

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1680

INTRODUCER: Senator Bradley

SUBJECT: Artificial Intelligence Transparency

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1680 establishes the Government Technology Modernization Council, an advisory council within the Department of Management Services, to generally advise the Legislature on artificial intelligence (AI)-related issues; and creates s. 501.174, F.S., entitled “Artificial intelligence transparency.” which requires certain safety and transparency standards and disclosures in connection with the use of artificial intelligence.

The purpose of the advisory council is to generally study and monitor the development and deployment of AI systems. Accordingly, the bill requires council members to meet at least quarterly and to perform several duties, including the preparation and submittal of two annual reports to the Governor and Legislature: one addressing ransomware incidents, and the other addressing artificial intelligence more generally. The bill also provides for the composition of the advisory council and regulates other aspects of service on the council.

With respect to for-profit entities and persons who produce or use AI and make such AI content available to the Florida public, the bill requires them to create certain safety and transparency standards and to publish certain disclosures whenever AI is being used. It also prohibits the use of AI to create obscene material if the image or information of a minor is used, or if the material is created by a person who must register as a sexual predator under state law. The bill does not apply to the use of an image or likeness for AI training purposes, or to persons not having a legal expectation of privacy, provided the disclosures required by the bill have been made. State agencies using AI must disclose such use to persons interacting with the agency, and must ensure that any confidential information obtained through AI remains confidential.

The bill provides for enforcement by the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act, and authorizes the department to adopt rules to implement the bill. It does not establish a private cause of action.

The bill takes effect on July 1, 2024.

II. Present Situation:

Artificial Intelligence

Generally

Artificial intelligence (AI) is the development of computer systems to perform tasks that normally require human intelligence, such as learning and decision-making.¹ It enables computer systems to receive information that is either provided to them by others or gathered by them (e.g. through camera lenses or other sensors), which they can then process and respond to in some meaningful way. To a certain extent, AI systems are capable of adapting their behavior by analyzing the effects of previous actions and working autonomously.²

Investments in AI have led to many of the transformative advancements that U.S. consumers rely upon every day,³ including mapping technologies, voice-assisted smartphones, handwriting recognition for mail delivery, financial trading, smart logistics, spam filtering, and language translation. AI advances have also provided significant social benefits in areas such as precision medicine, environmental sustainability, education, and public welfare.⁴

Types of AI

AI may be generally classified in one of three classes based on its capabilities or its functionalities:⁵

- *Artificial Narrow AI*. Also known as Weak AI, Artificial Narrow AI is the only type of AI that exists today. All other forms of AI are theoretical. Machines using Weak AI can only perform specific tasks using human-like capabilities. They can do nothing more than what they are programmed to do. Examples of Artificial Narrow AI include Siri, Alexa, and ChatGPT.⁶
- *General AI*. Also known as Strong AI, General AI is only a theoretical concept. Any machine or application using Strong AI in the future would be able to use what they have learned in the past to accomplish new tasks in different contexts without the need for additional training by human beings. In other words, they would be able to learn, perceive, understand, and function completely like a human beings.⁷
- *Super AI*. Also known as artificial superintelligence, Super AI is strictly theoretical. If ever realized, machines using Super AI would think, reason, learn, make judgments, and possess cognitive abilities surpassing those of human beings. Machines possessing Super AI capabilities would have evolved beyond the point of understanding human sentiments and

¹ National Conference of State Legislatures (NCSL), *Artificial Intelligence 2023 Legislation*, Jan. 12, 2024, <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation>.

² European Parliament, *What is artificial intelligence and how is it used?*, E.U. News, Jun. 20, 2023, <https://www.europarl.europa.eu/news/en/headlines/society/20200827STO85804/what-is-artificial-intelligence-and-how-is-it-used>.

³ U.S. Department of State, *Artificial Intelligence (AI)*, <https://www.state.gov/artificial-intelligence/> (last visited Jan. 20, 2024).

