

WORKING DRAFT

HOUSE BILL NO. _____

State investment standards.

Sponsored by: Select Committee on Capital Financing and Investments

A BILL

for

1 AN ACT relating to public funds; modifying requirements and
2 standards for the investment of state funds; modifying
3 requirements for managers of state funds; and providing for
4 an effective date.

5

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

7

8 **Section 1.** W.S. 4-10-911, 9-4-701(a)(v), (vi), (ix),
9 (x) and by creating a new subsection (s), 9-4-708(a), (b)
10 and (d), 9-4-709(b)(vii), (d)(iii) and by creating a new
11 subsection (e), 9-4-711(a)(i) and (iv), (b) and (d) by
12 creating a new paragraph (iv) and 9-4-834(c) are amended to
13 read:

14

1 **4-10-911. Application to public funds of the state of**
2 **Wyoming.**

3

4 This article ~~does not apply~~ applies to public funds of
5 the state of Wyoming unless ~~specific reference is made to~~
6 ~~this article~~ a different investment standard is
7 specifically provided for the investment of specified
8 public funds.

9

10 **9-4-701. Permissible investments; treasurer's rules**
11 **and regulations.**

12

13 (a) The state treasurer may invest permanent funds
14 with the approval of the state loan and investment board in
15 the following:

16

17 (v) ~~And, with the approval of the state loan and~~
18 ~~investment board, the state treasurer may invest permanent~~
19 ~~funds~~ In farm loan mortgages in compliance with the laws of
20 this state;

21

22 (vi) ~~Permanent funds may be invested~~ In other
23 securities the legislature authorizes by law;

24

1 (ix) ~~The state treasurer may invest~~ In
2 diversified mutual funds which invest in securities which
3 the state treasurer could not own directly if:

4
5 (x) ~~The state treasurer may invest~~ In a
6 commingled fund held through a trust company or trust
7 department of a bank which holds securities which the state
8 treasurer could not own directly if:

9
10 (s) Except as otherwise provided in this article,
11 when approving, acquiring, investing, reinvesting,
12 exchanging, retaining, selling and managing securities and
13 other property with funds of the state of Wyoming, the
14 state loan and investment board, the state treasurer, a
15 designee of the state treasurer or any other fiduciary
16 appointed by the state treasurer shall exercise the
17 judgment and care of a prudent investor as specified under
18 the Uniform Prudent Investor Act, W.S. 4-10-901 to 4-10-
19 913.

20
21 **9-4-707. State investments; definitions; sale at a**
22 **gain or loss.**

23

1 ~~(b) When acquiring, investing, reinvesting,~~
2 ~~exchanging, retaining, selling and managing property for~~
3 ~~the benefit of the state, the state treasurer shall~~
4 ~~exercise judgment and care under the circumstances then~~
5 ~~prevailing, which persons of prudence, discretion and~~
6 ~~intelligence exercise in the management of their own~~
7 ~~affairs, not in regard to speculation but using care in the~~
8 ~~management of all funds, considering income and safety~~
9 ~~within the provisions of the law.~~

10

11 **9-4-708. Investment managers.**

12

13 (a) The state treasurer may contract with ~~registered~~
14 investment ~~advisors~~ managers and pay for investment
15 services and investment advice subject to the following
16 conditions:

17

18 (i) All fees and other costs of contracting for
19 and using the services of ~~a registered~~ an investment
20 ~~advisor~~ manager, except transaction costs and custodial
21 fees, shall be paid ~~earnings~~ by state warrant and accounted
22 for on at least a quarterly basis;

23

1 (ii) No contract with ~~a registered~~ an investment
2 ~~adviser~~ manager shall permit that ~~adviser~~ manager to manage
3 more than fifteen percent (15%) of the total portfolio of
4 state funds available for investment at the time the
5 contract is executed. No ~~registered~~ investment ~~adviser~~
6 manager under contract with the state ~~loan and investment~~
7 ~~board~~ treasurer shall be permitted to act as a securities
8 broker with respect to transactions involving state
9 investments, or to receive any fee or other consideration
10 with respect to any transaction by a broker on behalf of
11 the state;

