

March 9, 2022

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
Statehouse, Room 346-S
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 537 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 537 is respectfully submitted to your committee.

SB 537 would require any state agency or political subdivision that receives directly or indirectly any gift or grant with a value of \$50,000 or more from any foreign source to disclose the gift or grant to the Department of Administration within 30 days. The disclosure would be required to 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 would also require any entity that applies to a state agency or political subdivision for a grant, or proposes a contract having a value of \$100,000 or more, to disclose to the state agency or political subdivision any current or prior interest, contract with or gift or grant received from a foreign country of concern if the current or prior interest, contract, gift or grant has a value of \$50,000 or more, and the interest existed at any time or the contract, gift, or grant was received or in force at any time during the previous five years.

Foreign country of concern would include 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. The bill also would include definitions for foreign government and foreign source. The disclosure would be required to include the name and mailing address of the disclosing entity, the amount of the contract, gift, or grant or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the gift or grant and the name of the agent or controlled entity that is the source or interest holder.

Within one year before applying for any grant or proposing any contract, the entity would be required to provide a copy of the disclosure to the Department of Administration. This disclosure would not be required for an application or proposal from an entity that is currently required to disclose foreign gifts or grants under other state or federal law; or from a public or not-for-profit research institution with respect to research funded by a federal agency. Online publication would be

deemed disclosure to any state agency and political subdivision. After a disclosure is made, the entity would be required to revise the disclosure within 30 days after entering into a contract with, or receiving a grant or gift from, a foreign country of concern or within 30 days after the acquisition of any interest in the entity by a foreign country of concern.

SB 537 would require the Department of Administration to:

1. Screen each vendor participating in the online procurement system at least once every five years if the vendor has the capacity to fill an order of \$100,000 or more;
2. Contract with federal agencies that are responsible for identifying individuals and organizations subject to trade sanctions, embargoes, or other restrictions under federal law to conduct the screenings;
3. Add a notification to the online procurement system regarding the applicability of the disclosure requirement;
4. Ensure that purchasers through the online procurement system may easily access all disclosures made by vendors participating in the system;
5. Establish and maintain a website to publish the disclosures required;
6. Establish an online system for making the disclosures;
7. Investigate any alleged violation 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;
8. Request records relevant to any reasonable suspicion of a violation;
9. Receive records requested from entities within 30 days or at a later time agreed to by the investigating state agency or political subdivision;
10. Assess civil penalties for failure to disclose or provide records amounting to \$5,000 for a first violation or \$10,000 for any subsequent violation;
11. Issue final orders determining a third or subsequent violation by a state agency or political subdivision including: (1) the identity of the officer or employee responsible for acceptance of the undisclosed grant or gift; and (2) a referral to the Governor or other officer authorized to suspend or remove from public office the officer or employee responsible for acceptance of the undisclosed grant or gift with copies provided to the President of the Senate and the Speaker of the House of Representatives;
12. Disqualify from eligibility for any grant or contract funded by a state agency or political subdivision any entity, other than a state agency or political subdivision, for third or subsequent violations;
13. Determine when ineligibility may be lifted for good cause;

14. Include and maintain an active and current list of ineligible entities on the website; and
15. Adopt rules and regulations necessary to implement and administer the provisions of the bill prior to January 1, 2023, including procedures related to identifying the federal agencies to be consulted for screenings, notifying a vendor of the disclosure requirements, and modifying the online procurement system.

SB 537 would also prohibit any public entity that receives state appropriations or levies ad valorem taxes from participating in any agreement with, or accepting any grant or gift from, a foreign country of concern or any entity controlled by a foreign country of concern if the agreement, grant or gift: (1) constrains the freedom of contract of the public entity; (2) allows the curriculum or values of a program in this state to be directed or controlled by a foreign country of concern; or (3) promotes an agenda detrimental to the safety or security of the United States or the residents of the United States.

Prior to the execution of any cultural exchange agreement with a foreign country of concern, the agreement must be shared with federal agencies concerned with protecting national security or enforcing trade sanctions, embargoes, or other restrictions under federal law. The public entity would be prohibited from entering into the agreement if a federal agency provides information indicating that the agreement promotes an agenda detrimental to the safety or security of the United States or the residents of the United States. Public entities would also be prohibited from accepting anything of value conditioned upon participating in a program or other endeavor to promote the language or culture of a foreign country of concern.

