

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): State Affairs Committee, Public Integrity & Elections Committee, Grall and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/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	26 Y, 0 N	Lee	Pridgeon
3) State Affairs Committee	21 Y, 0 N, As CS	Toliver	Williamson

SUMMARY ANALYSIS

The bill arose out of the 2020 work of the House Select Committee on the Integrity of Research Institutions. The Select 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 requires greater disclosure of foreign support for public entities, scrutiny of grant applicants and vendors of goods and services with certain foreign connections, and 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;
- 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;
- Department of Management Services to screen vendors participating in the online procurement system at least once every five years; and
- Universities and colleges, including their direct-support organizations 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 or the Florida Department of Education.

The bill also:

- Prohibits agreements between certain state entities and the seven countries of concern if the agreement contains certain provisions or requirements; and
- 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.

The bill has an indeterminate, but likely insignificant fiscal impact. See Fiscal Analysis & Economic Impact Statement.

The bill is effective July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

In 2020, the House Select Committee on the Integrity of Research Institutions (Select Committee) undertook an extensive review of Florida's university based research programs.¹ 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 derived 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 investigation. The Select Committee learned of additional investigations, some of which remain confidential due to their being actively pursued by law enforcement. The Select Committee learned that Florida-based research institutions had a combined annual budget of \$2.7 billion, with public universities accounting for \$2.3 billion of that research spending. Eight of Florida's State University System (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 public university 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 learned in 2020 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 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 activities related to international travel of U.S. based faculty were undisclosed. 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 international 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 used as a 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

¹ 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?Committeed=3075>.

Current situation:

State and Federal Interactions with Foreign Governments

State law 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 federal agencies publish lists related to sanctions, restrictions, and scrutiny imposed by federal law. One such list published by the U.S. Department of State is the “state sponsors of terrorism” list that currently includes Cuba, Iran, North Korea, and Syria.² 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.³ That interim rule defined “foreign adversaries” to include Russia, the PRC, the Nicolás Maduro government of Venezuela, Cuba, Iran, and North Korea.⁴ 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.⁵ Along with Syria, a state sponsor of terrorism, these reflect the foreign governments most hostile to U.S. interests. The rule became effective on March 22, 2021.⁶

Competitive Solicitation for Commodities or Contractual Services

Chapter 287, F.S., regulates state agency⁷ procurement of commodities and services.⁸ Florida law requires state agencies that wish to procure commodities or contractual services in excess of \$35,000⁹ to use a competitive solicitation process.¹⁰ A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.¹¹ Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid,¹² request for proposals,¹³ or invitation to negotiate.¹⁴

The Department of Management Services (DMS), in consultation with the Chief Financial Officer, is required to maintain a program for online procurement of commodities and contractual services.¹⁵ State

² State Sponsors of Terrorism, Bureau of Counterterrorism, U.S. Dept. of State, found at: <https://www.state.gov/state-sponsors-of-terrorism/>; see also U.S. Congressional Research Service: State Sponsors of Acts of International Terrorism – Legislative Parameters: In Brief (R43835; Nov. 30, 2018), Dianne E. Rennack.

³ 86 Fed. Reg. 4909 (Jan. 19, 2021).

⁴ 86 Fed. Reg. 4911 (Jan. 19, 2021).

⁵ 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->.

⁶ *Supra* note 4.

⁷ The term “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges. Section 287.012(1), F.S.

⁸ Chapter 287, F.S.

⁹ See s. 287.017, F.S., for a list of purchasing categories and their corresponding threshold amounts.

¹⁰ S. 287.057(1), F.S.

¹¹ S. 287.012(6), F.S.

¹² S. 287.057(1)(a), F.S.

¹³ S. 287.057(1)(b), F.S.

¹⁴ S. 287.057(1)(c), F.S.

