

SENATE FILE NO. SF0138

Investment of state funds-2.

Sponsored by: Senator(s) Bebout, Dockstader, Driskill,
Gierau, Hicks, Kinskey, Perkins and Rothfuss

A BILL

for

1 AN ACT relating to the investment of state funds;
2 authorizing the purchase of real property assets and
3 associated interests as specified; specifying requirements
4 for the purchase; specifying sources of funding for the
5 purchase; requiring the segregation of purchased assets
6 based on funding source; specifying the distribution of
7 earnings, income and royalties from purchased assets;
8 creating the property tax reimbursement payment account;
9 requiring reports; specifying a time limit for purchase
10 authorization and specifying timeframes for preliminary and
11 final agreements; authorizing payments to local governments
12 in lieu of property taxes as specified; authorizing the
13 retention of consultants; authorizing reviews, studies and
14 recommendations as alternatives to executing any authorized
15 purchase; making conforming amendments; providing

1 appropriations; reappropriating funds; and providing for an
2 effective date.

3

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

5

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

8

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

11

12 (a) Subject to the approval required in subsection
13 (f) of this section, the state loan and investment board is
14 hereby authorized to make one (1) or more purchases of
15 assets for investment that are located within the state of
16 Wyoming or within states with contiguous borders to
17 Wyoming. Assets that may be purchased under this section
18 shall be limited to surface interests, mineral interests
19 with or without the surface estate and any equity or other
20 interests associated with the surface or mineral interests
21 purchased. The state loan and investment board is
22 authorized to conduct any negotiations with any entity for
23 the purchase of assets under this section. Any purchase

1 under this section shall be subject to the following
2 requirements:

3

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

9

10 (ii) Any purchase under this section shall be in
11 accordance with all applicable investment policies
12 established by the state loan and investment board and with
13 the prudent investor rule established in the Wyoming
14 Uniform Prudent Investor Act, W.S. 4-10-901 through
15 4-10-913;

16

17 (iii) For real property purchased under this
18 section:

19

20 (A) At least one (1) appraisal of the
21 entirety of the real property to be purchased shall be
22 completed before a purchase agreement is finalized;

23

1 (B) Evidence of marketable title
2 satisfactory to the board shall be provided by the current
3 owner before the purchase is completed and property is
4 conveyed.

5

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

10

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

13

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

16

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

19

20 (i) The legislative stabilization reserve
21 account, provided that the total amount expended from the
22 account for the purchase under this section shall not
23 exceed seventy-five percent (75%) of the total expenditures

1 for all purchases pursuant to this section, which amount is
2 appropriated to the state loan and investment board from
3 the account as necessary for the purposes of this section;
4

5 (ii) The permanent Wyoming mineral trust fund
6 under W.S. 9-4-204(u)(iii), provided that the total amount
7 expended from the fund shall not exceed the amount that the
8 state loan and investment board determines would result in
9 an investment that complies with all adopted investment
10 policy statements for the fund and with the prudent
11 investor rule set forth in the Wyoming Uniform Prudent
12 Investor Act, W.S. 4-10-901 through 4-10-913. The state
13 loan and investment board shall account for the best
14 interests of the current and future beneficiaries of the
15 permanent Wyoming mineral trust fund when determining any
16 amounts to expend under this paragraph;
17

18 (iii) The common school account within the
19 permanent land fund, provided that the total amount
20 expended from the account shall not exceed the amount that
21 the board of land commissioners determines to be consistent
22 with the duties and obligations owed to the current and
23 future beneficiaries of state trust land sales proceeds and

1 that the state loan and investment board determines is
2 consistent with all adopted investment policy statements
3 for the account and with the prudent investor rule set
4 forth in the Wyoming Uniform Prudent Investor Act, W.S.
5 4-10-901 through 4-10-913;

