SENATE FILE NO. SF0155

Inviolate higher education funds.

Sponsored by: Select Committee on Capital Financing and Investments

A BILL

for

AN ACT relating to public funds; designating monies within certain higher education accounts as inviolate funds pursuant to article 15, section 20 of the Wyoming Constitution; prohibiting expenditure of principal accordingly; providing for investment by the state treasurer; authorizing investment of funds in stock as specified; providing for use of earnings; providing for the remittance of monies; establishing a spending policy and reserve account for the excellence in higher education endowment fund; and providing for an effective date.

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

**Section 1.** W.S. 9-4-204(u) by creating new paragraphs (vi) and (vii), 9-4-601(d)(v), 9-4-713 by creating new subsections (k) through (p), 9-4-834(a), 21-16-1201, 21-16-1202(b)(intro), (ii), (iii) and (c), 21-16-1203(b)(intro), (ii), (iii) and (c), 21-16-1204(a)(intro), by creating a new paragraph (iv) and (b) and 21-16-1302 are amended to read:

**9-4-204. Funds established; use thereof.**

(u) Other funds defined as follows shall be classified by the state auditor pursuant to subsections (s) and (t) of this section:

(vi) The excellence in higher education endowment fund - to consist of funds appropriated or designated to the fund by law, or by gift from whatever source. In accordance with Wyoming Constitution Article 15, Section 20, monies within the fund shall not be expended and may be invested in the same manner as other permanent funds of the state. Earnings from investment of monies within the fund are subject to the spending policy as provided in W.S. 9-4-713 and shall be distributed and expended as provided by law. Earnings in excess of spending policies shall be retained as provided by W.S. 9-4-713;

(vii) Hathaway student scholarship endowment fund - to consist of funds appropriated or designated to the fund by law, or by gift from whatever source. In accordance with Wyoming Constitution Article 15, Section 20, monies within the fund shall not be expended and may be invested in the same manner as other permanent funds of the state. Earnings from investment of monies within the fund shall be distributed and expended as provided by law.

**9-4-601. Distribution and use; funds, accounts, cities and towns benefited; exception for bonus payments.**

(d) Any revenue received under subsection (a) of this section in excess of two hundred million dollars ($200,000,000.00) shall be distributed as follows:

(v) From the amounts which would otherwise be distributed to the school foundation program account under paragraph (iii) of this subsection, amounts shall be deposited to the excellence in higher education endowment ~~account~~ fund and the student scholarship endowment ~~account~~ fund created by W.S. ~~21-16-1201~~ 9-4-204(u)(vi) and (vii) in accordance with and subject to the requirements of this paragraph. The amounts specified in this paragraph shall be reduced as the state treasurer determines necessary to ensure that as of July 1 of each fiscal year, there is an unobligated, unencumbered balance of one hundred million dollars ($100,000,000.00) within the school foundation program account. Distributions under this paragraph shall be as follows:

(A) Seventy-nine percent (79%) to the Hathaway student scholarship endowment ~~account~~ fund, until that account balance equals four hundred million dollars ($400,000,000.00);

(B) Twenty-one percent (21%) to the excellence in higher education endowment ~~account~~ fund until distributions to that ~~account~~ fund under this subparagraph equal one hundred five million dollars ($105,000,000.00);

(C) After the amounts specified in subparagraphs (A) and (B) of this paragraph are deposited to the appropriate ~~account~~ fund, remaining funds shall be deposited to the school foundation program account as provided in paragraph (iii) of this subsection.

**9-4-713. Investment earnings spending policy - permanent funds.**

(k) There is created the excellence in higher education endowment reserve account. As soon as possible after the end of each of the fiscal years beginning on and after July 1, 2006, revenues in this account in excess of seventy-five percent (75%) 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 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 and joint appropriations interim committee no later than October 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 fund shall be 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. For the fiscal years 2007 through 2010, the state treasurer shall calculate the annual spending policy by using the average market value of the fund in each of those fiscal years, calculated from the first day of the fiscal year.

(p) Annually, not later than September 30, 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.

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

(a) To the extent constitutionally allowed, the state treasurer, or his designee, which shall be registered under the Investment Advisor's Act of 1940 as amended, or any bank as defined in the act, upon written authority, may invest monies in the permanent fund accounts, in securities authorized by law, provided not more than fifty-five percent (55%) shall be invested in common stocks. As used in this section, "permanent fund accounts" means the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii), ~~and~~ 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), the permanent land fund under W.S. 9-4-204(u)(iv), including revenues credited to that fund under W.S. 9-4-605(j), and the reserve accounts created under W.S. 9-4-713(b), ~~and~~ (f) and (k) and 21-16-1302(a).

