

ORIGINAL HOUSE
BILL NO. HB0222

ENROLLED ACT NO. 32, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to the administration of government; authorizing the establishment of performance compensation plans for specified employees of the state treasurer's office and the Wyoming retirement system; establishing requirements for the plans; directing the establishment and evaluation of investment benchmarks as specified; authorizing the investment funds committee to engage consultants as specified; making conforming amendments; requiring reports; providing an appropriation; and providing for an effective date.

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

Section 1. W.S. 9-1-409 by creating new subsections (e) and (f), 9-2-1022(b)(intro), 9-3-406(a) and by creating a new subsection (d) and 9-4-720 by creating a new subsection (f) are amended to read:

9-1-409. State treasurer; duties generally; demand accounts; state revenues paid to treasurer.

(e) The state treasurer may implement and administer a performance compensation plan in accordance with this subsection. The plan shall:

(i) Be limited to those at-will employees of the state treasurer's office listed in paragraph (ii) of this subsection who are directly engaged in investing assets of the state;

(ii) Be limited to the following participating employees:

(A) Chief investment officer;

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(B) Senior investment officer;

(C) Investment officer;

(D) Senior analyst;

(E) Analyst.

(iii) Seek to maximize total returns net of fees on investments authorized by law and in the best interest of the state;

(iv) Be based solely on investment performance exceeding investment benchmarks as established by the investment funds committee created by W.S. 9-4-720 for each fund and asset class for an investment period. No performance compensation shall be paid under the plan unless the investment funds committee determines that the established benchmarks have been exceeded;

(v) Measure investment performance during an investment period based on the following:

(A) Fifty percent (50%) related to total fund performance. For purposes of this subsection, "total fund" means the total or overall investment portfolio of funds managed by the state treasurer's office, excluding the following:

(I) Funds invested for a specific public purpose;

(II) Investments specifically directed by the state treasurer or state loan and investment board and not made at the recommendation of participating employees.

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(B) Fifty percent (50%) related to the performance of the employee's individual assigned asset classes.

(vi) Provide that payments for investment performance for any one (1) investment period shall be as follows:

(A) For payments earned in fiscal year 2020 - the investment performance beginning July 1, 2019 and ending June 30, 2020;

(B) For payments earned in fiscal year 2021 - the arithmetic average of the investment performance beginning July 1, 2019 and ending June 30, 2020 and the investment performance beginning July 1, 2020 and ending June 30, 2021;

(C) For payments earned in fiscal year 2022 and each fiscal year thereafter - the arithmetic average of the annual investment performance beginning that fiscal year and the two (2) immediately preceding fiscal years.

(vii) Be funded from investment returns, with each invested fund's share calculated in proportion to the magnitude of aggregate investment earnings of each fund invested, including interest and dividends, which shall be continuously appropriated for payment of performance compensation as authorized by this subsection;

(viii) Include a limit for total payments to all participating employees for performance compensation earned in any one (1) investment period in an amount not to exceed two percent (2%) of net investment returns above the

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established benchmark of the total fund for that investment period for payments pursuant to subparagraph (v)(A) of this subsection and two percent (2%) of net investment returns above the established benchmark of the employee's individual assigned asset classes for that investment period for payments pursuant to subparagraph (v)(B) of this subsection;

(ix) Include a limit for total payments to an individual employee for performance compensation earned in any one (1) investment period in an amount not to exceed the following:

(A) One hundred percent (100%) of a chief investment officer's base salary;

(B) Seventy-five percent (75%) of a senior investment officer's base salary;

(C) Fifty percent (50%) of an investment officer's base salary;

(D) Twenty-five percent (25%) of a senior analyst's or analyst's base salary.

(x) Provide that performance compensation earned in any one (1) investment period will be paid over a three (3) year period as follows:

(A) Twenty-five percent (25%) during the fiscal year immediately following the fiscal year in which the performance compensation was earned;

(B) Twenty-five percent (25%) during the second fiscal year following the fiscal year in which the performance compensation was earned;

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(C) Fifty percent (50%) during the third fiscal year following the fiscal year in which the performance compensation was earned.

