

# Wyoming Public Purpose Investments

August 7, 2015

## Management Audit Committee

*Senator Bruce Burns, Chairman*

*Representative David Miller, Vice Chairman*

*Senator Floyd A. Esquibel*

*Senator Wayne Johnson*

*Senator David Kinskey*

*Senator Charles Scott*

*Representative Cathy Connolly*

*Representative Dan Kirkbride*

*Representative Thomas Lockhart*

*Representative Michael K. Madden*

*Representative Nathan Winters*

## Prepared by

*Michael Swank, Program Evaluation Manager*

*Joy Hill, Program Evaluator*

*Samantha Mills, Associate Program Evaluator*

*Kathy Misener, Associate Program Evaluator*

*Elizabeth Martineau, Associate Program Evaluator*

*Marla Smith, Associate Program Evaluator*

*Anthony Sara, Technical Assistance & Graphics*



**Program Evaluation Staff**

*Michael Swank*  
*Program Evaluation Manager*

*Joy Hill*  
*Program Evaluator*

*Samantha Mills*  
*Associate Program Evaluator*

*Kathy Misener*  
*Associate Program Evaluator*

*Elizabeth Martineau*  
*Associate Program Evaluator*

*Marla Smith*  
*Associate Program Evaluator*

***Technical Assistance and Graphics:***

*Anthony Sara*  
*Legislative Information Officer*



# Wyoming Legislative Service Office

## EXECUTIVE SUMMARY

### Wyoming Public Purpose Investments

Program Evaluation Section

August 7, 2015

#### Evaluation Purpose

In December 2014, the Management Audit Committee (Committee) directed the Legislative Service Office (LSO) to conduct a program evaluation of Wyoming public purpose investments (PPIs). The Committee’s concerns focused on the efficient administration of these investments, possible opportunity costs (including valuing public benefits), and the applicability and use of the Uniform Prudent Investment Act (UPIA). PPIs were previously evaluated by LSO in 1997.

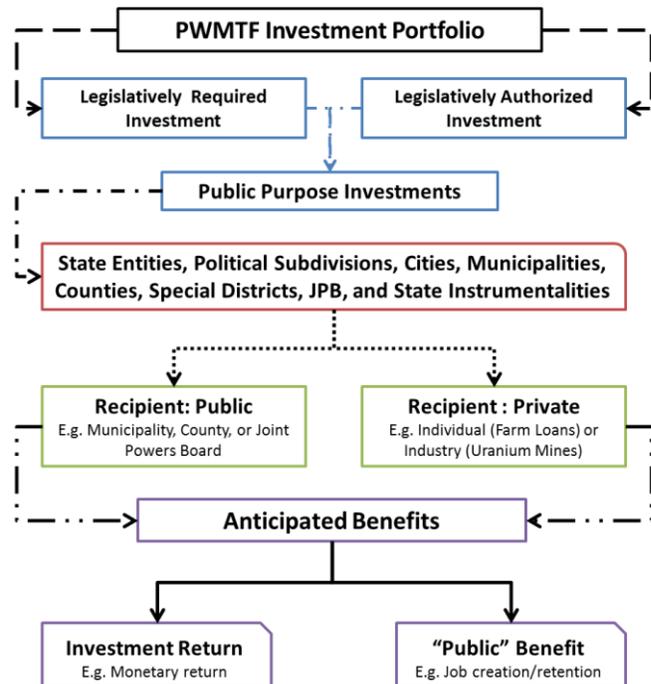
#### Background

In Chapters 1 and 2, the report provides background information on where PPIs fit into the State’s investment array as well as identifies common themes in trying to distinctly define or group PPIs. Key highlights include that for most investments made with State funds, the State Treasurer and the State Loan and Investment Board (SLIB) oversee the State’s investment portfolio. The entire portfolio, separated into ten separate funds, currently has a market value of approximately \$19.7 billion, with the Permanent Wyoming Mineral Trust Fund (PWMTF) accounting for the largest single fund at \$7.2 billion. Most PPIs are made from the PWMTF.

However, PPIs are investments specifically chosen and made under the direct authorization of the Legislature. These investments are typically not related to one another except for the use of public entities (political subdivisions) to or through which the investments are made and the desire to achieve various public purposes or benefits for the State and its citizens; see Figure ES.1 at right. The distinct nature of each individual PPI makes it challenging to define, group, and evaluate them together.

For example, some PPIs are required to be executed while others are more discretionary. Also, some have strict interest rates while others’ rates may float based on a statutory or rules-based formula.

**Figure ES.1 General Areas Impacting How PPIs May be Defined or Assessed**

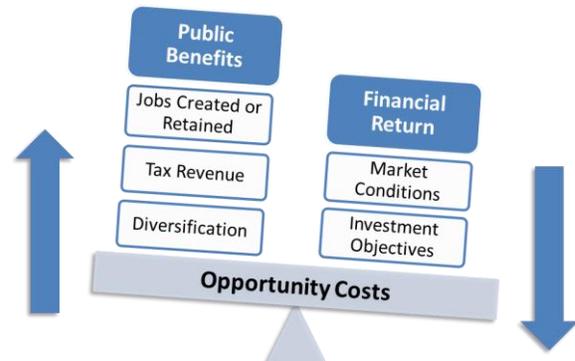


Note: The full graphic can be found on page 26.

Due to these challenges, LSO looked at PPIs under the unifying theme that they are *investments*. LSO used professional standards like the State Master Investment Policy (MIP) goals and objectives as well as the UPIA on which to base its review.

Therefore, this report highlights when and how PPIs diverge from these standards and provide recommendations to both the Legislature and executive agencies. The report seeks to help the State better connect both the financial return and public purpose goals, see Figure ES.2 at right, through clearer statutes and more efficient and transparent executive administration.

**Figure ES.2 Understanding Opportunity Cost**



Note: The original graphic can be found on page 29.

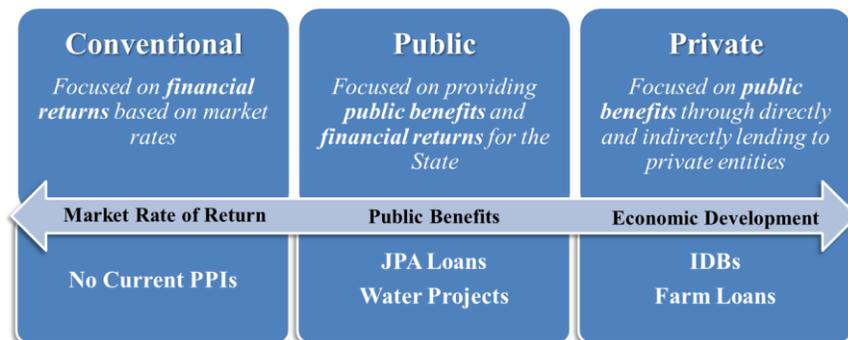
## Report, Finding and Recommendation Summary

This report advises the Legislature and executive branch administering agencies for PPIs on several issues. In Chapter 3, the report notes that PPIs have generally returned less financial income to the PWMTF than could be expected if the PPI funds were invested in the regular diversified portfolio (potential opportunity cost). Therefore, the Legislature could consider modifying how PPI interest rates are set. LSO also found that as an investment gets further away from market-based investing (focused on financial rate of return) it is more difficult to assess investment risk. The inability to properly assess risk in turn also makes it difficult to value both financial returns and public benefits to reveal if the State is being reasonably compensated; see Figure ES.3, at right. Risk assessment is most important when the ultimate recipient of invested State funds is a private, rather than public, entity. The Legislature

could consider changing the funding source for investments where private entities may receive funds and uncertain public benefits appear to outweigh financial returns.

In Chapter 4, LSO found that the current reporting on PPIs to the Legislature is incomplete, inconsistent, and fragmented. Since the Legislature designates PPIs outside the regular portfolio investment process, the consistency and thoroughness of reporting to the Legislature can be improved. Identifying and reporting on these investments' use, lending, and repayment trends as well as potential

**Figure ES.3 State Investment of Public Funds Continuum**



Note: The original graphic can be found on page 36 of the report.

delinquencies and defaults, can be reviewed and acted upon by the Legislature, as necessary, in a timely manner.

In Chapter 5, LSO found that the Office of State Lands and Investments (OSLI) can update several of its administrative responsibilities to increase PPI program efficiencies and transparency. Finally, in Chapter 6, LSO identified many PPI programs that have gone unused, most since

the 1997 LSO evaluation. The report recommends possible statutory changes to eliminate unused or potentially unnecessary program authorizations.

In total the report contains twelve recommendations. Five recommendations are for the Legislature to consider and seven are directed toward the PPI administering agencies.

## **Agency Response**

---

### **State Treasurer's Office (STO)**

---

The STO believes all of the different approaches to PPIs are well-intentioned. The STO notes that occasionally PPI effectiveness varies and their prosecution is uneven. The STO believes its role, where given the responsibility and authority, is to bring the discipline embodied in the Uniform Prudent Investor Rule to PPIs, tempered by the proposed source of funding and the Legislature's intent.

The STO partially agrees that the Legislature consider establishing a consistent or default interest rate for all PPIs and that the Legislature consider removing the statutory requirement for the WBC to formally recommend the interest rate for each IDB application. The STO agrees that the Legislature consider a funding source, other than permanent funds, for the IDB program. The STO also agrees that PPI reporting could be improved and that it should coordinate and compile information for presentation to the Legislature. Finally, the STO suggests that the Legislature review funding needs before repealing the Local Government and School District Bond Guarantee programs. See page STO-1 of the report for the full response.

### **Office of State Lands and Investment (OSLI)**

---

The OSLI notes two general themes in the report. First, the agency believes that measuring and delivering a public purpose through the Farm Loan program is achieved through the establishment of the program and the availability of funds. Second, the OSLI takes delinquencies and defaults seriously and resolution of those issues is dictated by not only SLIB rules, but also the terms of the mortgage contracts.

The OSLI agrees that it should conduct a review of the Farm Loan Program rules and that it will report back to the Management Audit Committee in one year to review the status and progress of the EnABLE data system. It also agrees to study, with the WWDO, the potential overlap in services and program administration of small water development and hydro-power development projects.

The Agency partially agrees that it should coordinate with the WBC to provide training and guidance to OSLI staff and prospective Beginning Agricultural

Producer borrowers regarding adequate and actionable business plans. The Agency is neutral to the recommendations that it should provide a business plan template or require annual or biennial reporting from Beginning Agricultural Producer borrowers. The OS LI states Farm Loan program statutes appear intended to have the SLIB and OS LI operate as a commercial lender where success of the program is judged by repayments on the loaned funds. See page OS LI-1 of the report for the full response.

### **Wyoming Water Development Office (WWDO)**

---

The WWDO states that overall, the report fairly describes the permanent fund loans it administers and agrees that it can work with the OS LI to study areas in which both agencies provide services and program administration related to small water development and hydro-power development projects. However, the WWDO does not believe that there is any current duplication of effort between the agencies.

In addition, the WWDO is required to prepare a feasibility study for all hydropower projects, but it does not believe that statute requires consultation between the WWDO and the OS LI for hydropower projects. Finally, the WWDO reiterates that the Gillette-Madison project is still under construction and agrees that no interest has accrued on loaned funds, but the project is still in compliance with financial conditions. See page WWDO-1 of the report for the full response.

### **Wyoming Business Council (WBC)**

---

The WBC partially agrees that the Legislature consider establishing a consistent or default interest rate for all PPIs, but cautions that an interest rate set in statute would be difficult to adjust and could decrease flexibility and responsiveness. The WBC also partially agrees that the Legislature consider removing the statutory requirement for the WBC to recommend interest rates on IDBs. It states that there is no need for the WBC to recommend a rate for IDBs. However, if the program is viewed as an economic development tool, then there is some merit to the WBC reviewing a range of potential rates based on business financial analyses and projections. See page WBC-1 of the report for the full WBC response.

# Recommendation Locator

Chapter Number	Recommendation Number	Recommendation Summary	Page Number	Party Addressed	Agency Response
3	3.1	The Legislature could consider setting a consistent or default interest rate for all PPIs, which correlates with a multi-year rolling average of the PWMTF yield.	34	Legislature	STO: Partially Agree WBC: Partially Agree
3	3.2	The Legislature could consider extending appropriated funds or establishing a separate fund for IDBs rather than using the PWMTF.	40	Legislature	STO: Agree WBC: Agree
4	4.1	The Legislature could consider amending W.S. 9-4-715(n) to provide for more comprehensive, standardized, and direct reporting requirements for all PPI programs and projects.	52	Legislature	STO: Agree
4	4.2	The STO should coordinate and compile information noted under Recommendation 4.1.	53	State Treasurer's Office	STO: Agree
5	5.1	The OSLI and the SLIB should conduct a review of Farm Loan program rules to address the timing of repayments.	62	Office of State Lands and Investments	OSLI: Agree
5	5.2	The OSLI and the SLIB should provide a business plan template for prospective borrowers to follow when applying for a loan under the Beginning Agricultural Producer sub-program of the Farm Loan program.	63	Office of State Lands and Investments	OSLI: Neutral
5	5.3	The OSLI should coordinate with the WBC to provide training and/or other guidance to both OSLI staff and	63	Office of State Lands	OSLI: Partially Agree

Chapter Number	Recommendation Number	Recommendation Summary	Page Number	Party Addressed	Agency Response
		prospective Beginning Agricultural Producer borrowers on adequate and actionable business plans.		and Investments	WBC: Agree
5	5.4	The OSLI should require annual or biennial reports from Beginning Agricultural Producer borrowers on their progress toward meeting business plan expectations and goals.	63	Office of State Lands and Investments	OSLI: Neutral
5	5.5	The OSLI should report back to the Management Audit Committee in one year to review the status and progress of the EnABLE data system.	63	Office of State Lands and Investments	OSLI: Agree
6	6.1	The WWDO and the OSLI should study the areas in which both agencies provide services and program administration related to small water development and hydro-power development projects.	70	Office of State Lands and Investments and the Wyoming Water Development Office	OSLI: Agree  WWDO: Agree
6	6.2	The Legislature could consider the following modifications to PPI program statutes as outlined in this chapter: <ul style="list-style-type: none"> <li>Revise relevant statutes under Chapter 34 (State Loan and Investment Board), Title 11 (Agriculture, Livestock and Other Animals) to change references from “irrigation loans” to “water development projects” or “small water projects,” as applicable, in conformance with the terminology used for the loan program authorized under W.S. 11-34-301 and 302 and as presented by the OSLI</li> </ul>	71	Legislature	STO: Partially Agree  WBC: Agree

Chapter Number	Recommendation Number	Recommendation Summary	Page Number	Party Addressed	Agency Response
		<p>website.</p> <ul style="list-style-type: none"> <li>• Revise W.S. 11-34-306 to provide clarification on whether the \$10 million hydro-power funding level is intended to be the program-level funding limit, rather than per-project funding limit.</li> <li>• Repeal the statutory authorizations for the following inactive and/or unused programs: <ul style="list-style-type: none"> <li>○ Local Government Bond Guarantee program: W.S. 9-4-1002 and 9-4-715(h);</li> <li>○ School District Bond Guarantee program: W.S. 9-4-1001 and W.S. 9-4-715(g);</li> <li>○ Area Redevelopment program: W.S. 11-34-303;</li> <li>○ Deferred Property Tax program: W.S. 9-4-715(j);</li> <li>○ University of Wyoming Advance Payment Contract program: W.S. 21-16-501 through W.S. 21-16-505;</li> <li>○ Student Loan Stand-by program: W.S. 21-16-113 (with conforming amendments to W.S. 21-16-714 for the WHEAA); and</li> <li>○ Lamb Processing Facility Loan program: W.S. 11-34-304 and W.S. 11-34-305.</li> </ul> </li> </ul>			
6	6.3	The Legislature could consider removing the requirement that the WBC formally recommend the interest rate for IDB applications.	73	Legislature	<hr/> STO: Partially Agree <hr/> WBC: Partially Agree



---

# TABLE OF CONTENTS

---

## Wyoming Public Purpose Investments

---

Introduction, Scope, and Methodology .....	1
<b>Chapter 1:</b> The Legislature Directly Invests State Funds .....	7
<b>Chapter 2:</b> What is a “Public Purpose Investment?” .....	21
<b>Chapter 3:</b> Investing in PPIs Diverges from the PWMTF Investment Goals and the Prudent Investor Principles .....	27
<b>Chapter 4:</b> Most PPI Information Collected and Reported is not Conducive to Meaningful Legislative Oversight of its Designated Investments .....	41
<b>Chapter 5:</b> Adjustments to the OSLI Practices Would Streamline Administration and Contribute to Better PPI Reporting and Program Transparency .....	55
<b>Chapter 6:</b> Outmoded and Unclear Statutes could be Modified or Repealed for More Efficient PPI Administration.....	65
Agency Responses .....	75
State Treasurer’s Office .....	STO-1
Office of State Lands and Investments .....	OSLI-1
Wyoming Water Development Office .....	WWDO-1
Wyoming Business Council .....	WBC-1
<i>Appendices</i>	
(A) <i>Wyoming Constitution and Statutes (selected excerpts)</i> .....	A-1
(B) <i>Wyoming Master Investment Policy (selected excerpts)</i> .....	B-1
(C) <i>Summary of Wyoming Public Purpose Investment Programs and Projects</i> .....	C-1
(D) <i>Other States’ Use and Investment of Permanent Funds</i> .....	D-1
(E) <i>LSO Evaluation Opportunity Cost Methodology</i> .....	E-1



---

# List of Acronyms

---

## Wyoming Public Purpose Investments

---

<b>CAFR</b>	.....	Comprehensive Annual Financial Report
<b>CREG</b>	.....	Consensus Revenue Estimating Group
<b>CSA</b>	.....	Common School Account (of the Permanent Land Fund)
<b>ETI</b>	.....	Economically Targeted Investment (also Social Investment)
<b>GAAP</b>	.....	United States Generally Accepted Accounting Principles
<b>GF</b>	.....	Wyoming State General Fund
<b>GIC</b>	.....	Guarantee Investment Contract
<b>HYB</b>	.....	High Yield Bonds
<b>IBARS</b>	.....	Internet Budgeting Analysis and Reporting System
<b>IDB</b>	.....	Industrial Development Bond
<b>JPA</b>	.....	Joint Powers Act
<b>LDI</b>	.....	Legislatively Designated Investments
<b>LSO</b>	.....	Legislative Service Office
<b>MIP</b>	.....	Master Investment Policy
<b>MRG</b>	.....	Mineral Royalty Grant
<b>OSLI</b>	.....	Office of State Lands and Investments
<b>PIR</b>	.....	Prudent Investor Rule (or Prudent Investor Standard under UPIA)
<b>PPI</b>	.....	Public Purpose Investments
<b>PWMTF</b>	.....	Permanent Wyoming Mineral Trust Fund
<b>ROI</b>	.....	Return on Investment
<b>ROR</b>	.....	Rate of Return
<b>SAO</b>	.....	Wyoming State Auditor’s Office
<b>SAP</b>	.....	State Agency Pool
<b>SLIB</b>	.....	State Loan and Investment Board
<b>STO</b>	.....	Wyoming State Treasurer’s Office

**TDOA**..... Time Deposit, Open Account  
**UPIA**..... Uniform Prudent Investor Act  
**WBC**..... Wyoming Business Council  
**WDA** ..... Water Development Account  
**WIA**..... Wyoming Infrastructure Authority  
**WOLFS**..... Wyoming Online Financial System  
**WPA** ..... Wyoming Pipeline Authority  
**W.S.**..... Wyoming Statute  
**WWDC** ..... Wyoming Water Development Commission  
**WWDO** ..... Wyoming Water Development Office

---

---

# Introduction, Scope, and Methodology

---

---

## Introduction and Scope

Under W.S. 28-8-107(b), the Legislative Service Office (LSO) is authorized to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

The Management Audit Committee (Committee) voted on June 24, 2013 to request a scoping paper on the topic of legislatively designated investments (LDIs). At the November 13-14, 2013 Committee meeting, the Committee discussed the scoping paper, requested minor modifications to the paper, and voted to authorize LSO Program Evaluation staff to move forward with the full evaluation of the topic using the terminology of public purpose investments (PPIs), instead of LDIs. Under the guidance provided by the modified scoping paper and accompanying discussion of the Committee, LSO staff targeted the evaluation on the following research questions:

1. Which of the current PPI programs could be restructured, phased out, or repealed?
2. Is the current and varied oversight structure for PPIs (multiple agencies with different missions/purposes) adequate and appropriate for maintaining and monitoring these investments?
3. What are the financial opportunity costs for these investments compared with the conventional investment portfolio's rate of return?
4. How are public purposes or public benefits valued by PPI administering agencies and do these measures meet the intent of the Legislature?
5. How may the Legislature better structure current or future PPIs to protect the State's permanent funds and reasonably account for investment risks associated with PPIs?
6. How are the requirements under the Uniform Prudent Investor Act (UPIA, also called the Prudent Investor Rule) applied when executing PPIs as established by the Legislature?

The State Treasurer and the State Loan and Investment Board (SLIB) oversee the State's investment portfolio through ten separate permanent and non-permanent funds<sup>1</sup>. The entire portfolio currently has a market value of approximately \$19.7 billion, with the Permanent Wyoming Mineral Trust Fund (PWMTF) and the State Agency Pool Fund accounting for the majority of these funds at \$7.2 and \$6.3 billion, respectively. These separate funds are invested according to the SLIB-approved Master Investment Policy (MIP), which outlines the principles, philosophies, goals and objectives, and allowable investment vehicles in which to invest State monies.

---

<sup>1</sup> The ten funds include the WYOSTAR fund for local governments, but this fund is not open to PPI investments.

However, the placement and accounting of PPIs fall outside of this traditional or conventional investment process since these investments are specifically designated by the Legislature. PPIs are often referred to as “Wyoming investments,” but may be generally explained to cover legislatively authorized or required investments of State funds to achieve certain in-state public purposes or benefits for its citizenry. The main authorization for making these investments comes from Article 15, Section 19 of the Wyoming Constitution. This provision allows the Legislature to loan monies from the PWMTF to local governments, special districts, and the like, often called “political subdivisions,” through designated programs or projects.

This evaluation provides a detailed summary of the current organization of PPIs from the perspective of a singular group of *investments*, even though they are not a conventional asset class. Based on information gathered during the scoping and survey processes for this evaluation, LSO focused on PPIs currently operating or authorized that utilize the PWMTF, from which the vast majority of these investments are funded. For additional explanation, the following notes provide several considerations that helped refine the research scope for this evaluation:

- PPIs that have been repealed, no longer carry an outstanding balance, or have been repaid and closed were generally reviewed for background information to describe their final disposition;
- Investments made from the Common School Account of the Permanent Land Fund (particularly inter-fund borrowing and trust real estate purchases) must meet a different set permanent trust obligations than the trust obligations for PPIs funded out of the PWMTF;
- The TDOA program funded out of the State Agency Pool Fund is considered as an area for further evaluation due to recent administrative and statute changes (see page 6); and
- The Basin Electric Power Bond is exempt from W.S. 9-4-715(n), which defines the maximum allowable investment in PPIs at \$600 million.

Still, many of the concepts and concerns outlined in this evaluation may be reasonably translated or applied to specific PPIs noted in these exceptions to the project scope.

### **Legislative Executive Oversight Balance for PPIs**

This evaluation balances research and recommendations between the executive and legislative branches’ responsibilities. Key concerns include day-to-day administrative issues for which the executive branch agencies are responsible when implementing these investments, as well as policy and oversight responsibilities of the Legislature. The evaluation provides potential responses to better or more effectively reach the explicit purposes intended for these investments.

When reviewing this report, one important factor to keep in mind is how these investments are put in place by the Legislature, which makes them

unique to the State of Wyoming. LSO generally reviewed other states' practices in order to reveal potentially efficient, new, or innovative ways to conduct program activities. However, due to the Wyoming-specific nature of these legislative decisions and how each investment project or program is structured, other states' practices provide limited applicability to Wyoming. In other words, it is difficult to provide recommendations for program improvements without also second-guessing or appreciably altering the Legislature's intent to make specific investment and public policy decisions in the State. Therefore, LSO approached this evaluation by focusing on themes, standards, criteria, and recommendations that may be objectively applied across all PPI programs.

### **The Legislature Reviewed PPIs in 1997**

For additional context, this evaluation is not the first conducted on PPIs in Wyoming. In 1997, the Legislature conducted a policy analysis on many, but not all PPIs, based on the recommendation of the Joint Revenue Interim Committee. This topic grew out of work initially conducted by the 1995 Select Committee on Financial and Cash Flow Management. The Committee followed the recommendation and requested that 26 LDI programs and projects, or special investments, be reviewed and reported back to the Legislature.

The 1997 review found that total LDI *authorizations* of State funds accounted for about a third (\$1.1 billion out of \$3.25 billion) of the entire State funds portfolio, not just the PWMTF. While the actual cash outlays for these investments were less than the full program authorizations, the portfolio and possible opportunity cost was reviewed. Two opportunity costs were identified in this evaluation: 1) LDIs received below-market returns, possibly sacrificed for expected, but sometimes ambiguous public benefits; and 2) Funds for authorized PPIs need to remain liquid (i.e. easily accessible) as executed transactions would need immediate cash to be completed. Consequently, the State was not able to implement more favorable investments to optimize conventional investment returns, under the investment regime at the time.

This analysis did not contain specific recommendations, but provided policy alternative suggestions for the Legislature. Example outcomes of this review included the following:

- Excess program authorizations were reviewed and the Legislature adjusted some programs' investment funding limits and repealed others;
- The Legislature formed the Select Committee on Capital Financing and Investments (Select Committee) in 1997 and made the Select Committee permanent with the passage of House Bill 47 in 1999. The Select Committee is intended to provide "the Legislature with legitimate reasons to regularly consider LDIs and review their performance."

## Methodology

This evaluation was conducted according to statutory requirements and professional standards and methods for governmental audits and evaluations. The research was conducted from August 2014 through May 2015. The general analytical time frame covered by this evaluation includes documents and data from July 1, 2004 (FY2005) through May 2015, unless noted otherwise.

Research methods included:

### **Interviews, Observations, and Requests**

1. Interviewed executive branch programmatic/project staff at the following agencies: the State Treasurer's Office (STO), the Office of State Lands and Investments (OSLI), the Wyoming Business Council (WBC), the Wyoming Water Development Office (WWDO) staff to the Wyoming Water Development Commission (WWDC), the Wyoming Infrastructure Authority (WIA), the Wyoming Pipeline Authority (WPA), the State Auditor's Office (SAO), and the Wyoming Department of Audit (DOA).
2. Observed agency oversight board/commission meetings including: the State Loan and Investment Board/State Board of Land Commissioners (SLIB/SBLC); the WBC Board of Directors, and the WWDC.
3. Observed the Legislature's committee meetings (both interim meetings and during the 2015 Legislative Session), including the following: standing committees Minerals, Business, and Economic Development; Appropriations; Revenue; Corporations, Elections, and Political Subdivisions; Agriculture, State, and Public Lands and Water Resources; Select Water; and the Select Committee on Capital Financing and Investments.
4. Developed research questions to clarify agencies' practices based on program requirements or criteria (i.e. statute, rules, policies, guidelines, etc.) and submitted questions to the administering agencies for written response.
5. Conducted field visits to facilities and properties financed with PPI funds under the Joint Powers Act (JPA) Loan and Farm Loan programs. This included tours and interviews with end recipients (borrowers). Counties visited included: Hot Springs County, Big Horn County, Crook County, Weston County, and Johnson County.

