

## Substitute No. 1

## HOUSE BILL NO. HB0249

Investment of state funds.

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

A BILL

for

1 AN ACT relating to the investment of state funds; authorizing  
2 the purchase of real property assets and associated interests  
3 as specified; specifying requirements for the purchase;  
4 specifying sources of funding for the purchase; requiring the  
5 segregation of purchased assets based on funding source;  
6 specifying the distribution of earnings, income and royalties  
7 from purchased assets; creating the property tax  
8 reimbursement payment account; requiring reports; requiring  
9 a legislative session to convene and adjourn prior to  
10 execution of any purchase agreement; authorizing payments to  
11 local governments in lieu of property taxes as specified;  
12 specifying other required arrangements for the purchase and  
13 management of asset purchased; requiring recommendations;  
14 authorizing the retention of consultants; authorizing  
15 reviews, studies and recommendations as alternatives to

1 executing any authorized purchase; providing an  
2 appropriation; and providing for an 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 to  
7 read:

8

9 **9-4-715.1. Permissible purchases of surface,**  
10 **subsurface and mineral estates and related assets as**  
11 **authorized investments; conditions for purchase; reports;**  
12 **limitations.**

13

14 (a) The state loan and investment board is authorized  
15 to investigate, conduct due diligence, and reach agreements  
16 as necessary to make one (1) or more purchases of assets for  
17 investment that are located within the state of Wyoming or  
18 within states with contiguous borders to Wyoming, subject to  
19 the provisions of this section. The board is authorized to  
20 conduct any negotiations with any entity for the purchase of  
21 assets under this section. The board shall develop  
22 recommendations as required by this section for any purchase.  
23 Assets that may be purchased under this section shall be

1 limited to surface and subsurface interests, including  
2 mineral interests with or without the surface estate and any  
3 equity, contract or other interest associated with the  
4 surface, subsurface or mineral interest purchased. The  
5 investigation, recommendations and any agreement to purchase  
6 shall be in accordance with the provisions of this section  
7 including the following:

8

9 (i) The state loan and investment board shall  
10 complete due diligence that analyzes the fair market value of  
11 the assets to be purchased and the feasibility and impacts of  
12 any purchase on the state and on the funds used to complete  
13 the purchase;

14

15 (ii) Any purchase shall be:

16

17 (A) In accordance with all applicable  
18 investment policies established by the state loan and  
19 investment board and with the prudent investor rule  
20 established in the Wyoming Uniform Prudent Investor Act, W.S.  
21 4-10-901 through 4-10-913;

22

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

3

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

7

8                   (iii) For real property:

9

10                   (A) The board shall have conducted a market  
11 analysis or other determination of value of the entirety of  
12 the real property to be purchased;

13

14                   (B) Evidence of marketable title  
15 satisfactory to the board shall be provided by the current  
16 owner prior to any property being conveyed.

17

18                   (iv) Three (3) members of the senate, as appointed  
19 by the president of the senate and three (3) members of the  
20 house appointed by the speaker of the house shall act as  
21 liaisons to the state loan and investment board during the  
22 investigation of the potential purchase, completion of due  
23 diligence and negotiations;

1

2 (v) A purchase made under this section shall be  
3 made utilizing one (1) or more of the following sources,  
4 subject to the conditions specified:

5

6 (A) The permanent Wyoming mineral trust fund  
7 under W.S. 9-4-204(u)(iii), provided that the state loan and  
8 investment board shall account for the best interests of the  
9 current and future beneficiaries of the permanent Wyoming  
10 mineral trust fund, in addition to the prudent investor rule  
11 and state investment policies when determining any amounts to  
12 expend from the fund;

13

14 (B) The common school account within the  
15 permanent land fund, provided that the state loan and  
16 investment board and the board of land commissioners shall  
17 account for statutory, constitutional and other fiduciary  
18 duties to the beneficiaries of the account, in addition to  
19 the prudent investor rule and state investment policies when  
20 determining any amounts to expend from the fund;

21

22 (C) The issuance of special revenue bonds  
23 provided:

1

2

(I) The bonds may be issued by a state entity under existing law as identified by the board;

4

5

(II) May be issued by a newly created entity recommended by the board;

7

8

(III) The board shall identify any revenue source that it recommends to pay or guarantee the bonds. In no instance shall the board recommend any tax source for payment or guarantee of the bonds.

12

13

(D) Any other source of state funds other than the legislative stabilization reserve account, the common school spending policy reserve account and funds which are encumbered, obligated or which have been appropriated for expenditure for a specified purpose.

18

19

(vi) A purchase may be made with an aggregate amount of the sources specified in paragraph (v) of this subsection, provided that each funding source used shall acquire separate assets that are segregated from assets of

22

1 the other funding sources used. In determining the  
2 segregation of assets the board shall take into account:

3

4 (A) The location of any assets to be  
5 purchased and whether the assets are located in Wyoming or  
6 outside Wyoming;

7

8 (B) The established and potential sources of  
9 income from the assets purchased;

10

11 (C) The investment policies adopted by the  
12 board for the funding source.