¹⁵ S. 287.057(22), F.S.

agencies must participate in the program, entitled MyFloridaMarketplace, and eligible users¹⁶ may participate, too.¹⁷ Vendors must be prequalified as meeting certain mandatory requirements and qualifications criteria to participate in MyFloridaMarketplace.¹⁸ DMS is required to adopt rules to administer My Florida Marketplace that:

- Determine the requirements and qualification criteria for prequalifying vendors.
- Establishing the procedures for conducting online procurement.
- Establishing the criteria for eligible commodities and contractual services.
- Establishing the procedures for providing access to online procurement.
- Determining the criteria warranting any exceptions to participating in My Florida Marketplace.¹⁹

DMS is authorized to impose and collect fees for the use of the online procurement system.²⁰ DMS has imposed a transaction fee of 1 percent per transaction involving commodities and contractual services, which is deducted, when possible, from payments made to the vendor.²¹

Effect of proposed changes:

The bill requires regular disclosure by all state agencies and political subdivisions of all gifts²² and grants²³ received directly or indirectly 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 agencies²⁴ and political subdivisions must make their disclosures to the Department of Financial Services (DFS). The 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 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 contracts²⁵ 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 19, 2021, as Sponsors of Terrorism by the U.S. Department of State or “foreign adversaries” by the U.S. Department of Commerce.²⁶ Such interests, gifts, grants, or contracts must be disclosed if valued at \$50,000 or more. The disclosures must be made to DFS within one year before applying for any grant or proposing any contract and must include:

- The name and mailing address of the disclosing entity.
- The amount of the contract or gift or grant or the value or the interest disclosed.
- The applicable foreign country of concern.
- The date of the termination of the contract or interest.
- The date of the receipt of the grant or gift.
- The name of the agent or controlled entity that is the source or interest holder.

Disclosure is not required with respect to:

- A proposal to sell commodities through MyFloridaMarketplace.
- A proposal to sell commodities to a university pursuant to the Board of Governors (BOG) Regulation 18.001.

¹⁶ The term “eligible user” means any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system. Section 287.012(11), F.S.

¹⁷ Section 287.057(22), F.S.

¹⁸ *Id.*

¹⁹ *Id.*; see Rules 60A-1.030 and 60A-1.033, F.A.C.

²⁰ *Id.*

²¹ Rule 60A-1.031, F.A.C.

²² The bill defines “gift” to mean any transfer of money or property from one entity to another without compensation.

²³ The bill defines “grant” to mean a transfer of money for a specified purpose, including a conditional gift.

²⁴ The bill defines “state agency” to mean any agency or unit of state government created or established in law.

²⁵ The bill defines “contract” to mean any agreement for the direct benefit or use of any party to such agreement, including an agreement for the sale of commodities or services.

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

- An application or proposal from an entity that is a state agency, political subdivision, or institution of higher education that is required to disclose a grant or gift from a foreign source.
- An application or proposal from a foreign source that, if granted or accepted, would be disclosed by a state agency, political subdivision, or institution of higher education.
- An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.

Vendors that provide goods or services on MyFloridaMarketplace are exempt from the disclosure requirement but are subject to screening every five years if the vendor has the capacity to fill an order of \$100,000 or more. If DMS identifies an exempt vendor as an entity under scrutiny by federal sanctions programs, that vendor loses the disclosure exemption. The online procurement system must include a notification regarding the applicability of the disclosure requirement to the vendor. DMS must ensure that purchasers through MyFloridaMarketplace may easily access all disclosures made by vendors participating in the system.

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 rising to \$10,000 for subsequent violations. When a state agency or political subdivision commits a third violation, DFS must refer the public officer responsible for the acceptance of the undisclosed grant or gift to the Governor or other 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 Commission²⁷ may remove such ineligibility for good cause.

The bill requires DFS to establish and maintain a public website to publish the disclosures. DFS is authorized to establish an online system for making the disclosures. DFS must include and maintain an active list of ineligible entities barred from eligibility for grants or contracts from state agencies or political subdivisions. A disclosure published online by DFS is deemed disclosed to every state agency and political subdivision.

The bill states that any information disclosed concerning gifts or grants from foreign sources to state agencies and political subdivisions is not confidential or exempt from public record requirements.

The bill authorizes both DMS and DFS to adopt rules needed to carry out the new law. Rules must be published by December 31, 2021, unless the department head certifies that a delay is necessary and sets a date by which such rules will be published.

The bill requires DFS to investigate allegations of violations 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.

International cultural agreements

Current situation:

Public entities engage in many forms of international cultural exchanges. Florida law provides for coordination of certain international relationships.²⁸ Sister state and sister city agreements are among the better-known relationships.²⁹ Florida's economic development programs emphasize commerce with foreign jurisdictions.³⁰

²⁷ The Administration Commission is composed of the Governor and Cabinet (Attorney General, Chief Financial Officer, and Commissioner of Agriculture). S. 14.202, F.S.

