

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 846

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Avila

SUBJECT: Agreements of Educational Entities with Foreign Entities

DATE: April 11, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	HE	Favorable
2.	Collazo	Cibula	JU	Fav/CS
3.	Jahnke	Twogood	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 846 establishes requirements specific to State University System (i.e. state universities) and Florida College System (i.e. state colleges) institutions with respect to receiving foreign gifts and entering into international cultural agreements.

The bill prohibits state universities, state colleges, and their employees and representatives, from soliciting or accepting any gift in their official capacities from a college or university based in a foreign country of concern, or from a foreign principal.

It also prohibits state universities and colleges from accepting any grant from or participating in any agreement or partnership with any college or university based in a foreign country of concern, or with any foreign principal. A state university or college may only participate in a partnership or agreement with a college or university based in a foreign country of concern, or with a foreign principal, if authorized by the Board of Governors or the State Board of Education, respectively, and if the agreement satisfies certain other criteria required of all state agency cultural agreements.

The bill also:

- Authorizes the Board of Governors or the State Board of Education to impose statutory sanctions on, and withhold performance funding from, state universities or colleges for unapproved partnerships or agreements.

- Requires the submittal of reports to the Governor and the Legislature, annually by December 1, which include data on grants, agreements, partnerships, or contracts with any foreign entity.

Lastly, the bill prohibits the ownership or operation of any private school participating in the state's school choice scholarship program, by a person or entity domiciled in, owned by, or in any way controlled by a foreign country of concern or a foreign principal.

The bill takes effect on July 1, 2023.

II. Present Situation:

The State University System and the Board of Governors

The State University System is composed of 12 public universities.¹ Each constituent university is administered by a board of trustees.

The Board of Governors (BOG) is responsible for operating, regulating, controlling, and being fully responsible for the management of the whole State University System.² It is also responsible for ensuring compliance with all applicable local, state, and federal laws governing the institutions under its jurisdiction.³

If the BOG determines that one of its institutions is not complying with a law or regulation, it may initiate a number of disciplinary actions including withholding of state or other funds, requiring periodic reporting until the institution is in compliance, or reporting noncompliance to the Legislature.⁴

Established in 2007, the BOG Office of the Inspector General and Director of Compliance provides leadership and coordination of audit, investigative, and compliance activities for the BOG and generally promotes activities that ensure accountability, financial integrity, and efficiency as required by law.⁵

The Florida College System and the State Board of Education

Except for the State University System, the State Board of Education (SBE) is the chief implementing and coordinating body of public education in Florida.⁶ It is responsible for overseeing the performance of early learning coalitions, district school boards, and Florida College System institution boards of trustees in connection with the enforcement of all laws and rules.⁷

¹ See State University System of Florida, *Universities*, <https://www.flbog.edu/universities/> (last visited Mar. 17, 2023) (identifying 12 state universities).

² FLA. CONST., art. IX, s. 7(a)-(d).

³ Section 1001.705(2), F.S.

⁴ See generally s. 1008.322(5), F.S.

⁵ State University System of Florida, *Inspector General*, <https://www.flbog.edu/about-us/inspector-general/> (last visited Mar. 17, 2023).

⁶ Section 1001.02(1), F.S.; FLA. CONST., art. IX, s. 2.

⁷ Section 1008.32, F.S.

If the SBE determines that a Florida College System institution is not complying with a law or regulation, it may initiate a number of disciplinary actions including the withholding of state or other funds, requiring periodic reporting until the institution is in compliance, or reporting noncompliance to the Legislature.⁸

Research and Development

Expenditures

In 2020-2021, research and development expenditures for all U.S. colleges and universities was almost \$90 billion.⁹ In that same year, total research and development expenditures by state universities in Florida was approximately \$2.3 billion.¹⁰

Review by the Select Committee on the Integrity of Research Institutions

In 2020, the Florida House of Representatives Select Committee on the Integrity of Research Institutions (Select Committee) undertook an extensive review of Florida's university-based research programs. 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 from relationships with Chinese talent and research programs. Following that disclosure, the University of Florida disclosed to the Select Committee that three of its research staff were under similar investigations.¹¹

In March 2021, Governor Ron DeSantis and members of the Florida House and Senate highlighted proposed legislation to combat foreign influence, in response to the Communist Party of China's deliberate attempts to economically infiltrate the U.S. Among the purposes of the proposed legislation was to place strategic safeguards against foreign influence by strengthening institutional vetting and applying protections for Florida's institutions of higher education, public entities, and recipients of public grants or contracts.¹² The Select Committee found that Florida state research grants lacked certain requirements deemed reasonably necessary to ensure research integrity.¹³

⁸ See generally s. 1008.32(4), F.S.

