



## WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** April 27, 2021

**TO** Select Committee on Capital Financing and Investments

**FROM** Polly Scott, Senior Fiscal Analyst

**SUBJECT** Committee Background Materials

For purposes of background for the initial meeting of the 2021-2022 Select Committee on Capital Financing and Investments. This memorandum provides the following materials:

**A. Investment-related statutes including:**

- W.S. 9-4-108, Crediting of investment returns.
- W.S. 9-4-219, Legislative Stabilization Reserve Account.
- W.S. 9-4-220, Strategic Investments and Projects Account.
- W.S. 9-4-220.1, Wyoming State Penitentiary Capital Construction Account.
- W.S. 9-4-714 through 9-4-718, Investment of state funds.
- W.S. 9-4-719, Spending policies.
- W.S. 9-4-720 and 9-4-721, Investment Funds Committee.
- W.S. 28-11-201, Select Committee on Capital Financing and Investments.

**B. [2020 Report to the Legislature from the Select Committee on Capital Financing and Investments](#) (embedded hyperlink)**

W.S. 9-4-719(p) requires the Select Committee to annually report recommendations to the Legislature on modifications to spending policy amounts. The 2020 report conveyed support for adjusting the statutes to specify more frequent deposits of dividends and income to the General Fund from the Permanent Wyoming Mineral Trust Fund reserve account, and no additional changes were recommended. During the last interim, the Select Committee formed a working group to begin a dialogue with the State Treasurer's Office and the Investment Funds Committee to support improved investment outcomes. The working group's efforts resulted in the enactment of legislation during the 2021 General Session.

**C. 2021 Adopted legislation relating to investment policies (embedded hyperlinks)**

- **SF 63** – PWMTF reserve account-distribution timing, sponsored by Select Committee on Capital Financing and Investments. This amended the law to provide for quarterly payments from the PWMTF reserve account to the General Fund and for an annual reconciliation process.
- **SF 119** – Investment of state permanent funds (reference portfolio), sponsored by Joint Appropriations Committee. This amended the law to replace a specific percentage of permanent funds that may be invested in equities with a risk profile standard for the investment of those funds.

- **SF 120** – Investment of state non-permanent funds (reference portfolio), sponsored by sponsored by Joint Appropriations Committee. This is a companion bill to SF 119 and adopts the same risk profile for the investment of state non-permanent funds.
- **SF 121** – State funds – investments and distributions, sponsored by Senator Perkins. This legislation a) codified some current practices of the State Treasurer's Office related to the payout of capital gains (losses), b) implemented the uniform use of the term "earnings" in various statutes, c) modified the spending policy amounts for the Permanent Wyoming Mineral Trust Fund, Common School Permanent Land Fund and the Excellence in Higher Education Endowment, d) established the distribution of the one percent severance tax in future years f) repeals the Legislative Deficit Control Account and e) directed the Select Committee to conduct a two-year study.
- **HB 219** – Investment funds committee-(IFC) membership, Sponsored by Representative Nicholas. This increases the number of appointed members on the IFC from four (4) to six (6) and adjusts the membership of the chief investment officer and the Wyoming Retirement System chief investment officer to be ex officio nonvoting members of the IFC.
- **HB 244** -State investment administration, sponsored by House Appropriations Committee. Requires the IFC to study and assess options for improving investment operations relating to state funds and report to the Select Committee by November 1, 2021.

#### **D. Overview on spending policies**

W.S. 9-4-719 directs the policy for spending from Wyoming's permanent funds according to three objectives in descending order of importance:

##### **9-4-719. Investment earnings spending policy permanent funds.**

(a) The purpose of this section is to establish a spending policy for earnings on permanent fund investments to provide, in descending order of importance:

- (i) Consistent, sustainable flow of earnings for expenditure over time;
- (ii) Protection of the corpus of the permanent funds against inflation; and
- (iii) To the extent practicable, increases in earnings available for expenditure to offset the effects of inflation.

With the exception of the Hathaway Scholarship Endowment, the spending policies for the permanent funds – the Permanent Wyoming Mineral Trust Fund (PWMTF), Common School Permanent Land Fund (CSPLF), and Excellence in Higher Education Endowment (EHEE) -- have been expressed as a fixed percentage of the fund's value, currently set at five percent (5%) of the rolling five-year average market value. With the adoption of 2021 SF 121, the spending policy reductions legislated to begin in FY 2023 for the PWMTF and FY 2025 for the CSPFL were repealed, and the spending policy amount will remain at five percent (5%). The spending policy amount for EHEE was reduced to four and three quarters percent (4.75%), and 2021 SF 121 increases it to five percent (5%) for FY 2022 and thereafter.

**Table 1: Spending Policy Amounts (as a percent of the five-year market value)**

Fiscal Year	PWMTF	CSPLF	Excellence in Higher Education Endowment Fund
2019	5.00%	5.00%	4.75%
2020	5.00%	5.00%	4.75%
2021	5.00%	5.00%	4.75%
2022 and thereafter	5.00%	5.00%	5.00%

The interest, dividends, and realized capital gains from each corpus are used to support spending needed for the associated programs. By statute and policy set by the state treasurer, realized gains are distributed after the end of the fiscal year, subject to covering any losses first. A reserve account for each fund has been established in the event there is not sufficient interest, dividends, and realized capital gains to meet the full spending policy amount. The reserve accounts are funded by corpus interest, dividends and realized capital gains above the spending policy amount and, in some cases, specific appropriations.

Although the spending policies are a fixed percentage, the percentage may not always be achieved if the interest, dividends, and realized capital gains are not sufficient to meet the spending policy amount. As a result, reserve accounts have been established and are used to supplement when interest, dividends, and realized capital gains are not enough. Staff provides the Select Committee with the actual and estimated spending policy results for the fiscal year at its fall meeting.

The following flow charts, included in this memo, depict the distribution methodology for each fund of the permanent funds.

