

Legislative Analysis



FOREIGN INFLUENCE OF PUBLIC BODIES ACT

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House Bill 4240 as introduced
Sponsor: Rep. Bill G. Schuette
Committee: Government Operations
Complete to 3-19-25

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4240 would create a new act, the Foreign Influence of Public Bodies Act, to prohibit a **public body** from participating in an agreement with, or accepting a **grant** from, a **foreign country of concern** if the agreement or grant does any of the following:

- Constrains the public body's freedom to contract.
- Allows the values of a program in Michigan to be directed or controlled by the foreign country of concern.
- Promotes an agenda that is detrimental to the safety and security of the United States or its residents.

Public body would mean a department, board, commission, office, agency, authority, or other unit of state or local government, but would not include a public school, a public junior or community college, or a state university.

Grant would mean a transfer of money for a specified purpose and would include a conditional gift.

Foreign country of concern would mean China, Cuba, Iran, North Korea, Russia, Syria, or Venezuela or an agency or other entity under significant control of any of those countries.

In addition, before a public body executes a cultural exchange agreement with a foreign country of concern, the substance of the agreement would have to be shared with a federal agency concerned with protecting national security or enforcing trade sanctions, embargoes, or other restrictions under federal law. If the federal agency determines that the agreement promotes an agenda that is detrimental to the safety and security of the United States or its residents, the public body could not enter into the agreement.

A public body could not accept anything of value that is conditioned on participation in a program or other endeavor that promotes the language or culture of a foreign country of concern.

Gift disclosures

A public body that receives, directly or indirectly, a gift or grant with a value of \$50,000 or more from a **foreign source** would have to submit to the Department of Insurance and Financial Services (DIFS), within 30 days after receiving the gift or grant, a disclosure that includes all of the following:

- The date the public body received the gift or grant.
- The value of the gift or grant.

- The name of the foreign source.
- The country of residence or domicile of the foreign source.

Foreign source would mean any of the following:

- A **foreign government** or agency of a foreign government.
- A governmental or nongovernmental entity created solely under the laws of a foreign state or states.
- An individual who is not a citizen or national of the United States or a territory or protectorate of the United States.
- An agent acting on behalf of a person described above.

Foreign government would mean the government of a country, nation, or group of nations, or a province or other political subdivision of a country or nation, and would include an agent of a country or nation, but would not include the government of the United States or of a state or political subdivision of the United States.

Designated person disclosures

A **designated person** that applies to a public body for a grant or **contract** with a value of \$100,000 or more would have to submit a disclosure to the public body that includes all of the following:

- The designated person's name and mailing address.
- The value of the **interest**, contract, **gift**, or grant that qualifies the person as a *designated person* (see definition below).
- The foreign country of concern relevant to the interest, contract, gift, or grant.
- The date of termination of the interest or contract, or the date the designated person received the gift or grant, as applicable.

Designated person would mean any of the following:

- A person that has a current interest in or contract with a foreign country of concern that is valued at \$50,000 or more.
- A person that had an interest in or contract with a foreign country of concern that was valued at \$50,000 or more and was terminated within the previous five years.
- A person that received a grant or gift from a foreign country of concern that was valued at \$50,000 at the time of receipt and was received within the previous five years.

Contract would mean an agreement for the direct benefit or use of a party to the agreement, including an agreement for the sale of commodities or services.

Interest would mean a direct or indirect investment in, or loan to, an entity that is valued at not less than 5% of the entity's net worth or a form of direct or indirect control exerting similar or greater influence on the governance of the entity.

Gift would mean a transfer of money or property from one entity to another without compensation.

A designated person would have to submit a copy of the disclosure to DIFS, but could not do so any earlier than one year before the person applies to a public body for a grant or contract.

If the information in a disclosure changes after it is submitted and before the grant or contract is awarded, the designated person would have to amend the disclosure within 30 days after the change and submit a copy of the amended disclosure to DIFS.

Other disclosure provisions

DIFS would have to establish and maintain a website that publishes the disclosures described above (both gift disclosures and designated person disclosures), and it could establish an online system for submitting those disclosures.

The information in gift disclosures and designated person disclosures would not be confidential and would be subject to the Freedom of Information Act (FOIA).

Screenings

At least once every five years, the Department of Technology, Management, and Budget (DTMB) would have to screen each person awarded a grant or contract with a value of \$100,000 or more by a public body in the previous five years. The screening would have to be conducted through a federal agency that is responsible for identifying persons that are subject to trade sanctions, embargoes, or other restrictions under federal law. If a screening identifies a person as being subject to a sanction, embargo, or other restriction under federal law, DTMB would have to notify the person of those results, and the person would have to comply with the designated person disclosure requirements until the sanction, embargo, or restriction expires.

Alleged violations

DIFS would have to investigate any allegations of a violation of the bill's disclosure and screening provisions if it receives them as a referral from a public body's compliance officer or as a sworn complaint based on substantive information and reasonable belief.

DIFS could request records that are relevant to a reasonable suspicion of such a violation, and the applicable person would have to provide the records within 30 days after receiving the request unless a later time is agreed to by the parties.

Remedies

A person that violates the bill's requirements related to disclosure, screenings, or producing requested records could be ordered to pay a civil fine in any of the following amounts:

- For the first violation, \$5,000.
- For any subsequent violation, \$10,000.

A violation could be prosecuted by the prosecutor of the county where it occurred or by the attorney general.

In addition, a person that is subject to a third violation would be ineligible for the award of a contract by a public body, unless the ineligibility is lifted for good cause by DTMB, which would have to maintain a list of people that are ineligible for a contract under these provisions.

DIFS and DTMB could develop and issue rules to implement the bill.

FISCAL IMPACT:

House Bill 4240 is not likely to have a significant fiscal impact on the state. It is not known how many, if any, state departments or agencies currently accept anything of value from a foreign country of concern that would violate the requirements of the bill.

The bill would have an indeterminate fiscal impact on the Department of Insurance and Financial Services. DIFS would be required to process submitted disclosures, maintain a website that publishes the disclosures, investigate any violations of the act, and promulgate any necessary administrative rules. The department would likely incur costs associated with each of these activities. The bill would also allow DIFS to establish an online system for submitting disclosures, which may result in additional costs. Any costs that would be incurred from provisions in the bill are indeterminate, as they would depend on numerous factors, including the number of entities engaging in activities requiring disclosures.

DTMB would be required to conduct a screening every five years of each person or public body awarded a grant or contract with a value of over \$100,000. This screening would be conducted through a federal agency and is not expected to entail additional costs to DTMB.

The bill also would have an indeterminate fiscal impact on the state and on local units of government related to civil fines and the courts. Under the bill, a person that violates disclosure requirements under the bill, or fails to produce records, may be ordered to pay a civil fine of \$5,000 for the first violation or \$10,000 for the second or subsequent violation. The number of civil fines that would be ordered under provisions of the bill is not known. Revenue collected from payment of civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. It is not known if provisions of the bill would result in an increase in court caseloads. If so, the fiscal impact on the judiciary and local court systems would depend on how court caseloads and related administrative costs are affected. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of civil fine revenue the state would collect, revenue for libraries, or costs to local courts cannot be made.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.