HOUSE BILL NO. HB0249

Investment of state funds.

Sponsored by: Representative(s) Nicholas, Harshman, Kinner, Larsen, Olsen, Schwartz, Sommers and Walters

A BILL

for

AN ACT relating to the investment of state funds; authorizing the purchase of real property assets and associated interests as specified; specifying requirements for the purchase; specifying sources of funding for the purchase; requiring the segregation of purchased assets based on funding source; specifying the distribution of earnings, income and royalties from purchased assets; creating the property tax reimbursement payment account; requiring reports; specifying a time limit for purchase authorization and specifying timeframes for preliminary and final agreements; authorizing payments to local governments in lieu of property taxes as specified; authorizing the retention of consultants; authorizing reviews, studies and recommendations as alternatives to executing any authorized purchase; making conforming amendments; providing
appropriations; reappropriating funds; and providing for an
effective date.

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

Section 1. W.S. 9-4-715.1 and 39-13-113 are created
to read:

9-4-715.1. Permissible purchases of investment
assets.

(a) Subject to the approval required in subsection
(f) of this section, the state loan and investment board is
hereby authorized to make one (1) or more purchases of
assets for investment that are located within the state of
Wyoming or within states with contiguous borders to
Wyoming. Assets that may be purchased under this section
shall be limited to surface interests, mineral interests
with or without the surface estate and any equity or other
interests associated with the surface or mineral interests
purchased. The state loan and investment board is
authorized to conduct any negotiations with any entity for
the purchase of assets under this section. Any purchase
under this section shall be subject to the following requirements:

(i) Before a purchase is completed, the state loan and investment board shall complete due diligence that analyzes the fair market value of the assets purchased and the feasibility and impacts of the purchase on the state and on the funds used to complete the purchase;

(ii) Any purchase under this section shall be in accordance with all applicable investment policies established by the state loan and investment board and with the prudent investor rule established in the Wyoming Uniform Prudent Investor Act, W.S. 4-10-901 through 4-10-913;

(iii) For real property purchased under this section:

(A) At least one (1) appraisal of the entirety of the real property to be purchased shall be completed before a purchase agreement is finalized;
(B) Evidence of marketable title satisfactory to the board shall be provided by the current owner before the purchase is completed and property is conveyed.

(b) The following members of the legislature shall act as liaisons to the state loan and investment board during the completion of due diligence and negotiations for any purchase under this section:

(i) Two (2) members of the house of representatives, as appointed by the speaker of the house;

(ii) Two (2) members of the senate, as appointed by the president of the senate.

(c) A purchase made under this section shall be made utilizing one (1) or more of the following sources:

(i) The legislative stabilization reserve account, provided that the total amount expended from the account for the purchase under this section shall not exceed seventy-five percent (75%) of the total expenditures
for all purchases pursuant to this section, which amount is
appropriated to the state loan and investment board from
the account as necessary for the purposes of this section;

(ii) The permanent Wyoming mineral trust fund
under W.S. 9-4-204(u)(iii), provided that the total amount
expended from the fund shall not exceed the amount that the
state loan and investment board determines would result in
an investment that complies with all adopted investment
policy statements for the fund and with the prudent
investor rule set forth in the Wyoming Uniform Prudent
Investor Act, W.S. 4-10-901 through 4-10-913. The state
loan and investment board shall account for the best
interests of the current and future beneficiaries of the
permanent Wyoming mineral trust fund when determining any
amounts to expend under this paragraph;

(iii) The common school account within the
permanent land fund, provided that the total amount
expended from the account shall not exceed the amount that
the board of land commissioners determines to be consistent
with the duties and obligations owed to the current and
future beneficiaries of state trust land sales proceeds and
that the state loan and investment board determines is consistent with all adopted investment policy statements for the account and with the prudent investor rule set forth in the Wyoming Uniform Prudent Investor Act, W.S. 4-10-901 through 4-10-913;

(iv) Other unobligated and unencumbered funds appropriated to the state loan and investment board for investment, or to the board of land commissioners to execute its duties, to the extent the funds are not restricted by law to be expended only for other specified purposes.

