WASHINGTON POLICY CENTER

LEGISLATIVE MEMO

Senate Bill 5838, to create a government task force to oversee development of Artificial Intelligence

By Todd Myers, Director, Center for the Environment January 2024

Key Findings

1. **The rapid growth of artificial intelligence has prompted legislators to propose creating a government task force to regulate how AI is used.**
2. **Senate Bill 5838 would create a task force of at least 42 members to report on the development of AI and recommend potential regulation.**
3. **Regulating artificial intelligence because it can be misused is similar to arguing that politicians should regulate the internet or the scientific process because they could be misused.**
4. **Regulating AI threatens to undermine the promise of the technology, undermining environmental solutions, economic benefits, and consumer use.**
5. **WILDLABS, the World Wildlife Fund's conservation tech organization, lists AI as the top future technology for protecting threatened species around the world. Allowing innovation is key to achieving that promise.**
6. **Although the task force is focused on the misuse of AI by the private sector, the most serious misuse of the technology has been by governments. Responses from ChatGPT have also shown a consistent leftward political bias.**
7. **Rather than looking to limit AI's innovation, legislators should focus on privacy and other concerns in the same way they would with other information technologies and tools.**

Introduction

Just over one year ago, ChatGPT captured the public's attention by showing that this artificial intelligence (AI) tool can reply to questions in a way that is virtually indistinguishable from a human response. Since then, the advanced capabilities of AI have drawn increasing attention from politicians and special interests, who appear both worried about its potential misuse and are excited about using AI to promote their own agendas.

Washington state is a major player in AI innovation, with Microsoft having a stake in OpenAI, the creator of ChatGPT. Responding to these various issues and economic interests, some lawmakers have introduced Senate Bill 5838 to create a government task force made up of a wide range of special interests, politicians, and AI experts to consider potential government regulation.[1]

That task force, however, is more likely to hinder the growth of AI and make it hard to fulfill its promise as a tool for benefitting Washington's economy, the people of Washington, and to solve important social challenges like environmental sustainability. The purpose of the legislation is to catch up with the innovation that has occurred. Regulating AI due to fear of theoretical problems would sacrifice AI's promise to give legislators and others a vague sense of security.

The best way to ensure that AI achieves its potential as a tool for economic growth, a way to create environmental solutions, and bring benefits to Washingtonians is to address concerns about the use of AI in the same way we would address them if they were from the internet, the scientific process, or anywhere else.

The text of SB 5838

The legislation contains three elements: it would create the task force, it would outline the topic areas the task force would address, and it

1 SB 5838, "AN ACT Relating to establishing an artificial intelligence task force; creating new sections; and providing an expiration date," Washington State Legislature, introduced December 12, 2023, at https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Bills/5838.pdf?q=20240114144825

washingtonpolicy.org
(206) 937-9691

would require task force recommendations and reporting.

The proposed legislation lists a minimum of 42 members of the AI task force who would be drawn from a range of political, special interest, business, and academic backgrounds. For example, there must be one member "representing a statewide teachers association," "at least five representatives from advocacy organizations" representing various racial and ethic groups and other "vulnerable" communities, several named special interests, and several politicians and representatives of state agencies.

Of those 42 representatives, only 11 would be from groups that have some expertise in AI. Nearly three quarters of the proposed task force members would be politicians or people from special interest groups unrelated to AI.

The task force would be given a broad mandate to examine a wide range of topics, including identification of risks from AI, "benefits and risks to the public broadly," recommendations on "appropriate uses and limitations" of AI, "racial equity considerations," civil liberties issues, and how to educate the public about these issues.

It also asks task force members to suggest regulation regarding testing of AI systems "before public release," to protect privacy and security, and to "ensure accountability, including oversight, impact assessment, auditability, and due diligence mechanisms." That is an extremely broad mandate. Regulation that can provide accountability, oversight, and impact assessment could be extremely intrusive.

The large number of members of the task force, including members from special interest groups with no clear connection to artificial intelligence technology, and an expansive mandate indicates the bill sponsors are having difficulty understanding the issues at hand and providing clear guidance. Given the public attention that AI has generated, the sponsors seem to feel they should provide oversight, even if they are unsure what should be overseen or how to do it.

A large board, with a significant majority of members who have little understanding or experience of AI, combined with a vague mandate, is unlikely to deliver useful guidance for policymakers.

The market, not government, made AI useful

The sponsor of SB 5838, Senator Joe Nguyen (D-Seattle), claims that AI could be the next big industry in Washington state. The remarkable growth in AI has occurred without direction from politicians. That lack of political control is what prompted introduction of the bill.

Senator Nguyen claims that the reason ChatGPT was released to the public was that investors like Elon Musk stopped providing funding.[2] Senator Nguyen claims that when OpenAI stopped receiving funding from Elon Musk, "ChatGPT became a thing because they had to fund the actual initiative."