### **Document Review**

6. Reviewed current PPI statutory provisions as well as researched legislative history and session law changes to the PPI programs and projects over time.
7. Reviewed current PPI promulgated rules and regulations as well as researched discontinued or past rules to understand agencies' PPI program administration and development over time.

8. Requested and reviewed PPI program and project documents used by the State agencies in charge of PPI administration. Documents included, but were not limited to, the following:
  - Policy and/or procedures manuals;
  - Program application materials from prospective borrowers;
  - Agency application review, evaluation, and recommendation materials, such as checklists, matrices, etc.
9. Requested and reviewed individual PPI borrower casefiles as well as summary materials presented to relevant decision-makers (i.e. the SLIB, the WBC, etc.) for final approval.
10. Reviewed agency reports of PPI programs and projects provided for or available to executive branch leadership and the Legislature.
11. Requested and reviewed relevant Attorney General's Office opinion letters issued to agencies and other documents used by PPI administering agencies to clarify processes and decision-making requirements or allowances.

#### **Data Review**

12. Requested and reviewed individual PPI data tracking and reporting systems at each administering agency. This review included statistical, financial, and accounting data systems.
13. Reviewed administering agencies' relevant Wyoming Online Financial System (WOLFS) account coding and transactions for PPI programs.
14. Requested and reviewed summary information about PPI programs reviewed in past evaluations that are currently repealed or unused, or contain no outstanding balance.
15. LSO reviewed other states' establishment, use, and investment of permanent funds. After preliminary review, LSO determined five states best compare to Wyoming. For each state, LSO requested information covering the following five areas:
  - a. Investment programs, purposes, and legal definitions of PPIs;
  - b. The type of funds invested and funding caps or revolving funds;
  - c. The basic administrative processes for evaluation, approval, and denial;
  - d. The use of the prudent investor rule; and,
  - e. A review of reporting requirements with specific interest to determine if reporting on poor performing or "bad" investments occurs.

## Area for Further Review

During the evaluation, LSO identified one area that may warrant further review by the Committee, or other Legislative standing committee, in the future.

### **Time Deposit, Open Account Program**

The Time Deposit, Open Account program (under W.S. 9-4-803 and 809 through 811) is administered by the STO, which is authorized to deposit State funds into Wyoming financial institutions in order to make sufficient and reliable capital available for in-state lending needs. The STO currently uses funds from the State Agency Pool Fund for this program rather than the PWMTF. Banks are not required to take these funds, but if they do choose to utilize this program, they must sign a contract with the State, provide adequate collateral to cover the deposit, and pay interest at a rate that is adjusted quarterly by the State Board of Deposits, which is composed of the five statewide elected officials. The current interest rate is based on the average monthly yield on the one-year Treasury Bill for the prior full calendar quarter (currently 0.15%). Recently, the STO changed its semi-annual allotments process to better monitor banks' need for these funds.

Significant issues encountered during this evaluation, in addition to changing the STO business practices include:

- The program purpose evolution from one of safekeeping public funds to the current focus on supplementary capital for community lending.
- The impact of the low interest rate along with the large size of outstanding loan balance at any one time present a different opportunity cost challenge for the State compared with other PPIs and the permanent funds.
- Current monitoring of banks by the STO to ensure banks target program funds toward in-state borrowers.

During the 2015 General Session, the Legislature passed HB 30 (HEA 29; Laws, Ch. 52) authorizing the STO to adopt rules and regulations for state depository approval and the TDOA program. The bill also contained provisions to update state depository and TDOA statutes to current banking and financial institution practices.

## Acknowledgements

The Legislative Service Office expresses appreciation to those individuals, agencies, and other states that assisted with our research. We convey specific gratitude to the State Treasurer's Office, the Office of State Lands and Investments, the Wyoming Business Council, and the Wyoming Water Development Office, as well as the states officials of Alaska, Montana, New Mexico, North Dakota, and Utah, for their continuous cooperation during this evaluation including their availability for interviews and prompt responses to document and data requests.

---

---

## Chapter 1: The Legislature Directly Invests State Funds

---

---

### Wyoming's Constitution Establishes State Funds and Allowable Investment Actions

The Legislature has periodically authorized or specifically designated investments of State permanent and non-permanent funds within the State to meet a variety of public purposes. Broadly described, these public purposes include financing public infrastructure, retaining or expanding businesses in the State (sometimes termed economic development or economic diversification), as well as guaranteeing student, local government, and school district debts. The central terminology for this evaluation is legislatively designated investments (LDIs) or currently known as public purpose investments (PPIs) of State funds.

Two key factors contribute to these investments' formation and their relationship with the conventional investment regime for the State:

1. The establishment of State accounts or funds, both permanent and non-permanent funds; and
2. The Wyoming Constitutional and statutory authority to invest these funds in political subdivisions of the State.

On the first factor, both the Wyoming Constitution and statutes help establish and define funds or accounts of the State with which agencies and officials may conduct its business. For example, the Wyoming Constitutional provision Article 15, Section 19, provides the main legal authority to establish and invest monies in the Permanent Wyoming Mineral Trust Fund (PWMTF). In addition, W.S. 9-4-204 further designates many accounts and fund types for use. Under this provision, the Legislature codified the PWMTF as a "permanent fund" of the State as well as other permanent and non-permanent funds (e.g. Hathaway Scholarship Fund, Permanent Land Funds, the State General Fund, etc.).

On the second factor, Article 15, Section 19 (excerpt shown below) offers specific direction on how the State may invest the PWMTF, including that the Legislature may prescribe the lending of monies in the fund to the State's political subdivisions:

*"The Legislature shall provide by law for an excise tax on the privilege of severing or extracting minerals...The proceeds from such tax shall be deposited in the Permanent Wyoming Mineral Trust Fund. The fund, including all monies deposited in the fund from whatever source, shall remain inviolate. The monies in the fund shall be invested as prescribed by the Legislature and all income from fund investments shall be deposited by the State Treasurer in the general fund on an annual basis. The Legislature may also specify by law,*

*conditions and terms under which monies in the fund may be loaned to political subdivisions of the state (LSO Emphasis)."*

This provision allows the State to invest the PWMTF for the benefit of the State's income to the General Fund, while setting the standard that the corpus of the fund must remain inviolate. Other constitutional provisions note the Legislature's role in defining and prescribing how the State may invest the PWMTF and other State funds with various conditions and caveats in how certain decisions or transactions may be made. Constitutional provision Article 16, Section 6 notes that the State and its political subdivisions, with some exceptions, may not lend credit or make donations, or become owner in capital stock of associations or companies. However, the PWMTF may be invested in stocks. Also Article 3, Section 40 does not allow the release or write-off of any liability owed the State without legislative approval where a debt is determined uncollectible and with possible legislative payment back to the proper fund (i.e. payment back to the PWMTF corpus).

Providing for more operational direction to requisite State agencies in handling State funds, W.S. 9-4-714 through 719 (along with 9-4-831) set out most of the legal requirements and allowances for the investment of State funds. Key provisions that impact this evaluation include:

- Outline of the types of investments the State may retain, including a variety of separately-authorized PPIs;
- Investments may be authorized by both the State Loan and Investment Board (SLIB) and the Legislature;
- Requires the State Treasurer's Office (STO), the SLIB, and their designees act and make investment decisions according to a "prudent" investment level of care (see page 11 for a summary of exceptions to this requirement);
- Requires the SLIB to develop and review annually the investment policy statements that guide the State's investment objectives and priorities; and
- Allows the STO to contract with investment managers and consultants as part of the investment program/practices.

See Appendix A for selected Wyoming Constitution and statute provisions related to the full evaluation.

## **State Investment Practices are More Sophisticated than in Past Years**

Through most of the 1990s, the investment of State funds was primarily accomplished through debt or fixed income securities, such as bonds, without inclusion of a variety of other investment vehicles. Specifically absent from the State's investment portfolio was investment in equities, such as buying stock in a publicly traded corporation. However, toward the end of the 1990s, as the State looked for greater returns to meet various budget needs, the Legislature began moving State investment practices toward modern, diversified portfolio management.

To accompany and help guide this transition, the Legislature empowered and required the SLIB to develop, adopt, and review investment policy statements for State funds (currently under W.S. 9-4-716) at least annually. Since 1999, these policy statements have been contained in the State’s investment guiding document termed the Master Investment Policy (MIP). See Appendix B for selected excerpts from the most current MIP. This document provides extensive narrative on volumes of considerations that the State, and particularly the SLIB and the STO, must follow in order to properly allocate and execute State investments on a day-to-day basis. Over the last fifteen-plus years, through the MIP, the SLIB has primarily and gradually diversified the State’s portfolio under the Legislature’s broad statutory direction. Newer investment asset classes include conventional equity investments along with real estate, private equity, venture capital, and hedge funds. The Legislature’s direct use of PPIs continues to be part of the portfolio, but is not evaluated alongside the conventional investments made by the State.

Several key features of the MIP are outlined in Table 1.1, below, highlighting how the State categorizes which funds are invested, at what level the portfolio is diversified (asset allocation), and how investments are reviewed and assessed (performance benchmarks). The overall investment policy for the State is to invest public funds of the State in a manner that strives for maximum safety, provides adequate liquidity, and achieves the highest possible investment return consistent with the primary objectives of safety and liquidity.

**Table 1.1**  
**Example Features of the Current State Master Investment Policy (April 2015)**

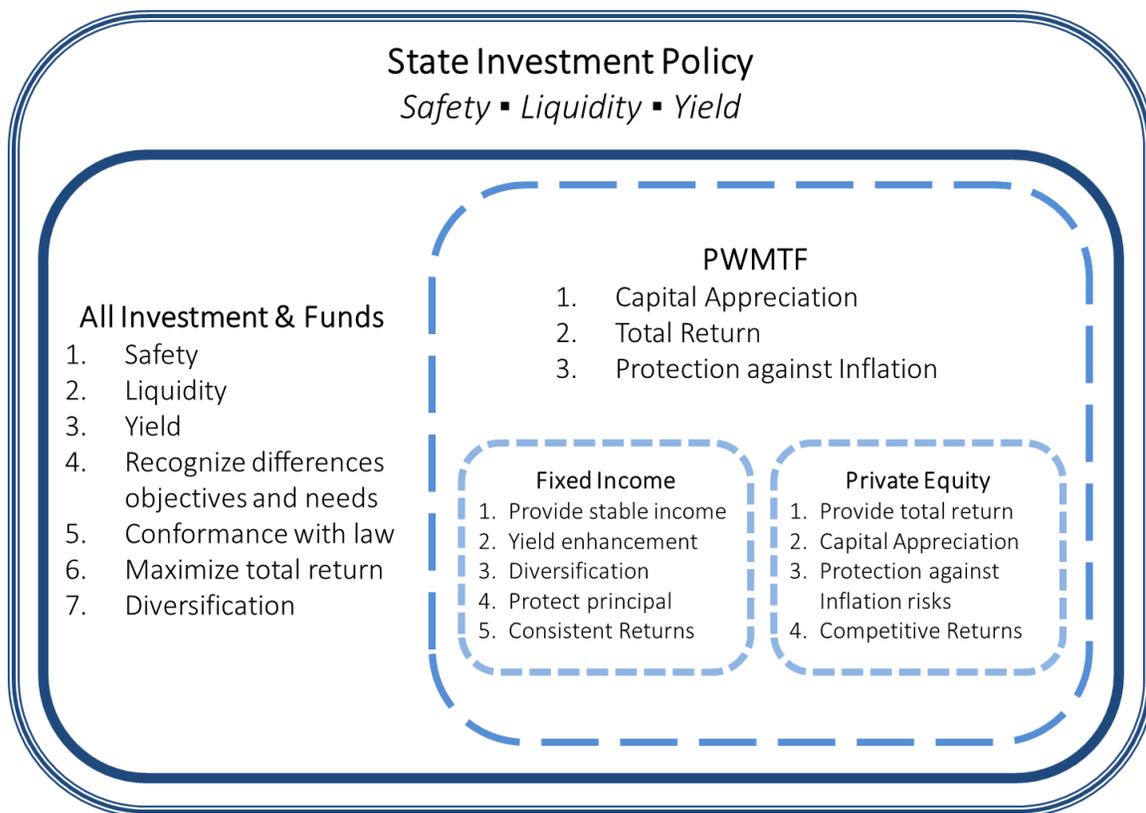
Funds Invested	Asset Classes/Allocation Used (PWSTRF)	Performance Benchmarks (PWSTRF)
<p>Each fund has a separate sub-policy at the end of the MIP</p> <ul style="list-style-type: none"> <li>• Non-permanent                             <ul style="list-style-type: none"> <li>○ State Agency Pool</li> <li>○ Workers’ Compensation</li> <li>○ Tobacco Settlement Trust Fund</li> </ul> </li> <li>• Permanent                             <ul style="list-style-type: none"> <li>○ Permanent Wyoming Mineral Trust Fund</li> <li>○ Common School Permanent Land Fund</li> <li>○ Hathaway Scholarship Fund</li> </ul> </li> </ul>	<p>Restricted by statute to no more than 55% equities. The target allocation includes:</p> <p><i>Equity:</i></p> <p>Global Equity 3.1%</p> <p>International Equity 11.5%</p> <p>Private Equity 4.0%</p> <p><i>Convertibles</i> 2.0%</p>	<p>Global equity allocation</p> <ul style="list-style-type: none"> <li>• MSCI ACW Index</li> </ul> <p>International equity allocation</p> <ul style="list-style-type: none"> <li>• MSCI ACW ex U.S. Index</li> </ul> <p>Private equity allocation</p> <ul style="list-style-type: none"> <li>• State’s actual private equity investment returns</li> </ul> <p>Convertibles allocation</p> <ul style="list-style-type: none"> <li>• Bank of America, Merrill Lynch All Convertibles</li> <li>• All Quality Index</li> </ul>

**Source:** Legislative Service Office excerpts using the State of Wyoming Master Investment Policy (April 2015).

Figure 1.1, below, provides an alternative perspective of how the MIP illustrates the way in which any investment is reviewed and evaluated is typically dynamic and must meet various conditions. More specifically, additional considerations are made for not only the portfolio as a whole, but also for individual funds (e.g. PWMTF) and specific types of investment managers (e.g. fixed income versus private equity).

These intentional layers of objectives and priorities are established to ensure that the *appropriate* expertise and attention is paid to the different investment classes, but still reflect the letter and spirit of the State’s requirements. For example, due to these various layers, an investment manager given a specific set of objectives and priorities by the STO to consider for an asset class may not be specifically focused on looking at how their investments affect the entire portfolio. Yet, by following the outlined objectives and priorities in agreement with the State, the manager is still meeting the intent of the policy and benchmarks for that asset class, as part of the whole diversified portfolio.

**Figure 1.1  
Investment Objectives and Priorities by Level of Policy Consideration**



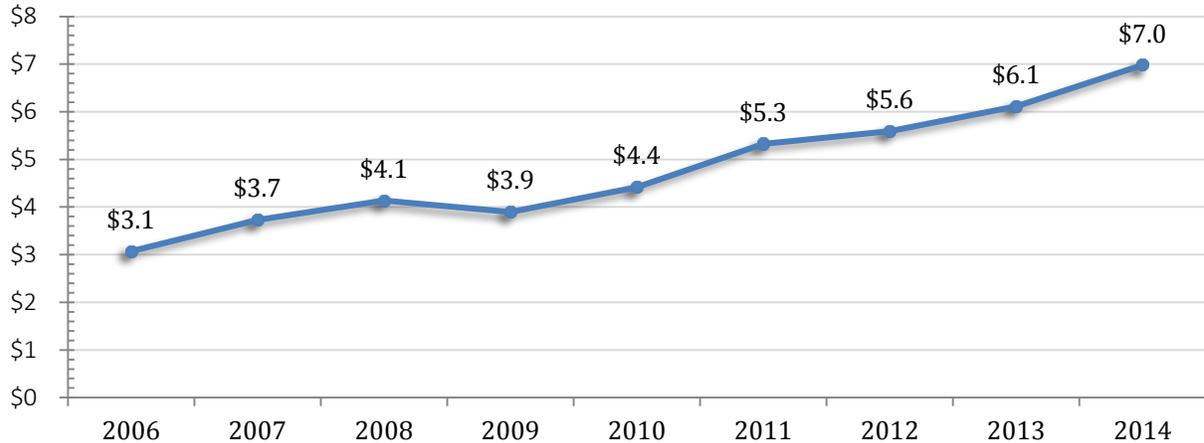
**Source:** Legislative Service Office summary using the State of Wyoming Master Investment Policy (April 2015).

**PWMTF Corpus has More Than Doubled since FY2006**

As demonstrated in Figure 1.2, next page, the market valuation of the PWMTF has grown 127.3% from \$3.1 billion in FY2006 to \$7.0 billion in FY2014. Over this same period, the amount of the PWMTF invested in PPIs

has varied between 1% and 3% and in FY2014 PPIs represented approximately 2% of the PWMTF's total investment portfolio.

**Figure 1.2**  
**PWMTF Average Market Rate FY2006-FY2014 (Billions)**



Source: Legislative Service Office from the State Treasurer's Office reports.

### **State Funds are to be Invested According to the Uniform Prudent Investment Act**

Prior to 1994, when the Uniform Prudent Investment Act (UPIA) was developed at the national level, each investment's performance could be evaluated on its own, and not necessarily in unison with other portions of the investment portfolio. There was no *required* holistic approach to investing that considered the needs and circumstances of trusts and their beneficiaries. Further, trustees were generally limited in seeking external, professional investment assistance. The adjustment to "modern portfolio theory" and prudent investing includes "considering the purposes, terms, distribution requirements, and other circumstances of the trust" using "reasonable care, skill and caution." Adherence to this investment philosophy, also called the Prudent Investor Rule (PIR) or Prudent Investor Standard, injects professional judgment and flexibility into the investment decisions made by trustees of a trust (i.e. the SLIB, the STO, and the Legislature).

Wyoming initially adopted its version of the UPIA in 1999 (W.S. 4-9-101 through 113), then revised and re-codified the act in 2003 within the Uniform Trust Code (W.S. 4-10-901 through 913). The re-codification in 2003 did not change the character of the Act, but in 2005, the Legislature specifically chose to include all State funds under the purview of the UPIA. This change did have the basic effect of changing the Legislature's perspective from a default opt-in statute to a default opt-out statute. In other words, until 2005, the Legislature had to apply the UPIA overtly to State funds on a case-by-case basis. With the 2005 change, the UPIA is inherently applied to all State funds up front unless the Legislature sets a different investment standard. The MIP specifies fidelity to this Act and requires that it should apply to all

participants that act as “custodians” of the State’s funds and trusts, including contract investment managers.

## Four State Agencies are Primarily Responsible for PPI Administration and Oversight

One of the more challenging aspects of conducting this evaluation is that no one agency has absolute administrative oversight of all PPIs. Noted in more detail in Chapter 2, the Legislature has implemented PPIs on an incremental or piece-meal basis with no distinct grouping of purposes or intent. Therefore, under current statutory authorizations, four State agencies hold some responsibility for PPI administration and oversight:

1. The State Treasurer’s Office (STO);
2. The Office of State Lands and Investments (OSLI) with the State Loan and Investment Board (SLIB);
3. The Wyoming Water Development Office (WWDO) with the Wyoming Water Development Commission (WWDC); and
4. The Wyoming Business Council (WBC).

The OSLI/SLIB and the STO retain most of the authority to administer, oversee, and report on these investments. However, the WWDO/C and the WBC each retain review, consultation, and recommendation authority over certain PPIs. Table 1.2, below, lists all PPI programs and projects that were *initially* reviewed for background to this evaluation. The list also summarizes which investments are currently active and carry an outstanding balance as well as those that have been closed and repealed. See Appendix C for individual summaries of each PPI, including the primary administering agency, allowable allocation or commitment levels, interest rate, and required or allowable funding source.

**Table 1.2**  
**Wyoming PPI Programs and Projects by**  
**Administrative Agency and Current Status, as of February 2015**

Administrative Agency	PPI Program/ Project Name	Balance
OSLI/SLIB	<i>Active</i>	
	Aeronautics Loan program	\$4,292,917
	Farm Loan program	\$25,636,676
	Hot Springs State Park Loan program	\$5,461
	Joint Powers Act Loan program	\$6,403,216
	Local Government Bond Guarantee program	None
	Wyoming Real Estate Land purchases	\$18,335,738
	School District Bond Guarantee program	\$2,160,000 (Principal) \$117,845 (Interest)
WWDO/C	<i>Active</i>	
	Gillette-Madison Pipeline project	\$29,552,239
	Shoshone Municipal Water Treatment project (1987)	\$12,335,128

Administrative Agency	PPI Program/ Project Name	Balance
	<i>Closed</i>	
	Cheyenne Sherard Water Treatment project (1998)	Repaid (2007)
	Green River/Rock Springs Water Treatment project (1995) <sup>4</sup>	Repaid (2000)
	Natrona County Regional Water Treatment project (1995) <sup>4</sup>	Repaid (2000)
	Sheridan Area Water Treatment project (1989)	Repaid (2013)
OSLI/SLIB and WWDO/C	Hydro-Power Development Loan program <sup>1</sup>	None
	Irrigation Loan program <sup>1</sup>	\$708,661
OSLI/SLIB and WBC	Area Redevelopment program <sup>3</sup>	None
STO and WBC	Industrial Development Bonds (1999, re-codified 2008) <sup>3</sup>	\$52,301,399
	<i>Active</i>	
	Basin Power Electric Bond	\$27,555,000
	Community College Bond program	Repaid (2010)
	Deferred Property Tax program	None
	Drainage District Bond program	\$24,000
	Inter-Fund Borrowing	\$225,000,000
	Student Loan Stand-By program	None
	Time Deposit, Open Account program	\$159,950,000
	University of Wyoming Bond program	None
	UW Advance Payment Contracts	None
	<i>Closed</i>	
STO	Cheyenne Stage II Water project (Guarantee Investment Contract – 1988) <sup>2</sup>	Repaid (2014)
	Clean Coal Investment program	Repealed (2005)
	Direct Student Loan program	Repealed (2011)
	Economic (Industrial) Development Bonds (1991) <sup>3</sup>	Repealed (1999)
	Economic (Industrial) Development Bond program – Agriculture (1995)	Repealed (1999)
	Home Mortgage Loan program	Repealed (2003)
	Link Deposit program	Repealed (1993)
	Loans to the Wyoming Infrastructure Authority and Wyoming Pipeline Authority	Legislature Repaid Loan (2010)
	Pooled Joint Powers Loans (Met Life Guaranteed Investment Contract, 1989) <sup>2</sup>	Repaid (2013)
	Small Business Assistance Act Loan program	\$64,928 Repealed (2008)
	UW American Heritage Center/Art Museum <sup>5</sup>	Repaid (1997)
	Wyoming Territorial Park project	Repaid (2014)

**Source:** Legislative Service Office summary of Wyoming statutes and State Treasurer's Office information.

<sup>1</sup> The WWDO and WWDC are statutorily required to consult on hydro-power projects and must consult on OS LI water projects defined under 11-34-302, if requested by OS LI.

<sup>2</sup> In 1988 and 1989, the State Treasurer converted PPIs into guaranteed investment contracts whereby the State received

Administrative Agency	PPI Program/ Project Name	Balance
-----------------------	---------------------------	---------

the same investment income pledged by the original PPIs; for the Cheyenne Stage II Project, the STO also received a \$3.6 million premium profit on the sale of the PPI.

<sup>3</sup> The WBC has statutory responsibility to consult, review, and recommend action on these investments.

<sup>4</sup> Authorized funding was returned to the permanent fund without interest accruing on the investment.

<sup>5</sup> This investment was fully paid by 1997, but was included in the 1997 Legislative Service Office evaluation.

**Note:** Programs and projects shaded are/were *not* funded with the PWMTF.

Each agency handles these investments as part of the larger agency mission and activities for the office, generally without unique staff positions dedicated specifically to one or a group of PPIs. For example, several staff in the STO has direct responsibility to work through Industrial Development Bond (IDB) applications and supporting documents. Additionally, STO accounting staff tracks disbursement and repayments on all PPIs issued by the State in coordination with the WWDO and the OSLI. The OSLI has dedicated grant and loan staff to administer its authorized PPIs as secondary duties as these staff primarily administer other State programs that are funded through biennial appropriations (i.e. mineral royalty grants, safe drinking state revolving fund grants, etc.). The WWDO does have one project manager for the Gillette-Madison water project (though this project is not this manager's sole responsibility) and the WBC utilizes staff in its Business and Industry Division to assist the STO with IDB proposals, applications, and recommendations. In some instances, the Governor, separately from the SLIB (for IDBs), and the Attorney General have contract and agreement review responsibilities on some PPIs.

Finally, other agencies that have tangential responsibility for one or more of these investment programs includes the Wyoming Infrastructure Authority (WIA; public agent issuer of Basin Power Electric Bond) and the Wyoming Pipeline Authority (WPA), which has similar bonding authority as the WIA, but has yet to utilize this bonding authority.

### **Report Focuses on Investments Made Out of the PWMTF**

After significant review and analysis, the bulk of this evaluation focuses on PPIs funded out of the PWMTF and that appear to fall under W.S. 9-4-715(n), which establishes a cap or maximum limit on PPIs the State may fund. The PWMTF is generally used as the default funding source for most required and discretionary PPIs.

It is difficult to distinctly define a PPI, what it includes, or what processes and considerations are unique to implement it beyond the generalized assertion that it is directly "legislatively designated." In general, one element of what makes PPIs unique, compared to other investments made under the conventional portfolio (those intended to be financially profitable), is that the Legislature has required the State to act as a direct banking institution under certain circumstances. This seemingly simplistic concept does not quite extend a full understanding of many of the characteristics or traits that challenge the State when it authorizes, structures, initiates, reviews, and executes a PPI. In most cases, the State is acting as both an investment

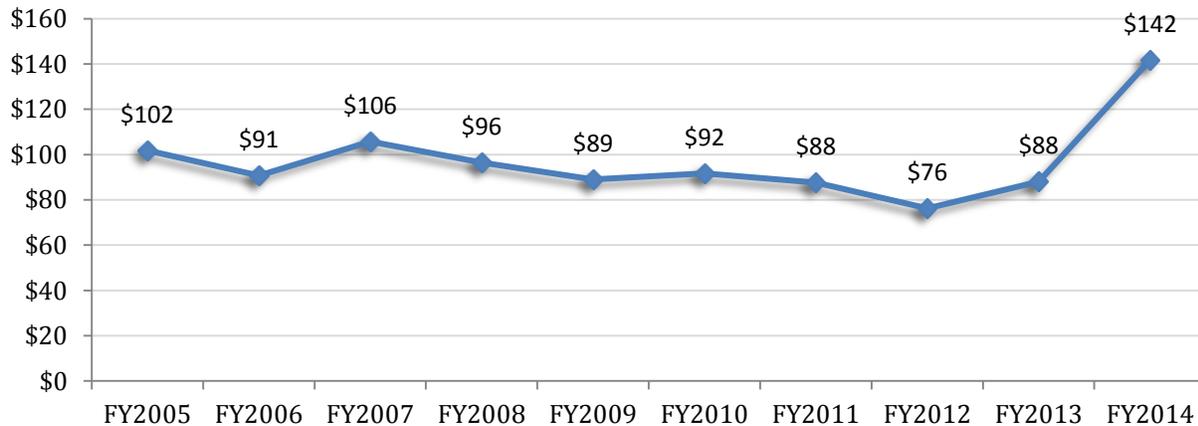
manager in charge of picking investment opportunities under PPI programs as well as the transaction executing authority and loan-servicing agent required to account for outgoing and incoming funds.