⁴ *Id.*

⁵ IBM, *Understanding the different types of artificial intelligence*, Oct. 12, 2023, <https://www.ibm.com/blog/understanding-the-different-types-of-artificial-intelligence/>; Naveen Joshi, *7 Types of Artificial Intelligence*, Jun. 19, 2019, Forbes, <https://www.forbes.com/sites/cognitiveworld/2019/06/19/7-types-of-artificial-intelligence/?sh=7b5ddf4d233e>.

⁶ *Id.*

⁷ *Id.*

experiences to feeling emotions, having needs, and possessing beliefs and desires of their own.⁸

Under the umbrella of Artificial Narrow AI or Weak AI, there are four kinds of AI based upon functionalities:⁹

- *Reactive Machine AI.* Reactive machines are AI systems with no memory. They are designed to perform very specific tasks. They can only work with presently available data because they cannot recollect previous outcomes or decisions. Reactive Machine AI stems from statistical math and can analyze vast amounts of data to produce a seemingly intelligent output. Examples of machines and applications that rely upon Reactive Machine AI include IBM Deep Blue (IBM’s chess-playing supercomputer) and the Netflix recommendation engine.¹⁰
- *Limited Memory AI.* In addition to having the capabilities of purely reactive machines, Limited Memory AI machines and applications are also capable of learning from historical data to make decisions. Almost all present-day Limited Memory AI applications, including Generative AI tools (e.g. chatbots and virtual assistants) and self-driving vehicles, are Limited Memory AI machines and applications.¹¹
- *Theory of Mind AI.* Theory of Mind AI is a kind of General AI that exists in concept only at this time. It is the “next level” of AI systems that researchers are currently developing. Machines and applications using a Theory of Mind level AI will be able to understand the thoughts and emotions of other entities. In theory, this will allow them to simulate human-like relationships and to contextualize artwork and essays, which today’s Generative AI tools are unable to do.¹²
- *Self-Aware AI.* Self-Aware AI is a kind of Super AI that exists in concept only at this time. It is strictly theoretical. If ever achieved, it will have the ability to understand its own internal conditions and traits along with human emotions and thoughts. It will also have its own set of emotions, needs, and beliefs.¹³

Generative AI

Generative AI is a type of Limited Memory AI technology¹⁴ that can produce high-quality content, including text, images, audio, or video, within seconds when prompted by a user.¹⁵ Although it was first introduced in the 1960s, it was not until 2014, with the introduction of

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* Emotion AI is a kind of Theory of Mind AI that is currently under development. Researchers hope that it will one day have the ability to analyze voices, images, and other kinds of data to recognize, simulate, monitor, and respond appropriately to humans on an emotional level. To date, Emotion AI is unable to understand and respond to human feelings. *Id.*

¹³ *Id.*

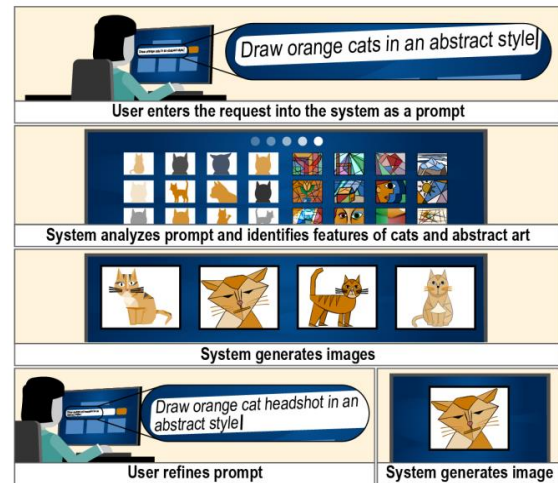
¹⁴ George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

¹⁵ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (June 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>; George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

generative adversarial networks, or GANs (a type of machine learning algorithm),¹⁶ that Generative AI could convincingly create authentic images, videos, and audio of real people.¹⁷

