

MINUTES  
**JOINT FINANCE-APPROPRIATIONS COMMITTEE**

**DATE:** Friday, June 16, 2023

**TIME:** 10:00 A.M.

**PLACE:** Lincoln Auditorium WW02

**MEMBERS PRESENT:** Senators Co-chairman Grow, Bjerke, Burtenshaw, Lent, Cook, VanOrden, Adams, Herndon, Ward-Engelking, Just

Representatives Co-chairman Horman, Miller, Raybould, Furniss, Handy, Lambert, Petzke, Tanner, Green

**ABSENT/ EXCUSED:** Representative Bundy

**CONVENED:** **Co-Chairman Grow** called the meeting to order at 9:59 a.m.; a silent roll call was taken.

**OPENING REMARKS:** **Co-Chairman Grow** welcomed those in attendance and explained the purpose of having a public hearing regarding the University of Idaho's purchase of the University of Phoenix. Senator Grow elaborated that, as the committee responsible for appropriating funds for state universities, giving the members of the JFAC committee an opportunity to ask legal, fiscal, and risk-based questions about the purchase was important. **Co-Chairman Horman** reinforced the reasons for the hearing by discussing the committee's role in the fiscal oversight of the taxpayers' money and the committee's desire to ensure that the risks associated with the purchase will not negatively impact Idaho taxpayers. **Co-Chairman Grow** reminded JFAC members that the individuals from Hawley-Troxel and Ernst & Young are advocates for the University of Idaho and are not representing the State of Idaho.

**AGENCY PRESENTATION:** **UNIVERSITY OF IDAHO (UOI); Scott Green, President**

**President Green** highlighted the constraints created by non-disclosures agreements (NDAs) associated with the deal to affiliate with the University of Phoenix (UOP). He acknowledged that this has limited UOI from sharing details of the deal, but it also provided an opportunity for UOI's team to thoroughly analyze the financials and risks associated with the deal. **Mr. Green** explained that this transaction will be creating a separate entity that holds assets and becomes a nonprofit entity, therefore UOI and UOP will remain separate entities affiliated through that newly created nonprofit at no cost to taxpayers. **Mr. Green** also expanded on how this transaction would meet requests the legislature made of UOI, including: reducing cost of delivery, increasing innovation to combat economic disruptions, producing more pathways for rural students and increasing the number of degrees for in-demand jobs. He also described the economic outlook for higher education and summarized the forward-looking trends with in-person enrollment declining and the demand for online programs for adult learners increasing.

In response to Committee questions, **Mr. Green** explained that the deal is not closed, therefore the risk to the seller (UOP) is still high. The NDAs are there for the benefit of both the buyer and the seller. The seller receives protections for their

business interests in the form of privacy from the public marketplace. The buyer (UOI) attains access to detailed financials and records to identify the risk associated with the deal to evaluate whether or not it's a sound business decision. **Mr. Green** also stated that UOI has acted with the approval and oversight of the Idaho State Board of education.

In response to Committee questions, **Mr. Green** explained that there has been oversight from UOI Board of Regents, and they have kept the Governor's Office informed. **Mr. Green** stated his belief that the State Board of Education Policy was followed but referred to the Idaho State Board of Education to elaborate on the implementation of that policy.

**Idaho State Board of Education Member Dr. David Hill** came forward and referred to the Idaho State Constitution and reinforced that this transaction is the affiliation of two separate entities. In response to Committee questions, **Dr. Hill** stated that it is his understanding that Mr. Green held several public hearings hosted by UOI and that the State Board of Education does not generally hold public hearings on matters like this transaction.

In response to Committee questions, **President Green** explained the surpluses generated by UOP can be distributed back into UOP or however the UOP Board of Directors sees fit. Per the agreement with UOP it is intended that \$10 million of any surplus annually would be distributed to UOI for principal and interest to be paid, and it is possible that additional funds could also be distributed back to UOI if it is a mutually beneficial action. **Mr. Green** provided information about the organizational structure including the new nonprofit placement and he explained how UOI will be affiliated with UOP through the nonprofit with the oversight of the Board of Regents, which is the governing body of UOI. **Mr. Green** also shared projected financial metrics illustrating the impact of the transaction.

In response to Committee questions, **Mr. Green** clarified the structure of the nonprofit. **Mr. Green** explained how nonprofits acquire surpluses or deficits, not profits, and those surpluses are then distributed back into the business.

In response to Committee questions, **Mr. Green** spoke of UOI's history and their Board of Regents. He then elaborated that the bonds issued for this transaction would be funded and secured by assets and revenue from UOP, mitigating risk for UOI and the State of Idaho. **Mr. Green** then read UOI's outside counsels' statement on the transaction. "The Regents possess ample powers through the Idaho Constitution and applicable Idaho statutes to, (i) form a nonprofit corporation; (ii) acquire assets indirectly through the nonprofit corporation; (iii) allow the nonprofit corporation to issue debt and incur liabilities secured principally by the nonprofit corporations' assets and revenues; and (iv) incur direct university liabilities on behalf of the nonprofit corporation if necessary, subject to the overall limitations that the university serves a public purpose and does not obligate state appropriated funds." **Mr. Green** also reinforced that there will always be some level of risk with any transaction and that UOI has worked to mitigate the risk to the State of Idaho as much as possible.

In response to Committee questions, **Mr. Green** stated that there are approximately 400 Idaho students currently enrolled in UOP and explained the benefits of the affiliation with UOP. **Mr. Green** highlighted how online learning will expand UOI

offerings to Idaho citizens looking to further their education.