I am not familiar with the motive behind making ChatGPT public, but if Senator Nguyen is correct, the reason millions of people now have access to this incredible tool is due to the power of the free market. It wasn't government funding or foresight, but the recognition that ChatGPT is so useful that people would be willing to pay for it. Senator Nugyen's comments indicate he feels that ChatGPT should not have been released to the public because the motive was to generate a profit.

The greatest threat preventing AI from becoming Washington's next great industry is excessive regulation. In Europe, more than 150 researchers and entrepreneurs signed a letter warning that the proposed "AI Act" would have, "catastrophic implications for European competitiveness."[3] Washington needs to avoid similar mistakes.

AI's potential to help the environment

The legislative interest in AI is prompted by the remarkable improvement in large-language computer models like ChatGPT over the past year. Artificial intelligence is used in many other

2 "Senate Environment, Energy, and Technology Hearing," TVW, accessed January 2024 at https://www.tvw.org/watch/?clientID=9375922947&eventID=2024011101&startStreamAt=1869&stopStreamAt=1882

3 "European companies claim the EU's AI Act could 'jeopardise technological sovereignty,'" by Jess Weatherebed, The Verge, June 30, 2023, at https://www.theverge.com/2023/6/30/23779611/eu-ai-act-open-letter-artificial-intelligence-regulation-renault-siemens

ways as well, and it already plays an important role in solving energy and environmental problems.

For example, AI is used by a company called Sense to identify the unique electronic signatures of appliances in a house, providing real-time information about how homes and buildings are using electricity. That information can be used to find ways to conserve energy – cutting costs and reducing environmental impact. That technology has now been integrated into smart meters built by the Spokane-based company ITRON.[4]

It is also used in smart thermostats like Google Nest and Ecobee to help homeowners keep houses comfortable by using the least amount of energy possible at times when prices and carbon-intensity are low. Puget Sound Energy offers a program that provides rebates for homes with smart thermostats that can be used to reduce electricity demand during periods of stress on the energy grid.[5]

Experts in conservation technology have also identified artificial intelligence as the most promising tool to "advance conservation." The "State of Conservation Technology 2023" report from WILDLABS, which is affiliated with the World Wildlife Fund, found that while AI currently ranks 10th out of 11th in conservation technologies in use, it ranked number one in the "capacity to advance conservation." That promise can only be realized by expanding the diversity and reach of innovation. Adding political barriers to new applications of AI will slow down the innovation that is necessary to ensure AI becomes the tool conservationists are hoping it will become.

The number of ways artificial intelligence will be used to address environmental problems continues to grow. The Pacific NW National Laboratory recently launched the "Center for AI @PNNL," with the specific goal of promoting "energy resilience."[6] Government regulation authored by a panel of special interests risks slowing down this important avenue of innovation.

This is one reason many who testified on the legislation asked that their organization be specifically added to the AI task force. They understand that the regulation could distort the direction of AI innovation and application in Washington and they want to either limit that distortion, or make it work for them.

To address the many environmental problems where government has failed, we need to democratize environmentalism and distribute power to people, not concentrate it in the hands of politicians or government agencies. AI helps achieve that.

This isn't the only area where AI holds the promise to solve important challenges. It is already helping find cures for cancer, personalizing education, and encouraging innovation in many other areas. Limiting innovation risks undermining breakthroughs in these, and other, important areas.

Addressing AI's risks or adding politics?

The calls for regulation cite potential misuse of AI as a threat. However, artificial intelligence is no different than other powerful tools that can be abused.

The legislation says, "when used irresponsibly, artificial intelligence has the potential to further perpetuate bias and harm to historically excluded groups," among other concerns. The words "artificial intelligence" could be replaced with "the internet," appeals to "science," or even – according to the Washington State Department of Health – "rational thinking."[7] Simply because something can be misused does not mean it is wise for the government to regulate it.

Like the internet or a free press, there are concerns that AI can be misused to harm privacy or create other risks. To address concerns about privacy we don't limit the internet or impose controls on newspapers. Instead, policymakers focus on the specific problem independent of

4 "Sense Joins Itron's Expanding Ecosystem of Distributed Intelligence Partners," Itron, February 2, 2023, at https://www.itron.com/na/company/newsroom/2023/02/02/sense-joins-itrons-expanding-ecosystem-of-di-partners

5 "PSE | PSE Flex," Puget Sound Energy, Accessed January 2024, at https://www.pse.com/en/rebates/PSE-flex

6 "Center for AI | PNNL," Pacific Northwest National Laboratory, Accessed January 2024, at https://www.pnnl.gov/projects/center-ai

7 "Washington State's New Climate Curriculum Attacks 'Rational Thinking,'" by Todd Myers, National Review, May 23, 2023, at https://www.nationalreview.com/2023/05/washington-states-new-climate-curriculum-attacks-rational-thinking/

the particular tool. AI should be treated in the same way and any proposed regulation should focus on the problem rather than regulating a mechanism that may potentially cause concern.