²⁸ See s. 288.816, F.S.

²⁹ *Id.*

³⁰ See ss. 288.816, 288.826, F.S.

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 acknowledge its “One China” policy.³¹ 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, six with Russian jurisdictions, and three with Venezuelan cities.³²

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.³³ 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 could 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.³⁴

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.³⁵ A Florida-China Institute, for example, is authorized for The University of West Florida, University of South Florida, and Eastern Florida State College.³⁶ Ten other institutes are established by law.

Effect of proposed changes:

The bill prohibits participation in an agreement with a foreign country of concern by any state agency,³⁷ political subdivision,³⁸ public school,³⁹ state college,⁴⁰ or state university⁴¹ that is authorized to expend state-appropriated funds or levy ad valorem taxes that:

- Constrains the freedom of contract of such public entity;
- Allows the curriculum or values of a program in the state to be directed or controlled by the foreign country of concern; or
- Promotes an agenda detrimental to the safety or security of the United States or its residents. Prior to execution of any cultural exchange agreement with a foreign country of concern the substance of the agreement must be shared with federal agencies concerned with protecting

³¹ 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/>).

³² Florida Sister Cities Database (found at: <https://tampabayprotocol.com/sister-cities-database>).

³³ “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/>).

³⁴ “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>).

³⁵ S. 288.8175(1), F.S.

³⁶ S. 288.8175(4)(e), F.S. (Currently, USF is not participating.)

³⁷ The bill defines “state agency” to mean any agency or unit of state government created or established in law.

³⁸ The bill defines “political subdivision” to mean counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts of the state. The term also includes any entity under the control of or established for the benefit of a political subdivision.

³⁹ The bill defines “public school” to mean any education institution under the supervision of a school district and includes any entity under the control of or established for the benefit of a public school or school district.

⁴⁰ The bill defines “state college” to mean any postsecondary education institution under the supervision of the State Board of Education, including any entity under the control of or established for the benefit of a state college.

⁴¹ The bill defines “state university” to mean any state university under the supervision of the Board of Governors, including any entity under the control of or established for the benefit of a state university.

national security or enforcing trade sanctions, embargoes, or other restrictions under federal law. If such federal agency provides information suggesting such agreement promotes an agenda detrimental to the safety or security of the United States or its residents, the public entity may not enter into the agreement.

The bill 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 exempt⁴² from public records requirements. 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. The H. Lee Moffitt Cancer Center and Research Institute has even broader confidentiality exemptions from Florida's public records laws.

The Higher Education Act of 1965 requires education institutions to report foreign gifts and grants valued at \$250,000 or more.⁴³ Between 2018 and 2021, the U.S. Department of Education (USDOE) carefully scrutinized the reporting program. 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.⁴⁴

From 1984 to 1994, Florida law required universities and community colleges to report foreign receipts valued at \$100,000 or more to the Commissioner of Education and legislative leaders.⁴⁵ As with the federal law, the statute did not extend to university foundations and DSOs. The requirement appears to have generated few such reports.

Effect of proposed changes:

⁴² The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business. Art. I, s. 24, FLA. CONST. The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government. *Id.* The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate. *Id.* There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (Aug. 1, 1985).

⁴³ See 20 U.S.C. § 1011f.

⁴⁴ 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>).

⁴⁵ S. 240.138, F.S. (1994) (repealed ch. 95-196 and ch. 95-392, Laws of Fla.).

The bill requires institutions of higher education⁴⁶ to semiannually report, each January 31 and July 31, all foreign gifts, grants, and contracts⁴⁷ valued at \$50,000 or more. The requirement applies to all SUS institutions as well as separately governed branch campuses, centers, and institutes existing under the jurisdiction of the Board of Governors (BOG).⁴⁸ An institution of higher education is permitted to consolidate its report with that of all its affiliate organizations.⁴⁹ In addition, all Florida College System institutions under the jurisdiction of the Florida Department of Education (FDOE)⁵⁰ are included, as well as independent institutions operating in Florida under a state charter or those required to report foreign gifts under federal law. SUS institutions must make disclosures to the BOG. All other institutions must disclose to the FDOE. The disclosure must include:

- The amount of the gift and the date it was received.
- The contract start and end date 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 country of principal residence or domicile of the foreign source.
- A copy of a gift agreement between the foreign source and the institution of higher education, signed by the foreign source and the chief administrative officer of the institution of higher education, or their respective designees. If an agreement includes certain information protected from disclosure, then an abstract and redacted copy providing all required information may be submitted in lieu of a copy of the agreement.

