

2022 Regular Session

SENATE BILL NO. 473

BY SENATORS MILLIGAN AND FESI AND REPRESENTATIVE MIKE JOHNSON

INTERNATIONAL AFFAIRS. Provides relative to foreign interest in certain Louisiana research facilities. (7/1/23)

1 AN ACT

2 To enact Part III-C of Chapter 5 of Title 17 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 17:1826.1 through 1826.4, relative to foreign sources of funds; to
4 provide for reporting of certain foreign sources of monies used as gifts or grants or
5 in contracts involving certain postsecondary education institutions; to provide for use
6 of certain monies to fund employment of and study by foreign graduate students and
7 faculty in a research capacity; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part III-C of Chapter 5 of Title 17 of the Louisiana Revised Statutes of
10 1950, comprised of R.S. 17:1826.1 through 1826.4 is hereby enacted to read as follows:

11 **PART III-C. HIGHER EDUCATION FOREIGN**

12 **SECURITY ACT OF 2022**

13 **§1826.1. Short title**

14 **This Act shall be known and may be cited as the "Higher Education**
15 **Foreign Security Act of 2022".**

16 **§1826.2. Foreign gift reporting**

17 **A. As used in this Section, the following words shall have the following**

1 meanings unless the context clearly indicates otherwise:

2 (1) "Affiliate organization" means any entity under the control of or
3 established for the benefit of an organization required to report under this
4 Section, including a direct-support organization.

5 (2) "Contract" means any agreement for the acquisition by purchase,
6 lease, or barter of property or services by a foreign source for the direct benefit
7 or use of any of the parties, and any purchase, lease, or barter of property or
8 services from a foreign country of concern.

9 (3) "Foreign country of concern" means countries under sanctions or
10 other restrictions imposed by the state or federal government, including any
11 federal license requirement; custom rules; export controls; restrictions on
12 taking institution property, including but not limited to intellectual property,
13 abroad; restrictions on presentations, teaching, and interactions with foreign
14 colleagues; and other subjects important to the research and academic property
15 of the institution.

16 (4) "Foreign government" means the government of any country, nation,
17 or group of nations, or any province or other political subdivision of any
18 country or nation, other than the government of the United States and its states
19 or political subdivisions, including any agent of the foreign government.

20 (5) "Foreign source" means any of the following:

21 (a) A foreign government or an agency of a foreign government.

22 (b) A legal entity, governmental or otherwise, created solely under the
23 laws of a foreign state or states.

24 (c) An individual who is not a citizen of the United States or of a territory
25 or protectorate of the United States.

26 (d) An agent, including a subsidiary or an affiliate of a foreign legal
27 entity, acting on behalf of any source defined in Subparagraph (a), (b), or (c) of
28 this Paragraph.

29 (6) "Gift" means any contract, gift, grant, endowment, award,

1 scholarship, or donation of money or property of any kind, or any combination
2 thereof, including a conditional or unconditional pledge of a contract, gift,
3 grant, endowment, award, scholarship, or donation. For purposes of this
4 Paragraph, the term "pledge" means a promise, agreement, or an expressed
5 intention to give a thing of value.

6 (7) "Postsecondary education institution" or "institution" means a
7 Louisiana college or university, a nonpublic postsecondary institution that is a
8 member of the Louisiana Association of Independent Colleges and Universities,
9 and any other entity offering a program of postsecondary education that has a
10 physical presence in the state and is required to report foreign gifts or contracts
11 pursuant to 20 U.S.C. 1011f, or an affiliate organization of any such college,
12 university, institution, or school.

13 (8) "Research-related support position" means any individual in a
14 support role funded by gifts, grants, or contracts.

15 B.(1)(a) Each institution shall report any gift received directly or
16 indirectly from a foreign source with a value of fifty thousand dollars or more.
17 This report shall be made each January thirty-first and July thirty-first and
18 shall include the gifts made during the six-month period ending on the last day
19 of the month immediately preceding the reporting month. The institution shall
20 include in its report gifts received by all affiliate organizations of the institution.

21 (b) If a foreign source provides more than one gift directly or indirectly
22 to an institution and its affiliate organizations in a single fiscal year and the total
23 value of all gifts is fifty thousand dollars or more, then all gifts received from
24 that foreign source shall be reported.

25 (c) For purposes of this Paragraph, a gift received from a foreign source
26 through an intermediary shall be considered an indirect gift to the institution.

27 (2) A report required under this Subsection shall be made to the
28 following entities:

29 (a) The institution's board of supervisors. The respective board shall file

1 an annual summary of these gifts with the Board of Regents.