Generative AI systems learn patterns and relationships from massive amounts of data, which enables them to process and create new content that may be similar, but not identical, to the underlying training data. Such systems rely upon sophisticated machine learning algorithms and statistical models to work.¹⁸

In order to generate new content, Generative AI users are required to submit prompts that guide the generation of new content. Many iterations may be required to produce the intended result because Generative AI is sensitive to the wording of prompts.¹⁹



Source: GAO (analysis and illustrations). | GAO-23-106782

How Generative AI Works²⁰

Because Generative AI can do so much, it has many potential applications, including in education, government, medicine, and law. Applications include:

- Writing a speech in a particular tone.
- Summarizing complex research.
- Assessing legal documents.
- Creating images for different applications.
- Composing music.
- Composing poems.
- Designing molecules for new drugs.
- Generating programming codes.
- Translating languages.
- Implementing chatbots.

¹⁶ “A generative adversarial network (GAN) is a deep learning architecture. It trains two neural networks to compete against each other to generate more authentic new data from a given training dataset. For instance, you can generate new images from an existing image database or original music from a database of songs. A GAN is called adversarial because it trains two different networks and pits them against each other. One network generates new data by taking an input data sample and modifying it as much as possible. The other network tries to predict whether the generated data output belongs in the original dataset. In other words, the predicting network determines whether the generated data is fake or real. The system generates newer, improved versions of fake data values until the predicting network can no longer distinguish fake from original.” Amazon Web Services (AWS), *What is a GAN?*, <https://aws.amazon.com/what-is/gan/> (last visited Jan. 20, 2024). GAN can generate images, training data for other models, complete missing information, and generate 3D models from 2D data. *Id.*

¹⁷ George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

¹⁸ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (June 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>. Training data can include open-source information, such as text and images from the internet. *Id.*

¹⁹ *Id.*

²⁰ *Id.*

- Deploying “deepfakes.”²¹
- Improving dubbing for movies.
- Designing physical products and buildings.²²

As of early 2023, emerging Generative AI systems have reached more than 100 million users and have attracted global attention to their potential applications.²³

The U.S. Government Accountability Office has identified several opportunities and challenges in connection with the proliferation of Generative AI systems.²⁴ With respect to opportunities, Generative AI can quicken access to ideas and knowledge by helping people more efficiently gather new information; help automate a wide variety of administrative and repetitive tasks; and enhance the productivity of many industries.²⁵ With respect to challenges, because Generative AI systems can respond to harmful instructions, they can increase the speed and scale of many real world harms, such as facilitating the development and proliferation of false information; facilitating the use of copyrighted, proprietary, or sensitive data, without the owner’s or subject’s knowledge; reducing privacy for users, including minors, through the retention of personally identifiable information without consent; and facilitating the storage and use of sensitive information by foreign adversaries.²⁶

Regulation

Concerns about the potential misuse or unintended consequences of AI have prompted efforts to examine and develop standards at the federal and state levels.²⁷

For example, the White House Office of Science and Technology Policy has published a document identifying principles that should guide the design, use, and deployment of automated

²¹ Deepfake AI is a type of AI used to create convincing images, audio, and video hoaxes. “Deepfakes” are created using a combination of techniques, including face swapping. Algorithms learn the unique features of a person’s face, such as the shape of his or her nose, the size of his or her eyes, and the position of his or her eyebrows, to create new images or videos using the person’s likeness. The new image or video is very realistic and it may be difficult to tell that it has been manipulated. Jerome Thiebaud, *How Badly Will Deepfakes Weaponize Generative AI?*, Centific, <https://www.centific.com/how-badly-will-deepfakes-weaponize-generative-ai/> (last visited Jan. 22, 2024).

²² Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (Jun. 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>; George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

²³ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (Jun. 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ NCSL, *Artificial Intelligence 2023 Legislation*, Jan. 12, 2024, <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation>.

systems.²⁸ And the U.S. National Institute of Standards and Technology²⁹ is holding workshops and discussions with the public and private sectors to develop federal standards for the creation of reliable and trustworthy AI systems.³⁰

In 2023, at least 25 states, Puerto Rico, and the District of Columbia introduced AI bills, and 18 states and Puerto Rico adopted resolutions or enacted legislation. Examples include:³¹

- Connecticut:
 - Required its Department of Administrative Services to conduct an inventory of all systems employing AI in use by state agencies and, beginning Feb. 1, 2024, to perform ongoing assessments of such systems, to ensure that they will not result in unlawful discrimination or disparate impact.
 - Required its Office of Policy and Management to establish policies and procedures concerning the development, procurement, implementation, utilization and ongoing assessment of systems employing AI in use by state agencies.³²
- Louisiana adopted a resolution requesting its Joint Committee on Technology and Cybersecurity to study the impact of AI in operations, procurement, and policy.³³
- Maryland established a grant program, its Industry 4.0 Technology Grant Program, to assist certain small and medium-sized manufacturing enterprises with implementing new “industry 4.0” technology or related infrastructure. The definition of industry 4.0 includes AI.³⁴
- North Dakota enacted legislation defining a person as an individual, organization, government, political subdivision, or government agency or instrumentality, and specifying that the term does not include environmental elements, AI, animals, or inanimate objects.³⁵
- Texas created an AI advisory council to study and monitor AI systems developed, employed or procured by state agencies. North Dakota, Puerto Rico, and West Virginia also created similar councils.³⁶

²⁸ The White House, Office of Science and Technology Policy (OSTP), *Blueprint for an AI Bill of Rights*, <https://www.whitehouse.gov/ostp/ai-bill-of-rights/> (last visited Jan. 22, 2024); see also The White House, OSTP, *Blueprint for an AI Bill of Rights* (Oct. 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf> (providing that one should be protected from unsafe or ineffective systems; one should not face discrimination by algorithms (systems should be used and designed in an equitable way); one should be protected from abusive data practices via built-in protections and have agency over how data about him or her is used; one should know that an automated system is being used and understand how and why it contributes to outcomes that impact him or her; and one should be able to opt out, where appropriate, and have access to a person who can quickly consider and remedy problems one encounters).

²⁹ The U.S. National Institute of Standards and Technology (NIST) was founded in 1901 and today forms part of the U.S. Department of Commerce. It is one of the nation’s oldest physical science laboratories. NIST, *About NIST*, <https://www.nist.gov/about-nist> (last visited Jan. 22, 2024).

³⁰ National Conference of State Legislatures (NCSL), *Artificial Intelligence 2023 Legislation*, Jan. 12, 2024, <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation>; see also NIST, *Artificial Intelligence*, <https://www.nist.gov/artificial-intelligence> (last visited Jan. 22, 2024) (describing NIST’s activities in connection with AI development).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Advisory Councils

A “council” or an “advisory council” is a kind of advisory body. It is created by specific statutory enactment and appointed to:

- Function on a continuing basis for the study of problems arising in a specified functional or program area of state government.
- Provide recommendations and policy alternatives.³⁷

Advisory bodies created by specific statutory enactment, as an adjunct to an executive agency, must be established, evaluated, or maintained in accordance with the following requirements:

- They may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.³⁸
- They must be terminated by the Legislature when they are no longer necessary and beneficial to the furtherance of a public purpose.³⁹
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies established as adjuncts to executive agencies.⁴⁰
- They must meet a statutorily defined purpose.⁴¹
- Their powers and responsibilities must conform with the definitions for governmental units specified by statute.⁴²
- Their members, unless expressly provided otherwise in the state constitution, must be appointed for four-year staggered terms.⁴³
- Their members, unless expressly provided otherwise by specific statutory enactment, must serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided by statute.⁴⁴
- The private citizen members of advisory bodies that are adjunct to executive agencies must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.⁴⁵
- The private citizen members of commissions or boards of trustees that are adjunct to executive agencies must be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of the State Constitution.⁴⁶
- Unless an exemption is otherwise specifically provided by law, all meetings of advisory bodies adjunct to executive agencies are public meetings, and minutes, including a record of all votes cast, must be maintained for all meetings.⁴⁷

³⁷ Section 20.03(7), F.S.

