

BILL ANALYSIS

Senate Research Center
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H.B. 127
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Education K-16
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Foreign adversaries maintain close ties with tier-one universities in Texas. In the past two decades, colleges have received close to \$2 billion from hostile nations. These connections often result in the theft of innovative research and economic espionage. Such actions threaten the integrity of Texas' educational institutions and undermine national security.

H.B. 127 establishes several key provisions to protect the integrity of universities. A few of which are establishing a Higher Education Security Council, regulating gifts and donations, prohibiting contracts with foreign adversary companies, creating contract evaluation measures, and establishing standards of investigation for potential infractions. Noncompliance of a university would result in civil penalties or a second-degree felony, depending on the action.

The bill amends:

- Subchapter Z, Chapter 51, Education Code, by adding Section 51.957.
- Subtitle A, Title 3, Education Code, by adding Chapter 51B.
- Section 31.05 (c), Penal Code.

H.B. 127 amends current law relating to measures to protect public institutions of higher education from foreign adversaries and to the prosecution of the criminal offense of theft of trade secrets, provides civil penalties, and increases a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 2 (Section 51B.002, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.957, as follows:

Sec. 51.957. HIGHER EDUCATION RESEARCH SECURITY COUNCIL. (a) Defines "council," "postsecondary educational institution," and "tier one research institution."

(b) Provides that the Higher Education Research Security Council (council) is established to promote secure academic research at tier one research institutions while mitigating the risk of foreign espionage and interference.

(c) Provides that the council is composed of certain persons.

(d) Provides that a council member serves at the will of the person who designated the member.

(e) Requires that a vacancy on the council be filled in the same manner as the original designation.

(f) Requires the council member designated under Section 51.956 (Policy Framework for Research Security) for The Texas A&M University System to serve as the initial presiding officer of the council.

(g) Requires the council to perform certain duties.

(h) Requires the council to meet at least once each quarter.

(i) Requires that a meeting conducted under Subsection (h) be in person or by video conference call, as determined by the presiding officer.

(j) Requires the council to prepare and submit to the governor, the Office of the Attorney General, and the presiding officer of each legislative committee with primary jurisdiction over higher education an annual report on the status of research security at tier one research institutions and any associated recommendations.

(k) Provides that a report submitted under Subsection (j) is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(l) Provides that the council is authorized to solicit and accept gifts, grants, and donations for purposes of this section but is prohibited from soliciting or accepting a gift, grant, or donation from an entity or country that meets certain criteria.

SECTION 2. Amends Subtitle A, Title 3, Education Code, by adding Chapter 51B, as follows:

CHAPTER 51B. HIGHER EDUCATION RESEARCH AND PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51B.001. DEFINITIONS. Defines "affiliate organization," "company," "coordinating board," "council," "federally banned company," "foreign adversary," "foreign adversary company," "foreign government," "foreign source," "gift," "institution of higher education," and "political party."

Sec. 51B.002. RULES. Requires the Texas Higher Education Coordinating Board (THECB) to adopt rules necessary to implement this chapter.

SUBCHAPTER B. REQUIREMENTS FOR GIFTS FROM AND CONTRACTS WITH FOREIGN ADVERSARIES AND CERTAIN COMPANIES

Sec. 51B.051. GIFT FROM FOREIGN ADVERSARY. (a) Prohibits an institution of higher education or employee of an institution of higher education from accepting a gift the institution is directly or indirectly offered from a foreign source of a foreign adversary unless the gift is of de minimis value, as determined by THECB rule.

(b) Requires an institution of higher education to include the prohibition described by Subsection (a) in the institution's ethics policy and create a mechanism by which an employee of the institution is authorized to report being offered from a foreign source of a foreign adversary a gift prohibited by Subsection (a).

(c) Requires each institution of higher education that submits reporting on foreign gift and contract disclosures to the United States Department of Education required under Section 117, Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.), to submit that reporting to THECB at the time when the institution is required to submit that reporting to the United States Department of Education.

(d) Requires THECB, not later than December 1 of each year, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives

a report detailing the information submitted by institutions of higher education under Subsection (c) for that year.

(e) Provides that information required to be reported under this section is not confidential except as otherwise provided by federal or state law or unless protected as a trade secret by federal or state law.