2 (b) Unless already reported to the institution's board of supervisors, an
3 annual summary of the gifts shall be filed with the Board of Regents for any
4 institution or affiliate organization of the institution.

5 C. Reports of gifts subject to the requirements of this Section shall
6 include the following information, unless the information is exempt from
7 disclosure under the provisions of this Section or otherwise prohibited or
8 deemed confidential under federal or state law:

9 (1) The amount of the gift and the date it was received.

10 (2) The contract start and end date, if the gift is a contract.

11 (3) The name of the foreign source and, if not a foreign government, the
12 country of citizenship, if known, and the country of principal residence or
13 domicile of the foreign source.

14 (4)(a) A copy of any gift agreement between the foreign source and the
15 institution, signed by the foreign source and the chief administrative officer of
16 the institution, or their respective designees, which includes a detailed
17 description of the purpose for which the gift is to be used by the institution, the
18 identification of the persons whom the gift is explicitly intended to benefit, and
19 any applicable conditions, requirements, restrictions, or terms made a part of
20 the gift regarding the control of curricula, faculty, student admissions, student
21 fees, or contingencies placed upon the institution to take a specific public
22 position or to award an honorary degree. If an agreement contains information
23 protected from disclosure, an abstract and redacted copy of the disclosure
24 containing information that is not protected shall be submitted in lieu of a copy
25 of the agreement.

26 (b) Beginning July 1, 2024, the internal auditor of the Board of Regents
27 shall annually inspect or audit a random sample of at least five percent of the
28 total number of gifts disclosed by or gift agreements received from any
29 institution during the previous fiscal year to determine the institution's

1 compliance with the requirements of this Section.

2 (c) Upon request by the governor, the president of the Senate, or the
3 speaker of the House of Representatives, the internal auditor of the Board of
4 Regents shall inspect or audit a gift or gift agreement.

5 D. An institution that knowingly, willfully, or negligently fails to disclose
6 the information required in this Section shall be subject to a civil penalty of one
7 hundred five percent of the amount of the undisclosed gift, payable only from
8 non-state funds of the institution or the affiliate organization that received the
9 gift. The recovered funds shall be deposited into the state general fund.

10 §1826.3. Screening foreign researchers

11 A.(1) Every person seeking employment with a postsecondary education
12 institution as defined in R.S. 17:1826.2 in a research or research-related support
13 position, or applying as a graduate student for a research or research-related
14 support position, or for a position as a visiting researcher shall, prior to being
15 offered a position of employment, be screened by the institution to determine
16 if any of the following apply to the person:

17 (a) The person is a citizen of a foreign country and not a permanent
18 resident of the United States.

19 (b) The person is a citizen or permanent resident of the United States
20 who has any affiliation with an institution or program in a foreign country of
21 concern as defined in R.S. 17:1826.2.

22 (c) The person has at least one year of prior employment or training in
23 a foreign country of concern as defined in R.S. 17:1826.2, except for
24 employment or training by an agency of the United States government.

25 (2) The provisions of this Subsection shall apply only to institutions that
26 receive state appropriations and have annual research budgets of ten million
27 dollars or more.

28 B. Each foreign applicant for a position listed in Subsection A of this
29 Section shall submit a copy of the applicant's current passport and the most

1 recently submitted Online Nonimmigrant Visa Application, DS-160. After
2 extraction of all information relevant to the requirements of this Section, the
3 institution may destroy or return the copy of the DS-160 submitted by an
4 applicant.

5 C. Each applicant for a position listed in Subsection A of this Section
6 shall submit a complete resume and curriculum vitae, including every
7 institution of higher education attended; all previous employment since the
8 applicant's eighteenth birthday; a list of all published material for which the
9 applicant received credit as an author, a researcher, or otherwise or to which
10 the applicant contributed significant research, writing, or editorial support; a
11 list of the applicant's current and pending research funding, and its amount,
12 from any source, including the applicant's role on the project, and a brief
13 description of the research; and a full disclosure of nonuniversity professional
14 activities, including any affiliation with an institution or program in a foreign
15 country of concern. If an applicant has been continually employed or enrolled
16 in a postsecondary education institution in the United States for twenty years
17 or more, the resume may, but is not required to, include employment history
18 before the most recent twenty-year period.

19 D. The president or chief administrative officer of the institution shall
20 adopt a policy for the proper screening of all individuals subject to this Part for
21 research-related support positions and shall take necessary and reasonable steps
22 to verify all attendance, employment, publications, and contributions listed in
23 the application prior to any offer of a position to the applicant. Necessary and
24 reasonable steps may include the following:

25 (1) Searching public databases for research publications and
26 presentations.

27 (2) Searching public conflict of interest records to identify any research
28 publication or presentation that may have been omitted from the application.

