June 24, 2025

The Honorable Rebecca Bauer-Kahan
California State Assembly
1021 O Street, Suite 5210
Sacramento, CA 95814

SUBJECT: AB 1405 (BAUER-KAHAN) ARTIFICIAL INTELLIGENCE: AUDITORS: ENROLLMENT OPPOSE – AS AMENDED APRIL 3, 2025

Dear Assemblymember Bauer-Kahan:

The California Chamber of Commerce and the undersigned must **OPPOSE** your **AB 1405 (Bauer-Kahan)** as amended on April 03, 2025, calling for the creation of a mechanism for Artificial Intelligence (AI) auditors to assess AI systems or models on behalf of a third party to be established within the Government Operations Agency by January 1, 2027, as specified, because the bill is both premature and deficient, and we should be seriously considering the role of the state in the development of AI and whether we want government effecting requiring their prior endorsement to permit the creation and growth of this industry. That is not to say that AI auditing should not happen. Just that questions exist as to whether the state's role in facilitating the creation of an AI audit industry in CA is: (1) necessary at this time when no law currently requires AI auditing and (2) whether it would even be appropriate, and – presuming it would exist for the purpose of serving as a mandatory, de facto certification process to permitting technological innovation – to what extent if at all?

By prematurely creating auditing regimes for private-sector AI systems and encourage policymakers to consider more widely used and workable accountability tools, not only for impact assessments but also potentially beyond, we are concerned that **AB 1405** will invariably create far more problems than it will solve them at this stage: creating inconsistencies in the quality, performance, and completion of the audits, potentially breeding distrust in their results and in the technology, promoting anti-competitive behaviors, and imposing significant, unnecessary, and unjustified excessive costs to conduct audits that will have produce a false sense of security and minimal, if any, benefit at potentially significant cost --- both in terms of fiscal costs, but also in terms of the costs associated with prematurely hindering innovation and placing ill-defined burdens on an rapidly evolving field.

Lack of standard audit procedures, let alone comprehensive standards for AI auditors both in todays' AI auditing ecosystem and in AB 1405

We agree that principles of accountability promoted by audits are incredibly important, if for no other reason than distrust discourages the adoption of these tools; and even more so because we have an obligation to ensure the responsible development, adoption, and deployment of these tools. This responsibility is at its highest regarding high-risk use cases which pose significant legal concerns or similarly significant effects to consumers and employees. That is why companies already will build internal AI governance or risk management programs that leverage important new resources to conduct such functions, internally, to help identify and manage AI-related risks and avoid liability as result.

Our concern, however, is that **AB 1405** has the potential to do far more damage than good when it comes to providing that accountability. We find that clarity in terminology here can be particularly helpful to framing the policy questions and problems of **AB 1405** – namely, what is meant by "audits" or "auditors" in the business context. To start, at the most basic level, these terms are typically used in the context of evaluating an entity's compliance with established laws or standards; the entity's internal controls, operations, or policies; or their financial statements or records. "Audits" generally refer to improving controls, compliance, or risk management in these aspects, and "auditors" usually refers to qualified, independent professionals

or firms whose core job is to objectively review and verify the aforementioned items. “Auditors”, of course, can exist externally to the company as “third party” entities, but they can also be internal employees or contractors.

What matters perhaps even more than auditors being “third party” evaluators or reviewers is that they are independent[1], standards-based and standards-bound professionals, with appropriate certification confirming their credentials demonstrating their expertise as well as their accountability, public trust and confidence via a framework that at minimum:

- provides the necessary oversight that makes them subject to reputational and legal consequences for their misconduct, negligence, if not ethical violations;
- ensures their independence/impartiality/objectivity and affirms their duty of confidentiality to protect proprietary information, trade secrets, shareholder interests and other business information, unless legally compelled to disclose; and,
- establishes clear standards by which companies, shareholders, the public, and the courts can evaluate and rely upon their reports for oversight and enforcement.

It should be noted that today’s AI auditing ecoysystem is virtually non-existent, lacking not only comprehensive standards in terms of standard audit procedures as well robust frameworks for governing the professional conduct of the AI auditors themselves, but also lacking sufficient resources for conducting invariably complex audits for AI systems. (*See* The Business Software Alliance (BSA): Enhancing AI Accountability: Effective Policies for Assessing Responsible AI”[2].)

First, **AB 1405** defines “audit” in a circular, if not empty, fashion, defining a “covered audit” to mean “an audit conducted pursuant to any state statute that requires an audit f an AI system or model by an independent third-party auditor” – when no such statute exists. We would suggest narrowing the bill’s definition of “audit” to “impact assessments” and make the bill contingent upon the enactment of either AB 1018 or SB 420, but the bill would still remain vastly unworkable.

Putting aside that it fails to define “audit” in any meaningful way, the bill more importantly lacks the comprehensive standards that are required to ensure the development of expertise among an entirely new category of auditing professionals who would be needed to effectively perform the responsibilities of an auditor for this specific, yet nascent technology. Indeed, the bill almost lacks any identifiable standards. Moreover, the State does not have, nor does this bill propose, the development of the necessary framework that would be needed to enable the proper oversight of these professionals, their audits, and their adherence to clear standards.

As drafted, the bill only provides a handful of other statutorily mandated requirements that must be met, all of which are vastly insufficient to constitute comprehensive standards. Those requirements primarily require AI auditors to provide the certifications or accreditations that they hold to justify their status as an auditor and a 200 word statement, maximum, about themselves and their services, and a standard operating procedure (SOP) that describes the auditor’s procedures in sufficient detail to enable a third party to assess whether audits are conducted according to generally accepted industry best practices which is far more appropriate in the context of a self-assessment or audit.