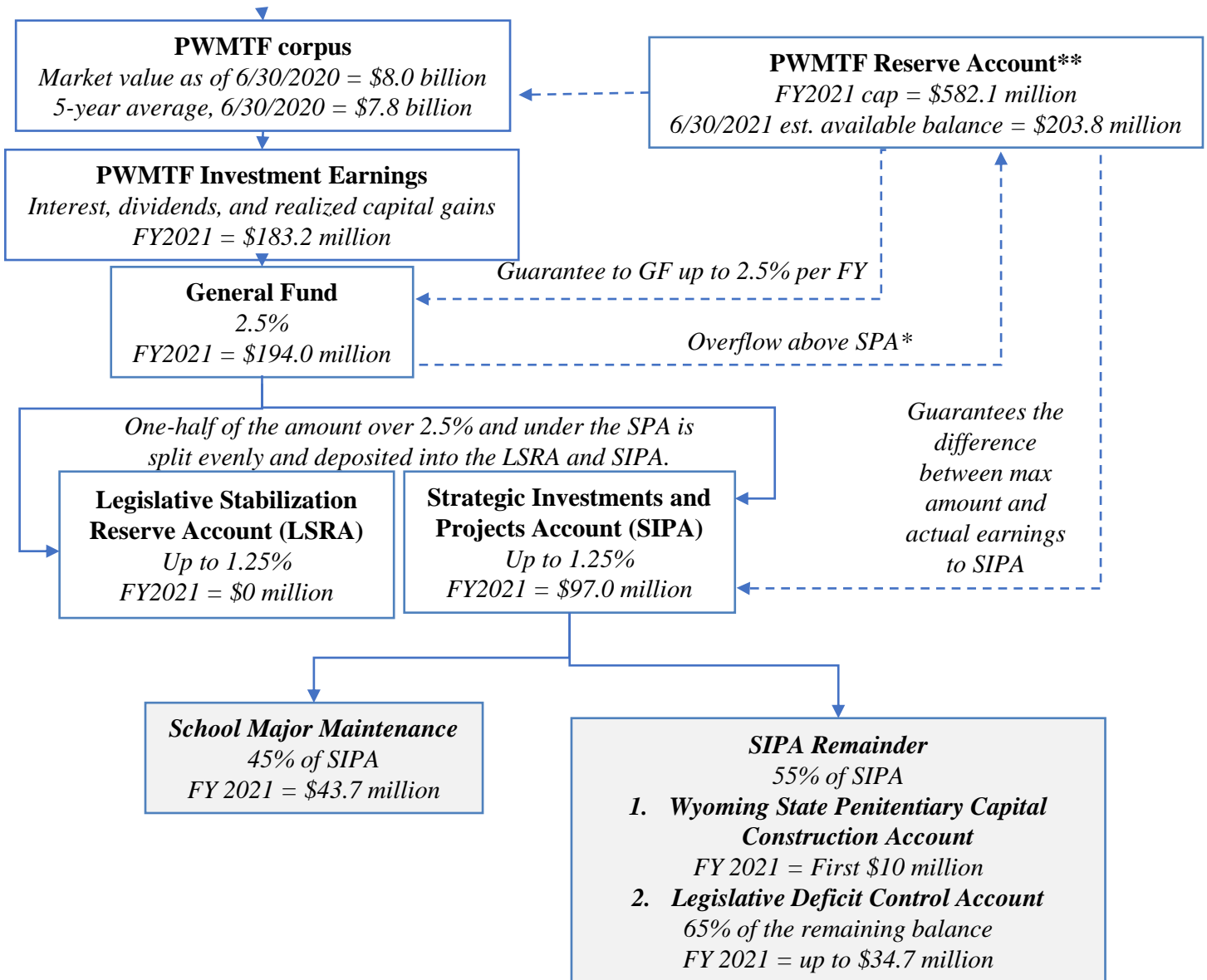
APPENDIX B-1  
**Estimated Spending Policy for FY2021**  
**Permanent Wyoming Mineral Trust Fund (PWMTF)**  
**W.S. 9-4-719**

The **Spending Policy Amount (SPA)** for FY2021 is 5% of the 5-year average market value of the PWMTF corpus. W.S. 9-4-719(a) outlines the purpose of the spending policy as:

(a) The purpose of this section is to establish a spending policy for earnings on permanent fund investments to provide, in descending order of importance:

- (i) Consistent, sustainable flow of earnings for expenditure over time;
- (ii) Protection of the corpus of the permanent funds against inflation; and
- (iii) To the extent practicable, increases in earnings available for expenditure to offset the effects of inflation.

**Severance Taxes**



**Notes:**

\* For future years, the SPA will change as follows: FY2020-2022 = 5%, FY2023 = 4.75%, FY2024 = 4.5%

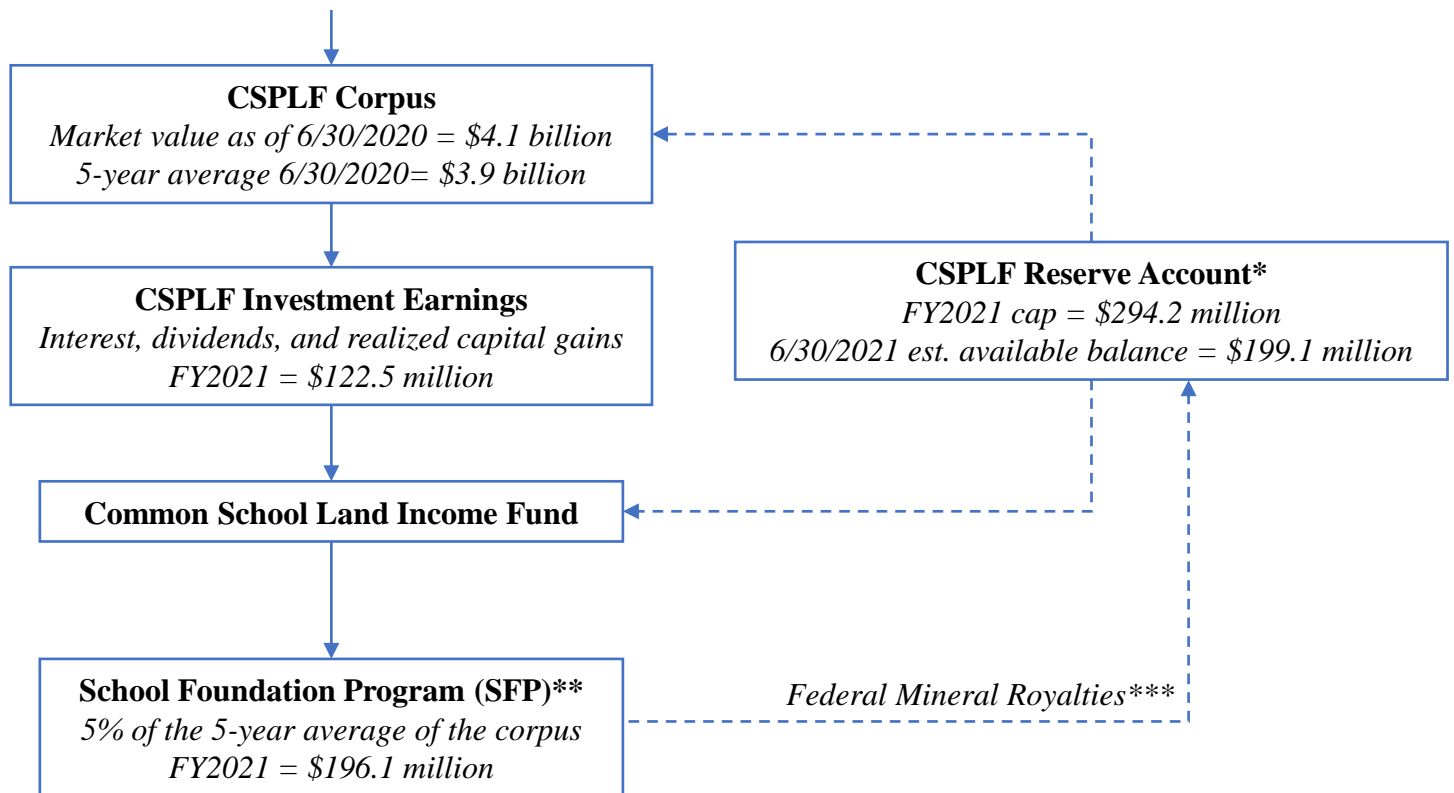
\*\*Excess over 150% of the SPA in the PWMTF Reserve Account goes back to the PWMTF corpus.

APPENDIX B-2  
**Estimated Spending Policy Reserve Account for FY2021**  
**Common School Permanent Land Fund (CSPLF)**  
**W.S. 9-4-719**

The **Spending Policy Amount (SPA)** for FY2021 is 5% of the five-year average of the value of the corpus.\* W.S. 9-4-719(a) outlines the purpose of the spending policy as:

- (a) The purpose of this section is to establish a spending policy for earnings on permanent fund investments to provide, in descending order of importance:
- (i) Consistent, sustainable flow of earnings for expenditure over time;
  - (ii) Protection of the corpus of the permanent funds against inflation; and
  - (iii) To the extent practicable, increases in earnings available for expenditure to offset the effects of inflation.

