

No. 1985-99

## AN ACT

HB 971

Requiring the disclosure of gifts to institutions of higher education made by foreign governments, foreign legal entities and foreign persons.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Higher Education Gift Disclosure Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“College or university.” Any nonprofit educational institution situated within this Commonwealth empowered to provide a program of education beyond the high school level and which, by virtue of governing law and regulation, is recognized by the State Board of Education as an institution of higher education and which places no restrictions upon the admission of students based upon race, creed or national origin. The term includes all institutions of the State System of Higher Education.

“Department.” The Department of Education of the Commonwealth.

“Foreign government.” Any government other than the United States Government or the government of a state or a political subdivision thereof. The term shall include an agent of such government.

“Foreign legal entity.”

(1) Any legal entity created under the laws of a foreign government.

(2) Any legal entity created under the laws of the United States or of any state or political subdivision thereof if:

(i) fifty percent of the ownership of the stock of, or interest in, such legal entity is directly or indirectly owned legally or beneficially by one or more foreign governments or one or more foreign persons;

(ii) fifty percent of the membership of any such entity is composed of foreign persons or legal entities created under the laws of a foreign government or agents of such legal entities; or

(iii) fifty percent of the assets of such entity are derived from contributions or loans from foreign governments or foreign persons.

“Foreign person.” Any foreign legal entity and any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof. The term shall include an agent of such individual.

“Gift.” Any contract, gift, grant, endowment, award or donation of money or property of any kind, or any combination of these, which in any one fiscal year equals or exceeds \$100,000.

“Secretary.” The Secretary of Education of the Commonwealth.

Section 3. Disclosure requirements.

(a) In general.—

(1) Every college and university shall disclose the amount, terms, restrictions, requirements and conditions attached to or made a part of any gift of a value equal to or in excess of \$100,000 made to the college or university by a donor known to the college or university through reasonable good faith efforts to be a foreign government, foreign legal entity or foreign person in any fiscal year of the college or university. This provision shall only apply in circumstances where the contribution of the foreign government, foreign legal entity or foreign person, alone or together with others, exceeds 50% of the total gift.

(2) If the foreign government, foreign legal entity or foreign person makes more than one gift to a college or university in any fiscal year of the college or university and the total value of the gifts equals or exceeds \$100,000, the college or university shall make the same disclosure with respect to all such gifts received.

(b) Report.—The foregoing information shall be forwarded by a college or university to the secretary not later than the due date for the Federal return of organizations exempt from income tax. Such information shall include:

(1) The name and address of the donor of the gift.

(2) The amount and date of the making of each gift.

(3) The subject of each gift.

(4) A detailed description of any terms, restrictions, requirements or conditions imposed on the college by the terms of the gift.

(5) A detailed description of the purpose for which the gift will be used by the college or university, including the identification of the persons whom the gift is explicitly intended to benefit.

(c) Forms.—Colleges and universities shall forward the foregoing information to the secretary on forms prepared and made available by the secretary for that purpose.

Section 4. Alumni gift reports.

Notwithstanding the provisions of this act, if the foreign source is an alumnus, and no grant or contract contains any conditions, restrictions, requirements, matching provisions or designations other than that the grant or contract is given for the benefit of the institution as a whole, the disclosure report shall be required to disclose only the nationality and country of residence of the foreign source.

Section 5. Publication of gifts and contracts.

The information subject to disclosure under section 3 shall be a matter of public record and shall be made available by the department to the general public for review and copying during normal business hours.

Section 6. Sworn statement of nationality.

Any college or university may, at its option, request any donor to submit a sworn statement, on a form prepared and made available to the colleges and universities by the secretary for that purpose, attesting to whether the donor

is a foreign legal entity or foreign person. A college or university may thereafter, without further penalty, rely upon that sworn statement in complying with the disclosure requirements of this act with respect to the foreign status of the donor.

**Section 7. Penalties.**

(a) **Donee penalty.**—Any college or university that willfully or intentionally fails to disclose the information required by section 3 shall be subject to a civil penalty of 105% of the amount of any undisclosed gift.

(b) **Donor penalty.**—Any foreign legal entity or foreign person that submits a false sworn statement, on their own behalf or on behalf of a foreign government, to a college or university pursuant to section 6 as defined in 18 Pa.C.S. § 4904(b) (relating to unsworn falsification to authorities) shall be subject to the penalties prescribed therein.

**Section 8. Effective date.**

This act shall take effect in 60 days.

**APPROVED—**The 19th day of December, A. D. 1985.

**DICK THORNBURGH**