

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 679 Agreements of State Colleges and State Universities with Foreign Entities

SPONSOR(S): Postsecondary Education & Workforce Subcommittee, Canady and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Postsecondary Education & Workforce Subcommittee	17 Y, 0 N, As CS	Dixon	Kiner
2) Higher Education Appropriations Subcommittee	13 Y, 0 N	Smith	Smith
3) Education & Employment Committee			

SUMMARY ANALYSIS

Beginning July 1, 2023, the bill prohibits a state university or state college, authorized to expend state-appropriated funds, from accepting any grant from or participating in any partnership or agreement with any college, university, or entity that is based in or controlled by a foreign country of concern unless the state university or state college, has received approval from the Board of Governors (BOG) or the State Board of Education (SBE), respectively. The partnership or agreement must otherwise be legal and deemed by the BOG or SBE, as applicable, to be valuable to students, the state university or state college, and not detrimental to the safety or security of the United States or United States residents.

The bill also prohibits a state university, state college, or any employee or representative of such entities, from soliciting or accepting a gift – regardless of value – from a foreign country of concern, entity located in or controlled by a foreign country of concern, or associated individuals or employees. Acceptance of such gifts will subject the state university or college to a civil penalty, enforced by the BOG or SBE. Pursuant to current law, these and other institutions of higher education must disclose foreign gifts and contracts from non-foreign countries of concern that are valued at \$50,000 or more.

Florida law identifies foreign countries of concern to include: 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 Nicolás Maduro, and the Syrian Arab Republic.

Beginning July 1, 2023, the bill contains penalties for non-compliance. Beginning August, 1, 2024, the bill contains reporting requirements.

The bill has no direct or immediate fiscal impact, however if an institution fails to comply, there could be a significant fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to a United States Senate Committee report, American taxpayers contribute over \$150 billion each year to scientific research in the United States through entities such as the National Science Foundation, the National Institutes of Health, and the Department of Energy.¹ In addition, Florida and other states contribute millions in state tax dollars to support scientific discovery. As a result, the United States of America has some of the most robust and scientifically advanced research institutions in the world. These institutions, their talented researchers, and a culture of openness and collaboration attract researchers and build collaborative networks across the world.

Board of Governors

The Board of Governors (BOG) of the State University System (SUS) oversees the performance of state university boards of trustees in the enforcement of laws, rules, and regulations. The BOG is also responsible for operating, regulating, controlling and being fully responsible for the management of the SUS. However, pursuant to Florida's Constitution, the BOG's management is subject to the powers of the Legislature to appropriate for the expenditure of funds.² The state university presidents are responsible for the accuracy of the information and data reported to the BOG.³ In addition, like other state agencies, the BOG has an Office of Inspector General (IG) charged with promoting accountability, financial integrity and efficiency required by law. The BOG IG is also charged with detecting fraud and abuse within state universities.

For state university board of trustees that are in noncompliance with any law, BOG regulation or audit recommendation, the BOG may initiate any of the following actions:⁴

- Withhold state funds, discretionary grant funds, discretionary lottery funds, or other funds appropriated to the BOG for disbursement to the university, until compliance is met.
- Declare the state university ineligible for competitive grants disbursed by the BOG.
- Require monthly or periodic reporting on the noncompliance situation until it is remedied.
- Report to the Legislature that the state university is unwilling or unable to comply with the law or BOG's rule or regulation and recommend action to be taken by the Legislature.

State Board of Education

The State Board of Education (SBE) oversees the performance of early learning coalitions, district school boards, and Florida College System institution boards of trustees in enforcement of all laws and rules. The SBE has the authority to request and receive information, data, and reports from early learning coalitions, school districts, and Florida College System institutions. For Florida College System institutions, the president of the institution is responsible for the accuracy of the information and data reported to the state board.⁵

With respect to allegations of non-compliance with law or SBE rule, the Commissioner of Education (Commissioner) may investigate, determine probable cause, and report findings to the SBE. In addition,

¹ United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans*, Staff Report, United States Senate (2019), available at <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China's%20Talent%20Recruitment%20Plans%20Updated2.pdf>

² FLA. CONST., Art. IX, s. 7(d).

