

BILL ANALYSIS

S.B. 1585

By: Hughes

Homeland Security, Public Safety & Veterans' Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that foreign adversaries of the United States may seek to develop economic and technological dependencies in the American economy as a way to achieve leverage over the United States. For example, the bill sponsor has informed the committee that foreign adversaries can implement an economic strategy known as military-civil fusion, a strategy involving a foreign adversary leveraging state subsidies and intellectual property theft to indigenize the production of critical technologies that have both civilian and military applications, such as drones, 5G communication equipment, laser sensors, and surveillance devices. The bill sponsor has also informed the committee that foreign adversaries can also implement a strategy known as dual circulation, which involves making the foreign adversary's domestic market less dependent on other nations while simultaneously making other nations more dependent on the foreign adversary's economy. Furthermore, according to a 2022 bulletin prepared by the National Counterintelligence and Security Center, foreign adversaries may seek to influence U.S. policies and advance conflicting geopolitical interests at the state and local government level by creating economic dependencies and shaping policy through the business community. Finally, the bill sponsor has informed the committee that companies of foreign adversaries are often beholden to the military and surveillance apparatuses of those foreign adversaries and that working with technology companies of foreign adversaries that collect and transmit data provides opportunities for espionage and sabotage. S.B. 1585 seeks to address these issues, ensure that the state does not become economically dependent on foreign adversaries, and ensure that foreign adversaries are not able to collect sensitive data from Texas by providing for a prohibition on governmental contracts with companies of foreign adversaries for certain information and communications technology.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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

S.B. 1585 amends the Government Code to provide for a prohibition on governmental contracts with companies of foreign adversaries for certain information and communications technology, to authorize a civil penalty, and to create a criminal offense.

Prohibition on Certain Contracts in Connection with Information and Communications Technology

Definitions

S.B. 1585 defines the following terms for purposes of the bill's provisions:

- "company," by reference to provisions relating to the prohibition on certain contracts in connection with critical infrastructure, as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit;
- "control" as the direct or indirect power, whether or not exercised, to determine, direct, or decide important matters affecting a company through the ownership of a majority or a dominant minority of the total outstanding voting interest in the company, board representation, proxy voting, special share, contractual arrangement, formal or informal arrangement to act in concert, or other means of exercising power;
- "foreign adversary" as:
 - the People's Republic of China; or
 - any country listed on the entity list under Supplement No. 4 to 15 C.F.R. Part 744, a supplement listing certain entities or addresses subject to license requirements for specified items under certain federal Export Administration Regulations, because there is reasonable cause to believe the country is involved, has been involved, or poses a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States;
- "governmental entity," by reference to provisions relating to payments for goods and services, as a state agency or political subdivision of the state;
- "information or communications technology or service" as a product or service that:
 - is designed to facilitate by electronic means the processing, storage, retrieval, communication, transmission, or display of information or data; and
 - allows a foreign adversary to do any of the following:
 - store data;
 - communicate independently of the product or service;
 - independently control systems; or
 - independently engage in two-way communication;
- "scrutinized company" as a company or a wholly owned subsidiary or majority-owned subsidiary of a company that is:
 - identified on the covered list of communications equipment or services under federal regulations relating to secure and trusted communications networks as producing or providing communications equipment or a service that poses an unacceptable risk to U.S. national security or the security and safety of U.S. persons; or
 - as provided by federal regulations relating to securing the information and communications technology and services supply chain, not a U.S. person and has been subject to a determination by the U.S. secretary of commerce, or the secretary's designee, as involved in a transaction related to an information or communications technology or service that posed an undue or unacceptable risk; and
- "two-way communication," with respect to an information or communications technology or service, as systems or components that facilitate the bidirectional exchange of information which may include remote or unauthorized access.

