



## MEMORANDUM OF OPPOSITION

**BILL:** S.5398 (Savino)  
**SUBJECT:** Third-Party Tracking Software for State Contracts Greater than \$250,000  
**DATE:** May 1, 2019

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and open shop construction companies strongly opposes S.5398 (Savino) which would mandate third-party tracking software to verify hours worked and billed on state government contracts greater than \$250,000.

This type of unverified third-party tracking software amounts to what internet security experts call spyware because, it captures everything on a computer including personally identifiable and sensitive information such as passwords, health data, screen shots, keystrokes, mouse movements, financial records, and other communications. Most workplaces—and individuals—have policies and software in place to prevent exactly this sort of malicious software from infesting their computers.

In more than 30 states, Transparent Business, a start-up computer software company, is pushing “model” spyware legislation on state legislatures to purportedly improve transparency and oversight of state contracts. The start-up software company’s investment page targets high wealth investors in United States and across the globe by promising a huge return on investment predicated on the enactment of the “model” spyware legislation.

The bill requires allowing the contracting agency or an auditor of such agency unfettered access to any and all data collected or provided by the software and purportedly protects all private or confidential data as otherwise required by federal or state law. The data would be considered as financial records belonging to the contractor which will require storage or arrange for the storage of data collected by the software. The unfettered agency access to the data will be the expense of the contractor because the bill prohibits charging the agency or an auditor of the agency for access to or use of the work tracking software, or for access to or retrievals of data collected by the software.

It is unclear who would audit the tracking software to determine whether it is operating as intended. To ensure a level playing field, state agencies would need to monitor and audit software implementation across all professional or technical contractors performing work for the state on computers. This would require additional auditing resources to cover contractors used by the state for engineering, surveying, accounting/financial, legal, environmental, and insurance-related services, just to name a few. The bill makes no appropriation to cover the added costs to the state for such compliance monitoring. As a result, the bill will result in increased costs for taxpayers and contractors to purchase software, data collection and storage, and other related costs. The bill would have a disproportionate cost and compliance impact on minority and women owned businesses struggling in New York State.

While AGC NYS supports increased transparency and oversight in state contracting, mandating unverified spyware from a start-up computer software company is dangerous business. Indeed, it is an outrageous, Orwellian invasion of privacy and places the private and propriety and financial information of private companies at significant risk. AGC NYS supports the procurement oversight authority of New York State Comptroller and the hard working state government employees that review, approve, and audit public contracts. **AGC NYS strongly opposes and urges the Legislature to reject S.5398 (Savino).**