



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5853/1
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2021 ASSEMBLY BILL 946

February 2, 2022 - Introduced by Representatives MURPHY, ARMSTRONG, GUNDRUM and ALLEN, cosponsored by Senators ROTH and DARLING. Referred to Committee on State Affairs.

- 1 **AN ACT to create** 36.46 and 36.47 of the statutes; **relating to:** research at
2 University of Wisconsin System institutions, disclosure requirements relating
3 to contracts with and gifts from foreign sources, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates institutional and individual disclosure requirements applicable to institutions of the University of Wisconsin System and to UW System employees and others relating to research and to contracts with and gifts from foreign governments, companies, and individuals. The bill also requires each UW institution that conducts research to have a research best practices policy.

Current law requires the Board of Regents of the UW System to report to the legislature annually on the number and outcome of certain classified research contracts and biennially on the purpose, duration, cost, and anticipated completion date of research projects funded with general purpose revenue. In addition, the chancellor of UW-Madison on behalf of UW-Madison, and the Board of Regents on behalf of the other UW institutions, must annually submit to the legislature an accountability report that identifies, among other economic-development-related data, the amount and source of research funds, the number of government contracts received, and the number of research projects in progress or completed.

Current law also prohibits any UW System employee from acting as an agent for another if it would create a conflict of interest with the terms of the employee's service in the UW System and also requires the Board of Regents to promulgate rules relating to conflicts of interest. These rules prohibit specified persons, including

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faculty and academic staff, from engaging in outside activities if doing so conflicts with his or her public responsibilities to the UW institution or to the UW System. In addition, the rules require such a person to annually report to his or her institution the following: 1) associations with organizations related to his or her fields of academic interest or specialization; 2) private remunerative relationships with nongovernmental sponsors of university research for which the person is a principal investigator; and 3) remunerative outside activities in his or her field of academic interest or specialization. The rules also require each UW institution to develop policies and procedures relating to outside activities, including those relating to use of university facilities, absences from regular duties, and conflicts of interest.

Also under current law, with exceptions, it is a crime for a public employee to participate in a contract in both an official and private capacity if the employee has a private pecuniary interest and also an official function requiring the exercise of discretion. Among the exceptions, the provision does not apply to a contract between a research company and the UW System or a UW institution for the purchase of goods or services, including research, if the interest that a UW System employee has in the research company has been evaluated and addressed in a management plan for evaluating and managing potential conflicts of interest and this plan complies with the Board of Regents' policy for such management plans.

Federal law also requires each UW institution to annually submit to the federal Department of Education a publicly available disclosure report containing certain information if the institution receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year. Federal law requires additional disclosures of gifts from or contracts with foreign sources that contain certain restrictions or conditions.

Under the bill, if a UW institution receives a gift from or enters into a contract with a foreign source, the value of which is \$50,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the UW institution must submit to the legislature and to the state Department of Justice an annual disclosure report containing 1) the aggregate dollar amount of the gifts and contracts by country and 2) the purpose of each gift or contract. A "foreign source" includes a foreign government, a foreign legal entity or its subsidiary or affiliate, and an individual who is not a U.S. citizen or national. A "gift" includes a gift of money or property. A "contract" is defined as an agreement for the acquisition by purchase, lease, or barter of property or services by a foreign source, for the direct benefit or use of either of the parties. The Board of Regents may submit one report on behalf of multiple UW institutions.

The bill also requires each UW institution to separately disclose any restricted or conditional gift or contract from a foreign source. A "restricted or conditional gift or contract" is defined as any endowment, gift, grant, contract, award, present, or property that includes provisions regarding the employment, assignment, or termination of faculty; the establishment of departments, centers, programs, or new faculty positions; the selection or admission of students; or the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students

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of a specified country, religion, sex, ethnic origin, or political opinion. The disclosure must include the dollar amount, the date, a description of the conditions or restrictions, and the applicable country.

Under the bill, if a UW System employee fails to act in good faith and with reasonable diligence to facilitate a UW institution's reporting of foreign-source gifts and contracts with an aggregate value of at least \$50,000 or of a restricted or conditional gift or contract, the employee may be fined not more than \$5,000 for the first offense and not more than \$10,000 for each subsequent offense.

In addition to institutional disclosures, the bill requires each UW System employee who participates in research conducted at or sponsored by a UW institution, and each third-party researcher, to disclose all research contracts with and gifts from any foreign source associated with the People's Republic of China, Russia, Cuba, Iran, North Korea, or Syria to the extent the contract or gift involves the employee or third-party researcher. The bill defines a "third-party researcher" as a principal investigator, project director, collaborator, consultant, or other person who participates in the design, conduct, or reporting of research conducted at or sponsored by a UW institution and who is not a UW System employee or student. The disclosure must be made to the applicable UW institution and include the amount of the contract or gift; the date the contract was entered into or the gift received; the name and address of the foreign source; and a copy of any applicable agreement. Any person who willfully or with gross negligence violates these disclosure requirements may be fined an amount not exceeding 105 percent of the amount of the applicable contract or gift.

