

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

1 alternatives to executing any authorized purchase;
2 providing an appropriation; and providing for an effective
3 date.

4

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

6

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

9

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

14

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

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

9

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

15

16 (ii) Any purchase shall be:

17

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

23

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 (C) If the property to be purchased is
19 located in Wyoming, the board shall hold not less than one
20 (1) public meeting in any county where the land to be
21 purchased is located to gather input prior to the purchase.

22

1 (iv) Three (3) members of the senate appointed
2 by the president of the senate and three (3) members of the
3 house appointed by the speaker of the house shall act as
4 liaisons to the state loan and investment board during the
5 investigation of the potential purchase, completion of due
6 diligence and negotiations;

7

11

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

19

20 (B) The common school account within the
21 permanent land fund, provided that the state loan and
22 investment board and the board of land commissioners shall
23 account for statutory, constitutional and other fiduciary

1 duties to the beneficiaries of the account, in addition to
2 the prudent investor rule and state investment policies
3 when determining any amounts to expend from the fund;

4

5 (C) The issuance of special revenue bonds
6 provided:

7

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

10

11 (II) The bonds may be issued by a
12 newly created entity recommended by the board;

13

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

18

19 (D) Any other source of state funds other
20 than the legislative stabilization reserve account, the
21 common school permanent fund reserve account and funds
22 which are encumbered, obligated or which have been
23 appropriated for expenditure for a specified purpose.

1

2 (vi) A purchase may be made with an aggregate
3 amount of the sources specified in paragraph (v) of this
4 subsection, provided that each funding source used shall
5 acquire separate assets that are segregated from assets of
6 the other funding sources used. In determining the
7 segregation of assets the board shall take into account:

8

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

12

13 (B) The established and potential sources
14 of earnings from the assets purchased;

15

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

18

22

5

9

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

12

13 (iv) The potential anticipated earnings that may
14 be generated by the assets to be purchased, including the
15 sources and types of earnings;

16

17 (v) The anticipated date to execute the
18 agreement;

19

20 (vi) The anticipated date to close all
21 transactions necessary to implement the agreement;

22

1 (vii) Any legislation necessary to effectuate
2 the agreement;

3

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

8

9 (c) No agreement under this section shall be executed
10 by the board pursuant to this section without the approval
11 of the attorney general. No purchase agreement pursuant to
12 this section, whether or not in fulfillment of any
13 agreement in principle shall be executed after the report
14 to the legislature under this section and prior to approval
15 of the legislature in a special or regular session of the
16 Wyoming legislature. Any agreement in principle entered
17 into by the state loan and investment board pursuant to
18 this section shall specifically provide that it is subject
19 to this section and that the state, the board or any other
20 state entity shall not incur any liability for failure to
21 fulfill the agreement if legal authority of the board to
22 execute the agreement does not exist, including as a result

1 of any legislation enacted in a special or regular session
2 of the legislature referenced in this subsection.

3

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

9

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

16

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

18

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

21

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

1

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

5

8

11

12 (B) All other earnings shall be deposited
13 to the general fund in accordance with laws, rules and
14 policies governing other earnings from investments of the
15 permanent Wyoming mineral trust fund. Upon deposit of
16 earnings to the general fund under this subparagraph there
17 is appropriated from the general fund to the school
18 foundation program account an amount equal to the deposit
19 to the general fund;

20

21 (C) Monies deposited pursuant to this
22 paragraph shall not be considered as earnings or income for

1 purposes of W.S. 9-4-204(u)(iii) and 9-4-719(c), (d) and
2 (q).

3

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

13

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

17

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

20

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

1

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

4

5 (iv) Earnings generated from assets purchased
6 with funds pursuant to subparagraph (a)(v)(D) of this
7 section shall be deposited to the account used to make the
8 purchase. Earnings in excess of the amount expended from
9 the account shall be deposited to the school foundation
10 program account.

11

12 (h) The state loan and investment board and board of
13 land commissioners shall manage any assets purchased in
14 accordance with the following:

15

16 (i) The board of land commissioners shall manage
17 all surface, subsurface and mineral interests, whether
18 directly or through the retention of a manager. The state
19 loan and investment board and the board of land
20 commissioners are authorized to assume all leases,
21 contracts and other agreements related to the purchased
22 assets as they exist regardless of whether the lease,
23 contract or other agreement complies with the provisions of

1 title 36 of the Wyoming statutes applicable to state lands.
2 Subject to existing lease and contract rights assumed, all
3 state laws governing the management of state lands shall be
4 applicable to assets unless otherwise provided in this
5 section or other applicable law. The state loan and
6 investment board and the board of land commissioners may
7 renegotiate leases, contracts and other agreements as
8 either board deems necessary or appropriate to fulfill the
9 state's fiduciary duties and that would be in the best
10 interests of the state, provided:

11

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

15

16 (B) Any grazing lease or permit which
17 exists at the time of the purchase shall not be modified in
18 any manner without the consent of the lessee or permit
19 holder.

20

21 (ii) The office of state lands and investments
22 shall include in its biennial budget request separate
23 appropriation requests for the costs of managing real

1 property interests as determined by the board of land
2 commissioners and for the cost of managing other assets as
3 determined by the state loan and investment board in
4 accordance with this subsection;

5

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

15

16 (iv) The state loan and investment board shall
17 manage purchased assets other than surface, subsurface and
18 mineral interests.

19

20 (j) The office of state lands and investments shall
21 review all leases, contracts and other agreements relating
22 to any proposed purchase under this section and shall make
23 recommendations for any modifications to applicable state

1 laws to best manage the assets purchased for the benefit of
2 the state and in light of the state's fiduciary duties.

3

4 (k) The state loan and investment board may, in
5 addition to any authority granted under this section study
6 the potential to purchase assets as specified in this
7 section and recommend to the legislature any legislation
8 deemed by the board to be necessary or convenient to
9 facilitate any future purchase.

10

11 **39-13-113. State payments in lieu of taxes for local**
12 **governments; account created; distribution of funds.**

13

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

16

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

1 department. On or before October 1, from funds within the
2 property tax payment reimbursement account the state
3 treasurer shall reimburse each county treasurer for the
4 amount of taxes that would have been collected if the
5 property were not exempt. The county treasurer shall
6 distribute the revenue to each governmental entity in the
7 actual amount of taxes lost due to the exemption.

8

9 **Section 2.**

10

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

14

15 (i) Regularly report to the legislature any
16 negotiations and steps taken to pursue a purchase under
17 this act;

18

19 (ii) Identify in the report required by W.S.
20 9-4-715.1(b):

21

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

1

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

7

8 (C) Anticipated earnings required by the
9 Wyoming constitution or federal law to be distributed to a
10 fund or account other than the corpus of the fund or
11 account used to purchase an asset;

12

13 (D) Earnings anticipated to be needed to
14 pay or guarantee payment of any revenue bonds anticipated
15 to be issued;

16

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

19

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

22

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

5

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

9

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

12

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

15

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

20

21 Section 3.

22

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14

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

19

20

(END)