

ENROLLED ACT NO. 69, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to the investment of state funds; authorizing the purchase or purchases of real property assets and associated interests and other actions regarding a purchase as specified; specifying requirements for any purchase; specifying sources of funding for purchases; providing for the treatment and management of purchased assets; providing for distribution of earnings from purchased assets; creating the property tax payment reimbursement account; requiring reports; requiring public notice and a public comment period and meeting; requiring approval by the legislature prior to entering into any purchase agreement; providing for reimbursement to local governments in lieu of property taxes as specified; specifying other required arrangements for any purchase; requiring recommendations; authorizing the retention of consultants; authorizing reviews, studies and recommendations as alternatives to executing any authorized purchase; providing an appropriation; and providing for an effective date.

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

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

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

(a) The state loan and investment board is authorized to investigate, conduct due diligence, and reach agreements as necessary to make one (1) or more purchases of assets for investment that are located within the state of Wyoming or within states with contiguous borders to Wyoming,

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subject to the provisions of this section. The board is authorized to conduct any negotiations with any entity for the purchase of assets under this section. The board shall develop recommendations as required by this section for any purchase. Assets that may be purchased under this section shall be limited to surface and subsurface interests, including mineral interests with or without the surface estate and any equity, contract or other interest associated with the surface, subsurface or mineral interest purchased. The investigation, recommendations and any agreement to purchase shall be in accordance with the provisions of this section including the following:

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

(ii) Any purchase shall be:

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

(B) Be subject to the requirements for alternative investments under W.S. 9-4-715;

(C) Be evaluated as provided in W.S. 9-4-715(d) and (e) in addition to other provisions of this section for the particular source of funds invested, or in the aggregate from all funds invested.

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(iii) For real property:

(A) The board shall have conducted a market analysis or other determination of value of the entirety of the real property to be purchased;

(B) Evidence of marketable title satisfactory to the board shall be provided by the current owner prior to any property being conveyed.

(iv) Immediately upon filing the report required by subsection (b) of this section, the state loan and investment board shall:

(A) Make available to the public on its website the details of the proposed purchase including the locations of the assets, the purchase price, all funding sources for the purchase, the projected costs to manage the assets purchased and projected revenue streams from the assets purchased;

(B) Establish an open public comment period to review the details of the proposed purchase, during which members of the public may submit written comments electronically, by mail or both;

(C) During the comment period provided by subparagraph (B) of this paragraph, hold at least one (1) informational public hearing within a geographic area in Wyoming that would be affected by the proposed purchase, notice of which shall be published one (1) time in a newspaper of general circulation within the county in which the hearing is to be held and in a newspaper of statewide circulation. At the hearing the board shall present the terms of the proposed purchase and take public testimony.

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If more than one (1) meeting is held, the information presented at each meeting may be the same.

(v) Three (3) members of the senate appointed by the president of the senate and three (3) members of the house appointed by the speaker of the house shall act as liaisons to the state loan and investment board during the investigation of the potential purchase, completion of due diligence and negotiations. Legislators serving as liaisons shall be authorized salary, per diem and mileage for each meeting attended, including meetings with the full board or with any subcommittee of the board involving the investigation or negotiations under this section;

(vi) A purchase made under this section shall be made utilizing one (1) or more of the following sources, subject to the conditions specified:

(A) The legislative stabilization reserve account, provided that the total amount invested from the account shall not diminish the state's credit ratings as reported by the major credit rating agencies in the United States. In determining the amount to invest from the account, if any, the state loan and investment board shall consult with the state treasurer and the chief investment officer within the treasurer's office regarding the state's existing credit ratings and how the ratings could be impacted by any investment of funds from the legislative stabilization reserve account under this section. In determining potential impacts the board, treasurer and chief investment officer shall consider the balance of the account, including anticipated market fluctuations affecting invested funds comprising that balance, existing and potential obligations of funds within the account under current provisions of law and other factors the board,

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treasurer and chief investment officer identify as affecting the potential impact. In no event shall more than one hundred fifty million dollars (\$150,000,000.00) be invested from the legislative stabilization reserve account pursuant to this subparagraph;

(B) The permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii);

(C) The common school account within the permanent land fund;

(D) The issuance of special revenue bonds provided:

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

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

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

(E) Any other source of state funds other than the common school permanent fund reserve account and funds which are encumbered, obligated or which have been appropriated for expenditure for a specified purpose. The state loan and investment board may accept federal grants and other contributions, grants, gifts, bequests and donations from any source designated to be used to make purchases pursuant to this section which will impose no financial obligation upon the state.