6

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

13

14 (d) Any purchase under this section shall be made
15 only from funds specified in subsection (c) of this
16 section. A purchase may be made with an aggregate amount of
17 the sources specified in subsection (c) of this section,
18 provided that each funding source used in the purchase
19 acquires separate assets that are segregated from assets of
20 the other funding sources used. In determining the
21 segregation of assets purchased under this section, the
22 state loan and investment board shall take into account:

23

1 (i) The location of any assets to be purchased
2 and whether the assets are located in Wyoming or outside
3 Wyoming;

4

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

7

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

10

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

15

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

22

23 (g) A purchase made under this section shall:

1

2 (i) Be subject to the requirements for
3 alternative investments under W.S. 9-4-715;

4

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

8

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

11

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

14

15 (h) The board of land commissioners shall manage all
16 surface and mineral interests purchased under the authority
17 of this section. The board of land commissioners may direct
18 the office of state lands and investments to manage the
19 purchased surface and mineral interests. The board of land
20 commissioners may retain a manager to manage the real
21 property interests purchased. The compensation of the
22 manager shall be allocated proportionally based on the
23 surface and mineral interests purchased by each funding

1 source identified in subsection (c) of this section. The
2 state loan and investment board shall manage other assets
3 purchased under the authority of this section in accordance
4 with its management of other state investments. The office
5 of state lands and investments shall include in its
6 biennial budget request separate appropriation requests for
7 the costs of managing real property interests as determined
8 by the board of land commissioners and for the cost of
9 managing other assets as determined by the state loan and
10 investment board in accordance with this subsection.

11

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

15

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

19

20 (A) Shall be deposited first to the
21 property tax reimbursement account created in W.S.
22 39-13-113 until the balance of the account equals one
23 hundred fifteen percent (115%) of the total disbursements

1 from the account in the previous calendar year. Funds from
2 this account shall only be expended to reimburse local
3 governments for property taxes in accordance with W.S.
4 39-13-113;

5

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

8

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

11

12 (A) Mineral royalties shall be deposited to
13 the permanent Wyoming mineral trust fund. Monies deposited
14 pursuant to this subparagraph shall not be considered as
15 earnings or income for purposes of W.S. 9-4-204(u)(iii) and
16 9-4-719(c), (d) and (q);

17

18 (B) All other earnings shall be deposited
19 to the general fund in accordance with laws, rules and
20 policies governing other earnings from investments of the
21 permanent Wyoming mineral trust fund.

22

1 (iii) Earnings generated from assets purchased
2 with funds of the common school account within the
3 permanent land fund shall be deposited in accordance with
4 law, rules and policies governing earnings from the
5 investment of or holding of other common school permanent
6 land fund account assets. Monies deposited to the common
7 school account within the permanent land fund pursuant to
8 this paragraph shall not be considered as earnings for
9 purposes of W.S. 9-4-719(g) and (h);

10

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

15

16 (k) Upon completion of a purchase under this section,
17 the board of land commissioners shall determine if the sale
18 of purchased real property assets located outside of
19 Wyoming is in the best interests of the beneficiaries of
20 the fund used to purchase the assets, or the state in the
21 case of purchases using funds of the legislative
22 stabilization reserve account. If the board so finds, it is
23 authorized to sell the asset in accordance with the

1 provisions of W.S. 36-9-101 through 36-9-117, subject to
2 the following:

3

4 (i) Advertisement of the sale under W.S.
5 36-9-104 shall be provided in the county in which the real
6 property is situated and in an adjoining county in Wyoming;

7

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

11

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

15

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

1 and 36-1-111 and the rules of the board of land
2 commissioners.

3

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

6

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

15

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

18

19 (A) Not later than November 15, 2020
20 regarding any negotiations and steps taken to pursue a
21 purchase agreement under this section; and

22

1 (B) If the board anticipates entering into
2 a purchase agreement under this section by December 31,
3 2020, it shall report:

4

5 (I) The anticipated date to execute
6 the agreement;

7

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

10

11 (III) Any legislation necessary to
12 effectuate the agreement.

