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 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; requiring a legislative session to convene and adjourn prior to execution of any purchase agreement; authorizing payments to local governments in lieu of property taxes as specified; specifying other required arrangements for the purchase and management of asset purchased; requiring recommendations; authorizing the retention of consultants; authorizing reviews, studies and recommendations as alternatives to
executing any authorized purchase; providing an appropriation; 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 surface, subsurface and mineral estates and related assets as authorized investments; conditions for purchase; reports; limitations.

(a) The state loan and investment board is authorized to investigate, conduct due diligence, and reach agreements as necessary 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, subject to the provisions of this section. The board is authorized to conduct any negotiations with any entity for the purchase of assets under this section. The board shall develop recommendations as required by this section for any purchase. Assets that may be purchased under this section shall be
limited to surface and subsurface interests, including mineral interests with or without the surface estate and any equity, contract or other interest associated with the surface, subsurface or mineral interest purchased. The investigation, recommendations and any agreement to purchase shall be in accordance with the provisions of this section including the following:

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

(ii) Any purchase shall be:

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

(C) 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.

(iii) For real property:

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

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

(iv) Three (3) members of the senate, as appointed by the president of the senate and three (3) members of the house appointed by the speaker of the house shall act as liaisons to the state loan and investment board during the investigation of the potential purchase, completion of due diligence and negotiations;
(v) A purchase made under this section shall be made utilizing one (1) or more of the following sources, subject to the conditions specified:

(A) The permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii), provided that 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, in addition to the prudent investor rule and state investment policies when determining any amounts to expend from the fund;

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

(C) The issuance of special revenue bonds provided:
(I) The bonds may be issued by a state entity under existing law as identified by the board;

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

(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.

(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.

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

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

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

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

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

(i) A listing of the assets to be purchased and the location of the assets, separately identifying the specific location of all assets outside the state. The board shall report any title defects it determines exists;
(ii) The total fair market value of all assets and the purchase price. The board shall report the method or methods used to determine value;

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

(iv) The anticipated date to execute the agreement;

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

(vi) Any legislation necessary to effectuate the agreement;

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

(c) No agreement under this section shall be executed by the board pursuant to this section without the approval of
the attorney general. No purchase agreement pursuant to this
section, whether or not in fulfillment of any agreement in
principle shall be executed after the report to the
legislature under this section and prior to the convening and
adjournment of a special or regular session of the Wyoming
legislature. Any agreement in principle entered into by the
state loan and investment board pursuant to this section shall
specifically provide that it is subject to this section and
that the state, the board or any other state entity shall not
incur any liability for failure to fulfill the agreement if
legal authority of the board to execute the agreement does
not exist, including as a result of any legislation enacted
in a special or regular session of the legislature referenced
in this subsection.

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

(e) 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.

(f) A purchase made under this section shall:

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

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

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

(i) 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;
(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. Upon deposit of earnings to the general fund under this paragraph there is appropriated from the general fund to the school foundation program account an amount equal to the deposit to the general fund;

(C) Monies deposited pursuant to this paragraph 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).

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

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

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

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

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

(h) The state loan and investment board and board of land commissioners shall manage any assets purchased in accordance with the following:
(i) The board of land commissioners shall manage all surface, subsurface and mineral interests, whether directly or through the retention of a manager. The state loan and investment board and the board of land commissioners are 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. Subject to existing lease and contract rights assumed, all state laws governing the management of state lands shall be applicable to assets unless otherwise provided in this section or other applicable law. The state loan and investment board and the board of land commissioners may renegotiate leases, contracts and other agreements as either board deems necessary or appropriate to fulfill the state's fiduciary duties and that would be in the best interests of the state, provided:

(A) No royalty payable to the state shall be reduced from the rate existing as of the date the lease, contract or agreement governing the rate was assumed;
(B) Any grazing lease or permit which exists at the time of the purchase shall not be modified in any manner without the consent of the lessee or permit holder.

(ii) 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;

(iii) All surface and mineral interests purchased with funds from the common school account within the permanent land fund shall be managed as school trust lands. All other surface and mineral interests shall also be managed as the office of state lands and investments manages school trust lands, subject to subsection (g) of this section and provided further that the lands shall be managed for multiple use purposes for the benefit of the state as provided in W.S. 36-12-102;
(iv) The state loan and investment board shall manage purchased assets other than surface, subsurface and mineral interests.

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

(k) The state loan and investment board may, in addition to any authority granted 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, from funds within the property tax payment reimbursement account the state treasurer shall reimburse each county treasurer for the amount of taxes that would have been collected if the property were not exempt. The county treasurer shall distribute the revenue to each governmental entity in the actual amount of taxes lost due to the exemption.

Section 2.

(a) In addition to information required to be reported under W.S. 9-4-715.1, the state loan and investment board shall:
(i) Regularly report to the legislature any negotiations and steps taken to pursue a purchase under this act;

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

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

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

(C) Anticipated earnings required by the Wyoming constitution or federal law to be distributed to a fund or account other than the corpus of the fund or account used to purchase an asset;
(D) Earnings anticipated to be needed to pay or guarantee payment of any revenue bonds anticipated to be issued;

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

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

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

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

(iii) Recommend to the legislature in the report required by W.S. 9-4-715.1(b):
(A) How management costs should be allocated to each segregated set of assets.

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

Section 3.

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

(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 or office of state lands and investments to retain experts 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, 2022. This appropriation shall not be transferred or expended for any other purpose.
Section 4. 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.

(END)