(xi) Provide that performance compensation shall be forfeited by an employee upon termination of employment subject to an anti-compete agreement for future employment related to asset management. This paragraph shall not apply to termination based on death, disability or retirement;

(xii) Provide that performance compensation shall not be included as compensation for the purpose of computing retirement or pension benefits earned by the employee;

(xiii) Subject participating employees to the following terms and conditions related to leave time:

(A) Chief investment officers, senior investment officers and investment officers shall receive leave time in the same manner and amount as department directors under W.S. 9-2-1706(b);

(B) Senior analysts and analysts shall receive leave time in accordance with standards and rules established or promulgated in accordance with W.S. 9-2-1022(a).

(xiv) Provide that performance compensation shall only be based on performance criteria occurring on or after the execution of an employment contract in accordance with this subsection. No performance compensation shall be paid other than as provided in the employment contract;

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(xv) Be submitted to the joint appropriations committee and the select committee on capital financing and investments for comment, and approved by the human resources division, prior to implementation. The human resources division shall not disapprove a performance compensation plan which complies with the requirements of this subsection;

(xvi) Be submitted and administered by the state treasurer as a separately designated and appropriated budget unit.

(f) The state treasurer shall report to the joint appropriations committee and the select committee on capital financing and investments by November 1 of each year on the plan authorized by subsection (e) of this section. The report shall include:

(i) Payments and methodology of calculating payments under the plan;

(ii) A measurement quantifying the risk resulting from the variation between the prior year's investment benchmarks and the prior year's actual investments;

(iii) An estimate of future payments under the plan and future expected investment benchmarks.

9-2-1022. Duties of department performed through human resources division.

(b) The state compensation plan shall, to the extent not otherwise provided by law, apply to all state executive branch employees except those employees of the University of Wyoming and community colleges. The compensation and classification plan shall be designed to attract and retain

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a sufficient quantity of quality employees with competitive compensation based on relevant labor markets for each class of employment. The plan shall be based upon principles of fairness and equity and be administered with sound fiscal discipline. The plan shall utilize both fixed and variable compensation as well as noncash reward and recognition programs. All variable compensation benefits under the plan, except as otherwise provided by law, shall be administered by the department as a separately designated and appropriated budget item. The plan shall consist of:

9-3-406. Retirement board; employment and compensation of director, consulting actuary and assistants; director designated secretary; compensation of members; quorum; seal.

(a) The board shall employ a director and a consulting actuary and other professional and clerical assistants necessary for the administration of the retirement system and the Wyoming deferred compensation program established under W.S. 9-3-501 through 9-3-508. The compensation of employees shall be fixed by the board, subject to confirmation and approval by the ~~personnel~~human resources division and together with all other necessary expenses of the board shall be paid by vouchers drawn on the state treasurer of Wyoming. The director shall also serve, without additional compensation, as secretary of the board. The board shall have the authority to obtain the financial and criminal background history of an employee or employment applicant of the Wyoming retirement system in accordance with W.S. 7-19-106 and 7-19-201. In fixing compensation of employees the board may implement and administer a performance compensation plan in accordance with this subsection. The plan shall:

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(i) Be limited to those at-will employees of the board listed in paragraph (ii) of this subsection who are directly engaged in investing assets of the retirement system;

(ii) Be limited to the following participating employees:

(A) Chief investment officer;

(B) Senior investment officer;

(C) Investment officer;

(D) Senior analyst;

(E) Analyst.

(iii) Seek to maximize total returns net of fees on investments authorized by law and in the best interest of the retirement system;

(iv) Be based solely on investment performance exceeding investment benchmarks established pursuant to this paragraph. The board shall establish investment benchmarks, which shall be approved by the investment funds committee created by W.S. 9-4-720, for each fund and account for an investment period. No performance compensation shall be paid under the plan unless the board determines, subject to review by the investment funds committee, that the established benchmarks have been exceeded;

(v) Measure investment performance during an investment period based one hundred percent (100%) on total fund performance. For purposes of this subsection, "total

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fund" means the total or overall investment portfolio of the retirement system;

(vi) Provide that payments for investment performance for any one (1) investment period shall be as follows:

(A) For payments earned in fiscal year 2020 - the investment performance beginning July 1, 2019 and ending June 30, 2020;

(B) For payments earned in fiscal year 2021 - the arithmetic average of the investment performance beginning July 1, 2019 and ending June 30, 2020 and the investment performance beginning July 1, 2020 and ending June 30, 2021;

(C) For payments earned in fiscal year 2022 and each fiscal year thereafter - the arithmetic average of the annual investment performance beginning that fiscal year and the two (2) immediately preceding fiscal years.

