

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 2010

INTRODUCER: Education Committee and Senator Diaz

SUBJECT: Foreign Influence

DATE: April 14, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Westmark</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 2010 provides safeguards against foreign influence through establishing processes that govern screening and disclosure of foreign gifts, contracts, employment, travel, and research arrangements, as well as cultural agreements, with countries of concern. Specifically, the bill:

- Requires specified entities that apply for or receive any gift or grant with a value of \$50,000 or more from any foreign source to disclose such gift or grant to the appropriate agency, along with additional specified information.
- Requires the Department of Financial Services (DFS) to manage a website to publish required disclosures and maintain an active and current list of ineligible entities on the website, and requires DFS to investigate an allegation of a disclosure violation.
- Requires the Department of Management Services to, at least once every five years, screen specified vendors participating in the online procurement system.
- Subjects an institution of higher education that knowingly, willfully, or negligently fails to disclose to a civil penalty of 105 percent of the amount of the undisclosed gift.
- Requires each state university or specified entity that receives state appropriations or state tax revenue and has a research budget of \$10 million or more to screen applicants for research or research-related support positions who are citizens of a foreign country and who are not permanent residents of the United States, or who are citizens or permanent residents of the United States who have any affiliation with an institution or program, or at least one year of prior employment or training, in a specified foreign country of concern.
- Requires the state university or entity to maintain records of applications, expenses, and payments or honoraria related to approved international travel. Such records must be retained for at least three years.

- Prohibits specified participation in cultural agreements with or acceptance of any grant from a foreign country of concern, or any entity controlled by such a country, for specified activities.

The bill has an indeterminate fiscal impact. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

In March 2021, Governor Ron DeSantis and members of the Florida House and Senate highlighted proposed legislation to combat foreign influence, in response to the Communist Party of China's deliberate attempts to economically infiltrate the United States. Among the purposes of the proposed legislation were to place strategic safeguards against foreign influence through strengthening institutional vetting and applying protections for Florida's institutions of higher education, public entities, and recipients of public grants or contracts.¹

Legislative Background – Select Committee on Integrity of Research Institutions

In 2020, the Florida House of Representatives Select Committee on the Integrity of Research Institutions (Select Committee) undertook an extensive review of Florida's university-based research programs. This investigation arose out of revelations that the CEO of H. Lee Moffitt Cancer Center and Research Institute and three other officers or research scientists had failed to disclose support from relationships with Chinese talent and research programs. Following that disclosure, the University of Florida (UF) disclosed to the Select Committee that three of its research staff were under similar investigations. The Select Committee learned of additional investigations, some of which remain confidential due to active law enforcement investigations.

The Select Committee learned that Florida-based research institutions had a combined annual budget of \$2.7 billion with Florida's public universities accounting for \$2.3 billion of that research spending. Eight of Florida's State University System universities had research budgets of \$10 million or more. Four private institutions had budgets exceeding \$10 million. Research grants from public sources fund the vast majority of this research and universities receive generous shares of research grants for administration. Consequently, research activity generates significant profits for many institutions.²

The open and collaborative research environment in the free world depends on the honesty and integrity of individual scientists, technicians, and administrators. The Select Committee in 2020 learned that federal officials were investigating about 200 cases across the U.S. involving federal grant recipients of research funds who had failed to disclose professional, academic, and

¹ Florida Governor Ron DeSantis, *Governor Ron DeSantis and House Speaker Chris Sprowls Highlight Proposed Legislation to Combat Foreign Influence and Corporate Espionage* (March 1, 2021), available at <https://www.flgov.com/2021/03/01/governor-ron-desantis-and-house-speaker-chris-sprows-highlight-proposed-legislation-to-combat-foreign-influence-and-corporate-espionage/>.

² Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>, at 7.

business relationships in violation of various grant requirements. The Select Committee also ascertained that Florida state research grants often lacked similar requirements deemed reasonably necessary to ensure research integrity.³

In 2020, Florida law⁴ required that any person engaged in the design, conduct, or reporting of research and employed by a state university or specified entity engaging in research, is required by the policies of such university or entity to disclose and receive a determination that the outside activity⁵ or financial interest⁶ does not affect the integrity of the state university or entity. An employee who does not disclose any outside activity or financial interest as required must be suspended without pay pending the outcome of an investigation, which must not exceed 60 days. Additionally, upon conclusion of the investigation, the university or entity may terminate the contract of the employee.⁷

The Select Committee also learned that a U.S. visa to study or teach in the U.S. does not adequately screen foreign scientists' and students' security risk or trustworthiness. As with many employment or enrollment decisions, verifying representations made by an applicant regarding experience and credentials is a significant tool to protect an institution's integrity.⁸

In addition, the Select Committee learned that many undisclosed activities relate to foreign travel of U.S.-based faculty. International travel by faculty and graduate students creates opportunities for recruitment to engage in unethical conduct and for misappropriation of property and theft of university research. If an institution does not scrutinize and monitor foreign travel, it can expect compromising activities to take place.⁹

As part of its investigation, the Select Committee reviewed studies indicating that sister cities programs, academic language and culture centers, foreign funding of domestic institutions and foreign-influenced employment of domestic scientists and engineers are all means to influence domestic policy, advance hostile foreign interests, and limit academic freedom. Such activities project foreign interests into domestic affairs.¹⁰

³ Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>, at 7.

⁴ Section 18, ch. 2020-117, L.O.F.

⁵ "Outside activity" is defined to include anything an employee does for an organization or an individual, other than the university or entity, that is related to the employee's expertise. Section 1012.977(2)(b), F.S.

⁶ "Financial interest" is defined to include anything of value other than that provided directly by the university or entity. Section 1012.977(2)(a), F.S.

⁷ Section 1012.977, F.S.

⁸ Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>, at 7.

⁹ *Id.*

¹⁰ *Id.*

Federal Law and Recommended Practices

Threats to the U.S. Research Enterprise

Although state law currently imposes few limitations on relationships between foreign governments and state agencies, political subdivisions, or public contractors, federal law imposes many layers of scrutiny on certain dealings with foreigners, mostly related to science and technology having military implications, sales of arms and certain financial transactions related to terrorism, human trafficking, international drug dealing and other important national interests. Various agencies publish many lists related to various sanctions, restrictions and scrutiny imposed by federal law. In addition, many programs scrutinize transactions involving America's biggest global competitors, China and Russia. On January 19, 2021, the U.S. Department of Commerce published an interim final rule entitled: "Securing the Information and Communications Technology and Services Supply Chain." That interim rule¹¹ defined "foreign adversaries" to include Russia, China, the Nicolás Maduro government of Venezuela, Cuba, Iran, and North Korea. Along with Syria, a state sponsor of terrorism, these reflect the foreign governments most hostile to U.S. interests.¹²

As of March 2018, more than 1.4 million international students and professors were participating in America's open and collaborative academic environment. The inclusion of these international scholars at U.S. colleges and universities entails both substantial benefit—and notable risk. Some foreign actors, particularly foreign state adversaries, seek to illicitly or illegitimately acquire U.S. academic research and information to advance their scientific, economic, and military development goals. Through their exploitative efforts, they reduce U.S. competitiveness and deprive victimized parties of revenue and credit for their work.¹³

The Chinese government's strategic goals include becoming a comprehensive national power, creating innovation-driven economic growth, and modernizing its military. It aspires to equal or surpass the U.S. as a global superpower and influence the world with a value system shaped by undemocratic, totalitarian ideals. The Chinese government has historically sponsored economic espionage, and China is the world's principal infringer of intellectual property. The annual cost to the U.S. economy of counterfeit goods, pirated software, and theft of trade secrets is between \$225 billion and \$600 billion.¹⁴

A 2019 U.S. Senate report found that China prioritizes a strategy of military-civilian fusion that seeks to pool talent and financial resources to jointly develop technologies, conduct research, and attract talent that mutually reinforces both the military and civilian sectors. As of 2017, China

¹¹ 86 Fed. Reg. 4911 (January 19, 2021).

¹² Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>, at 8.

¹³ Florida House of Representatives, Select Committee on the Integrity of Research Institutions, *Meeting Packet* (Jan. 21, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3075&Session=2020&DocumentType=Meeting%20Packets&FileName=sci%201-21-20.pdf>, at 253.

¹⁴ *Id.* at 254 and 255.

has reportedly recruited 7,000 researchers and scientists, with U.S.-based researchers and scientists targeted specifically if they focus on or have access to cutting-edge research and technology. In response to U.S. government scrutiny, China has attempted to delete online references to its talent recruitment plans and reportedly instructed Chinese institutions on how to avoid additional U.S. scrutiny. Employment contracts used by China's most prominent talent recruitment plan, the Thousand Talents Plan, contain provisions that violate U.S. research values, including non-disclosure provision related to their research and employment with Chinese institutions. In some cases, members of China's Thousand Talents Plan received both U.S. grants and Chinese grants for similar research, established "shadow labs" in China to conduct parallel research being conducted in the U.S., and stole intellectual capital and property.¹⁵

In response to these findings, recommendations from the U.S. Senate report include all of the following:

- Federal agencies should declassify and disseminate more information on foreign talent recruitment plans.
- U.S. grant-making agencies should harmonize the grant proposal process and standardize reporting requirements for disclosing all foreign conflicts of interest, conflicts of commitment, and all outside and foreign support.
- U.S. research institutions should establish best practices in monitoring scientific and research collaboration with foreign nationals.¹⁶

Presidential Memorandum on National Security

On January 14, 2021, President Donald Trump signed National Security Presidential Memorandum 33 (the Memorandum) to direct a national response to safeguard the security and integrity of federally funded research and development in the United States. Among other directives, the Memorandum:

- Prohibited federal personnel from participating in foreign government-sponsored talent recruitment programs.
- Directed specified entities to ensure that vetting processes for foreign students and researchers reflect the changing nature of the risks to the U.S. research enterprise.
- Directed departments and agencies to standardize disclosure processes, definitions, and forms related to research security across funding agencies to the maximum extent practicable.¹⁷

Strengthening the Security and Integrity of America's Research Enterprise

Also in January 2021, the National Science and Technology Council released recommended practices for strengthening the security of America's research in science and technology. Recommended practices include:¹⁸

¹⁵ U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans* (Nov. 18, 2019), available at <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China's%20Talent%20Recruitment%20Plans%20Updated2.pdf>, at 7 and 8.

¹⁶ *Id.* at 11-13.

¹⁷ Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (Feb. 15, 2021), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%202-15-21.pdf>, at 7-25.

¹⁸ *Id.* at 27-48.

- Establishing and operating a comprehensive research security program.¹⁹
- Requiring disclosure to the organization of all information necessary to identify and assess potential conflicts of interest and commitment, including filing of relevant disclosures.
- Ensuring compliance with requirements for reporting foreign gifts and contracts.
- Establishing and operate a risk-based security process for foreign travel review and guidance.

Disclosure and Screening of Foreign Gifts and Contracts

Federal law restricts the receipt and disposition of foreign gifts. Any federal employee, member of the Armed Forces and their spouses may not request or accept a gift from any unit or agent of a foreign government. The Attorney General may bring a civil action against any employee who knowingly solicits or accepts an unauthorized gift from a foreign government or who fails to deposit or report such gift. The court may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000.²⁰

The most critical list of foreign nations identifies “state sponsors of terrorism” as Cuba, North Korea, Iran, and Syria.²¹ Further, foreign adversaries to the United States have been defined to include Russia, China, the Nicolás Maduro government of Venezuela, Cuba, Iran, and North Korea.²²

Reporting, Inspection, and Penalties for Foreign Gifts

Current Disclosure Requirements – Institutions of Higher Education

Divisions of sponsored research at state universities must disclose the amount and source of research funding, even when the research itself involves records that are confidential and exempt from public inspection. However, university and Florida College System institutions direct support organizations (DSOs) enjoy a broad confidentiality exemption for records related to donors who wish to be anonymous and expenditures of donated funds other than travel expenditures.²³

The Higher Education Act of 1965 requires education institutions to report foreign gifts and grants valued at \$250,000 or more. Between 2018 and 2021, the U.S. Department of Education

¹⁹ According to the recommendation, research security programs should include, at a minimum, elements of cyber security, foreign travel security, insider threat awareness and education, and export control training. Depending on the organization’s individual risk profile and resources, cyber security elements can include robust access and device registration protocols, hardware encryption, and incorporating use of commercial threat management and commercial compliance solutions into internal due diligence programs. Economies of scale often can be realized by coordinating with other organizations to leverage physical and intellectual assets and avoid unnecessary duplication.

²⁰ 5 U.S. Code § 7342.

²¹ U.S. Department of State, *State Sponsors of Terrorism*, <https://www.state.gov/statesponsors-of-terrorism/> (last visited March 18, 2021).

²² See 86 Fed. Reg. 4911 (January 19, 2021). State law further prohibits certain business interactions with specified vendors, including those on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and vendors engaged in business operations with Cuba or Syria. Department of Management Services (DMS), *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021)(on file with Senate Committee on Education), at 2. See also Rule 60A-1.006(2), F.A.C.

²³ Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>, at 10.

carefully scrutinized the reporting program and discovered billions of dollars of unreported foreign gifts from many of the best-funded institutions. At the same time, it became evident that the federal mandate does not extend to foreign donations to foundations and other non-profit entities controlled by, or formed or operated for the exclusive benefit of, the reporting institutions.²⁴

From 1984 to 1994, Florida law required universities and community colleges to report foreign receipts valued \$100,000 or more to the Commissioner of Education and legislative leaders.²⁵ As with the federal law, the statute did not extend to university foundations and DSOs, and the requirement appears to have generated few such reports.²⁶

Applicant Screening and Research Integrity of Foreign Researchers

At present, state law imposes no responsibility on research institutions to screen foreign applicants. Universities conduct background screening on faculty hires in general, not only on foreign researchers.²⁷

Approval Processes for International Travel

UF has implemented an active registration and screening program for international travel, including specific prohibitions and limitations on activities with Iran and Cuba. The program provides faculty and travelers clear guidance on legal and ethical restrictions. It also ensures protection of UF property including intellectual property.²⁸ Other institutions may also have international travel screening and monitoring in place.

State Law and Regulations

Code of Ethics for Public Officers and Employees

The Florida constitution requires a code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests.²⁹ The Code of Ethics for Public Officers and Employees (the Code) is outlined in Florida law,³⁰ and includes standards of

²⁴ U.S. Department of Education Office of General Counsel, *Institutional Compliance with Section 117 of the Higher Education Act of 1965* (Oct. 2020), available at <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>.

²⁵ Section 240.138, F.S. 1994 (repealed ch. 95-196 and ch.95-392, L.O.F.).

²⁶ Florida House Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>, at 10.

²⁷ Board of Governors (BOG), *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021)(on file with the Senate Committee on Education), at 4. This screening consists of checks such as criminal background screening, reference checks, experience verification, and education verification. For example, Florida State University conducts international criminal history background checks for candidates who have lived outside the United States for six months or more within the past seven years. *Id.*

²⁸ See UF Research, *International Travel*, <https://research.ufl.edu/compliance/export-controls/international-travel.html> (last visited March 15, 2021).

²⁹ State of Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees* (2021), available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf>, at 1.