(d) Any purchase under this section shall be made only from funds specified in subsection (c) of this section. A purchase may be made with an aggregate amount of the sources specified in subsection (c) of this section, provided that each funding source used in the purchase acquires separate assets that are segregated from assets of the other funding sources used. In determining the segregation of assets purchased under this section, the state loan and investment board shall take into account:
(i) The location of any assets to be purchased and whether the assets are located in Wyoming or outside Wyoming;

(ii) The established and potential sources of income from the assets purchased;

(iii) The investment policies adopted by the state loan and investment board for the funding source.

(e) No purchase shall be completed under this section without the written opinion of the attorney general certifying the legality of the transaction and all documents connected therein.

(f) The board of land commissioners shall give final approval for any purchase under this section that is negotiated by the state loan and investment board that provides for the expenditure of funds from the common school account within the permanent land fund or from other funds appropriated to the board of land commissioners.

(g) A purchase made under this section shall:
2. (i) Be subject to the requirements for alternative investments under W.S. 9-4-715;

3. (ii) Be evaluated as provided in W.S. 9-4-715(d) and (e) in addition to other provisions of this section for the particular source of funds expended;

4. (iii) Not be considered a public purpose investment under W.S. 9-4-715(n);

5. (iv) Not be considered for purposes of the authority granted under W.S. 9-4-715(k).

6. (h) The board of land commissioners shall manage all surface and mineral interests purchased under the authority of this section. The board of land commissioners may direct the office of state lands and investments to manage the purchased surface and mineral interests. The board of land commissioners may retain a manager to manage the real property interests purchased. The compensation of the manager shall be allocated proportionally based on the surface and mineral interests purchased by each funding
source identified in subsection (c) of this section. The state loan and investment board shall manage other assets purchased under the authority of this section in accordance with its management of other state investments. The office of state lands and investments shall include in its biennial budget request separate appropriation requests for the costs of managing real property interests as determined by the board of land commissioners and for the cost of managing other assets as determined by the state loan and investment board in accordance with this subsection.

(j) Earnings generated from each set of segregated assets purchased under this section shall be deposited as follows:

(i) Earnings generated from assets purchased with funds from the legislative stabilization reserve account:

(A) Shall be deposited first to the property tax reimbursement account created in W.S. 39-13-113 until the balance of the account equals one hundred fifteen percent (115%) of the total disbursements
from the account in the previous calendar year. Funds from this account shall only be expended to reimburse local governments for property taxes in accordance with W.S. 39-13-113;

(B) The balance shall be deposited to the legislative stabilization reserve account.

(ii) For assets purchased with funds of the permanent Wyoming mineral trust fund:

(A) Mineral royalties shall be deposited to the permanent Wyoming mineral trust fund. Monies deposited pursuant to this subparagraph shall not be considered as earnings or income for purposes of W.S. 9-4-204(u)(iii) and 9-4-719(c), (d) and (q);

(B) All other earnings shall be deposited to the general fund in accordance with laws, rules and policies governing other earnings from investments of the permanent Wyoming mineral trust fund.
(iii) Earnings generated from assets purchased with funds of the common school account within the permanent land fund shall be deposited in accordance with law, rules and policies governing earnings from the investment of or holding of other common school permanent land fund account assets. Monies deposited to the common school account within the permanent land fund pursuant to this paragraph shall not be considered as earnings for purposes of W.S. 9-4-719(g) and (h);

(iv) Earnings generated from assets purchased with funds pursuant to paragraph (c)(iv) of this section shall be deposited to the account from which the funds were used to make the purchase.

(k) Upon completion of a purchase under this section, the board of land commissioners shall determine if the sale of purchased real property assets located outside of Wyoming is in the best interests of the beneficiaries of the fund used to purchase the assets, or the state in the case of purchases using funds of the legislative stabilization reserve account. If the board so finds, it is authorized to sell the asset in accordance with the
provisions of W.S. 36-9-101 through 36-9-117, subject to the following:

(i) Advertisement of the sale under W.S. 36-9-104 shall be provided in the county in which the real property is situated and in an adjoining county in Wyoming;

(ii) The sale shall be conducted in a Wyoming county adjoining the county in which the real property is located;

(iii) Funds from any sale shall be deposited by the state treasurer to the corpus of the account from which the asset was purchased.

