

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7017 PCB PIE 21-01 Foreign Influence

**SPONSOR(S):** Public Integrity & Elections Committee, Grall

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Elections Committee	18 Y, 0 N	Rubottom	Rubottom
1) Education & Employment Committee	19 Y, 0 N	Kiner	Hassell
2) Appropriations Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The bill arose out of the 2020 work of the House Select Committee on the Integrity of Research Institutions.<sup>1</sup> That committee learned of foreign influence corrupting Florida's research environment. Reviewing numerous informative studies, the Select Committee also learned of the corrupting influences of foreign funding and certain cultural exchange programs. Legislation in 2020 imposed strict disclosure requirements on university employees engaged in research activities.

The bill proposes greater disclosure of foreign support for public entities, scrutiny of grant applicants and purveyors of goods and services with certain foreign connections, thorough scrutiny of foreign applicants for research positions and of foreign travel and activities of employees of major research institutions.

Specifically, the bill requires:

- State agencies and political subdivisions to disclose all foreign donations and grants of \$50,000 or more to the Department of Financial Services (DFS);
- Applicants for grants from or those proposing contracts with state agencies and political subdivisions to disclose all foreign financial connections with any of seven countries of concern;
- Universities and colleges, including their Direct Support Organizations (DSOs) and other affiliates, to disclose all foreign donations and grants of \$50,000 or more to either the Board of Governors of the State University System (BOG) or the Florida Department of Education.

The bill also:

- Prohibits agreements for or the acceptance of donations conditioned on a program to promote the language and culture of any of seven countries of concern;
- Requires thorough screening of foreign applicants for research positions and foreign travel and activities of employees for every higher education institution and related research institutes having a research budget of \$10 million or more.

The bill provides for enforcement of disclosure requirements and operational audits of other requirements.

The bill has an indeterminate fiscal impact.

The bill is effective July 1, 2021.

<sup>1</sup> The Select Committee's webpage provides access to Video Archives of informative public hearings and Meeting Packets containing many helpful studies and other documents relevant to the matters discussed in this Staff Analysis. See: <https://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3075>.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Background:***

##### ***Investigation of the House Select Committee on the Integrity of Research Institutions***

In 2020, the House Select Committee on the Integrity of Research Institutions 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 People's Republic of China (PRC) talent and research programs. Following that disclosure, the University of Florida 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 SUS 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.

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. When a researcher does not disclose a relationship that may compromise the objectivity or motives of the researcher, the work product of such individual is not reliable. As a result, in 2020, the Legislature mandated institutional employment policies requiring disclosure of all financial interests and outside activities of university employees engaged in the design, conduct or reporting of research. The standards reinforce disclosure requirements of most federal research grants.

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.

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.

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.

##### ***Foreign adversaries and foreign transactions with public entities***

*Current situation:*

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. The most critical list of foreign nations identify “state sponsors of terrorism” which currently includes Cuba, Iran, North Korea and Syria<sup>2</sup>. In addition, many programs scrutinize transactions involving America’s biggest global competitors, the PRC 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 rule defined “foreign adversaries” to include Russia, the PRC, the Nicolás Maduro government of Venezuela, Cuba, Iran and North Korea.<sup>3</sup> This is a relatively short list of scrutinized countries compared to other federal lists of countries scrutinized in various import-export and financial oversight programs.<sup>4</sup> Along with Syria, a state sponsor of terrorism, these reflect the foreign governments most hostile to U.S. interests.

*Effect of proposed changes:*

HB 7017 would require regular disclosure by all state agencies and political subdivisions of all gifts and grants from a foreign source defined to include foreign governments, their agents, legal entities created under foreign laws as well as foreign nationals. Disclosure is required if the amount of the gift or grant is \$50,000 or more. State agencies and political subdivisions must make their disclosures to the Department of Financial Services (DFS).

The bill requires certain disclosures from any entity seeking a grant from a state agency or political subdivision, or proposing to sell goods or services thereto, in an amount of \$100,000 or more. Such entities must disclose any interests of, contracts with and gifts or grants from foreign countries of concern within one year prior to submitting a grant application or contract proposal. The bill defines “foreign countries of concern” to include the seven nations listed as of January, 2021, as Sponsors of Terrorism by the U.S. Department of State or “foreign adversaries” by the U.S. Department of Commerce. Such interests, gifts, grants or contracts must be disclosed if valued at \$50,000 or more. The disclosures must be made to DFS. Purveyors of goods or services on Florida’s online procurement system operated by the Department of Management Systems (DMS) are exempt from the disclosure requirement, subject to screening every five years. If DMS identifies an exempt purveyor as an entity under scrutiny by federal sanctions programs, that purveyor loses the disclosure exemption. The exemption does not apply to purveyors of services.

DFS may administratively enforce the disclosures of state agencies, political subdivisions and entities applying for grants or proposing contracts. First violations result in a civil fine of \$5,000, which rises to \$10,000 for subsequent violations. When a state agency or political subdivision commits a third violation, DFS must refer the public officer responsible to the authority with power to discipline the officer, which may include suspension or removal from office. Applicants for grants and contracts committing a third violation are thereafter barred from eligibility for grants or contracts from state agencies or political subdivisions. The Administration Commission may remove such ineligibility for good cause.

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<sup>2</sup> State Sponsors of Terrorism, Bureau of Counterterrorism, U.S. Dept. of State, found at: <https://www.state.gov/state-sponsors-of-terrorism/>.

<sup>3</sup> 86 Fed. Reg. 4911 (January 19, 2021).

<sup>4</sup> Such lists are published by the Department of Treasury, Office of Foreign Assets Control, Department of Commerce, Bureau of Industry and Security, Department of State, Directorate of Defense Trade Controls, as well as multiple Department of Defense and Department of Energy agencies. See Export Controlled or Sanctions Countries, Entities and Persons, DoResearch, Stanford University, found at: <https://doresearch.stanford.edu/research-scholarship/export-controls/export-controlled-or-sanctioned-countries-entities-and-persons#persons-and-organizations->.

The bill requires DFS to maintain a public website publishing the disclosures.

The bill abolishes any confidentiality or exemption from public records inspection for any records of foreign donations to state agencies and political subdivisions.

The bill authorizes both DMS and DFS to adopt rules needed to carry out the new law. Rules must be published by December 1, 2021, unless the department head certifies that a delay is necessary and sets a date by which such rules will be published.

### ***International cultural agreements***

#### *Current situation:*

Public entities engage in many forms of international cultural exchanges. Florida law provides for coordination of certain international relationships.<sup>5</sup> Sister state and sister city agreements are among the better-known relationships.<sup>6</sup> Florida's economic development programs emphasize commerce with foreign jurisdictions.<sup>7</sup>

Many have raised concern in recent years that such agreements may impose the public policy of foreign competitors upon local U.S. governments. It has been reported that the PRC requires sister city agreements to enforce its "One China" policy.<sup>8</sup> 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": 11 with political subdivisions of the PRC, 6 with Russian jurisdictions and 3 with Venezuelan cities.<sup>9</sup>

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 PRC program promoting Chinese language and culture, funded by significant PRC grants. By 2014, there were at least 90 Confucius Institutes in the U.S. and more than 400 worldwide.<sup>10</sup> Since that time, many have raised questions about the nature of these Institutes. 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 2019 U.S. Senate staff report found that the programs can compromise academic freedom. Some Confucius Institute agreements apply PRC law to activities on U.S. campuses. 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 PRC.<sup>11</sup>

Beginning in 1987, Florida law established "Linkage institutes" between Florida postsecondary institutions and foreign countries. Their purpose is to develop stronger economic, cultural, educational and social ties between Florida and strategic foreign countries.<sup>12</sup> A Florida-China Institute, for example, is authorized for The University of West Florida, University of South Florida, and Eastern Florida State College.<sup>13</sup> Ten other institutes are established by law.

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<sup>5</sup> See s. 288.816, F.S.

<sup>6</sup> See s. 288.816, F.S.

<sup>7</sup> See, ss. 288.816, 288.826, F.S.

<sup>8</sup> For example, see "Sister-City Relations and Identity Politics: The Case of Prague, Beijing, Taipei, and Shanghai", *The Diplomat*, Feb. 25, 2020 (found at: <https://thediplomat.com/2020/02/sister-city-relations-and-identity-politics-the-case-of-prague-beijing-taipei-and-shanghai/>).

<sup>9</sup> Florida Sister Cities Database (found at: <https://tampabayprotocol.com/sister-cities-database/>).

<sup>10</sup> "UWF to Host Opening Ceremony of Confucius Institute" UWF Newsroom, April 28, 2014 (found at: <https://news.uwf.edu/uwf-host-opening-ceremony-confucius-institute/>).

<sup>11</sup> "Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans", Permanent Subcommittee on Investigations, U.S. Senate Committee on Homeland Security and Governmental Affairs at p. 6. (Nov. 18, 2019) (found at: <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China's%20Talent%20Recruitment%20Plans.pdf>).

<sup>12</sup> S. 288.8175(1), F.S.

<sup>13</sup> S. 288.8175(4)(e), F.S. (Currently, USF is not participating.)

*Effect of proposed changes:*

The bill prohibits participation in any agreement with a country of concern by any state agency, political subdivision, public school, state college, or state university establishing a program or other endeavor to promote the language or culture of a foreign country of concern. It also prohibits any grant or donation conditioned upon participation in such program or endeavor. Each Florida institution or other public body will remain free to pursue the study of any language and culture apart from any such agreement or conditions.

***Foreign gifts and grants to education institutions***

*Current situation:*

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 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. The H. Lee Moffitt Cancer Center and Research Institute has even broader confidentiality exemptions from Florida's open records laws.

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 (USDOE) carefully scrutinized the reporting program. The USDOE 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.<sup>14</sup>

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.<sup>15</sup> As with the federal law, the statute did not extend to university foundations and Direct Support Organizations. The requirement appears to have generated few such reports.

*Effect of proposed changes:*

The bill requires institutions of higher education to report all foreign gifts, grants and contracts valued at \$50,000 or more. The requirement applies to all State University System (SUS) institutions as well as separately governed branch campuses, centers and institutes existing under the jurisdiction of the Board of Governors (BOG)<sup>16</sup>. In addition, all Florida College System institutions under the jurisdiction of the State Department of Education (FDOE)<sup>17</sup> are included as well as independent institutions operating in Florida under a state charter or required to report foreign gifts under federal law. The bill includes foundations, DSOs and other entities controlled by or operated for the benefit of an institution of higher education. SUS institutions must make disclosures to the BOG. All other institutions must disclose to the FDOE.

The bill abolishes any confidentiality or exemption from public records inspection for any records of foreign donations to universities and colleges.

The bill authorizes the BOG and FDOE to enforce the disclosure obligations of institutions of higher education. Undisclosed gifts result in a penalty equal to 105 percent of such gift, to be deposited in the General Revenue Fund of the state. In addition, both the Attorney General and Chief Financial Officer may bring civil actions to enforce such obligation.

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<sup>14</sup> Institutional Compliance with Section 117 of the Higher Education Act of 1965, USDOE Office of General Counsel (Oct. 2020) (found 2/27/21 at <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>).

<sup>15</sup> S. 240.138, F.S. 1994 (repealed ch. 95-196 and ch.95-392, LOF).

<sup>16</sup> Subpart B, Part II, ch. 1004, F.S.

<sup>17</sup> Subpart B, Part III, ch. 1004, F.S.

## **Screening foreign research staff**

### *Current situation:*

Many recent investigations discovered non-disclosed activities through careful research into published information about the subject's academic and research activities. At present, state law imposes no responsibility on research institutions to screen foreign applicants.