³⁰ See ss. 112.311 - 112.3261, F.S.

conduct for public officers, employees of agencies, and local government attorneys;³¹ full and public disclosure of financial interests;³² and investigative procedures in response to prohibited personnel actions.³³

Ethics laws generally consist of two types of provisions, either prohibiting certain actions or conduct or requiring that certain disclosures be made to the public. Prohibited actions or conduct include solicitation and acceptance of gifts, unauthorized compensation, misuse or abuse of public position, disclosure or use of specified information, and solicitation or acceptance of honoraria. Prohibited employment and business relationships include doing business with one's agency, and conflicting contractual relationship, among others. Public officers and employees are required to publicly disclose their financial interests to prevent conflicts of interests.³⁴

International Cultural Agreements

Florida law provides for coordination of certain international relationships, including those between sister states and sister cities. Florida's economic development programs emphasize commerce with foreign jurisdictions.³⁵ However, such agreements may impose the public policy of foreign competitors upon local U.S. governments; it has been reported that China requires sister city agreements to enforce its "One China" policy.³⁶ According to the Tampa Bay Protocol and Trade Council, there are a number of sister city agreements with jurisdictions in nations described above as "foreign adversaries": eleven with political subdivisions of China, six with Russian jurisdictions and three with Venezuelan cities.³⁷

In the past decade, the University of North Florida, the University of West Florida, the University of South Florida, and Miami-Dade College each were home to a Confucius Institute under a program of the Communist Party of China promoting Chinese language and culture, funded by significant Chinese grants. By 2014, there were at least 90 Confucius Institutes in the U.S. and more than 400 worldwide.³⁸ By September 2019, each of the four above-named Florida institutions had closed its Confucius Institute following significant criticism by U.S. Senator Marco Rubio and others. A U.S. Senate Subcommittee found that the limitations on Confucius Institutes "export China's censorship of political debate to the United States and prevent the academic community from discussing topics" sensitive to the Communist Party of China,³⁹ and

³¹ Section 112.313, F.S.

³² Sections 112.3144 and 112.31445, F.S. There is currently no disclosure requirement for any gift or grant of any value for state agencies, political subdivisions, or entities that apply to a grant or propose a contract. There are also no penalties for failure to disclose such information. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 2.

³³ Section 112.31895, F.S.

³⁴ State of Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees* (2021), available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf>, at 2-5, 11.

³⁵ See ss. 288.816 and 288.826, F.S.

³⁶ See Matej Šimalčík and Adam Kalivoda, *Sister-City Relations and Identity Politics: The Case of Prague, Beijing, Taipei, and Shanghai*, *The Diplomat*, Feb. 25, 2020, available at <https://thediplomat.com/2020/02/sister-city-relations-and-identity-politics-the-case-of-prague-beijing-taipei-and-shanghai/>.

³⁷ Tampa Bay Protocol & Trade, *Florida Sister Cities Database*, <https://tampabayprotocol.com/sister-cities-database> (last visited March 15, 2021).

³⁸ UWF Newsroom, *UWF to Host Opening Ceremony of Confucius Institute* (April 28, 2014), available at <https://news.uwf.edu/uwf-host-opening-ceremony-confucius-institute/>.

³⁹ U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans* (Nov. 18, 2019).

some Confucius Institute agreements apply law of the Communist Party of China to activities on U.S. campuses.⁴⁰

Linkage Institutes

Beginning in 1987, Florida law established linkage institutions between Florida postsecondary institutions and foreign countries to assist in the development of stronger economic, cultural, educational, and social ties between this state and strategic foreign countries, through the promotion of the following specified activities between the postsecondary institutions in this state and those of selected foreign countries.⁴¹

- Expanded public and private dialogue on cooperative research and technical assistance activities;
- Increased bilateral commerce;
- Student and faculty exchange;
- Cultural exchange; and
- The enhancement of language training skills.⁴²

A Florida-China Institute is currently authorized by law for three postsecondary institutions in Florida,⁴³ and ten other institutes are established by law.⁴⁴

As of March 4, 2021, the U.S. Senate passed a bill restricting federal departmental funding from institutions of higher education or other postsecondary educational institutions that maintain any contract or agreement with a Confucius Institute, unless such agreement includes clear provisions that protect academic freedom, prohibit the application of any foreign law on any campus of such institution, and grant full managerial authority, including full control over what is being taught, to such institution.⁴⁵

III. Effect of Proposed Changes:

This bill provides safeguards against foreign influence through establishing processes that govern screening and disclosure of foreign gifts, contracts, employment, travel, and research arrangements, as well as cultural agreements, with countries of concern.

⁴⁰ See also U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *China's Impact on the U.S. Education System* (Feb 29, 2019), available at <https://www.hsgac.senate.gov/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf>.

⁴¹ Section 288.8175(1), F.S.

⁴² The BOG has noted that several foreign languages have been designated by the U.S. government as “critical languages” with respect to national security. These include Chinese or Mandarin, Russian, Arabic, and Persian. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021)(on file with the Senate Committee on Education), at 6.

⁴³ Section 288.8175(4)(e), F.S.

⁴⁴ The BOG has also identified student exchange agreements between the University of North Florida and the Saint Petersburg State University of Economics in Russia, and student recruitment agreements between Florida International University and entities in Venezuela. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021)(on file with the Senate Committee on Education), at 3.