13

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

20

21 (iv) Not later than September 1 of each year
22 regarding:

23

1 (A) The earnings and income generated from
2 assets purchased in accordance with this section for the
3 immediately preceding fiscal year; and

4

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

8

9 (o) The state loan and investment board is authorized
10 to enter into an agreement to execute a purchase under this
11 section until December 31, 2020. The authority granted
12 under this section is extended to March 31, 2021 if the
13 board files with the secretary of state not later than
14 December 31, 2020 its report to the legislature that an
15 agreement to purchase assets as provided under this section
16 has been reached in principle and that the anticipated date
17 to close all transactions necessary to implement the
18 agreement is not later than March 31, 2021. The secretary
19 of state shall affix the seal of his office to the board's
20 report upon the filing of the report and shall deliver a
21 copy of the report certified by the secretary of state to
22 the legislature upon its filing.

23

1 (p) The state loan and investment board may, in
2 addition to purchasing any assets under this section, study
3 the potential to purchase assets as specified in this
4 section and recommend to the legislature any legislation
5 deemed by the board to be necessary or convenient to
6 facilitate any future purchase.

7

8 **39-13-113. State payments in lieu of taxes for local**
9 **governments; account created; distribution of funds.**

10

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

13

14 (b) Any county in which property purchased or
15 acquired by exchange pursuant to W.S. 9-4-715.1 is located
16 shall be eligible for payment from the property tax payment
17 reimbursement account to the extent the property would have
18 been taxed if not used primarily for a governmental
19 purpose. On or before September 1, county assessors shall
20 certify the exemptions granted for such property to the
21 department. On or before October 1, the state treasurer out
22 of funds within the property tax payment reimbursement
23 account shall reimburse each county treasurer for the

1 amount of taxes that would have been collected if the
2 property was not exempt. The county treasurer shall
3 distribute the revenue to each governmental entity in the
4 actual amount of taxes lost due to the exemption.

5

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

9

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

14

15 **9-4-219. Legislative stabilization reserve account**
16 **created; purposes; legislative deficit control account.**

17

18 (a) The legislative stabilization reserve account
19 created by 2005 Wyoming Session Laws, Chapter 191, Section
20 4, Section 301(d) is continued and codified. Funds within
21 the account shall only be expended by legislative
22 appropriation. ~~All~~ Funds within the account shall be
23 invested by the state treasurer as authorized under W.S.

1 9-4-715(a), (d), (e) and (q) and all investment earnings
2 from the account attributable to those investments shall be
3 credited to the general fund. Funds within the account may
4 also be invested by the state loan and investment board as
5 provided in W.S. 9-4-715.1 and all investment earnings
6 attributable to those investments shall be credited as
7 provided in W.S. 9-4-715.1.

8
9 **9-4-715. Permissible investments.**

10
11 (q) The state treasurer, or his designee, which shall
12 be registered under the Investment Advisor's Act of 1940 as
13 amended if required to be registered by the terms of that
14 act as amended shall invest the legislative stabilization
15 reserve account created in W.S. 9-4-219 in a manner to
16 obtain the highest return possible subject to the
17 following:

18
19 (i) The treasurer shall consult with the state
20 loan and investment board to identify funds within the
21 account that the board has identified as funds potentially
22 necessary to complete a purchase authorized by W.S.
23 9-4-715.1 and separately invest those funds for the period

1 as recommended by the board in order to provide the
2 liquidity needed to effectuate the purchase. Through the
3 date specified in W.S. 9-4-715.1(o), including any
4 extension of that date under W.S. 9-4-715.1(o), the funds
5 identified by the board shall not be subject to paragraph
6 (ii) of this subsection and shall be separately invested;

7
8 ~~(i)~~(ii) Investments shall be made in accordance
9 with investment policy statements adopted by the board
10 under W.S. 9-4-716. In adopting investment policy
11 statements for the legislative stabilization reserve
12 account, the board shall seek to preserve the balance of
13 the account as necessary to address:

14
15 (A) A budget shortfall or structural budget
16 deficit through contingent appropriations and expenditures
17 under W.S. 9-2-1014(d)(ii) and (iii);

18
19 (B) A published consensus revenue
20 estimating group estimate of revenues that is less than
21 existing legislative appropriations for state government
22 operations or support of public schools;

23

1 (C) Other emergencies and needs identified
2 or authorized by the legislature under Wyoming statutes and
3 session laws.