12
13 (iii) The amount of state funds under contract
14 with ~~a registered~~ an investment ~~adviser~~ manager shall not
15 exceed ten percent (10%) of the total assets managed by
16 that investment ~~adviser~~ manager;

17
18 (iv) Registered Investment ~~advisors~~ managers
19 shall be selected based upon a competitive process and with
20 consideration given to the historical performance of
21 prospective ~~advisors~~ managers. No ~~registered~~ investment
22 ~~adviser~~ manager shall be hired unless approved by a
23 majority vote of the state loan and investment board. The
24 contract with ~~a registered~~ an investment ~~adviser~~ manager

1 may be terminated by a majority vote of the state loan and
2 investment board;

3

4 (v) ~~Registered~~ Investment ~~advisors~~ managers
5 shall be paid on a negotiated flat fee or performance basis
6 based upon net assets invested;

7

8 (vi) Contracts with ~~registered~~ investment
9 ~~advisors~~ managers shall be subject to cancellation upon
10 receipt of thirty (30) days notice by either party;

11

12 (vii) The state treasurer shall not contract
13 with any person as ~~a registered~~ an investment ~~advisor~~
14 manager under this subsection unless that person ~~and or~~
15 that person's firm ~~have~~ has prior to the execution of the
16 contract, a verifiable ~~Association of Investment Managers~~
17 ~~Research (AIMR)~~ Chartered Financial Analyst Institute
18 compliant track record of at least five (5) years with
19 respect to the type of investments regarding which the
20 advisor will provide services or the ~~registered~~ investment
21 ~~advisor~~ manager is employed by an organized and chartered
22 bank trust company with trust assets in excess of one
23 billion dollars (\$1,000,000,000.00). Any prospective
24 ~~advisor~~ manager shall submit to the state treasurer audited

1 financial statements in accordance with the treasurer's
2 rules and regulations and a certified record of the
3 ~~advisor's~~ manager's past investment performance prepared by
4 an independent entity;

5
6 (viii) Each registered investment advisor
7 manager shall at least quarterly provide a report to the
8 state treasurer describing the ~~advisor's~~ manager's
9 performance relative to mutually agreed upon industry
10 indices and reflecting all brokerage fees and other fees or
11 expenses paid by or fees earned by the ~~advisor~~ manager
12 which are paid by the state under the contract.

13
14 (b) With the approval of the state loan and
15 investment board, the state treasurer may contract for
16 services to select ~~an advisor~~ an investment manager.

17
18 ~~(c) Prior to initial use of a registered investment~~
19 ~~advisor, the statewide financial audit, conducted by an~~
20 ~~accounting firm under contract to the state auditor, shall~~
21 ~~have completed an audit of the state's investments.~~

22
23 (d) All direct investments in federal securities and
24 exchange commission regulated securities with funds of the

1 state which are managed by an investment manager shall be
2 managed only by an investment manager who is also a
3 registered investment advisor under the Investment
4 Advisor's Act of 1940 as amended. Any investment manager
5 retained in accordance with this section may manage any
6 security which at the time of issuance is not regulated by
7 the securities and exchange commission.

8

9 **9-4-709. State investment policy; evaluation.**

10

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

13

14 (vii) Procedures for selecting and dismissing
15 ~~registered~~ investment ~~advisors~~ managers when utilized;

16

17 (d) The state loan and investment board:

18

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

21

22 (iii) Shall receive an appropriation directed to
23 the office of state lands and investments to be used to

1 compensate the ~~consultant~~ entity retained under paragraph
2 (i) of this subsection for its services.

3

4 (e) The state treasurer shall obtain the approval of
5 the state loan and investment board prior to the investment
6 of funds in alternative investments:

7

8 (i) The approval of the state loan and
9 investment board shall be complete upon the review and
10 written acceptance of the material terms of the instruments
11 governing the investment;

12

13 (ii) Any material adverse change to the terms of
14 instruments governing investments, previously approved by
15 the state loan and investment board, at any time while the
16 investments are held by the state of Wyoming shall require
17 the renewal of approval of such investments by the board.