**Sale of school lands, at least 2/3 of production and sale of state mineral royalties, easements, surface damage payments, etc.**



**Notes:**

\*The SPA is “guaranteed” from the CSPLF Reserve Account to the Common School Land Income Fund. The excess within the CSPLF Reserve Account over 150% of the SPA is directed to the CSPLF corpus (automatic appropriation).

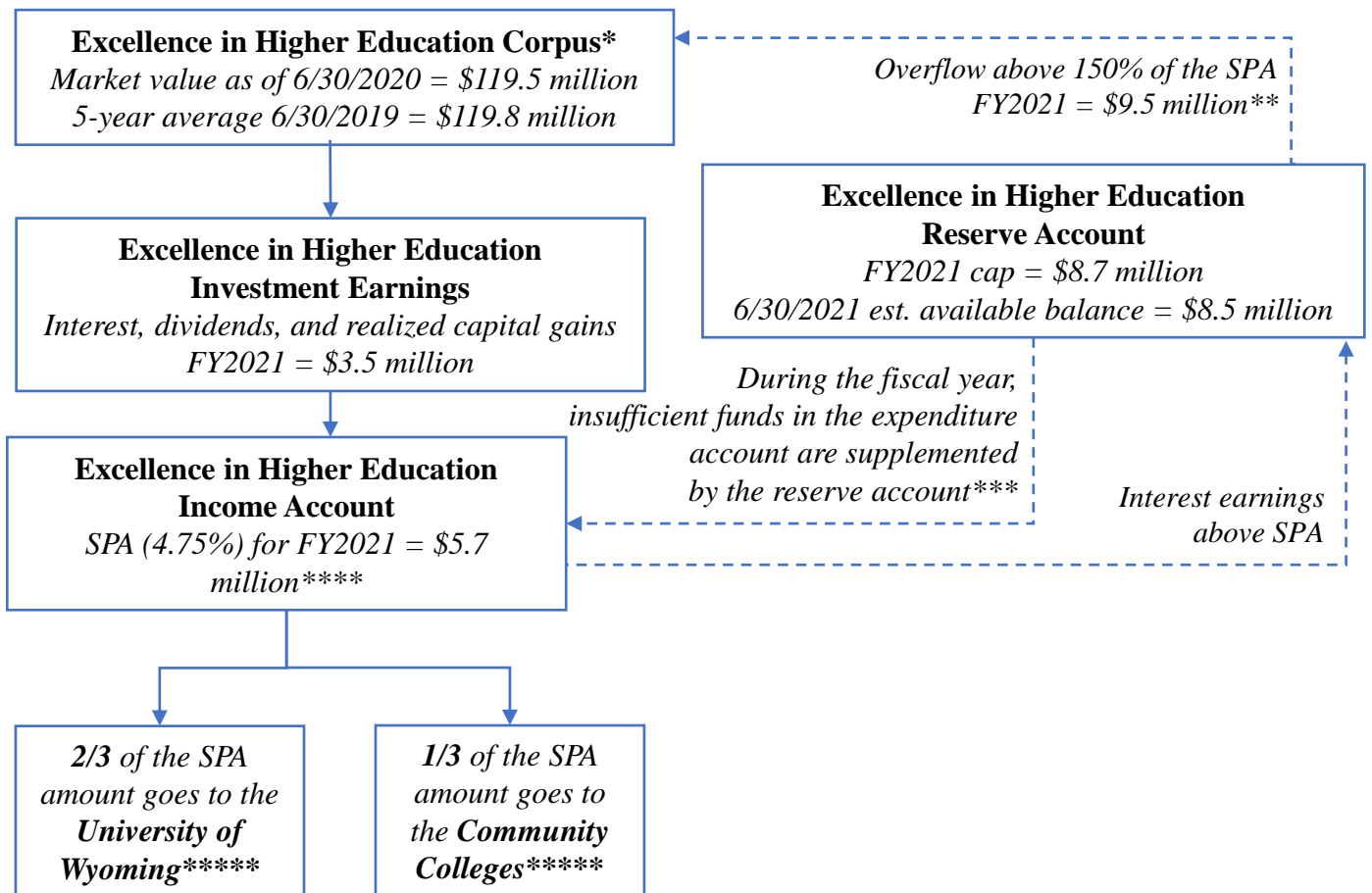
\*\*For future years, the SPA will change as follows: FY2020-2024 = 5%, FY2025 = 4.75%, FY2026 = 4.5%

\*\*\*There is an automatic appropriation to the CSPLF Reserve Account from FMR amounts exceeding \$200 million that would otherwise be deposited in the SFP for any amounts in excess of the SPA.

APPENDIX B-3  
**Estimated Spending Policy Reserve Account for FY2021**  
**Excellence in Higher Education Endowment Program**  
**W.S. 9-4-719**

The **Spending Policy Amount (SPA)** for FY2021 is 4.75% of the 5-year average market value of the Excellence in Higher Education corpus. W.S. 9-4-719(a) outlines the purpose of the spending policy as:

- (a) The purpose of this section is to establish a spending policy for earnings on permanent fund investments to provide, in descending order of importance:
- (i) Consistent, sustainable flow of earnings for expenditure over time;
  - (ii) Protection of the corpus of the permanent funds against inflation; and
  - (iii) To the extent practicable, increases in earnings available for expenditure to offset the effects of inflation.



**Notes:**

\*A portion of the federal mineral royalties over the \$200 million cap that would have been deposited in the School Foundation Program Account were deposited in the Excellence in Higher Education fund (corpus) until the maximum of \$105 million was achieved. It was fully funded in FY2008.

\*\* 2018 Session Laws, Ch.134, Sec. 300(e) specifies no funds within the reserve account shall be credited to the corpus between March 15, 2018 and June 30, 2020.