⁹ National Science Foundation, *Ranking by total R&D expenditures*, <https://ncesdata.nsf.gov/profiles/site?method=rankingbysource&ds=herd> (last visited March 17, 2023).

¹⁰ Board of Governors, *State University System Research: Presentation to the Florida Senate Committee on Education Postsecondary*, at 41:23 (Jan. 18, 2023), https://www.flsenate.gov/media/videoplayer?EventID=1_zc8d1g0v-202301181000&Redirect=true.

¹¹ Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet*, at 2 (March 4, 2020), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf>.

¹² Press Release, Florida Governor Ron DeSantis, *Governor Ron DeSantis and House Speaker Chris Sprowls Highlight Proposed Legislation to Combat Foreign Influence and Corporate Espionage* (March 1, 2021), <https://www.flgov.com/2021/03/01/governor-ron-desantis-and-house-speaker-chris-sprohls-highlight-proposed-legislation-to-combat-foreign-influence-and-corporate-espionage/>.

¹³ Florida House of Representatives, Public Integrity & Elections Committee, *supra* note 11, at 2.

As part of its investigation, the Select Committee reviewed studies indicating that all of the following activities, because they project foreign interests into domestic affairs, are means to influence domestic policy, advance hostile foreign interests, and limit academic freedom:

- Sister cities programs.
- Academic language and culture centers.
- Foreign funding of domestic institutions.
- Foreign-influenced employment of domestic scientists and engineers.¹⁴

Disclosure of Foreign Gifts

At the federal level, colleges and universities in the U.S. which receive contracts and gifts from a foreign source worth \$250,000 or more within a calendar year, must file disclosure reports with the Secretary of the U.S. Department of Education. Such reports must be filed twice a year.¹⁵

At the state level, any agency¹⁶ that receives, directly or indirectly, any gift or grant with a value of \$50,000 or more from any foreign source must disclose the gift or grant to the Department of Financial Services (DFS) within 30 days after receiving the gift or grant. The disclosure must include the date and amount of the gift or grant, as well as the name and country of residence or domicile of the foreign source.¹⁷ Violations of this disclosure requirement could result in financial penalties: \$5,000 for a first violation and \$10,000 for any subsequent violation. A third or subsequent violation could result in the person responsible for accepting the undisclosed grant or gift being removed from office or a determination that the agency is ineligible for any grants or contracts.¹⁸

Additionally, any institution of higher education (IHE)¹⁹ and its affiliate organizations must report, on a semiannual basis, any gift received, directly or indirectly, from a foreign source having a value of \$50,000 or more during the fiscal year to either the BOG (for a state university) or the SBE (for all other institutions).²⁰ Such reporting substitutes for the DFS reporting requirement. The IHE's report must include the amount of the gift and the date received, the contract start and end date if applicable, the name of the foreign source, and a copy of the gift agreement.²¹

Beginning July 1, 2022, the Inspector General of the BOG or the Inspector General of the Department of Education, as applicable, must randomly inspect or audit, on an annual basis, at least 5 percent of the total number of gifts disclosed by or gift agreements received from IHEs

¹⁴ *Id.*

¹⁵ 20 U.S.C. s. 1011f(a).

¹⁶ "State agency" means any agency or unit of state government created or established by law. Section 286.101(1)(h), F.S.

¹⁷ Section 286.101(2), F.S.

¹⁸ Section 286.101(7), F.S.

¹⁹ An "institution of higher education" is a state university and an affiliated institute with 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 under federal law, or an affiliate organization of an institution of higher education. Section 1010.25(1)(g), F.S.

²⁰ Section 1010.25(2), F.S.

²¹ Section 1010.25(3), F.S.

during the previous year to determine an institution's compliance with the reporting requirements.²²

An IHE that knowingly or negligently fails to disclose a specified gift is subject to a civil penalty of 105 percent of the amount of the undisclosed gift, payable only from the non-state funds of the IHE or the affiliated organization that received the gift. The BOG or SBE may enforce the penalty. Absent BOG or SBE enforcement, the Attorney General or the Chief Financial Officer may bring a civil action to enforce the penalty.²³

