

IN THE SENATE

SENATE BILL NO. 1450

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING CHAPTER 28, TITLE 33, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 33-2818, IDAHO CODE, TO PROVIDE A SHORT TI-
3 TLE; AMENDING CHAPTER 28, TITLE 33, IDAHO CODE, BY THE ADDITION OF A
4 NEW SECTION 33-2819, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 28,
5 TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2820, IDAHO
6 CODE, TO ESTABLISH AN INDEPENDENT PUBLIC BODY CORPORATE AND POLITIC
7 AND TO ESTABLISH PROVISIONS REGARDING THE BOARD; AMENDING CHAPTER 28,
8 TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2821, IDAHO
9 CODE, TO PROVIDE FOR BOARD MEETINGS AND THE SELECTION OF A BOARD CHAIR;
10 AMENDING CHAPTER 28, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
11 TION 33-2822, IDAHO CODE, TO PROVIDE FOR THE POWERS AND AUTHORITIES OF
12 FOUR THREE EDUCATION; AMENDING CHAPTER 28, TITLE 33, IDAHO CODE, BY THE
13 ADDITION OF A NEW SECTION 33-2823, IDAHO CODE, TO ESTABLISH THE FOUR
14 THREE EDUCATION FUND; AMENDING CHAPTER 28, TITLE 33, IDAHO CODE, BY THE
15 ADDITION OF A NEW SECTION 33-2824, IDAHO CODE, TO PROVIDE FOR A REPORT;
16 PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.
17

18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Chapter 28, Title 33, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 33-2818, Idaho Code, and to read as follows:

22 33-2818. SHORT TITLE. The provisions of this section through section
23 33-2824, Idaho Code, shall be known and may be cited as the "Four Three Educa-
24 tion Act."

25 SECTION 2. That Chapter 28, Title 33, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 33-2819, Idaho Code, and to read as follows:

28 33-2819. DEFINITIONS. For the purposes of this chapter:

29 (1) "Board" means the board of trustees of four three education that
30 governs and acts for four three education pursuant to section 33-2820, Idaho
31 Code.

32 (2) "Board of regents" means the state board of education and board of
33 regents of the university of Idaho pursuant to section 33-2802, Idaho Code.

34 (3) "Institution" means the university of Phoenix.

35 SECTION 3. That Chapter 28, Title 33, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 33-2820, Idaho Code, and to read as follows:

38 33-2820. FOUR THREE EDUCATION ESTABLISHED -- BOARD. (1) There is
39 hereby created an independent public body corporate and politic to be known

1 as "Four Three Education." Four Three Education, Inc., an Idaho nonprofit
2 corporation, is, with the consent of such nonprofit corporation, hereby
3 automatically and by operation of law converted into four three education,
4 which is hereby created pursuant to this section, to continue as an in-
5 dependent public body corporate and politic. All property of Four Three
6 Education, Inc., shall be the property of four three education without
7 transfer, assignment, reversion, or impairment. All debts, obligations,
8 and other liabilities of Four Three Education, Inc., shall be debts, obliga-
9 tions, and other liabilities of four three education. Four three education
10 is a governmental instrumentality established for the dissemination of
11 knowledge and learning. Four three education may exercise the authority and
12 powers conferred by this chapter and such exercise shall be deemed and held
13 to be the performance of an essential public function on behalf of the state
14 of Idaho and the university of Idaho, under the administrative supervision
15 of the board of regents and the state of Idaho and the control of the board as
16 set forth in this chapter and in the bylaws of four three education.

17 (2) The board of regents shall remain the sole member of four three edu-
18 cation with the rights and duties as set forth in this chapter and in the by-
19 laws of four three education.

20 (3) While four three education is a governmental instrumentality, it is
21 not an agency of the state of Idaho. Four three education shall not be sub-
22 ject to the purchasing statutes and rules of the state of Idaho or subdivi-
23 sions of the state, including but not limited to chapters 28, 57, and 92, ti-
24 tle 67, Idaho Code, and shall not be subject to the provisions of chapter 2,
25 title 74, Idaho Code, except that the reports required in section 33-2824,
26 Idaho Code, shall be made in open meetings of those committees.

27 (4) (a) The board of trustees of four three education shall initially
28 consist of eleven (11) total members. At all times the board shall con-
29 sist of a majority of independent trustees separate from any contrac-
30 tual, employment, familial, or financial relationship with or interest
31 in four three education or in the university of Idaho, or any affiliate
32 thereof, as determined by the board of regents. Independent trustees
33 shall be appointed to the board by the board of regents pursuant to this
34 subsection and the bylaws of four three education. Trustees who are not
35 independent trustees are designated as affiliated trustees. The mem-
36 bers of the board shall include the following:

37 (i) One (1) member of the house of representatives appointed by
38 the speaker of the house of representatives, which member shall be
39 deemed to be an affiliated trustee;

40 (ii) One (1) member of the senate appointed by the president pro
41 tempore of the senate, which member shall be deemed to be an affil-
42 iated trustee;

43 (iii) The president of the board of regents, or the president's de-
44 signee from other members of the board of regents, which member
45 shall be deemed to be an affiliated trustee;

46 (iv) The president of the university of Idaho, which member shall
47 be deemed to be an affiliated trustee;

48 (v) The president of four three education, which member shall be
49 deemed to be an affiliated trustee; and

1 (vi) Six (6) members appointed by the board of regents, which mem-
 2 bers shall be deemed to be independent trustees as defined in this
 3 section.