Though a more extensive discussion of the PPI characteristics is in Chapter 2, the conclusion is that PPIs generally meet at least the three following conditions: 1) the corpus of either State permanent or non-permanent funds can be used; 2) PPIs do not go through either the regular appropriations process of the Legislature nor the State Loan and Investment Board’s MIP allocation and review process; and 3) funds’ use focuses on people, communities, or businesses *within* the State rather than financial rate of return analysis.

These conditions apply to both direct and immediate investment of State funds in a program or project as well as guarantees by the State to cover investments or debts of public entities or institutions when authorized and called upon to do so. The latter notion, while not a direct, active investment of State funds, does include elements of investment decision-making by administering agencies and placing the State’s funds at risk for a public purpose or potentially limiting the State’s immediate conventional investment options.

The amount of investments in PPIs has also remained relatively steady for most of the past ten years. To illustrate this condition, the outstanding balance amounts for investments in PPIs from the PWMTF are depicted in Figure 1.3, below. Despite the increase in investment in PPIs in the past two years (mostly attributable to the uranium operation IDBs and the Gillette-Madison water project), according to the STO annual reports, the total invested amount from the PWMTF was more than double (over \$290 million) in 2000.

**Figure 1.3**  
**Outstanding Balance for PPIs from the PWMTF (Millions)**

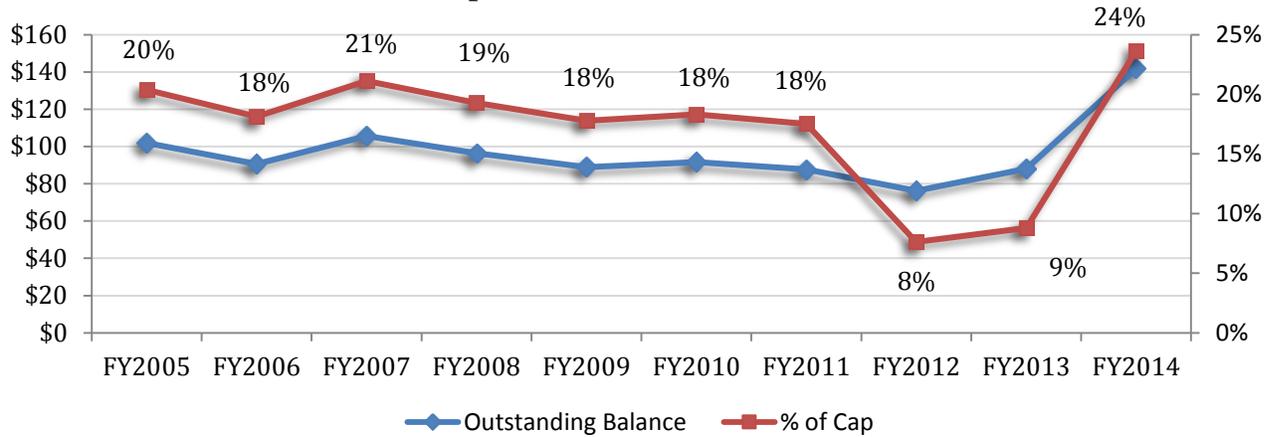


**Source:** Legislative Service Office from the State Treasurer’s Office Annual and Investments Reports  
**Note:** Total does not include Basin Electric Power Bond.

Additionally, the amounts invested in PPIs have been under program allotments as well as the aggregate investment cap despite the combined

statutory allotments exceeding the investment cap. Figure 1.4, next page, shows that investments in PPIs from the PWMTF have been consistent over the last decade and have not gone above 25% of the allowable aggregate cap (currently \$600 million).

**Figure 1.4**  
**Investment Cap and PWMTF PPI Balances (Millions)**



**Source:** Legislative Service Office from State Treasurer’s Office information.

Today, investments in PPIs represent a small portion of the State investment portfolio. Listed in Table 1.3, below, are the outstanding balance amounts compared to the PWMTF market valuation. The proportion of the PWMTF invested in PPIs has decreased over the past ten years, primarily a result of the growth in the PWMTF. Therefore, the current proportion of investments in PPIs is not by design and is instead an indirect result of the growth of the PWMTF and the State’s portfolio as a whole.

**Table 1.3**  
**Outstanding Balance for PPIs Compared to the Average Market Valuation for the PWMTF**

Fiscal Year	Outstanding PPI Investments from PWMTF <sup>1</sup>	PWMTF Avg. Market Valuation	% of PWMTF invested in PPIs <sup>1</sup>
FY2005	\$101,795,138	\$2,557,796,545	4%
FY2006	\$90,640,095	\$3,070,623,840	3%
FY2007	\$105,661,737	\$3,728,082,077	3%
FY2008	\$96,405,422	\$4,135,435,366	2%
FY2009	\$88,962,753	\$3,893,843,313	2%
FY2010	\$91,637,560	\$4,414,080,035	2%
FY2011	\$87,643,275	\$5,325,828,961	2%
FY2012	\$76,206,166	\$5,595,493,940	1%
FY2013	\$88,006,869	\$6,112,755,251	1%
FY2014	\$141,745,338	\$6,979,071,774	2%

**Source:** Legislative Service Office from State Treasurer’s Office information.

<sup>1</sup> Does not include investment in the Basin Electric Bond purchased from the Wyoming Infrastructure Authority.

**Legislatively Appropriated Funds May also Serve Similar or the Same Purposes as PPIs, but Do Not Follow All of the Same Conditions**

The Legislature also directly appropriates other State funds to accomplish the same or similar purposes as PPIs. With the public purpose in mind for this approach, these funds may be considered “public purpose appropriations” or “public purpose expenditures” of the Legislature. Yet, just like PPIs, most often these investments must also go through a public sponsoring entity (e.g. the State or local political subdivision). If the end beneficiary or recipient includes private interests, these appropriations must also maintain sufficient legal assurances that the use of these funds is according to Wyoming Constitution Article 16, Section 6. Example programs funded by these appropriations include the Business Ready Communities and Community Facilities programs under the WBC, the Wyoming Water Development program, and the OS LI-administered Mineral Royalty Grant (MRG) program.

These appropriated funds are generally expended as authorized by appropriations made each biennium in the biennial budget bills or in stand-alone legislation. In fact, today, appropriated funds account for the majority of State funds directed toward “investment” in community and business infrastructure. Table 1.4, below, provides a summary of appropriated funds over the last five biennia aimed at major development or rehabilitation programs established by the Legislature. In total, the Legislature has appropriated approximately \$ 1.1 billion over ten years for business, water, and other community development programs with similar intentions as PPIs.

**Table 1.4**  
**Select Legislative Appropriations of State Funds for**  
**Community and Business Infrastructure Programs (FY2007-FY2016)**

<b>Program → BFY ↓</b>	<b>Wyoming Business Council<sup>1</sup></b>	<b>Water Development Programs<sup>2</sup></b>	<b>Mineral Royalty Grant Program<sup>3</sup></b>	<b>BFY Total</b>
BFY2007	\$80,517,198	\$102,708,813	\$33,400,000	\$258,876,011
BFY2009	\$86,750,000	\$116,742,753	\$33,400,000	\$266,330,558
BFY2011	\$73,500,000	\$103,784,630	\$33,400,000	\$210,684,630
BFY2013	\$64,130,000	\$87,491,957	\$33,400,000	\$185,021,957
BFY2015	\$64,130,000	\$121,110,349	\$30,316,578	\$215,556,927
<b>Total Program Appropriated</b>	<b>\$369,027,198</b>	<b>\$531,838,502</b>	<b>\$163,916,578</b>	<b>\$1,136,470,083</b>

**Source:** Legislative Service Office summary of Wyoming legislative appropriations.

<sup>1</sup> Includes Business Ready Communities and Community Facilities programs.

<sup>2</sup> Includes funding from Water Development Accounts, Abandoned Mine Lands federal funds, and State General Funds for water projects, not agency administration; does not include State General Fund appropriations to the Water Development Accounts.

<sup>3</sup> Mineral Royalty Grant funds can be used in a funding package with other OS LI programs, including JPA loans.

While not all-inclusive, this table illustrates the amount of funding the State invests through other methods to achieve public purpose outcomes. Additional appropriations for education programs and facilities and direct

distributions and grants to local governments may also meet the spirit of “public purpose” investing. Yet often with appropriated funds, the State invests by mostly providing grants to public entities to meet the specific purpose of the appropriations and programs. While some of the mechanics and legal considerations for these investments are similar to PPIs, appropriated funds expended under the concept of the State making an “investment” in a community almost exclusively relies on an emphasis of the public benefit as the basis for determining success.

PPIs do not include other methods or investment strategies used as incentives to invest in the State. These methods include strategies that are intended to have similar impacts to spur growth or retain state businesses, including but not limited to: tax refunds or rebates; tax exemptions or waivers; and tax credits. Other areas not included within this evaluation are outright grants or appropriations to communities for general operations, funding of endowments, special use taxes (e.g. local sales tax option for economic development), or grants and loan programs for specific professions (e.g. nursing, physicians, dentists, or other professional retention programs).

## **Other States’ Uses of Permanent Funds**

Specific policies on individual programs that are similar to Wyoming PPIs in other states exist. However, other states mostly use general funds rather than permanent trust funds for those programs. For example, many other states appear to have agricultural or farm loan programs (e.g. Hawaii, Washington, North Dakota), irrigation loan programs (e.g. Montana, Delaware, and Alaska), yet in many instances the source of funding for investments are appropriated or non-permanent funds. Such instances further distinguish these programs from Wyoming PPIs. Therefore, in trying to gauge other states’ PPI practices, LSO research focused on states that have established permanent funds, particularly by deposits of mineral tax revenues due to the State. Based on this initial approach, five states fit the selection criteria: Alaska, Montana, New Mexico, North Dakota, and Utah.

However, finding overarching, similar policies for public purpose investments in other states compared to those in Wyoming was a challenge. This challenge is attributed to differences in each state’s management and utilization of its permanent trust funds, timing of when these permanent funds were started, amount of permanent funds on hand or under investment management, and how public purposes may be defined or implied when making investments. See Appendix D for a summary of selected other states’ use and investment of their permanent funds.

## **Clearer Legislative Direction and More Transparent Agency Practices Can Better Meet Explicit and Implied PPI Investment Goals**

Highlighting other states’ different policy approaches illustrates one inherent challenge to navigating the Wyoming’s PPI landscape: each state, and more specifically each state’s legislature, develops an investment policy and structure that is unique to itself. Understandably, Wyoming’s policy is both

informed by and reactive to cultural, economic, and political norms and values. These factors make it difficult to establish objective evaluation standards on which to base recommendations for system change without potentially denigrating the policy decisions that put these programs and projects in place.

Consequently, this evaluation presents recommendations that will help the State better meet both its financial and public purpose goals through clearer statutes and more efficient and transparent administration. Chapter 2 of this report summarizes the complex nature of viewing PPIs under a universal definition or investment class. Chapter 3 advises the Legislature on potential opportunity costs for having these types of investments as well as the impact of utilizing the UPIA to make IDB investment decisions on such unique investment risks and that primarily benefit a private recipient. Chapters 4 and 5 cover administrative reporting and oversight as well as agency practice changes to increase program efficiencies and transparency. Finally, Chapter 6 summarizes antiquated or problematic statutes that may need modification or repeal to eliminate extraneous programs and to streamline administering agencies' actions moving forward.



---



---

## Chapter 2: What is a “Public Purpose Investment?”

---



---

### Public Purpose Investments are Stand-Alone Programs and Projects

An important issue related to both the scope and depth of this evaluation is how the State defines PPIs. The Legislature has effectively implemented each program or project in isolation; the Legislature identified needs and purposes separately and not as part of a larger investment class or group within the State’s overall investment portfolio. For example, the Legislature designates or allows State funds to be invested in unique agricultural operations, industrial scale business development and expansion, local water supply or treatment facilities, and community recreational facilities.

However, these programs or projects are implicitly or explicitly termed investments, and consequently, carry dual expectations for contributing a financial rate of return, while also achieving an overriding public benefit to the State and/or citizens. Conventional investments are generally gauged on financial rate of return, commensurate with the investments’ risks, as the prime or most important measure of success. Therefore, PPIs may not be termed conventional within the framework of the State’s diversified investment portfolio for any of the permanent or non-permanent funds.

The dual expectation of both public benefit and financial return outcomes, while not necessarily directly in competition with one another, do provide for a unique status for these investments. These investments have been termed “economically targeted investments,” “social investments,” “mission investments,” or “impact investments.” Table 2.1, below, provides example definitions and conditions of these investment types that parallel many of the characteristics of PPIs. A common theme or characteristic of these types of investments is that the financial rate of return goal may be equal to or even subordinate to other expected and realized other investment outcomes, such as achievement of some public benefit exceeding established or implied expectations.

**Table 2.1**  
**Definitions and Considerations of Investments Similar to PPIs**

Investment Type	Definition
Economically Targeted Investments	Designed to encourage a particular type of economic activity and are investments that are selected for the economic benefit that they create in addition to the investment return; obtain a risk-adjusted rate of return under the Prudent Investor Rule and enhance the economy
Impact Investing	Investments that are intended to create measurable social or environmental benefit in addition to financial return
Socially Responsible Investing	Investment decision makers should consider social or ethical issues as well as financial ones in making decisions about investments; investments can and should effect positive change as well as generate financial returns

Investment Type	Definition
Mission Investing	When an entity uses some of its investment assets in ways that accomplish its investment objectives while also supporting its mission; the investment may yield a return similar to other investments, or the mission-related benefit may be considered to outweigh any reduced financial benefit

Source: Legislative Service Office research and analysis.

In this environment, it becomes more challenging to evaluate these investments, together or separately, on their implementation, tracking and reporting processes (i.e. consistency or adequacy) or opportunity costs (i.e. financial and public benefit outcomes/performance).

### Statute Designates the State's Capacity to make PPIs

The most direct legal reference to PPIs comes from W.S. 9-4-715(n), which states:

“(n) The state treasurer shall not invest state funds for a specific public purpose authorized or directed by the legislature in excess of a total of six hundred million dollars (\$600,000,000.00), excluding investments made pursuant to W.S. 37-5-406. Prior to the convening of each general session, the state treasurer shall, after consultation with the board, recommend any adjustments to this allocated amount to the select committee on capital financing and investments.”

While this statutory reference exempts bonds issued under the Wyoming Infrastructure Authority (W.S. 37-5-406), there is no other reference or explanation of which investments are actually included under the PPI umbrella and more specifically this monetary cap.

However, prior to this most current statutory provision, the Legislature did define certain designated investments that met the intent of the Legislature to be classified as PPIs. Beginning in 2000 through 2008 (when it was repealed), W.S. 9-4-712 specifically defined the following programs or projects as PPIs in order to more uniformly classify these investments and verify the amount of funds dedicated toward the statutory cap (e.g. \$500 million for “permanent funds” in 2008):

- Clean coal technology [Repealed 2005];
- Mortgage loans [Repealed 2003];
- Small business loans;
- Student loans;
- Deferred property taxes;
- Industrial development bonds;
- Farm loans;
- Irrigation district loans;

- Joint powers loans;
- Hot Springs state park loans;
- Shoshone municipal water treatment project;
- Sheridan area water treatment project;
- Laramie territorial park;
- Natrona county regional water treatment project [Repealed 2003];
- Green River/Rock Springs water treatment plant [Repealed 2003];
- 1998 Cheyenne water plant project; and
- Loans for airport construction.

This statute section tried to capture future PPIs by stating that this section also applied to the public purpose investment “of funds enacted into law on or after January 1, 2000, unless specifically excluded.” Additional language noted that PPIs were not investments covered by the conventional investment portfolio under the Master Investment Policy (MIP) and as otherwise prescribed by the Legislature and law.

Particular challenges with this itemized listing of investments included, but were not limited to:

- Requirement of specific legislation to add or remove investments from the list (e.g. 2003 Laws, Ch. 110 or 2005 Laws, Ch. 183);
- The total allowable caps on each investment may actually exceed the aggregate cap for PPIs in statute (e.g. 2008: \$500 million PPI cap against \$580 million total authorizations for individual PPI programs and projects), requiring potential judgment calls by administering agencies, the State Treasurer’s Office (STO) and/or the State Loan and Investment Board (SLIB) to choose which PPIs to fund as they approach the cap;
- The allowable cap was set up to include investments of “permanent funds” and does not include non-permanent funds;
- Static investments, like water projects, were mixed with ongoing or recurring investment programs, annual fluctuations in PPI programs more directly and frequently impact contributions toward the aggregate investment cap; and
- Potential to miss some investments that fit the characteristics of PPIs, but were left out (e.g. guaranteed investment contracts purchased by the STO for past PPIs).

This list also does not follow the definition of legislatively designated investments (LDIs) studied by the Legislature in 1997 noted in Chapter 1. Additional programs like the Local Government and School District Bond guarantee programs, the Time Deposit, Open Account program (investments from non-permanent funds), and direct loans to state agencies, facilities, or institutions (e.g. University of Wyoming) were not included under this

statute and logically excluded from the Legislature-sanctioned definition of PPIs and the funding cap. Similarly, today, programs like Inter-fund Borrowing and Real Estate Investments from the Common School Account of the Permanent Land Fund do not fall within the purview of this previous definition.

## **PPIs Include Investment of State Funds Outside of the Conventional and Diversified Portfolio**

With the preceding summary in mind, and based on earlier evaluative work conducted by the Legislature and LSO, PPIs involve at least the following three general conditions:

- 1) These investments may be funded from the *corpus* of either state permanent or non-permanent funds;
- 2) These investments do not go through either the regular appropriations process of the Legislature nor the SLIB MIP asset allocation and review process for conventional portfolio investments; and
- 3) PPI programs or projects are focused on people, communities or businesses *within* the State.

### **Many Factors Impact a Concise or Operational Definition of PPIs**

Based on these conditions, it may appear simple to define PPIs as essentially including all PPIs initially reviewed and displayed in Chapter 1. Yet, LSO also wanted to be cognizant of other features or issues confronting the State when these investments are made. For example, the following comments or statements, while not indicative of agency-wide beliefs, were encountered during research about how PPIs have been characterized:

- STO Staff: PPIs are subsidy programs that are intended to better the community or that PPIs are government handouts at a subsidized interest rate;
- STO Annual Reports: *Legislative Directed Subsidy Investments* or *Legislative Allocation of the Permanent Funds*;
- OSLI Official: The Legislature directs the investment or use of permanent funds for programs that have an “additional public purpose other than making money for the State in the form of returns on the dollar.”
- Previous LSO Summary: “Programs or projects authorized by law in which permanent funds are to be invested. In most cases, but not all, the State receives a return that is less than it otherwise could if these funds were invested in the marketplace.”
- SAO Official: There appear to be two distinct types of investments categorized as LDIs: projects or programs intended for a public purpose or benefit that happen to produce a return, and investments made specifically for a return;

- Wyoming MIP: “‘Wyoming Investments’ is an investment either mandated or permitted by the Wyoming State Legislature for the benefit of the State of Wyoming;” and
- FY2012 Comprehensive Annual Financial Report: “Legislatively authorized investments represent those investments the Treasurer has been directed to invest in by the Legislature and/or approved by the Legislature.”

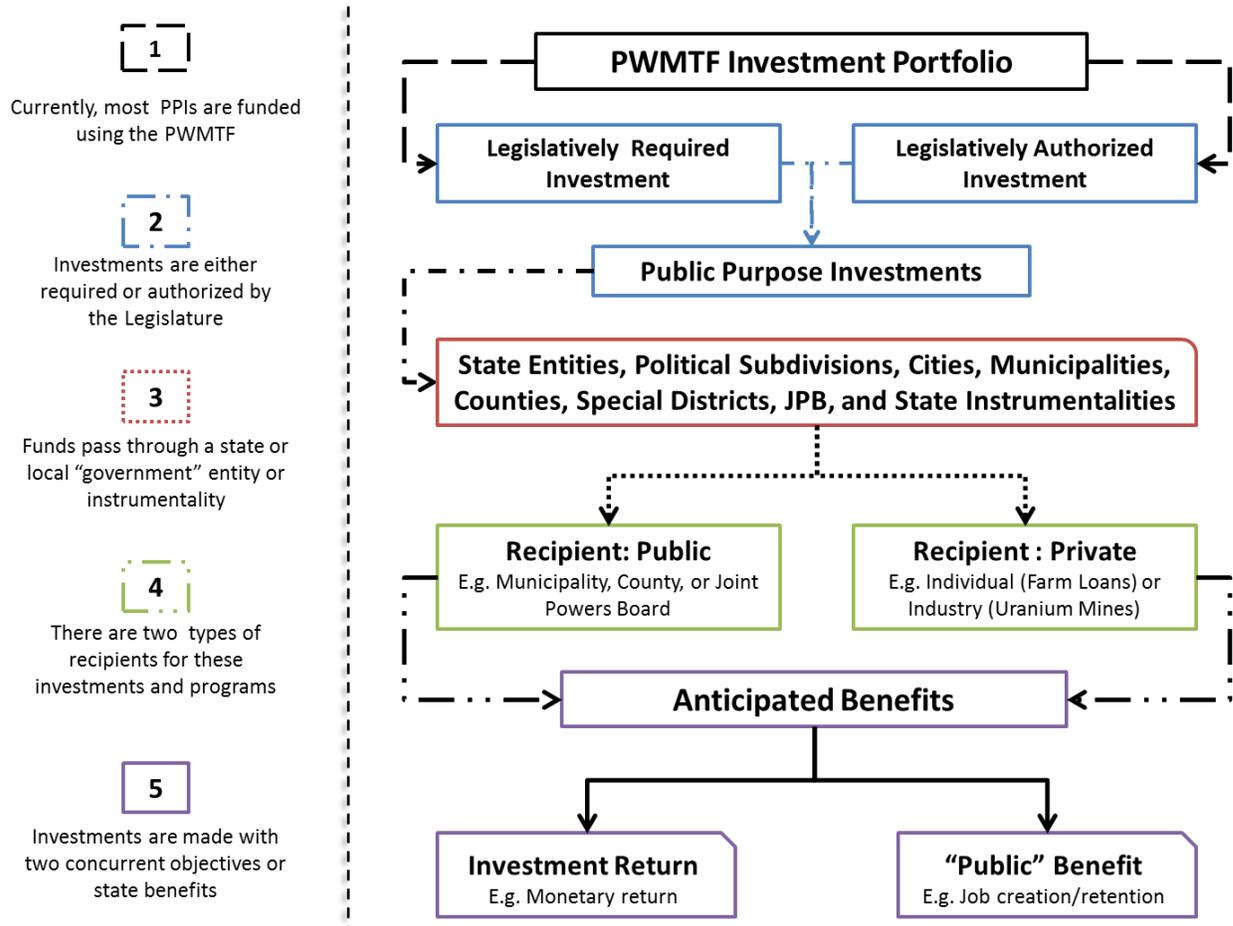
These comments offer some themes, such as the legislative designation of specific programs or projects and lower than market interest rates. However, these statements indicate that an all-encompassing definition of these investments remains elusive. Succinctly, these investments are defined as much by the noted conditions, as well as agencies perceptions about the outcomes and expectations of PPIs.

The following five points summarize and provide additional context for what LSO has determined best conceptualize PPIs used by the State:

- *Funding Source*: PPIs are legislatively authorized or required investments made from the State permanent or non-permanent funds, which are usually managed in the State’s conventional investment portfolio;
- *State Authority and Public Purpose/Benefit*: When established, PPIs are presumed to be made for the direct or indirect benefit of all citizens of the State, which include public infrastructure projects, promoting economic activity, expanding the tax base, or other public purposes so deemed by the Legislature;
- *Public Entity Applicant*: PPIs involve the flow of funds to state entities, instrumentalities, municipalities, counties, or other government entities (generally called political subdivisions);
- *Public and/or Private Entity Recipient of Funds*: The public purpose authorized by the Legislature may be accomplished through funds passed to and/or through public entities and ultimately delivered to private recipients;
- *Financial Return and Investment Prudence*: While PPIs are selected for their public benefit, all are generally expected to yield a monetary return to the parent fund from which an investment is made; PPIs should also be prudent investments, subject to the UPIA, unless a different investment standard is so specified.

Graphically, Figure 2.1, below, provides the factors that impact how LSO targeted its research into this topic. While not all PPIs fit into this diagram, it does encapsulate various considerations for identifying evaluation points for these investments.

**Figure 2.1**  
**General Areas Impacting How PPIs May be Defined or Assessed**



**Source:** Legislative Service Office research and analysis.

---

---

## **Chapter 3: Investing in PPIs Diverges from the PWMTF Investment Goals and the Prudent Investor Principles**

---

---

Created by a Wyoming constitutional amendment in 1975, the Permanent Wyoming Mineral Trust Fund (PWMTF) receives revenues from severance taxes levied on mineral extraction in the State. As noted in Chapter 1, the PWMTF is invested as prescribed by the Legislature, but significant details are delegated to the State Treasurer's Office (STO) and the State Loan and Investment Board (SLIB), which cultivate and approve the State Master Investment Policy (MIP). The PWMTF income is deposited in the General Fund to allow the Legislature the ability to spend the income where it is most needed to fund government programs and services. The PWMTF has been called the fiscal savior in several economic downturns and is predicted to provide long-term financial stability for the State government budget. A key provision is the inviolate nature of the PWMTF, which sets the investment climate, purpose, and objective of the fund.

The PWMTF is not the only permanent fund that can be used for public purpose investments (PPIs); it is both the most common fund specified by the Legislature, if one fund is specified, and the primary fund selected for PPIs when the Legislature allows for agency discretion. The STO often selects the PWMTF due to its size and recent regular growth of deposits into the fund.

This chapter reviews the estimated opportunity cost of investing PWMTF monies in PPIs and the potential to bring continuity or consistency in how interest rates may be set for these programs or projects. It also discusses the challenges of applying the prudent investor rule to PPIs, particularly for the Industrial Development Bond (IDB) program where private companies are the final recipient of invested funds.

### **PPIs Are Not a Defined Asset Class and Their Investment Risks Challenge PWMTF Investment Goals and Priorities**

Safe investments are more appealing than riskier investments, but riskier investments generally pay a higher premium to compensate for the increase of potential losses. According to the STO, outside of PPIs, the State's higher yielding, riskier investments are researched by firms with specific expertise in analyzing credit risks associated with potential investments; proper due diligence, thoughtful analysis, and careful consideration are valued to assess the potential risks and benefits of each investment. Evaluating this risk exposure means keeping risk in the portfolio to an "efficient frontier," or point where the risk and return characteristics correlate with "Wyoming's very low risk tolerance" for its funds. The State does not normally invest in risky assets that cannot pay appropriate risk premiums.

