FISCAL IMPACT REPORT

SPONSOR Chandler **LAST UPDATED** 1/29/25
ORIGINAL DATE 1/27/25
SHORT TITLE Artificial Intelligence Act **BILL NUMBER** House Bill 60
ANALYST Hilla

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Attorney General	No fiscal impact	No fiscal impact	Indeterminate but minimal		Recurring	General Fund
State Agencies	No fiscal impact	No fiscal impact	Indeterminate but minimal		Recurring	General Fund (See Fiscal Implications)
Total	No fiscal impact	No fiscal impact	Indeterminate but minimal		Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Memorial 2 for the Legislative Education Study Committee to create an artificial intelligence workgroup.

Sources of Information

LFC Files
National Conference of State Legislatures (NCSL)
National Institute of Standards and Technology (NIST)

Agency Analysis Received From
Attorney General (AG)
Administrative Office of District Attorneys (AODA)
Department of Information Technology (DoIT)
Department of Homeland Security and Emergency Management (DHSEM)
Health Care Authority (HCA)
Higher Education Department (HED)
Economic Development Department (EDD)
Sandia National Laboratories (SNL)

Agency Analysis was Solicited but Not Received From
Public Education Department (PED)
Administrative Office of the Courts (AOC)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 60

House Bill 60 (HB60) creates the Artificial Intelligence Act, a regulatory framework for artificial intelligence (AI) systems. The Act consists of 15 sections, with rulemaking and enforcement to be assigned to the New Mexico Attorney General (NMAG). The bill establishes various definitions and responsibilities for developers and deployers of artificial intelligence, creating transparency and mechanisms to protect consumers from algorithmic discrimination. Important definitions in the bill:

- An artificial intelligence system is defined as any machine-based system that generates outputs, including content, decisions, predictions, or recommendations that can influence a physical or virtual environment for an explicit or implicit objective;
- Algorithmic discrimination is any condition in which the use of an artificial intelligence system results in an unlawful differential treatment or impact that disfavors a person on the basis of the person's actual or perceived age; color; disability; ethnicity; gender; genetic information; proficiency in the English language; national origin; race; religion; reproductive health; veteran status; or other status protected by state or federal law;
- Consequential decision is a decision that has a material legal or similarly significant effect on the provision or denial to a consumer of or the cost or terms of: education enrollment or an educational opportunity; employment or an employment opportunity; a financial or lending service; health care services; housing; insurance; or legal service;
- High-risk artificial intelligence system means any artificial intelligence system that when deployed makes or is a substantial factor in making a consequential decision, with various exceptions.

Other important definitions in the bill include "consumer" as a resident of New Mexico, a "developer" as a person who develops or intentionally and substantially modifies an artificial intelligence system and a "deployer" as a person who deploys an AI system. The Act primarily focuses on protecting consumers from algorithmic discrimination, as defined, by establishing developer responsibilities, deployer risk management requirements, legal enforcement parameters, and transparency provisions.

To protect consumers, the bill requires various disclosures of risk directly to the consumer and NMAG. Developers must publicly list all high-risk AI systems they offer along with an explanation of their risk mitigation efforts. Developers must notify NMAG within 90 days of discovering that their AI system has or is likely to have resulted in algorithmic discrimination, along with providing information about underlying properties of the system.

Deployers of an AI system (those who have purchased or otherwise received an AI system from a developer) must use reasonable care to protect consumers from any known or foreseeable risk of algorithmic discrimination, including creating a risk management policy that meets standards established by NMAG. Additionally, deployers must conduct annual impact assessments that include a statement of the high-risk AI system's intended use, an analysis of foreseeable risks of algorithmic discrimination and the metrics used to evaluate performance limitations, as well as

the demographic makeup of test datasets. For at least three years following the final deployment of a high-risk AI system, a deployer shall maintain records of the most recently conducted impact assessment for the system, including all records concerning the assessment. If a deployer discovers that their use of a high-risk AI system has resulted in algorithmic discrimination, NMAG may request that impact assessment. Deployers must also notify consumers of their use of high-risk AI systems. When those systems make or are a substantial factor in making a consequential decision that affects consumers, the deployer must explain the use of the system to affected consumers, accompanied by an appeals process and opportunities to correct errors. Any information provided directly to the consumer needs to be in multiple languages and accessible for those with disabilities.