<u>Confidentiality</u>

Proposed Section 11549.85(a)(5) is incredibly problematic. Auditors should not be disclosing confidential information in the context of a professional consultation or peer review without the permission of the auditee.

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[1] Not just in terms of being objective when it comes to the business they are evaluating, but also in terms of not being their competitor/having a conflict of interest that would make the outcomes of their report biased.

[2] BSA report available at <https://www.bsa.org/policy-filings/enhancing-ai-accountability-effective-policies-for-assessing-responsible-ai> [as of June 22, 2025].

Disclosure of confidential information could result in theft of trade secrets or other business harms (as a best practice, it would be redacted in the event an auditor is consulting with other third parties).

Any provisions on the disclosure of confidential information should take into account that auditors may be bound by professional duties of confidentiality and by contracts with the auditee that prohibit disclosures and ensure that statutory disclosure mandates do not override any of the independent obligations that the AI auditor may owe under ethical codes or contractual terms. That said, making such changes to a bill that is so premature and potentially ill-conceived is like putting the finishing touches on a novel that arguably should never be written — let alone one that still exists only as an outline.

Whistleblowers

AB 1405's whistleblower provisions require the Government Operations Agency ("GovOps" or "agency") to create a website reporting mechanism by January 1, 2027, for people to report any misconduct by an AI Auditor to that agency and to share reports submitted using that mechanism with other state agencies as necessary for enforcement purposes. The bill also provides that AI auditors cannot (1) prevent an employee from disclosing information to the AG or the Labor Commissioner, or using the bill's reporting mechanism to GovOps, including through the terms and conditions of employment or seeking to enforce terms and conditions of employment, *if the employee has reasonable cause to believe the information indicates that the auditor is noncompliant with the bill*; or (2) retaliate against an employee for disclosing the same.

While protecting whistleblowers obviously serves important policy objectives in any number of contexts, these provisions are both unnecessary and potentially counterproductive in this context. Existing frameworks, including the Sarbanes-Oxley Act and California Labor Code Section 1102.5, already provide robust protection for employees who report wrongdoing and there is no reason to believe that these protections are insufficient. There is nothing unique or inherent to the use of AI that justifies creating an overlapping, if not inconsistent schemes for a subset of auditors. To the contrary, imposing duplicative rules risks confusing reporting pathways for workers and creating compliance uncertainty. It may even suggest that existing laws would not apply in the absence of creating new protections such as these.

A robust ecosystem that permits voluntary third-party evaluations first, prior to imposing burdensome and potentially premature mandatory third-party assessments through regulatory authority, would be consistent with the Governor's work group report:

In conclusion, we urge the Legislature to take a more nuanced approach that allows the frontier AI field to mature further, develop its own safety standards and best practices, and build a robust ecosystem for evaluation before imposing potentially burdensome and potentially premature mandatory third-party assessments through regulatory authority. One such approach, for example, would be to encourage voluntary third-party assessments and focusing on building the foundations for effective evaluation science first.

This would be entirely consistent with the Governor's AI working group's recent report[3] which acknowledges the rapidly accelerating science and technological innovation in AI and emphasizes the importance of balancing the technology's benefits and material risks, and in fact notes both the immaturity of the scientific foundations of modern AI (including the lack of rigorous science of AI evaluation) and the challenges of scoping regulation and setting appropriate thresholds.

With this in mind, mandatory third-party assessments, if not carefully designed, could tilt the balance too far towards risk mitigation, stifling the potential transformative benefits of frontier AI in fields like agriculture, biology, education, and medicine. Imposing rigid regulatory requirements like mandatory third-party assessments too early in the development of AI could prematurely constrain research and development by forcing compliance with standards that may quickly become outdated or may not be well-suited to new advancements. The report's recognition of the immaturity of the scientific foundations of modern AI and the lack of rigorous science of AI evaluation in fact suggests that there may not yet be widely accepted,

[3] Joint California Policy Working Group on AI Frontier Models, *THE CALIFORNIA REPORT ON FRONTIER AI POLICY*, available at <June-17-2025-–-The-California-Report-on-Frontier-AI-Policy.pdf> [as of June 23, 2025].

standardized methodologies or a sufficient pool of qualified, unbiased third-party auditors with the expertise necessary to effectively assess the complex capabilities and risks of frontier AI models and developer practices. As such, in requiring such assessments before the field has matured, legislation such as **AB 1405** could lead to assessments that are not particularly informative or that impose costs without commensurate benefits.

At this point in time, and as evidenced by the lack of standards in **AB 1405**, we would find it challenging to determine which entities should be subject to mandatory third-party assessments and the appropriate criteria for such assessments, especially given the diverse range of models, developers, and potential impacts. Implementing poorly defined mandates could lead to uneven application and unintended consequences.

As such, we encourage the California Legislature to instead focus on encouraging the widely used and workable accountability tools, like impact assessments via self-assessments or voluntary third-party assessments, prior to any adoption of mandatory regulations around third party assessments, but for all the aforementioned reasons we unfortunately must strongly **OPPOSE** your **AB 1405 (Bauer-Kahan)**.

Sincerely,

Ronak Daylami
Policy Advocate
on behalf of

California Chamber of Commerce, Ronak Daylami
Computer & Communications Industry Association (CCIA), Aodhan Downey
TechCA, Courtney Jensen
TechNet, Robert Boykin

cc: Legislative Affairs, Office of the Governor

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