4 (b) If the size of the board changes, any such change shall be made in
 5 accordance with the bylaws, provided that in any event the number of
 6 trustees who are independent trustees shall be adjusted if necessary
 7 to ensure that a majority of the full board are independent trustees as
 8 specified in this section. The board of regents may not eliminate the
 9 affiliated trustee member positions identified in paragraph (a) of this
 10 subsection.

11 (5) The board shall hold its meetings as set forth in the bylaws of four
 12 three education, which may include meetings by telephone or video facili-
 13 ties.

14 (6) Members of the board and employees of four three education shall not
 15 be:

16 (a) Considered public officials, employees, or agents of the state of
 17 Idaho by virtue of their service on the board or performance of services
 18 for four three education; or

19 (b) Eligible for or entitled to any benefits available to public offi-
 20 cials or employees of the state of Idaho, including the public employee
 21 retirement system of Idaho.

22 (7) Nothing in this chapter shall prevent a member of the board who is
 23 otherwise a current or former state of Idaho employee from receiving his
 24 usual state compensation and benefits in such capacity as a state of Idaho
 25 employee.

26 (8) In the event of dissolution of four three education, the board
 27 shall, after paying or making provision for the payment of all liabilities,
 28 distribute all the assets of four three education to the university of Idaho
 29 and the state of Idaho.

30 (9) Members of the board of trustees shall serve without compensation
 31 for time or services.

32 SECTION 4. That Chapter 28, Title 33, Idaho Code, be, and the same is
 33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 34 ignated as Section 33-2821, Idaho Code, and to read as follows:

35 33-2821. ORGANIZATION MEETING -- CHAIR. The initial board shall be ap-
 36 pointed in accordance with section 33-2820, Idaho Code. The president of the
 37 board of regents shall call and convene a meeting to serve as the initial or-
 38 ganizational meeting of four three education and shall serve as the chair pro
 39 tempore. At such meeting, bylaws, in the form presented by the chair pro tem-
 40 pore, shall be adopted. Following adoption, a chair of the board shall be
 41 elected in the manner provided in the bylaws. Upon such election, the chair
 42 pro tempore shall yield further proceedings to be conducted at the direction
 43 of the chair of the board.

44 SECTION 5. That Chapter 28, Title 33, Idaho Code, be, and the same is
 45 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 46 ignated as Section 33-2822, Idaho Code, and to read as follows:

1 33-2822. POWERS AND AUTHORITY OF FOUR THREE EDUCATION. (1) Unless oth-
2 erwise required by this chapter, in the discretion of the board, four three
3 education shall have the powers and authority to perform all duties that are
4 necessary and appropriate to acquire the institution pursuant to a written
5 agreement for such acquisition and thereafter own and operate the institu-
6 tion, both within and without the state, so as to serve four three educa-
7 tion's public purpose, including to:

8 (a) Provide for the instruction of students, the assessment of compe-
9 tencies, and the award of degrees, diplomas, and certificates, as may be
10 appropriate;

11 (b) Have perpetual succession as a body corporate and politic;

12 (c) Adopt bylaws for the regulation of its affairs and the conduct of
13 its business, which may only be altered, amended, or repealed and new
14 bylaws adopted by the affirmative vote of two-thirds (2/3) of the board,
15 subject to approval by the board of regents. Such bylaws shall be avail-
16 able for public inspection and available for public viewing online;

17 (d) Sue and be sued and prosecute and defend, at law or in equity, in any
18 court having jurisdiction of the subject matter and of the parties;

19 (e) Have and use a corporate seal and alter the same at pleasure;

20 (f) Maintain an office at such place or places as it may designate;

21 (g) Borrow money and apply for and accept advances, loans, grants,
22 contributions, and any other form of financial assistance from any
23 sources, public or private, for the purposes of this chapter, and give
24 such security as may be required, including a pledge of any loan, grant,
25 or contribution and by a mortgage of property, and enter into and carry
26 out contracts or agreements in connection therewith; and

27 (h) Acquire and hold, and dispose of, real and personal property or
28 rights or interests therein.