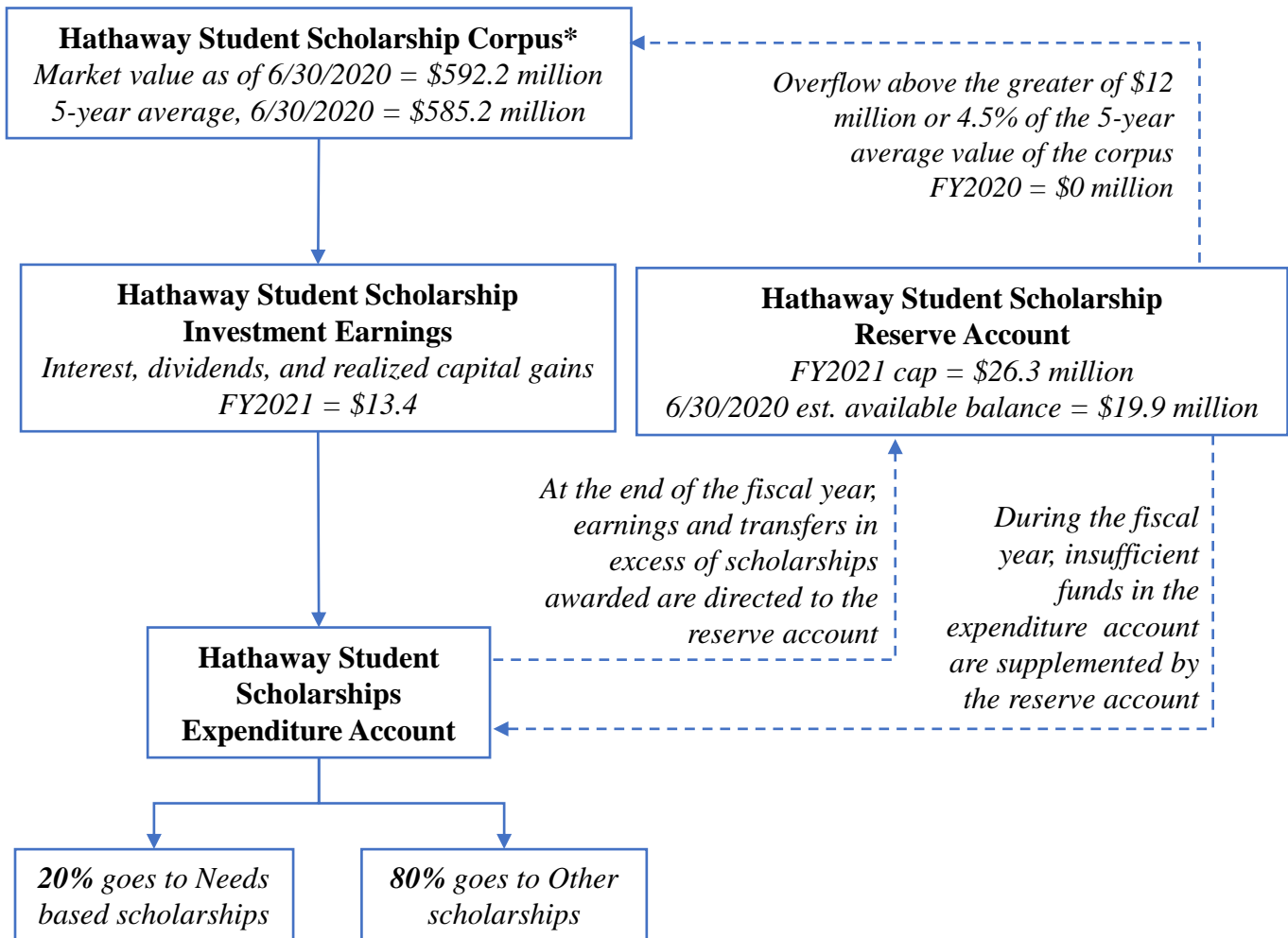
\*\*\* Pursuant to W.S. 9-4-719(n) the supplement for insufficient funds from the Excellence in Higher Education Reserve Account is limited to one-half of the difference between the investment income earned and the SPA.

\*\*\*\* STO reported a correction to the distribution amount for FY2019 of approximately \$185,000 that impacts the FY2020 distribution amount.

\*\*\*\*\* Pursuant to W.S. 21-16-1201(c), the institutions shall only expend 90% of the distributions in fiscal years in which the SPA is reached or exceeded.

APPENDIX B-4  
**Estimated Spending Policy Reserve Account for FY2021**  
**Hathaway Student Scholarship Endowment Program**  
**W.S. 21-16-1302**

The **Spending Policy Amount (SPA)** for this account is established as the amount necessary to fund scholarships for Wyoming students to attend the University of Wyoming and community colleges, if students meet legislatively established criteria, pursuant to W.S. 21-16-1303 through 1306.



**Notes:**

\*A portion of the federal mineral royalties over the \$200 million cap that would have been deposited in the School Foundation Program Account were deposited in the Hathaway Student Scholarship fund (corpus) until the maximum of \$400 million was achieved. It was fully funded in FY2007. Pursuant to 2008 Session Laws, Ch. 48, Section 3, Section 027, Footnote 2, an additional \$50 million was appropriated from the federal coal lease bonus sales to the Hathaway Student Scholarship fund (corpus).

**9-4-108. Crediting of investment returns. [New]**

**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 shall be credited to the general fund.

(b) To the extent funds are available after all other appropriations or transfers from the legislative stabilization reserve account to be made on or prior to June 30 of the applicable fiscal year have been made, an amount necessary to restore the unobligated, unencumbered balance within the public school foundation program account to one hundred million dollars (\$100,000,000.00) on June 30 of each fiscal year shall be transferred from the legislative stabilization reserve account into the public school foundation program account. This subsection is repealed the month immediately following the date that the state auditor and the state treasurer first certify to the governor and the department of revenue, and the governor certifies the same to the secretary of state, that the unobligated, unencumbered balance in the legislative stabilization reserve account is less than five hundred million dollars (\$500,000,000.00).

(c) There is created the legislative deficit control account within the legislative stabilization reserve account. 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) and (e) and all investment earnings from the account shall be credited to the general fund. W.S. 9-4-715(q) shall not apply to the investment of this account. For purposes of accounting and investing only, the legislative deficit control account shall be treated as a separate account from the legislative stabilization reserve account.

**9-4-220. Strategic investments and projects account created; purposes.**

(a) The strategic investments and projects account created by 2013 Wyoming Session Laws, Chapter 73, Section 4, Section 300(e) is continued and codified. Funds within the account shall only be expended by legislative appropriation. Subject to subsection (b) of this section, the governor may include appropriation requests from funds available within the strategic investments and projects account within his biennial budget requests for one-time expenditures as he deems necessary. All funds within the account shall be invested by the state treasurer and all investment earnings from the account shall be credited to the general fund, except as provided by W.S. 9-4-220.1(a).

(b) For fiscal year 2021 and in each fiscal year thereafter unencumbered and unobligated funds available for expenditure in the strategic investments and projects account shall be expended for the following purposes and subject to the following:

(i) An amount equal to forty-five percent (45%) of the maximum amount which may be credited to the strategic investments and projects account pursuant to W.S. 9-4-719(q) shall be credited to a school major maintenance subaccount. Funds within the subaccount shall be expended only for school major maintenance obligations of the state. For purposes of accounting and investing only, the school major



maintenance subaccount shall be treated as a separate account from the strategic investments and projects account;

(ii) After making transfers to the Wyoming state penitentiary capital construction account under W.S. 9-4-220.1, on June 30, 2021 for fiscal year 2021 and June 30 of each fiscal year thereafter sixty-five percent (65%) of the funds in excess of the amount calculated under paragraph (i) of this subsection shall be credited to the legislative deficit control account within the legislative stabilization reserve account. The remainder may be expended as appropriated by the legislature.

**9-4-220.1. Wyoming state penitentiary capital construction account; funds transferred to the account.**

(a) There is created the Wyoming state penitentiary capital construction account within the strategic investments and projects account created by W.S. 9-4-220. Funds in the account shall only be expended upon legislative appropriation. Through the fiscal year ending June 30, 2034, all funds within the account shall be invested in the pool A investment account by the state treasurer pursuant to W.S. 9-4-715(p). Thereafter, all funds within the account shall be invested as determined by the state treasurer. All investment earnings from the account shall be credited to the account. For purposes of accounting and investing only, the Wyoming state penitentiary capital construction account shall be treated as a separate account from the strategic investments and projects account.

(b) Beginning on June 30, 2021 for fiscal year 2021 and June 30 of each fiscal year thereafter as provided in this subsection, the state treasurer shall transfer ten million dollars (\$10,000,000.00), or as much thereof as is available, from any unobligated funds within the strategic investments and projects account to the Wyoming state penitentiary capital construction account. The state treasurer shall cease transferring funds to the Wyoming state penitentiary capital construction account pursuant to this subsection on July 1, 2038.

