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FISCAL IMPACT REPORT

BILL NUMBER: Senate Bill 68

SHORT TITLE: Artificial Intelligence Government Use Act

SPONSOR: Berghams

LAST UPDATE: 1/26/26 **ORIGINAL DATE:** 1/26/26 **ANALYST:** Hilla

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
State Agencies	No fiscal impact	Indeterminate, but potentially substantial	Indeterminate, but potentially substantial	Indeterminate, but potentially substantial	Recurring	General Fund
Total	No fiscal impact	Indeterminate, but potentially substantial	Indeterminate, but potentially substantial	Indeterminate, but potentially substantial	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 28 and relates to House Bill 141

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Department of Information Technology
Office of Broadband Access and Expansion
Cybersecurity Office
Health Care Authority
Attorney General
Administrative Office of the Courts
Public Education Department
Higher Education Department
New Mexico School for the Blind and Visually Impaired

Agency or Agencies That Were Asked for Analysis but did not Respond

Department of Health
Economic Development Department

SUMMARY

Synopsis of Senate Bill 68

Senate Bill 68 (SB68) creates the Artificial Intelligence Government Use Act. The Act defines the following:

- artificial intelligence (AI) is defined as machine-based system that can infer from input that it receives how to generate outputs that can influence a physical or virtual environment for implicit or explicit objectives;
- a consequential decision is a decision that has a material, legal or similarly significant effect on education enrollment, employment or an employment opportunity, a financial or lending service, housing, health care service, insurance, or a legal service; and
- a public body as any of the following: a state agency, a board, a bureau, a commission, a department, a district or an instrumentality of the state, a county, municipality, a governing body of a charter school, a school district, the New Mexico School for the Blind and Visually Impaired or a public post-secondary educational institution.

SB68 directs public bodies to establish policies for the use of AI used by employees, including training its employees on cybersecurity and the use of AI, as well as requiring a human employee to make a final consequential decision regardless of what an AI tool recommends. These AI policies by any public body or branch of government shall be made public upon request.

The effective date of this bill is July 1, 2026.

FISCAL IMPLICATIONS

The fiscal impact of this bill is indeterminate but has the potential to be substantial across all state agencies in their recurring operating budgets. Since SB68 would require each individual agency to create and establish its own AI regulations, this would have a large state impact as agencies may need to hire additional staff or contract out to establish its own AI policies, regulate and train on those policies, as well as the costs associated with an Inspection of Public Records Act (IPRA) request.

It is important to note that in December 2025, a federal executive order was issued that seeks to limit state enforcement of AI laws through litigation and discretionary grant conditions. As part of the order, an AI task force will be led by the federal Attorney General to challenge state AI laws in court, even though New Mexico does not have comprehensive AI laws at this current point in time. The federal executive order states that executive agencies may condition discretionary grants on states not enacting an AI law that conflicts with the policy of the executive order, and that states receiving discretionary grants from any federal executive agencies may not enforce any identified AI laws during the performance period of the grants. State agencies that receive discretionary federal grants may be subject to funding restrictions if federal executive agencies impose grant conditions as outlined in the federal executive order and determine that state AI policies conflict with federal policy.

This executive order directs the U.S. Department of Commerce to consider withholding Broadband Equity Access and Deployment (BEAD) funding for non-deployment funds for states with “onerous” AI laws, as noted by the Office of Broadband Access and Expansion. New

Mexico was awarded \$675 million total in federal BEAD funds, of which \$243 million is allocated for non-deployment projects. While New Mexico does not have an official, comprehensive AI framework, passage of future laws in the state could put 36 percent of BEAD funding at risk if the federal government defines the state's AI regulations as "onerous."

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. SB68's definition of AI is more aligned with generative AI but is broad enough to cover predictive AI as well.

New Mexico has previously defined artificial intelligence in Laws 2024, Chapter 57, and then again in Laws 2025, Chapter 101. Laws 2024, Chapter 57, 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." Laws 2025, Chapter 101 defines AI as "a broad category of existing, emerging and future digital technologies that involves using algorithms to drive the behavior of agents such as software programs, machine and robotics." The definition of AI in SB68 is more aligned with its definition in Laws 2024, Chapter 57, but SB68's definition is more general and not specific to synthetic media or "deep fakes."

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.

The Department of Information Technology (DoIT) and the Cybersecurity Office (OCS) created AI guidelines for executive branch agencies in 2025, as well as developed an AI training in conjunction with the State Personnel Office. DoIT's AI policies reflect the national best practices, including education on what to and not to input in public AI system tools. OCS adds in its analysis that smaller public bodies may lack expertise or resources to draft comprehensive policies surrounding AI and cybersecurity. The office notes that allowing public bodies to have individualized cybersecurity and data governance policies surrounding AI may conflict with standards and best practices established by the Cybersecurity Advisory Committee. If these policies established by a public body are subject to the public, this could conflict with information otherwise protected by IPRA, in which sensitive information could be made available to the public.

The Higher Education Department (HED) notes that SB68 is unclear in what counts as valid or sufficient human decision-making regarding a consequential decision. HED states that "there are

situations where AI systems and automated learning tools make better decisions than humans and situations where they make worse decisions, and this can apply to specific decisions made by the same systems and tools. Public bodies may find it difficult to separate out those scenarios and demonstrate compliance with the intent of SB68.”

According to the Public Education Department (PED), the use of AI by teachers and students nationwide has expanded dramatically, including the use of AI for tracking student risk of dropping out and tracking student biometric information. PED established AI guidance in 2025 for schools and school districts for its use in administrative and instructional contexts, which is similar to what is outlined in SB68 in highlighting the importance of a human-made decision.

ADMINISTRATIVE IMPLICATIONS

As noted by various agencies in their analyses, this bill could lead to conflicts between agency AI policies as well as policies already established by DoIT.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill may conflict with House Bill 28, which deals with AI and consequential decision making. As noted by the Attorney General, the two bills may conflict in that HB 28 seems to assume that these entities are permitted to make consequential decisions based on artificial intelligence outputs, whereas SB 68 requires such entities to mandate that a human make the final consequential decision, regardless of the output of the artificial intelligence tool.

SB68 relates to House Bill 141, which would create the Artificial Intelligence Transparency Act and require the disclosure and identification of synthetic content, prohibit the dissemination of deceptive synthetic content, and provide for civil and criminal enforcement and prescribes AI authority and regulation to the Attorney General.

TECHNICAL ISSUES

The definitions of AI in SB68 differ from what is currently defined in statute, as well as how the term is defined in House Bills 28 and 141.

HED notes the following:

Section 3.B.4 could use further clarity. As written, it prohibits public body AI systems and automated decision tools from "intentionally override[ing] or avoid[ing] the security or system integrity procedures of the public body" except for when authorized by a designated security officer. The intention here may be to prevent these systems from engaging in activities or outputs that are not accounted for in a public body's formal cybersecurity and use policies, except for experimentation and testing for new solutions. However, the use of the words "override" and "avoid" may be trying to identify something different. It could help to include clarifying language for this item in particular.