Following the creation of rules related to the Act by NMAG, the state would be able to enforce its provisions and consumers could file civil action in district court related to alleged violations of the Act. Developers and deployers can avoid state penalties if they are able to demonstrate they are taking proactive risk mitigation efforts. However, a violation of the Artificial Intelligence Act is an unfair practice and may be enforced under the Unfair Practices Act.

HB60 exempts deployers from meeting certain conditions, including those with fewer than 50 full-time employees and those that do not use their own data to train the high-risk AI system. Systems that are already regulated by equivalent or stricter federal laws are also exempt. Exclusions also include systems that perform "narrow procedural tasks," such as calculators, cybersecurity, or antivirus software.

The effective date of this bill is July 1, 2026, with rulemaking to be finalized by the Attorney General by January 1, 2027.

FISCAL IMPLICATIONS

The fiscal impacts of the bill would apply to NMAG's operating budget in FY27. Due to the timing of the rulemaking by the AG, there would be no fiscal impact in FY25 and FY26, with an indeterminate but minimal fiscal impact starting in FY27.

Various agencies, such as the Department of Information Technology (DoIT), state that should the bill pass, agencies may require additional funding for new full-time employees to comply with various provisions of the bill, as the state departments may be considered a developer or deployer under HB60. However, similar to NMAG, this would not impact DoIT or any other state agency's recurring budget that would otherwise need to comply with HB60 until FY27, thus the fiscal impact on state agencies until FY27 is indeterminate but minimal.

SIGNIFICANT ISSUES

The main types of AI are generative and predictive AI. Generative AI creates content based on learned information and outputs information in the form of text, images, and sound. Predictive AI makes predictions based on historical data by finding patterns and analyzing data to predict future events. HB60's definition accounts for both generative and predictive AI systems.

New Mexico has previously defined artificial intelligence in Laws 2024, Chapter 57. Chapter 57, the only enacted state legislation relating to AI, allows for civil penalties if the use of AI to create deceptive media in election campaigns is not disclosed. As used in the Campaign

Reporting Act, AI is defined as "a machine-based or computer-based system that through hardware or software uses input data to emulate the structure and characteristics of input data to generate synthetic content, including images, video or audio." That definition is more aligned with generative and not predictive AI.

Federal blueprints and frameworks surrounding AI encourage the use of clear and plain language that is understandable by a broad audience. The National Institute of Standards and Technology's AI risk management framework encourages transparency, accountability, and ethical uses of AI. Other states are considering regulatory frameworks to place guardrails around AI. The first-ever rule on AI was adopted by the European Union in 2023 using a risk-based approach. The EU's Artificial Intelligence Act aims to ensure that AI systems are overseen by people, and are safe, transparent, traceable, non-discriminatory, and environmentally friendly. The Act establishes obligations for providers and users of AI, like additional transparency requirements, depending on the level of risk AI can create (acceptable risk, high-risk, and unregulated risk). In the United States, state and federal governments are still developing frameworks for AI oversight.

Sanida National Laboratories (SNL) notes that no best practices exist yet for bias detection and mitigation, as well as evaluation metrics for algorithmic discrimination. SNL mentions that metrics for measuring bias are inconsistent and sometimes conflicting.

HB60 is closely aligned with Colorado's Consumer Protections for Artificial Intelligence Act, which similarly focuses on consequential decisions and algorithmic discrimination. Colorado's AI bill is the first comprehensive AI bill in the nation, according to the National Conference of State Legislatures. HB60 follows national trends in attempting to address algorithmic discrimination by high-risk AI systems.

The Higher Education Department (HED) notes that it could be difficult to determine when developers or deployers of high-risk AI systems have not met the requirements of the bill. HED states that New Mexico residents may not know when algorithmic discrimination occurs from a high-risk AI system, despite the requirements for various disclosures to the consumer. The Health Care Authority (HCA) raises similar concerns, highlighting that the criteria for detecting algorithmic discrimination is not defined in HB60 and relies on a credible report from a deployer.