³⁸ Section 20.052(1), F.S.

³⁹ Section 20.052(2), F.S. The executive agency to which the advisory body is made an adjunct must advise the legislature at the time the advisory body ceases to be essential to the furtherance of a public purpose. *Id.*

⁴⁰ Section 20.052(3), F.S.

⁴¹ Section 20.052(4)(a), F.S.

⁴² Section 20.052(4)(b), F.S.

⁴³ Section 20.052(4)(c), F.S.

⁴⁴ Section 20.052(4)(d), F.S.

⁴⁵ Section 20.052(5)(a), F.S.

⁴⁶ Section 20.052(5)(b), F.S.

⁴⁷ Section 20.052(5)(c), F.S.

- If an advisory body that is adjunct to an executive agency is abolished, its records must be appropriately stored, within 30 days after the effective date of its abolition, by the executive agency to which it was adjunct, and any property assigned to it must be reclaimed by the executive agency.⁴⁸

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.⁴⁹ FDUTPA was modeled after the Federal Trade Commission Act.⁵⁰

The Department of Legal Affairs or the state attorney's office in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.⁵¹ The state attorney's office may enforce violations of FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in writing; or the state attorney fails to act within 90 days after a written complaint is filed.⁵² In certain circumstances, consumers may also file suit through private actions.⁵³

The department and the state attorney's office have powers to investigate FDUTPA claims, which include:⁵⁴

- Administering oaths and affirmations.
- Subpoenaing witnesses or matter.
- Collecting evidence.

The department and the state attorney's office may seek the following remedies:⁵⁵

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to \$10,000 per willful violation.

FDUTPA may not be applied to certain entities in certain circumstances, including:⁵⁶

⁴⁸ Section 20.052(5)(d), F.S.

⁴⁹ Section 501.202, F.S.

⁵⁰ See 15 U.S.C. s. 45; see also D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).

⁵¹ Sections 501.203(2) and 501.207(1)(c) and (2), F.S.; see also David J. Federbush, *FDUTPA for Civil Antitrust Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. BAR J. 52 (Dec. 2002), available at <https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/> (analyzing the merits of FDUTPA and the potential for deterrence of anticompetitive conduct in Florida).

⁵² Section 501.203(2), F.S.

⁵³ Section 501.211, F.S.

⁵⁴ Section 501.206(1), F.S.

⁵⁵ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

⁵⁶ Section 501.212(4), F.S.

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services.
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

III. Effect of Proposed Changes:

Government Technology Modernization Council

Section 1 of the bill creates the Government Technology Modernization Council, as an advisory council⁵⁷ within the Department of Management Services. Except as otherwise provided in the bill, the council must operate in a manner consistent with the statute regulating advisory bodies, commissions, and boards.⁵⁸

Purpose

The purpose of the council is to study and monitor the development and deployment of artificial intelligence systems and provide reports on such systems to the Governor and the Legislature.

Composition

The council must be comprised of the following members:

- The Lieutenant Governor or his or her designee.
- The state chief information officer.
- The Surgeon General of the Department of Health or his or her designee.
- The Secretary of the Agency for Health Care Administration or his or her designee.
- A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.
- The Chief Inspector General.
- Twelve representatives from institutions of higher education located in the state or the private sector with senior-level experience or expertise in artificial intelligence, cloud systems, identity management, data science, and machine learning, with:
 - Six appointed by the Governor.
 - Three appointed by the President of the Senate.
 - Three appointed by the Speaker of the House of Representatives.
- One member of the Senate, appointed by the President of the Senate or his or her designee.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives or his or her designee.