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(vii) As part of the report required under subsection (b) of this section, the state loan and investment board shall recommend to the legislature whether:

(A) A purchase should be made with an aggregate amount of the sources specified in paragraph (vi) of this subsection;

(B) Each funding source used should acquire separate assets that are segregated from assets of the other funding sources used. In developing this recommendation the board shall consider:

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

(II) The established and potential sources of earnings from the assets purchased;

(III) The investment policies adopted by the board for the funding source.

(C) The assets purchased under this section should be allocated to the sources of funding used to make the purchase on a proportionate basis;

(D) Assets purchased under this section should be divided among purchase sources in order to maximize the return on investment from the purchases; and

(E) Assets purchased with funds from the common school account within the permanent land fund should

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be treated separately from assets purchased with other sources specified in paragraph (vi) of this subsection.

(viii) Before the state loan and investment board enters into a purchase agreement under this section, the legislature shall convene to consider the proposed purchase in a special, general or budget session, and before execution of the purchase agreement, legislation authorizing the proposed purchase of assets shall be passed by a majority vote of the members of both houses and approved by the governor.

(b) The state loan and investment board shall report to the legislature after reaching an agreement in principle to purchase under this section:

(i) A listing of the assets to be purchased and the location of the assets, separately identifying the specific location of all assets outside the state. The board shall report any title defects it determines exists;

(ii) The total fair market value of all assets and the purchase price. The board shall report the method or methods used to determine value;

(iii) The funding source or sources recommended to be used for the purchase;

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

(v) The anticipated date to execute the final purchase agreement;

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(vi) The anticipated date to close all transactions necessary to implement the final purchase agreement;

(vii) Any legislation necessary to effectuate the final purchase agreement or which the board determines would be beneficial to the state in regard to the purchase, including allocation of earnings under subsection (g) of this section;

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

(c) No agreement under this section shall be executed by the board pursuant to this section without the approval of the attorney general. Any agreement in principle entered into by the state loan and investment board pursuant to this section shall specifically provide that it is subject to this section and that the state, the board or any other state entity shall not incur any liability for failure to fulfill the agreement if legal authority of the board to execute the agreement does not exist, including as a result of any legislation enacted in a special, general or budget session of the legislature referenced in paragraph (a)(viii) of this section.

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

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

(f) A purchase made under this section shall:

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

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

(g) Earnings generated from assets purchased under this section shall be deposited as follows:

(i) For investment of funds of the permanent Wyoming mineral trust fund:

(A) Mineral royalties shall be deposited to the permanent Wyoming mineral trust fund;

(B) All other earnings shall be deposited to the general fund in accordance with laws, rules and policies governing other earnings from investments of the permanent Wyoming mineral trust fund. Upon deposit of earnings to the general fund under this subparagraph the treasurer shall transfer to the school foundation program account an amount equal to the deposit to the general fund;

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

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

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

(iii) Earnings generated from investment of proceeds of revenue bonds shall be deposited in the following order:

(A) To an account for bond payments and to establish any sinking fund necessary for that purpose;

(B) To the property tax payment reimbursement account created by W.S. 39-13-113;

(C) The balance to be deposited to the school foundation program account, until all revenue bonds issued for a purchase under this section, including bonds issued to refund those bonds, have been redeemed in full.

(iv) Earnings generated from investment of funds pursuant to subparagraphs (a)(vi)(A) and (E) of this section shall be deposited to the account used to make the investment. Earnings in excess of the amount invested from the account shall be deposited to the school foundation program account. If an investment is made from funds of a grant or other contribution accepted pursuant to

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subparagraph (a)(vi)(E), earnings from the investment shall be deposited as directed by the terms of the grant or contribution or to the school foundation program account if there is no direction.

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

(i) The board of land commissioners shall manage all surface, subsurface and mineral interests, whether directly or through the retention of a manager. The state loan and investment board and the board of land commissioners are authorized to assume all leases, contracts and other agreements related to the purchased assets as they exist regardless of whether the lease, contract or other agreement complies with the provisions of title 36 of the Wyoming statutes applicable to state lands. Subject to existing lease and contract rights assumed, all state laws governing the management of state lands shall be applicable to assets unless otherwise provided in this section or other applicable law. The state loan and investment board and the board of land commissioners may renegotiate leases, contracts and other agreements as either board deems necessary or appropriate to fulfill the state's fiduciary duties and that would be in the best interests of the state, provided:

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

(B) Any mineral, coal, oil, gas or grazing lease or permit which exists at the time of the purchase shall not be modified in any manner without the consent of

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the lessee or permit holder during the term of the lease or permit. Upon expiration of any lease, permit, contract or other agreement the state loan and investment board or the board of land commissioners may renegotiate or enter into new leases, contracts or other agreements to provide the state with a rate of return at the current market levels.