The bill also requires each UW institution to ensure that its employees and students who perform research supported by state or federal funds, and any other person who participates in such research at the institution, satisfy all disclosure requirements associated with the awarding of the research funding, including the reporting of financial conflicts of interest under federal rules governing the management and reporting of financial conflicts of interest in U.S. Public Health Service-funded research. Unless the UW institution already maintains such a policy or does not conduct research, each UW institution must create a policy of best practices for research projects, security, and collaboration that further American scientific standards of transparency, reciprocity, merit-based competition, and integrity. In developing this policy, the institution must consider best practice standards established by federal agencies and other entities that award research grants.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 **SECTION 1.** 36.46 of the statutes is created to read:

2 **36.46 Disclosure of foreign sources of funding. (1) DEFINITIONS.** In this
3 section:

4 (a) “Attributable country,” with respect to a foreign source, means the
5 following:

6 1. For a foreign source who is an individual, the country of citizenship or, if
7 unknown, the principal residence.

8 2. For a foreign source that is a legal entity, but not including a foreign
9 government, the country of incorporation or, if unknown, the principal place of
10 business.

11 (b) “Contract” means any agreement for the acquisition by purchase, lease, or
12 barter of property or services by a foreign source, for the direct benefit or use of either
13 of the parties.

14 (c) “Country of concern” means the People’s Republic of China, Russia, Cuba,
15 Iran, North Korea, or Syria.

16 (d) “Foreign source” means any of the following:

17 1. A foreign government, including an agency of a foreign government.

18 2. A legal entity, governmental or otherwise, created solely under the laws of
19 a foreign state.

20 3. An individual who is not a citizen or a national of the United States or of a
21 trust territory or protectorate of the United States.

22 4. An agent, including a subsidiary or affiliate of a foreign legal entity, acting
23 on behalf of a foreign source.

24 (e) “Gift” means any gift of money or property.

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1 (f) “Restricted or conditional gift or contract” means any endowment, gift,
2 grant, contract, award, present, or property of any kind that includes provisions
3 regarding any of the following:

4 1. The employment, assignment, or termination of faculty.

5 2. The establishment of departments, centers, research or lecture programs,
6 or new faculty positions.

7 3. The selection or admission of students.

8 4. The award of grants, loans, scholarships, fellowships, or other forms of
9 financial aid restricted to students of a specified country, religion, sex, ethnic origin,
10 or political opinion.

11 (g) “Third-party researcher” means a principal investigator, project director,
12 collaborator, consultant, or other person who participates in the design, conduct, or
13 reporting of research conducted at or sponsored by an institution and who is not a
14 system employee or student.

15 **(2) INSTITUTIONAL DISCLOSURE.** (a) If an institution receives a gift from or enters
16 into a contract with a foreign source, the value of which is \$50,000 or more,
17 considered alone or in combination with all other gifts from or contracts with that
18 foreign source within a calendar year, the institution shall submit under s. 13.172
19 (3) to the standing committees of the legislature with jurisdiction over higher
20 education matters, and to the department of justice, an annual disclosure report as
21 provided in pars. (b) and (c).

22 (b) 1. A report required under par. (a) shall be submitted no later than January
23 31 after the calendar year to which the report applies.

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1 2. In lieu of submitting a report under par. (a), an institution may provide all
2 applicable information to the board and the board may submit a report on behalf of
3 multiple institutions containing all information required from these institutions.

4 (c) Each report required under par. (a) shall contain all of the following:

5 1. For gifts received from or contracts entered into with a foreign source other
6 than a foreign government, the aggregate dollar amount of the gifts and contracts,
7 disclosed according to each attributable country.

8 2. For gifts received from or contracts entered into with a foreign government,
9 the aggregate dollar amount of the gifts and contracts received from each foreign
10 government.

11 3. For each gift received from or contract entered into with any foreign source,
12 the purpose of the gift or contract.

13 (d) 1. In addition to the requirement under par. (a), if an institution receives
14 a restricted or conditional gift or contract from a foreign source within a calendar
15 year, the institution shall disclose all of the following:

16 a. For gifts received from or contracts entered into with a foreign source other
17 than a foreign government, the dollar amount, the date, a description of the
18 conditions or restrictions, and the attributable country.

19 b. For gifts received from or contracts entered into with a foreign government,
20 the dollar amount, the date, a description of the conditions or restrictions, and the
21 name of the foreign government.