Furthermore, PPIs are not part of the conventional investment asset allocation. The STO works with an investment advisor to review asset allocation targets to assess how the portfolio is meeting State needs and

investment goals. As a result, each specified fund, including the PWMTF, is diversified through a variety of securities with some paying higher interest rates and others that pay lower interest rates. The balance between different asset classes used in a portfolio help mitigate or protect against the potential for overall or catastrophic investment failure of the portfolio.

**PWMTF's MIP Sub-policy Investment Goals Emphasize Total Return, Appreciation and Protection against Inflation**

The STO maintains that every investment is important and has the potential to influence the rest of the State's portfolio. One STO official noted that PPIs have a "venture capital" feel about them (primarily IDBs) and prospective borrowers come to the State because their borrowing proposal does not have market-bearable risk. Due to the non-market-bearable risks, once purchased by the State, investments are held until maturity. For PPIs that could be sold, the due diligence required by another lender to purchase the investment would be cost prohibitive; therefore, the State cannot readily sell these investments. Without a market to sell these investments, PPI values may not appreciate and contribute additional capital gains similar to conventional investments to the State portfolio. Finally, PPIs have interest rates, mostly established in statute, that inhibit the State from gaining possible market returns for an investment.

In addition to these broad concerns, the MIP contains fund-specific sub-policies. As shown in Figure 1.1 in Chapter 1, Sub-Policy Section 21.2 outlines specific requirements for the PWMTF. A crucial feature of this sub-policy is that the fund should have a long-term growth strategy to maximize, as much as possible, total return, capital appreciation, and protection against inflation. Funds allocated to PPIs, in many respects conflict with not only the broader MIP goals of safety, liquidity, and yield, but also the PWMTF-specific goals.

## **PPIs Are Intended to Produce Public Benefits in Addition to Financial Returns**

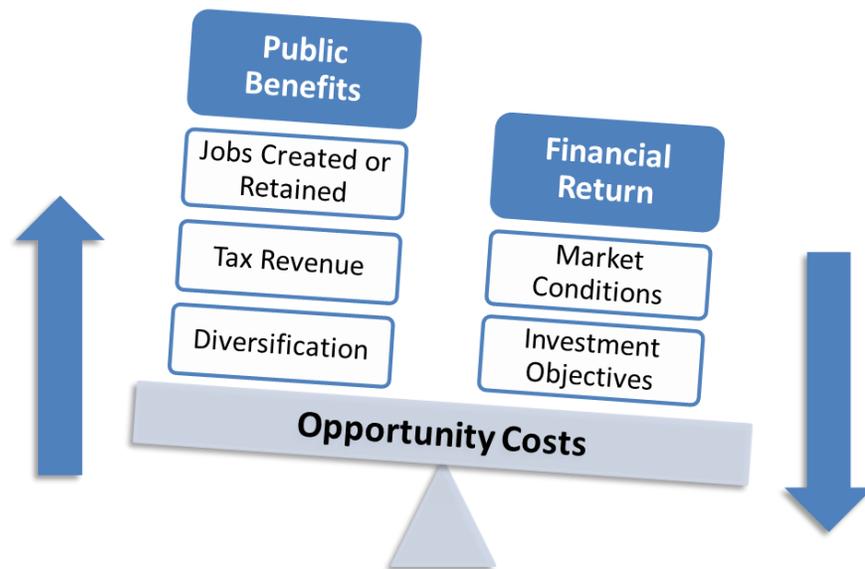
In comparison to other investments, PPIs are not designed to be as financially profitable investments as convention investments, because a lower rate is offered in exchange for a public benefit. Public benefits commonly focus on job creation or retention, tax revenue, and growth or diversification of the economy. Other benefits could include furthering a community's or the State's beneficial use of water resources or maintaining or expanding agricultural operations. Currently, when executing PPIs at the administering agency level, financial returns can be, and to some extent are, tracked while public benefits are generally not considered beyond statutory purpose statements.

These two rate-of-return factors indicate a difficulty valuing opportunity cost for PPIs. Opportunity cost is the loss of possible income because a different investment avenue is selected over another. Opportunity costs affect the State in many ways including a loss of potential financial return due to

interest rates that are not *market* driven. Essentially, the risk exposure of an investment is not commensurate with the actual return.

Figure 3.1, below, summarizes the conceptual balancing act between financial return and public benefit by showing example concerns or conditions that impact PPI evaluation and performance.

**Figure 3.1**  
**Understanding Opportunity Cost**



Source: Legislative Service Office research and analysis.

## **PWMTF Financial Returns to the State General Fund Have Been Reduced since FY2006**

Opportunity cost is not only a measurement against the return of the portfolio as a whole, but it is also a measurement of return compared to other like investments. However, according to agency officials, comparing PPIs to like investments is difficult. For example, IDBs may correlate to high-yield bonds (HYBs) or “Junk Bonds.” Yet, according to the STO, several characteristics of HYBs are not followed by IDBs:

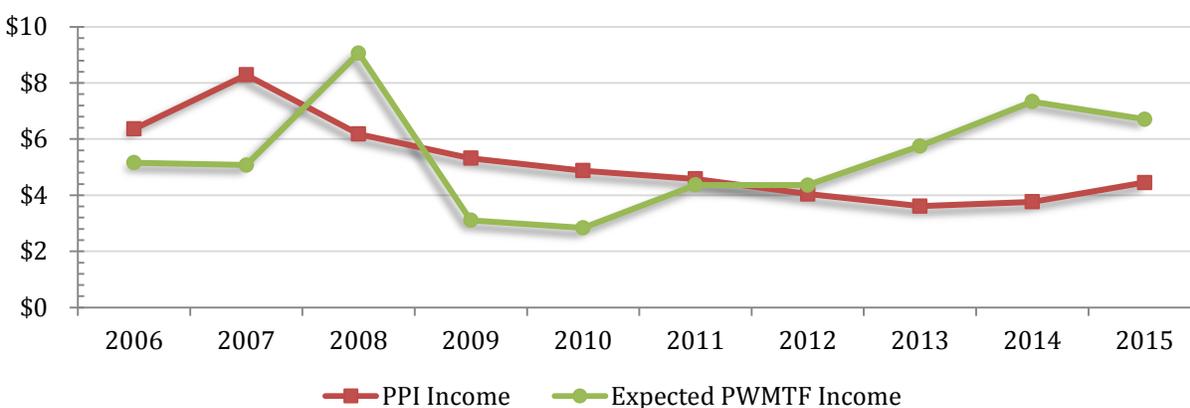
- HYBs are traded in the marketplace, filled with all types of investors, which help to determine the “risk premium” associated with a particular investment.
- HYBs are researched by professional, expert staff that specialize in these investments to analyze investment and credit risks.
- HYBs may be rated by professional ratings service firms.
- HYBs are expected to provide financial returns commensurate with the investment risk.

Consequently, an important caveat to LSO’s analysis of opportunity cost is that it does not consider opportunity costs of PPIs caused by inadequate returns based on the comparable investments’ market-driven risks. The

following analysis is only based on the measurement against the overall yield return to the PWMTF.

Figure 3.2, below, shows a ten-year trend analysis for *expected PWMTF income* compared to *actual PPI income* based on the yield rates of the PWMTF over this period. Looking at this figure in total, the State has forgone approximately \$2.3 million in additional investment income over this ten-year timeframe. Importantly, the opportunity cost for PPIs is not constant from year-to-year. In some years, there may be a significant opportunity cost, while in other years, PPIs as a whole proved more beneficial for the State than the PWMTF portfolio yield.

**Figure 3.2**  
**PWMTF and PPI Income FY2006-FY2015 (Millions)**



**Source:** Legislative Service Office analysis of the State Treasurer’s Office PPI balance and repayment data.

Further analysis by LSO indicated that the impact of lower returns from PPIs was a negative 0.1% on the PWMTF yield over the ten-year timeframe. In other words, the inclusion of PPIs within the PWMTF effectively depressed the yield by about 1/10<sup>th</sup> of 1%. This effect is different from year-to-year. Over ten years, PPIs have performed lower than the whole portfolio.

### **Opportunity Cost is Relative to Differing Investment Conditions over Time**

Another point to keep in mind is that for the first five years (2006-2010) under this analysis, PPI returns outpaced the PWMTF yield by about \$5.8 million; note that this coincides with the heart of the most recent national economic recession. However, for the most recent five years (2011-2015), PPIs have underperformed financially by about \$8.1 million. Consequently, depending on the timeframe under consideration when looking at these investments, the yield and opportunity costs for the State can vary.

One final analysis LSO performed is the impact of the Farm Loan program on opportunity cost. As noted in the 1997 Legislatively Designated Investments (LDI) evaluation, farm loans “subsidized” other LDIs since the program used higher interest rates than most other LDIs, enhancing their financial performance. At the time, these loans also accounted for “35 to 40

percent” of invested LDIs, which weighed heavily on the opportunity cost calculations.

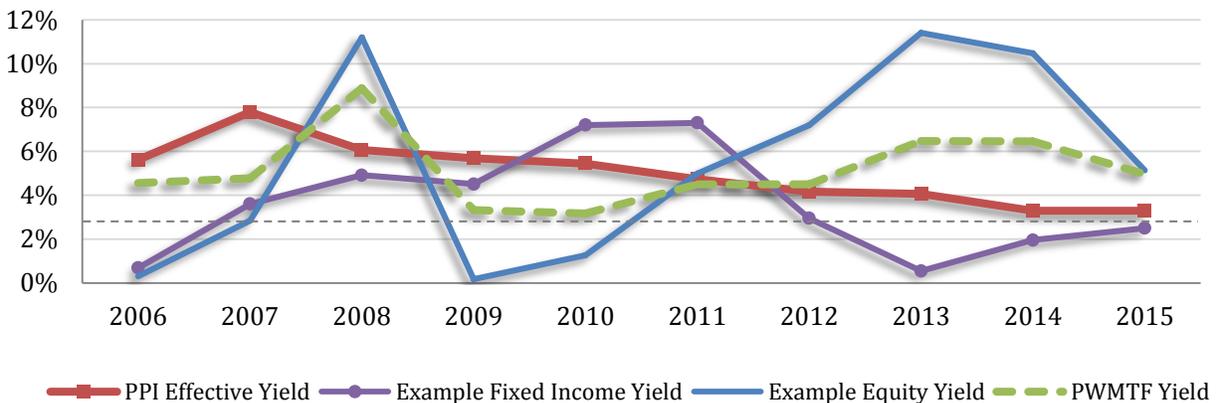
Today, farm loans are a much smaller portion of the overall PPI portfolio (current balance around \$25 million compared to over \$100 million in 1997). Additionally, most active farm loans fall under the Beginning Agriculture Producer sub-category, which are approved at lower interest rates (currently below the 4% base rate for regular farm loans). If this trend continues, farm loans will remain underperforming relative to the PWMTF portfolio and contribute to what appears to be a decreasing trend in PPI yield that may remain at or fall below 4% in the future.

**Opportunity Cost of PPIs against Other PWMTF Asset Classes**

While the PWMTF total portfolio yield likely provides the most reasonable benchmark to compare the PPI yield to determine opportunity cost, LSO did conduct additional opportunity cost analysis against both equity and fixed income assets. The STO cautions against comparing PPI returns to other PWMTF asset classes; however, this analysis provides additional context as to how the State could have otherwise invested PPI funds.

Specific investment manager funds selected by LSO included State Street Global Advisors (2015 labeled “All Cap Index) for equity and PIMCO Core for fixed income. If PPI dedicated funds were invested with the equity manager, there could have been an estimated realized gain of \$5.4 million in State General Fund Income over the ten-year period. Compared to the core fixed income manager, the State could have incurred an estimated loss of \$19.6 million against the PPI income. The aggregate information is presented in Figure 3.3, below. This figure captures the annual yield rates of PPIs versus the PWMTF, and the example equity and fixed income managers. The figure illustrates the lower peaks, but dramatic valleys of the reduced volatility of the PPI and PWMTF as compared to the undiversified asset class examples.

**Figure 3.3  
PWMTF, PPI, and Example Investment Managers Incomes**



Source: Legislative Service Office analysis of the State Treasurer’s Office PPI balance and repayment data.

## **Valuing Public Benefits of PPIs with Financial Returns Can be Problematic**

Evaluating an investment using only one aspect of the return potential does not demonstrate the total benefits and opportunity cost the State would experience when establishing and implementing PPIs. According to the STO, if the purpose of the PPI is not solely to gain financial returns, then program intents, purposes, and public benefits, must be considered. Currently, of the four administering agencies, only the Wyoming Business Council (WBC) identifies and analyzes these public benefits for use during its review and selection of IDBs. Officials from the WBC state this analysis does not affect its interest rate recommendation in light of the prudent investor rule.

In addition to these quantifiable public benefit metrics, there are also more qualitative or anecdotal social benefits, which are harder to define and measure. For example, a Beginning Agriculture Producer Loan recipient may be able to produce more products that could be sold locally. In another instance, a Farm Loan recipient might be able to use their property to help increase the quality of life in a local community by providing access to fishing and wildlife habitats. Still another recipient may advance the genetic make-up of a livestock herd for a better and more valuable product.

While the Wyoming Supreme Court has held that “[p]rotecting the economic and social stability of the state is a legitimate state objective” (i.e. public purpose), without a clearer definition for the public benefit, there is no conclusive way to determine the true opportunity costs of PPIs; or if the State was reasonably and prudently compensated for the investment. The prevailing attitude is that while treating PPIs as conventional investments is ideal, the practicality is that these investments are legislatively designated projects for a specific public purpose and cannot be treated the same.

## **PPI Interest Rates are Set Individually in Statute**

Statutes provide for the terms, conditions, structure, and administration of PPIs, including program specific caps and interest rates. Since each PPI is set at different times according to different legislative and economic conditions, there is limited consistency in both fixed and variable rates used for these programs. For example, many PPI water projects have been set at a fixed 4% rate (interest does not accrue until the project is complete). The Joint Powers Act (JPA) loan rate is currently set at “rates of interest for similar securities on the commercial market upon a basis which will not be less than the average rate of return realized on all permanent mineral trust fund investments as determined by the state treasurer for the five (5) calendar years immediately preceding the year in which the loan is made.”

Other examples include regular Farm Loans with a range from 4% to 10% and IDBs set “at a fixed or adjustable rate, indexed to the prime or ten (10) year treasury bill rate as determined by the State Treasurer, which is reasonably commensurate with the risk, as recommended by the Wyoming

business council.” Figure 3.4, below, illustrates the *current* effective interest rates for select PPI programs and projects.<sup>2</sup> Rates for programs like JPA loans and Farm Loans are averages based on financial returns divided by the program outstanding balance.

**Figure 3.4**  
**Example FY2014 PPI Interest Rates**

0%		3%		6%		9%	
Gillette-Madison Pipeline	Laramie Territorial Park	Beginning Ag Loans	Farm Loans (All)	IDBs 5.75%	JPA 6.66%	Farm Loans	
0.00%	1.50%	3.22%	5.23%			8.10%	

**Source:** Legislative Service Office analysis of statute, session law, and agency information.

Consequently, based upon these interest rates, along with additional examples included in Table 3.1, below, individual PPI opportunity costs can vary. Investments in Beginning Agriculture Producer loans, the Gillette-Madison Pipeline (until the project begins accruing interest), and the Laramie Territorial Park appear to be the greatest risk for opportunity costs compared to the FY2014 PWMTF yield of 6.45%.

**Table 3.1**  
**Current Interest Rates for PPIs**

PPIs	Interest Rate	FY2014 PWMTF Yield	Difference – PWMTF minus PPI
Aeronautics	5.00%	6.45%	1.45%
Farm Loans <sup>1</sup>	5.23%	6.45%	1.22%
Beginning Ag Loans <sup>1</sup>	3.22%	6.45%	3.23%
Farm Loan <sup>1</sup>	8.10%	6.45%	-1.65%
Livestock Loan	5.00%	6.45%	1.45%
Gillette Madison Pipeline <sup>2</sup>	0.00%	6.45%	6.45%
Hot Springs	6.25%	6.45%	0.20%
IDBs	5.75%	6.45%	0.70%
Irrigation <sup>1</sup>	5.00%	6.45%	1.45%
JPA	6.66%	6.45%	-0.21%
Laramie Territorial Park	1.50%	6.45%	4.95%

**Source:** Legislative Service Office research and analysis.

<sup>1</sup> Average as of 4/6/2015

<sup>2</sup> State Session laws provide for a 4% interest rate on this loan, but no interest will begin to accrue until the project is deemed beneficial by the Water Development Commission/Office.

The clearest cost to the State for these non-market interest rates is that the Gillette-Madison Pipeline project will not generate income until the project is

<sup>2</sup> There have been three loan disbursements for the Gillette-Madison project to date (2010, 2012, and 2013) and no interest has accrued on these loans.

substantially complete and deemed beneficial to the project sponsor. For FY2014, investment in Gillette-Madison project could have cost the State an estimated \$1.9 million in interest income. The other PPI that showed the State was receiving significantly less income was the Laramie Territorial Park project.<sup>3</sup> If an interest rate is fixed in statute and not reviewed and adjusted periodically to current returns, there is no opportunity to accommodate for market changes over time.

Finally, none of the administering agencies currently make rate decisions, where discretion is granted by the Legislature, based on consideration of the public benefits. In other words, agencies do not work backwards from a market rate by valuing the public purpose or benefit to arrive at an acceptable financial interest rate (within statutory limitations) for PPIs. For example, if the State invests in a PPI at a 4% interest rate, but the PWMTF earns 6.5% interest, the State is implying that the public benefit received by the State should be equivalent to 2.5% interest. However, due to the continual activity of making loans, a PPI's benefit value will not be consistent as the PWMTF earnings rate will ebb and flow over time.

**Recommendation 3.1:** The Legislature could consider setting a consistent or default interest rate for all PPIs, which correlates with a multi-year rolling average of the PWMTF yield.

If the Legislature considers maximum financial return as a basic goal for the PWMTF, this recommendation would provide a consistent interest rate for PPIs commensurate with the PWMTF's investment goals. Utilizing a multi-year average methodology would smooth out annual market volatility that may impact the rate determination. While this rate would not directly take into account the public benefit returns on PPIs, these benefits could equate to a PPI's investment appreciation and additional return above the interest income earned from this approach.

By establishing a floor for PPI interest rates, the Legislature would need to consider potential consequences. For example, tying the rate to the PWMTF yield could increase the fund's income, but may possibly be less predictable than a fixed rate floor. Additionally, the rate, depending on how high it is set, may not accommodate all PPIs where the use of a PPI can depend on market cycles (e.g. the Farm Loan program may get more use when market interest rates go higher than under the program's current interest rate structure).

## **Uniform Prudent Investor Act Should Apply to All State Funds**

As discussed in Chapter 1, the Uniform Prudent Investor Act (UPIA) was implemented for the management of the State's investments under "modern portfolio theory." Modern portfolio theory focuses on maximizing investment returns, while also minimizing investment risks when constructing, organizing, and diversifying a portfolio. Under UPIA, a trustee

---

<sup>3</sup> Notably this investment was originally set at 6%, but was decreased in 1994 to 1.5%. However, this decrease was not made based on valuing the investment for increased or additional public benefit. Rather it was to accommodate the borrower's inability to meet the original loan terms.

can choose investments that play a suitable, appropriate, and timely role in achieving the risk/return objectives of the trust and that meet the other requirements of prudent investing.

When selecting investments, the risk profile is considered to assess and rate the potential risks on a continuum. The STO stated it generally considers the following when assessing investment risks, including for IDBs:

- Financial concerns;
- Reputational considerations;
- Operational problems;
- Political issues;
- Practical complexities;
- Regulatory troubles;
- Conflicts of interest; or
- Other characteristics that might impair the success of an investment.

The fund from which the investment is made also affects risk and return decisions, namely the inviolate nature of the permanent funds connotes that the funds are not intended to be put at risk lightly and are expected to return sufficient, market-driven and risk-based income to the State.

### **The Practical Application of the UPIA is challenging for Officials Because of the Nature of Investments**

Proper selection of investments is vital to the success of the PWMTF portfolio, especially with the ever-increasing complexity of the State's asset mix described in the MIP. However, investments made for public purposes remain an anomaly and do not mesh with the improved or advanced investment selection processes of today. According to the STO, from a purely financial perspective, PPIs are generally not investments the STO would or could select to meet state fiduciary standards.

The STO also states PPIs are almost guaranteed to underperform because the risk premium (extra return for tolerating extra risk from a given investment) is most often not commensurate with the actual risks the State takes on with these investments. In short, the risk of improper selection of investments can and does affect the investment success of the PWMTF and according to one STO official, PPI underperformance can "contaminate" the overall performance of the portfolio.

There are several reasons why it is challenging for officials to apply the principles of the UPIA unconditionally.

- The risk profile of PPIs is not often consistent with the provisions of the UPIA because of a focus on political impetus and non-financial outcomes; there is little or no discretion afforded to the administering agency in whether to select the investment.

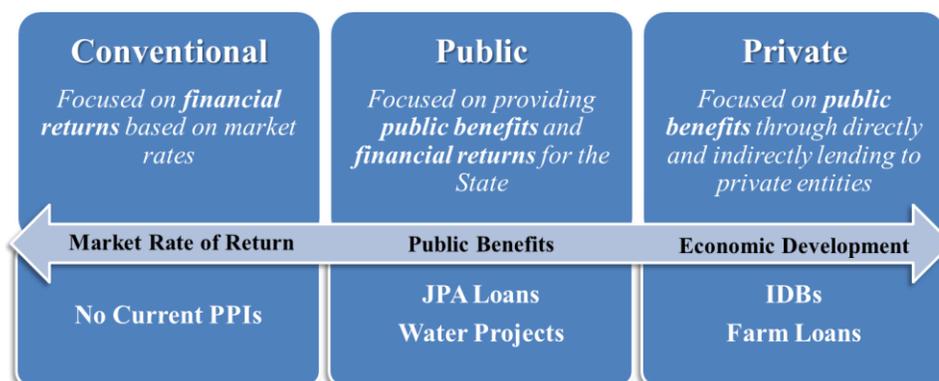
- Some PPIs have permissive statutory authority to accept or reject candidate investments, but agency officials believe the investments are obligatory if an applicant meets program eligibility requirements (including financial criteria, credit worthiness, and repayment conditions), such as JPA, Aeronautics, Hydro-Power Development, and Hot Springs State Park Loans.
- Applicants seek funding through PPI programs because they cannot otherwise obtain funding on the open market, or they are seeking more attractive financing than available from the current market.

Moreover, officials from the STO and the OSLI stated that because public benefits must be considered, and are hard to quantify, applying the UPIA uniformly is difficult. Much of the conflict arises because of the UPIA principle of loyalty. W.S. 4-10-905 states, “A trustee shall invest and manage the trust assets solely in the interest of the [current and future] beneficiaries.” When valuing higher financial yields versus an ambiguous public benefit, a trustee may sacrifice the interest of the beneficiaries if below-market returns are accepted in favor of other objectives.

Not all investments in the economic development of Wyoming are contradictory to the principles of UPIA. For example, the STO notes an instance where private equity managers used State funds for investment in the Jonah Field in the Green River Basin, through independent review and selection applying marketplace risk analysis.

For additional context, Figure 3.5, below, provides a visual representation of a continuum of investment strategies used for State funds. Succinctly, different investments provide different levels of investment return (solely financial return to public/private benefit). On the left, there are investments focused entirely on financial, market-based returns (i.e. conventional investments). Moving to the right, there are loans to political subdivisions and direct and indirect (through local governments) lending to private entities. The further away from market-based investing, the more difficult it is to apply UPIA and to estimate investment risk, calculate full investment return (financial and other), and validate or verify public benefits achieved.

**Figure 3.5**  
**State Investment of Public Funds Continuum**



**Source:** Legislative Service Office illustration.

### **Politicization of the Investment Decision can Jeopardize the PWMTF**

According to several agencies, when public or political pressure is used to influence investment decisions, to make a PPI “work,” greater risks are taken and more leniencies are granted. This lack of objectivity becomes problematic and increases the State’s exposure to risk when investment decisions are not made according to the merits of the project. Often times administering agencies must find creative ways to ensure that there are sufficient protections to safeguard the State, such as requesting and relying on non-traditional collateral to mitigate risk.

LSO identified these specific risks and issues when reviewing IDB casefiles for approved and proposed projects as far back as 2004. The Hawkins and Powers (Hawkins) IDB is an example where both public and political pressure was used to encourage the State to take an active role in helping a Wyoming company that was failing. Specifically, messages from members of the public, the private sector, and State officials were found in tandem with the due diligence work performed by the STO. The STO treated each concern and attempt to alter the office’s judgment with direct communication citing obligations under the prudent investor rule for State funds investment. However, despite the prevailing notion that the Hawkins IDB was a riskier investment, in April 2004 the Treasurer purchased the Hawkins \$4.6 million fifteen-year bond from Big Horn County with a variable interest rate; the State’s eventual purchase totaled \$3.92 million.

Six months after the purchase, Hawkins was unable to make their first interest-only payment in October 2004 and the bond was declared to be in default. Initial collection on the debt, through selling pledged collateral, occurred between January 2005 and April 2006, and Hawkins was administratively dissolved in February 2007. The STO was able to recover the entire principal and some interest. The STO declared the remaining debts uncollectable in November 2008 approximately four years after the bond defaulted.

### **Other States’ Approach Permanent Fund Investing by Applying Prudent Investment Principles and Set Apart PPIs**

Most states have adopted UPIA, and may face the same challenges in balancing the guiding principles of UPIA related to investments focused on financial return versus other investment outcomes. However, understanding the different approaches Alaska and Montana use for public purpose investing can alleviate the conflict between prudent investor standards and non-financial investment goals.

*Alaska.* Alaska’s Permanent Fund is insulated from direct investments in economic development. Alaska identified early on that the fund could not be all things to all people, or alternatively, that the fund could not function to meet too many competing needs of the state. Instead of using the permanent fund, Alaska uses appropriated funds to finance public purpose projects.

**Montana.** The corpus of the Coal Tax Trust Fund is invested conventionally and only investment revenues may be used for public purpose investments, including the income from the trust's sub-funds, like the Big Sky Economic Development Fund. This sub-fund's income is used to pursue economic development at the local government or community level. Through statute, the Montana Board of Investments is encouraged to invest 25% of the Coal Tax Trust Fund *revenues* in the State economy.

## **IDBs May Require an Alternative Funding Source**

In the preceding pages of this chapter, LSO notes the ever-present challenges to keep the objectives and goals of the PWMTF in mind when implementing PPIs. While Recommendation 3.1, above, will provide balance wherein the PWMTF can obtain more market-level returns from PPIs, there remains the challenge of objectively and wholly valuing PPIs under the UPIA while determining where the public benefit fits into these assessments.

While not all PPIs specifically target economic development as a primary goal, many of PPIs fit within a broader infrastructure theme that inherently impact the overall development potential of communities. For example, JPA loans, Aeronautics loans, and individual water project loans' purposes dovetail with economic development concerns in communities. However, the ultimate recipient of loaned funds in these cases are local government entities and are generally able and/or required to make commitments of collateral and revenues toward loan repayment. These entities also often have constant, ongoing relationships with the administering agencies through use of other program offerings.