(ii) The office of state lands and investments shall include in its biennial budget request separate appropriation requests for the costs of managing real property interests as determined by the board of land commissioners and for the cost of managing other assets as determined by the state loan and investment board in accordance with this subsection;

(iii) Real property interests purchased shall be managed as the office of state lands and investments manages school trust lands, subject to subsection (g) of this section and provided further that the lands shall be managed for multiple use purposes for the benefit of the state in the manner stated in W.S. 36-12-102 to the extent that management is not inconsistent with any fiduciary duties of the state regarding the invested funds;

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

(j) The office of state lands and investments shall review all leases, contracts and other agreements relating to any proposed purchase under this section and shall make recommendations for any modifications to applicable state laws to best manage the assets purchased for the benefit of the state and in light of the state's fiduciary duties.

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(k) Upon completion of a purchase under this section, the state loan and investment board is authorized to take all actions as the board deems necessary to sell, transfer or otherwise dispose of purchased real property assets and other interests, including the dissolution of business entities holding purchased assets in which the state has acquired complete ownership as part of a purchase under this section. Funds from any sale, transfer or dissolution under this subsection shall be deposited by the state treasurer to the corpus of the accounts from which the assets were purchased.

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

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

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

(b) Any county in which property purchased or acquired by exchange pursuant to W.S. 9-4-715.1, is located shall be eligible for payment from the property tax payment reimbursement account to the extent the property would have been taxed if not used primarily for a governmental purpose. On or before September 1, county assessors shall certify the exemptions granted for such property to the department. On or before October 1, from funds within the property tax payment reimbursement account and subject to legislative appropriation the state treasurer shall

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reimburse each county treasurer for the amount of taxes that would have been collected if the property were not exempt. The county treasurer shall distribute the revenue to each governmental entity in the actual amount of taxes lost due to the exemption.

Section 2. W.S. 9-4-219(a) and 9-4-715(q) by creating a new paragraph (i), by renumbering (i) as (ii) and (iv) as (v) and by amending and renumbering (ii) as (iii) and (iii) as (iv) are amended to read:

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 attributable to those investments shall be credited to the general fund. Funds within the account may also be invested by the state loan and investment board as provided in and subject to the limitations in W.S. 9-4-715.1.

9-4-715. Permissible investments.

(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

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obtain the highest return possible subject to the following:

(i) The treasurer shall consult with the state loan and investment board to identify funds within the account that the board has identified as funds potentially necessary to complete a purchase authorized by W.S. 9-4-715.1 and separately invest those funds for the period as recommended by the board in order to provide the liquidity needed to effectuate the purchase. Until March 31, 2021, the funds identified by the board shall not be subject to paragraph (ii) of this subsection and shall be separately invested;

~~(i)~~(ii) 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.

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~~(ii)(iii)~~ 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. The provisions of this paragraph shall not be applicable through March 31, 2021;

~~(iii)(iv)~~ 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)–(iii)~~ 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. Funds identified pursuant to paragraph (i) of this subsection shall not be considered as obligated or encumbered funds for purposes of this paragraph and for purposes of W.S. 9-4-219(b) until the state loan and investment board executes a purchase agreement pursuant to W.S. 9-4-715.1. Investments under this paragraph shall be made in compliance with subsections (c) and (d) of this section;

~~(iv)(v)~~ 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.

Section 3.

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

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

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

(A) Anticipated earnings to be distributed to the corpus of a fund or account used to purchase an asset, if segregated, identifying whether the earnings are required to be distributed to the corpus by the Wyoming constitution or federal law;

(B) Anticipated earnings required by the Wyoming constitution or federal law to be distributed to a fund or account other than the corpus of the fund or account used to purchase an asset, if segregated;

(C) Earnings anticipated to be needed to pay or guarantee payment of any revenue bonds anticipated to be issued;

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

(E) Earnings anticipated to be needed to fund management costs of the assets.

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

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(A) How management costs should be allocated to each segregated set of assets or upon proportionate allocation if so recommended by the board;

(B) Whether any purchased real property assets located outside of Wyoming should be reviewed by the board of land commissioners for immediate or subsequent sale or exchange and whether modification to W.S. 36-1-110 and 36-1-111 should be made to facilitate any such exchange.

Section 4.

(a) The office of state lands and investments, upon the direction and approval of the state loan and investment board, may retain experts to fulfill the due diligence and related requirements of this act.

(b) There is appropriated from the state building commission contingency account to the office of state lands and investments for duties of the state loan and investment board under this act such funds as are necessary for the board or office of state lands and investments to retain experts under subsection (a) of this section. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2022. This appropriation shall not be transferred or expended for any other purpose.

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FILE NO. SF0138

ENGROSSED

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Section 5. 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 Senate.

Chief Clerk