(vii) Be funded from investment returns, with each invested fund's share calculated in proportion to the magnitude of aggregate investment earnings of each fund invested, including interest and dividends, which shall be continuously appropriated for payment of performance compensation as authorized by this subsection;

(viii) Include a limit for total payments to all participating employees for performance compensation earned in any one (1) investment period in an amount not to exceed two percent (2%) of net investment returns above the established benchmark of the total fund for that investment period;

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(ix) Include a limit for total payments to an individual employee for performance compensation earned in any one (1) investment period in an amount not to exceed the following:

(A) One hundred percent (100%) of a chief investment officer's base salary;

(B) Seventy-five percent (75%) of a senior investment officer's base salary;

(C) Fifty percent (50%) of an investment officer's base salary;

(D) Twenty-five percent (25%) of a senior analyst's or analyst's base salary.

(x) Provide that performance compensation earned in any one (1) investment period will be paid over a three (3) year period as follows:

(A) Twenty-five percent (25%) during the fiscal year immediately following the fiscal year in which the performance compensation was earned;

(B) Twenty-five percent (25%) during the second fiscal year following the fiscal year in which the performance compensation was earned;

(C) Fifty percent (50%) during the third fiscal year following the fiscal year in which the performance compensation was earned.

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(xi) Provide that performance compensation shall be forfeited by an employee upon termination of employment subject to an anti-compete agreement for future employment related to asset management. This paragraph shall not apply to termination based on death, disability or retirement;

(xii) Provide that performance compensation shall not be included as compensation for the purpose of computing retirement or pension benefits earned by the employee;

(xiii) Subject participating employees to the following terms and conditions related to leave time:

(A) Chief investment officers, senior investment officers and investment officers shall receive leave time in the same manner and amount as department directors under W.S. 9-2-1706(b);

(B) Senior analysts and analysts shall receive leave time in accordance with standards and rules established or promulgated in accordance with W.S. 9-2-1022(a).

(xiv) Provide that performance compensation shall only be based on performance criteria occurring on or after the execution of an employment contract in accordance with this subsection. No performance compensation shall be paid other than as provided in the employment contract;

(xv) Be submitted to the joint appropriations committee and the select committee on capital financing and investments for comment, and approved by the human resources division, prior to implementation. The human resources division shall not disapprove a performance compensation plan which complies with the requirements of this subsection;

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(xvi) Be submitted and administered by the board as a separately designated and appropriated budget unit.

(d) The board shall report to the joint appropriations committee and the select committee on capital financing and investments by November 1 of each year on the plan authorized by subsection (a) of this section. The report shall include:

(i) Payments and methodology of calculating payments under the plan;

(ii) A measurement quantifying the risk resulting from the variation between the prior year's investment benchmarks and the prior year's actual investments;

(iii) An estimate of future payments under the plan and future expected investment benchmarks.

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

(f) In addition to the duties prescribed under this act, the committee shall 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. The committee through the state treasurer's office may engage the services of consultants on a contract basis for rendering professional assistance and advice in establishing and evaluating benchmarks.

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Section 2. The state treasurer and the board of the Wyoming retirement system shall separately submit any performance compensation plan proposed for implementation in fiscal year 2020 to the joint appropriations committee for comment not later than May 1, 2019. The committee shall provide any comments on a submitted plan not later than May 30, 2019.

Section 3. There is appropriated ten thousand dollars (\$10,000.00) from the general fund to the state treasurer's office. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2020. This appropriation shall only be expended for engaging the services of consultants under W.S. 9-4-720(f), as created by this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2020. This appropriation shall be included in the state treasurer's office 2021-2022 standard biennial budget request.

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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)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk