



*American Council of Engineering Companies of New York*

## **OPPOSE S5398. (Savino)** **Contractor Spyware Legislation**

The American Council of Engineering Companies of New York (ACEC New York), an organization representing nearly 300 engineering and related firms totaling more than 30,000 employees in New York State, opposes bill number **S.5398 (Savino)** which seeks to mandate the installation and usage of third-party software to track and manage computer usage.

This legislation poses significant threats to the privacy and digital security of private citizens and fails to accomplish its intended goal.

As described in the Sponsor's memo, the key functionality of the software is tracking and recording a computer user's keystrokes and mouse movements as well as capturing screenshots. By doing so, this software gains unparalleled and unfettered access to not just the private and sensitive information entered into and contained on a computer including passwords and logins, but also the unique and individually-identifiable biometric data derived from keystrokes and mouse movements. It is almost impossible for this software **not** to gather information that is personally sensitive, protected by businesses internal data security rules, and legally protected by numerous State and Federal laws.

For example, an engineer working for one of ACEC New York's member multinational engineering firms could have her work-sponsored 401k plan, or health plan, or deferred compensation plan open in the background of her monitor, and the plans for the bridge she is currently designing for a State agency open in the foreground. With the activation of this software, the tracking of mouse and key activation would trigger GDPR regulation for biometric information collection. Collection (and eventual transmission) of screenshots with personal financial or health information could trigger obligations under HIPAA, New York State Social Security Number Protection Act, Fair Credit Reporting Act, Gramm-Leach-Bliley and other laws and regulations covering the privacy and sharing of such records. In some cases, a firm diligent about reviewing, analyzing and scrubbing the data for a single user could produce responsive records that steer clear of privacy violations. In most other cases, compliance would be impossible. Because the bill prohibits charging the agency for the use of the software, the massive costs of managing compliance with existing privacy laws and regulations would be unrecoverable and have a disproportionate impact on small and MWBE-owned firms.

This bill fails to set any standard for verifying the integrity of the software to be installed and does not impose objective oversight to ensure the effective encryption, protection and secure handling of data collected and transmitted. Any company or business entity that chooses to install software over which they have no control, and which indiscriminately collects and transmits massive amounts of personal information runs the risk of massive liability in the foreseeable event of a leak, hack or unauthorized disclosure facilitated by this spyware.

The bill fails to accomplish the goal of enhanced transparency in the provision of professional services. Engineers and allied design professionals are subject to audits throughout the procurement and delivery cycle and operate under an existing set of rules (the Federal Acquisition Regulations) that tightly prescribe billing and other accountability obligations.

Engineers spend considerable time in the field and in consultation with their peers. The time spent on a computer is a woefully inadequate measure of the full range of service provided by an engineer working on a project for New York State. Additionally, as reflected in State Finance Law, the Qualifications-Based Selection procurement of engineering and professional design services considers a firm's qualifications, which, as a matter of course includes a review of past performance and quality of work.

ACEC New York supports integrity and transparency in the provision of professional engineering and design services. However, this bill is a dangerous and unreasonable intrusion into the digital security of firms and personal privacy of individual employees. The measures contemplated in this bill are impossible to square with the current heightened awareness of and demand for protection against digital intrusion and personal data disclosure. For the foregoing reasons, ACEC New York strongly opposes this bill.