

BILL ANALYSIS

H.B. 5061
By: Leach
Delivery of Government Efficiency
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that the CEO of Superior HealthPlan, a state Medicaid insurance company, recently admitted to hiring private investigators to conduct surveillance on lawmakers, their families, patients, and journalists, which included attempts to access sensitive information such as sealed divorce records and investigating spouses and family members. The bill author has also informed the committee that actions like these taken by state contractors erode public trust, highlight vulnerabilities in current oversight mechanisms, and raise concerns about potential coercion used to secure state contracts, interference with accountability and oversight, and the undermining of legitimate claims. H.B. 5061 seeks to prevent such breaches of trust, safeguard and protect the interests of Texas citizens, improve accountability, deter unethical behavior, and promote fairness in state contracting by prohibiting certain activities by contractors and vendors of state agencies.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 5061 amends the Government Code to prohibit certain activities by contractors and vendors of state agencies and to provide for administrative penalties.

Applicability

H.B. 5061 applies to each procurement of goods or services made by a state agency, including a procurement made as follows:

- by the comptroller of public accounts;
- under purchasing authority delegated to the agency by or under statutory provisions relating to the following:
 - the acquisition of goods and services by a public institution of higher education;
 - the acquisition of goods and services by The University of Texas M. D. Anderson Cancer Center;
 - the delegation of purchasing functions by the comptroller; or
 - applicable purchases of less than a specified monetary amount or purchases over that amount as authority is delegated by the comptroller; or
- by the Texas Department of Transportation or a procurement paid for by local or institutional funds of an institution of higher education.

Prohibited Activities

H.B. 5061 prohibits a contractor or subcontractor of a state agency or a vendor responding to a contract solicitation from directly or indirectly doing the following through a third party:

- engaging in surveillance targeting the following individuals:
 - a member of the state legislature or a person employed to support the state legislature in any capacity;
 - a state agency employee, including an independent contractor who contracts with a state agency to perform work or provide a service; or
 - an individual making a complaint or raising concerns regarding state agency operations or contracting;
- engaging in an act of intimidation, coercion, extortion, undue influence, or other similar conduct intended to influence, silence, or retaliate against such an individual; or
- using private or confidential information to manipulate or influence a state contracting decision or proceeding.

For purposes of the bill's provisions, the bill defines "surveillance" as monitoring, investigating, tracking, or collecting information about an individual without the individual's express authorization, including physical surveillance, electronic tracking, data mining, and social media monitoring, and "undue influence" as an improper use of power, position, or information to manipulate a decision-making process, including the use of private or confidential information for personal or organizational gain.

Oversight, Enforcement, Complaint Process, and Investigation

H.B. 5061 requires the state auditor's office (SAO) to oversee and enforce the bill's provisions and authorizes the SAO to collaborate with the Texas Ethics Commission to ensure compliance with the bill's provisions and transparency of oversight and enforcement actions. The bill requires the Texas Rangers division of the Department of Public Safety (DPS) to investigate any alleged criminal offense related to a violation of the bill's provisions.

H.B. 5061 authorizes a person who believes that the person was the target of prohibited activity under the bill's provisions to file a complaint with the SAO. The bill requires the SAO to do the following with respect to such a complaint:

- establish and maintain a confidential reporting hotline and an online portal for submitting a complaint;
- investigate a complaint submitted under these provisions and determine whether a violation of the bill's provisions occurred not later than the 90th day after the date the office receives the complaint; and
- if during an investigation of a complaint the SAO suspects that a criminal offense has been committed, refer the matter to the Texas Rangers division of DPS for a comprehensive criminal investigation.

The bill requires the Texas Rangers division of DPS to investigate the complaint and, if appropriate, refer the matter to the attorney general's office for prosecution.

Contract Termination, Barring From State Contracts, and Administrative Penalties

H.B. 5061 establishes that, on a final determination by the SAO that a person violated the bill's provisions, the person is, as follows:

- for a first violation:
 - subject to immediate termination of any state contracts without further obligation;
 - liable for an administrative penalty in an amount not to exceed \$500,000 or, if the violation involved undue influence or the misuse of private or confidential information, \$2 million; and

- barred from responding to a solicitation for or being awarded a state contract until the 10th anniversary of the date the person receives the final determination or, if the violation involved undue influence or the misuse of private or confidential information, until the 15th anniversary of that date; and
- for a second or subsequent violation:
 - subject to immediate termination of all state contracts without further obligation;
 - liable for an administrative penalty in an amount not to exceed \$1 million or, if the violation involved undue influence or the misuse of private or confidential information, \$2 million; and
 - barred permanently from responding to a solicitation for or being awarded a state contract.

The bill establishes that an individual who authorizes or directs an entity to violate the bill's provisions may be subject to a penalty under these provisions in the same manner as an entity that is determined to have violated the bill's provisions.

Prohibited Retaliation Against Employees

H.B. 5061 establishes that an employee has a cause of action against an employer who suspends or terminates the employee's employment or otherwise disciplines or discriminates or retaliates against the employee for the following:

- reporting to the employee's supervisor, a state regulatory agency, or a law enforcement agency a violation of the bill's provisions; or
- initiating or cooperating in any investigation by or proceeding of a governmental entity relating to a state contract.

The bill defines "employee" for these purposes as a person who is an employee of a contractor or subcontractor of a state agency or a vendor responding to a contract solicitation by a state agency.

H.B. 5061 authorizes a petitioner to recover the following:

- actual damages and damages for lost wages if the petitioner's employment was suspended or terminated;
- exemplary damages;
- court costs; and
- reasonable attorney's fees.

The bill entitles a person whose employment is suspended or terminated, in addition to those amounts, to appropriate injunctive relief, including, if applicable, reinstatement in the person's former position and reinstatement of lost fringe benefits or seniority rights.

H.B. 5061 requires the petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, to bring suit or notify the Texas Workforce Commission (TWC) of the petitioner's intent to sue under the bill's provisions. A petitioner who notifies TWC under these provisions must bring suit not later than the 90th day after the date of the delivery of the notice to TWC. The bill requires TWC, on receipt of the notice, to notify the employer of the petitioner's intent to bring suit.

H.B. 5061 establishes that the petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse, neglect, or exploitation if the person is suspended or terminated within 60 days after the date the person reported the violation or initiated or cooperated in an investigation or proceeding. A suit under the bill's provisions may be brought in the district court of the county in which the plaintiff resides, the plaintiff was employed by the defendant, or the defendant conducts business. The bill requires the SAO to provide legal assistance to a petitioner who brings suit.

Annual Report

H.B. 5061 requires the SAO and the Texas Rangers division of DPS jointly to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature, not later than September 1 of each year, a written report on the following:

- the number and nature of complaints filed alleging a violation of the bill's provisions;
- the outcome of each complaint investigated by the SAO and, if applicable, the Texas Rangers division of DPS; and
- the penalties imposed under the bill's provisions.

The bill requires the SAO and the Texas Rangers division of DPS jointly to submit the first required report not later than September 1, 2026.

EFFECTIVE DATE

September 1, 2025.