Sec. 51B.052. PROHIBITED CONTRACT WITH FOREIGN ADVERSARY COMPANY OR FEDERALLY BANNED COMPANY; EXCEPTION. (a) Prohibits a foreign adversary company or a federally banned company, except as provided by Subsection (b), from submitting a bid for a contract or enter into a contract with an institution of higher education relating to goods or services. Provides that, for purposes of this section, a company is considered a foreign adversary company if the company enters into a contract with an institution of higher education to sell to the institution any final products or services produced by a foreign adversary company or a federally banned company.

(b) Authorizes an institution of higher education to enter into a contract with a company described by Subsection (a) if there is no other reasonable option for procuring the good or service, the institution preapproves the contract, and failure to procure the good or service would pose a greater threat to this state than the threat associated with procuring the good or service.

Sec. 51B.053. CERTIFICATION REQUIRED. Requires an institution of higher education to require a vendor submitting a bid for a contract relating to goods or services to include in the bid a written certification that the vendor is not prohibited from submitting the bid or entering into the contract under Section 51B.052(a).

Sec. 51B.054. FALSE CERTIFICATION; VIOLATION. (a) Requires an institution of higher education that determines that a vendor holding a contract with the institution was ineligible to have the contract awarded under Section 51B.052(a) because the vendor's certification submitted under Section 51B.053 was false to notify the vendor that the vendor is in violation of this subchapter. Requires that the notice include the basis for the institution's determination that the vendor is in violation of this subchapter.

(b) Requires an institution of higher education, on making a final determination that a vendor violated this subchapter, to refer the matter to the attorney general for enforcement under Section 51B.056.

Sec. 51B.055. CONTRACT TERMINATION FOR FALSE CERTIFICATION; BARRING FROM STATE CONTRACTS. (a) Requires an institution of higher education, on making a final determination that a vendor violated this subchapter, to immediately terminate the contract without further obligation to the vendor.

(b) Authorizes the Comptroller of Public Accounts of the State of Texas, on receiving notice from an institution of higher education of a contract termination under Subsection (a) because a vendor violated this subchapter, to bar the vendor from participating in state contracts using procedures prescribed under Section 2155.077 (Barring Vendor From Participation in State Contracts), Government Code.

(c) Provides that debarment under this section expires on the fifth anniversary of the date of the debarment under Subsection (b).

Sec. 51B.056. CIVIL PENALTY. (a) Provides that a vendor that violates this subchapter is liable to the state for a civil penalty in an amount equal to the greater of twice the amount of the contract terminated under Section 51B.055 or \$250,000.

(b) Authorizes the attorney general to bring an action to recover a civil penalty imposed under this section.

Sec. 51B.057. INVESTIGATION. (a) Requires an institution of higher education to investigate an alleged violation of this subchapter if the institution receives a complaint from a compliance officer of a state agency or an institution of higher education or a sworn complaint based on substantive information and reasonable belief.

(b) Authorizes an institution of higher education to request from any person records relevant to a reasonable suspicion of a violation of this subchapter. Requires a person who receives a request under this subsection to produce the records not later than the 10th day after the date the person receives the request, unless the institution and the person agree to a later date.

SUBCHAPTER C. INTERNATIONAL CULTURAL EXCHANGE AGREEMENTS AND PARTNERSHIPS AND STUDENT ASSOCIATIONS

Sec. 51B.101. DEFINITIONS. Definitions "cultural exchange agreement" and "cultural exchange partnership."

Sec. 51B.102. CERTAIN INTERNATIONAL CULTURAL AGREEMENTS AND PARTNERSHIPS PROHIBITED. (a) Prohibits an institution of higher education from participating in a cultural exchange agreement or cultural exchange partnership with a foreign source of a foreign adversary, or an entity controlled by a foreign adversary, that meets certain criteria.

(b) Requires an institution of higher education, before entering into a cultural exchange agreement or cultural exchange partnership with a foreign source of a foreign adversary, to share the agreement or partnership with the council. Prohibits the institution, if the council determines that the agreement or partnership violates the prohibition under Subsection (a), from participating in the agreement or partnership.

(c) Requires the council, not later than December 1 of each year, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report detailing the total number of cultural exchange agreements and cultural exchange partnerships that were entered into by institutions of higher education and rejected by the council in the 12 months preceding the date of the report.

Sec. 51B.103. PROHIBITIONS ON STUDENT ASSOCIATIONS. (a) Prohibits a student or scholars association affiliated with an institution of higher education from accepting a gift from a foreign source of a foreign adversary or entering into a contract or agreement with a foreign source of a foreign adversary.

(b) Requires an institution of higher education to terminate an affiliation with a student or scholars association if the institution determines that the association has violated this section.