⁴⁵ CONFUCIUS Act, S. 590, 117th Cong. (2021).

Disclosure and Screening of Foreign Gifts and Contracts

The bill creates s. 286.101, F.S., to require any state agency or political subdivision that receives directly or indirectly any gift or grant with a value of \$50,000 or more from any foreign source to disclose such gift or grant to the Department of Financial Services (DFS) within 30 days after its receipt.⁴⁶ Such disclosure must include the date of the gift or grant, the amount of the gift or grant, and the name and country of residence or domicile of the foreign source.

The bill requires any entity that applies to a state agency or political subdivision for a grant or proposes a contract⁴⁷ of \$100,000 or more to disclose to the state agency or political subdivision any current, or for the past five years, any prior interest of, any contract with, or any grant or gift received from a foreign country of concern⁴⁸ of \$50,000 or more. The bill also specifies requirements for updates to the disclosure during the gift, grant, or contract. Such disclosure must include the name and mailing address of the disclosing entity, the amount of the contract, grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. Within one year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to DFS.⁴⁹

Disclosure is not required with respect to:

- A proposal to sell commodities through the online procurement program;
- An application or proposal from an entity that discloses foreign gifts or grants under provisions for institutions of higher education and affiliated organizations;
- An application or proposal from a foreign source that, if granted or accepted, would be disclosed under provisions for institutions of higher education and affiliated organizations; or
- An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.

The bill deems a disclosure published online to a DFS online site as a disclosure to every state agency and political subdivision. From the time a disclosure is made through the term of any awarded state grant or contract, the entity must revise its disclosure within 30 days after entering into a contract with or receiving a grant or gift from a foreign country of concern or within 30 days after the acquisition of any interest in the entity by a foreign country of concern. In addition, the bill requires, at least once every five years, the Department of Management Services (DMS) to screen each vendor of commodities or services participating in the online

⁴⁶ Disclosure is not required if such gift or grant is disclosed under s. 1010.25, F.S., established in the bill.

⁴⁷ The Department of Management Services (DMS) has noted that it is unclear if proposing a contract, as used in this bill, refers to bids, proposals, or replies. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 3.

⁴⁸ “Foreign country of concern” is defined in the bill to mean the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

⁴⁹ It is unclear if the language requires such disclosure a year before an application, or if the bill requires only that a disclosure not be more than a year old. Additionally, the BOG identified the need for clarification in language requiring entities to disclose specified items to DFS “within 1 year before applying for any grant or proposing any contract,” since universities might not be aware of grant or contractual opportunities a year before they take place, BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 11.

procurement system if the vendor has the capacity to fill an order of \$100,000 or more. Screening must be conducted through federal agencies responsible for identifying persons and organizations subject to trade sanctions, embargoes, or other restrictions under federal law.⁵⁰

If a vendor is identified as being subject to sanctions, embargoes, or other restrictions, the vendor must make the required disclosures until such restriction expires. A notification regarding the applicability of the disclosure requirement to the vendor must be included on the online procurement system when applicable. DMS must ensure that purchasers made by vendors using the online procurement system are easily accessible by the system's participants.

The bill requires DFS to establish and maintain a website to publish the disclosures. Upon receiving a referral from an inspector general or other compliance officer of a state agency or political subdivision or any sworn complaint based upon substantive information and reasonable belief, DFS must investigate an allegation of a violation of disclosure requirements.

The bill also:

- Authorizes DFS, an inspector general, or any other agent or compliance officer authorized by a state agency or political subdivision to request records relevant to any reasonable suspicion of a violation. Records must be provided within 30 days or at a later agreed upon time.
- Specifies that failures to disclose or provide records constitutes a civil violation and fine of \$5,000 for a first violation or \$10,000 for any subsequent violation.

The bill specifies, in addition to any fine assessed, a final order determining a third or subsequent violation:

- By a state agency or political subdivision, must include a determination of the identity of the officer responsible for acceptance of the undisclosed grant or gift. DFS must send the order to the Governor or other authorized officer able to suspend or remove a public officer. The referral must also be provided to the President of the Senate and the Speaker of the House of Representatives for oversight of such suspension and removal authority.
- By an entity other than a state agency or political subdivision, must automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.

The bill specifies that, except as provided in s. 1004.22(2), F.S., regarding materials concerning methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or propriety information during the course of research conducted by divisions of sponsored research, or information protected by any statute that is a trade secret as defined in s. 812.081(1)(c) or s. 688.002(4), F.S, information and records relating to a gift or grant from a foreign source are not confidential or exempt.

The bill authorizes DMS and DFS to adopt rules necessary to carry out their responsibilities as specified. Specifically:

⁵⁰ DMS has pointed out that the bill does not provide authority for DMS to specify in rule "other restrictions under federal law" that DMS would be required to screen for, which could be more specifically defined. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 6.

- DMS may identify the federal agencies to be consulted as specified and the procedure for notifying a vendor of the disclosure requirements when applicable.
- DMS may adopt rules to apply requirements as specified to the online procurement system.
- Any rules necessary for implementation must be published by December 1, 2021,⁵¹ subject to certain exceptions.