The bill states that any information disclosed concerning gifts from foreign sources to institutions of higher education is not confidential or exempt from public record requirements, unless it is a trade secret pursuant to statute or information generated or discovered during the course of research conducted by state universities.

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 into 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. However, a lesser penalty, but at least 5 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.

Screening foreign research staff

Current situation:

Many recent investigations have 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 the following applicants to be carefully screened with respect to past education, employment, and publication:

- Applicants seeking employment in research or research-related support positions.

⁴⁶ The bill defines "institution of higher learning" to mean a state university, an entity listed in subpart B of part II of chapter 1004 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. 1011f, or an affiliate organization of an institution of higher education.

⁴⁷ The bill defines "contract" to mean any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties, and any purchase, lease, or barter of property or services from a foreign country of concern.

⁴⁸ Subpart B, Part II, ch. 1004, F.S.

⁴⁹ The bill defines "affiliate organization" to mean any entity under the control of or established for the benefit of an organization required to report a foreign gift under the bill, including a direct-support organization.

⁵⁰ Subpart B, Part III, ch. 1004, F.S.

- Graduate and undergraduate students applying for research or research-related support positions.
- 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 agency of the United States government, in a foreign country of concern.

The screening must occur before interviewing the applicant or offering to the applicant a position of employment or of visiting researcher. An applicant for a research position who fails to disclose the required information 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. An applicant must submit the following documentation:

- A complete copy of the applicant's passport.
- A complete copy of the applicant's most recently submitted Online Nonimmigrant Visa Application, DS-160.
- A complete resume and curriculum vitae, including every institution of higher learning attended.
- All previous employment since the applicant's 18th birthday.
- A list of all published material for which the applicant received credit as an author, 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.
- A full disclosure of nonuniversity professional activities, including any affiliation with an institution or program in a foreign country of concern.

The bill requires the president or chief administrative officer of each state university to designate a research integrity office (RSO) to review all submitted materials and take reasonable steps to verify all attendance, employment, publications, and contributions listed in a foreign applicant's application.

Reasonable steps 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 (FBI) or any other federal agency willing to scrutinize the applicant for national security or counterespionage purposes and search any public listings of persons subject to sanctions or restrictions under federal law.
- Any other steps deemed appropriate by the RSO.

The state university or applicable entity may also direct the RSO to approve applicants for hire based on a risk-based determination considering the nature of the research and the background and ongoing affiliations of applicant. RSOs must report to the FBI and to the governing board of the entity, as well as any law enforcement agency designated by the Governor or the BOG, the identity of any applicant who was rejected for employment based on the scrutiny required by the bill.

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.⁵¹ The University of Florida (UF) has implemented an active registration and screening program for international travel.⁵² The program provides faculty and other travelers clear guidance on legal and ethical restrictions. It also ensures the 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 approval and monitoring program similar to the program established at UF. The bill requires preapproval and screening by an RSO for any employment-related foreign travel or employment-related foreign activities engaged in by all faculty, researchers, and research department staff. Pre-approval by an RSO must be based on the applicant's review and acknowledgment of guidance published by the employing state university or entity that relates to countries under sanctions or other restrictions of the state of the U.S. government. To qualify for preapproval, individual travelers must make a binding commitment not to violate the state university's or entity's limitations on travel and activities abroad and to obey all federal laws. The state university or entity is required to maintain records of all foreign travel requests and approvals, expenses reimbursed during such travel, and payments honoraria received during such travel and activities. Under the bill, the implementation of each travel-screening program must undergo an operational audit by July 1, 2025. The operational audit must be conducted by the Inspector General of the BOG, the Inspector General of the entity, or the Auditor general. In addition, 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.

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.

⁵¹ See Stanford University, Export Controlled or Sanctioned Countries, Entities and Persons (found 3/28/21 at <https://doresearch.stanford.edu/research-scholarship/export-controls/export-controlled-or-sanctioned-countries-entities-and-persons#persons-and-organizations->); Brown University, International Travel (found 3/28/21 at <https://www.brown.edu/research/international-travel>.)