Indeed, government regulation is likely to exacerbate some of the problems the task force is purported to address. As University of Washington professor and AI expert Pedro Domingos wrote in The Economist, "Regulating a nascent industry like AI opens the door to all sorts of noxious political and special-group interference. (Imagine if the same had happened to the Internet.)"[8] By creating a panel dominated by special interests with only vague guidance, SB 5838 seems to embody Dr. Domingos' concerns almost perfectly.

Notably, while the legislation uses examples of potential racial bias from AI to put several members of "historically excluded groups" on the task force, it does not mention well-known instances of political bias. A study by European researchers found that ChatGPT human programmers gave it an overt "pro-environmental, left-libertarian orientation."[9] The researchers note that, "in contrast to traditional voting advice application which present factual data (e.g., the Greens support the taxation of [airline] flights), conversational AI systems add their own political 'opinion.'"

There are numerous tangible examples of this bias. For example, when asked to write a poem praising Donald Trump, ChatGPT refused, but it did create one praising Joe Biden. These examples and additional research from the left-leaning Brookings Institution concluded that, "There is a clear left-leaning political bias to many of the ChatGPT responses."[10]

If the purpose of the task force is to remove bias in AI – rather than impose a particular political bias – the legislation should include the persistent left-wing bias as a topic to address as well as a representative of a right-leaning organization to represent the interests of those against whom ChatGPT's programmers have imposed viewpoint discrimination.

Oversight should be open and pro-innovation

The task force created by the bill is fairly large – at least 42 members. The claim is that such a large group would allow many different perspectives to be represented. At the end of the day, the regulations recommended by the task force would likely be enforced by a small group of people within a state agency. What appears to be an open process would become much more closed once the work of the task force is finished.

Even if the task force continued to operate, it could not match the level of oversight that exists organically among the various companies competing in the private marketplace to create various AI systems, or the thousands of AI experts and researchers studying the latest developments on a daily basis. The insights provided by all of those private-sector experts are far more comprehensive and accurate than the views of a government task force made up of people with little technological experience who gather infrequently with the stated purpose of constraining the innovation of others.

The information provided by the task force would certainly be out of date and guided more by political agendas than knowledgeable assessment. During the hearing, Senator Lisa Wellman said she wanted more frequent reports from the task force to assure the public that research "is being done at a high level by the state."[11] She argued that people could look to the government to get "general information from trusted sources."

After two years in which government leaders and agency staff have been consistently dishonest about the impact of climate policy and utilities commissioners said that sharing cost information with utility customers would be too "confusing," the notion that people see the government as a "trusted source" is remarkably tone deaf. The public understands that all information and recommendations released by

8 "Letters to the Editor," The Economist, May 11, 2023, at https://www.economist.com/letters/2023/05/11/letters-to-the-editor

9 The political ideology of conversational AI: Converging evidence on ChatGPT's pro-environmental, left-libertarian orientation," Jochen Hartmann, Jasper Schwenzow, and Maximillian Witte, January 5, 2023, at https://arxiv.org/ftp/arxiv/papers/2301/2301.01768.pdf

10 "The politics of AI: ChatGPT and political bias," Jeremy Baum and John Villasenor, Brookings Institution, May 8, 2023, at https://www.brookings.edu/articles/the-politics-of-ai-chatgpt-and-political-bias/

11 "Senate Environment, Energy, and Technology Hearing," TVW, accessed January 2024 at https://www.tvw.org/watch/?clientID=9375922947&eventID=2024011101&startStreamAt=1832&stopStreamAt=1866

the task force would reflect the political agendas of the members and the agency staff.

In fact, the most harmful examples of the misuse of AI come from the Chinese government, not from the private sector. This is not to compare Washington's government with that of China, but treating government as a trusted source when there is a real risk of government misusing AI technology is myopic.

Additionally, the prime sponsor of the bill, Senator Nguyen, indicated he wants the task force because it would be driven by politics, not by profit motive. He said, "it is good for a governmental entity – for us – to have that position because there is not that dynamic and pressure to raise revenue."

The irony is that allocating seats on the task force to special interests is an admission by bill sponsors that each of these groups has its own agenda. Rather than providing a "trusted" unbiased view of AI, the task force would be comprised of people with carefully selected political biases and agendas.

Conclusion: First do no harm

Artificial intelligence has made incredible strides in the past year and the promise of using it to address environmental problems that have eluded government solutions is growing. Premature efforts to control and guide AI's development threatens those innovations.

Far from lacking oversight, AI's development is the subject of massive public scrutiny and vigorous market competition. From university researchers to tech journalists, national laboratories, hobbyists, and large and small businesses, AI development is being watched from every angle.

Creating a task force that would invariably lack expertise and constantly be playing catch up, and whose primary role would be to add political agendas to the discussion, is likely to harm an innovation that holds incredible promise for people, Washington's economy, and the planet.

Todd Myers is the Director of the Center for the Environment.