Reporting, Inspection, and Penalties for Foreign Gifts

The bill creates s. 1010.25, F.S., to require each institution of higher education (IHE)⁵² to semiannually report, each January 31 and July 31, any gift received directly or indirectly from a foreign source with a value of \$50,000 or more during the fiscal year.⁵³ If a foreign source provides more than one gift directly or indirectly to an IHE in a single fiscal year and the total value of those gifts is \$50,000 or more, all gifts received from that foreign source must be reported. A gift received from a foreign source through an intermediary is considered an indirect gift to the IHE. An IHE is authorized to consolidate its report with that of all its affiliate organizations.

A report is required to be made to the following entities:

- The Board of Governors (BOG), if the recipient is a state university, a branch campus, center, institute, or special program as specified in law,⁵⁴ that has its own governing board or DSO.
- Unless already reported to the BOG, the State Board of Education (SBE), if the recipient is any other IHE or an affiliated DSO.

For each gift subject to the reporting requirement, the IHE is required to provide to the BOG or SBE, as applicable, all of the following information, unless otherwise prohibited or deemed confidential under federal or state law:

- The amount of the gift and the date it was received.
- The contract start and end dates if the gift is a contract.
- The name of the foreign source and, if not a foreign government, the country of citizenship, if known, and the principal residence or domicile of the foreign source.
- A copy of a gift agreement between the foreign source and the IHE, signed by the foreign source and the chief administrative officer of the IHE, which must include the purpose,

⁵¹ According to DMS, the term used in the bill does not specify if the publication by this deadline refers to the publication of the Notice of Rule Development, Notice of Proposed Rule, or adoption of the rule. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 6. Currently, ss. 120.74(4)-(5), F.S., require publication of a Notice of Rule Development by November 1 and a notice of Proposed Rule by the following April 1.

⁵² The bill defines “Institution of higher education” as a state university; an entity listed in law that has its own governing board; a Florida College System institution; an independent nonprofit college or university that is located in and chartered by the state and grants baccalaureate or higher degrees; any other institution that has a physical presence in the state and is required to report foreign gifts or contracts pursuant to 20 U.S.C. s. 1011(f); or an affiliate organization of an institution of higher education.

⁵³ Pursuant to 20 U.S.C. s. 1101(f), universities report gifts of \$250,000 or more from foreign sources to the U.S. Department of Education within a calendar year, on January 31 or July 31, whichever is sooner.

⁵⁴ See ss. 1004.33-1004.64991, F.S. The Board of Governors has identified entities with governing boards listed in subpart B of part II of chapter 1004, F.S., as including the Florida Industrial and Phosphate Research Institute, Shands Teaching Hospital and Clinics, H. Lee Moffitt Cancer Center and Research Institute, Medical Marijuana Research Board, and the Florida Institute for Human and Machine Cognition. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 1.

terms, and conditions of the gift. With respect to an agreement containing information from a division of sponsored research protected from disclosure by specified law, an abstract and redacted copy providing all required information that is not so protected may be submitted in lieu of a copy of the agreement.

Beginning July 1, 2022, the Inspector General of the BOG or the Inspector General of the Department of Education (DOE), as applicable, is required to randomly inspect or audit at least 10 percent of the total number of gifts or gift agreements received from IHEs during the previous year. The inspection or audit must examine the extent to which the IHE exercised due diligence with respect to whether the gift was received from a foreign source, as well as the IHE's compliance with the reporting requirements. However, upon the request of the Governor, the President of the Senate, or the Speaker of the House of Representatives, the Inspector General of the BOG or the Inspector General of the DOE, as applicable, must inspect or audit a gift or gift agreement.

The BOG or SBE, as applicable, is required to exercise the oversight and enforcement authority provided in law⁵⁵ to sanction an IHE that fails to report a reportable gift within 60 days after the reporting deadlines established as specified.

The bill subjects an IHE that knowingly, willfully, or negligently fails to disclose the information to a civil penalty of 105 percent of the amount of the undisclosed gift, payable only from nonstate funds of the IHE or the affiliate organization that received such gift. The BOG and SBE, as applicable, is authorized to administratively enforce and impose the civil penalty. A lesser penalty, but at least five percent of the amount of the undisclosed gift, may be imposed if a negligent failure is not a result of negligent management or is de minimis.

In the absence of enforcement by the BOG or SBE, as applicable, the bill authorizes the Attorney General or Chief Financial Officer to bring a civil action to enforce as specified.

The bill specifies that, except as provided in specified law regarding divisions of sponsored research, or information protected by any statute that is a trade secret as defined in law, information and records relating to a gift from a foreign source are not confidential or exempt.⁵⁶

The bill authorizes the BOG to adopt regulations and the SBE to adopt appropriate rules.

Applicant Screening and Research Integrity of Foreign Researchers

The bill creates s. 1010.35, F.S., to require, beginning July 1, 2021, each state university or entity listed as specified in law⁵⁷ which receives state appropriations or state tax revenue and has a research budget of \$10 million or more to screen applicants for research or research-related support positions, and applicants for positions of visiting researcher, who are citizens of a foreign country and who are not permanent residents of the United States, or who are citizens or permanent residents of the United States who have any affiliation with an institution or program, or at least one year of prior employment or training, excepting employment or training by an

⁵⁵ Section 1008.322 or 1008.32, F.S., respectively,

⁵⁶ As defined in s. 119.07(1), F.S., and Art. 1, s. 24(a), Fla. Const.