⁵² University of Florida, International Travel (found 3/28/21 at <https://research.ufl.edu/compliance/export-controls/international-travel.html>.)

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:

See Fiscal Comments.

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 may have an insignificant negative fiscal impact on political subdivisions in order to comply with the foreign gift reporting requirements.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The requirement for DMS to perform screening through federal agencies responsible for identifying persons or organizations subject to trade sanctions, embargoes, or other restrictions, could delay payments to vendors. The amount of the fiscal impact on revenues is indeterminate.⁵³

The bill establishes an administrative fine (\$5,000 for the first occurrence and \$10,000 for each subsequent occurrence) to be assessed against an entity that violates the disclosure requirements.

D. FISCAL COMMENTS:

The bill has an indeterminate, but likely insignificant fiscal impact.

The bill authorizes FDOE and BOG to conduct audits or inspections of institutions of higher education within existing resources.

The fiscal impact on universities and institutions of higher education to comply with additional screening and reporting requirements is anticipated to be minimal.

DFS indicated that the cost of maintaining a website to publish disclosures could be done within existing resources. The cost associated with administrative enforcement is indeterminate, since the volume and complexity of the investigations referred to the Office of Fiscal Integrity is unknown.⁵⁴ However, any fiscal impact will be handled within existing resources.

DMS indicated that modifications to the online procurement system may be required to implement the bill and establishing an online system with DFS for submitting and publishing disclosures will have a negative fiscal impact, but likely insignificant. Additional funding may be required; the total cost is indeterminate.⁵⁵ However, the fiscal impact is likely to be insignificant.

III. COMMENTS

⁵³ Florida Department of Management Services (DMS), Agency Analysis of 2021 House Bill 7017, p. 1 (Mar. 19, 2021).

⁵⁴ Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, HB 7017 (Mar. 19, 2021).

⁵⁵ DMS, *supra* note 38, at 1.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires political subdivisions to disclose certain gifts received from foreign sources; however, an exemption may apply because the bill only requires a one-time disclosure to DFS within 30 days of receipt of the foreign gift. Therefore, the fiscal impact is likely insignificant.

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.

FDOE has existing rulemaking authority sufficient to adopt rules necessary to implement foreign gift reporting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 6, 2021, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment did the following:

- Expanded the exceptions to the disclosure requirements of those entities that apply for a grant or propose a contract with a value of \$100,000 or more to include:
 - A proposal to sell commodities to a university pursuant to the BOG Regulation 18.001.
 - An application or proposal from an entity that discloses foreign gifts or grants.
 - An application or proposal from a foreign source that, if granted or accepted, would be disclosed.
 - An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.
- Removed the reference to cultural agreements and specified that that agreements with foreign countries of concern with the following characteristics are prohibited:
 - Constrains the freedom of contract of the public entity;
 - Allows the curriculum or values of a program in the state to be directed or controlled by the foreign country of concern; or
 - Promotes an agenda detrimental to the safety or security of the United States or its residents.
- Clarified that “political subdivision” has the same meaning as s. 1.01(8), F.S., and that the terms “public school” and “state agency” include any entity under their control or established for their benefit.
- Required the Inspector General of the BOG or the FDOE to annually inspect or audit 5 percent of the total number of gifts or gift agreements received from institutions of higher learning during the previous year.

- Permitted a lesser penalty to be applied to an institution of higher education that negligently fails to disclose gifts from foreign sources if a negligent failure is not the result of negligent management or is de minimis.
- Required state universities and related entities to screen 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 foreign country of concern
- Specified that foreign travel and activities must be employment-related to require preapproval by a state university or related entity.
- Required the Inspectors General of certain higher education entities or the BOG or the Auditor General to perform an operation audit regarding the implementation of the foreign travel provisions of the bill.
- Specified that information disclosed concerning gifts or grants from foreign sources to state agencies and political subdivisions is not confidential or exempt from public record requirements.
- Specified that any information disclosed concerning gifts from foreign sources to institutions of higher education is not confidential or exempt from public record requirements, unless it is a trade secret pursuant to statute or information generated or discovered during the course of research conducted by state universities.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.