

## HOUSE BILL NO. HB0222

Performance compensation.

Sponsored by: Joint Appropriations Committee

A BILL

for

1 AN ACT relating to the administration of government;  
2 authorizing the establishment of performance compensation  
3 plans for specified employees of the state treasurer's office  
4 and the Wyoming retirement system; establishing requirements  
5 for the plans; directing the establishment and evaluation of  
6 investment benchmarks as specified; authorizing the  
7 investment funds committee to engage consultants as  
8 specified; making conforming amendments; requiring reports;  
9 providing an appropriation; and providing for an effective  
10 date.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

14 **Section 1.** W.S. 9-1-409 by creating new subsections (e)  
15 and (f), 9-2-1022(b)(intro), 9-3-406(a) and by creating a new

1 subsection (d) and 9-4-720 by creating a new subsection (f)  
2 are amended to read:

3

4 **9-1-409. State treasurer; duties generally; demand**  
5 **accounts; state revenues paid to treasurer.**

6

7 (e) The state treasurer may implement and administer a  
8 performance compensation plan in accordance with this  
9 subsection. The plan shall:

10

11 (i) Be limited to those at-will employees of the  
12 state treasurer's office listed in paragraph (ii) of this  
13 subsection who are directly engaged in investing assets of  
14 the state;

15

16 (ii) Be limited to the following participating  
17 employees:

18

19 (A) Chief investment officer;

20

21 (B) Senior investment officer;

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23 (C) Investment officer;

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(D) Senior analyst;

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(E) Analyst.

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(iii) Seek to maximize total returns net of fees on investments authorized by law and in the best interest of the state;

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(iv) Be based solely on investment performance exceeding investment benchmarks as established by the investment funds committee created by W.S. 9-4-720 for each fund and asset class for an investment period. No performance compensation shall be paid under the plan unless the investment funds committee determines that the established benchmarks have been exceeded;

17

18

(v) Measure investment performance during an investment period based on the following:

20

21

(A) Fifty percent (50%) related to total fund performance. For purposes of this subsection, "total fund" means the total or overall investment portfolio of funds

23

1 managed by the state treasurer's office, excluding the  
2 following:

3  
4 (I) Funds invested for a specific public  
5 purpose;

6  
7 (II) Investments specifically directed  
8 by the state treasurer or state loan and investment board and  
9 not made at the recommendation of participating employees.

10  
11 (B) Fifty percent (50%) related to the  
12 performance of the employee's individual assigned asset  
13 classes.

14  
15 (vi) Provide that payments for investment  
16 performance for any one (1) investment period shall be as  
17 follows:

18  
19 (A) For payments earned in fiscal year 2020  
20 - the investment performance beginning July 1, 2019 and  
21 ending June 30, 2020;

22

1                   (B) For payments earned in fiscal year 2021  
2 - the arithmetic average of the investment performance  
3 beginning July 1, 2019 and ending June 30, 2020 and the  
4 investment performance beginning July 1, 2020 and ending June  
5 30, 2021;

6  
7                   (C) For payments earned in fiscal year 2022  
8 and each fiscal year thereafter - the arithmetic average of  
9 the annual investment performance beginning that fiscal year  
10 and the two (2) immediately preceding fiscal years.

11  
12                   (vii) Be funded from investment returns, with each  
13 invested fund's share calculated in proportion to the  
14 magnitude of aggregate investment earnings of each fund  
15 invested, including interest and dividends, which shall be  
16 continuously appropriated for payment of performance  
17 compensation as authorized by this subsection;

18  
19                   (viii) Include a limit for total payments to all  
20 participating employees for performance compensation earned  
21 in any one (1) investment period in an amount not to exceed  
22 two percent (2%) of net investment returns above the  
23 established benchmark of the total fund for that investment

1 period for payments pursuant to subparagraph (v)(A) of this  
2 subsection and two percent (2%) of net investment returns  
3 above the established benchmark of the employee's individual  
4 assigned asset classes for that investment period for  
5 payments pursuant to subparagraph (v)(B) of this subsection;

6  
7 (ix) Include a limit for total payments to an  
8 individual employee for performance compensation earned in  
9 any one (1) investment period in an amount not to exceed the  
10 following:

11  
12 (A) One hundred percent (100%) of a chief  
13 investment officer's base salary;

14  
15 (B) Seventy-five percent (75%) of a senior  
16 investment officer's base salary;

17  
18 (C) Fifty percent (50%) of an investment  
19 officer's base salary;

20  
21 (D) Twenty-five percent (25%) of a senior  
22 analyst's or analyst's base salary.