(c) Provides that, for purposes of this section, member dues or fees are not considered a gift from a foreign source of a foreign adversary.

SUBCHAPTER D. SCREENING OF FOREIGN RESEARCHERS

Sec. 51B.151. SCREENING OF FOREIGN RESEARCHERS REQUIRED. (a) Requires an institution of higher education, before offering an applicant employment for a research or research-related support position at the institution or granting an applicant access to research data or activities or other sensitive data of the institution, to screen the applicant as provided by this subchapter if the applicant is a citizen of a foreign country and is not a permanent resident of the United States or is affiliated with an institution or program, or has at least one year of employment or training, in a foreign adversary, other than employment or training by an agency of the United States.

(b) Requires that a screening under this section include a background check to determine if the applicant has any ties to a foreign adversary that would prevent the applicant from being able to maintain the security or integrity of the institution of higher education and research data or activities or other sensitive data of the institution.

(c) Requires an institution, if the institution of higher education procures a third party to conduct a background check under Subsection (b), to consult with DPS and the council in determining whether the third party is qualified to conduct a background check that meets the requirements of that subsection.

(d) Authorizes an institution of higher education to screen additional applicants as provided by this subchapter for a position described by Subsection (a) at the institution's discretion.

Sec. 51B.152. APPLICATION: REQUIRED MATERIALS. (a) Requires an institution of higher education to require an applicant subject to screening under Section 51B.151 to submit to the institution certain documents.

(b) Authorizes an applicant who has been continuously employed or enrolled in a postsecondary educational institution in the United States for the preceding 20 years, notwithstanding Subsection (a)(2)(B) (relating to a resume and curriculum vitae that includes a list of all places of employment since an applicant's 18th birthday), to include in the applicant's resume only the applicant's employment history for the preceding 20 years.

(c) Authorizes an institution of higher education to destroy or return to an applicant the copy of the applicant's nonimmigrant visa application submitted under Subsection (a)(1) (relating to requiring an applicant to submit to an institution a copy of the applicant's passport and nonimmigrant visa application most recently submitted to the United States Department of States if the applicant is a citizen of a foreign country) after extracting all information relevant to the requirements of this subchapter.

Sec. 51B.153. RESEARCH INTEGRITY OFFICE. (a) Requires the chief administrative officer of an institution of higher education to establish a research integrity office to review the materials submitted to the institution by an applicant under Section 51B.152 and take certain reasonable steps to verify the information in the application.

(b) Authorizes an institution of higher education to direct the research integrity office to approve applicants for hire using a risk-based determination that considers the nature of the research and the applicant's background and ongoing affiliations.

(c) Requires an institution of higher education to complete the requirements of this subchapter before interviewing or offering a position to an applicant described by Section 51B.151(a) in a research or research-related support position or granting the applicant access to research data or activities or other sensitive data.

(d) Prohibits an institution of higher education from employing an applicant subject to screening under Section 51B.151(a) in a research or research-related support position if the applicant fails to disclose in the application a substantial educational, employment, or research-related activity or publication or presentation unless the applicable department head or the department head's designee certifies in writing the substance of the failure to disclose and the reasons for disregarding that failure. Requires that a copy of the certification be kept in the investigative file of the research integrity office and be submitted to the nearest Federal Bureau of Investigation field office.

(e) Requires the research integrity office to report to the nearest Federal Bureau of Investigation field office, and to any law enforcement agency designated by the governor or the institution of higher education's governing board, the identity of an applicant who is rejected for employment based on the screening required by this subchapter or other risk-based screening.

SUBCHAPTER E. FOREIGN TRAVEL: RESEARCH INSTITUTIONS

Sec. 51B.201. FOREIGN TRAVEL: RESEARCH INSTITUTIONS. (a) Requires an institution of higher education to establish an international travel approval and monitoring program.

(b) Requires that the program require, in addition to any other travel approval process required by the institution of higher education, preapproval from the institution's research integrity office established under Section 51B.153 for any employment-related foreign travel or activities by a faculty member, researcher, or research department staff member of the institution.

(c) Provides that a research integrity office is authorized to preapprove travel or activities under the program only if the applicant reviews and acknowledges certain guidance published by the institution of higher education that relates to foreign adversaries or countries under sanctions or other restrictions by this state or the United States government and agrees to comply with the institution of higher education's limitations on travel and activities abroad and all applicable federal laws.