13

14 (b) The state loan and investment board shall report to  
15 the legislature prior to entering into any agreement to  
16 purchase under this section:

17

18 (i) A listing of the assets to be purchased and  
19 the location of the assets, separately identifying the  
20 specific location of all assets outside the state. The board  
21 shall report any title defects it determines exists;

22

1           (ii) The total fair market value of all assets and  
2 the purchase price. The board shall report the method or  
3 methods used to determine value;

4  
5           (iii) The funding source or sources anticipated to  
6 be used for the purchase;

7  
8           (iv) The anticipated date to execute the  
9 agreement;

10  
11           (v) The anticipated date to close all transactions  
12 necessary to implement the agreement;

13  
14           (vi) Any legislation necessary to effectuate the  
15 agreement;

16  
17           (vii) Any modifications to this act or other  
18 applicable state laws to best manage the assets purchased for  
19 the benefit of the state and in light of the state's fiduciary  
20 duties.

21  
22           (c) No agreement under this section shall be executed  
23 by the board pursuant to this section without the approval of

1 the attorney general. No purchase agreement pursuant to this  
2 section, whether or not in fulfillment of any agreement in  
3 principle shall be executed after the report to the  
4 legislature under this section and prior to the convening and  
5 adjournment of a special or regular session of the Wyoming  
6 legislature. Any agreement in principle entered into by the  
7 state loan and investment board pursuant to this section shall  
8 specifically provide that it is subject to this section and  
9 that the state, the board or any other state entity shall not  
10 incur any liability for failure to fulfill the agreement if  
11 legal authority of the board to execute the agreement does  
12 not exist, including as a result of any legislation enacted  
13 in a special or regular session of the legislature referenced  
14 in this subsection.

15

16 (d) Any report provided pursuant to this section shall  
17 include the written opinion of the attorney general that all  
18 transactions proposed by the board are in accordance with  
19 law, either existing or as recommended by the board to be  
20 modified.

21

22 (e) The board of land commissioners shall give final  
23 approval for any purchase under this section that is

1 negotiated by the state loan and investment board that  
2 provides for the expenditure of funds from the common school  
3 account within the permanent land fund or from other funds  
4 appropriated to the board of land commissioners.

5

6 (f) A purchase made under this section shall:

7

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

10

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

13

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

17

18 (i) For assets purchased with funds of the  
19 permanent Wyoming mineral trust fund:

20

21 (A) Mineral royalties shall be deposited to  
22 the permanent Wyoming mineral trust fund;

23

1                   (B) All other earnings shall be deposited to  
2 the general fund in accordance with laws, rules and policies  
3 governing other earnings from investments of the permanent  
4 Wyoming mineral trust fund. Upon deposit of earnings to the  
5 general fund under this paragraph there is appropriated from  
6 the general fund to the school foundation program account an  
7 amount equal to the deposit to the general fund;

8  
9                   (C) Monies deposited pursuant to this  
10 paragraph shall not be considered as earnings or income for  
11 purposes of W.S. 9-4-204(u)(iii) and 9-4-719(c), (d) and (q).

12  
13                   (ii) Earnings generated from assets purchased with  
14 funds of the common school account within the permanent land  
15 fund shall be deposited in accordance with law, rules and  
16 policies governing earnings from the investment of or holding  
17 of other common school permanent land fund account assets.  
18 Monies deposited to the common school account within the  
19 permanent land fund pursuant to this paragraph shall not be  
20 considered as earnings for purposes of W.S. 9-4-719(g) and  
21 (h);

22

1           (iii) Earnings generated from assets purchased  
2 with the proceeds of revenue bonds shall be deposited and  
3 used in the following order:

4

5           (A) To repay the bonds and to establish any  
6 sinking fund necessary for that purpose;

7

8           (B) To fund the property tax payment  
9 reimbursement account created by W.S. 39-13-113 as provided  
10 in W.S. 39-13-113;

11

12           (C) The balance to be deposited to the school  
13 foundation program account.

14

15           (iv) Earnings generated from assets purchased with  
16 funds pursuant to subparagraph (a)(v)(D) of this section  
17 shall be deposited to the account used to make the purchase.  
18 Excess earnings under this paragraph shall be deposited to  
19 the school foundation program account.