When communities sponsor PPIs, where the end recipient of the loaned funds and expected payer is a private entity, there is a heightened concern with investment prudence and Wyoming constitutional compliance. A concern expressed by the STO, specific to the IDB program, is that the STO is not only looking out for the State, it is also looking out for local communities that may issue bonds to fulfill their development desires. The STO believes that many Wyoming communities do not have the expertise to step in and provide or assist in vetting these complex and risky investments where the funding is not directly going to the sponsor.

Consequently, in 2013, the STO recommended to the Joint Appropriations Committee that the Legislature create a separate fund for investments in IDBs with an explicit directive that the funds still be used prudently for economic development. This proposed improvement to the IDB program stems from concerns with the conflict between selecting wise investments under the provisions of UPIA and investments in economic development where confirmation and the true value of promised public benefits is tenuous. No further discussions have occurred between the STO and the Legislature regarding this recommendation.

Additionally, STO officials stated that the most recent IDBs are among the largest single investments the State would make or has made. Although the PWMTF is capable of accommodating the large PPIs in terms of funding, the

issue is not liquidity but safety. The large investments in the IDB-Uranerz (\$20 million) and IDB-UR (\$34 million) represent instances where the risk is not commensurate with the rate of return because the vague public benefit *appears to outweigh* the financial return and MIP investment objectives.

**Funding Similar to the Large Project Economic Development Program (2014 Senate File 97) Could be Used for IDBs**

The Legislature has begun moving in this direction. In 2014, SF0097 created the economic development enterprise account, within the revolving investment fund, to provide loans through the authority provided under the Amendment IV program. The Amendment IV program was established in 1986, when voters approved an amendment to Article 16, Section 12 of the Wyoming Constitution. The amendment authorizes the use of state funds to provide loans and loan guarantees to entities for the purpose of economic development through the revolving investment fund. An important feature of the revolving account is that funds are not inviolate like the permanent funds.

Consistent with the amendment, the 2014 bill established the framework for loans and loan guarantees that focus on the following stated economic benefits:

- Creation of a significant expansion of permanent jobs;
- Significant increases in the assessed valuation of the county or counties in which the project will be located;
- Substantial increase in the sales, property or other tax revenues to the county where the project is located;
- Promotion of a stable, balanced and diversified economy; and,
- Private investment in the county or counties in building, equipment, and direct project infrastructure of not less than three times the amount of the loan or loan guarantee.

While there are expected economic benefits defined for the Economic Development Large Project program (so named in STO rules), the potential interest rate is substantially subsidized. The STO rules provide that the interest rates for projects can be as low as 1% and are to be determined on a project by project basis after considering applicable risk factors and the impact of the project.

A \$25 million appropriation was made to the large project account to be expended as a loan for economic development projects. Repayment of principal and interest in connection with these project loans as well as earnings are deposited into the enterprise account. The funds within the account are continuously appropriated; however, unencumbered funds as of June 30, 2016 require further action from the Legislature to be expended. To date, no applications for this program have been submitted.

The contribution requirement for the applicants under this program is three times the requested loan or loan guarantee amount. Therefore, the State

portion would represent 25% of the project costs. Since the IDB program allows loans to cover up to 75% of project costs, the large project program appears to provide stricter applicant financial standards than the IDB program, which uses state permanent funds.

**Recommendation 3.2:** The Legislature could consider extending appropriated funds or establishing a separate fund for IDBs rather than using the PWMTF.

Simplistically, increased attention to the public benefits of PPIs can directly affect the review process and financial returns of an investment. The STO reported to the Select Committee on Capital Financing and Investments in the fall 2014 that the IDB and Large Project Economic Development programs essentially target very similar purposes and clientele for economic development. The STO has even promulgated rules for both programs that are almost identical as to the review and vetting process to be used. It appears reasonable for this recommendation to be discussed further among the Legislature and executive agencies.

Investments from another funding source would free the State from more explicit UPIA or constitutional concerns inherent with using *permanent* funds, primarily the prohibition against loss of the corpus. The WBC also supports funding IDBs from non-permanent funds and believes these investments would still be judicially reviewed and could follow similar guidance for such programs as the Business Ready Communities program under its charge.

---



---

## Chapter 4: Most PPI information Collected and Reported is not Conducive to Meaningful Legislative Oversight of its Designated Investments

---



---

Despite the Legislature directly authorizing public purpose investments (PPIs), historically, it has required limited direct reporting on the status, activity, outcomes, and problematic PPIs. Current administering agencies provide fragmented information that comes from a variety of different sources, which lacks sufficient detail for crucial Legislative oversight. Specifically, the reported information does not allow the Legislature to assess accurately if the programs are achieving explicit or implied benefits to the State in addition to expected financial returns. In addition, responsible agencies do not regularly report delinquent and defaulted PPIs to the Legislature.

### Reporting is Fragmented and Lacks Detail

The State Treasurer's Office (STO), the Office of State Lands and Investments (OSLI), and the Wyoming Business Council (WBC) provide annual reports on PPIs. The State Auditor's Office (SAO) also reports PPI information in the State's Comprehensive Annual Financial Report (CAFR). Additionally, the Wyoming Water Development Commission (WWDC) reports the status of water projects funded through separate legislative appropriations, along with those funded by the Water Development Accounts, in its WWDC Legislative Report. Reporting from the STO includes a biennial report to the Select Committee on Capital Financing and Investments (Select Committee) that contains any recommendations the STO may have regarding the maximum PPI funding limit. Table 4.1, below, illustrates the type of information reported by each agency responsible for the administration of PPIs. Although the Legislature receives annual reports regarding PPIs, the information is not consistent from year-to-year and varies by agency.

**Table 4.1**  
**State Agency Reports that Include PPI Information**

Report		Contents
<b>STO Investment Report</b>		
<i>Frequency</i>	Annual	Details of investments, performance, asset allocation, distributions, and other programs and activities administered by the STO. <u>Includes:</u> list of 'Wyoming Investments' with outstanding amounts, statutory allotment, amount available, interest rate, and amount of interest accrued.
<i>Reporting To</i>	Select Committee on Capital Financing & Investments	
<i>Statutory Authority</i>	9-4-715(a) <sup>1, 2</sup>	
<b>STO Annual Report</b>		
<i>Frequency</i>	Annual	Nearly identical information as provided in the STO

<b>Report</b>		<b>Contents</b>
<i>Reporting To</i>	Available through the STO website	Investment Report.
<i>Statutory Authority</i>	9-4-715(a)	
<b>STO PPI Report to Select Finance</b>		
<i>Frequency</i>	Biennial	Treasurer's recommend adjustments to the legislative cap on PPIs (currently \$600 million).
<i>Reporting To</i>	Select Committee on Capital Financing & Investments	
<i>Statutory Authority</i>	W.S. 9-4-715(n)	
<b>STO and WBC IDB Effectiveness Report</b>		
<i>Frequency</i>	Annual	Report on the effectiveness of the authorized IDBs. <u>Includes:</u> IDB project details including cost of bonds, closure dates, interest rates, maturity dates, reported jobs created, related expenditure totals, and declined projects.
<i>Reporting To</i>	Joint Minerals, Business and Economic Development Committee	
<i>Statutory Authority</i>	W.S. 9-7-4-715(m)	
<b>OSLI Business Plan &amp; Annual Report and Strategic Plan</b>		
<i>Frequency</i>	Annual and Biennial	Agency Performance and Strategic Plans. <u>Includes:</u> Interest revenues, loan balance, and statutory allotment for PPIs administered by the OSLI (Farm, Irrigation, JPA, and Hot Springs); loan origination fees for Farm and JPA Loan Loss Reserve Accounts; and, field staff time related to Farm Loans.
<i>Reporting To</i>	Governor & Legislature	
<i>Statutory Authority</i>	W.S. 9-2-1014 and W.S. 28-1-115	
<b>OSLI Loan Program Overview Report</b>		
<i>Frequency</i>	At least Quarterly	Data provided to the SLIB for PPIs administered by the OSLI. <u>Includes:</u> statutory allotments and outstanding loan balances.
<i>Reporting To</i>	SLIB	
<i>Statutory Authority</i>	None	
<b>OSLI Loan Loss Reserve Report</b>		
<i>Frequency</i>	At least Annually	Information provided in the SLIB meeting materials. <u>Includes:</u> JPA Loan Loss Reserve Account balance, and Farm Loan Loss Reserve revenues.
<i>Reporting To</i>	SLIB	
<i>Statutory Authority</i>	None	
<b>WBC Annual Report</b>		
<i>Frequency</i>	Annual	Economic development strategy and recommended legislative and executive actions related to strategy. <u>Includes:</u> IDB project details including type of business, type of development, location, and projected jobs.
<i>Reporting To</i>	Legislature	
<i>Statutory Authority</i>	W.S. 9-12-112	
<b>WWDC Legislative Report</b>		
<i>Frequency</i>	Annual	Detailed listing of all water projects including PPI water projects. <u>Includes:</u> costs, historical summary of appropriations, grant to loan ratios, and recommended legislative action.
<i>Reporting To</i>	Legislature	
<i>Statutory Authority</i>	W.S. 41-2-118(a)(iii)	
<b>CAFR</b>		

Report		Contents
<i>Frequency</i>	Annual	The State's financial activity as well as financial status. <u>Includes:</u> Fair Value amounts, credit rating, and interest rate risk of 'Legislatively Authorized Investments'. Also includes loan receivable amounts for loan PPIs (Farm, JPA, SBAA, Hot Springs, and Livestock).
<i>Reporting To</i>	Legislature	
<i>Statutory Authority</i>	9-1-403	

**Source:** Legislative Service Office summary using information provided by the administering agencies.

<sup>1</sup> The STO Annual Report is required to include investments, though the STO has submitted a separate investment report since FY2009.

<sup>2</sup> The SLIB/Board of Deposits also receives a separate quarterly report indicating the extent to which state depositories have provided collateral for the TDOA program; this report is not required by statute, but W.S. 9-4-810 requires the Board of Deposits to adjust the TDOA interest rate quarterly (currently set at the average monthly yield on the 1-YR Treasury Bill for the prior full calendar quarter) which may correspond to the quarterly reports to the SLIB.

### **Reporting Formats and Dates are Inconsistent**

PPI information is not always consistently reported in different reports. For example, both the FY2014 STO Annual Report and FY2014 STO Investment Report provide information related to PPIs including statutory allotments, outstanding investments, and amount available. However, those amounts reported vary from one report to another. Table 4.2, below, illustrates those discrepancies.

**Table 4.2**

### **PPI Amounts Reported in FY2014 STO Annual Report and FY2014 Investment Report<sup>1</sup>**

PPI Statutory Allotment	Report	Outstanding Investment	Amount Available
Farm Loan \$275,000,000	Annual Report	\$25,200,782	\$249,799,218
	Investment Report	\$24,259,158	\$250,740,842
	<i>Difference</i>	<i>\$941,624</i>	<i>(\$941,624)</i>
Irrigation Loan \$20,000,000	Annual Report	\$781,568	\$19,218,432
	Investment Report	\$916,786	\$19,083,214
	<i>Difference</i>	<i>(\$135,218)</i>	<i>\$135,218</i>
Joint Powers Loan \$60,000,000	Annual Report	\$4,992,115	\$55,007,885
	Investment Report	\$5,613,344	\$54,386,656
	<i>Difference</i>	<i>(\$621,229)</i>	<i>\$621,229</i>
Hot Springs State Park \$2,000,000	Annual Report	\$22,469	\$1,977,531
	Investment Report	\$33,655	\$1,966,345
	<i>Difference</i>	<i>(\$11,186)</i>	<i>\$11,186</i>
Small Business Assistance & FmHA Ag Loans \$0	Annual Report	\$74,137	\$0
	Investment Report	\$82,965	\$0
	<i>Difference</i>	<i>(\$8,828)</i>	<i>\$0</i>
Industrial Development Bonds \$300,000,000	Annual Report	\$54,000,000	\$246,000,000
	Investment Report	\$34,000,000	\$266,000,000
	<i>Difference</i>	<i>\$20,000,000</i>	<i>(\$20,000,000)</i>
Aeronautics Loans \$10,000,000	Annual Report	\$4,534,996	\$5,465,004
	Investment Report	\$4,760,659	\$5,239,341
	<i>Difference</i>	<i>(\$225,663)</i>	<i>\$225,663</i>

<b>PPI Statutory Allotment</b>	<b>Report</b>	<b>Outstanding Investment</b>	<b>Amount Available</b>
Cheyenne Stage II GIC \$0	Annual Report	\$0	\$0
	Investment Report	\$1,508,310	\$0
	<i>Difference</i>	<i>(\$1,508,310)</i>	<i>\$0</i>

**Source:** Legislative Service Office summary using State Treasurer's Office information.

<sup>1</sup> Not all PPIs reported by the STO are incorporated in Tables 4.1 and 4.2; only inconsistently reported amounts are noted.

In addition to differing dollar amounts, PPI information reported by the STO is not always consistent year-to-year in terms of which PPIs are identified as "Wyoming Investments" or "Other Wyoming Investments." For example, in FY2014 only Basin Electric Power Bond is noted as an "Other Wyoming Investments," while in FY2013, Cheyenne Stage II GIC, Drainage District Bonds, and Time Deposit Open Account Banking program are included in that designation. Furthermore, the data reported differs from one agency to the next.

Most of the balances found in the FY2014 STO Investment Report and the farm loan balance from the STO Annual Report do not align with the OSLI's annual report for FY2014. Listed in Table 4.3, below, is the amount of outstanding investments reported by the OSLI and the STO for FY2014. The OSLI attributes these differences to court approved bankruptcies, where the revenue received is posted to the loan-loss reserve account. Therefore, this revenue is not reported to the STO since it does not impact the PWMTF corpus or interest income balances.

**Table 4.3  
Outstanding Investment Amounts Reported by the STO and the OSLI (FY2014)**

<b>PPI</b>	<b>OSLI Outstanding Investment</b>	<b>STO Outstanding Investments (Investment Report)</b>	<b>STO Outstanding Investments (Annual Report)</b>
Farm Loans	\$5,612,471	<b>Not Separately Reported</b>	<b>Not Separately Reported</b>
Farm Loan- Beginning Ag	\$19,998,726		
Farm Loans- Livestock Loans	\$44,531		
Farm Loans- Total	\$25,655,728	\$24,259,158	\$25,200,782
Irrigation Loans	\$781,568	\$916,786	\$781,568
Joint Powers Loans	\$4,992,115	\$5,613,344	\$4,992,115
Hot Springs State Park	\$22,469	\$33,655	\$22,469
Airport Loans-Aeronautics Commission	\$4,534,996	\$4,760,659	\$4,534,996

**Source:** Legislative Service Office summary of State Treasurer's Office and Office of State Lands and Investments reports.

An example of reporting inconsistency between the OSLI and the STO is PPI revenue/interest reported by both agencies. Both the STO and the OSLI report funds captured because of PPI loans approved by the SLIB. However, those amounts differ slightly for the same reporting period. In addition, the

STO identifies these funds as “interest,” while the OSLI identifies these funds as “revenue.”

Table 4.4, below, identifies different interest/revenue amounts reported by the STO and the OSLI for FY2014. Although the difference between the reported amounts is not great, the variance illustrates an inconsistency that occurs between two administering entities.

**Table 4.4**  
**PPI Revenue/Interest amount Reported by the STO and the OSLI (FY2014)**

<b>PPI</b>	<b>Amount Reported by STO</b>	<b>Amount Reported by the OSLI</b>	<b>Difference</b>
Farm Loans	\$1,051,414	\$1,122,604	\$ (71,190)
Hot Springs State Park	\$2,311	\$2,311	\$0
Irrigation Loans	\$44,244	\$44,180	\$64
Joint Powers Loans	\$318,910	\$546,904	\$ (227,994)

**Source:** Legislative Service Office analysis of the State Treasurer’s 2014 Investment Report and the OSLI 2014 Business and Annual Report.

The OSLI administers the majority of the programs considered PPIs; however, the format of the agency’s annual reports has varied somewhat over the past five years and provides very little information related to PPIs.

The most recent annual report, entitled the Business Plan & Annual Report includes information related to interest revenues, loan balances and statutory allotments for Farm loans, Irrigation loans, Joint Powers Act (JPA) loans and Hot Springs State Park loans, loan origination fees for the Farm Loan Loss Reserve and JPA Loan Loss Reserve accounts, and field staff time related to Farm Loans (demonstrated in Table 4.1). There are notable differences between the format and information reported in the 2014 Business Plan & Annual Report when compared against previous iterations, but within each report, the OSLI provides very little information related to PPI activity and success.

## **Additional PPI Reporting**

### **Wyoming Business Council**

There are no specific reporting requirements of the WBC for its Annual Report related to PPIs. However, included in the annual reports for FY2014 and FY2013 are brief references to the Industrial Development Bond (IDB) program. This information consists of the bond amount, projected jobs, and type of business and development for current projects. No further explanatory information is provided. This same IDB information is also separately reported, in coordination with the STO, to the Joint Minerals, Business, and Economic Development Committee as required under W.S 9-4-715(m).

### **Wyoming Water Development Office/Commission**

While the WWDC submits annual reports to the Legislature called the Legislative Report, these reports contain general information about the water

development program. The amount of the PWMTF monies loaned is listed, yet no additional loan details related to the interest or repayment or value of the project are listed. Additionally, the reports do not list projects as specific PPIs of the State.

### **State Auditor's Office**

While not responsible for PPIs, the State Auditor's Office (SAO), PPI information is also included within the Comprehensive Annual Financial Report (CAFR). The PPI information presented in the CAFR is provided to SAO by the administering agencies and is reported differently than other reports. PPIs are reported as fixed income and legislatively designated investments. The CAFR provides an all-inclusive look at fiscal health of the State but does not deal with programmatic reporting discrepancies discussed in this chapter.

## **Delinquencies and Defaults Are Not Regularly Reported to the Legislature**

Although each PPI administering agency addresses delinquencies and defaults through formal and informal internal processes, agencies do not provide this information to the Legislature on a regular basis. If the Legislature were consistently informed as to the delinquent and default status of PPI borrowers the Legislature could address potential issues proactively, without letting the loans languish over time. Further, the Legislature could use the information to determine whether to implement similar, future PPI programs.

Under the Wyoming Constitutional provision Article 3, Section 40, the Legislature must address debts owed to the State. This may include State funds recovery or forgiving a debt by appropriating funds to the permanent fund. In the event that investments are not properly collateralized, the same would be true to compensate for unrecoverable principal payments. The risk of default may, in effect, cost the State beyond the lost opportunity of realizing a larger rate of return if invested in the traditional investment portfolio.

Below are examples of four individual investments representing risk of loss to the State. These examples illustrate the need for administering agencies to regularly report defaults and delinquencies to the Legislature.

### **Jamestown Rio Vista JPA Loan**

*Approved 1981 ▪  
Closed ▪ 1982  
Defaulted 1998 ▪  
Resolved 2013*

"It became apparent...that the loan was not going to be collected." The district tried to meet the interest payments, but was not eliminating any principle.

### **The Jamestown Rio Vista (Joint Powers Act) Loan Was Declared in Default in 1998**

This loan for \$600,000 was intended to be for a term of 10 years with an interest rate of 8.5% for an annual payment of \$91,445, totaling \$914,446 in payments. Within the first year, a principal payment (\$53,362) was made along with some of the accrued interest, which was the only principal payment ever made by the district.

Correspondence and communication between the district, the SLIB, and the Wyoming Attorney General's (AG) office in the case files

attempted to resolve the delinquency. The matter was turned over to the AG's office for legal action and the district was not able to satisfy the debt. When this loan was approved, the ability to refinance or reamortize the loan was not allowed under program statute and rules at that time.

This defaulted loan remained on the "books" for 32 years, and it was not until 2013, pursuant to the process outlined in W.S. 16-11-110, that the PWMTF corpus was made whole (\$546,639). The Legislature appropriated \$422,171 in General Funds (2013 Laws, Ch. 73, Section 331), of which \$419,071 was actually used along with \$127,568 from the loan-loss reserve account.

**Lovell Drainage  
District Bond**

*Created 1910s ▪  
Reissued 1930s ▪  
Delinquent 2008 ▪  
Unresolved*

It appears this bond was in trouble from the start. Eleven years after the bond was issued the outstanding principal was \$122,500 of \$124,000.

**Lovell Drainage District Bond has been in default since 1974**

The Lovell Drainage District Bond has been outstanding since the 1930s, but appears to have originated in the 1910s and was refinanced multiple times. The most recent bond was issued on December 23, 1932 and scheduled to mature on January 1, 1974.

The Lovell Drainage District Bond has never had a complete principal or accrued interest payment. The last payment for the Lovell bond was in 2009 for \$5,500 credited toward the principal balance, previous payments were made in 1987, 1991, 1995, and 2001. Interest owed at the time of the last payment was approximately \$104,000. In February 2008, the STO attempted to resolve this delinquency and requested assistance from the AG's Office. Even in 2008, when the bond was 36 years past due, the AG called this bond "delinquent" and not in default.

A difficulty in collecting this bond was that the AG determined that W.S. 9-4-704 was the controlling statute on how the State (SLIB) could handle this uncollectible debt. However, this statute was repealed during the 2008 session effective July 1, 2008, during the same period in which the STO and AG were in discussion about this delinquent/defaulted bond. Collection actions for this bond have ceased since 2009-2010.

**Hawkins and Powers  
IDB**

*Approved April 2004 ▪  
Defaulted October  
2004 ▪ Resolved 2008*

Hawkins was unable to make the first interest only payment and the bond was accelerated (i.e. immediately due) by the bond Trustee in January 2005.

**Hawkins and Powers Aviation, Inc. IDB Required State to Sell Pledged Collateral; took four years to resolve**

Hawkins and Powers Aviation, Inc. (Hawkins) applied to the WBC for an IDB in early 2003 and was approved for \$4.6 million, of which only \$3.5 million was eventually loaned. In 2002-2003, the "project" was already started and debt was incurred.

After additional due diligence work to secure collateral, the Treasurer made the decision to purchase the bond in April 2004. The borrower was unable to make the first interest-only payment in October 2004 and the bond trustee declared default. From January 2005 through April 2006, Hawkins sold collateral assets to repay the State the

principal on the bond. In February 2007, Hawkins was administratively dissolved.

Despite several obstacles, the STO was able to recover the entire principal and some interest (\$27,047). However, the STO was unable to recover approximately \$150,000 in interest, fees, and expenses and \$230,000 in premium payment. The STO did not declare the remaining interest, fees, and expenses as uncollectable until 2008 and in November, the STO reported the remaining unpaid amount as uncollectable and asked that the State Auditor include this in the 2009 CAFR.

### **Farm Loan # 8631**

*Approved 2001 ▪ 1<sup>st</sup>  
Delinquent 2003 ▪  
Unresolved*

The borrower has submitted six repayment plans and had at least two foreclosure proceedings initiated between 2003-2014.

### **Farm Loan #8631 Suffers from Frequent, Annual Delinquencies**

Through file review and discussions with OSLI staff, it became clear to evaluators that Farm Loan #8631 has been, and continues to be, problematic for the agency. This loan was originally approved June 27, 2001 for \$400,000 at 8% interest with annual payments set at \$35,530.97. The borrower had an existing farm loan with the OSLI, which was paid according to loan requirements without issue. However, the subsequent loan was used in part to refinance the existing farm loan and provide capital for improvements of the same farm. From 2003 to 2014, the borrower submitted six repayment plans and at least two foreclosure proceedings have been initiated against the borrower because of denied repayment plans by the SLIB. Before the 2011 foreclosure was completed, the borrower brought the loan current, halting the foreclosure process. However, another repayment plan was submitted in April 2014 for the missed 2013 payment, but was denied by the SLIB, thus initiating foreclosure once again.

According to OSLI staff, as of May 1, 2015 the borrower submitted a repayment plan, which will be reviewed by staff and presented to the SLIB in its August 2015 meeting for consideration.

## **Lack of Communication Regarding Defaulted PPI Projects**

The STO does not track individual loan payments for all types of loans. Specifically, for some loans that are administered by the OSLI, program payment information is provided by the OSLI to the STO in the aggregate and not for individual loans. As a result, the STO does not keep track of individual loans for these programs rather payments are submitted to the STO and recorded as a lump sum of principal and interest income to the PWMTF. If a borrower misses a payment, the STO may not know about it.

An example of the effect of this process is the default for the James Town Rio Vista Loan. The STO reports that it was not aware of the default until a discrepancy was discovered in the balances reported for the CAFR. The difference in the reported amounts was a result of the OSLI declaring the loan uncollectable and writing off the remaining balance, while the STO had not.

In lieu of an individual loan reconciliation process, on a monthly basis STO staff calculates the PPI cost value and provides that information to the OSLI and the WWDC to ask if they agree with the STO's calculations. STO staff noted they could request verification of the numbers *and* ask administering agencies to provide information related to delinquencies and defaults, but that is not current practice. It was also noted that there might be jurisdictional issues to consider in the STO's responsibility related to delinquencies and defaults. The prevailing perspective is that the STO is instructed by the Legislature to *lend* money to the agency that in turn administers these funds, and the agency is ultimately responsible for ensuring funds are repaid.

While the STO does receive some information on OSLI-administered PPIs on a monthly basis, STO staff expressed some interest in receiving notification of delinquencies and/or defaulted investments on a more regular basis. In addition to jurisdictional concerns on collecting on delinquencies and defaults, STO officials raised concerns about duplicative activity as well as system constraints if individual loan payments were recorded for all PPIs. Although there is certainly no desire to create a situation in which duplicative activity is encouraged between the agencies for purposes of tracking PPIs, implementation of some degree of tracking on the part of the STO will serve to keep the STO up-to-date with the individual PPIs.

## **Oversight Expectations and Potential Monitoring**

### **Role of the Select Committee on Capital Financing and Investments**

The Select Committee is responsible for overseeing and monitoring PPIs and for serving as informant to the Legislature regarding State funded investments. Based on LSO review of meeting minutes back to 1997, it appears the Select Committee no longer views PPIs and the income they generate to require more robust oversight from the larger State investment portfolio. This review indicated a gradual shift of the committee toward overall portfolio concerns with intermittent discussion of PPIs. This trajectory for the Select Committee was also supported by one former member who noted that the Committee has only been meeting once per year and appears to focus more on spending policy issues related to the permanent funds without also actively monitoring PPIs.

Another area of concern expressed by the former Select Committee member is the fragmented nature of PPI administration, which could be an impediment to efficiency and effectiveness of the PPI programs. He further stated that it is very reasonable for the Legislature to remain informed of "bad PPI investments" (i.e. delinquencies and defaults).

Active monitoring of PPIs by the Select Committee could provide the Legislature with the opportunity to determine reasons for "bad investments." He also stated, in his opinion, that it is reasonable, and perhaps sometimes necessary, to go out to the communities that receive funds and experience what the impact is first-hand.

### **The OSLI Loans**

There is no evidence of performance accountability related to public benefits between the OSLI/SLIB and the borrower. One reason is that there appear to be no performance-based agreements for the PPI loans. Additionally, there is little to no actual monitoring of projects by OSLI staff. OSLI staff informed evaluators that this is due in part to resource limitations (e.g. lack of staff and funds). However, OSLI staff repeatedly stated that they interpret PPI program performance as lending funds for the purposes set forth in statute. The agency further contends that additional verification that the purpose or public benefit is being met is not needed or that it would require more specific legislative (statutory) direction to implement. Chapter 5 provides further detail regarding this issue and potential to address performance tracking and reporting on OSLI-administered farm loans.