**21-16-1201. Excellence in higher education endowment fund; Hathaway student scholarship endowment fund; distributions by state treasurer; legislative restrictions.**

(a) The excellence in higher education endowment ~~account~~ fund is created ~~to consist of funds appropriated or designated to the account by law, or by gift from whatever source, for distribution in accordance with this article~~ as provided by W.S. 9-4-204(u)(vi).

(b) In addition to the ~~account established under subsection (a) of this section~~ excellence in higher education endowment fund, a student scholarship endowment ~~account~~ fund, to be known as the Hathaway student scholarship endowment ~~account~~ fund, is established ~~to consist of funds appropriated or designated to the account by law, or by gift from whatever source, for distribution in accordance with this article~~ as provided by W.S. 9-4-204(u)(vii).

(c) ~~Upon receipt of legislative appropriations to the excellence in higher education endowment account or as soon thereafter as is reasonably appropriate,~~ The state treasurer shall ~~distribute amounts within~~ place earnings from the ~~account~~ investment of monies in the higher education endowment fund in an income account for subsequent disbursement as provided in this subsection. Earnings for any fiscal year which are in excess of the spending policy amount established pursuant to W.S. 9-4-713(o) shall be distributed as provided by W.S. 9-4-713(m). Earnings within the spending policy amount shall be distributed on a quarterly basis as follows:

(i) Two-thirds (2/3) ~~of the amount within the account~~ to the University of Wyoming;

(ii) The remaining one-third (1/3) ~~of the amount within the excellence in higher education endowment account~~ equally to each Wyoming community college.

(d) Commencing with the fiscal year beginning July 1, 2006, earnings from the Hathaway student scholarship endowment ~~account~~ fund created by this article shall be transferred by the state treasurer to the Hathaway scholarship expenditure account created by W.S. 21-16-1302. ~~Any subsequent deposits to the Hathaway student scholarship endowment account mandated by law or appropriation shall remain in the account until otherwise used to support scholarship programs as specified by law.~~

**21-16-1202. Excellence in higher education endowment fund distributions to University of Wyoming.**

(b) The university shall use the earnings ~~from the investment of funds made available through distributions from the excellence in higher education endowment account under this section~~ received under W.S. 21-16-1201(c)(i) to establish endowed faculty positions and to acquire instructional and resource materials, classroom equipment and other resources necessary to support the work of endowed faculty. The following shall govern the university in the use of these funds:

(ii) Not less than two-thirds (2/3) of the ~~amounts made available through the investment of distributions from the excellence in higher education endowment account~~ earnings received shall be used for the recruitment and retention of faculty possessing abilities necessary to expand university instruction and research in disciplines related to economic and social challenges facing Wyoming, including but not limited to energy, natural resources, wildlife, science, earth sciences, health sciences, agriculture, education and engineering. The purpose of this paragraph is to provide university assistance to the state of Wyoming and its residents to the broadest extent possible, through the diversification of its economy, preservation of its natural and human resources and the enhancement of its quality of life. Not less than four (4) faculty recruited and retained under this paragraph shall be in the college of education;

(iii) The remaining ~~amounts made available through the investment of distributions from the endowment account~~ earnings received shall be used for the recruitment and retention of faculty with established reputations in teaching and research excellence in other areas of distinction as identified in the university academic plan, including disciplines important to the state and region and its history and culture such as business, arts and humanities, mathematics, cultural studies, economics and law. The purpose of this paragraph is to enhance undergraduate and graduate instruction, to prepare students to become productive and contributing members of society and to promote an appreciation of arts, humanities and other cultures and interests affecting quality of life;

(c) The university may collaborate with community colleges on the use of ~~amounts distributed~~ earnings received from the excellence in higher education endowment ~~account pursuant to this section~~ fund.

**21-16-1203. Excellence in higher education endowment fund distributions to Wyoming community colleges.**

(b) Each community college shall use the earnings ~~made available through the investment of distributions from the endowment account~~ received under W.S. 21-16-1201(c)(ii) as provided by this section to establish endowed faculty positions and to acquire instructional and resource materials, classroom equipment and other resources necessary to support the work of the endowed faculty. The following shall govern each community college in the use of these funds:

(ii) The ~~amounts made available through the investment of distributions from the endowment account~~ earnings received shall be used for the recruitment and retention of faculty with abilities necessary to establish or expand vocational programs and program quality benefiting communities, businesses and industries within respective service areas. The purpose of this paragraph is to enhance the ability of community colleges to prepare students for a lifetime of higher wages and expanded job opportunities, to provide local and regional businesses and industries with an improved, better trained and better educated workforce and to increase the economic stability of proximate communities and the entire state;

(iii) ~~Amounts~~ Earnings not expended pursuant to paragraph (ii) of this subsection which are ~~made available through the investment of distributions from the endowment account~~ received shall be used for the recruitment and retention of faculty with established reputations in academic areas offered by each individual community college. The purpose of this paragraph is to improve the ability of colleges to better prepare students to pursue bachelor and graduate degrees at the University of Wyoming or other four (4) year institutions and offer additional courses of outreach instruction to high school and adult populations within their service areas.