29 (3) Contacting employers from the previous ten years to verify

1 employment.

2 (4) Contacting all institutions of higher education attended to verify
3 enrollment and educational progress.

4 (5) Searching public listings of persons subject to sanctions or
5 restrictions under federal or state law.

6 (6) Requesting further investigation, including but not limited to a
7 second background check performed by the Federal Bureau of Investigation,
8 the Louisiana State Police, or any other qualified local law enforcement agency,
9 if any of the individual's information provided on the online non-immigrant visa
10 application Form DS-160 raises any security concerns for the institution about
11 the individual's relationship with a foreign country of concern.

12 E. Each institution may direct the research integrity officer to approve
13 an applicant for hire based on a risk-based determination considering the
14 nature of the research and the background and ongoing affiliations of the
15 applicant.

16 F. The requirements of this Section shall be completed before offering
17 any position to an applicant for a position listed in Subsection A of this Section.

18 G. Prior to July 1, 2025, the office of the legislative auditor shall perform
19 an operational audit regarding implementation of the provisions of this Section.

20 §1826.4. Foreign travel; research institutions

21 A. By July 1, 2023, each postsecondary education institution as defined
22 in R.S. 17:1826.2 that receives state appropriations and has a research budget
23 of ten million dollars or more shall establish an international travel approval
24 and monitoring program. The program shall require preapproval and screening
25 by the institution for any employment-related foreign travel and
26 employment-related foreign activities engaged in by any faculty member,
27 researcher, or any other research department staff. This requirement is in
28 addition to any other travel approval process applicable to the institution.

29 B.(1) Preapproval by the institution shall be based on the applicant's

1 review and acknowledgment of guidance published by the institution which
2 relates to countries under sanctions or other restrictions imposed by the state
3 or federal government, including any federal license requirement; customs
4 rules; export controls; restrictions on taking institution property, including
5 intellectual property, abroad; restrictions on presentations, teaching, and
6 interactions with foreign colleagues; and other subjects important to the
7 research and academic integrity of the institution.

8 (2) Preapproval shall be based on the binding commitment of the
9 individual traveler not to violate the institution's limitations on travel and
10 activities abroad and to obey all applicable federal laws. Any person subject to
11 this Section traveling abroad representing their respective institution, upon
12 return, shall report any gifts of funds, or promises to pay offered by a foreign
13 country of concern or any entity representing the interests of a foreign country
14 of concern.

15 C. The postsecondary education institution shall maintain records of all
16 foreign travel requests and approvals; expenses reimbursed by the institution
17 during travel, including for transportation, food, and lodging; and payments
18 and honoraria received during the travel and activities, including for
19 transportation, food, and lodging. The institution shall keep records of the
20 purpose of the travel and any records related to the foreign activity review.
21 These records shall be retained for at least three years or any longer period of
22 time required by any other applicable state or federal law.

23 D. The institution shall provide an annual report of travel to foreign
24 countries of concern as defined in R.S. 17:1826.2 listing individual travelers,
25 foreign locations visited, and foreign institutions visited to the board of
26 supervisors of the applicable institution.

27 E. By July 1, 2025, the office of the legislative auditor shall perform an
28 operational audit regarding the implementation of this Section.

29 Section 2. This Act shall become effective on July 1, 2023.

The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tyler McCloud.

DIGEST

SB 473 Re-Reengrossed

2022 Regular Session

Milligan

Proposed law shall be known as the "Higher Education Foreign Security Act of 2022".

Proposed law provides for reporting of gifts and contracts funded from foreign sources, screening of foreign researchers, and travel involving institutions of higher education.

Proposed law defines certain terms including "affiliate organization", "foreign country of concern", and "foreign source".

Proposed law requires each institution of higher education and its affiliate organizations to report any gift received directly or indirectly from a foreign source having a value of \$50,000 or more in a fiscal year and that the report include all gifts valued at \$50,000 or more. Provides that the report be made to the following:

- (1) The institution's board of supervisors and an annual summary to the Board of Regents.
- (2) Unless already reported to the institution's board of supervisors, an annual summary of the gifts shall be filed with the Board of Regents for any institution of higher education or an affiliate organization of the institution.

Proposed law requires that the report include the amount of the gift and the date received; if the gift is a contract, its start and end date; name of the foreign source and country of principal residence or domicile; and a copy of the agreement between the foreign source and the institution.

Proposed law, beginning July 1, 2024, requires the internal auditor of the Board of Regents to annually audit a random sample of at least five percent of the total number of gifts. Provides for audits upon request by the governor or the presiding officers of the legislature.