Furthermore, while W.S. 11-34-105(b)(viii) requires the OSLI Director to keep the SLIB informed with “regular reports” of delinquent and defaulted PPIs under its charge, it does not appear this information is readily passed along to the STO, other than the Treasurer as a member of the SLIB.

In comparison to the lack of site visits by OSLI staff, the STO noted that its staff has participated in site visits related to the uranium IDBs since these investments were approved. The purpose of these visits and ongoing monitoring is to verify collateral and observe the facilities. When asked whether there would be any benefit from conducting site visits related to other PPIs, like the Farm Loan program, the STO noted that any investment manager should ensure that collateral is okay, especially considering the State is the “banker” in these cases. If such follow-up or similar monitoring is not provided, the STO expressed concern over the potential security of these investments.

### **Industrial Development Bond Monitoring**

According to WBC staff, the WBC does not actively monitor IDBs once a bond is purchased by the State. If WBC staff becomes aware of any issues, they are reported to the STO immediately. However, the STO does engage in follow-up with IDB borrowers and in some cases involves the WBC in post-closure monitoring discussions. For example, in a recent meeting with one of the uranium company IDB borrowers about its merger with another energy company, officials from the STO, the WBC, and the County met to discuss the potential impact of the merger on the security of the investment and best ways to protect the State’s investment.

### **Monitoring: Other Considerations**

There are provisions identified in loan applications and loan agreements and conditions that seem to require, or at least express intent, for some degree of active monitoring and/or tracking to occur on the back-end or post-closing side of a loan, not just on the front-end.

For example, the JPA Loan Application states eligible projects need to meet health and safety requirements. While it is true that elements of a loan

project may meet these requirements on “paper” during the development of the project, post-investment verification of some kind should clearly illustrate that claimed elements actually met health and safety requirements.

Additionally, JPA application requirements necessitate the applicant to identify the “need” of the project. Again, while that can be conceptually illustrated in the application, actual verification during the life of the loan, and perhaps increased scrutiny of projections, might be beneficial.

The Loan Agreement and Conditions for JPA loans also requires the borrower to “permit the Office of State Lands & Investments (OSLI), and any party designated by them, to examine, visit, and inspect, at any and all reasonable times, the project funded by this loan, including accounts, records, receipts, disbursements, contracts, and any other matters relating to this project.” Even though this provision is not a requirement for the OSLI to conduct this follow-up, inclusion of such a provision in the Loan Agreement could be construed as encouraging the OSLI to conduct such follow-up.

In addition, the OSLI is in the process of replacing its outdated grant and loan tracking systems, the Farm Loan System and Grants and Loans System (GALS), with a new system called EnABLE. Staff informed evaluators that they are still in the process of learning the capabilities of the system, but are planning to use the task function of the system, which will allow the OSLI to generate individual tasks such as “a reminder to follow up with a borrower or entity for many different purposes.” The generation of these tasks and reminders in the system will allow staff to create delinquency reports and will “allow for the status of a loan to be changed from active, to default or foreclosure, or approved repayment plan, if applicable.” OSLI staff assured that the processes established in rules and statute related to each loan program will be reflected in the checklists and tasked in EnABLE.

### **Potential for a Single Entity (STO) Reporting out PPI Information**

In order to bring consistency and timeliness to PPI monitoring, the four PPI administering agencies need to be on the same page as the Legislature. Consequently, a single report specific to PPIs may inform the Legislature on the status and effectiveness of PPI programs, as well as instances of delinquencies or defaults that require agency or legislative action.

During discussions with the STO regarding the need for a central repository for reporting, there was some support for the STO taking on this role, so long as staff and resources allow. The task would focus on reporting and not oversight of all PPIs or of other agencies’ administration responsibilities. In other words, addressing program administration, delinquencies, and defaults would remain the responsibility of administering agencies.

Other concerns expressed by the STO relate to issues with the STO being required to have some accountability or authority over another agency’s budget by directly asking the Legislature to appropriate funds for a PPI default that the STO does not oversee. In addition, while not opposed to

more robust PPI reporting, the STO voiced concern about potential mission creep if it is designated as a central repository for PPI information.

Overall, LSO found that administering agencies attempt to fulfill their responsibilities for being good and trustworthy stewards for the PPI programs based primarily on up-front due diligence efforts. As much as possible, post-investment monitoring and reporting directly to the Legislature is reasonable to reveal the full impact of PPIs as well as ongoing delinquencies and defaults.

**Recommendation 4.1:** The Legislature could consider amending W.S. 9-4-715(n) to provide for more comprehensive, standardized, and direct reporting requirements for all PPI programs and projects.

While W.S. 9-4-715(n) already requires the STO to provide biennial feedback to the Legislature on changes to the maximum aggregate funding limit for PPIs, the Legislature may wish to consider requiring more specific PPI program and project details from each administering agency. By requiring state agencies to act as investment managers coupled with the dual financial and public benefit outcomes expected of these investments (and set outside the conventional investment portfolio), it appears necessary for the Legislature to more directly and fully receive program and project-related PPI information.

Example information for this report could include, *but not be limited to*:

- PPI program-specific investment activity:
  - Number of individual loans/investments made/denied/pending, etc.; and
  - Number of investments in delinquent/default or other distressed status;
- PPI program-specific financial summary:
  - Amounts loaned, lending trends;
  - Repayment amounts and repayment trends;
  - Reamortization and refinance trends;
  - Delinquent/default/collection actions and amounts recovered; and
  - Program and/or project financial and public benefit performance outcomes, possibly including risk assessment and opportunity costs
- Programmatic statutory concerns:
  - Need to address program-specific funding limits/caps;
  - Update on dormant or unused programs;
  - Changes required to comply with current lending/investment practices; and
  - Need for Legislative funding or actions to keep the PWMTF corpus whole.

**Recommendation 4.2:** The STO should coordinate and compile information noted under Recommendation 4.1.

LSO believes that the STO, which handles accounting for both the disbursement and repayment of PPI funds, is central to providing reporting to the Legislature. Therefore, W.S. 9-4-715(n) should still focus on the STO as a reasonable conduit and coordinating agent. Similarly, this reporting on a biennial rather than annual basis still appears reasonable.

The intent of these recommendations is not to add to the reporting burden of either the administering agencies to produce this information or the Legislature to receive the information. LSO found that much of this information is tracked or is available from the PPI administering agencies. This recommendation merely asks the agencies to provide greater transparency to allow for consistent and timely review and action by the primary State funds trustees: the Legislature.



---



---

## Chapter 5: Adjustments to the OSLI Practices Would Streamline Administration and Contribute to Better PPI Reporting and Program Transparency

---



---

As noted earlier in the report, PPI programs encounter two separate, but equally important spheres of influence: the legislative and executive branches. This chapter describes three process-related issues affecting the Office of State Lands and Investments' (OSLI) responsibilities to implement and oversee its various PPI programs and projects:

1. Farm Loan rules;
2. Beginning Agriculture Producer business plans; and
3. Gradual change to a new data system, EnABLE.

### **Farm Loan Rules Reveal Potential Problems for Timing of Borrower Repayments**

OSLI staff explained to LSO that all Farm Loan payments are due annually on December 1 of each year. Early agency statements noted that this requirement has proved troublesome in the past since many agricultural operations may not receive their revenues at one consistent or defined point in the year. Consequently, the OSLI believes many borrowers become delinquent on a loan through no true fault or malicious intent of the borrower.

While LSO was not able to conduct an analysis of all current outstanding farm loans to confirm or deny this specific perception held by the OSLI, LSO did review payments for a sample of 8 individual farm and beginning agriculture producer loans to better understand how often these borrowers' accounts experienced a delinquency. Table 5.1, below, summarizes these loans' payment history. In summary, LSO's review found that (as of February 2015), 6 of the 8 loans (or 75%) had at least one borrower repayment postmarked to the OSLI *after* the December 1 due date. This includes counting payments as past due if the entire installment was not postmarked to the OSLI by the original repayment deadline. Overall, over half, 57.5%, of the expected annual payments were past due. While these results may not transfer directly to the remainder of the outstanding farm loans, it does show that past-due repayment installments are not uncommon for the program, regardless of the reason for their delinquency.

**Table 5.1**  
**Late Farm Loan Repayments for LSO Casefile Sample**

Casefile Sample Number	Expected Annual Payments	Payments: – After December 1	Payments – After December 31	Percent Late Payments – December 1	Percent Late Payments – December 31
1	4	0	0	0.00%	0.00%
2	5	3	1	60.00%	20.00%

Casefile Sample Number	Expected Annual Payments	Payments: – After December 1	Payments – After December 31	Percent Late Payments – December 1	Percent Late Payments – December 31
3	3	0	0	0.00%	0.00%
4	6	5	5	83.33%	83.33%
5	1	1	1	100%	100%
6	5	3	2	60.00%	40.00%
7	3	2	1	66.67%	33.33%
8	13	9	7	69.23%	53.85%
<b>Total</b>	<b>40</b>	<b>23</b>	<b>17</b>	<b>57.50%</b>	<b>42.50%</b>

**Source:** Legislative Service Office analysis of Office of State Lands and Investments information.

Early in the evaluation, OSLI staff noted that the cause of this problem was *statutory* structure. As a result, not only were repayments delinquent, but if a repayment is not received by December 31 of a given year, borrowers must submit repayment plans by May 1 of the following year to become current on a loan. Borrowers also must pay penalty interest fees for each day a payment is overdue. After LSO’s review of program statutes and the OSLI/SLIB rules on this issue, it appears that statute is not the cause of the OSLI’s concerns with the December 1 repayment deadline.

Currently, Farm Loan program statutes are not specific in requiring one or more absolute repayment deadlines. Rather, W.S. 11-34-113(a)(ii) and (b) state:

“(a)(ii) Every mortgage shall contain an agreement providing for repayment of the entire amount of the loan and interest upon a certain date or in several specified payments, *or on an amortization plan of annual or semiannual installments* so computed as to ... terminate the debt within an agreed period of not less than five (5) years nor more than thirty (30) years. The method of repayment is at the option of the board.

(b) After five (5) years from date of the mortgage, additional payments for part or all of the principal may be made *on the annual or semiannual payment date* under such rules and regulations as the board may prescribe...*(LSO emphasis)*”

These statutes appear to provide the OSLI/SLIB the flexibility to structure the repayment arrangements through rules and regulations, and these are the cause of this agency concern. Consequently, Chapter 7, Section 13(a) of program’s rules set out the December 1 deadline and requirement for annual, rather than semi-annual, borrower repayment installments as allowed in statute.

## **The OSLI Does Not Provide Adequate Assurance that Beginning Agricultural Producer Applicants are Meeting the Program’s Public Purpose and Benefit Objective**

During LSO’s initial research and interactions with OSLI staff, they noted that one area where the staff is unable to possibly meet expectations is with

respect to reviewing and evaluating prospective borrowers’ business plans, specifically required of Beginning Agriculture Producer loans. Currently neither statute nor rule requires business plans to be submitted by prospective borrowers. This requirement comes directly from OSLI staff in their application instructions to applicants.

Table 5.2 below provides statute, rule, and application provisions that indicate the policy of the Legislature, the SLIB, and the OSLI, respectively. From the broadest provisions to the most specific, each provision highlights the need to direct State funds and resources to loans that definitively meet the program purpose and benefit objectives (the investment goals and objectives akin to the conventional master investment policy).

Crucial provisions in statute speak to the SLIB setting the conditions of the application process and on which forms prospective borrowers must use as well as that these conditions are not limited to financial information and analysis. Chapter 7 Farm Loan rules highlight actions meant to define progress made from loaned monies, such as “development and improvement” of agriculture properties as well as the overall policy of the board to “inure the greatest benefit of the State and represent a wise investment of State funds.” Finally, the OSLI re-iterates this sentiment in rules, that the State will “derive the greatest benefit” from these loans as well as requiring specific application forms (commensurate with statute) and the need for, at least, beginning agriculture producers to provide a “detailed business plan.”

**Table 5.2  
Public Purpose and Public Benefit Policy for Farm Loans**

<b>Statute</b>
<p>11-34-111</p> <p>(a) Every applicant for a loan under this act <i>shall apply on a form prescribed by the board</i>. The applicant shall state the object to which the proceeds of the loan will be applied <i>and shall furnish such other information as required by the board</i>.</p> <p>(b) The state loan and investment board is <i>authorized to promulgate rules and regulations to establish criteria for determining the priority in which farm loan applications will be considered</i>. The <i>criteria for establishing priority will include, but are not limited to</i>, an applicant's need, financial net worth, earning capacity and the ability to repay the loan.</p>
<b>Rules and Regulations</b>
<p>Section 3. General Policy.</p> <p>(a) The Board shall extend farm loans to <i>foster and encourage agriculture, dairying, and livestock raising in the State of Wyoming, and the development and improvement of farm lands</i>. Farm loans shall be made in such a manner and to such parties as shall, in the judgment of the Board, <i>inure to the greatest benefit of the state and represent a wise investment of state funds</i>.</p> <p>(b) The Beginning Agriculture Producer loan program is <i>intended to help beginning farmers or ranchers get into a production agriculture business</i>. It is not intended to benefit investors or developers.</p> <p>Section 6. Application Procedure.</p>

(a) Applications. (i) Each prospective borrower <i>shall submit a written loan application, on the form furnished by the Office.</i>
<b>Application Instructions</b>
“The Purpose of the law is to <i>foster and encourage farming and ranching in the State of Wyoming, to develop and improve agricultural lands</i> and to create and establish a system of rural credits to be controlled and managed by the State Loan and Investment Board” “Farm loans shall be made in a manner to parties which, in the judgment of the Board, <i>will derive the greatest benefit of the state and represent a wise investment of state funds.</i> ”
<b>Application Farm/Ranch Information Request</b>
XIII. For Beginning Agriculture Producer Loans, provide a <i>detailed business plan</i> for the first 3 to 5 years of your operation.

Source: Legislative Service Office summary.

LSO conducted a review of 26 total Farm Loan case files, including 16 Beginning Agriculture Producer loans. Throughout the casefiles, LSO encountered few business plans. In addition, most plans found and reviewed by LSO do not articulate clear and measurable impacts anticipated from loans to the prospective borrowers. Often these plans were short (one page or less) and hand-written. During LSO’s observation of an OS LI staff briefing with a SLIB board member prior to a recent the SLIB meeting, the OS LI mentioned that typical business plans they receive are not detailed or informative.

OS LI staff stated that in the absence of these business plans, the staff must conduct further due diligence with prospective borrowers through telephone or other correspondence to better understand what is to be gained by the borrower (and by extension, what is gained by the community and the State). This coordination and communication is in addition to reviewing other aspects of an application, particularly the prospective borrowers’ cash flow as representative evidence for judging their ability to repay the loan.

The basic issue with respect to gauging the extent to which the Farm Loan program is meeting its purpose is not that the OS LI or the SLIB have failed to articulate the need for public benefit. Rather, the OS LI cites two specific challenges to enforcing the business plan provision in the application review process, including:

- 1) Current the OS LI farm loan review staff are not trained and have no expertise to evaluate and render advice or comment on agriculture business plans; and
- 2) Varying levels of borrower expertise to navigate technology to comply with more rigorous plan formatting and description requirements.

On the first issue, while statute requires the SLIB/OS LI to “employ assistants, clerks, appraisers and other employees as necessary to conduct its business (11-34-103(b)),” the agency does not believe that the current program utilization rate is high enough and that the current budget climate and balancing other grant and loan program duties do not provide justification for additional staff at this point. Finally, the agency counters that utilizing agency appraisal staff helps properly secure or collateralize

these loans in lieu of requiring or reviewing more detailed business plans, despite the ongoing application requirement.

Second, OS LI staff believes it is necessary to remain flexible and approachable to continue to adequately interact with prospective borrowers. They assert that many prospective borrowers are not well versed in technology that may assist their compliance with the business plan requirement. Therefore, in the absence of well-defined business plans, OS LI staff pursues constant formal and informal interaction with prospective borrowers in order to satisfy its need for information on the bankability of each loan. With varying levels of industry and technological expertise among applicants, the OS LI believes the same information that would be found in a business plan may be gathered without prescriptive requirements.

In addition, it appears the current application review process highlights only the financial side of an application and not the public purpose or public benefit side. For example, LSO examined the OS LI application review checklist and rubric/review materials and found that these guiding documents significantly emphasize the necessary financial analysis for each loan. Table 5.3, below, summarizes the Farm Loan Review Checklist, which the OS LI uses to track the status of each application. LSO noted that this substantially mirrors the Farm Loan Process work steps summary and flowcharts. This checklist suggests that the financial analysis, with support of a property appraisal is the review step on which the OS LI relies most to make its recommendations to the SLIB.

**Table 5.3**  
**Farm Loan Review Checklist (Excerpt)**

1	Grants & Loans	Application Received
2	Grants & Loans	Financial Analysis
	Grants & Loans	a. If the analysis is favorable, documents will be scanned to F:\SHARE\Farm Loans (each borrower will have their own folder)
	Grants & Loans	b. If the analysis is unfavorable, written notification sent to applicant - End of process
3	Grants & Loans	c. Notify Field Service Division an appraisal is needed

**Source:** Wyoming Office of State Lands and Investments.

LSO commends OS LI’s loan staff in providing adequate and thorough vetting of prospective borrowers’ financial standing in order to verify their immediate ability to repay on a loan. However, this initial financial analysis does not provide full assurance on a borrower’s long-term ability to repay on a loan nor articulate “detailed” and scrutinized quantitative and qualitative outcomes from the loan directed at assessing public purpose and public benefits to be achieved.

As set out by the Wyoming Entrepreneur Small Business Development Center, a business plan serves three primary purposes: 1) provide a “road

map” for a business and what and how to achieve anticipated objectives; 2) introduce internal and external partners to the business; and 3) provide a sales tool for financing and investment. Plans are intended to foster transparency, staff development, and efficient use of resources. Important features of a detailed business plan may include, but are not limited to:

- Summary and description of a business;
- Operations plan for production, record-keeping, etc.;
- Marketing plan;
- Financial plan; and
- Other supporting information about the business, such as references, brochures, etc.

The OSLI provided LSO with its minimum, desired requirements for such plans, to include “legible business plan where each year is broken out by operations, revenue generation and growth... [and] a narrative on how the borrower plans to control costs associated with their operations.”

The need to better describe and validate farm loans impact and their ability to meet the public purpose mandate is paramount in light of the fact that PPIs in general are not financed at market-driven interest rates (refer to Chapter 3). In fact, more farm loans are now approved for beginning agriculture producers that have interest rates below the yield rate for the PWMTF. Therefore, the balance of these investments’ “return” to the State is beyond cash interest payments. The State should expect and see direct and indirect public benefits obtained from these loans.

To better summarize this concern, the Wyoming Attorney General’s (AG’s) Office makes a distinction between reviews related to the satisfaction of statutory requirements for a candidate investment, and the review in assessing the prospective investments under the prudent investment standards. While this concern is often considered for many of the WBC programs, including the IDB program, this concern also applies to other state “investment” programs. At issue is to establish criteria on which to judge if a public benefit is enough to validate or justify the use of State funds for the investment.

Termed “adequate consideration,” the primary focus is on what the State receives in exchange for a specific concession, such as lower financial returns. Essentially, the State is willing to forgo certain gains (e.g. lower interest rates) *if* the exchange in public benefits is high enough. Currently, no specific criteria exist to determine the proper balance between financial return and public benefit or the point at which adequate consideration is achieved. However, the concept does provide a starting point at which to define the proper relationship between public benefits and financial returns. Obtaining, reviewing, and revisiting farm loan borrowers’ business plans can start the process toward both quantitatively and qualitatively measuring the program’s impact beyond financial rates of return.

A borrower’s application, and more specifically their detailed business plan, is where the OSLI and the SLIB could better judge the effectiveness of a loan with respect to describing the anticipated and tangible benefits gained by the borrower, community, or State. This would also provide solid, objective documentation for the benefit of the borrower and the OSLI. Coupled with overall reporting issues and recommendations described in Chapter 5, assessments of these plans compared to borrowers’ realized achievements could begin to provide the Legislature with other, non-financial outcomes on which to gauge program success.

**The OSLI’s Move to a Modern Data System Is a Good First Step toward More Efficient and Effective PPI Administration**

One issue that significantly impacts the OSLI is the multiple data systems it uses to administer, track, and report on various grant and loan programs, including PPIs. The OSLI uses two primary systems to process current PPI programs’ applications: the Farm Loan System and the Grant and Loan System (GALS). The Farm Loan system is used to manage loans for farm loans, irrigation loans, and special loans (namely the Hot Springs State Park Loans approved prior to 2015). The GALS system is used to track JPA, Aeronautics, Hydro-power loans as well as the new Hot Springs State Park Loan approved in April 2015.

According to OSLI staff, both GALS and the Farm Loan System are antiquated and have limited technical support to maintain the systems. Particular challenges identified by OSLI staff and LSO are included in Table 5.4, below.

**Table 5.4  
Limitations of Current the OSLI Data Systems Used for PPI Tracking and Processing**

<p><b>GALS:</b></p> <ul style="list-style-type: none"> <li>• No longer interfaces with the State’s uniform accounting system (WOLFS)</li> <li>• There are some instances when GALS does not calculate principle and interest income correctly based on differences between GALS default amortization calculation and older loan amortization schedules.</li> <li>• No staff-level ad hoc reporting capability</li> <li>• Other partner programs like the Department of Environmental Quality and the WWDO are unable to access the OSLI information</li> <li>• Not able to link multiple funding sources used for a project (i.e. partnering JPA loan with Mineral Royalty Grant funds)</li> </ul>
<p><b>Farm Loan System:</b></p> <ul style="list-style-type: none"> <li>• Limited accessibility to older, closed Farm Loan electronic files once code designations are changed</li> <li>• Inaccurate Farm Loan action dates due to multiple system conversions over the years</li> <li>• Need to retroactively hardcode some Farm Loan payment dates to appropriately</li> </ul>

calculate loan interest

- No staff-level ad hoc reporting capability and must receive support from the Department of Enterprise Technology Services to create new reports at additional agency expense
- Many broken links leading to no information or data

**Source:** Legislative Service Office summary of the Office of State Lands and Investments information.

Under these circumstances, and in order to maintain proper reporting and interface for the federal Safe Drinking Water and Clean Water State Revolving Fund (SDWSRF and CWSRF) programs also administered through the OSLI, the agency began looking into a new primary data system in 2012. According to OSLI staff, the previous GALS contractor, while sufficient in the past, was not very responsive to initial requests for information on updating or replacing GALS. Therefore, the OSLI moved forward with a new contractor, Technology Partnership Group, in January 2014 to implement a modular data system called EnABLE. The OSLI is funding this new system primarily with state revolving funds, since its primary focus will be on the federal water programs. However, it will be able to support the OSLI's other grant and loan programs' administration as well.

Specific benefits of this transition to a new system include:

- Web-based system and accessible by other agencies;
- Module structure and can be upgraded and customized;
- Interfaces with federal data bases and the State's accounting system (WOLFS);
- Reporting efficiencies, including ad hoc reporting;
- Track grant and loan activities; loan life-cycle tracking;
- Automated system, processing and programmable workflows;
- Allow for electronic (email) invoicing; and
- Role-based security; user tags to identify when and by whom changes are made.

The full roll-out of the system is expected to be a phased process where new modules are planned, built, tested and pushed into production one at a time. The initial intention is to get the federal programs online first, followed by the Farm Loan System and other stand-alone systems. Items in the GALS system are anticipated to be moved to EnABLE last, as it is still meeting basic staff needs at this time. Costs for the system were estimated at \$400,000 through FY2016, though it is unclear if the original cost and timeframe will be met.

**Recommendation 5.1:** The OSLI and the SLIB should conduct a review of Farm Loan program rules to address the timing of repayments.

The OSLI and the SLIB have not conducted a comprehensive or thorough review of its Farm Loan promulgated rules in some time. Current rules have been effective since September 2008, but it appears that the agency has some misconceptions, perhaps passed along from outgoing to incoming staff. This “how things have always been done” or inherited approach obscures the discretion and flexibility the agency has to outline formal processes for the farm loan program. The OSLI staff did note that it is currently undergoing a rules reduction review in accordance with the Governor’s directive. LSO believes this would be an opportune time to not just look at rules reduction, but modifications that set the program on more modern footing. This review should also extend beyond the repayment issue. This should blend well with the agency’s move toward a modern data system, EnABLE, which is intended to allow for the agency to more efficiently use or manage its flexibility and limited staff resources.

**Recommendation 5.2:** The OSLI and the SLIB should provide a business plan template for prospective borrowers to follow when applying for a loan under the Beginning Agricultural Producer sub-program of the Farm Loan program..

**Recommendation 5.3:** The OSLI should coordinate with the WBC to provide training and/or other guidance to both OSLI staff and prospective Beginning Agricultural Producer borrowers on adequate and actionable business plans.

**Recommendation 5.4:** The OSLI should require annual or biennial reports from Beginning Agricultural Producer borrowers on their progress toward meeting business plan expectations and goals.

It is clear that the existence of the Farm Loan program implies the Legislature wishes to achieve a public purpose related to sustaining and expanding agricultural enterprises in the State. The SLIB’s general policy found in program rules and regulations reiterates this purpose: “inure to the greatest benefit of the State and represent a wise investment...” However, other than financial loan performance, there is little to no information available for the OSLI and the SLIB to more clearly articulate how the purpose or public benefit is verifiably being achieved. In addition, since a typical business plan includes both financial and other components, the institution of more thorough plan requirement by the OSLI should provide an enhanced application starting point on which the agency can pursue clarification from borrowers as well as to base loan approval and monitoring decisions.

**Recommendation 5.5:** The OSLI should report back to the Management Audit Committee in one year to review the status and progress of the EnABLE data system.

While EnABLE is not intended to solely focus on the OSLI/SLIB’s PPI programs, it is important for the agency to keep the Legislature informed of when and how the system ultimately functions to make PPI administration more efficient and effective. Specific agency concerns with being short staffed and under resourced for the volume of grant/loan programs it administers create incentives for the agency to structure the system to work

with current staff and resource constraints, but to still accomplish all program and reporting requirements. Also, the Legislature will obtain better feedback of where EnABLE may not answer all resource concerns of the agency prior to the 2017 General Session where supplemental appropriations may be discussed.

---



---

## Chapter 6: Outmoded and Unclear Statutes Could be Modified or Repealed for More Efficient Administration

---



---

Since the 1997 LSO evaluation on LDIs, the Legislature has made many modifications to PPI statutes to revise PPI programs and project authorizations. Even with changes to clarify legislative intents, some PPIs have fallen out of favor, still contain confusing or unclear statutory direction, or need modification to achieve intended public purposes. In addition, LSO found that some current PPI-administering agencies' practices could benefit from modifications to help increase efficiency and transparency, as well as more clearly hold borrowers accountable for meeting program goals.

### Areas for Potential Statute Modification

LSO identified numerous inconsistencies or potential issues with various PPI program statutes. LSO found two areas within the OS LI administered programs that appear to require statutory modification. Table 6.1, below, summarizes the particular programs and statute references that should be reviewed by the Legislature for potential revision. Following the table are briefings on the issues identified by LSO.