³ Section 1008.322(1) and (2), F.S.

⁴ Section 1008.322(5)(a) – (d), F.S.

⁵ Section 1008.32(1), F.S.

the Commissioner must report to the SBE any finding by the Auditor General that an institution is acting without statutory authority or contrary to general law.⁶

Relationships with Foreign Entities

Florida's state universities⁷ and state colleges⁸ facilitate open and publicly accessible research and scholarly activities, both domestically and internationally. These research endeavors can be externally funded by taxpayers through various entities, including granting agencies, or governments, as well as industry agreements, or private foundations. Additional concerns arise when those involved in federal or state funded research projects fail to disclose outside activities or financial interest, which may adversely affect the integrity of the research and research institution.

Recently, it was discovered that researchers at state research institutions had undisclosed relationships with foreign research institutions from a foreign country of concern.⁹ The undisclosed relationships resulted in an investigation conducted by the Florida House of Representatives in 2020. During the investigation, the investigating committee ascertained that Florida state research grants often lacked requirements deemed reasonably necessary to ensure research integrity. As a result, the Legislature required greater disclosure of foreign gifts, contracts, and 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 foreign travel and activities of employees of major research institutions.¹⁰

Present Situation

Reporting Foreign Gifts and Contracts with Institutions of Higher Education

Federal and State Requirements

The Higher Education Act of 1965 requires institutions of postsecondary education to report on January 31 and July 31, each year, all foreign gifts and grants received from or contracts entered into with a value of \$250,000 or more.¹¹ Between 2018 and 2021, the U.S. Department of Education (USDOE) carefully scrutinized the reporting program.¹² The USDOE discovered billions of dollars of unreported foreign gifts from many of the best-funded institutions.¹³

In recognition of USDOE's discovery, the Florida Legislature passed legislation to require institutions of higher education¹⁴ to semiannually report, each January 31 and July 31, all foreign gifts¹⁵ or

⁶ Section 1008.32(2), F.S.

⁷ Section 288.860(1)(f), F.S. 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.

⁸ Section 288.860(1)(e), F.S. 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.

⁹ Section 288.860(1)(a), F.S. defines "foreign country of concern" to mean 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 Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

¹⁰ Sections 288.860, F.S. and 1010.25, F.S.

¹¹ See 20 U.S.C. § 1011f.

¹² Institutional Compliance with Section 117 of the Higher Education Act of 1965, USDOE Office of General Counsel (Oct. 2020), available at <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>.

¹³ *Id.*

¹⁴ Section 1010.25(1)(g), F.S., defines "institution of higher education" 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.

¹⁵ Section 1010.25(1)(f), F.S., defines "gifts" to mean any contract, gift, grant, endowment, award, or donation of money or property of any kind, or any combination thereof, including a conditional or an unconditional pledge of such contract, gift, grant, endowment,

contracts,¹⁶ valued at \$50,000 or more, received directly or indirectly¹⁷ from the same foreign source,¹⁸ including its subsidiaries and affiliates, alone or collectively in the fiscal year. The institution of higher education may consolidate its report with all of its affiliate organizations.¹⁹

State universities must disclose reportable foreign gifts and contracts to the BOG.²⁰ All other institutions of higher education must disclose their reportable foreign gifts and contracts to the SBE.²¹

For each gift subject to the reporting requirement, the disclosure to the BOG or SBE must include:²²

- The amount of the gift and the date it was received.
- If the gift is a contract, the contract start and end date.
- 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.
 - The agreement must include: a detailed description of the purpose for which the gift will be used by the institution of higher education; the identification of the persons for whom the gift is explicitly 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.
 - If an agreement includes certain information protected from disclosure,²³ then an abstract and redacted copy providing all required information may be submitted in lieu of a copy of the agreement.

The Inspector General of the BOG or the Inspector General of the Florida Department of Education (DOE), is required to randomly inspect or audit at least five percent of the total number of gifts disclosed by, or gift agreements received from, institutions of higher education during the previous year for the purpose of determining an institution's compliance with the reporting requirements.²⁴

In 2022, the BOG Office of Inspector General and Director of Compliance conducted the required compliance review of foreign gifts. The review consisted of 689 foreign gift disclosures received from eight SUS institutions²⁵ for Fiscal Year (FY) 2021-2022.²⁶

award, or donation. For purposes of s. 1010.25(f), F.S., the term "pledge" means a promise, an agreement, or an expressed intention to give a gift.

