

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 846

INTRODUCER: Senator Avila

SUBJECT: Agreements of State Colleges and State Universities with Foreign Entities

DATE: March 28, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jahnke</u>	<u>Bouck</u>	<u>HE</u>	<b>Favorable</b>
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

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 from a foreign country of concern, or an entity or person associated with a foreign country of concern.

It also prohibits state universities and colleges from participating in any agreement or partnership with an educational institution or other entity that is based in, or controlled by, a foreign country of concern. A state university or college may only participate in such an agreement 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 sanctions on state universities or colleges for unapproved partnerships or agreements.
- Requires the submittal of reports to the Governor and the Legislature, annually by August 1, which include data on grants, agreements, partnerships, or contracts with any foreign entity.

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.<sup>1</sup> 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.<sup>2</sup> It is also responsible for ensuring compliance with all applicable local, state, and federal laws governing the institutions under its jurisdiction.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

### 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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

<sup>2</sup> FLA. CONST., art. IX, s. 7(a)-(d).

<sup>3</sup> Section 1001.705(2), F.S.

<sup>4</sup> See generally s. 1008.322(5), F.S.

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

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

<sup>7</sup> Section 1008.32, F.S.

<sup>8</sup> See generally s. 1008.32(4), F.S.

## Research and Development

### *Expenditures*

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

### *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.<sup>11</sup>

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.<sup>12</sup> The Select Committee found that Florida state research grants lacked certain requirements deemed reasonably necessary to ensure research integrity.<sup>13</sup>

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.<sup>14</sup>

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

<sup>10</sup> 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](https://www.flsenate.gov/media/videoplayer?EventID=1_zc8d1g0v-202301181000&Redirect=true).

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

<sup>12</sup> 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/>.

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

<sup>14</sup> *Id.*

## 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.<sup>15</sup>

At the state level, any agency<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

Additionally, any institution of higher education (IHE)<sup>19</sup> 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).<sup>20</sup> 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.<sup>21</sup>

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

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.<sup>23</sup>

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<sup>15</sup> 20 U.S.C. s. 1011f(a).

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

<sup>17</sup> Section 286.101(2), F.S.

<sup>18</sup> Section 286.101(7), F.S.

<sup>19</sup> 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.

<sup>20</sup> Section 1010.25(2), F.S.

<sup>21</sup> Section 1010.25(3), F.S.

<sup>22</sup> Section 1010.25(3)(d)2., F.S.

<sup>23</sup> Section 1010.25(5), F.S.

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.<sup>24</sup> 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:<sup>25</sup> China (19) and Russia (2).<sup>26</sup> The Inspector General and Director of Compliance reported that all foreign gift disclosures were made in a timely manner in the prescribed method.<sup>27</sup>

### **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.<sup>28</sup> 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.<sup>29</sup>

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

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.<sup>31</sup>

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

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<sup>24</sup> 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).

<sup>25</sup> "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.

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

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *See generally* ss. 288.816 and 288.826, F.S.

<sup>29</sup> *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/>.

<sup>30</sup> Section 288.860(2), F.S.

<sup>31</sup> Section 288.860(4), F.S.

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.<sup>32</sup>

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.<sup>33</sup>

### **III. Effect of Proposed Changes:**

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 universities<sup>34</sup> and state colleges<sup>35</sup> 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, 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.

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 from accepting any grant from, or participate in, any agreement or partnership with any college, university, or entity that is based in or controlled by a foreign country of concern except for instances specified in the bill.

The bill defines “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.

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<sup>32</sup> Section 288.860(2)(c), F.S.

<sup>33</sup> Section 288.860(3), F.S.

<sup>34</sup> 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.

<sup>35</sup> 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.

The bill authorizes a state university or state college, upon approval by the BOG or SBE, respectively, to enter into an agreement with a foreign country of concern or an entity located in or controlled by a foreign country of concern if the BOG or SBE, respectively, deems the agreement valuable to students and the state university or state college and 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 to sanction 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 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 deposit funds into the General Revenue Fund.

The bill requires each state university and state college to submit a report to the BOG and the Department of Education, respectively, by July 1 of each year. By August 1, 2024, and each August 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 agreements of state universities and state colleges, respectively, with foreign entities.

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

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

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.

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.<sup>36</sup>

**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 Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>36</sup> 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).



B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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