

MINUTES
HOUSE STATE AFFAIRS COMMITTEE

DATE: Thursday, February 29, 2024

TIME: 9:00 A.M.

PLACE: Room EW40

MEMBERS: Chairman Crane(13), Vice Chairman Young, Representatives Palmer, Barbieri, Holtzclaw, Scott, Andrus, Skaug, Alfieri, Allgood, Crane (Crane) (12), Gannon, Achilles

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet will be retained in the committee secretary's office; following the end of session the sign-in sheet will be filed with the minutes in the Legislative Library.

Vice Chairman Young called the meeting to order at 9:00 AM.

HCR 26: **Elizabeth Bowen**, legislative legal counsel, presented **HCR 26** explaining she is here to give advice on the University of Idaho's purchase of the University of Phoenix. She outlined on May 18th, 2023 the Board of Regents of the University of Idaho voted to authorize the creating of FourThree education a non-profit which would acquire all the assets of the University of Phoenix. The Board of Regents and the University of Idaho would be the sole members of FourThree. She argued the Board has no constitutional or statutory authority to acquire and own another university, create a corporation, or invent new powers for itself. Furthermore, since the constitutional authority to create FourThree does not exist, if the corporation fails a court could hold the University of Idaho responsible for any debts. **HCR 26** asks the Board to reconsider the transactions and what they have done to bypass the legislature, as well as authorizes the Speaker of the House and the President Pro Tem of the Senate to take legal action on behalf of the legislature if necessary.

In response to committee questions, **Ms. Bowen** clarified there are no laws which would require a non-profit corporation to share records or comply with open meeting regulations. She stated it would be a good idea for the legislature to create a committee to review all the documents related to transactions, seek the advice of experts, and discuss further with the Department of Education. She clarified in their public roles she does not believe University leadership and the Board of Regents had the constitutional authority to form this non-profit, though it does not qualify as misuse of public funds since only bond funds will be used for the transaction. She cited a court ruling in California in which a university was held liable after a non-profit created had gone defunct.

Scott Green, University of Idaho President, testified **in opposition to HCR 26** stating the University has acted in good faith based on counsel of advisors since the beginning. He affirmed though this conversation centers on risk, this transaction can help elevate higher education in Idaho with new learning modalities and degree options. In response to committee questions, President Green stated the University did not have a mechanism to seek the approval of the legislature since this transaction did not require an appropriation. He stated the legal opinions provided by their counsel were shared with JFAC and with this committee. The purchase agreement is on the website and bonding documents will be made available when they are finished. He highlighted they followed their checklists provided by legal counsel which includes their reporting line of the Board of Regents, then the Governor, but does not include the legislature. He spoke to the University

being a land grant institution stating none of the 42 brick and mortar buildings throughout the state will close due to the transaction because they provide other services. Additionally this will allow the land grant mission to be met in new ways by bringing in qualified teachers where the University is currently unable to find them. He mentioned online learning is one of the best ways to provide access to education and serve nontraditional learners. He emphasized University of Phoenix will have its own management team, as will the University of Idaho. He pointed out the other universities in Idaho supported this transaction and believe it will help the development of Online Idaho. He confirmed their legal counsel was hired because of their expertise and stated all materials presented to the Board about this transaction are on the University website. He answered committee questions regarding various actors in the transaction including Apollo Education and Hogan Lovells and affirmed conflicts of interest would have had to have been disclosed before the transaction.

Kent Nelson, Special Counsel to the University of Idaho, answered additional committee questions explaining bonding documents will be shared with the public and the legislature upon their completion, and stated the legally binding contract for this transaction has already been signed. In regard to constitutional authority he clarified the Board of Regents' authority is embedded in the Constitution which is confirmed throughout Idaho case law, making this transaction legal. He further stated he was in charge of interviewing and hiring Hogan Lovells.

Kurt Liebich, State Board of Education, responded to further committee questions stating with hindsight he feels they should have gotten more legislative involvement, however the timeline was key to the seller in this transaction. He highlighted the enormous changes happening in higher education stating online learning is more cost effective and offers growth in student population through adult learners. He affirmed a lawsuit filed by the legislature would put the transaction at risk and closed stating standing still and not considering transactions like this at all also poses great risk to the University.

Mike Stoddard, Hawley Troxell, answered other committee questions, citing Article 9 Sections 2 and 10 as Idaho constitutional authority for the Board of Regents. He clarified the main reason for the creation of FourThree was to limit the liability to the University of Idaho more clearly as FourThree will be responsible for repaying bonds leaving the University and the State with no legal obligation.

April Renfro, Legislative Audits, responded to committee questions about how this transaction will appear on state financial records stating the University of Idaho has included FourThree in their component units and the University's assets and liabilities will be reported.

**UNANIMOUS
CONSENT
REQUEST:**

Vice Chairman Young asked unanimous consent to **HOLD HCR 26** for one legislative day. There being no opposition the request was granted.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 10:56 AM.

Representative Young
Chair

Kennedy Jones
Secretary