¹⁶ Section 1010.25(1)(b), F.S. 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.

¹⁷ For the purpose of s. 1010.25(1), F.S., the term "indirectly" a gift received from a foreign source through an intermediary shall be considered an indirect gift to the institution of higher education.

¹⁸ Section 1010.25(1)(e), F.S. defines "foreign source" to mean a foreign government or an agency of a foreign government; a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; an individual who is not a citizen or a national of the United States or a territory or protectorate of the United States; or an agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

¹⁹ Section 1010.25(1)(a), F.S. defines "affiliated organization" to mean any entity under the control of or established for the benefit of an organization required to report under this section, including a direct-support organization.

²⁰ Section 1010.25(2)(a), F.S. and Subpart B, Part II, ch. 1004, F.S.

²¹ Section 1010.25(2)(b), F.S. and Subpart B, Part III, ch. 1004, F.S.

²² Section 1010.25(3), information reporting is required unless otherwise deemed confidential under federal law having no exemption applicable to reporting.

²³ Section 1004.22, F.S.

²⁴ Section 1010.25(3)(d)2., F.S.

²⁵ The eight institutions included Florida Agricultural and Mechanical University (FAMU), Florida Atlantic University (FAU), Florida International University (FIU), Florida State University (FSU), Moffitt, University of Central Florida (UCF), University of Florida (UF), and University of South Florida (USF).

²⁶ State University System of Florida, Board of Governors, *Compliance Review: Foreign Gifts Inspections, Office of Inspector General and Director of Compliance*, Project No. 23-002, (Dec. 15, 2022).

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The review found that the total amount of foreign gifts reported for FY 2021-2022 equaled approximately \$116.6 million. The foreign gifts reported included contracts for goods, services, or clinical research trials; awards, pledges, or donations of money or property; and student sponsorships. The countries from which the most reported gifts²⁷ were received include Germany (80 gifts), Switzerland (77 gifts), the United Kingdom (59 gifts), Japan (51 gifts), and Ireland (37 gifts).

Twenty-one, or 3.05 percent, of the foreign gifts reported came from foreign countries of concern. There were 19 reported gifts from the People’s Republic of China and two gifts reported from Russia, which equaled approximately \$5.2 million or 4.47 percent of the total amount reported for all foreign gifts. The categorical information on the purpose, volume, and related values of the reported foreign gifts from the People’s Republic of China and Russia are shown in the table below.

Gift Purpose	Total Number	Cumulative Monetary Value
Goods or Services Purchased from a Private Company	9	\$887,900
Agreements for Donation of Artwork	1	\$700,000
Collaborative Degree Programs with Chinese Universities	3	\$1,922,840
Research Agreements with Chinese Companies and Universities	3	\$944,846
Clinical Trial Agreements with Chinese Companies	5	\$699,013

Other findings disclosed in the review included discrepancies between aggregate amount reporting and individualized reporting; reports which failed to include proper and/or correct gift agreements; incorrectly executed pledge agreements; and challenges as to certain monetary reporting issues, such as those related to royalties, education agreements, research or clinical trials.²⁸

Institutions of higher education that fail to report a reportable gifts or contracts within 60 days after the reporting deadline are subject to penalties imposed by the SBE or the BOG.²⁹ Additionally, an institution of higher education that knowingly, willfully, or negligently fails to disclose the required information in its report to the BOG or SBE, is subject to a civil penalty of 105 percent of the amount of the undisclosed gift or contract. The penalty must be paid from nonstate funds. The recovered funds must be deposited into the General Revenue Fund. The BOG or the SBE, as applicable, may administratively enforce the civil penalty as an administrative penalty. In lieu of the BOG or SBE, the Attorney General or the Chief Financial Officer may bring a civil action to enforce the penalty. If such action is successful, the Attorney General or the Chief Financial Officer, is entitled to reasonable attorney fees and costs.³⁰

A whistle-blower who reports an undisclosed foreign gift or contract to the appropriate inspector general may also report the gift to the Attorney General or the Chief Financial Officer and retain statutory whistle-blower protection.³¹ Such a whistle-blower is entitled to a reward of 25 percent of any penalty recovered. The Chief Financial Officer is authorized to make expenditures from the recovery to pay the reward. The whistle-blower may designate an intermediary to receive the reward to preserve whistle-blower confidentiality.³²

Any information disclosed concerning gifts or contracts from foreign sources to institutions of higher education is not confidential or exempt from public record requirements, unless it is a trade secret under Florida law or information generated or discovered during the course of research conducted by state universities.³³

²⁷ The gifts received from the top five countries accounted for approximately 44 percent of the disclosed foreign gifts.

²⁸ State University System of Florida, Board of Governors, *supra* note 26.

²⁹ Section 1010.25(4), F.S. See s. 1008.32, F.S defining the State Board of Education oversight enforcement authority, and s. 1008.332, F.S., defining the Board of Governors oversight enforcement authority.

³⁰ Section 1010.25(5)(a) and (b), F.S.

³¹ Section 112.3188, F.S.

³² Section 1010.25(5)(c), F.S.

³³ Section 1010.25(6), F.S.

Effect of the Proposed Changes

Beginning July 1, 2023, the bill prohibits a state university or state college, authorized to expend state-appropriated funds, from accepting any grant from or participating in any partnership or agreement with any college, university, or entity that is based in or controlled by a foreign country of concern unless: the BOG or SBE deem such partnership or agreement valuable to students and the state university or state college, respectively, and is not detrimental to the safety or security of the United States or its residents.

Beginning July 1, 2023, the bill requires the BOG or SBE to sanction by withholding additional performance funding for a state university or state college, respectively, that enters into a partnership or agreement with a foreign country of concern or an entity that is located in or controlled by a foreign country of concern without approval from the board. The funds withheld must be deposited into the General Revenue Fund. The BOG or SBE may administratively enforce the withholding of the performance funding.

By August 1, 2024, and August 1 thereafter, the bill requires the BOG and the DOE, respectively, to annually submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to partnership or agreements of state universities and state colleges, respectively, with foreign entities. Each state university and state college is required to submit information for this report to the BOG and DOE, respectively, by July 1 each year. At a minimum, the report must include the following information for the previous fiscal year:

- Data reflecting any grant program, agreement, partnership, or contract between a state university or state college and any college, university, or entity that is based in or controlled by a foreign country and the date it is expected to terminate.
- Data reflecting any office, campus, or physical location used or maintained by a state university or state college in a foreign country.

The bill also requires that a state university or state college, or any employee or representative of a state university or state college, may not solicit or accept any gift, including any physical object, loan, reward, promise of future employment, favor, or service, from a foreign country of concern or an entity that is located in or controlled by a foreign country of concern; or a person associated with or employed by a foreign country of concern or an entity that is located in or controlled by a foreign country of concern. Pursuant to current law, these and other institutions of higher education must disclose foreign gifts and contracts from non-foreign countries of concern that are valued at \$50,000 or more.³⁴

The bill defines the following terms with respect to international cultural agreements involving international affairs:

- “Partnership” means a faculty or student exchange program, a study abroad program, an articulation program, a recruiting program or a dual degree program.
- “Agreement” means a written statement of mutual interest in academic or research collaboration.

The bill provides definitions of “state university” and “state college” apart from definitions for those entities found in Ch. 1001, the Early Learning-20 Education Code, to mean the following with respect to foreign gifts and contracts:

- “State college” means any postsecondary education institution under the supervision of the SBE, including any entity under the control of or established for the benefit of a state college.
- “State university” means any state university under the supervision of the BOG, including any entity under the control of or established for the benefit of a state university.

The bill also provides authority for the BOG and SBE, respectively, to adopt rules and regulations to administer the bill’s provisions.