The Secretary of Management Services, or his or her designee, must serve as the ex officio, nonvoting executive director of the council.

⁵⁷ A “council” or “advisory council” means an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. Section 20.03(7), F.S.

⁵⁸ See s. 20.052, F.S. (regulating advisory bodies, commissions, and boards).

Term

The bill requires members to serve for a term of 4 years; however, for the purpose of providing staggered terms, the initial appointments of members made by the Governor must be for a term of 2 years. A vacancy must be filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

Compensation

The bill requires members of the council to serve without compensation, but they are entitled to receive reimbursement for per diem and travel expenses pursuant to state law.⁵⁹

Confidential or Exempt Status of Information Received

The bill requires members of the council to maintain the confidential or exempt status of information received in the performance of their duties and responsibilities as members of the council. In accordance with state law,⁶⁰ a current or former member of the council may not disclose or use information not available to the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Members must sign an agreement acknowledging these provisions.

Duties

The bill requires the council to meet at least quarterly to:

- Assess and provide guidance on necessary legislative reforms and the creation of a state code of ethics for artificial intelligence systems in state government.
- Assess the effect of automated decision systems on constitutional and other legal rights, duties, and privileges of residents of the state.
- Study the potential benefits, liabilities, and risks that the state, residents of this state, and businesses may incur as a result of implementing automated decision systems.
- Recommend legislative and administrative actions that the Legislature and state agencies may take to promote the development of artificial intelligence systems in this state.
- Assess where artificial intelligence is deployed today.
- Assess what artificial intelligence is currently capable of, and the recent developments, including the application of artificial intelligence in manufacturing, mining, farming, and logistics.
- Evaluate common standards for artificial intelligence safety and security measures.
- Discuss the future of artificial intelligence and the ways it could develop over the next decade, including the application of artificial intelligence to manufacturing, mining, farming, and logistics.
- Assess the ways governmental entities and the private sector are utilizing artificial intelligence.

⁵⁹ Section 112.061, F.S.

⁶⁰ See s. 112.313, F.S. (providing standards of conduct for public officers, employees of agencies, and local government attorneys).

- Determine the ways artificial intelligence is being exploited by bad actors, including foreign countries of concern as defined in state law.⁶¹

The bill provides that by June 30, 2025, and each June 30 thereafter, the council must submit to the President of the Senate and the Speaker of the House of Representatives any legislative recommendations considered necessary by the council to address artificial intelligence.

The bill also provides that by December 1, 2024, and each December 1 thereafter, the council must submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents. At a minimum, the report must include:

- A summary of recommendations by relevant national entities on artificial intelligence systems in state government.
- An assessment of the impact of using artificial intelligence systems on the liberty, finances, livelihood, and privacy interests of the residents of this state.
- Recommended policies necessary to:
 - Protect the privacy and interests of residents of the state from any decrease in employment caused by artificial intelligence systems.
 - Ensure that residents of the state are free from unfair discrimination caused or compounded by the use of artificial intelligence systems.
 - Promote the development and deployment of artificial intelligence systems in the state.
- Any other information the council considers relevant.

For purposes of the bill, “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; the Public Service Commission; the Department of Legal Affairs; the Department of Agriculture and Consumer Services; and the Department of Financial Services. The term does not include university boards of trustees or state universities.⁶²

Artificial Intelligence Transparency

Section 2 of the bill creates s. 501.174, F.S., entitled “Artificial intelligence transparency.”

Definitions

The bill defines:

- “Artificial intelligence” to mean software developed with machine-learning, logic-based and knowledge-based, or statistical approaches, which can, for a given set of human-defined

⁶¹ See s. 287.138(1)(c), F.S. (defining “foreign countries of concern” to mean the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern).

