UNIVERSITY SYSTEM
of MARYLAND

HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE
House Bill 1271
Information Technology - Artificial Intelligence - Policies and Procedures
(Artificial Intelligence Governance Act of 2024)
March 5, 2024
Favorable with Amendment

Chair Pena-Melnyk, Vice Chair Cullison and committee members, thank you for the opportunity to share our position on House Bill 1271. The bill takes important steps to regulate artificial intelligence within the state government and the University System of Maryland (USM) looks forward to working with all the stakeholders to mitigate risk of these vastly accelerated burgeoning technologies.

USM comprises 12 distinguished universities and three regional centers with distinct and unique approaches to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from Western Maryland to the Eastern Shore. A range of institutional types complement this geographic diversity. The USM includes land-grant universities, regional universities, and HBCUs, together with universities whose missions focus on online education, professional and graduate education, and environmental education.

The Chancellor, USM Presidents, and the Board of Regents all understand the importance of addressing the risks posed by artificial intelligence. We have been engaged in research related to the risks and impacts of artificial intelligence on all facets of society for several years. Experts across the University System of Maryland have written numerous papers about important topics such as algorithmic bias and discrimination, the legal risks posed by artificial intelligence, and the ethical use of artificial intelligence across many fields of society.

While we agree with many of the principles included in this bill, we have the following concerns:

The Definition of Artificial Intelligence

The definition of Artificial Intelligence, in the bill, is very broad. Many technology products have functions that would fall under this definition. As examples, word processors and most smartphones make suggestions related to sentence completion, spelling, and grammar; all internet search engines use AI to tailor the results that are produced; and even language translation tools use AI in the background to convert text from one language to another. We believe the definition of artificial intelligence in this bill would include a significant amount of the technology currently in use across the USM.

The Artificial Intelligence Inventory

Given the very broad definition of artificial intelligence in the bill, creating the inventory of artificial intelligence systems would be a massive undertaking, and updating it annually would require the permanent allocation of human and financial resources. Given the pressure that everyone feels to keep the cost of higher education as low as possible, we would discourage the requirement to create and maintain an inventory that would include a significant amount of the technology across all our institutions.

Even more, we believe one of the main principals of the bill is to identify and address algorithmic decision making that poses a high risk to individuals; and while the vast majority of our artificial intelligence systems do not make decisions and pose no risk to individuals, we would be required to create and maintain an inventory of all artificial intelligence related systems. The inventory will inefficiently expend resources to include many systems that pose no risk to individuals instead of focusing resources on the few systems that are making possibly high-risk algorithmic decisions.

Artificial Intelligence Impact Assessments

The impact assessments will be a challenge to complete by any unit of state government, including the USM. The risks posed by artificial intelligence are typically related to the artificial intelligence algorithm used by the solution and the way the AI algorithm was trained. Information about a system's algorithms and training is typically considered to be a trade secret, and most vendors will not share it. Even more, many product vendors use another vendor's artificial intelligence solution and don't know the technical details of the artificial intelligence vendor's solution. In the end, the information necessary to do an AI risk assessment will be very difficult if not impossible for agencies or institutions to obtain.

Cybersecurity Risk of Publishing the Inventory

This bill also requires the artificial intelligence inventory to be published on the organization's public website. The inventory would be required to include the name of the

system, the vendor of the system, the capabilities of the system, and the purpose and use of the system. Foreign adversaries and hackers already routinely watch the websites of our units for information they can use to target our state, and this inventory would give them a roadmap to hack our agencies and institutions. All assessments and inventories must be kept confidential to help keep our information and systems secure.

Required Policies and Procedures – Differences Between Agencies and Public Higher Education

Higher education institutions and state agencies are very different. While most agencies serve one community, sector of the state economy, or mission; institutions of higher education serve all sectors, multiple different missions, and local, state, federal, and international communities. Agencies are comparable to business enterprises while institutions of higher education are like small cities.

In recognition of the differences, the USM is already exempted from several sections of the Maryland Code and instead required to develop and maintain information technology policies that are functionally compatible with IT policies established for the executive branch. For each of the policies, the USM determines how to develop a parallel policy that meets the spirit and intention of the state policy while providing the flexibility the USM needs to meet the needs of all of our communities. In recognition of our differences from state agencies and to be able to compete locally, nationally, and internationally, we need the ability to establish and maintain USM policies that are functionally compatible with any artificial intelligence policies established by Maryland DoIT.

Limits on Procurement

The bill blocks the procurement of any technology that is not compliant with the artificial intelligence policies established by Maryland DoIT. Given that many vendors may be unable or unwilling to provide details of their algorithms and training data, this could limit the pool of vendors available to state agencies. Related to the USM, we need to be sure that we can limit our procurement to technologies that are compatible with our functionally compatible versions of Maryland DoIT artificial intelligence policies.

Impact on Research

The bill would impact our ability to continue to compete for and be a thought leader in AI research. While we agree that any potential impact on human subjects must be mitigated, we have instances where we need to procure solutions so that we can study risks like bias and discrimination. The bill as written could block our ability to procure artificial intelligence solutions that we need for research. Risk to individuals is already something our institutional review boards consider for each research project that involves human

subjects. We need the flexibility to be able to procure any technologies we may need for our research while addressing any risks to individuals through our existing review processes.

Recommended Amendments

In order to address the concerns outlined above, we suggest the following amendments to the bill.

1.   Given that one of the principal concerns is to address any algorithmic decisions that could pose a risk to individuals, the focus should be taken off the artificial intelligence technology and placed on how agencies are making decisions that impact individuals. The law should focus on business functions that involve decisions that pose a risk to an individual, where the agency is turning the decision over to artificial intelligence.

2.   The requirements to inventory of all artificial intelligence systems, perform impact assessments of all artificial intelligence systems, and publish the inventory on a public website should be deleted. The inventory and assessments would consume a tremendous amount of resources with limited benefit, and publishing the inventory is a large cybersecurity risk.

3.   An inventory of where each unit uses artificial intelligence to make high-risk business decisions that impact individuals should be added in place of the system inventory. This inventory should be carefully crafted to not create any cybersecurity risk for the unit.

4.   Given the diversity of functions and possible impacts, institutions of public higher education should be exempted from the new artificial intelligence subtitle. This exemption would be consistent with the existing exemptions from other subtitles of the Maryland code and the requirement that we maintain USM policies that are functionally compatible with state policies. If public institutions of higher education are exempted from the new subtitle, Maryland DoIT and the new artificial intelligence subcabinet of the governor's office will be able to develop artificial intelligence related policies that best serve the agencies of the executive branch, and the USM can develop parallel polices that meet the same goals while allowing our research and diverse operations to flourish and compete locally, nationally, and internationally.

House Bill 1271 addresses some important issues for the State, but instead of first addressing artificial intelligence systems, we suggest that the bill should first focus on the business decisions that are being outsourced to artificial intelligence. Once the decisions and possible risks have been identified from a business function perspective, analysis can be done to ensure that any technology that is used to make decisions has been reviewed to protect individuals.

Finally, given that higher education institutions operate very differently from agencies, we request an exemption from the new subtitle so that we can develop and maintain our own functionally compatible policies to govern all aspects of artificial intelligence.
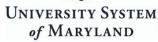
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