In response to Committee questions, **Mr. Green** gave a verbal SWOT analysis of UOI's position. UOI's strength is the university's dedication to research in multiple industries and fields and UOI's weakness is not having a strong online program. UOI's opportunity is to gain a new category of student demographics and the threat to UOI is the projected decrease in in-person enrollment.

In response to Committee questions, **Mr. Green** explained what the Committee would have access to and what UOI's future JFAC presentations would contain. The committee would have access to UOI's financial records, which would include information about the affiliation with UOP. He also stated that UOI has the responsibility to provide information about the transaction and its effect on UOI's financials to the JFAC Committee during budget hearings.

In response to Committee questions, **Mr. Green** explained that the seller (UOP) has the authority to lift the NDA and it is unlikely that they will lift the NDA until the transaction is closed. He expressed that he could not speak for the board about the procedure followed for executive session, but he had knowledge that executive sessions were held.

**Idaho State Board of Education Executive Director Matt Freeman** stepped forward to address committee questions related to executive sessions. **Mr. Freeman** stated that when the state board of education went into executive session to discuss the matters related to this transaction, the provision of the open meeting law they used was to consider preliminary negotiations involving matters of trade or commerce in which the governing body was in competition with governing bodies in other states or nations. **Mr. Freeman** reinforced that no decisions can be made in executive session. He then explained that the State Board of Education stated that no decisions were made for the record when the board left executive session.

In response to Committee questions, **President Green** expanded on the payment of legal fees for this transaction. UOI has paid half a million dollars in bills so far but expects the expense to be more than \$5 million. UOI will be paying that expense until UOI begins receiving payments from UOP. The intentions for the initial payments from UOP are to reimburse UOI for that expense.

In response to Committee questions, **Mr. Green** interpreted the reasons behind UOI's year-over-year Earnings Before Interest, Taxes, Depreciation, and Amortization growth projections. UOI is highly reliant on in-person enrollment currently, which is projected to decrease due to several factors. UOP has downsized its operation and focused adult learners in a primarily online environment. UOP's enrollment year-to-date in this demographic has grown approximately 8%. **Mr. Green** stated that UOI is affiliating with the UOP of today, not the UOP of that past. **Mr. Green** also mentioned that Online Idaho will benefit from this transaction because it will provide access to UOP's technology for online learning. **Mr. Green** addressed the failed transaction between University of Arkansas and UOP.

**Idaho State Board of Education Member Dr. David Hill** came forward to summarize a memo from the board of education pertaining to Online Idaho. He highlighted that they have integrated all 8 higher education institutions into one common learning management system, have created a financial aid cooperation

agreement, and have combined all online course catalogs in one place simplifying the student experience. **Dr. Hill** also noted that UOP will not replace Online Idaho but will augment Online Idaho. The two entities serve different demographics and Online Idaho can gain technology from UOP to better serve Idaho students.

In response to Committee questions, **President Green** clarified what the strategic investment fund is and where the funds for that account came from.

In response to Committee questions, **Mr. Green** explained what UOI would do in the best-case, and worst-case financial scenarios related to the affiliation with UOP. In the best-case scenario, when the university would have excess funds, UOI would work to give back to Idaho students in the form of scholarship. In the worst-case scenario, the diversification created by affiliating with UOP would mitigate risk. To fulfill the annual \$10 million debt obligation in a worst-case scenario, after all preventive measures have failed, UOI would resort to using non-appropriated sources to pay, including revenue from housing, parking, dining, vandal brand stores, licensing, distributions from UOI's foundation, and donor gifts.

In response to Committee questions, **Kent Nelson, General Counsel for UOI**, stated that the employees of the nonprofit organization will not be employed by UOI.

In response to Committee questions, **President Green** expressed that no formalized deal was made before the executive sessions with the Idaho State Board of Education were held. He also personally attested to there being no decisions made during executive sessions where he was present.

**Idaho State Board of Education Executive Director Matt Freeman** stepped forward and stated that the board was aware of two other states in negotiations with UOP and counsel from their Deputy Attorney General advised the exemption used was appropriate.

In response to Committee questions, **General Counsel for UOI, Kent Nelson**, addressed when the committee would have access to information related to the transaction. **Mr. Nelson** highlighted that access to eligible information would be gradual as the deal develops.

In response to Committee questions, **President Green** explained that the Apollo Group will not be involved and the leadership team of UOP will remain the same.

In response to Committee questions, **Mr. Green** discussed the possibilities of UOP synthesizing educational programs in the future.

In response to Committee questions, **Mr. Green** explained UOP's reputation risk from past lawsuits and stated that all lawsuits have been settled and none of the previous management from that period are a part of the current deal. UOP student debt is another risk exposure that the UOP management team has been addressing by contributing \$1.5 million to that exposure. To mitigate that risk, UOI negotiated to have \$200 million to be left on the balance sheet.

In response to Committee questions, **Mr. Green** clarified that UOP will no longer be a private business by the close of the transaction, meaning profit that used to be going to investors no longer will be. This transaction aligns with UOI's mission and

if similar opportunities arise in the future, UOI will consider them.

In response to Committee questions, **Mr. Green** addressed the impacts of the annual \$10 Million bond obligation. UOI and UOP will need to attain approval from creditors for the substantial change before entering the bond market. **Mr. Green** estimated entering the bond market in January of 2024. He also stated that they will be hedging their interest rates.

In closing, **Mr. Green** expressed his appreciation for the opportunity to explain the transaction and answer related questions. He also stated that ongoing questions are welcome.

**Co-Chairman Grow** closed the meeting by thanking everyone in attendance. He expressed that he looks forward to open dialogue with UOI as the transaction moves forward.

**ADJOURNED** **Co-Chairman Grow** adjourned the meeting at 12:02 PM.

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Senator Grow  
Chair

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Keith Bybee  
Secretary