⁶² See s. 282.318(2), F.S. (providing that the term has the same meaning as in s. 282.0041, F.S., except that it includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services).

objectives, generate outputs such as content, predictions, recommendations, or decisions influencing certain environments.

- “Department” to mean the Department of Legal Affairs.

Safety and Transparency Standards

To make it clear and conspicuous to consumers when content is generated by artificial intelligence, the bill requires any for-profit entity or person who produces or uses artificial intelligence, and makes such artificial intelligence content available to the Florida public, to create safety and transparency standards, including, but not limited to, the use of watermarks.

Additionally, an entity or a person who uses artificial intelligence must provide a clear and conspicuous disclosure statement:

- When an individual in this state is communicating or interacting with the entity or person through an artificial intelligence mechanism.
- If a political advertisement uses an image, a likeness, or content that has been generated by artificial intelligence, and has been synthetically or digitally manipulated, to convincingly portray a person as another person or as doing or saying something that was not actually done or said. Any such advertisement is subject to requirements and enforcement actions set forth by the Florida Elections Commission.

Use of Artificial Intelligence in the Creation of Obscene Material

The bill prohibits the use of artificial intelligence in the creation of obscene material if:

- The image or information of a minor is used.
- The biometric information of an identifiable minor is used.
- The material is created by a person who must register as a sexual predator under state law.⁶³

Applicability

The bill does not apply to:

- Use of an image or a likeness for artificial intelligence training purposes as long as the image or likeness is not distributed to or viewable by the public.
- A person who does not have a legal expectation of privacy as long as disclosure is provided pursuant to the bill.

State Agencies using Artificial Intelligence

The bill requires state agencies using artificial intelligence to disclose such use to persons who are interacting with them through artificial intelligence, and to ensure that any confidential information accessible to an artificial intelligence system remains confidential.

Enforcement

The bill provides that, except in connection with state agencies’ use of artificial intelligence, violations of the bill are deemed to be unfair and deceptive trade practices actionable solely by the department under the Florida Deceptive and Unfair Trade Practices Act.⁶⁴ If the department

⁶³ See s. 775.21(6), F.S. (The Florida Sexual Predators Act).

⁶⁴ Chapter 501, part II, F.S.

has reason to believe that a violation of the bill has occurred, the department, as the enforcing authority, may bring an action for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to the bill, the sections of the Act providing for individual remedies under the Act,⁶⁵ and for application of the Act,⁶⁶ do not apply. In addition to other remedies under the Act, the department may collect a civil penalty of up to \$50,000 per violation of the bill.

The bill provides that for purposes of bringing an action pursuant to the bill, any entity or person who produces or uses artificial intelligence that is distributed to or viewable by the public in this state is considered to be both engaged in substantial and not isolated activities within this state, and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

Private Causes of Action

The bill does not establish a private cause of action.

Authorization to Adopt Rules

The bill authorizes the department to adopt rules to implement the bill.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

⁶⁵ Section 501.211, F.S.

⁶⁶ Section 501.212, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

With respect to for-profit entities and persons who produce or use AI and make such AI content available to the Florida public, the bill will cause them to incur indeterminate costs, because such entities and persons will now need to create safety and transparency standards and publish disclosures to ensure compliance with the bill.

C. Government Sector Impact:

The Department of Management Services will incur costs associated with administratively supporting the council and reimbursing its members for travel and other costs. State agencies will incur costs associated with modifying their websites and other interfaces with the public to ensure that their use of AI is disclosed to persons interacting with them. However, these costs will be relatively small and can likely be absorbed by the Department of Management Services' and other state agencies' existing operating budgets.

The bill will also result in both an increase in civil penalties collected by the Department of Legal Affairs, and an increase of regulatory costs to the department, which has been tasked with enforcing the bill. These costs will be relatively small and can likely be absorbed by the Department of Legal Affairs' existing operating budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 282.802 and 501.174.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