Sec. 51B.202. MAINTENANCE OF RECORDS AND REPORT. (a) Requires an institution of higher education to maintain for at least three years, or any longer period of time required by applicable federal or state law, certain records relating to foreign travel and activities by a faculty member, researcher, or research department staff member of the institution.

(b) Requires an institution of higher education to annually submit to the institution's governing board a report on foreign travel by a faculty member, researcher, or research department staff member of the institution to a foreign adversary. Requires that the report list each traveler, foreign location visited, and foreign institution visited.

SUBCHAPTER F. ACADEMIC PARTNERSHIPS

Sec. 51B.251. APPROVAL OF CERTAIN ACADEMIC PARTNERSHIPS REQUIRED.

(a) Authorizes an institution of higher education to enter into or renew an academic partnership with an educational or research institution located in a foreign adversary only if the council determines that the institution maintains sufficient structural safeguards to protect the institution's intellectual property, the security of this state, and the national security interests of the United States.

(b) Provides that the council is authorized to make a determination described by Subsection (a) only if the council determines that the partnership includes certain safeguards.

(c) Authorizes the council to require an institution of higher education to reject or terminate an academic partnership described by Subsection (a) at any time and for any reason.

(d) Requires the council, not later than December 1 of each year, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report detailing the total number of academic partnerships that were entered into or renewed and the total number of academic partnerships that the council rejected or terminated in the 12 months preceding the date of the report.

SUBCHAPTER G. FOREIGN ADVERSARY SOFTWARE AND EDUCATION SERVICES

Sec. 51B.301. REVIEW OF EDUCATION SOFTWARE. (a) Requires an institution of higher education to:

(1) conduct a thorough review of the use by the institution of testing, tutoring, or other education software owned or controlled by a foreign adversary or a company domiciled or headquartered in a foreign adversary; and

(2) develop a plan to eliminate the use of education software described by Subdivision (1).

(b) Prohibits an institution of higher education from entering into or renewing a contract to provide testing, tutoring, or other education software with a foreign adversary or a company domiciled or headquartered in a foreign adversary.

SUBCHAPTER H. ENFORCEMENT

Sec. 51B.351. ENFORCEMENT. (a) Prohibits an institution of higher education from spending money appropriated to the institution for a state fiscal year until the governing board of the institution submits to the governor, the legislature, THECB, and the council a report certifying the governing board's compliance with this chapter during the preceding state fiscal year.

(b) Requires the governing board of each institution of higher education, or the board's designee, in the interim between each regular session of the legislature, to testify before the standing legislative committees with primary jurisdiction over higher education at a public hearing of the committee regarding the board's compliance with this chapter.

(c) Requires the state auditor to periodically conduct a compliance audit of each institution of higher education to determine whether the institution has spent state money in violation of this section. Requires the state auditor to adopt a schedule by which the state auditor will conduct compliance audits under this subsection. Requires that the schedule ensure that each institution of higher education is audited at least once every four years.

(d) Provides that, if the state auditor determines pursuant to a compliance audit conducted under Subsection (c) that an institution of higher education has spent state money in violation of this section, the institution:

(1) is required to cure the violation not later than the 180th day after the date on which the determination is made; and

(2) if the institution fails to cure the violation during the period described by Subdivision (1), is ineligible to receive formula funding increases, institutional enhancements, or exceptional items during the state fiscal biennium immediately following the state fiscal biennium in which the determination is made.

SECTION 3. Amends Section 31.05(a), Penal Code, by adding Subdivisions (2-a), (2-b), and (2-c) to define "foreign agent," "foreign government," and "foreign instrumentality."

SECTION 4. Amends Section 31.05(c), Penal Code, to provide that an offense under Section 31.05 (Theft of Trade Secrets) is a felony of the third degree, except that the offense is a felony of the second degree if it is shown on the trial of the offense that the person who committed the offense intended to benefit a foreign agent, foreign government, or foreign instrumentality.

SECTION 5. (a) Requires the appropriate entities, not later than October 1, 2025, to designate the members of the council established under Section 51.957, Education Code, as added by this Act.

(b) Requires the council established under Section 51.957, not later than January 1, 2026, Education Code, as added by this Act, to hold its initial meeting.

SECTION 6. Makes application of Section 51B.052, Education Code, as added by this Act, prospective.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Provides that Section 51B.351(a), Education Code, as added by this Act, applies beginning with money appropriated to a public institution of higher education for the state fiscal year beginning September 1, 2026.

SECTION 9. Effective date: September 1, 2025.