18

19 **9-4-711. Permissible investments of state funds.**

20

21 (a) Any funds of the state of Wyoming may be invested
22 by the state treasurer, or his designee under W.S. 9-4-
23 834(a), in any one (1) or more of the following securities:

24

1 (i) Investments authorized by W.S. 9-4-831;
2 ~~except for W.S. 9-4-831(a)(xxvi) regarding commercial paper~~
3 ~~which is subject to paragraph (iii) of this subsection;~~

4
5 (iv) ~~In addition to~~ Any other security or
6 securities the legislature authorizes or has authorized by
7 law, or any security or alternative investment which has
8 otherwise been approved by the state loan and investment
9 board. ~~In approving securities for the investment and~~
10 ~~management of state funds, the board shall exercise the~~
11 ~~judgment and care that a prudent investor would, in light~~
12 ~~of the purposes, terms, distribution requirements and all~~
13 ~~other circumstances regarding state funds, including risk~~
14 ~~and return objectives established by the board which are~~
15 ~~reasonably suitable to the purpose of the investment and~~
16 ~~management of Wyoming state funds~~ pursuant to W.S. 9-4-
17 709(e);

18
19 (b) ~~Trustee's investment and management decisions~~
20 ~~respecting~~ The provisions of W.S. 9-4-701(s) shall apply to
21 investments made under this section subject to the
22 following:

23

1 (i) Without limiting the foregoing, individual
2 ~~assets~~ investments or groups of investments made under this
3 section shall not be evaluated ~~not~~ in isolation but in the
4 context of the ~~trust~~ entire investment portfolio ~~as a whole~~
5 and as ~~a~~ part of an overall investment strategy ~~having risk~~
6 ~~and return objectives reasonably suited to~~ of the trust or
7 fund from which the investment is derived, consistent with
8 the policies for such trust or fund established under W.S.
9 9-4-709 by the state loan and investment board;

10
11 (ii) Notwithstanding paragraph (i) of this
12 subsection, the purchase of a security or the making of any
13 direct investment by the state treasurer or his designee in
14 a security shall not constitute a delegation of his duties
15 under this article or under any rule promulgated under this
16 article.

17
18 ~~(c) A trustee may delegate investment and management~~
19 ~~functions that a prudent trustee of comparable skills could~~
20 ~~properly delegate under the circumstances. The trustee~~
21 ~~shall exercise reasonable care, skill and caution in:~~

22
23 ~~(i) Selecting an agent;~~

24

1 ~~(ii) Establishing the scope and terms of the~~
2 ~~delegation, consistent with the purposes and terms of the~~
3 ~~trust; and~~

4
5 ~~(iii) Periodically reviewing the agent's actions~~
6 ~~in order to monitor the agent's performance and compliance~~
7 ~~with the terms of the delegation.~~

8
9 (d) For purposes of approving additional ~~securities~~
10 ~~for investment~~ investments under paragraph (a)(iv) of this
11 section:

12
13 (i) "Security" means an investment instrument
14 such as a note, stock, treasury stock, bond, debenture,
15 evidence of indebtedness, certificate of interest or
16 participation in any profit sharing agreement, collateral
17 trust certificate, preorganization certificate or
18 subscription, transferable share, investment contract,
19 voting trust certificate, certificate of deposit for a
20 security or, in general, any interest or instrument
21 commonly known as a "security", or any certificate of
22 interest or participation in, temporary or interim
23 certificate for, receipt for, guarantee of, or warrant or
24 right to subscribe to or purchase, any of the foregoing.

1 The foregoing may be issued by corporations, government
2 bodies or other entities that offer investor shares,
3 interests, units or other measures of ownership in the
4 entity or provide for a creditor relationship with the
5 entity;

6
7 (iv) "Alternative investment" means investments
8 proposed by the state treasurer which are not expressly
9 identified and approved in this article but have been
10 approved by the state loan and investment board pursuant to
11 W.S. 9-4-709(e).

12

13 **9-4-834. Investment of permanent funds.**

14

15 (c) The state treasurer may contract with ~~registered~~
16 investment ~~advisors~~ managers as provided in W.S. 9-4-708.

17

18 **Section 2.** W.S. 9-4-707(b), 9-4-708(c) and 9-4-711(c)
19 are repealed.

20

21 **Section 3.** This act is effective July 1, 2005.

22

23

(END)

1