

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 Education

BILL: SB 2010

INTRODUCER: Senator Diaz

SUBJECT: Foreign Influence

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	Pre-meeting
2.			AED	
3.			AP	

I. Summary:

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.
- 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, including graduate and undergraduate students.
- Requires the state university or entity to keep detailed records of expenses and activities related to individual traveler's professional, research, and academic activities.
- Prohibits specified participation in 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 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

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-sprohls-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.

³ *Id.*

⁴ Section 18, ch. 2020-117, L.O.F.

outside activity⁵ or financial interest⁶ does not affect the integrity of the state university or entity.⁷ 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.⁸ Additionally, upon conclusion of the investigation, the university or entity may terminate the contract of the employee.⁹

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.¹⁰

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.¹¹

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.¹²

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

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 Section 1012.977(3), F.S.

⁹ *Id.*

¹⁰ 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.

¹¹ *Id.*

¹² *Id.*

Communications Technology and Services Supply Chain.” That interim rule¹³ 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.¹⁴

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.¹⁵

The Chinese government’s strategic goals include becoming a comprehensive national power, creating innovation-driven economic growth, and modernizing its military.¹⁶ 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.¹⁷ The Chinese government has historically sponsored economic espionage, and China is the world’s principal infringer of intellectual property.¹⁸ 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.¹⁹

A 2019 U.S. Senate report found that China prioritizes a strategy of military-civilian fusion which 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.²⁰ As of 2017, China 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.²¹ 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.²² 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

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

¹⁴ 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.

¹⁵ 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.

¹⁶ *Id.* at 255.

¹⁷ *Id.*

¹⁸ *Id.* at 254.

¹⁹ *Id.*

²⁰ 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.

²¹ *Id.*

²² *Id.*

employment with Chinese institutions.²³ 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.²⁴

In response to these findings, recommendations from the U.S. Senate report include:²⁵

- 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.

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:²⁶

- 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.

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:²⁷

- Establish and operate a comprehensive research security program.²⁸

²³ 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 8.

²⁴ *Id.*

²⁵ *Id.* at 11-13.

²⁶ Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (Feb. 15, 2021), available at <https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%202-15-21.pdf>, at 7-25.

²⁷ *Id.* at 27-48.

²⁸ 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.

- Require disclosure to the organization of all information necessary to identify and assess potential conflicts of interest and commitment, including filing of relevant disclosures.
- Ensure compliance with requirements for reporting foreign gifts and contracts.
- Establish 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.²⁹ 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 \$5,000.³⁰

The most critical list of foreign nations identifies “state sponsors of terrorism” as Cuba, North Korea, Iran, and Syria.³¹ 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.³²

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 institution 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.³³

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 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.³⁴

²⁹ 5 U.S. Code § 7342.

³⁰ *Id.*

³¹ U.S. Department of State, *State Sponsors of Terrorism*, <https://www.state.gov/statesponsors-of-terrorism/> (last visited March 18, 2021).

³² See 86 Fed. Reg. 4911 (January 19, 2021).

³³ 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.

³⁴ 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>.

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.³⁵ 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.³⁶

Applicant Screening and Research Integrity of Foreign Researchers

At present, state law imposes no responsibility on research institutions to screen foreign applicants.

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.³⁷ The program provides faculty and travelers clear guidance on legal and ethical restrictions.³⁸ It also ensures protection of UF property including intellectual property.³⁹ 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.⁴⁰ The Code of Ethics for Public Officers and Employees (the Code) is outlined in Florida law,⁴¹ and includes standards of conduct for public officers, employees of agencies, and local government attorneys;⁴² full and public disclosure of financial interests;⁴³ and investigative procedures in response to prohibited personnel actions.⁴⁴

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.⁴⁵ 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

³⁵ Section 240.138, F.S. 1994 (repealed ch. 95-196 and ch.95-392, L.O.F.).

³⁶ 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.