Additionally, HED argues that after a credible report of algorithmic discrimination, the investigation into the high-risk AI system that caused the discrimination may not provide any answers as to how the system arrived at its conclusion. HED explains that some AI systems use "black-box algorithms"—machine learning models that produce outputs without revealing how they make decisions. HED suggests HB60 may require developers and deployers not to develop or deploy systems using black-box models, or raise questions about how to handle systems with different levels of explainability.

DoIT, HCA, and HED all mention that the bill would apply to all public bodies and state agencies if the public bodies or agencies were to develop or deploy artificial intelligence systems. DoIT states the definition of high-risk AI systems is very broad and expansive, thus would have significant administrative and fiscal impacts on public bodies and state agencies, which would be required to comply with the notice and impact assessment requirements.

The detailed compliance requirements may discourage small developers or startups from locating to New Mexico due to the high costs to comply with the bill, potentially reducing economic opportunities in the state. The Economic Development Department (EDD) states that requirements of the act could result in new and increased costs and administrative burdens for New Mexico businesses developing an/or deploying AI systems. EDD states the bill could have

a negative impact on innovation by creating additional obstacles for the development and deployment of new AI technologies.

ADMINISTRATIVE IMPLICATIONS

As noted in the fiscal implications, this bill would create a recurring funding need for state agencies that are considered developers or deployers, resulting in the need for various agencies to hire more staff or increase their information technology contracts to ensure compliance with HB60.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill is related to House Memorial 2, which requests that the Legislative Education Study Committee create an artificial intelligence workgroup to examine, among other things, data governance policies with respect to artificial intelligence.

TECHNICAL ISSUES

NMAG identifies various technical issues. The analysis states,

> Subsection B of Section 4 and Subsection E of Section 9 allow developers and deployers, respectively, to designate portions of certain required submissions to the NMDOJ as 'proprietary information or a trade secret.' If the intent of these provisions is to exempt this information from disclosure pursuant to the Inspection of Public Records Act (IPRA), then the provisions should either explicitly do so or the term 'proprietary information' should be deleted. IPRA expressly protects 'trade secrets,' but is silent as to 'proprietary information.' Paragraph 1 of Subsection A of Section 12 states that the Act shall not be construed to restrict a person's ability to 'comply with federal, state, or municipal laws or regulations.' The inclusion of municipal laws or regulations introduces the possibility that a municipality could alter or constrain the application of the Act in their jurisdiction.

HCA adds:

> Section 2 (H) should add 'designed to MAINTAIN or promote the improved health,' and should add hospice to the services included. Section 2 (I)(3) should include all discrimination areas covered by state and federal statutes. Section 3 (B)(2)(f) seems to beg the question of bias and discrimination with 'intended outputs of the system' without further clarification of (human?) intents. Section 3 C needs definition of 'model cards' and 'dataset cards.' Section 4 (B) does not align with later definition of trade secret as it is necessarily widely disclosed. Disclosure of work-product or attorney-client information would make serious inroads in privileges and protections. It might be useful to stress that IPRA exception applies to NM DOJ and not a private deployer or developer. Continued learning in Section 6 needs definition. Section 8(C) should not 'allow' but require 'human review.' Section 8(D)(1) should also include the specific language of the consumer appealing if that language was used previously. Section 9 (E) See Section 4 analysis of trade secret and privilege. Section 10 would apply to HCA AI systems.

SNL states that HB60 should provide clearer technical definitions and thresholds, such as adding the disclosure of the use of AI with the user liable for the decision, as SNL states AI can't be

blamed for making an unlawful decision. SNL suggests that the focus of the bill should be on transparency as opposed to AI-specific regulations.

ALTERNATIVES

Unless funded through future year appropriations, the Act could impede or prevent agency adoption of consumer assistive AI technologies, such as licensing or benefit systems, DoIT states. The department proposes expressly exempting state agencies from compliance with HB60 contingent on granting explicit oversight authority for AI and emerging technologies use by state agencies to DoIT and the Office of Cybersecurity (administratively attached to DoIT). See agency analysis for proposed amendments.

EH/rl/SL2*