(m) The board of land commissioners is authorized to pursue and complete an exchange of real property assets purchased pursuant to this section if doing so is in the best interests of the beneficiaries of the fund used to purchase the assets, or the state in the case of purchases using funds of the legislative stabilization reserve account. An exchange may be made for federal or privately owned land and shall be in accordance with W.S. 36-1-110
and 36-1-111 and the rules of the board of land commissioners.

(n) The state loan and investment board shall report to the legislature:

(i) Not less than sixty (60) days before entering into an agreement to purchase assets under this section. The report shall include a description of the assets to be purchased including the location of the assets, the purchase price and the funding source or sources for the purchase and the specific location of all assets located outside of the state and their total fair market value;

(ii) If the report required under paragraph (i) of this subsection has not been filed:

(A) Not later than November 15, 2020 regarding any negotiations and steps taken to pursue a purchase agreement under this section; and
(B) If the board anticipates entering into a purchase agreement under this section by December 31, 2020, it shall report:

(I) The anticipated date to execute the agreement;

(II) The anticipated date to close all transactions necessary to implement the agreement;

(III) Any legislation necessary to effectuate the agreement.

(iii) Not later than December 31, 2020 if a purchase agreement has been reached in principle but all transactions necessary to effectuate the purchase will not be completed by December 31, 2020. The submission of this report shall be in accordance with subsection (o) of this section;

(iv) Not later than September 1 of each year regarding:
(A) The earnings and income generated from assets purchased in accordance with this section for the immediately preceding fiscal year; and

(B) The disposition and distribution of earnings and income in accordance with subsection (j) of this section.

(o) The state loan and investment board is authorized to enter into an agreement to execute a purchase under this section until December 31, 2020. The authority granted under this section is extended to March 31, 2021 if the board files with the secretary of state not later than December 31, 2020 its report to the legislature that an agreement to purchase assets as provided under this section has been reached in principle and that the anticipated date to close all transactions necessary to implement the agreement is not later than March 31, 2021. The secretary of state shall affix the seal of his office to the board's report upon the filing of the report and shall deliver a copy of the report certified by the secretary of state to the legislature upon its filing.
(p) The state loan and investment board may, in addition to purchasing any assets under this section, study the potential to purchase assets as specified in this section and recommend to the legislature any legislation deemed by the board to be necessary or convenient to facilitate any future purchase.

39-13-113. State payments in lieu of taxes for local governments; account created; distribution of funds.

(a) The property tax payment reimbursement account is created.

(b) Any county in which property purchased or acquired by exchange pursuant to W.S. 9-4-715.1 is located shall be eligible for payment from the property tax payment reimbursement account to the extent the property would have been taxed if not used primarily for a governmental purpose. On or before September 1, county assessors shall certify the exemptions granted for such property to the department. On or before October 1, the state treasurer out of funds within the property tax payment reimbursement account shall reimburse each county treasurer for the
amount of taxes that would have been collected if the property was not exempt. The county treasurer shall distribute the revenue to each governmental entity in the actual amount of taxes lost due to the exemption.

(c) Funds within the property tax payment reimbursement account are hereby continuously appropriated to the state treasurer for purposes of this section.

Section 2. W.S. 9-4-219(a) and 9-4-715(q) by creating a new paragraph (i), by renumbering (i)(intro) as (ii)(intro) and (iv) as (v) and by amending and renumbering (ii) as (iii) and (iii) as (iv) are amended to read:

9-4-219. Legislative stabilization reserve account created; purposes; legislative deficit control account.

(a) The legislative stabilization reserve account created by 2005 Wyoming Session Laws, Chapter 191, Section 4, Section 301(d) is continued and codified. Funds within the account shall only be expended by legislative appropriation. All Funds within the account shall be invested by the state treasurer as authorized under W.S.
9-4-715(a), (d), (e) and (q) and all investment earnings from the account attributable to those investments shall be credited to the general fund. Funds within the account may also be invested by the state loan and investment board as provided in W.S. 9-4-715.1 and all investment earnings attributable to those investments shall be credited as provided in W.S. 9-4-715.1.

9-4-715. Permissible investments.