³⁴ Section 1010.25(2), F.S.
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B. SECTION DIRECTORY:

Section 1: Amends s. 288.860, F.S.; defining terms; prohibiting state universities and state colleges from accepting grants or participating in partnerships or agreements with a foreign country of concern unless specified conditions are met; authorizing state universities to enter into partnerships or agreements with a foreign country of concern if such partnerships or agreements are approved by the Board of Governors and specified requirements are met; authorizing the board to sanction and to withhold performance funding from a state university for entering into an unauthorized partnership or agreement; authorizing state colleges to enter into partnerships or agreements with a foreign country of concern if such partnerships or agreements are authorized by the State Board of Education and specified requirements are met; authorizing the state board to sanction and to withhold performance funding from a state college for entering into an unauthorized partnership or agreement with a foreign country of concern; requiring each state university and state college to annually submit specified information to the Board of Governors and Department of Education if certain conditions are met; requiring the Board of Governors and the department to annually submit a report to the Governor and the Legislature; providing requirements for the report; requiring the Board of Governors and the State Board of Education to adopt regulations and rules, respectively.

Section 2: Amends s. 286.101, F.S.; revising and defining terms; prohibiting a state university or college from soliciting or accepting a gift from a foreign country of concern; requiring the Board of Governors and the State Board of Education to adopt regulations and rules, respectively.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See fiscal comments.
2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See fiscal comments.
2. Expenditures:
See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

State colleges are eligible to receive state performance funding from two main sources: 1) Performance Based Incentives, and 2) Student Success Incentives Funds. Performance Based Incentives provide \$1,000 to colleges for every Career and Profession Education (CAPE) industry certification that their students complete. Student Success Incentive Funds are made up of two components (2+2 and Work

Florida) which provide colleges with funding based on their students' performance in critical course completions, retention, on-time degree completions, transfers, and placement outcomes. In FY 2022-2023, \$14.0 million³⁵ was appropriated for Performance Based Incentives and \$30.0 million was appropriated, with subsequent institution allocations, for Student Success Incentive Funds.³⁶

State universities are eligible to receive funding from the State University System Performance-Based Incentive.³⁷ The amount of the state investment appropriated by the Legislature for performance funding is matched by an amount reallocated from the university system base budget.³⁸ In FY 2022-23, the Legislature appropriated a state investment of \$265 million.³⁹

The bill has no direct or immediate fiscal impact, however if an institution fails to comply, there could be a significant fiscal impact.

The bill has an indeterminate fiscal impact related to state universities and state colleges being prohibited from accepting gifts from, and entering into partnerships or agreements with foreign countries of concern.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 7, 2023, the Postsecondary Education & Workforce Subcommittee adopted a proposed committee substitute with one amendment and reported the bill favorably as a committee substitute. The PCS, as amended, differed from HB 679 in the following ways:

- Provides that a state university may, upon approval by the Board of Governors, enter into an otherwise legal partnership or agreement with a foreign country of concern or an entity located in or controlled by a foreign country of concern if such partnership or agreement is deemed by the board to be valuable to students and the state university and is not detrimental to the safety or security of the United States or its residents.
- Provides that the board may withhold additional performance funding from a state university that enters into a partnership or agreement with a foreign country of concern or an entity that is located in or controlled by a foreign country of concern without approval from the board.
- Provides that a state college may, upon approval by the State Board of Education, enter into an otherwise legal partnership or agreement with a foreign country of concern or an entity located

³⁵ See Specific Appropriation 123, ch. 2022-156, L.O.F.

³⁶ See Specific Appropriation 124, ch. 2022-156, L.O.F.

³⁷ Section 1001.92, F.S.

³⁸ Board of Governors Performance Funding Model Overview available at <https://www.flbog.edu/wp-content/uploads/2023/01/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-Jan-2023.pdf>

³⁹ See Specific Appropriation 145, ch. 2022-156, L.O.F.

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in or controlled by a foreign country of concern if such partnership or agreement is deemed by the state board to be valuable to students and the state college and is not detrimental to the safety or security of the United States or its residents.

- Provides that the state board may withhold additional performance funding for a state college that enters into a partnership or agreement with a foreign country of concern or an entity that is located in or controlled by a foreign country of concern without approval from the state board.
- Requires that by August 1, 2024, and each August 1 thereafter, the Board of Governors and the Department of Education, respectively, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to partnerships and agreement of state universities and state colleges, respectively, with foreign entities.