**9-4-714. Definitions.**

(a) As used in this act:

(i) "Alternative investments" means investments in nontraditional asset classes or in traditional asset classes which are utilized in a nontraditional strategy;

(ii) "Asset classes" means categories of securities with similar characteristics and properties, such as cash equivalents, stocks, bonds and real estate;

(iii) "Board" means the state loan and investment board;

(iv) "Fund" means as defined by W.S. 9-4-203(a)(vii);

(v) "Permanent funds" means the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii), the Wyoming permanent land fund under W.S. 9-4-204(u)(iv), the excellence in higher education endowment fund under W.S. 9-4-204(u)(vi), the Hathaway student scholarship endowment fund under W.S. 9-4-204(u)(vii) and the Hathaway expand Wyoming scholarship endowment fund under W.S. 9-4-204(u)(viii);

(vi) "Committee" means the investment funds committee created by W.S. 9-4-720;

(vii) "Designated chief investment officer" means the employee retained pursuant to W.S. 9-4-715(a);

(viii) "This act" means W.S. 9-4-714 through 9-4-721.

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

(a) The state treasurer, in consultation with the investment funds committee, shall employ a designated chief investment officer who shall have minimum qualifications including at least ten (10) years of experience managing institutional investment portfolios of in excess of five hundred million dollars (\$500,000,000.00), experience with hiring and managing internal and external investment managers and extensive experience in any two (2) or more of the following areas: domestic equity, fixed income securities, international equity or alternative investments. The designated chief investment officer shall provide the state treasurer with information and recommendations regarding the investment of state funds and additional information as requested by the state treasurer. The state treasurer shall compile an annual report which shall include investment, income, individual and aggregate gains and losses by fund and the extent to which the state investment policy is being implemented. Subject to requirements of subsection (c) of this section, state funds may be invested in any investment:

- (i) Authorized by the legislature; or
- (ii) Authorized or approved by the board.

(b) 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, may invest up to seventy percent (70%) of the permanent funds in equities, including stocks of corporations pursuant to subsections (c) and (d) of this section. The state treasurer shall report at least annually to the select committee on capital financing and investments, the joint appropriations committee and the investment funds committee on the analysis conducted pursuant to paragraph (d)(ii) of this section and W.S. 9-4-716(b)(ix).

(c) The state treasurer shall obtain the approval of the board prior to the investment of funds in alternative investments, provided:

- (i) The investment funds committee shall review any new proposed investment of funds in alternative investments and shall submit recommendations to the board;
- (ii) The approval of the board shall be complete after consideration of any recommendation from the investment funds committee and upon the review and written acceptance by the board of the material terms of the instruments governing the investment;
- (iii) Any material adverse change to the terms of instruments governing investments, previously approved by the board, at any time while the investments are held by the state of Wyoming shall require the renewal of approval of such investments by the board.

(d) When approving, acquiring, investing, reinvesting, exchanging, retaining, selling and managing investments of the state of Wyoming, the members of the board, the members of the investment funds committee, the state treasurer, designees of the state treasurer or any other fiduciary appointed by the state treasurer, the board or the investment funds committee shall:

- (i) Exercise the judgment and care of a prudent investor as specified by the Uniform Prudent Investor Act, W.S. 4-10-901 through 4-10-913;

(ii) Evaluate the risk of investments using a strategy based on the principles of the capital market theory which are generally accepted and followed by institutional investors including long-term investors. This strategy includes a consideration of the following:

(A) Risks shall be mitigated through diversification of asset classes and investment approaches and through diversification of individual securities;

(B) Prudent risk taking is a necessary element of long-term investing and is needed to achieve the long-term objectives of a fund.

(e) Individual investments or groups of investments made under this act shall not be evaluated solely in isolation but also in the context of the entire investment portfolio and as part of an overall investment strategy of the trust or fund from which the investment is derived, consistent with the policies for such trust or fund established under W.S. 9-4-716 by the board. The purchase of a security or the making of any direct investment by the state treasurer or his designee in a security shall not constitute a delegation of his duties under this article or under any rule promulgated under this article.

(f) Repealed By Laws 2011, Ch. 129, § 207.

(g) The state treasurer may pledge not to exceed three hundred million dollars (\$300,000,000.00) from the common school account in the permanent land fund to guarantee school district bonds under W.S. 9-4-1001(d). These funds shall be invested as other funds in that account, but the state treasurer shall ensure sufficient liquidity of investments to ensure required disbursements can be made. This subsection is repealed effective July 1, 2020.

(h) Repealed by Laws 2016, ch. 110, § 3.

(j) Repealed by Laws 2019, ch. 35, § 2.

(k) Except as provided in subsection (o) of this section, upon request of the board, the state treasurer may invest funds received from sales of state trust lands plus up to two million dollars (\$2,000,000.00) one-time seed money contained in the common school account within the permanent land fund, by purchasing land and improvements thereon within Wyoming as assets of the trust.

(m) Repealed by Laws 2016, ch. 41, § 1.

(n) The state treasurer shall not invest state funds for a specific public purpose authorized or directed by the legislature in excess of a total of one billion dollars (\$1,000,000,000.00), excluding investments made pursuant to W.S. 37-5-406 or 37-5-605. By November 1 of each calendar year, the state treasurer, in consultation with the board, the Wyoming water development office, the Wyoming business council and the office of state lands and investments, shall provide a report to the select committee on capital financing and investments on all state funds invested for a specific public purpose authorized or directed by the legislature. The report shall include:

(i) A list of all investment or loan requests made in the previous year, the amount loaned or invested and the status of all investments and loans, including those which are delinquent as to the payment of any installment of principal or interest due;

(ii) Recommendations for future legislation, including recommendations for adjustments to the amount allocated by this subsection and recommendations for adjustments to the amounts allocated under

applicable state law for individual investments authorized or directed by the legislature for a specific public purpose; and

(iii) The cost of the investment to the people of Wyoming in terms of:

(A) Forgone earnings that could have been obtained if the funds had been invested by the state treasurer with the permanent funds of the state;

(B) Administrative and other costs associated with each investment.

(o) Upon request of the board and when determined by the board to be consistent with the duties and obligations owed to beneficiaries of state trust land sales proceeds, the state treasurer shall invest funds received from the sale of state trust lands to the federal government by purchasing federal lands and improvements within Wyoming from the federal government.

(p) There is created the pool A investment account. 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, pursuant to subsections (c) and (d) of this section and after consultation with the state agency or agencies receiving or administering investment earnings from the monies invested in the pool A investment account, may invest up to seventy percent (70%) of the monies comprising the pool A investment account in equities including stocks of corporations. The state loan and investment board, in consultation with the state agency or agencies receiving or administering investment earnings from the monies invested in the pool A investment account, shall annually review the state investment policy statements for the investment pool created by this subsection as required under W.S. 9-4-716. Monies in the following funds shall be invested in the pool A investment account:

(i) The Wyoming tobacco settlement trust fund created by W.S. 9-4-1203(a);

(ii) The Wyoming wildlife and natural resource trust account created by W.S. 9-15-103(a);

(iii) The Wyoming cultural trust fund established by W.S. 9-2-2304(a);

(iv) The Wyoming public television matching fund account created by W.S. 21-23-202(a);

(v) The trust account within the Wyoming game and fish fund created by W.S. 23-1-501(f);

(vi) Through the fiscal year ending June 30, 2034, the Wyoming state penitentiary capital construction account created by W.S. 9-4-220.1(a);

(vii) The transportation trust fund created by W.S. 9-4-607(a);

(viii) Not more than fifty percent (50%) of all funds received under the Uniform Unclaimed Property Act that are deposited into the unclaimed property account created by W.S. 34-24-124, excluding investment earnings from the account.

(ix) The emergency water projects account created by W.S. 41-2-124(f), including the voluntary pool program subaccount within that account.

(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) 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.

(ii) 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;

(iii) 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 (ii) 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. Investments under this paragraph shall be made in compliance with subsections (c) and (d) of this section;

(iv) 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.