20

21           (h) The state loan and investment board and board of  
22 land commissioners shall manage any assets purchased in  
23 accordance with the following:

1

2 (i) The board of land commissioners shall manage  
3 all surface, subsurface and mineral interests, whether  
4 directly or through the retention of a manager. The state  
5 loan and investment board and the board of land commissioners  
6 are authorized to assume all leases, contracts and other  
7 agreements related to the purchased assets as they exist  
8 regardless of whether the lease, contract or other agreement  
9 complies with the provisions of title 36 of the Wyoming  
10 statutes applicable to state lands. Subject to existing lease  
11 and contract rights assumed, all state laws governing the  
12 management of state lands shall be applicable to assets unless  
13 otherwise provided in this section or other applicable law.  
14 The state loan and investment board and the board of land  
15 commissioners may renegotiate leases, contracts and other  
16 agreements as either board deems necessary or appropriate to  
17 fulfill the state's fiduciary duties and that would be in the  
18 best interests of the state, provided:

19

20 (A) No royalty payable to the state shall be  
21 reduced from the rate existing as of the date the lease,  
22 contract or agreement governing the rate was assumed;

23

1                   (B) Any grazing lease or permit which exists  
2 at the time of the purchase shall not be modified in any  
3 manner without the consent of the lessee or permit holder.

4  
5                   (ii) The office of state lands and investments  
6 shall include in its biennial budget request separate  
7 appropriation requests for the costs of managing real  
8 property interests as determined by the board of land  
9 commissioners and for the cost of managing other assets as  
10 determined by the state loan and investment board in  
11 accordance with this subsection;

12  
13                   (iii) All surface and mineral interests purchased  
14 with funds from the common school account within the permanent  
15 land fund shall be managed as school trust lands. All other  
16 surface and mineral interests shall also be managed as the  
17 office of state lands and investments manages school trust  
18 lands, subject to subsection (g) of this section and provided  
19 further that the lands shall be managed for multiple use  
20 purposes for the benefit of the state as provided in W.S.  
21 36-12-102;

22

1           (iv) The state loan and investment board shall  
2 manage purchased assets other than surface, subsurface and  
3 mineral interests.

4

5           (j) The office of state lands and investments shall  
6 review all leases, contracts and other agreements relating to  
7 any proposed purchase under this section and shall make  
8 recommendations for any modifications to applicable state  
9 laws to best manage the assets purchased for the benefit of  
10 the state and in light of the state's fiduciary duties.

11

12           (k) The state loan and investment board may, in  
13 addition to any authority granted under this section study  
14 the potential to purchase assets as specified in this section  
15 and recommend to the legislature any legislation deemed by  
16 the board to be necessary or convenient to facilitate any  
17 future purchase.

18

19           **39-13-113. State payments in lieu of taxes for local**  
20 **governments; account created; distribution of funds.**

21

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

1

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

16

17 **Section 2.**

18

19 (a) In addition to information required to be reported  
20 under W.S. 9-4-715.1, the state loan and investment board  
21 shall:

22

1           (i) Regularly report to the legislature any  
2 negotiations and steps taken to pursue a purchase under this  
3 act;

4  
5           (ii) Identify in the report required by W.S.  
6 9-4-715.1(b):

7  
8           (A) Anticipated distribution of earnings  
9 from each set of segregated assets;

10  
11           (B) Anticipated earnings to be distributed to  
12 the corpus of a fund or account used to purchase an asset,  
13 identifying whether the earnings are required to be  
14 distributed to the corpus by the Wyoming constitution or  
15 federal law;

16  
17           (C) Anticipated earnings required by the  
18 Wyoming constitution or federal law to be distributed to a  
19 fund or account other than the corpus of the fund or account  
20 used to purchase an asset;

21

1                   (D) Earnings anticipated to be needed to pay  
2 or guarantee payment of any revenue bonds anticipated to be  
3 issued;

4

5                   (E) Anticipated earnings need to fund the  
6 property tax reimbursement account under W.S. 39-13-113;

7

8                   (F) Earnings anticipated to be needed to fund  
9 management costs of the assets;

10

11                   (G) Anticipated earnings to be distributed to  
12 the corpus of a fund or account used to purchase an asset,  
13 identifying whether the earnings are required to be  
14 distributed to the corpus by state law, rule or policy;

15

16                   (H) Remaining anticipated earnings to be  
17 distributed to a fund or account by existing law, rule or  
18 policy.

19

20                   (iii) Recommend to the legislature in the report  
21 required by W.S. 9-4-715.1(b):

22

1                   (A) How management costs should be allocated  
2 to each segregated set of assets.

3

4                   (B) Whether any purchased real property  
5 assets located outside of Wyoming should be reviewed by the  
6 board of land commissioners for immediate or subsequent sale  
7 or exchange.

8

9                   **Section 3.**

10

11           (a) The office of state lands and investments, upon the  
12 direction and approval of the state loan and investment board,  
13 may retain experts to fulfill the due diligence and related  
14 requirements of this act.

15

16           (b) There is appropriated from the state building  
17 commission contingency account to the state loan and  
18 investment board such funds as are necessary for the board or  
19 office of state lands and investments to retain experts under  
20 subsection (a) of this section. This appropriation shall be  
21 for the period beginning with the effective date of this act  
22 and ending June 30, 2022. This appropriation shall not be  
23 transferred or expended for any other purpose.

1

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

5

6

(END)