³⁷ See UF Research, *International Travel*, <https://research.ufl.edu/compliance/export-controls/international-travel.html> (last visited March 15, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 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.

⁴¹ See ss. 112.311 - 112.3261, F.S.

⁴² Section 112.313, F.S.

⁴³ Sections 112.3144 and 112.31445, F.S.

⁴⁴ Section 112.31895, F.S.

⁴⁵ 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.

honoraria.⁴⁶ Prohibited employment and business relationships include doing business with one's agency, and conflicting contractual relationship,⁴⁷ among others. Public officers and employees are required to publicly disclose their financial interests to prevent conflicts of interests.⁴⁸

International Cultural Agreements

Florida law provides for coordination of certain international relationships, including those between sister states and sister cities.⁴⁹ Florida's economic development programs emphasize commerce with foreign jurisdictions.⁵⁰ However, such agreements may impose the public policy of foreign competitors upon local U.S. governments; it has been reported that the China requires sister city agreements to enforce its "One China" policy.⁵¹ According to the Tampa Bay Protocol and Trade Council, there are a number of sister city agreements with jurisdictions in nations describe above as "foreign adversaries": eleven with political subdivisions of China, six with Russian jurisdictions and three with Venezuelan cities.⁵²

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.⁵³ 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,⁵⁴ and some Confucius Institute agreements apply law of the Communist Party of China to activities on U.S. campuses.⁵⁵

Linkage Institutes

Beginning in 1987, Florida law established linkage institutions between Florida postsecondary

⁴⁶ 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 3-4.

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 11.

⁴⁹ See s. 288.816, F.S.

⁵⁰ See ss. 288.816 and 288.826, F.S.

⁵¹ 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/>.

⁵² Tampa Bay Protocol & Trade, *Florida Sister Cities Database*, <https://tampabayprotocol.com/sister-cities-database> (last visited March 15, 2021)..

⁵³ 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/>.

⁵⁴ 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).

⁵⁵ 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>.

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:⁵⁶

- 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.

A Florida-China Institute is currently authorized by law for three postsecondary institutions in Florida,⁵⁷ and ten other institutes are established by law.

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.⁵⁸

III. Effect of Proposed Changes:

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.

Disclosure and Screening of Foreign Gifts and Contracts

The bill requires any state agency or political subdivision that receives 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.⁵⁹

The bill requires any entity that applies to a state agency or political subdivision for a grant or proposes a contract 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 concern⁶⁰ of \$50,000 or more. The bill also specifies requirements for updates to the disclosure during the gift, grant, or contract. Within one year

⁵⁶ Section 288.8175(1), F.S.

⁵⁷ Section 288.8175(4)(e), F.S.

⁵⁸ CONFUCIUS Act, S. 590, 117th Cong. (2021).

⁵⁹ Disclosure is not required if such gift or grant is disclosed under s. 1010.25, F.S., established in the bill.

⁶⁰ “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.

before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to DFS.

The bill exempts from the disclosure requirements a proposal to sell commodities or services through the online procurement program established by law.⁶¹ 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 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.

If a vendor is so identified, 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 the disclosures 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. DFS must include and maintain an active and current list of ineligible entities on the website, and must investigate an allegation of a disclosure violation upon receiving a valid referral from an inspector general or other compliance officer of a state agency or political subdivision or any sworn complaint. 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 information and records relating to a gift or grant from a foreign source are not confidential or exempt.⁶²

⁶¹ See s. 287.057(22), F.S.

⁶² As defined in s. 119.07(1), F.S., and Art. 1, s. 24(a), Fla. Const.

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

- 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, subject to certain exceptions.

Reporting, Inspection, and Penalties for Foreign Gifts

The bill requires each institution of higher education (IHE)⁶³ 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. 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.

The bill requires a report required under this subsection 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 law⁶⁴ that has its own governing board or DSO.
- The State Board of Education (SBE), if the recipient is a Florida College System institution, or any Florida independent college or university required to report, or any affiliated DSO.