(r) 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, pursuant to subsections (c) and (d) of this section, may invest up to seventy-five percent (75%) of the unobligated, unencumbered balance of the permanent Wyoming mineral trust fund reserve account created under W.S. 9-4-719(b) and common school permanent fund reserve account created under W.S. 9-4-719(f) in equities, including stocks of corporations. Investments under this subsection shall be in accordance with investment policy statements adopted by the board under W.S. 9-4-716. In adopting investment policy statements for the permanent Wyoming mineral trust fund reserve account and common school permanent fund reserve account, the board shall seek to preserve the balance of each account in a manner that strives for the highest possible risk-adjusted total return consistent with an appropriate level of safety and liquidity.

**9-4-716. State investment policy; investment consultant.**

(a) The board, in consultation with the investment funds committee, shall adopt investment policy statements for state funds and shall review those policy statements at least annually. These policy statements shall be subject to the following:

(i) The board may specify groupings of state funds for which separate investment policy statements are appropriate. At a minimum, those groupings shall include state funds for which there is a trust obligation, short term funds for operations and all other funds. The board may determine criteria under which certain funds shall be separately managed;

(ii) Nothing in this section shall be construed to prevent the state treasurer from pooling any state funds for investment purposes, including meeting cash flow requirements in accordance with approved investment policy statements.

(b) The investment policy statements shall include the following:

(i) Nominal return benchmarks;

(ii) Definition of risk and of return;

(iii) Risk tolerance;

(iv) Permissible investments and quality standards;

(v) Liquidity requirements;

(vi) Cash flow projections for the grouping of funds;

(vii) Procedures for selecting and dismissing investment managers when utilized;

(viii) Indices or benchmarks against which the returns will be measured;

(ix) Two (2) risk mitigation metrics for managing and mitigating the risks of investments consistent with the strategy specified in W.S. 9-4-715(d)(ii):

(A) One (1) metric shall specify the maximum percentage of monies in the state fund or state funds that may be invested in securities in consideration of all the factors developed for the fund's investment policy statement under this subsection; and

(B) One (1) metric shall measure risk in the state fund or state funds using a value at risk measurement technique or other similar risk measurement technique.

(c) The state treasurer, in consultation with the investment funds committee, shall develop and submit proposed investment policy statements for each grouping of state funds specified in subsection (a) of this section and may contract for assistance in developing proposals or in making suggestions for modifications to existing investment policy statements. The state treasurer shall report quarterly to the board and the investment funds committee regarding the performance of investments with respect to each grouping of state funds specified by the board under subsection (a) of this section and such other information as may be required by the board.

(d) The board:

(i) Shall procure the services of a qualified entity to evaluate:

(A) At least annually, the reasonableness and comprehensiveness of the investment policy statements required under this section;

(B) At least quarterly, the performance of the investments for each grouping based upon recognized indices and the reasonableness of the mix of assets in light of anticipated cash flow requirements and the investment policy statements;

(C) At least annually or when market conditions warrant a change or reallocation of investments, the risks of investing state funds using the metrics specified in the investment policy statements pursuant to paragraph (b)(ix) of this section.

(ii) Shall require competition to procure those services required under paragraph (i) of this subsection at least every four (4) years;

(iii) Shall receive an appropriation directed to the office of state lands and investments to be used to compensate the entity retained under paragraph (i) of this subsection for its services.

**9-4-717. Additional investment matters.**

(a) The state treasurer may form entities required in the general practice employed by banks and brokerage firms for the purpose of designating a "nominee name" in securities transactions.

(b) The state treasurer may offer and pay a reasonable premium for bonds and other securities. The purchase price shall not exceed the market value of the bonds or other securities at the time of purchase. The premium paid for the investments shall be amortized over the life of the investment to the fund or account from which the premium was paid.

(c) The state treasurer directly, or investment managers of state funds, may effect sales or exchanges of investments of state funds, whenever the sale or exchange will result in a loss of principal, if the sale or exchange tends to maximize the total return on the funds invested and is otherwise consistent with implementation of the state investment policy established by the board under W.S. 9-4-716.

(d) As part of the state investment strategy, the state treasurer may retain the services of a custodial bank or an independent securities lending agent to supervise a program of securities lending in exchange for a fee or other consideration. Supervision of the program shall include:

(i) Procedures to review the creditworthiness of all borrowers;

(ii) Requirements for full collateralization of all loans; and

(iii) Other methods and procedures required by the board for securing the lending program.

(e) In making any new investment of state funds under this act or investing state or other funds as otherwise authorized by law, the state treasurer shall consult with the designated chief investment officer or the officer's designee.

**9-4-718. Investment managers.**

(a) The state treasurer may contract with investment managers and pay for investment services and investment advice subject to the following conditions:

(i) All fees and other costs of contracting for and using the services of an investment manager, except transaction costs and custodial fees, shall be accounted for on at least a quarterly basis;

(ii) Without the approval of the board:

(A) No contract with an investment manager shall permit that manager to manage more than fifteen percent (15%) of the total portfolio of state funds available for investment at the time the contract is executed; and

(B) No investment manager under contract with the state treasurer shall be permitted to act as a securities broker with respect to transactions involving state investments managed by such investment manager, unless the transaction can be made without incurring commission or market impact cost.

(iii) The amount of state funds under contract with an investment manager shall not exceed ten percent (10%) of the total assets managed by that investment manager;

(iv) Investment managers shall be selected based upon a competitive process and with consideration given to the historical performance of prospective managers. No investment manager shall be hired unless approved by a majority vote of the board in consultation with the investment funds committee created by this act. The contract with an investment manager may be terminated by a majority vote of the board;

(v) Investment managers shall be paid on a negotiated flat fee or performance basis based upon net assets invested;

(vi) Contracts with investment managers shall be subject to cancellation upon receipt of thirty (30) days notice by either party;

(vii) The state treasurer shall not contract with any person as an investment manager under this subsection unless that person or that person's firm has prior to the execution of the contract, a verifiable CFA Institute (Chartered Financial Analyst Institute) compliant track record of at least five (5) years with respect to the type of investments regarding which the investment manager will provide services or the investment manager is employed by an organized and chartered bank trust company with trust assets in excess of one billion dollars (\$1,000,000,000.00). Any prospective manager shall submit to the state treasurer audited financial statements in accordance with the treasurer's rules and regulations and a certified record of the manager's past investment performance prepared by an independent entity;

(viii) Each investment manager shall at least quarterly provide a report to the state treasurer describing the manager's performance relative to mutually agreed upon industry indices and reflecting all brokerage fees and other fees or expenses paid by or fees earned by the manager which are paid by the state under the contract.

(b) Repealed by Laws 2015, ch. 11, § 2.

(c) The state treasurer may contract for services to select an investment manager.

**9-4-719. Investment earnings spending policy permanent funds.**

(a) The purpose of this section is to establish a spending policy for earnings on permanent fund investments to provide, in descending order of importance:

(i) Consistent, sustainable flow of earnings for expenditure over time;



(ii) Protection of the corpus of the permanent funds against inflation; and

(iii) To the extent practicable, increases in earnings available for expenditure to offset the effects of inflation.