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

12
13 ~~(iii)~~(iv) After consultation with the budget
14 division of the department of administration and
15 information, up to fifty-five percent (55%) of the
16 unobligated, unencumbered balance of the legislative
17 stabilization reserve account in excess of the amount
18 specified in paragraph ~~(ii)~~(iii) of this subsection, as
19 calculated by the state auditor on October 1 of each fiscal
20 year, may be invested in equities, including stocks of
21 corporations. Funds identified pursuant to paragraph (i) of
22 this subsection shall not be considered as obligated or
23 encumbered funds for purposes of this paragraph and for

1 purposes of W.S. 9-4-219(b) until the state loan and
2 investment board executes a purchase agreement pursuant to
3 W.S. 9-4-715.1. Investments under this paragraph shall be
4 made in compliance with subsections (c) and (d) of this
5 section;

6
7 ~~(iv)~~(v) Not later than November 1 of each year,
8 the state treasurer shall report to the joint
9 appropriations committee and the select committee on
10 capital financing and investments regarding the annual
11 review of the investment policy statement for the
12 legislative stabilization reserve account and the
13 investment performance of the account.

14

15 **Section 3.**

16

17 (a) In executing a purchase under W.S. 9-4-715.1, as
18 created by section 1 of this act, the state loan and
19 investment board is authorized to assume all leases,
20 contracts and other agreements related to the purchased
21 assets as they exist regardless of whether the lease,
22 contract or other agreement complies with the provisions of
23 title 36 of the Wyoming statutes applicable to state lands.

1 The board may renegotiate leases, contracts and other
2 agreements as the board deems necessary or appropriate to
3 fulfill the state's fiduciary duties and that would be in
4 the best interests of the state.

5

6 (b) Subject to existing lease and contract rights
7 assumed in accordance with subsection (a) of this section,
8 all state laws governing the management of state lands
9 shall be applicable to assets purchased pursuant to W.S.
10 9-4-715.1 unless otherwise provided in this act.

11

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

19

20 **Section 4.**

21

22 (a) Before engaging in any purchase under W.S.
23 9-4-715.1, as created by section 1 of this act, the state

1 loan and investment board shall consult with the investment
2 funds committee and, if the potential purchase appears to
3 be a prudent investment, cause to be completed a study of
4 due diligence that analyzes the fair market value of the
5 assets that are subjects of the potential purchase. The
6 board shall also determine the impacts of the purchase on
7 the state and on the corpus of each fund or account from
8 which funds are authorized to be used for the purchase. The
9 office of state lands and investments, upon the direction
10 and approval of the state loan and investment board, may
11 retain professional consultant experts to fulfill the
12 requirements of this subsection.

13

14 (b) There is appropriated from the state building
15 commission contingency account to the state loan and
16 investment board such funds as are necessary for the board
17 to retain professional consultant experts to complete any
18 pre-purchase due diligence study required under subsection
19 (a) of this section. This appropriation shall be for the
20 period beginning with the effective date of this act and
21 ending June 30, 2021. This appropriation shall not be
22 transferred or expended for any other purpose.

23

1 (c) There is appropriated from the legislative
2 stabilization reserve account to the property tax payment
3 reimbursement account created in W.S. 39-13-113, as created
4 by section 1 of this act, such funds as are necessary to
5 provide reimbursement payments to counties as provided in
6 W.S. 39-13-113, as created by section 1 of this act. This
7 appropriation shall be for the period beginning with the
8 effective date of this act and ending June 30, 2021. This
9 appropriation shall not be transferred or expended for any
10 other purpose and any unexpended, unobligated funds
11 remaining from this appropriation shall revert as provided
12 by law on June 30, 2021.

13

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

18

19 (END)