The bill would require each institution of higher education to:

1. Report to the Board of Regents annually on January 31 and July 31 any gift or number of gifts received directly, indirectly or through an intermediary from a foreign source with a value totaling \$50,000 or more;
2. Consolidate each institution's report with the report for the institution's affiliate organizations;
3. Include in the report unless otherwise prohibited or deemed confidential by federal law:
 - a. The amount of the gift and date the gift was received;
 - b. The start and end date if the gift is a contract;
 - c. The name of the foreign source or country of citizenship and the country of principal residence or domicile of the foreign source; and
 - d. A copy of the gift agreement signed by the chief executive officer of the institution and the foreign source including a detailed description of the purpose for which the gift will be used; the identities of the individuals for whom the gift is intended to benefit; and any applicable conditions, requirements, restrictions or terms made a part of the gift regarding the control of curricula, faculty, student admissions, student fees or contingencies placed upon the institution of higher education to take a specific public position or to award an honorary degree;

4. Submit to an annual audit or inspection by the Board of Regents, beginning July 1, 2023, of at least 5.0 percent of the total number of gifts or gift agreements received;
5. Submit to an annual audit or inspection by the Board of Regents upon the request of the Governor, the President of the Senate, or the Speaker of the House of Representatives; and
6. Pay a civil penalty of 105.0 percent of the amount of any undisclosed gift from non-state funds of the institution or affiliate organization that received the gift for knowingly, willfully, or negligently failing to disclose the gift.

In the absence of enforcement by the Board of Regents, SB 537 would allow the Attorney General to bring a civil action to enforce these provisions and if successful, the Attorney General would be entitled to reasonable attorney fees and costs. A whistleblower who reports an undisclosed foreign gift to the Board of Regents or the Attorney General would be entitled to protection under the Kansas Whistleblower Act and entitled to a reward of 25.0 percent of any penalty recovered by the Board of Regents or the Attorney General which could be paid through an intermediary attorney or trustee designated by the whistleblower. Under SB 537, the Board of Regents and the Attorney General may adopt rules and regulations to implement the provisions of this section.

Additional requirements for state educational institutions with a research budget of \$10.0 million or more would include:

1. Screening applicants seeking employment in research or research-related support positions, graduate and undergraduate students applying for research or research-related support positions and applicants for positions of visiting researcher who are citizens of a foreign country and who are not permanent residents of the United States;
2. Screening applicants 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, except employment or training by an agency of the United States government, in a foreign country of concern prior to interviewing or offering a position of employment or visiting researcher;
3. Submitting to the Board of Regents for each applicant:
 - a. A complete copy of the applicant's passport and most recently submitted online nonimmigrant visa application, DS-160, if the applicant is a foreign applicant;
 - b. A complete resume and curriculum vitae, including every institution of higher education attended;
 - c. All previous employment since the applicant's 18th birthday;
 - d. 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;
 - e. A list of the applicant's current and pending research funding from any source, including the funder, amount, applicant's role on the project and a brief description of the research; and

- f. A full disclosure of non-university professional activities, including any affiliation with an institution or program in a foreign country of concern;
4. Designating a research integrity office to review all applicant materials and take reasonable steps to verify all attendance, employment, publications, and contributions listed in the application prior to any interview for or offer of a position;
5. Establishing, on or before January 1, 2023, an international travel approval and monitoring program including requirements for preapproval and screening by the research integrity office for any employment-related foreign travel and employment-related foreign activities engaged in by all faculty, researchers and research department staff which must be in addition to any other travel approval process;
6. Publishing guidance related to countries under sanctions or other restrictions of the state or the United States government, including federal license requirements, customs rules, export controls, restrictions on taking state educational institution property abroad, restrictions on presentations, teaching and interactions with foreign colleagues; and other subjects important to the research and academic integrity of the institution;
7. Maintaining records, for at least three years, of all foreign travel requests and approvals, expenses reimbursed during travel; and payments and honoraria received during travel and activities in addition to records reflecting the purpose of the travel and any records related to the foreign activity review; and
8. Providing an annual report to the Board of Regents including foreign travel to countries of concern listing individual travelers, foreign locations visited, and foreign institutions visited.