(b) There is created the permanent Wyoming mineral trust fund reserve account. All funds within the account shall be invested by the state treasurer as authorized under W.S. 9-4-715(a), (d), (e) and (r) and all investment earnings from the account shall be credited to the account. Beginning July 1, 2016 for fiscal year 2017 and each fiscal year thereafter, the state treasurer shall transfer unobligated funds from this account to the general fund as necessary to ensure that an amount equal to two and one-half percent (2.5%) of the previous five (5) year average market value of the permanent Wyoming mineral trust fund, calculated on the first day of the fiscal year, is available for expenditure annually during each fiscal year. As soon as possible after the end of each of the fiscal years beginning on and after July 1, 2017, after making any transfer required pursuant to paragraph (i) of this subsection, revenues in this account in excess of one hundred fifty percent (150%) of the spending policy amount in subsection (d) of this section shall be credited to the permanent Wyoming mineral trust fund. For fiscal year 2020 and for each fiscal year thereafter:

(i) As soon as practicable after the end of the fiscal year, after making any other transfers provided by law from the permanent Wyoming mineral trust fund reserve account, but prior to calculating the balance of the account under this subsection, the state treasurer shall transfer from the account an amount equal to the difference between the maximum amount which may be credited to the strategic investments and project account pursuant to subsection (q) of this section and the amount actually credited to that account in the applicable fiscal year.

(c) The earnings from the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii) during each fiscal year beginning July 1, 2001, in excess of the spending policy established in subsection (d) of this section are appropriated from the general fund to the permanent Wyoming mineral trust fund reserve account. The appropriation shall be credited to the account as soon as practicable after the end of the fiscal year but no later than ninety (90) days after the end of the fiscal year.

(d) The annual spending policy for the permanent Wyoming mineral trust fund is as follows for each fiscal year (FY):

(i) Repealed by Laws 2002, Ch. 80, § 2.

(ii) Repealed By Laws 2004, Chapter 9, § 2.

(iii) Repealed By Laws 2004, Chapter 9, § 2.

(iv) Repealed By Laws 2002, Ch. 80, § 2.

(v) FY 2020 and each fiscal year through 2022 - an amount equal to five percent (5%) of the previous five (5) year average market value of the trust fund, calculated from the first day of the fiscal year;

(vi) FY 2023 - an amount equal to four and three-fourths percent (4.75%) of the previous five (5) year average market value of the trust fund, calculated from the first day of the fiscal year;

(vii) FY 2024 and each fiscal year thereafter - an amount equal to four and one-half percent (4.5%) of the previous five (5) year average market value of the trust fund, calculated from the first day of the fiscal year.

(e) Repealed By Laws 2007, Ch. 148, § 2.

(f) There is created the common school permanent fund reserve account. All funds within the account shall be invested by the state treasurer as authorized under W.S. 9-4-715(a), (d), (e) and (r) and all investment earnings from the account shall be credited to the account. Beginning July 1, 2017 for fiscal year 2018 and each fiscal year thereafter, the state treasurer shall transfer unobligated funds from this account to the common school account within the permanent land income fund as necessary to ensure that an amount equal to the spending policy amount established in subsection (h) of this section is available for expenditure annually during the fiscal year. As soon as possible after the end of each of the fiscal years beginning on and after July 1, 2017, revenues in this account in excess of one hundred fifty percent (150%) of the spending policy amount shall be credited to the common school account within the permanent land fund.

(g) There is annually appropriated to the common school permanent fund reserve account an amount determined under this subsection from funds as provided in W.S. 9-4-601(d)(vi). The amount shall be computed and calculated by the state treasurer. The amount shall be equal to the extent to which earnings from the common school account within the permanent land fund under W.S. 9-4-204(u)(iv) exceed the spending policy established in subsection (h) of this section for that fiscal year. The appropriation shall be credited to the account as soon as practicable after the end of the fiscal year but no later than ninety (90) days after the end of the fiscal year.

(h) The annual spending policy for the common school account within the permanent land fund is as follows for each fiscal year (FY):

(i) Repealed By Laws 2002, Ch. 80, § 2.

(ii) Repealed By Laws 2004, Chapter 9, § 2.

(iii) Repealed By Laws 2004, Chapter 9, § 2.

(iv) Repealed By Laws 2002, Ch. 80, § 2.

(v) FY 2020 and each fiscal year through 2024 - an amount equal to five percent (5%) of the previous five (5) year average market value of the account, calculated from the first day of the fiscal year;

(vi) FY 2025 - an amount equal to four and three-fourths percent (4.75%) of the previous five (5) year average market value of the account, calculated from the first day of the fiscal year;

(vii) FY 2026 and each fiscal year thereafter - an amount equal to four and one-half percent (4.5%) of the previous five (5) year average market value of the account, calculated from the first day of the fiscal year.

(j) Repealed By Laws 2007, Ch. 148, § 2.

(k) There is created the excellence in higher education endowment reserve account. Interest and other earnings on funds within the account shall be credited to the account. As soon as possible after the end

of each of the fiscal years beginning on and after July 1, 2017, revenues in this account in excess of one hundred fifty percent (150%) of the spending policy amount in subsection (o) of this section shall be credited to the excellence in higher education endowment fund created by W.S. 9-4-204(u)(vi).

(m) The earnings from the excellence in higher education endowment fund during each fiscal year beginning July 1, 2006, in excess of the spending policy amount established in subsection (o) of this section shall be deposited by the state treasurer to the excellence in higher education endowment reserve account. The excess earnings shall be credited to the reserve account as soon as practicable after the end of the fiscal year but no later than ninety (90) days after the end of the fiscal year.

(n) To the extent the spending policy amount established in subsection (o) of this section exceeds earnings from the excellence in higher education endowment fund for the prior fiscal year, the state treasurer shall distribute from the excellence in higher education reserve account an amount equal to one-half (1/2) the difference, and such amounts are continuously appropriated from the reserve account for that purpose. Any funds distributed pursuant to this subsection shall be distributed no later than ninety (90) days after the end of the fiscal year and shall be distributed and expended as provided in W.S. 21-16-1201 through 21-16-1203 for earnings from the excellence in higher education endowment fund. The state treasurer in consultation with the University of Wyoming and community college commission, shall report to the governor, joint appropriations interim committee, joint education interim committee and select committee on capital financing and investments no later than November 1, of any year in which funds have been or are anticipated to be distributed from the reserve account under this subsection.

(o) The annual spending policy amount for the excellence in higher education endowment is as follows for each fiscal year (FY):

(i) FY 2018-an amount equal to five percent (5%) of the previous five (5) year average market value of the excellence in higher education endowment fund, as calculated from the first day of the fiscal year;

(ii) FY 2019 and each fiscal year thereafter-an amount equal to four and three-fourths percent (4.75%) of the previous five (5) year average market value of the excellence in higher education endowment fund, calculated from the first day of the fiscal year.

(p) Annually, not later than November 1, the state treasurer, in consultation with the state loan and investment board, shall provide a recommendation to the select committee on capital financing and investments regarding modifications to the spending policy amounts contained in this section. The recommendations shall be consistent with the purposes specified in subsection (a) of this section. The select committee on capital financing and investments shall annually submit a recommendation to all members of the legislature before the convening of the session regarding modifications to the spending policy amounts.