Contracts with Scrutinized Companies Prohibited; Exception

S.B. 1585 prohibits a scrutinized company from submitting a bid for a contract or entering into a contract with a governmental entity relating to an information or communications technology or service. However, a governmental entity may enter into a contract relating to an information

or communications technology or service with a scrutinized company if the governmental entity, with the approval of the governor, determines any of the following:

- the only vendors available to provide the information or communications technology or service are scrutinized companies;
- the cost to the state of finding and contracting with a vendor that is not a scrutinized company would be so disproportionately high that the use of a vendor that is a scrutinized company would be overwhelmingly in the state's best interest; or
- any goods or services that originate with a scrutinized company and may be used in the performance of the contract constitute a de minimis amount of the total value of the goods and services provided under the contract and pose no risk to the security of the state.

Verification Required

S.B. 1585 requires a vendor submitting a bid for a contract relating to an information or communications technology or service to include in the bid a written verification that the vendor:

- is not a scrutinized company;
- will not contract with a scrutinized company for any aspect of its performance under the contract; and
- will not procure products or services from or that originate with a scrutinized company for use in the performance of the contract.

The bill prohibits a governmental entity from entering into a contract relating to an information or communications technology or service with a vendor that fails to provide this required verification.

False Verification; Violation

S.B. 1585 requires a governmental entity that determines that a vendor holding a contract with the entity was ineligible to have the contract awarded under the bill's provisions because the vendor's written verification was false to notify the vendor that the vendor is in violation of the bill's provisions. The notice must include the basis for the entity's determination that the vendor is in violation of the bill's provisions. The bill authorizes a vendor, not later than the 60th day after the date the vendor receives such a notice, to provide a written response to the governmental entity with evidence that the vendor's verification was not false and that the vendor is not in violation of the bill's provisions and establishes that, if a vendor does not provide a response in this manner, the entity's determination under these provisions becomes a final determination. The bill requires the governmental entity, not later than the 60th day after the date the governmental entity receives a vendor's response as provided under these provisions, to review the response and notify the vendor of the entity's final determination based on the evidence provided by the vendor. The bill requires a governmental entity, on making a final determination that a vendor violated the bill's provisions, to do the following:

- refer the matter to the attorney general, a district attorney, or a county attorney, as applicable, for enforcement under the bill's provisions relating to civil and criminal penalties; and
- notify the comptroller of public accounts of the final determination for purposes of the bill's provisions relating to debarment by the comptroller.

Contract Termination for False Verification; Barring from State Contracts

S.B. 1585 requires a governmental entity, on making a final determination that a vendor violated the bill's provisions, to immediately terminate the applicable contract without further obligation to the vendor and prohibits a vendor that violates the bill's provisions from responding to a solicitation for or being awarded a contract for goods or services by any governmental entity until the fifth anniversary of the date the vendor receives the final determination from the applicable government entity under the bill's provisions.

Debarment by the Comptroller

S.B. 1585 requires the comptroller, on receiving notice of a final determination from an applicable governmental entity that a vendor violated the bill's provisions, to bar the vendor from participating in state contracts until the fifth anniversary of the date the vendor receives such a final determination.

Civil Penalty

S.B. 1585 makes a vendor that violates the bill's provisions liable to the state for a civil penalty in an amount equal to the greater of the following:

- twice the amount of the contract terminated for false verification under the bill's provisions; or
- the amount of loss suffered by the state from terminating the contract.

The bill authorizes the attorney general to bring an action to recover a civil penalty imposed under these provisions and to recover reasonable attorney's fees and court costs in bringing such an action.

Criminal Penalty

S.B. 1585 creates a state jail felony offense for a vendor that violates the bill's provisions relating to the prohibition on certain contracts in connection with information and communications technology.

Procedural Provision

S.B. 1585 establishes that its provisions relating to the prohibition on certain contracts in connection with information and communications technology apply only to a contract for which the request for bids or proposals or other applicable expression of interest is made public on or after the bill's effective date. A contract for which the request for bids or proposals or other applicable expression of interest is made public before that date is governed by the law in effect on the date the request or other expression of interest is made public, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.