(c) The community colleges may collaborate with the University of Wyoming on the use of ~~amounts distributed~~ earnings received from the excellence in higher education endowment ~~account pursuant to this section~~ fund.

**21-16-1204. Annual reports; review by committees.**

(a) Not later than October 1, 2006, and October 1 of each year thereafter, the University of Wyoming and each Wyoming community college shall report to the joint appropriations and joint education interim committees of the legislature and to the governor on the use and expenditure of earnings ~~on the investment of distributions~~ from the excellence in higher education endowment ~~account~~ fund pursuant to this article, including the following:

(iv) Reserve fund distributions pursuant to W.S. 9-4-713(n).

(b) Upon receipt of reports by the University of Wyoming and each Wyoming community college on the use and expenditure of earnings as required under subsection (a) of this section, the joint appropriations and joint education interim committees shall report to members of the Wyoming legislature and the governor on the progress made by the university and community colleges in achieving the purposes stated under this article for distributions from the excellence in higher education endowment ~~account~~ fund and shall recommend any necessary changes to the higher education endowment program to accomplish these purposes. The reports required under this subsection shall be made in sufficient time to enable consideration by the legislature at the general or budget session immediately following the receipt of reports submitted pursuant to subsection (a) of this section.

**21-16-1302. Hathaway scholarship expenditure account created; reserve account created; use and appropriation of funds.**

(a) The Hathaway scholarship expenditure account is created to consist of earnings from the Hathaway student scholarship endowment ~~account~~ fund created by W.S. ~~21-16-1201~~ 9-4-204(u)(vii) and such other funds appropriated by the legislature to the expenditure account. Eighty percent (80%) of all monies deposited to the expenditure account under this section shall be available for scholarships under W.S. 21-16-1304 and 21-16-1305. Twenty percent (20%) of all monies deposited to the expenditure account under this section shall be available for scholarships under W.S. 21-16-1306. Monies within the expenditure account are continuously appropriated to the state treasurer for distribution to eligible institutions based on scholarships awarded under this article. All unexpended and unencumbered monies within the expenditure account at the end of each fiscal year shall be deposited by the state treasurer to the Hathaway student scholarship reserve account.

(b) There is created the Hathaway student scholarship reserve account. The reserve account shall consist of those monies deposited to the account pursuant to subsection (a) of this section and such other funds appropriated by the legislature to the reserve account. To the extent funds within the Hathaway scholarship expenditure account are insufficient in any fiscal year to fully fund scholarships awarded under this article, monies within the reserve account shall be deposited by the state treasurer to the expenditure account for distribution to eligible institutions to fund those scholarships. As soon as possible after the end of each of the fiscal years beginning on and after July 1, 2007, the state treasurer shall transfer monies from this reserve account to the Hathaway student scholarship endowment ~~account~~ fund to the extent monies within the reserve account are in excess of the greater of twelve million dollars ($12,000,000.00) or an amount equal to three and seventy-five hundredths percent (3.75%) of the previous five (5) year average market value of the Hathaway student scholarship endowment ~~account~~ fund, calculated from the first day of the fiscal year. The state treasurer shall report not later than September 30, of each year to the education committee and the select committee on capital financing and investments the amount of funds within the reserve account at the end of the previous fiscal year and as of July 1, of the current fiscal year.

**Section 2.** W.S. 9-4-713(e) and (j), 21-16-1202(a) and 21-16-1203(a) are repealed.

**Section 3.** Funds distributed from the excellence in higher education endowment account prior to the effective date of this act pursuant to W.S. 21-16-1201(c) and made available for investment by higher education foundations pursuant to W.S. 21-16-1202(a) and 21-16-1203(a) shall be remitted to the state treasurer for deposit in the excellence in higher education endowment fund as provided in this section. The state treasurer in consultation with the University of Wyoming, each community college and each foundation investing those funds shall provide for the remittance of those funds or investments purchased with those funds as expeditiously as possible, but may delay the remittance in accordance with prudent investment standards in order to maximize total net earnings.

**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)