(q) The state treasurer, or his designee, which shall be registered under the Investment Advisor's Act of 1940 as amended if required to be registered by the terms of that act as amended shall invest the legislative stabilization reserve account created in W.S. 9-4-219 in a manner to obtain the highest return possible subject to the following:

(i) The treasurer shall consult with the state loan and investment board to identify funds within the account that the board has identified as funds potentially necessary to complete a purchase authorized by W.S. 9-4-715.1 and separately invest those funds for the period
as recommended by the board in order to provide the liquidity needed to effectuate the purchase. Through the date specified in W.S. 9-4-715.1(o), including any extension of that date under W.S. 9-4-715.1(o), the funds identified by the board shall not be subject to paragraph (ii) of this subsection and shall be separately invested;

(ii) Investments shall be made in accordance with investment policy statements adopted by the board under W.S. 9-4-716. In adopting investment policy statements for the legislative stabilization reserve account, the board shall seek to preserve the balance of the account as necessary to address:

(A) A budget shortfall or structural budget deficit through contingent appropriations and expenditures under W.S. 9-2-1014(d)(ii) and (iii);

(B) A published consensus revenue estimating group estimate of revenues that is less than existing legislative appropriations for state government operations or support of public schools;
(C) Other emergencies and needs identified or authorized by the legislature under Wyoming statutes and session laws.

(iii) To the extent funds are available and prior to making any other investments, five hundred million dollars ($500,000,000.00) shall be invested in short term fixed income investment grade securities. The provisions of this paragraph shall not be applicable through the date specified in W.S. 9-4-715.1(o), including any extension of that date under W.S. 9-4-715.1(o);

(iv) After consultation with the budget division of the department of administration and information, up to fifty-five percent (55%) of the unobligated, unencumbered balance of the legislative stabilization reserve account in excess of the amount specified in paragraph (iii) of this subsection, as calculated by the state auditor on October 1 of each fiscal year, may be invested in equities, including stocks of corporations. Funds identified pursuant to paragraph (i) of this subsection shall not be considered as obligated or encumbered funds for purposes of this paragraph and for
purposes of W.S. 9-4-219(b) until the state loan and investment board executes a purchase agreement pursuant to W.S. 9-4-715.1. Investments under this paragraph shall be made in compliance with subsections (c) and (d) of this section;

(iv)-(v) Not later than November 1 of each year, the state treasurer shall report to the joint appropriations committee and the select committee on capital financing and investments regarding the annual review of the investment policy statement for the legislative stabilization reserve account and the investment performance of the account.

Section 3.

(a) In executing a purchase under W.S. 9-4-715.1, as created by section 1 of this act, the state loan and investment board is authorized to assume all leases, contracts and other agreements related to the purchased assets as they exist regardless of whether the lease, contract or other agreement complies with the provisions of title 36 of the Wyoming statutes applicable to state lands.
The board may renegotiate leases, contracts and other agreements as the board deems necessary or appropriate to fulfill the state's fiduciary duties and that would be in the best interests of the state.

(b) Subject to existing lease and contract rights assumed in accordance with subsection (a) of this section, all state laws governing the management of state lands shall be applicable to assets purchased pursuant to W.S. 9-4-715.1 unless otherwise provided in this act.

(c) The office of state lands and investments shall review all leases, contracts and other agreements and shall make recommendations for any modifications to applicable state laws to best manage the assets purchased in accordance with W.S. 9-4-715.1, as created by section 1 of this act, for the benefit of the state and in light of the state's fiduciary duties.

Section 4.

(a) Before engaging in any purchase under W.S. 9-4-715.1, as created by section 1 of this act, the state
loan and investment board shall consult with the investment funds committee and, if the potential purchase appears to be a prudent investment, cause to be completed a study of due diligence that analyzes the fair market value of the assets that are subjects of the potential purchase. The board shall also determine the impacts of the purchase on the state and on the corpus of each fund or account from which funds are authorized to be used for the purchase. The office of state lands and investments, upon the direction and approval of the state loan and investment board, may retain professional consultant experts to fulfill the requirements of this subsection.

(b) There is appropriated from the state building commission contingency account to the state loan and investment board such funds as are necessary for the board to retain professional consultant experts to complete any pre-purchase due diligence study required under subsection (a) of this section. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2021. This appropriation shall not be transferred or expended for any other purpose.
(c) There is appropriated from the legislative stabilization reserve account to the property tax payment reimbursement account created in W.S. 39-13-113, as created by section 1 of this act, such funds as are necessary to provide reimbursement payments to counties as provided in W.S. 39-13-113, as created by section 1 of this act. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2021. This appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2021.

Section 5. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.