29 (2) Four three education's powers and authority shall be subject to the
30 following limitations:

31 (a) Notwithstanding any provision of law to the contrary, four three
32 education shall not have the power to alter its fundamental structure
33 and public purpose as set forth in this chapter;

34 (b) Four three education shall be financially self-supporting and
35 shall not request any financial support from the state of Idaho;

36 (c) Four three education shall not have the power to tax;

37 (d) The board of regents may agree to assume liabilities and obliga-
38 tions of four three education as specifically agreed in one (1) or more
39 written contracts as part of the acquisition of the operating assets of
40 the institution as set forth below:

41 (i) The board of regents may support bond debt service of four
42 three education in an amount of up to nine million nine hundred
43 ninety thousand dollars (\$9,990,000) per year for a maximum term
44 of ten (10) years, subject to repayment thereof by four three edu-
45 cation, and provided the aggregate outstanding principal amount
46 of such support shall not exceed, at any time, the sum of fifty mil-
47 lion dollars (\$50,000,000);

48 (ii) The board of regents may assume liabilities of four three
49 education related to title IV of the higher education act of 1965
50 through co-signature of the institution's participation agree-

1 ments as required by the United States department of education;
2 and

3 (iii) Any of the liabilities or obligations of four three educa-
4 tion described in this paragraph that are assumed by the board of
5 regents shall be subject to the condition that four three educa-
6 tion remains the primary responsible party to such liabilities
7 and obligations and that any satisfaction of such liabilities and
8 obligations by the board of regents shall be reimbursed to the
9 board of regents by four three education; and

10 (e) The notes, bonds, or other obligations of four three education:

11 (i) Shall be exclusively obligations of four three education,
12 payable only in accordance with the terms thereof, and shall not be
13 obligations general, special, or otherwise of the state of Idaho,
14 or of any state of Idaho department, board, commission, agency,
15 institution, or political subdivision thereof;

16 (ii) Shall not constitute a debt, legal, moral, or otherwise,
17 of the state of Idaho, or of any state of Idaho department,
18 board, commission, agency, institution, or political subdivision
19 thereof;

20 (iii) Shall not constitute the giving or loaning of the credit
21 of the state of Idaho, or of any state of Idaho department,
22 board, commission, agency, institution, or political subdivision
23 thereof;

24 (iv) Shall not be enforceable against the state of Idaho; and

25 (v) Shall so recite on their face or on the first page of any ev-
26 idence of indebtedness the information required pursuant to this
27 paragraph.

28 (3) The board shall not be liable for any obligations of four three ed-
29 ucation. No members of the board shall be liable, and no cause of action of
30 any nature may arise against them, for any act or omission related to the per-
31 formance of their powers and duties pursuant to this chapter, unless such act
32 or omission constitutes willful or wanton misconduct. The board may provide
33 for indemnification of, and legal representation for, its members.

34 (4) The state does hereby agree with the holders of indebtedness of four
35 three education that the state will not limit or alter the rights vested in
36 four three education to fulfill the terms of any agreements made with the
37 holders thereof or impair the security, rights, or remedies of such holders
38 until the indebtedness is fully paid and discharged. Four three education is
39 authorized to include such limitation in any agreement with holders of such
40 indebtedness.

41 SECTION 6. That Chapter 28, Title 33, Idaho Code, be, and the same is
42 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
43 ignated as Section 33-2823, Idaho Code, and to read as follows:

44 33-2823. FOUR THREE EDUCATION FUND. (1) There is hereby created in the
45 state treasury the four three education fund, to which shall be credited or
46 deposited all moneys accruing for the purposes of the fund and all earnings
47 thereon. All moneys placed in the fund and earnings thereon are subject to
48 appropriation and shall be used to fund Idaho-specific postsecondary educa-
49 tion initiatives for the benefit of all Idahoans.

1 (2) Moneys to be credited or deposited into the fund may come from:

2 (a) Portions of licensing fees pursuant to a licensing agreement be-
3 tween the board of regents and four three education;

4 (b) Contributions out of four three education's surplus that exists af-
5 ter four three education is current on all its obligations, including
6 without limitation bond or loan payments and related covenants as al-
7 lowed under its bylaws; and

8 (c) Funds received in conjunction with the closing of the sale.

9 SECTION 7. That Chapter 28, Title 33, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
11 ignated as Section 33-2824, Idaho Code, and to read as follows:

12 33-2824. REPORT. Four three education shall submit a written report of
13 its activities and its condition to the governor and the director of the leg-
14 islative services office for distribution to all legislators on or before
15 January 31 every year. Four three education shall also report annually to
16 the joint finance-appropriations committee and the house of representatives
17 and senate education committees.

18 SECTION 8. SEVERABILITY. The provisions of this act are hereby declared
19 to be severable and if any provision of this act or the application of such
20 provision to any person or circumstance is declared invalid for any reason,
21 such declaration shall not affect the validity of the remaining portions of
22 this act.

23 SECTION 9. An emergency existing therefor, which emergency is hereby
24 declared to exist, this act shall be in full force and effect on and after its
25 passage and approval.