An institution's research integrity office would be required to:

1. Approve applicants for hire based on a risk-based determination considering the nature of the research and the background and ongoing affiliations of the applicant;
2. Certify in writing the substance of an applicant nondisclosure and the reasons it may disregard a failure to disclose; store the certification in an investigative file; and submit the certification to the nearest Federal Bureau of Investigation field office;
3. Report to the nearest Federal Bureau of Investigation field office and any law enforcement agency designated by the Governor or the Board of Regents the identity of any applicant who was rejected for employment based on the scrutiny or other risk-based determination; and
4. Preapprove applicants for international travel based on: (1) the applicant's review and acknowledgment of guidance published by the employing state educational institution that relates to countries under sanctions or other restrictions of the state or the United States government; and (2) the binding commitment of each individual traveler not to violate the state educational institution's limitations on travel and activities abroad and to obey all federal laws.

Prior to July 1, 2026, the Legislative Post Audit Committee would be required to direct the Legislative Division of Post Audit to conduct a performance audit regarding implementation of various requirements in SB 537 including the requirement for certain state educational institutions to develop a research integrity office and an international travel approval and monitoring program. SB 537 would take effect and be in force from and after its publication in the statute book.

The Department of Administration estimates the enactment of SB 537 would increase annual expenditures by \$110,000 in FY 2022 and \$430,000 in FY 2023 for additional staff to track and manage records related to contract usage; to pay an outside source to determine the system or tools needed; to purchase the system or enable existing systems; to pay software maintenance fees; and to manage the requirements of the bill. The Department indicates there are approximately 1,500 political subdivisions that would be required to comply with the provisions of the bill. Since the political subdivisions currently do not procure or contract through the Department, the Department cannot estimate the fiscal effect for political subdivisions.

The Kansas Association of Counties indicates the costs incurred by counties from creating a compliance program necessary to implement the new reporting requirements would fluctuate by county depending on the amount of personnel and training required.

The League of Kansas Municipalities indicates the bill would have no fiscal effect on municipalities.

The Kansas Board of Regents and the Office of the Attorney General indicate any additional work required by passage of SB 537 could be absorbed within existing resources.

The following provisions of SB 537 would increase annual expenditures for compliance costs at state universities:

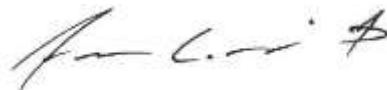
1. The requirement to report to the Department of Administration any gifts and contracts from foreign sources to the institution or an affiliated organization valued at \$50,000 and more;
2. The requirement to disclose any current or prior interest from foreign countries of concern when applying for grants or contracts of \$100,000 or more;
3. The requirement for biannual reporting to the Board of Regents of all direct or indirect foreign gifts totaling \$50,000 or more from each foreign source;
4. The requirement for enhanced screening procedures for research position applicants from foreign countries of concern;
5. The requirement to establish a research integrity office to review and verify the additional application requirements; and
6. The requirement to establish an international travel approval and monitoring program that requires preapproval by the research integrity office for any employment-related foreign travel or activities engaged in by all faculty, researchers and research department staff that is in addition to the current travel approval process at the university.

Kansas State University estimates the requirements would increase annual expenditures by \$330,000 for 3.00 FTE positions and other operating costs. The University of Kansas and the University of Kansas Medical Center estimate the bill would increase annual expenditures by \$986,000 for 10.25 FTE positions and other operating costs. Wichita State University estimates the bill would increase annual expenditures by \$489,900 for 5.00 FTE positions and other operating costs.

The Legislative Division of Post Audit (LPA) indicates the passage of SB 537 would have no fiscal effect on its operation since the cost of the audits would be covered through annual appropriations but would mean LPA could not do two other audits.

The Division of the Budget notes certain provisions apply to all state agencies as defined in KSA 75-3049 and additional appropriations could be required for any state agency affected by the bill's enactment if existing appropriations were insufficient to cover the added costs. In addition, the bill could increase revenue to the State General Fund from civil penalties for violations of certain requirements. Any fiscal effect associated with SB 537 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Vicki Jacobsen, Judiciary
Jay Hall, Association of Counties
Wendi Stark, League of Municipalities
Kelly Oliver, Board of Regents
Celeste Chaney-Tucker, Department of Administration
Sherry Rentfro, Department of Commerce
Ethan Erickson, Kansas State University
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Jeff Dewitt, University of Kansas
Craig Neuenswander, Education
Willie Prescott, Office of the Attorney General
Chris Clarke, Post Audit
Diana Kuhlmann, Emporia State University
Wesley Wintch, Fort Hays State University
Douglas B. Ball, Pittsburg State University