**Table 6.1**  
**PPIs Recommended for Statutory Modification**

Program	Statutory Reference	Issues to be addressed
Small Water projects	W.S. 11-34-301 and 302	<ul style="list-style-type: none"> <li>• Inconsistent statutory terminology</li> <li>• Similarities to the Wyoming Water Development Commission's small water development program</li> </ul>
Hydro-Power program	11-34-306	<ul style="list-style-type: none"> <li>• No per project cap within statute</li> <li>• Inconsistent and bifurcated administration for hydropower projects between the OS LI/SLIB and the WWDO/C</li> </ul>

Source: Legislative Service Office summary.

### **The OS LI Small Water Development Project Statutes Have Inconsistent Terminology and is Similar to a WWDC Program**

LSO identified two issues related to the small water development program that is administered by the OS LI with individual project loans approved by the SLIB. First, the statutory authorization under W.S. 11-34-301 and 302 provide for the OS LI to loan funds to eligible borrowers for small water projects and regular water development projects, respectively. These projects have been traditionally known as "irrigation loans." Irrigation loans are not defined in statute, yet this legacy terminology is still retained throughout

Title 11, Chapter 34 dealing with the OS LI/SLIB program authorizations. For example, W.S. 11-34-202 refers to the loan loss reserve account, to include covering “irrigation loans” under W.S. 11-34-302. Similarly, W.S. 11-34-105 and 113 specifically reference irrigation loans.

The second issue LSO identified related to the small water project PPI is that the program appears to closely resemble a similarly named program administered by the WWDO and WWDC. Under W.S. 11-34-301, the SLIB is authorized to approve up to \$20 million for these projects, of which no single or individual small water project can exceed \$150,000; loans under W.S. 11-34-302 can and do exceed \$150,000. The PWMTF is currently used for investments in irrigation loans, although statute allows the SLIB to invest from any permanent fund. The purpose of the OS LI’s water development program is to allow loans for “agricultural, recreational, or municipal purposes.” The program is available to court approved water districts, agencies of state and local government, as well as “persons, corporations, and associations” in this state.

The comparable program administered by the WWDO/C is also referred to as the small water projects program, authorized under W.S. 99-3-703 and 704. Its purpose is to participate with land management agencies and sponsoring entities (political subdivisions, including the joint or separate business councils of the Eastern Shoshone and Northern Arapahoe Indian tribes) in providing incentives for improving watershed condition and function. Authorizing statutes specifically note that the purpose of these projects include “agriculture, recreation, [and] environmental.”

Eligible projects may receive grants from the WWDC of half the project cost up to \$35,000, with the WWDC funding the projects through the Water Development Accounts. No single project may cost more than \$135,000 in total to be eligible for the program. Eligible projects include the construction or rehabilitation of small reservoirs, wells, pipelines and conveyance facilities, springs, solar platforms, irrigation works, windmills and wetland developments.

While the OS LI and WWDO/C may currently administer each program somewhat differently, the program authorizations, individual project funding levels, and purposes appear to overlap. The following areas represent examples where each program may differ, but may also impact program usage and attainment of program purposes:

- The OS LI’s program is a loan program whereas the WWDO/C program is a grant program;
- The OS LI’s program allows loans to private individuals, corporations, and associations along with sponsoring public entities whereas the WWDO/C program must utilize a sponsoring public entity; and
- The WWDO/C must still provide technical assistance to the OS LI for its program.

### **Hydro-power Development Program Confronts Administrative Challenges to its Use and Current Statute Does Not Provide a Clear Program or Project Funding Limit**

Approved in 2011, the hydro-power development program authorized under W.S. 11-34-306 and administered by the OSLI/SLIB has to date gone unused. According to agency officials, there appears to be interest among potential sponsors to fund these types of projects. However, interest may be tempered by this program's mechanics and terms to finance with loans. According to the WWDO staff, which is again statutorily required to consult on these projects, the time period to recoup investments in hydropower projects is long (up to 40 years; also longer than the maximum term of a potential loan of 30 years) and funding significant project costs on a loan may be considered too big of a risk for most communities.

While the WWDC provides assistance for the required feasibility studies, project sponsors must seek construction funding elsewhere, which could include the OSLI/SLIB under this program. Staff from the WWDC stated that sponsors want a grant program to pursue their investments in hydro-power. Based on agency practice the WWDO views using its water development account funds for hydro-power project construction to be beyond its mission. Specifically, the WWDO emphasizes putting water to beneficial use and not necessarily to provide communities with funds to assist in building revenue generating facilities. While it is unclear how much or if the funding available in the water development accounts could be used for hydro-power projects, the WWDO officials noted that it has not had a lot of interaction with the OSLI regarding the construction funding portion of these projects through the OSLI loan program.

One additional concern with the program is that there is no program-level cap similar to other PPIs. Currently, the statute states, "[a]ny loan granted under this section shall not exceed the aggregate sum of ten million dollars..." It appears that the Legislature may have intended the program-level cap to be \$10 million, but the OSLI currently interprets this language to mean that each single loan may be up to \$10 million. Furthermore, if the \$10 million is meant to be a program-level cap, if there is ever a large interest in this program, a single project could likely use a large percentage of a \$10 million program cap.

### **Areas for Potential Statutory Repeal**

Some PPI programs are no longer used or applicable to current needs. While in the past there was a concern with keeping unused program authorized funds in low-income producing investments (keeping them liquid) in anticipation for possible PPIs, the PWMTF is currently growing due to constant severance tax revenues. Therefore, the unused PPIs do not impact the portfolio. Listed in Table 6.2 is a summary of five PPIs that are not actively used and appear unlikely to be used by the State in the future. Full program descriptions may be found in Appendix C.

**Table 6.2**  
**Select Public Purpose Investments to Consider for Repeal**

Program	Statutory Reference	Issues Substantiating Repeal
Local Government Bond Guarantee program	W.S. 9-4-1002; 9-4-715(h)	<ul style="list-style-type: none"> <li>• Program has never been used since its inception date (1994), and therefore no bonds are currently under State guarantee</li> <li>• 1997 LDI evaluation found that the State required IRS approval to operate this program and this approval has not been, and is not planned, to be pursued</li> </ul>
School District Bond Guarantee	W.S. 9-4-1001 W.S. 9-4-715(g)	<ul style="list-style-type: none"> <li>• The Legislature provided a sunset date (November 1, 2001) for bonds eligible for the state guarantee (2002 Laws, Ch. 51)</li> <li>• State no longer guarantees new school district bonds under this authorization</li> <li>• Outstanding balance of State-guaranteed bonds is expected to mature in June 2020 and repeal would not impact these current guarantees.</li> </ul>
Area Redevelopment program	W.S. 11-34-303	<ul style="list-style-type: none"> <li>• Program has not ever been used to the recollection of both the OSLI and the WBC staff</li> <li>• Neither the SLIB (via OSLI staff assessment) nor the WBC believes it has primary responsibility for this program, although the statute delegates decision authority to the SLIB with the WBC acting as an advisory (not recommending) entity</li> <li>• The first federal statute referencing this program, Chapter 28 of Title 42 of the Federal Public Health and Welfare Act was repealed in 1965</li> <li>• The second federal statute reference, 42 U.S.C. 3161 and 3162, does not appear to reference an appropriate program to meet the intent of State statute and program</li> </ul>
Deferred Property Tax program	W.S. 9-4-715(j)	<ul style="list-style-type: none"> <li>• Last county to seek benefits under this program was Teton County in 1998</li> <li>• All outstanding debts under this program paid in full in 2010</li> </ul>
UW Advanced payment contract program	W.S. 21-16-501 et seq.	<ul style="list-style-type: none"> <li>• In 1997, the three-member administering board agreed to suspend the program</li> <li>• Primary authorizing statute for the STO to invest in these contracts, W.S. 9-4-701(n) was repealed in 2008 and has not been re-codified.</li> <li>• W.S. 21-16-505 allows for rules to be promulgated by the administering board, but there is no specification with which entity these rules would be enforced.</li> <li>• Appears no investment has been executed since at least 1997 (date of last LSO evaluation)</li> </ul>

**Source:** Legislative Service Office summary.

In addition to the above noted programs considered for repeal, two other programs may also be candidates for repeal: 1) the Student Loan Stand-by program authorized under W.S. 21-16-113 (coupled with W.S. 21-16-714); and 2) Lamb Processing Facility loans authorized under 11-34-304 and 305. While these programs contain similar lack of use issues to those listed in Table 6.2, these programs require more explanation as to the potential complications to moving forward with repeal.

The Student Loan Stand-by program is a PPI that is intended to function as a credit enhancement program where the State commits to purchasing federally guaranteed student loans issued by eligible entities if these entities cannot fulfil their bonding obligations. The maximum amount the State is able to commit is \$175 million. To date, only one entity was ever covered under this program: the private, non-profit Wyoming Student Loan Corporation later renamed Western States Learning Corporation (WSLC).

According to the STO, the program is no longer in use. The WSLC does provide loan servicing for other Wyoming loan (professional services “investment) programs, like the Wyoming Investment in Nursing, but recently sold its federally subsidized student loans to the Utah Higher Education Assistance Authority. The sale of these loans is primarily due to Congress passing the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA), which gives the U.S. Department of Education the authority to buy Stafford and PLUS loans from Federal Family Education Loan program (FFELP) lenders. Federally subsidized student loans are now only offered directly through the U.S. Department of Education. Effectively, the market for the Student Loan Stand-By program no longer exists.

However, the funding cap under W.S. 21-16-113 also applies to a second entity, the Wyoming Higher Education Assistance Authority (WHEAA) authorized under W.S. 21-16-701 et seq., which has similar commitment authority as the Student Loan Stand-by program. The WHEAA is “a body corporate to operate as a state instrumentality...” and not a private company. To date, the WHEAA has not used its financing authority nor has the State committed State funds under W.S. 21-16-714.

Table 6.3, below provides the statutory cross-references under the Student Loan Stand-by program and WHEAA program to which the State funding commitment cap applies.

**Table 6.3**  
**Student Loan Stand-by Program and Wyoming Higher Education Assistance Authority**

<b>Student Loan Stand-by Program (W.S. 21-16-113)</b>	<b>Wyoming Higher Education Assistance Authority (W.S. 21-16-714)</b>
The state treasurer with the approval of the governor and the advice of the attorney general may enter into standby commitment agreements for a commercially reasonable fee with any Wyoming nonprofit corporation organized to acquire guaranteed, or insured and other higher	(a) Subject to approval of the governor and advice of the attorney general, the state treasurer may enter into standby commitment agreements for a commercially reasonable fee with the authority under which the state agrees to purchase loans held by the authority at any

<b>Student Loan Stand-by Program (W.S. 21-16-113)</b>	<b>Wyoming Higher Education Assistance Authority (W.S. 21-16-714)</b>
<p>education loans in which the state of Wyoming will agree to purchase loans held by the nonprofit corporation at any time the corporation is unable to pay interest on or principal of any of its outstanding bonds on any regularly scheduled interest or principal payment date, or at maturity, whether by acceleration, redemption or otherwise...If the commitment is incurred, the investment shall be made from the Wyoming permanent mineral trust fund or permanent land fund and, <b>when combined with investments under W.S. 21-16-714, shall not exceed one hundred seventy-five million dollars (\$175,000,000.00). LSO Emphasis</b></p>	<p>time the authority is unable to pay interest on or principal of any of its outstanding obligations on any regularly scheduled interest or principal payment date, or at maturity, whether by acceleration, redemption or otherwise...If the commitment is incurred, the investment shall be made from the Wyoming permanent mineral trust fund or permanent land fund, and investment under this article, <b>when combined with investment made under W.S. 21-16-113, shall not exceed one hundred seventy-five million dollars (\$175,000,000.00). LSO Emphasis</b></p>

Source: Legislative Service Office summary..

The lamb processing facility loan program is not a PPI program in the same sense as others defined in this evaluation. However, LSO evaluators requested clarification regarding this program since it is essentially structured similar to PPIs administered by the OS LI and is in fact within the same Article as the small water project, area redevelopment, and hydro-power development programs.

This program was initiated in 1982 (1982 Laws, Ch. 25) and is intended to have the State loan public funds to assist in the development of lamb processing facilities to enhance the State's agricultural economy. It appears the Legislature intended for this program to be ongoing as it notes, like other the OS LI-administered PPIs, that there is a per-project cap (\$3.5 million) and sets interest rate requirements and maximum terms (7-12% for 20 years). However, statutory provisions do not specify the use of state permanent or non-permanent funds for these investments, but rather the original legislation appropriated \$3.5 million of state General Fund monies to initiate the program; loan principal and income was expected to be distributed back directly to the General Fund. OS LI staff stated that to their recollection, this program has not been used since its initiation and no other documentation or information can be found about loan activity.

**Recommendation 6.1:** The WWDO and the OS LI should study the areas in which both agencies provide services and program administration related to small water development and hydro-power development projects.

While the WWDO/C has primary responsibility for State water development administration and oversight, the Legislature has over time allowed the OS LI to offer programs that may impact the statewide water development policy. This recommended study is also important in light of the State water strategy released by the Governor in January 2015, specifically the "ten in ten"

proposal for building ten small water storage facilities in ten years. Therefore, due to overlapping responsibilities, the OSLI and WWDO should work together to identify overlapping program features, redundant processes, how program administration and oversight may be streamlined, as well as offer specific review and recommendation on the feasibility of implementing W.S. 11-34-306 (hydro-power development loans) to either complement or supplement actions required to meet state water development needs. A study report should be presented to both the Select Water Committee and the Agriculture State, and Public Lands & Water Resources Committee before the 2017 General Session.

**Recommendation 6.2:** The Legislature could consider the following modifications to PPI program statutes:

- Revise relevant statutes under Chapter 34 (State Loan and Investment Board), Title 11 (Agriculture, Livestock and Other Animals) to change references from “irrigation loans” to “water development projects” or “small water projects,” as applicable, in conformance with the terminology used for the loan program authorized under W.S. 11-34-301 and 302.
- Revise W.S. 11-34-306 to provide clarification on whether the \$10 million hydro-power funding level is intended to be the program-level funding limit, rather than per-project funding limit.
- Repeal the statutory authorizations for the following inactive and/or unused programs:
  - Local Government Bond Guarantee program: W.S. 9-4-1002 and 9-4-715(h);
  - School District Bond Guarantee program: W.S. 9-4-1001 and W.S. 9-4-715(g);
  - Area Redevelopment program: W.S. 11-34-303;
  - Deferred Property Tax program: W.S. 9-4-715(j);
  - University of Wyoming Advance Payment Contract program: W.S. 21-16-501 through 21-16-505
  - Student Loan Stand-by program: 21-16-113 (with conforming amendments to 21-16-714 for the WHEAA)
  - Lamb Processing Facility Loan program: 11-34-304 and 11-34-305

### **Requiring the WBC to Recommend Interest Rates for IDBs does not Agree with Prudent Investor Principles**

Set out in W.S. 9-4-715(m)(ii)(C), the interest rates for industrial development bonds are initially recommended by the WBC, before the STO has conducted its due diligence on the project applications. This requirement has been in statute since 2001 (2001 Laws, Ch. 136; then under W.S. 9-4-701(q)(ii)(C)) and specifically states:

“(C) The bonds bear interest at a fixed or adjustable rate, indexed to the prime or ten (10) year treasury bill rate as determined by the state treasurer, which is reasonably commensurate with the risk, *as recommended by the Wyoming business council; and (LSO Emphasis)*”

During research of IDB projects, LSO found that the statutory construction to have the Wyoming Business Council recommend interest rates for IDBs, particularly so early in the State's review process, is problematic for both the WBC and the STO. Based on the current IDB process, candidate IDBs are first scrutinized by the WBC, and are only considered for investment by the STO upon a favorable recommendation from the WBC (and the Governor). However, the State, through the STO, is charged with the final authority to determine appropriate interest rates for IDBs as prescribed by this statute and applying prudent investor principles (under W.S. 9-4-715(m)(vi)).

In order to determine the appropriate rate, the STO must complete a due diligence review to assess the ultimate risk to the State. Subsequently, the applicant cannot receive a final approved interest rate until after the WBC and the STO fully review the project. Significantly, the final interest rate will, or should, have bearing on the overall analysis conducted by both agencies in order to reasonably value and assess the viability of these investments.

According to both agencies' officials, in the past potential applicants would approach the STO first, either independently or in conjunction with the WBC, to discuss the project and potential interest rates, often without much of the required due diligence conducted. The STO states that any rate discussions that occur at the preliminary phase are entirely cursory, since the STO must thoroughly review the candidate IDBs in order to determine an appropriate rate.

The WBC uses its recommended interest rate during its review process to calculate cash flow and perform other due diligence review of a project. According to WBC officials, the applicant may use the interest rate to determine if funding through the IDB program is the best or most viable financing option for the project. However, LSO found from casefile reviews, there has not been a consistent method or policy used by the WBC for establishing or estimating interest rates for IDBs.

For the most recent IDBs approved by the State, the WBC says it based the recommended interest rates of 4.25% on the overall return on the PWMTF, with some advice provided by the STO. This is intended to be the practice for the WBC moving forward, but this policy and practice has not always been the case. In 2012, the WBC favorably considered investment in an IDB for a facility in Laramie County with a recommended interest rate of 2.5%. Although the bond never closed because the applicant withdrew before the STO completed its review of the project, the interest rate recommendation illustrates a different rate philosophy has been used by the WBC.

The most basic concern for both agencies is that the WBC-recommended rate sets an expectation with the applicant that can impair the STO's ability to independently assess a rate 'reasonably commensurate' to the risk. Officials from the WBC would prefer a more formalized rate recommendation process, and states that it is helpful to the applicant and the WBC to have a suggested

initial interest rate. However, knowing the actual interest rate would be optimal earlier in the process to help with their analysis of the project.

**Recommendation 6.3:** The Legislature could consider removing the requirement that the WBC formally recommend the interest rate on IDB applications.

It appears that the WBC and the STO currently have a reasonable coordinating process to implement the IDB program and the STO has even promulgated rules for its responsibilities under the program. These rules may promote greater consistency in rate determinations in the future. Yet, in order to maintain the current, coordinated process, the strict statutory requirement for the WBC to recommend an interest rate prior to the STO review appears unnecessary and may be counter-productive to following prudent investment principles required of the STO.



---

# **Agency Response**

---

## **Wyoming Public Purpose Investments**

---



---

# Agency Response

---

## State Treasurer's Office (STO)

---

**MARK GORDON**  
STATE TREASURER

**PATRICIA O'BRIEN ARP**  
DEPUTY STATE TREASURER



E-MAIL: Mark.Gordon@wyo.gov  
Pat.Arp@wyo.gov

TELEPHONE: 307-777-7408

**STATE OF WYOMING**  
**OFFICE OF THE STATE TREASURER**

STATE CAPITOL  
200 WEST 24TH STREET  
CHEYENNE, WY 82002

MEMORANDUM

Date: July 7, 2015

To: Senator Bruce Burns, Chairman  
Representative David Miller, Vice-Chairman  
Management Audit Committee  
Wyoming State Legislature

Re: State Treasurer's response to LSO Program Evaluation Report: *Wyoming Public Purpose Investments*

Dear Senator Burns, Chairman, Representative Miller, Vice Chairman, Management Audit Committee and Wyoming State Legislature:

The State Treasurer's Office appreciates the opportunity to comment and respond to the Legislative Service Office Program Evaluation Report: *Wyoming Public Purpose Investments*. Before commenting on some of the specific recommendations encompassed in the report, we would like to offer a couple of observations providing a context for our comments.

First: The report alludes to a confusion of terms used to label the collection of programs and specific outlays directing State of Wyoming monies towards items ostensibly obligated for a "public purpose." This awkwardness demonstrates the wide spectrum of intent and circumstance "Public Purpose Investments" occupy. The universe of intent, purpose, process, and style is quite broad whether grouped as "Wyoming Investments," "Public Purpose Investments (PPIs)," "Legislatively Directed Investments (LDIs)," or some other construction such as "Legislatively Authorized Investments" or, as in the case of Wyoming Infrastructure Authority issues, related Wyoming initiated bond purchases. We believe all of these approaches are well-intentioned even if occasionally their effectiveness varies and their prosecution is uneven. Our role, where we have been given the responsibility and authority, is to bring to our consideration of each potential investment the discipline embodied in the Uniform Prudent Investor Rule tempered by

the proposed source of funding and the Legislature's intent. On the matter of funding source, speaking for this Treasurer, we regard monies authorized for a public purpose out of the State's Permanent Funds as requiring a higher degree of diligence from those the Legislature might set aside from appropriations for the purpose of stimulating economic development. The Permanent Funds represent a lasting legacy for future generations and, in our view, should not be carelessly gambled away. Still, one must be mindful of the intent of each investment as well as each program. There is a divergence of rationale between say a water project for a community and a program intended to offer a safety valve for the vagaries of economic condition or economic quirk. These differences auger against uniform prescription under a broad umbrella; rather they suggest groupings of these sorts of investments might benefit from a more customized approach taking into account purpose, funding, size, intent, responsibility, and approach.

Second: Although probably self-evident, it is clear that the Legislature has a different role and responsibility for and to PPIs than the Executive. This Treasurer believes that personal views about philosophy or the appropriateness of programs or approaches are not material to his execution of Legislative notion. It is his duty to strive to implement the ideas of the Legislature in accordance with Constitutional and Statutory limits. It is important that Legislatures present and future understand the size, effectiveness, and success of these types of investment. Consequently, we are continually striving to find better ways to describe these investments and isolate them in our reports. We want to assure the public an accurate representation of the dimension of these undertakings alongside the standard investment portfolio.

**Recommendation 3.1:** The Legislature could consider setting a consistent or default interest rate for all PPIs, which correlates with a multi-year rolling average of the PWMTF yield.

**Partially Agree:** As mentioned in our preamble not all of these programs are created equal. For some, an interest rate with bands which is sensitive to the marketplace would help define the dimensions of a particular program or investment. For others, such as Ag Loans, their function as a safety valve for the extreme spikes in interest rates such as those experienced by Ag borrowers in the 1980's, set rates are valuable. Depending on the program, Executive prerogative is a more nimble and constructive way to calibrate intent with the marketplace than codified statute.

**Recommendation 3.2:** The Legislature could consider extending appropriated funds or establishing a separate fund for IDBs rather than using the PWMTF.

**Agree**

**Recommendation 4.1:** The Legislature could consider amending W.S. 9-4-715(n) to provide for more comprehensive, standardized, and direct reporting requirements for all PPI programs and projects.

**Agree:** We believe comprehensive and broadly inclusive reporting with a legislatively expressed definitive cap is superior to a statutorily enumerated list of specific investments. An inclusive cap would allow the Legislature to definitively express its view on a total it would like to commit to these sorts of investments.

**Recommendation 4.2:** The STO should coordinate and compile information noted under Recommendation 4.1.

**Agree:** We agree with allowing the Treasurer to “coordinate and compile” PPI information but note that (i) the obligation may require resources not currently available to the STO, (ii) other agencies must cooperate with, and supply necessary information to, the STO, and (iii) the STO would need direction and guidance from the Legislature as to what information it needs and how it would like such information compiled. There is a plethora of information and, without guidance from the Legislature and an understanding of the Legislature’s needs, then such information could be overwhelming and of little use.

**Recommendation 6.2:** The Legislature could consider the following modifications to PPI program statutes as outlined in this chapter:

- Revise relevant statutes under Chapter 34 (State Loan and Investment Board), Title 11 (Agriculture, Livestock and Other Animals) to change references from “irrigation loans” to “water development projects” or “small water projects,” as applicable, in conformance with the terminology used for the loan program authorized under W.S. 11-34-301 and 302 and as presented by the OSLI website.
- Revise W.S. 11-34-306 to provide clarification on whether the \$10 million hydro-power funding level is intended to be the program-level funding limit, rather than per-project funding limit.
- Repeal the statutory authorizations for the following inactive and/or unused programs:
  - Local Government Bond Guarantee program: W.S. 9-4-1002 and 9-4-715(h);

- School District Bond Guarantee program: W.S. 9-4-1001 and W.S. 9-4-715(g);
- Area Redevelopment program: W.S. 11-34-303;
- Deferred Property Tax program: W.S. 9-4-715(j);
- University of Wyoming Advance Payment Contract program: W.S. 21-16-501 through W.S. 21-16-505;
- Student Loan Stand-by program: W.S. 21-16-113 (with conforming amendments to W.S. 21-16-714 for the WHEAA); and
- Lamb Processing Facility Loan program: W.S. 11-34-304 and W.S. 11-34-305.

**Partially Agree:** Before repealing the statutory authorizations for the Local Government Bond Guarantee program or the School District Bond Guarantee program, the Legislature should review each to determine whether either could aid communities or districts in finding less expensive options in the future when either might need to avail themselves of these facilities. There is a precedent for School Districts which the Legislature might find instructive.

**Recommendation 6.3:** The Legislature could consider removing the requirement that the WBC formally recommend the interest rate for IDB applications.

**Partially Agree:** The challenge inherent in the IDB program is a “chicken or the egg” conundrum. The process envisioned in statute of having the WBC formally recommend the interest rate is appropriate, instructive, and sound because it allows the WBC to review an application for its business soundness before being advanced to the Governor and Treasurer. The “egg” in the process is what interest rate should the WBC use to evaluate the application? The process has not always been consistent. Occasionally the applicant might ask what the Treasurer could do for an interest rate and I believe this has usually been the approach. Depending, however, on the Treasurer’s inclination or sophistication that answer can fall within quite a range from what our yield projection might be (around 2% currently) to a five year total return (closer to 6% currently). This Treasurer has benefitted from allowing the WBC to recommend a rate because it establishes a likely lower bound on business rather than political grounds. Allowing the Treasurer discretion in setting the ultimate rate assures STO has the opportunity to exercise its due diligence pricing in market, public purpose, and any other pertinent considerations.

Response to LSO Program Evaluation Report:  
*Wyoming Public Purpose Investments*  
July 7, 2015  
Page 5

Thank you for the opportunity to respond to the Report and we look forward to working together to create and implement PPI programs that are the result of thoughtful and deliberate consideration as we balance the needs and concerns of the State.



---

# Agency Response

---

## Office of State Lands and Investment (OSLI)

---

### WYOMING OFFICE OF STATE LANDS AND INVESTMENTS

122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002  
Phone: 307.777.7331  
Fax: 307.777.3524  
[slfmail@wyo.gov](mailto:slfmail@wyo.gov)



MATTHEW H. MEAD  
Governor

BRIDGET HILL  
Director

July 7, 2015

Senator Bruce Burns, Chairman  
Representative David Miller, Vice-Chairman  
Management Audit Committee  
Wyoming State Legislature

Re: LSO Program Evaluation Report: Public Purpose Investments

Dear Chairman Burns and Vice-Chairman Miller:

We appreciate the opportunity to respond to the program evaluation report prepared by the Legislative Service Office Program Evaluation Team (LSO) entitled **Wyoming Public Purpose Investments** (Report). The Report examines the State's public purpose investments including several programs administered by the Office of State Lands and Investments (OSLI). In accordance with W.S. § 28-8-107(c), please consider this OSLI's formal written response to the Report.

Our response will primarily focus on the six recommendations in the Report specific to OSLI and will not respond to all of the assertions and conclusions on which the recommendations are based and with which we may disagree unless those assertions and conclusions are material to our response. However, before we address the recommendations of the Report specific to OSLI, we believe that it is appropriate to briefly express our views related to two general themes in the Report.