### *Effect of proposed changes:*

For institutions with a research budget in excess of \$10 million, the bill requires foreign applicants for research positions to be carefully screened with respect to past education, employment and publication. An applicant for a research position who fails to disclose all information required may not be employed in any research position unless the employing department head or a designee certifies in writing the reason for disregarding the failure to disclose. A copy of such certification must be submitted to a federal law enforcement office. In addition to verifying an applicant's academic, employment and publication history, the bill requires foreign applicants for research positions to be screened through federal law enforcement agencies. Institutions must also report to federal agents the identity of those rejected for employment based on screening required by the bill or other security-related screening.

The bill requires an operational audit of the implementation of the screening requirements within the first three years after the effective date of the requirement.

## **Monitoring foreign travel and foreign activities of research staff**

### *Current situation:*

Leading universities recognize the significant risks associated with foreign travel and activities.<sup>18</sup> The University of Florida (UF) has implemented an active registration and screening program for international travel.<sup>19</sup> The program provides faculty and other travelers clear guidance on legal and ethical restrictions. It also ensures protection of UF property including intellectual property. Other SUS institutions may also have responsible international travel screening and monitoring.

### *Effect of proposed changes:*

The bill requires every university with a research budget of \$10 million or more to establish an international travel monitoring program similar to UF's. In effect, the bill requires implementation of best practices in all major research institutions. Under the bill, each travel-screening program must undergo

an operational audit within three years of the effective date. As well, each institution must publish an annual report summarizing foreign travel and activities.

## **B. SECTION DIRECTORY:**

Section 1 creates s. 286.101, F.S., requiring disclosure of foreign gifts, grants and contracts by state agencies and political subdivisions and applicants for grants and contracts in excess of \$100,000 to disclose economic relationships with any of the seven countries of concern.

Section 2 creates s. 288.860, F.S., prohibiting agreements with any of the seven countries of concern.

Section 3 creates s. 1010.25, F.S., requiring disclosure of foreign gifts to Florida's universities and colleges.

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<sup>18</sup> See, for example: <https://doresearch.stanford.edu/research-scholarship/export-controls/export-controlled-or-sanctioned-countries-entities-and-persons#persons-and-organizations-> and <https://www.brown.edu/research/international-travel>.

<sup>19</sup> <https://research.ufl.edu/compliance/export-controls/international-travel.html>.

Section 4 creates s. 1010.35, F.S., requiring specific screening of foreign nationals seeking research related positions at universities having research budgets of \$10 million or more.

Section 5 creates s. 1010.36, F.S., requiring foreign travel monitoring programs at universities having research budgets of \$10 million or more.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill could discourage some foreign donations or grants if anonymity or secrecy is important to the donor.

#### **2. Expenditures:**

The bill will require expenditure of indeterminate amounts to administer its various requirements.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill could discourage some foreign donations or grants if anonymity or secrecy is important to the donor.

#### **2. Expenditures:**

The bill would require expenditure of an insignificant amount by political subdivisions in order to comply with the foreign gift reporting.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The enhanced integrity and security of Florida's research environment should offset any reduction in foreign donations or contracts the bill may cause.

### **D. FISCAL COMMENTS:**

N/A.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill's insignificant impact does not appear to implicate the requirements of Art. VII, s. 18 of the Florida Constitution

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill authorizes rulemaking by DFS to implement the reporting and online publication of foreign gift and contract disclosures by state agencies, political subdivisions and certain state grant and contract

applicants. It also authorizes DMS to adopt rules necessary to implement screening and notifications related to purveyors of goods through the online procurement system.

The BOG has constitutional authority to adopt regulations governing SUS institutions. The BOG will likely develop regulations implementing foreign gift disclosures and may adopt additional regulations to guide SUS institutions having research budgets of \$10 million or more in their other obligations under the bill. However, collaborative workgroups among the SUS institutions may supply needed guidance without resort to regulation.

The FDOE has existing rule-making authority sufficient to adopt rules necessary to implement foreign gift reporting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.