Proposed law subjects an institution of higher education to a civil penalty of 105% of the amount of undisclosed gifts if it knowingly, willfully, or negligently fails to disclose the information required in proposed law.

Proposed law requires that every person seeking employment in an institution of higher education that receives state appropriations and has an annual research budget of \$10 million or more, in a research or research-related support position, or applying as a graduate student for a research or research-related support position, or for a position as a visiting researcher be screened prior to being offered a position of employment to determine the following:

- (1) Whether the person is a citizen of a foreign country and not a permanent resident of the United States.
- (2) Whether the person is a citizen or permanent resident of the United States who has any affiliation with an institution or program in a foreign country of concern.
- (3) Whether the person has at least one year of prior employment or training in a foreign country of concern, except for employment or training by an agency of the United States government.

Proposed law requires foreign applicants to provide a copy of their current passport and the

most recently submitted Online Nonimmigrant Visa Application, DS-160.

Proposed law requires every applicant to submit a complete resume and curriculum vitae, including every institution of higher education attended; all previous employment since the applicant's eighteenth birthday; a list of all published material for which the applicant received credit as an author, a researcher, or otherwise or to which the applicant contributed significant research, writing, or editorial support; a list of the applicant's current and pending research funding, and its amount, from any source, including the applicant's role on the project, and a brief description of the research; and a full disclosure of non-university professional activities, including any affiliation with an institution or program in a foreign country of concern. If an applicant has been continually employed or enrolled in a postsecondary education institution in the United States for 20 years or more, the resume may but does not have to, include employment history before the most recent twenty year period.

Proposed law requires review and verification of all materials submitted as well as attendance, employment, publications, and contributions listed in the application prior to any offer of a position to the applicant. Provides that verification steps may include the following:

- (1) Searching public databases for research publications and presentations.
- (2) Searching public conflict of interest records to identify any research publication or presentation that may have been omitted from the application.
- (3) Contacting employers from the previous 10 years to verify employment.
- (4) Contacting all institutions of higher education attended to verify enrollment and educational progress.
- (5) Searching public listings of persons subject to sanctions or restrictions under federal law.
- (6) Requesting further investigation, including but not limited to a second background check performed by the Federal Bureau of Investigation, the La. State Police, or other qualified local law enforcement agency, if any of the individual's information provided on the Form DS-160 raises any security concerns for the institution about the individual's relationship with a foreign country of concern.

Proposed law authorizes each institution to direct the approval of an applicant for hire based on a risk-based determination considering the nature of the research and the background and ongoing affiliations of the applicant.

Proposed law requires, by July 1, 2023, each institution receiving state appropriations and with a research budget of \$10 million or more to establish an international travel approval and monitoring program. Requires preapproval and screening by the institution for any employment-related foreign travel and employment-related foreign activities engaged in by all faculty, researchers, and research department staff. Provides that preapproval be based on the applicant's review and acknowledgment of guidance from the institution which relates to countries under sanctions or other restrictions imposed by the state or federal government, including any federal license requirement; customs rules; export controls; restrictions on taking institution property, including intellectual property, abroad; restrictions on presentations, teaching, and interactions with foreign colleagues; and other subjects important to the research and academic integrity of the institution.

Proposed law requires any person subject to proposed law traveling abroad representing their institution, upon return, to report any gifts of funds, or promises to pay by a foreign country of concern or any entity representing the interests of a foreign country of concern.

Proposed law requires each institution to maintain records of all foreign travel requests and approvals; expenses reimbursed by the institution during travel, including for transportation, food, and lodging; and payments and honoraria received during the travel and activities, including for transportation, food, and lodging; keep records of the purpose of the travel and any records related to the foreign activity review. Requires retention of records for at least three years or any longer period of time required by any law.

Proposed law requires an annual report of foreign travel to countries of concern listing individual travelers, foreign locations visited, and foreign institutions visited to the college or university's board of supervisors.

Proposed law requires office of legislative auditor to perform an operational audit on implementation of proposed law by July 1, 2025.

Effective July 1, 2023.

(Adds R.S. 17:1826.1 - 1826.4)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Makes technical change.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Named the bill the "Higher Education Foreign Security Act of 2022".
2. Redefined "foreign country of concern".
3. Removes references to undergraduate students.
4. Removes references to the interview of students.
5. Requires any person subject to proposed law traveling abroad representing their institution, upon return, to report any gifts of funds, or promises to pay offered by a foreign country of concern or any entity representing the interests of a foreign country of concern.
6. Removes requirement that the institutions designate a research integrity officer.

Senate Floor Amendments to reengrossed bill

1. Adds the requirements for the reporting of gifts from a foreign source to an institution also applies to the institution's affiliate organizations.
2. Makes technical corrections.