The BOG Office of Inspector General and Director of Compliance, in its annual report, reported receipt of a total of 689 foreign gift disclosures from eight state universities for the 2020-2021 fiscal year. The total amount of the foreign gifts was approximately \$116.6 million.²⁴ Of these gifts, 579 were contracts, 26 were gifts, and 84 were student sponsorships. Twenty-one of the foreign gifts were from foreign countries of concern:²⁵ China (19) and Russia (2).²⁶ The Inspector General and Director of Compliance reported that all foreign gift disclosures were made in a timely manner in the prescribed method.²⁷

International Cultural Agreements

State law provides for the coordination of certain international relationships, including those between sister states and sister cities. Florida's economic development programs emphasize commerce with foreign jurisdictions.²⁸ However, such agreements could result in the imposition of foreign competitors' public policy preferences upon local U.S. governments; for example, it has been reported that China contractually requires its sister cities to acknowledge and commit to its "One China" policy.²⁹

Under state law, a state agency, political subdivision, public school, state college, or state university authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with, or accept any grant from, a foreign country of concern or any entity controlled by a foreign country of concern, which:

- 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

²² Section 1010.25(3)(d)2., F.S.

²³ Section 1010.25(5), F.S.

²⁴ Board of Governors, Office of Inspector General and Director of Compliance, *Compliance Review: Foreign Gifts Inspection*, at 3 (Dec. 15, 2022) (on file with the Committee on Education Postsecondary).

²⁵ "Foreign country of concern" means 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. Section 286.101(1)(b), F.S.

²⁶ Board of Governors, Office of Inspector General and Director of Compliance, *supra* note 24, at 7.

²⁷ *Id.* at 9.

²⁸ See generally ss. 288.816 and 288.826, F.S.

²⁹ See Matej Šimalčík and Adam Kalivoda, *Sister-City Relations and Identity Politics: The Case of Prague, Beijing, Taipei, and Shanghai*, THE DIPLOMAT, Feb. 25, 2020, available at <https://thediplomat.com/2020/02/sister-city-relations-and-identity-politics-the-case-of-prague-beijing-taipei-and-shanghai/>.

- Promotes an agenda detrimental to the safety or security of the U.S. or its residents.³⁰

Additionally, for the 2022-2023 fiscal year, a state agency, political subdivision, public school, state college, or state university may not enter into any agreement with, or accept any grant from, the Russian Federation, although this prohibition is currently set to expire on July 1, 2023.³¹

At the federal level, before executing any cultural exchange agreement with a foreign country of concern, the substance of the agreement must be shared with federal agencies that are tasked with protecting national security and enforcing trade sanctions, embargoes, or other restrictions under federal law. If one such federal agency provides information suggesting that the agreement promotes an agenda detrimental to the safety or security of the U.S. or its residents, the public entity may not enter into the agreement.³²

A state agency, political subdivision, public school, state college, or state university may not accept anything of value conditioned upon participation in a program or other endeavor to promote the language or culture of a foreign country of concern.³³

III. Effect of Proposed Changes:

CS/CS/SB 846 establishes requirements specific to state universities and Florida College System institutions (state colleges) related to the receipt of foreign gifts and international cultural agreements.

Foreign Gifts

The bill amends s. 286.101, F.S., to remove state universities³⁴ and state colleges³⁵ from the definition of a “state agency” for the purposes of foreign gift disclosures. Instead, the bill prohibits a state university or a state college, or any employee or representative, from soliciting or accepting any gift in their official capacities, including any physical object, loan, reward, promise of future employment, favor, or service, from a college or university based in a foreign country of concern, or from a foreign principal, as those terms are defined by the bill.

The bill requires the BOG and the SBE to adopt administrative regulations and rules, respectively.

International Cultural Agreements

The bill amends s. 288.860, F.S., to prohibit a state university or state college authorized to expend state-appropriated funds, beginning July 1, 2023, from accepting any grant from or participating in any agreement with any college or university based in a foreign country of

³⁰ Section 288.860(2), F.S.

³¹ Section 288.860(4), F.S.

³² Section 288.860(2)(c), F.S.

³³ Section 288.860(3), F.S.

³⁴ The bill defines “state university” as any postsecondary education institution under the supervision of the Board of Governors, including any entity under the control of or established for the benefit of a state university.

³⁵ The bill defines “state college” as 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.

concern, or with any foreign principal, except for instances specified in the bill. Beginning December 1, 2023, the bill also prohibits a state university or state college authorized to expend state-appropriated funds from accepting any grant from or participating in any partnership with any college or university based in a foreign country of concern, or with any foreign principal, except for instances specified in the bill.