23

1           (x) Provide that performance compensation earned  
2 in any one (1) investment period will be paid over a three  
3 (3) year period as follows:

4

5           (A) Twenty-five percent (25%) during the  
6 fiscal year immediately following the fiscal year in which  
7 the performance compensation was earned;

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9           (B) Twenty-five percent (25%) during the  
10 second fiscal year following the fiscal year in which the  
11 performance compensation was earned;

12

13           (C) Fifty percent (50%) during the third  
14 fiscal year following the fiscal year in which the performance  
15 compensation was earned.

16

17           (xi) Provide that performance compensation shall  
18 be forfeited by an employee upon termination of employment  
19 subject to an anti-compete agreement for future employment  
20 related to asset management. This paragraph shall not apply  
21 to termination based on death, disability or retirement;

22

1           (xii) Provide that performance compensation shall  
2 not be included as compensation for the purpose of computing  
3 retirement or pension benefits earned by the employee;

4  
5           (xiii) Subject participating employees to the  
6 following terms and conditions related to leave time:

7  
8           (A) Chief investment officers, senior  
9 investment officers and investment officers shall receive  
10 leave time in the same manner and amount as department  
11 directors under W.S. 9-2-1706(b);

12  
13           (B) Senior analysts and analysts shall  
14 receive leave time in accordance with standards and rules  
15 established or promulgated in accordance with W.S.  
16 9-2-1022(a).

17  
18           (xiv) Provide that performance compensation shall  
19 only be based on performance criteria occurring on or after  
20 the execution of an employment contract in accordance with  
21 this subsection. No performance compensation shall be paid  
22 other than as provided in the employment contract;

23



1           (xv) Be submitted to the joint appropriations  
2 committee and the select committee on capital financing and  
3 investments for comment, and approved by the human resources  
4 division, prior to implementation. The human resources  
5 division shall not disapprove a performance compensation plan  
6 which complies with the requirements of this subsection;

7  
8           (xvi) Be submitted and administered by the state  
9 treasurer as a separately designated and appropriated budget  
10 unit.

11  
12           (f) The state treasurer shall report to the joint  
13 appropriations committee and the select committee on capital  
14 financing and investments by November 1 of each year on the  
15 plan authorized by subsection (e) of this section. The report  
16 shall include:

17  
18           (i) Payments and methodology of calculating  
19 payments under the plan;

20  
21           (ii) A measurement quantifying the risk resulting  
22 from the variation between the prior year's investment  
23 benchmarks and the prior year's actual investments;

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(iii) An estimate of future payments under the plan and future expected investment benchmarks.

**9-2-1022. Duties of department performed through human resources division.**

(b) The state compensation plan shall, to the extent not otherwise provided by law, apply to all state executive branch employees except those employees of the University of Wyoming and community colleges. The compensation and classification plan shall be designed to attract and retain a sufficient quantity of quality employees with competitive compensation based on relevant labor markets for each class of employment. The plan shall be based upon principles of fairness and equity and be administered with sound fiscal discipline. The plan shall utilize both fixed and variable compensation as well as noncash reward and recognition programs. All variable compensation benefits under the plan, except as otherwise provided by law, shall be administered by the department as a separately designated and appropriated budget item. The plan shall consist of:

1           **9-3-406. Retirement board; employment and compensation**  
2 **of director, consulting actuary and assistants; director**  
3 **designated secretary; compensation of members; quorum; seal.**