Specifically, the bill requires, for each gift subject to the reporting requirement, the IHE 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, terms, and conditions of the gift.

Beginning July 1, 2022, the bill requires the Inspector General of the BOG or the Inspector General of the Department of Education (DOE), as applicable, 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

⁶³ 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.

⁶⁴ See ss. 1004.33-1004.64991, F.S.

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 bill requires the BOG or SBE, as applicable, to exercise the oversight and enforcement authority provided in law⁶⁵ 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 bill authorizes the BOG and SBE, as applicable, to administratively enforce and impose the civil penalty. 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 information and records relating to a gift from a foreign source are not confidential or exempt.⁶⁶

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 requires, beginning July 1, 2021, each state university or entity listed as specified in law⁶⁷ 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, including graduate and undergraduate students.

The bill requires, in addition to satisfying all federal employment and enrollment qualifications, the BOG or the governing board of the applicable entity to require a foreign applicant to submit a complete copy of his or her most recently submitted Nonimmigrant Visa Application, DS-160; 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. 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, but need not, include employment history before the most recent 20 years.

The bill requires the president or chief administrative officer of the state university or applicable entity to designate a research integrity office to verify all attendance, employment, publications, and contributions listed in the application required as specified. The research integrity office must search public databases for any omissions from the application. The research integrity

⁶⁵ Section 1008.322 or 1008.32, F.S., respectively,

⁶⁶ As defined in s. 119.07(1), F.S., and Art. 1, s. 24(a), Fla. Const.

⁶⁷ See ss. 1004.33-1004.64991, F.S.

office must submit the applicant's name and other identifying information to the Federal Bureau of Investigation (FBI) or any federal agency willing to scrutinize such applicant for national security or counterespionage purposes and search any public listings of persons subject to sanctions or restrictions under federal law.

The bill requires the screening be completed before employing an applicant in any research or research-related support position, or granting an applicant any access to sensitive data. An applicant who fails to disclose substantial information may not be employed in any research or research-related support position, 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 FBI field office.

In addition, the bill requires the research integrity office 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.

The bill requires, by July 1, 2025, the Inspector General of the BOG, the inspector general of an entity described, or the Auditor General to perform an operational audit regarding such implementation of screening requirements.

Approval Processes for International Travel

The bill requires, by January 1, 2022, each state university or associated entity listed in specified law⁶⁸ 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 for any foreign travel and foreign employment-related activities engaged in by all faculty, researchers, and research department staff.

The bill specifies that 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 which relates to countries under sanctions or other restrictions of the state or the U.S. government, and 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 bill requires the state university or entity to keep detailed records of expenses and activities related to the individual traveler's professional, research, and academic activities undertaken during foreign travel. Such records must be retained for at least 10 years or any longer period of time required by any other applicable state or federal law.

The bill requires the state university or entity to provide an annual report of foreign travel and activities listing individual travelers, foreign locations visited, and foreign institutions visited for

⁶⁸ See ss. 1004.33-1004.64991, F.S.

presentations, teaching, or research to the BOG or the governing board of the applicable entity and publish such report on its website.

In addition, the bill requires, unless an operational audit has been previously submitted by the institution's inspector general or internal auditor, by January 1, 2022, the Auditor General to perform an audit of the institution to ensure compliance as specified as part of the institution's next scheduled operational audit.

International Cultural Agreements

The bill specifies that a state agency, political subdivision, public school, state college, or state university 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.

The fiscal impact of this bill is indeterminate.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Compliance with gift reporting, applicant screening, and approval travel 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.⁶⁹

C. Government Sector Impact:

In addition, requirements to disclose to the Department of Financial Services 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.⁷⁰

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 Changes:**

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁹ Florida House of Representatives, *Staff Analysis of HB 7017 (2021)*, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7017a.EEC.DOCX&DocumentType=Analysis&BillNumber=7017&Session=2021>, at 7.

⁷⁰ *Id.*