⁵⁷ See ss. 1004.22-1004.64991, F.S.

agency of the United States government, in a specified foreign country of concern. Such screening is required prior to interviewing such applicant or offering a position of employment or of visiting researcher. At the discretion of the university or entity, other applicants for such positions may be screened.

In addition to satisfying all federal employment and enrollment qualifications, the BOG or the governing board of the applicable entity must require a foreign applicant to submit:

- A complete copy of his or her most recently submitted Nonimmigrant Visa Application, DS-160. After extraction of all information relevant to these requirements a university or entity may destroy or return the copy of the DS-160 submitted by an applicant.
- A complete resume and curriculum vitae, including every institution of higher education attended; all previous employment since the applicant's 18th birthday; and a list of all published material for which the applicant received credit as an author, a researcher, or otherwise, or to which the applicant contributed significant research, writing, or editorial support; a list of the applicant's current and pending research funding from any source, including funder, amount, applicant's role on the project, and brief description of the research; and a full disclosure of non-university professional activities including any affiliation with an institution or program in a foreign country of concern. For applicants who have been continually employed or enrolled in a postsecondary education institution in the United States for 20 years or more, the resume may include employment history before the most recent 20 years.

The president or chief administrative officer of the state university or applicable entity is required to designate a research integrity office to review all required materials and take reasonable steps to verify all attendance, employment, publications, and contributions listed in the application required prior to any interview of or offer of a position to the applicant.

The bill specifies "reasonable steps" that must be taken by a research integrity office to include:

- Searching public databases for research publications and presentations and public conflict of interest records to identify any research publication or presentation that may have been omitted from the application;
- Contacting all employers of the most recent 10 years to verify employment;
- Contacting all institutions of higher education attended to verify enrollment and educational progress;
- Searching public listings of persons subject to sanctions or restrictions under federal law;
- Submitting the applicant's name and other identifying information to the Federal Bureau of Investigation or any federal agency reasonably willing to scrutinize such applicant for national security or counterespionage purposes; and
- Any other steps deemed appropriate to the office.

The university or applicable entity may also direct the office to approve applicants for hire based on a risk-based determination considering the nature of the research and the background and ongoing affiliations of the applicant. These requirements must be completed before interviewing or offering any position to an individual described in any research or research-related support position and before granting such applicant any access to research data or activities or other sensitive data.

An applicant who must be screened may not be employed in any research or research-related support position if he or she fails to disclose a substantial educational, employment, or research-related activity or publication or presentation at the time of submitting the application required, unless the department head, or his or designee, certifies in writing the substance of the nondisclosure and the reasons for disregarding such failure to disclose. A copy of such certification must be kept in the investigative file of the research integrity office and must be submitted to the nearest Federal Bureau of Investigation field office.

The research integrity office is required to report to the nearest FBI office, and to any law enforcement agency designated by the Governor or the BOG and the governing board of the applicable entity described, the identity of any applicant who was rejected for employment based on the scrutiny required or other security-related screening.

By July 1, 2025, the Inspector General of the BOG, the inspector general of an entity described, or the Auditor General is required to perform an operational audit regarding such implementation of screening requirements.

Approval Processes for International Travel

The bill creates s. 1010.36, F.S., to require, by January 1, 2022, each state university or associated entity listed in specified law⁵⁸ that receives state appropriations or state tax revenue and has a research budget of \$10 million or more to establish an international travel approval and monitoring program. The program must require preapproval and screening by the research integrity office designated by the president or chief administrative officer of the state university or entity for any foreign travel and foreign employment-related activities engaged in by all faculty, researchers, and research department staff.

Preapproval by the research integrity office must be based on the applicant's review and acknowledgement of guidance published by the employing state university or entity that relates to countries under sanctions or other restrictions of the state or the U.S. government. In addition, the preapproval must be based on the binding commitment of the individual traveler not to violate the state university's or entity's limitations on travel and activities abroad and to obey all applicable federal laws.

The state university or entity is required to maintain records of all applications for foreign travel and activities; expenses reimbursed by the university incurred during such travel and activities; and payments and honoraria received during such travel and activities. The state university or entity must also keep records of all teaching, presentations, and other activities related to the individual traveler's professional, research, and academic activities undertaken during foreign travel. Such records must be retained for at least three years or any longer period of time required by any other applicable state or federal law.

⁵⁸ See ss. 1004.22-1004.64991, F.S. BOG has identified entities with governing boards listed in subpart B of part II of chapter 1004, F.S., which receive state funds and have a research budget of \$10 million or more as encompassing all state universities besides Florida Gulf Coast University, Florida Polytechnic University, and New College of Florida. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 2.

The state university or entity is required to provide an annual report of foreign travel to countries of concern listing individual travelers, foreign locations visited, and foreign institutions visited to the BOG or the governing board of the applicable entity.

In addition, by July 1, 2025, the Inspector General of the BOG, the inspector general of a described entity, or the Auditor General is required to perform an operation audit regarding implementation of foreign travel reporting.