4  
5           (a) The board shall employ a director and a consulting  
6 actuary and other professional and clerical assistants  
7 necessary for the administration of the retirement system and  
8 the Wyoming deferred compensation program established under  
9 W.S. 9-3-501 through 9-3-508. The compensation of employees  
10 shall be fixed by the board, subject to confirmation and  
11 approval by the ~~personnel~~human resources division and  
12 together with all other necessary expenses of the board shall  
13 be paid by vouchers drawn on the state treasurer of Wyoming.  
14 The director shall also serve, without additional  
15 compensation, as secretary of the board. The board shall  
16 have the authority to obtain the financial and criminal  
17 background history of an employee or employment applicant of  
18 the Wyoming retirement system in accordance with W.S.  
19 7-19-106 and 7-19-201. In fixing compensation of employees  
20 the board may implement and administer a performance  
21 compensation plan in accordance with this subsection. The  
22 plan shall:

23

1           (i) Be limited to those at-will employees of the  
2 board listed in paragraph (ii) of this subsection who are  
3 directly engaged in investing assets of the retirement  
4 system;

5  
6           (ii) Be limited to the following participating  
7 employees:

8  
9                   (A) Chief investment officer;

10  
11                   (B) Senior investment officer;

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13                   (C) Investment officer;

14  
15                   (D) Senior analyst;

16  
17                   (E) Analyst.

18  
19           (iii) Seek to maximize total returns net of fees  
20 on investments authorized by law and in the best interest of  
21 the retirement system;

22

1           (iv) Be based solely on investment performance  
2 exceeding investment benchmarks established pursuant to this  
3 paragraph. The board shall establish investment benchmarks,  
4 which shall be approved by the investment funds committee  
5 created by W.S. 9-4-720, for each fund and account for an  
6 investment period. No performance compensation shall be paid  
7 under the plan unless the board determines, subject to review  
8 by the investment funds committee, that the established  
9 benchmarks have been exceeded;

10  
11           (v) Measure investment performance during an  
12 investment period based one hundred percent (100%) on total  
13 fund performance. For purposes of this subsection, "total  
14 fund" means the total or overall investment portfolio of the  
15 retirement system;

16  
17           (vi) Provide that payments for investment  
18 performance for any one (1) investment period shall be as  
19 follows:

20  
21           (A) For payments earned in fiscal year 2020  
22 - the investment performance beginning July 1, 2019 and  
23 ending June 30, 2020;

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(B) For payments earned in fiscal year 2021 - the arithmetic average of the investment performance beginning July 1, 2019 and ending June 30, 2020 and the investment performance beginning July 1, 2020 and ending June 30, 2021;

(C) For payments earned in fiscal year 2022 and each fiscal year thereafter - the arithmetic average of the annual investment performance beginning that fiscal year and the two (2) immediately preceding fiscal years.

(vii) Be funded from investment returns, with each invested fund's share calculated in proportion to the magnitude of aggregate investment earnings of each fund invested, including interest and dividends, which shall be continuously appropriated for payment of performance compensation as authorized by this subsection;

(viii) Include a limit for total payments to all participating employees for performance compensation earned in any one (1) investment period in an amount not to exceed two percent (2%) of net investment returns above the

1 established benchmark of the total fund for that investment  
2 period;

3

4 (ix) Include a limit for total payments to an  
5 individual employee for performance compensation earned in  
6 any one (1) investment period in an amount not to exceed the  
7 following:

8

9 (A) One hundred percent (100%) of a chief  
10 investment officer's base salary;

11

12 (B) Seventy-five percent (75%) of a senior  
13 investment officer's base salary;

14

15 (C) Fifty percent (50%) of an investment  
16 officer's base salary;

17

18 (D) Twenty-five percent (25%) of a senior  
19 analyst's or analyst's base salary.

20

21 (x) Provide that performance compensation earned  
22 in any one (1) investment period will be paid over a three  
23 (3) year period as follows:

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(A) Twenty-five percent (25%) during the fiscal year immediately following the fiscal year in which the performance compensation was earned;

(B) Twenty-five percent (25%) during the second fiscal year following the fiscal year in which the performance compensation was earned;

(C) Fifty percent (50%) during the third fiscal year following the fiscal year in which the performance compensation was earned.