22 2. If an institution is required to submit a report under par. (a), the disclosure
23 required under this paragraph shall be included in the report under par. (a) for the
24 same calendar year. If an institution is not required to submit a report under par.
25 (a) for a calendar year but is subject to the disclosure requirement under this

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1 paragraph for that calendar year, the disclosure shall be submitted in the manner
2 and by the deadline described in pars. (a) and (b).

3 (e) An institution may satisfy the reporting requirements under this subsection
4 by submitting a report the institution prepared for a federal agency if the report
5 contains all information required under this subsection.

6 **(3) INDIVIDUAL DISCLOSURE.** (a) Each system employee who participates in
7 research conducted at or sponsored by an institution, and each 3rd-party researcher,
8 shall disclose all research contracts with and gifts from any foreign source associated
9 with a country of concern to the extent the contract or gift involves the employee or
10 3rd-party researcher.

11 (b) The disclosure required under par. (a) shall be made to the applicable
12 institution immediately upon execution of the contract or receipt of the gift. The
13 disclosure shall be made in the form and manner prescribed by the board but shall
14 include all of the following:

- 15 1. The amount of the contract or gift.
- 16 2. The date the contract was entered into, along with the contract start and end
17 date, or the date the gift was received.
- 18 3. The name and address of the foreign source.
- 19 4. A copy of any applicable agreement.

20 **(4) PENALTIES.** (a) Any system employee who fails to act in good faith and with
21 reasonable diligence to facilitate an institution's compliance with the requirements
22 under sub. (2) may be fined not more than \$5,000 for the first offense and not more
23 than \$10,000 for each subsequent offense.

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1 (b) Any person who willfully or with gross negligence violates the requirements
2 under sub. (3) may be fined an amount not exceeding 105 percent of the amount of
3 the applicable contract or gift.

4 **SECTION 2.** 36.47 of the statutes is created to read:

5 **36.47 Basic research standards.** (1) Each institution shall ensure that
6 system employees assigned to and students enrolled in the institution who perform
7 research supported by state or federal funds, and any other person who participates
8 in such research at the institution, satisfy all disclosure requirements associated
9 with the awarding of the research funding, including the reporting of financial
10 conflicts of interest under 42 CFR 50.605, as applicable.

11 (2) (a) Each institution shall create a policy of best practices for research
12 projects, security, and collaboration that further American scientific standards of
13 transparency, reciprocity, merit-based competition, and integrity. In developing the
14 policy, the institution shall consider best practice standards established by federal
15 agencies and other entities that award research grants. This paragraph does not
16 apply if, on the effective date of this paragraph [LRB inserts date], the institution
17 maintains a policy consistent with the requirements of this paragraph.

18 (b) Each institution shall provide resources, developed by the institution, for
19 preparing grant proposals to system employees assigned to and students enrolled in
20 the institution who are involved in research activities.

21 (c) This subsection does not apply to an institution at which no research is
22 conducted.

23 **SECTION 3. Nonstatutory provisions.**

24 (1) INDIVIDUAL DISCLOSURE FOR EXISTING CONTRACTS AND PRIOR GIFTS.

25 (a) In this subsection:

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1 1. "Contract" has the meaning given in s. 36.46 (1) (b).

2 2. "Country of concern" has the meaning given in s. 36.46 (1) (c).

3 3. "Foreign source" has the meaning given in s. 36.46 (1) (d).

4 4. "Gift" has the meaning given in s. 36.46 (1) (e).

5 5. "Institution" has the meaning given in s. 36.05 (9).

6 6. "System" has the meaning given in s. 36.05 (12).

7 7. "Third-party researcher" has the meaning given in s. 36.46 (1) (g).

8 (b) Each system employee who participates in research conducted at or
9 sponsored by an institution, and each 3rd-party researcher, shall disclose all
10 research contracts and gifts specified in par. (c) to the extent the contract or gift
11 involves the employee or 3rd-party researcher.

12 (c) Paragraph (b) applies to all of the following:

13 1. All research contracts with any foreign source associated with a country of
14 concern that are in effect on the effective date of this subdivision.

15 2. All gifts received from any foreign source associated with a country of
16 concern within 2 years immediately preceding the effective date of this subdivision.

17 (d) The disclosure required under pars. (b) and (c) shall be made to the
18 applicable institution not later than 6 months after the effective date of this
19 paragraph. The disclosure shall include all of the information specified in s. 36.46
20 (3) (b) 1. to 4.

21 **SECTION 4. Initial applicability.**

22 (1) The treatment of s. 36.46 (2) and (3) first applies to contracts entered into
23 and gifts received on the effective date of this subsection.

24 **SECTION 5. Effective date.**