(q) The earnings from the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii) during each fiscal year beginning July 1, 2016, which are less than the spending policy established in subsection (d) of this section are appropriated from the general fund subject to subsection (s) of this section and the following:

(i) Except as provided in paragraph (iii) of this subsection, any earnings in excess of two and one-half percent (2.5%) of the previous five (5) year average market value of the trust fund, calculated from the

first day of the fiscal year and less than or equal to the spending policy amount specified in subsection (d) of this section shall be credited to the legislative stabilization reserve account created by W.S. 9-4-219 and the strategic investments and projects account created by W.S. 9-4-220 in equal amounts;

(ii) The appropriations in this subsection shall be credited to the designated account as soon as practicable after the end of the fiscal year but no later than ninety (90) days after the end of the fiscal year;

(iii) For fiscal year 2019, funds directed to the strategic investments and projects account under paragraph (i) of this subsection shall be credited as follows and in priority order with the first priority fully funded before deposits to the subsequent priority:

(A) An amount equal to nine thousand three hundred seventy-five ten-thousandths percent (0.9375%) of the previous five (5) year average market value of the permanent Wyoming mineral trust fund, calculated on the first day of the fiscal year, to the permanent Wyoming mineral trust fund reserve account;

(B) An amount equal to three thousand one hundred twenty-five ten-thousandths percent (0.3125%) of the previous five (5) year average market value of the permanent Wyoming mineral trust fund, calculated on the first day of the fiscal year, to the strategic investments and projects account.

(r) Repealed by Laws 2017, ch. 205, § 2; ch. 206, § 2.

(s) In any fiscal year or fiscal biennium funds to be deposited to an account under subsection (q) of this section may be deposited to a different fund or account as specified by a general appropriations bill for state government as determined by the legislature to be necessary to alleviate a budget shortfall or structural budget deficit as defined by W.S. 9-2-1002, or to provide appropriations to maintain services as determined by the legislature.

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

(a) There is created the investment funds committee. The committee consists of seven (7) voting members including the state treasurer, the designated chief investment officer, the chief investment officer of the Wyoming retirement system and four (4) members appointed by a selection panel in accordance with W.S. 9-4-721. In addition to the voting members, there shall be one (1) ex officio nonvoting member appointed by the governor, and one (1) ex officio nonvoting member appointed by the management council.

(b) The ex officio nonvoting member appointed by the governor shall serve for the term of office of the governor but may be removed by the governor. The ex officio nonvoting member appointed by the management council shall serve a two (2) year term but is eligible for reappointment and may be removed by the management council.

(c) The voting members appointed by a selection panel shall serve a three (3) year term. The voting members are eligible for reappointment. Terms of appointment for voting members shall commence on March 1 of the year of appointment. Any appointed voting member of the committee may be removed by the selection panel at any time or may be removed by the governor for malfeasance or misconduct in office. If an appointed voting position on the committee becomes vacant for any reason, the selection panel shall appoint a member in accordance with W.S. 9-4-721 to fill the position for the remainder of

the unexpired term. Appointed voting members of the investment funds committee shall be confirmed by the senate. The selection panel may fill any vacancy occurring between sessions of the legislature by temporary appointment.

(d) The state treasurer shall be the chairman of the committee. The committee shall hold not less than four (4) regularly scheduled meetings each year. Special meetings may be called by the chairman and shall be called by the chairman upon a written request submitted by a majority of the voting members. All matters shall be decided by a majority vote of a quorum of the voting members of the committee, except as otherwise provided in this section.

(e) Meeting facilities, secretarial or clerical assistance, supplies and such other assistance as the committee may require in the performance of its duties shall be provided by the office of the state treasurer. Members of the committee who are not employees or elected officials of the state of Wyoming shall be paid expenses in the manner and amount prescribed for state employees under W.S. 9-3-102 and 9-3-103 for each day of attending and traveling to and from meetings and other activities necessary to the performance of the duties of the committee.

(f) The committee shall:

(i) Review state investment policies and procedures and recommend statutory, rule or policy modifications as the committee deems appropriate to maximize total net returns while protecting principal in a manner that strives for the highest possible risk adjusted total return consistent with an appropriate level of safety, liquidity and consideration of the unique circumstances for each fund;

(ii) Consult with the state treasurer and the board as required by law and as requested by each of those entities regarding the establishment and execution of state investment policies;

(iii) Monitor the investment of state funds in alternative investments;

(iv) Report to the legislature's select committee on capital financing and investments regarding state investment policies, procedures, authority and execution of the same upon request;

(v) Establish or approve investment benchmarks and determine or review whether benchmarks have been exceeded as required by W.S. 9-1-409(e) and 9-3-406(a). Notwithstanding subsections (a) and (b) of this section, members of the committee appointed by the governor or the management council may vote on benchmarks. A member of the committee who is also an employee or board member of the state treasurer's office or the Wyoming retirement system shall not vote on any benchmark.

(g) The committee through the state treasurer's office may contract with consultants having special expertise to assist in the performance of its duties.

(h) Liability of committee members shall be governed by W.S. 1-23-107.

**9-4-721. Investment funds committee; selection panel.**

(a) There is created the selection panel to appoint voting members to the investment funds committee as provided in W.S. 9-4-720. The panel consists of five (5) members composed of one (1) member appointed by each of the members of the board. Each selection panel member shall possess financial knowledge and experience to qualify them for the position. Once appointed, a selection panel member

shall serve for the term of office of the board member who appointed them but may be removed by the appointing board member.

(b) The selection panel shall research and interview candidates for the investment funds committee. The selection panel shall solicit nominations for candidates for the investment funds committee from the state treasurer's office, other members of the investment funds committee, other appropriate entities and the board. Interested persons may apply directly to the panel.

(c) No candidate shall be appointed by the selection panel to the investment funds committee unless the candidate has all of the following qualifications:

(i) Not less than seven (7) years of institutional investment experience involved in the management of a portfolio in excess of five hundred million dollars (\$500,000,000.00);

(ii) A broad understanding of financial markets;

(iii) Not been convicted of or pleads guilty or nolo contendere to a felony violation or been the subject of any disciplinary action involving moral turpitude;

(iv) No conflicts of interest that would lead to a violation of W.S. 6-5-106, 6-5-118, 16-6-118 or other comparable provision of law.

(d) Staff and support for the selection panel shall be provided by the office of the state treasurer. Members of the panel who are not employees or elected officials of the state of Wyoming shall receive per diem and travel expense reimbursement in the manner and amount prescribed for legislators under W.S. 28-5-101.

## **ARTICLE 2 - SELECT COMMITTEE ON CAPITAL FINANCING AND INVESTMENTS**

28-11-201. Appointment of members; powers and duties.

(a) Not later than March 31 following each general election, the president of the senate shall appoint six (6) members of the senate, and the speaker of the house of representatives shall appoint six (6) members of the house to a select committee on capital financing and investments. Appointments to the committee by each presiding officer shall reflect as nearly as possible the percentage of the elected membership of the majority and minority parties of each house, provided that not more than five (5) members appointed by each presiding officer shall be from the same political party.

(b) The select committee shall:

(i) Select from among its members a chairman and vice-chairman;

(ii) Monitor the establishment and implementation of state investment policy by the state loan and investment board under W.S. 9-4-716, including the extent to which investment goals are being achieved;

(iii) Monitor the establishment and implementation of state capital financing policy by the state building commission and any other state entity charged with capital financing;

(iv) Prepare and submit recommendations to the legislature, including sponsoring legislation, to improve statutes related to the investment of state and local government funds;

- (v) Develop knowledge and expertise among its members regarding issues related to investment of public funds and capital financing;
- (vi) Monitor state funds invested for a specific public purpose authorized or directed by the legislature.
- (c) The state loan and investment board shall:
  - (i) Provide the select committee with notice and minutes of all board meetings. The select committee and the board may hold joint meetings;
  - (ii) Provide information to the select committee upon request to assist the select committee to monitor progress.
- (d) The select committee may:
  - (i) Secure consulting services, if necessary, to provide technical assistance regarding state investment policy;
  - (ii) Review budgets and expenditures related to any aspect of state investment policy and its implementation;
  - (iii) Review budgets and expenditures related to any aspect of state capital financing policy and its implementation.