International Cultural Agreements

The bill creates s. 288.860, F.S., to specify that a state agency, political subdivision, public school, state college, or state university, which includes any direct support organizations, authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern, which establishes a program or other endeavor to promote the language or culture of a foreign country of concern, or accept anything of value conditioned upon participation in a program or other endeavor to promote the language or culture of a foreign country of concern.⁵⁹

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Board of Governors (BOG) has identified that its constitutional duties under Article IX, section 7 of the Florida Constitution extend to establishing personnel programs for the universities. BOG Regulation 1.001(5) delegates constitutional authority from the BOG to its university boards of trustees to establish university personnel programs,

⁵⁹ The BOG cites several institutes or agreements that address Cuban or Russian language or culture, including at the University of South Florida, the University of North Florida, and Florida Agricultural and Mechanical University. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 6.

which includes establishing policies regarding recruitment and selection of employees and employee travel.⁶⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Compliance with gift reporting, applicant screening, and travel approval as specified may result in indeterminate costs to institutions required to arrange or conduct these activities. Implementing travel review and approval processes and eliminating existing cultural agreements with countries of concern may reduce business and academic exchange between Florida and such countries. Given that the annual cost to the U.S. economy of counterfeit goods, pirated software, and theft of trade secrets is between \$225 billion and \$600 billion; however, enhanced integrity and security of Florida's research environment should offset any reduction in foreign donations or contracts the bill may cause.

The Board of Governors (BOG) has identified incremental costs to state universities in order to comply with foreign gift tracking and reporting, application screening, and travel approval provisions as specified. In addition, the BOG has identified the need for one auditor position to begin initial work to implement the requirements of this bill, at the estimated cost of \$129,900 to cover salary, benefits, and expenses.⁶¹

Requiring state agencies or political subdivisions to report to the Department of Financial Services (DFS) any gift or grant of \$50,000 or more from a foreign source as specified may result in increases in workload or personnel costs. Workload and personnel costs for the Department of Management Services to screen each vendor as specified every five years in the online procurement system could also increase, and publishing disclosures as specified could generate additional expenditures.⁶²

In addition, requirements to disclose to DFS any gifts or grants of \$50,000 or more from any foreign source may remove confidentiality of donors, with the potential to discourage some foreign donations or grants if anonymity or secrecy is important to the donor.⁶³

⁶⁰ BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021) (on file with Senate Committee on Education), at 10.

⁶¹ *Id.*, at 9.

⁶² DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021) (on file with Senate Committee on Education), at 4.

⁶³ Florida House of Representatives, *Staff Analysis of HB 7017* (2021), available at <https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=h7017a.EEC.DOCX&DocumentType=Analysis&BillNumber=7017&Session=2021>, at 7.

Failure of a state agency or political subdivision to provide records requested due to reasonable suspicion of a violation of obtaining the disclosures constitutes a \$5,000 fine for the first violation and a \$10,000 fine for any subsequent violation.⁶⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 286.101, 288.860, 1010.25, 1010.35, and 1010.36.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 30, 2021:

The committee substitute modifies requirements concerning disclosure and reporting of foreign gifts and grants, screening of foreign researchers, and foreign travel.

The committee substitute adds:

- To the requirement that entities applying for a contract or grant disclose foreign contracts, gifts, or grants a specification of items to report, including the name and mailing address of the disclosing entity, amount, source country, and contract terms.
- Exemptions to the disclosure requirements including gifts or grants that would already be reported by a state agency or political subdivision, and an application or proposal by a public or not-for-profit research institution.
- To the provision relating to an exemption from public records to allow university divisions of research records or trade secrets to remain confidential.
- DSOs as entities with restrictions on foreign gifts and grants.
- Authorization for colleges and universities to consolidate gift reporting with all affiliate organizations.
- Authorization for a division of sponsored research to submit an abstract and redacted copy providing all required information related to a gift report.
- A lesser penalty for failure to disclose, if the failure is not negligent management or if the gift amount is minimal.
- University divisions of sponsored research to screening requirements.
- Detailed criteria to determine those under screening requirements, to replace general language, and authorizes the university or entity to screen others for such research positions.

⁶⁴ DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021) (on file with Senate Committee on Education), at 5.

- Authorization for the university to destroy the copy of the visa application after extraction of all relevant information.
- Application requirements to include additional information about past research and disclosure of non-university professional activities.
- Additional requirements to “reasonable steps” taken by the research integrity office.
- Authorization for the university or entity to direct approval of an applicant based on a risk-based determination.

The committee substitute further specifies that:

- The disclosure requirements for a gift or grant of \$50,000 is a direct or indirect gift or grant.
- Information to be included in the gift or grant disclosure must include the amount and name and country of residence or domicile of the foreign source.
- The provision relating to an exemption from public records to allow university divisions of research records or trade secrets must remain confidential.
- Instead of keeping records of all teaching, presentations, and other activities related to the individual traveler’s professional, research, and academic activities undertaken during foreign travel, a university or entity must keep records of the purpose of the travel and any records related to the foreign activity review.
- Specified information regarding foreign travel no longer is required to be retained, and lowers retention time from 10 to 3 years.
- Annual report of foreign travel is limited to countries of concern, and removes the requirement that the report be posted on the relevant website.
- The Auditor General or specified entity is required to perform an operational audit by July 1, 2025.

B. Amendments:

None.