(xi) Provide that performance compensation shall be forfeited by an employee upon termination of employment subject to an anti-compete agreement for future employment related to asset management. This paragraph shall not apply to termination based on death, disability or retirement;

(xii) Provide that performance compensation shall not be included as compensation for the purpose of computing retirement or pension benefits earned by the employee;



1           (xiii) Subject participating employees to the  
2 following terms and conditions related to leave time:

3  
4           (A) Chief investment officers, senior  
5 investment officers and investment officers shall receive  
6 leave time in the same manner and amount as department  
7 directors under W.S. 9-2-1706(b);

8  
9           (B) Senior analysts and analysts shall  
10 receive leave time in accordance with standards and rules  
11 established or promulgated in accordance with W.S.  
12 9-2-1022(a).

13  
14           (xiv) Provide that performance compensation shall  
15 only be based on performance criteria occurring on or after  
16 the execution of an employment contract in accordance with  
17 this subsection. No performance compensation shall be paid  
18 other than as provided in the employment contract;

19  
20           (xv) Be submitted to the joint appropriations  
21 committee and the select committee on capital financing and  
22 investments for comment, and approved by the human resources  
23 division, prior to implementation. The human resources

1 division shall not disapprove a performance compensation plan  
2 which complies with the requirements of this subsection;

3  
4 (xvi) Be submitted and administered by the board  
5 as a separately designated and appropriated budget unit.

6  
7 (d) The board shall report to the joint appropriations  
8 committee and the select committee on capital financing and  
9 investments by November 1 of each year on the plan authorized  
10 by subsection (a) of this section. The report shall include:

11  
12 (i) Payments and methodology of calculating  
13 payments under the plan;

14  
15 (ii) A measurement quantifying the risk resulting  
16 from the variation between the prior year's investment  
17 benchmarks and the prior year's actual investments;

18  
19 (iii) An estimate of future payments under the  
20 plan and future expected investment benchmarks.

21  
22 **9-4-720. Investment funds committee created; duties.**

23

1       (f) In addition to the duties prescribed under this  
2 act, the committee shall establish or approve investment  
3 benchmarks and determine or review whether benchmarks have  
4 been exceeded as required by W.S. 9-1-409(e) and 9-3-406(a).  
5 Notwithstanding subsections (a) and (b) of this section,  
6 members of the committee appointed by the governor or the  
7 management council may vote on benchmarks. A member of the  
8 committee who is also an employee or board member of the state  
9 treasurer's office or the Wyoming retirement system shall not  
10 vote on any benchmark. The committee through the state  
11 treasurer's office may engage the services of consultants on  
12 a contract basis for rendering professional assistance and  
13 advice in establishing and evaluating benchmarks.

14

15       **Section 2.** The state treasurer and the board of the  
16 Wyoming retirement system shall separately submit any  
17 performance compensation plan proposed for implementation in  
18 fiscal year 2020 to the joint appropriations committee for  
19 comment not later than May 1, 2019. The committee shall  
20 provide any comments on a submitted plan not later than May  
21 30, 2019.

22

1           **Section 3.** There is appropriated ten thousand dollars  
2 (\$10,000.00) from the general fund to the state treasurer's  
3 office. This appropriation shall be for the period beginning  
4 with the effective date of this act and ending June 30, 2020.  
5 This appropriation shall only be expended for engaging the  
6 services of consultants under W.S. 9-4-720(f), as created by  
7 this act. Notwithstanding any other provision of law, this  
8 appropriation shall not be transferred or expended for any  
9 other purpose and any unexpended, unobligated funds remaining  
10 from this appropriation shall revert as provided by law on  
11 June 30, 2020. This appropriation shall be included in the  
12 state treasurer's office 2021-2022 standard biennial budget  
13 request.

14

15           **Section 4.** This act is effective immediately upon  
16 completion of all acts necessary for a bill to become law as  
17 provided by Article 4, Section 8 of the Wyoming Constitution.

18

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(END)