The bill defines:

- “Foreign principal” to mean:
 - The government or an official of the government of a foreign country of concern;
 - A political party or a member of a political party in a foreign country of concern;
 - A partnership, an association, a corporation, an organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country of concern or a subsidiary thereof; or
 - Any person who is domiciled in a foreign county of concern and is not a citizen or lawful permanent resident of the U.S.
- “Partnership” to mean a faculty or student exchange program, a study abroad program, an articulation program, a recruiting program, or a dual degree program. The term “agreement” means a written statement of mutual interest in academic or research collaboration.

The bill authorizes a state university or state college, upon approval by the BOG or SBE, respectively, to enter into a partnership or an agreement with a college or university based in a foreign country of concern, or with a foreign principal, if the BOG or SBE, respectively, deems the partnership or agreement valuable to students and the state university or state college and the partnership or agreement is not detrimental to the safety or security of the U.S. or its residents. The bill requires such agreement to also meet other statutory requirements for international cultural agreements, which prohibit agreements that constrain the institution’s freedom over contracts and curriculum, and require sharing the agreement with an appropriate federal agency.

The bill requires the BOG and SBE, beginning July 1, 2023, to exercise statutory oversight enforcement authority and impose statutory sanctions upon any state university or state college, respectively, that enters into a partnership or agreement with a college or university based in a foreign country of concern, or with a foreign principal, without the approval of the BOG or SBE, respectively. The bill authorizes the BOG and SBE to withhold additional performance funding for such partnerships or agreements and requires them to deposit such funds into the General Revenue Fund.

By December 1, 2024, and each December 1 thereafter, the bill requires the BOG and the Department of Education, respectively, to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to partnerships and agreements of state universities and state colleges, respectively, with colleges and universities based in a foreign country of concern, and with foreign principals.

The bill requires the report to 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 or university based in a foreign country of concern, or with a foreign principal.

- Data reflecting any office, campus, or physical location used or maintained by a state university or state college in a foreign country of concern, or with a foreign principal.
- The date on which any such grant program, agreement, partnership, or contract reported is expected to terminate.

The bill requires the BOG and SBE to adopt regulations and rules, respectively, to administer the requirements regarding international cultural agreements.

The bill adds a new paragraph to the statute regulating private school eligibility for the state school choice scholarship program,³⁶ to prohibit the ownership or operation of any participating private school by a person or entity domiciled in, owned by, or in any way controlled by a foreign country of concern or a foreign principal. It also provides that a violation of this paragraph constitutes an imminent threat to the health, safety, and welfare of the school's students and to the public, sufficient to justify immediate suspension of payment of scholarship funds as well as denial, suspension, or revocation of a school's participation in a scholarship program.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁶ Section 1002.421(1), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The BOG's legislative bill analysis suggests that it will incur costs associated with satisfying the bill's several collection, review, and reporting requirements, but does not quantify them.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.860 and 286.101.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on April 11, 2023:**

The committee substitute retains the provisions in the bill. The committee substitute also modifies the beginning date from July 1, 2023, to December 1, 2023, for when a state university or state college authorized to expend state-appropriated funds can no longer accept any grant from or participate in any partnership with any college or university based in a foreign country of concern, or with any foreign principal.

CS by Judiciary on March 29, 2023:

The changes to the bill by the committee substitute:

- Define the term “foreign principal” and prohibit state universities and colleges from accepting grants from, or participating in agreements or partnerships with, such foreign principals unless first approved by the Board of Governors or the State Board of Education.
- Clarify that the penalty provisions in the bill may also be applied against state universities and colleges that enter into partnerships with colleges or universities based in foreign countries of concern, or with foreign principals.

³⁷ State University System of Florida, Board of Governors, *2023 Legislative Bill Analysis for SB 846*, at 4-5 (Feb. 17, 2023) (on file with the Senate Committee on Judiciary).

- Require the Board of Governors and the Department of Education to include certain data regarding state universities and colleges' partnerships and agreements with foreign principals in their annual reports to the Governor and Legislature.
- Revise the date by which the Board of Governors and the Department of Education must submit these reports, from August 1, 2024 and each August 1 thereafter, to December 1, 2024 and each December 1 thereafter.
- Clarify that state universities and colleges, and their employees and representatives, may not solicit or accept any gift in their official capacities from a college or university based in a foreign country of concern or from a foreign principal.
- Add a new paragraph to the statute regulating private school eligibility for the state school choice scholarship program, to prohibit the ownership or operation of any participating private school by a person or entity domiciled in, owned by, or in any way controlled by a foreign country of concern or a foreign principal, and to provide penalties for violations of this provision.

B. Amendments:

None.