#### **GENERAL COMMENTS**

First, with regard to the discussion in the Report related to measuring and assessing whether farm loans are delivering a public purpose benefit; it is our belief that the program itself and the availability of these funds provides the public benefit. Specifically, it has long been OSLI's understanding that the Legislature created the

program to foster and encourage farming and ranching in the State, and the Legislature did so to recognize the agricultural industry's importance to the State and our economy as well as the indirect benefits the agricultural industry provides such as a open spaces and scenic view shed. Accordingly, the Legislature created a mechanism to make funding available for agricultural purposes when such funding was otherwise unavailable or the cost of obtaining such funding was too high to allow the agricultural borrower to be successful.

The statutes governing the farm loan program appear to indicate an intent for the SLIB and OSLI to operate more like a commercial lender than a business advisor or economic development entity. In particular, the statutes specify that SLIB is to establish a system of farm loans and the purposes for which said loans can be made (e.g., purchasing land, livestock, fertilizer, and improvements to increase the earning capacity of the borrower), the interest rate to be assessed, that an appraisal of the land to be held as collateral must be completed, and the limitation on the amount of any one loan in terms of a percentage of appraised value. The statutes also specify the criteria the SLIB is to consider when determining the priority to give applicants – financial net worth, earning capacity, and ability to repay the loan.

Considered as a whole, OSLI reads these statutes to indicate that the Legislature's objective was to have OSLI operate much like a commercial lender. The typical metric applicable to lenders is whether loans are being repaid and the interest revenue earned. The additional factor of whether the program is being utilized would also be applicable in these circumstances. If OSLI's understanding is correct, it is difficult to envision how other metrics could be employed to measure the public benefit the program provides especially on an individual loan basis as the Report seems to suggest.

As for the additional metric of program utilization, the program is not currently experiencing a high rate of utilization because interest rates are more favorable from other sources. However, in the eyes of agricultural borrowers, this program continues to provide the intended public benefit because it provides an important source of funding when other sources are unavailable.

The second theme that OSLI would address relates to delinquencies and defaults. Certainly delinquencies and defaults, when they occur, are of great concern for the OSLI and SLIB as we take seriously our charge to safeguard permanent funds. OSLI can report delinquencies and defaults to the Treasurer's Office and the Legislature if this Committee directs. However, it should be noted that in resolving delinquencies and defaults, OSLI is governed not only by the SLIB rules, but also the mortgage

contract applicable to each individual loan. Thus, the resolution of any delinquencies and defaults must be in accordance with those applicable authorities.

## **RECOMMENDATIONS**

### **Chapter 5, Recommendation 5.1:**

**“The OSLI and the SLIB should conduct a review of Farm Loan program rules to address timing of repayments.”**

*Agency Response: Agree*

As the administrative arm of the SLIB, OSLI will, as recommended, conduct a review of the Farm Loan program rules to consider the timing of repayments and whether an adjustment could be of benefit to the program and farm loan borrowers. Indeed, such review can easily be incorporated into OSLI’s plan to review all the SLIB rules in order to streamline and reduce the number of rules.

### **Chapter 5, Recommendation 5.2:**

**“The OSLI and the SLIB should provide a business plan template for prospective borrowers to follow when applying for a loan under the Beginning Agricultural Producer sub-program of the Farm Loan program.”**

*Agency Response: Neutral*

OSLI on behalf of the SLIB, can develop and provide a business plan template for prospective borrowers to follow when applying for a loan under the Beginning Agricultural Producer sub-program of the Farm Loan program. However, for the development of a business plan, it may be more beneficial to direct prospective Beginning Agricultural loan program borrowers to the Wyoming Business Council’s Agribusiness Division which, among other things, assists farmers and ranchers with marketing and business development.

Currently, the only type of loan within the farm loan program that requires a borrower to submit a business plan for the first three to five years of operations are Beginning Agricultural loans. The business plan requirement became a component of the Beginning Agriculture loan program to assure that prospective applicants were exercising some forethought and considering factors that may contribute to successful agricultural business operations. In particular, the Beginning Agricultural loan program

was instituted in 2003 to help beginning farmers or ranchers (generally individuals or entities that had never personally owned and operated farm and ranch land) to enter the agriculture business. As such, OSLI expected that those inexperienced in the agricultural industry or younger borrowers would utilize this program and wanted to assure that the prospective borrower had undertaken some business planning. Although younger and inexperienced borrowers do apply for these loans, the Beginning Agricultural Loan program is also utilized by individuals who have worked in the agricultural sector for many years but have simply never personally owned land. This type of borrower oftentimes has a good understanding of the requirements for a successful agricultural business.

Given the diverse type of borrower and the diverse agricultural operations for which borrowers seek loans, the type of assistance and expertise the Business Council's program can provide regarding business plans may be more helpful to potential borrowers. This is especially true when the aim of the business plan requirement was to assure that the borrower had in some way contemplated the various factors applicable to agricultural business operations.

Importantly, although OSLI believes that a sound business plan is a useful tool for the borrower to employ to help the borrower be successful, the content of the Business plan is not the primary focus of OSLI review for Beginning Agricultural Loan applications. Instead, the borrower's ability to repay the loan, credit history, and ensuring that the State is adequately collateralized is the focal point of the agency's review.

#### **Chapter 5, Recommendation 5.3:**

**"The OSLI should coordinate with the WBC to provide training and/or other guidance to both OSLI staff and prospective Beginning Agricultural Producer borrowers on adequate and actionable business plans."**

#### ***Agency Response: Partially Agree***

OSLI can coordinate with the WBC related to the guidance WBC can provide to prospective borrowers on adequate and actionable business plans for the Beginning Agricultural loan program. In fact, when LSO brought this possibility to OSLI's attention, OSLI began informing prospective Beginning Agricultural Loan borrowers that the WBC had a program that could provide guidance and/or training related to developing business plans.

Likewise, OSLI can coordinate with the WBC related to training it could provide to OSLI staff for what information should be expected in a business plan. However, as mentioned under recommendation 5.2, while OSLI believes that a sound business plan is a useful tool for the borrower to implement to help the borrower be successful, the Business plan is not the primary focus of OSLI review for Beginning Agricultural Loan applications. Instead, the borrower's ability to repay the loan, credit history, and ensuring that the State is adequately collateralized is the focal point of the Agency's review. Inasmuch as the statutes indicate OSLI is to act much like a lender, this focus is likely to remain even with additional training related to business plans.

Finally, if this recommendation also anticipates that following training OSLI would then in turn provide guidance or advice to prospective borrowers related to their business plans, OSLI would be cautious of taking such an action. In particular, because it is acting in a lending capacity OSLI would need to be very careful of advising potential borrowers about their business practices to avoid straying into areas that may create some form of lender liability.

#### **Chapter 5, Recommendation 5.4:**

**“The OSLI should require annual or biennial reports from Beginning Agricultural Producer borrowers on their progress toward meeting business plan expectations and goals.”**

#### ***Agency Response: Neutral***

OSLI could require annual or biennial reports from Beginning Agricultural Loan borrowers on their progress toward meeting any business plan. However, OSLI is unclear of the benefits of this suggestion because, as noted above, the measurement of success of the program is repayment of the loan and the interest earned. OSLI does not want to create an unnecessary reporting burden on the borrower, if the information to be gleaned from such a report is not then utilized. Additionally, as stated in our response to recommendation 5.2, the Beginning Agricultural Loan program only requires a business plan for the first three to five years of operations. However, the length of a Beginning Agricultural loan could be thirty years, and OSLI is uncertain if the recommendation is intended to require reporting for the entire length of the loan when the business plan was only required for the first three to five years of the loan.

In any event, reports of this type would provide minimal benefit to OSLI as the metric OSLI is primarily concerned about is the borrower's remittance of the required annual loan payment, and, as noted above, we would be cautious about counseling

borrowers to alter their business plans following a report. Further, OSLI is uncertain as to how this type of reporting could be used to measure whether the program is meeting a public purpose benefit.

**Chapter 5, Recommendation 5.5:**

**“The OSLI should report back to the Management Audit Committee in one year to review the status and progress of the EnABLE data system.”**

*Agency Response: Agree*

OSLI can and will report back to the Management Audit Committee in one year to review the status and progress of the EnABLE data system.

**Chapter 6, Recommendation 6.1:**

**“The WWDO and the OSLI should study the areas in which both agencies provide services and program administration related to small water development and hydro-power development projects.”**

*Agency Response: Agree*

OSLI can implement this recommendation and coordinate with the WWDO to identify if there are areas of overlap and whether efficiencies can be gained through coordinating aspects of both agencies' programs. At this time it is unknown whether such efficiencies could be gained as each agency's programs and roles within each program are separate and distinct. OSLI acknowledges that it appears the programs OSLI administers are not currently being fully utilized. As of June 30, 2015 there are only four outstanding small water development loans totaling \$584,616. Out of these four outstanding loans, the most recent SLIB approved loan was in 2005. Over the past years there has been little to no interest in the Small Water Development Project loan program through OSLI. The majority of loan activity for this program was during the 1970's and 1980's and a coordinated review may help identify ways to increase the utilization of the programs since the state's water needs fall within the WWDO's expertise and its staff may have familiarity with potential water projects.

The foregoing concludes our comments relative to LSO's recommendations. We look forward to discussing the Report in greater detail with the Committee in July.

Sincerely,



Bridget Hill  
Director



---

# Agency Response

---

## Wyoming Water Development Office (WWDO)

---



### WYOMING WATER DEVELOPMENT COMMISSION

6920 Yellowtail Road, Cheyenne, WY 82002

Phone: (307) 777-7626

Fax: (307) 777-6819

<http://wwdc.state.wy.us>

**Matthew H. Mead**  
Governor

#### Commissioners

Nick Bettas	Sheridan Little
Travis C. Brockie, I	William Resor
Karen Budd-Falen	Jeanette Sekan
Floyd Ganfield	Rodney Wagner
David Evans	Todd Werbelow

**Harry C. LaBonde, Jr., P.E.**  
Director

---

Date: July 7, 2015

To: Senator Bruce Burns, Chairman  
Representative David Miller, Vice-Chairman  
Management Audit Committee  
Wyoming State Legislature

From: Harry LaBonde, Director - Wyoming Water Development Office

Subject: LSO Program Evaluation Report: *Wyoming Public Purpose Investments*

Dear Chairman and Vice-Chairman,

The Wyoming Water Development Commission (WWDC) and Wyoming Water Development Office (WWDO) appreciate the opportunity to comment and respond to the Legislative Service Office program evaluation report, *Wyoming Public Purpose Investments (PPI)*. While the vast majority of WWDC projects do not involve PPI funding, there have been six projects in the last 28 years that have utilized loans from state permanent funds. These projects generally fall into one of two categories:

- Those projects that are not eligible through the normal WWDC funding program such as potable water treatment plants. It was determined by the Legislature that the WWDC was the best agency to manage funding for these large projects because of the extensive construction management experience that resides in this agency.
- Projects that are eligible for WWDC funding but because of the project's extremely large size, WWDC funds were not sufficient to finance the project. In these cases, direct legislative appropriations were made and the WWDC managed the project funding.

After a thorough review of the *Wyoming Public Purpose Investments* report, the WWDO offers the following comments:

1. Page 13, footnote 1; "The WWDO and WWDC are statutorily required to consult on hydro-power projects and must consult on OSLLI water projects defined under 11-34-302, if requested by OSLLI." The statute that references hydro-power projects is 11-34-306 and does not specifically require consultation between the agencies. It does however, require a WWDC prepared feasibility study of the hydro-power project and the WWDO is more than willing to consult/discuss the results of the study with the OSLLI as part of their loan application analysis.

2. Page 33 and 34; Table 3.1 shows the Gillette Madison Pipeline with an interest rate of 0% and footnote 2 which details that three loans have been made for this project with no interest accrued. This is misleading in that the loan agreements between the WWDC and City of Gillette stipulate an interest rate of 4% with the provision that interest does not begin accruing until the project is substantially complete. Since the project is still under construction, interest has not yet started to accrue. The text on pages 33 and 34 accurately describe this loan condition but the table does not reflect this information. This loan provision is compliant with the statutory authorization for this loan (99-3-1405).
3. **Recommendation 6.1:** The WWDO and OSLI should study the areas in which both agencies provide services and program administration related to small water development and hydro-power development projects (detailed description provided on pages 65 and 66).

**Agency Response:** Agree subject to the following comments. While the WWDO does not take exception to this recommendation, we do not believe that duplication of efforts between the two agencies or programs is taking place. That being said, the WWDO would be happy to conduct the study with the OSLI to determine potential areas of overlap (if any) and how to achieve improved coordination between the agencies.

- Small Water Development
  - The WWDC Small Water Project Program is designed to provide 50% grants up to a maximum of \$35,000 to qualifying projects to improve or develop new water sources. The source of these funds is Water Development Accounts I and II. Typical projects include stock wells, stock ponds, stock pipelines and tanks, and riparian zone improvements. The overall goal is to improve watershed health.
  - The OSLI Water Development Projects Program is a loan assistance program that will fund 33-1/3 % of water development projects for agricultural, recreation or municipal purposes. The source of funds is permanent funds of Wyoming. The overall goal is water development.
- Hydro-power Development
  - The WWDC will fund Level II feasibility studies for proposed hydro-power projects. The source of funding is Water Development Accounts I and II. The intent of these studies is to provide the project sponsor (irrigation district or municipality) with a realistic assessment of whether the project is cost effective.
  - The OSLI will provide loans to design and construct feasible hydro-power projects for municipalities, irrigation districts or special districts. Loans may be made up to a maximum of \$10,000,000 and the source of funding is from permanent funds of the state. I am not aware of any loans being made under this program primarily due to the project economics. It is difficult for small hydro-power projects to be cost effective when the purchasing price for new power generation is set at the avoided cost by power companies.

The WWDO believes that the draft report clearly delineates and fairly describes the permanent fund loans that have been administered by the WWDC. We look forward to meeting with the Management Audit Committee in July and discussing action items that pertain to WWDC's PPI operations.

Respectfully,

A handwritten signature in blue ink that reads "Harry C. LaBonde Jr." with a stylized flourish at the end.

Harry C. LaBonde Jr., P.E.  
Director

x.c. Michael Swank - LSO



---

# Agency Response

---

## Wyoming Business Council (WBC)

---



BUSINESS COUNCIL  
214 W. 15<sup>th</sup> Street  
Cheyenne, WY 82002  
Tel: (307) 777-2800 Fax: (307) 777-2838  
[www.wyomingbusiness.org](http://www.wyomingbusiness.org)

---

### Memorandum

To: Senator Bruce Burns, Chairman  
Representative David Miller, Vice Chairman  
Management Audit Committee  
Wyoming State Legislature

From: Shawn Reese, CEO 

Subject: LSO Program Evaluation Report: *Wyoming Public Purpose Investments*

Date: July 7, 2015

Dear Chairman and Vice-Chairman,

The Wyoming Business Council appreciates the opportunity to comment and respond to the Legislative Service Office program evaluation report, *Wyoming Public Purpose Investments*.

Below are responses to recommendations involving the Wyoming Business Council.

**Recommendation 3.1: The Legislature could consider setting a consistent or default interest rate for all PPIs, which correlates with a multi-year rolling average of the PWMTF yield.**

**Agency response: Partially Agree.** The WBC supports a consistent approach to interest rates. However, the WBC also believes that there may be instances in which a flexible interest rate will increase the IDB program's responsiveness to certain economic development opportunities. Consistency and a default interest rate would benefit a prospective borrower because the prospective borrower could incorporate the rate into its financial projections reviewed by the WBC. Besides prevailing interest rates, there may be other business-specific circumstances that could necessitate a different rate such as the business' credit worthiness and risk, debt service ratios, etc. The WBC believes that an interest rate established in rule—and criteria by which a rate can be modified based on a business's financial situation would create consistency, flexibility, and responsiveness to a variety of economic development opportunities. An interest rate set in statute would be difficult to adjust and could decrease flexibility and responsiveness.

**Recommendation 3.2: The Legislature could consider extending appropriated funds or establishing a separate fund for IDB's rather than using the PWMTF.**

**Agency response: Agree.** The WBC supports consideration of extending appropriated funds for IDB's rather than using the PWMTF. This change could resolve the potential conflict between providing financing for economic development and providing financing to create a return to the PWMTF. The WBC analyzes IDB applications similar to other programs in the WBC program portfolio—with a conservative approach balanced with an acceptance of a certain amount of risk inherent with economic development. There are other revolving investment funds that can serve as models: the Challenge Loan Program, the Economic Development Enterprise Fund, and Business Ready Community program.

**Recommendation 5.3: The OSLI should coordinate with the WBC to provide training and/or other guidance to both OSLI staff and prospective Beginning Agricultural Producer borrowers on adequate and actionable business plans.**

**Agency Response: Agree.** The WBC can provide a business plan checklist and guidance in business plan review to any state agency or prospective borrower.

**Recommendation 6.2 : Repeal the statutory authorization for the Area Redevelopment program: W.S. 11-34-303.**

**Agency Response: Agree.** The WBC agrees with the recommendation to repeal W.S. 11-34-303. Existing WBC programs can accomplish purposes similar to those of the Area Redevelopment program.

**Recommendation 6.3: The Legislature could consider removing the requirement that the WBC formally recommend the interest rate on IDB applications.**

**Agency Response: Partially Agree.** The WBC's response to Recommendation 3.1 is relevant to this recommendation. If a single rate is established, there is no need for the WBC to recommend a rate. If IDB's are to be reviewed exclusively following the prudent investment principle—regardless of economic development merits, there is no need for the WBC to recommend a rate. However, if the IDB program is to be viewed as an economic development tool, the WBC can analyze a range of possible interest rates against the business's financial projections so the State Treasurer's Office can determine a final interest rate using information from the WBC about project viability under various rate scenarios.

---

# **Appendices**

---

## **Wyoming Public Purpose Investments**

---



---

# Appendix A

---

## Wyoming Constitution and Statutes (*excerpts*)

---

### Wyoming Constitutional Provisions

#### Article 3. Legislative Department

##### Section 38. Investment of trust funds.

The legislature may authorize the investment of trust funds by executors, administrators, guardians or trustees, in the bonds or stocks of private corporations, and in such other securities as it may by law provide. (As amended by Laws 1965, Senate Joint Resolution No. 5, p. 519.)

**Section 40.** Debts to state or municipal corporation cannot be released unless otherwise prescribed by legislature.

No obligation or liability of any person, association or corporation held or owned by the state or any municipal corporation therein shall ever be exchanged, transferred, remitted, released, postponed or in any way diminished except as may be prescribed by the legislature. The liability or obligation shall not be extinguished except by payment into the proper treasury or as may otherwise be prescribed by the legislature in cases where the obligation or liability is not collectible. (As amended by Laws 1983, Senate Joint Resolution No. 1, p. 961.)

#### Article 15. Taxation and Revenue

##### Section 19. Mineral excise tax; distribution.

The Legislature shall provide by law for an excise tax on the privilege of severing or extracting minerals, of one and one-half percent (1 1/2%) on the value of the gross product extracted. The minerals subject to such excise tax shall be coal, petroleum, natural gas, oil shale, and such other minerals as may be designated by the Legislature. Such tax shall be in addition to any other excise, severance or ad valorem tax. The proceeds from such tax shall be deposited in the Permanent Wyoming Mineral Trust Fund. The fund, including all monies deposited in the fund from whatever source, shall remain inviolate. The monies in the fund shall be invested as prescribed by the Legislature and all income from fund investments shall be deposited by the State Treasurer in the general fund on an annual basis. The Legislature may also specify by law, conditions and terms under which monies in the fund may be loaned to political subdivisions of the state. (As added by Laws 1974, House Joint Resolution No. 2A, p. 111; Amended by Laws 2006, House Joint Resolution No. 4.)

#### Article 16. Public Indebtedness

##### Section 6. Loan of credit; donations prohibited; works of internal improvement.

Neither the state nor any county, city, township, town, school district, or any other political subdivision, shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, except that funds of public employee retirement systems and the permanent funds of the state of Wyoming may be invested in such stock under conditions the legislature prescribes. The state shall not engage in any work of internal improvement unless authorized by a two-thirds (2/3) vote of the people. (As

amended by Laws 1984, House Joint Resolution No. 2, p. 323; Laws 1996, House Joint Resolution No. 5, 1.)<sup>4</sup>

**Section 12.** Economic development loan fund.

- (a) Notwithstanding Article 3, Section 36 and Article 16, Sections 1, 2 and 6 of this Constitution, the legislature, by a two-thirds (2/3) vote of all the members of each of the two (2) houses voting separately, may appropriate monies in an amount not exceeding one percent (1%) times the assessed value of the taxable property in the state as shown by the last preceding general assessment for taxation, to provide a revolving investment fund to be used to promote and aid the economic development of the state.
- (b) The investment fund created by this section shall be used to provide fully-funded loan guarantees or loans to proposed or existing enterprises which will employ people within the state, provide services within the state, use resources within the state or otherwise add economic value to goods, services or resources within the state.
- (c) Monies within the revolving investment fund shall be loaned or used to guarantee loans under such terms and conditions as the legislature may by law direct.
- (d) The cumulative total of monies appropriated to provide a revolving investment fund shall never exceed one percent (1%) on the assessed value of the taxable property in the state as shown by the last preceding general assessment for taxation.
- (e) Notwithstanding the limitation of subsection (d) of this section, earnings on the revolving investment fund shall be added to the revolving investment fund and shall be invested as provided in this section. (As added by Laws 1986, House Joint Resolution No. 1, p. 292.)

## Wyoming Statutory Provisions

### TITLE 4. Trusts

#### CHAPTER 10. Uniform Trust Code

##### ARTICLE 9. Uniform Prudent Investor Act

#### 4-10-901. Prudent investor rule; definitions.

- (a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.
- (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

#### 4-10-902. Standard of care; portfolio strategy; risk and return objectives.

- (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of

---

<sup>4</sup> The Legislature passed Senate Joint Resolution #2 (SJ0002) which will change the structure of this section as well as add authority for the state to invest non-permanent funds in equity investments. This amendment to the Wyoming Constitution will only take effect if passed by a majority of votes cast during the 2016 General Election.

the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

- (b) A trustee's investment and management decisions respecting individual assets shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- (c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
  - (i) General economic conditions;
  - (ii) The possible effect of inflation or deflation;
  - (iii) The expected tax consequences of investment decisions or strategies;
  - (iv) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
  - (v) The expected total return from income and the appreciation of capital;
  - (vi) Other resources of the beneficiaries;
  - (vii) Needs for liquidity, regularity of income and preservation or appreciation of capital; and
  - (viii) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.
- (d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.
- (f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.
- (g) Notwithstanding the foregoing provisions of this section, a trustee who discloses the application of this subsection and the limitation of the trustee's duties it provides either in the trust instrument or in a separate writing delivered to each insured at the inception of a life insurance contract or thereafter, if the disclosure is prior to an event giving rise to a claim thereunder, may acquire or retain a life insurance contract upon the life of the settlor or the settlor's spouse, or both, without liability for a loss arising from the trustee's failure to perform any of the following duties, unless the trust instrument states or limits otherwise:
  - (i) Determine whether the contract is or remains a proper investment;
  - (ii) Investigate the financial strength or changes in the financial strength of the life insurance company;
  - (iii) Make a determination of whether to exercise any policy option available under the contract;
  - (iv) Make a determination of whether to diversify the contracts relative to one another or to other assets, if any, administered by the trustee; or

- (v) Inquire about changes in the health or financial condition of the insured or insureds relative to a contract.

**4-10-903. Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

**4-10-904. Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of this article.

**4-10-905. Loyalty.**

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

**4-10-906. Impartiality.**

If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

**4-10-907. Investment costs.**

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

**4-10-908. Reviewing compliance.**

Compliance with the prudent investor rule under this article is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**4-10-909. Delegation of investment and management functions.**

- (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:
  - (i) Selecting an agent;
  - (ii) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - (iii) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
- (b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- (c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.
- (d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of the state of Wyoming even if investment advisory agreements or other related agreements provide otherwise, and the agent may be made a party to any action or proceeding if issues relate to a decision, action or inaction of the agent.

**4-10-910.** Language invoking standard of this article.

- (a) The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article:
  - (i) "Investments permissible by law for investment of trust funds";
  - (ii) "Legal investments";
  - (iii) "Authorized investments";
  - (iv) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital";
  - (v) "Prudent man rule," "prudent trustee rule," "prudent person rule" or "prudent investor rule."

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

This article applies to public funds of the state of Wyoming unless a different investment standard is specifically provided for the investment of specified public funds.

**4-10-912.** Application to Wyoming family college savings program trust.

This act does not apply to the Wyoming family college savings program trust created by W.S. 21-16-811(a), except that this article shall continue to apply as required under W.S. 21-16-813(c)(iii)

**4-10-913.** Short title.

This article may be cited as the "Wyoming Uniform Prudent Investor Act."

**Title 9.** Administration of the Government

**Chapter 1.** State Officers

**Article 4.** Auditor and Treasurer

**9-1-401.** Seals of office; access to records; power to administer oaths; accounting records.

- (a) The treasurer and auditor shall each:
  - (i) Keep a seal of office, which shall be used to authenticate all writings, papers and documents certified by either officer;
  - (ii) Have free access to each other's offices and to all other offices of the state to inspect books, accounts and papers pertaining to their duties;
  - (iii). Have power to administer oaths and affirmations required by law in matters touching their duties;
  - (iv) Balance their accounting records to verify that cash and investments, adjusted for outstanding warrants, reflect the amount due to each fund and account in the Wyoming uniform accounting system.

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

- (a) The state treasurer shall:
  - (i) Receive and keep all monies of the state not required by law to be received and kept by another state official;

- (ii) Pay all warrants duly and legally issued by the auditor so long as there are in his hands funds sufficient to pay the warrants;
  - (iii) Keep a just, true and comprehensive account of all money received and disbursed;
  - (iv) Have general responsibility for the management of state cash resources, including developing information in conjunction with the state auditor, to forecast the cash needs of the state.
- (b) The state treasurer may use demand accounts to pay warrants or to pay for investments. A record of the use of demand accounts shall be created and maintained in the treasurer's office.
  - (c) Every state officer, employee, department or commission receiving revenue for or on behalf of the state from any source shall pay all revenue to the state treasurer as directed by him.
  - (d) The state treasurer may employ legal counsel to review contracts entered into by the state treasurer in his official capacity and perform other duties as assigned by the state treasurer. Nothing in this subsection prohibits the state treasurer from using the services of the attorney general's office.

**9-1-413.** Report of financial commitments.

At the request of the state treasurer all state agencies and departments making financial commitments payable from the state treasury shall report to the state treasurer on forms prescribed by him the commitments made and the approximate date payable.

**9-1-415.** Collection of debts due the state; discharge of uncollectible debts.

- (a) Except as provided in subsections (e) and (f) of this section, any office or agency of the state may use the services of a collection agency licensed in Wyoming to assist in the collection of debts due the state or any state office or agency.
- (b) Any debt due and owing the state or any office or agency of the state, which is determined to be uncollectible, shall be certified to the state auditor by the chief administrative officer of the agency to which the debt is due. The certification shall include:
  - (i) The name and last known address of the debtor;
  - (ii) The goods or services for which the debt was incurred;
  - (iii) The amount of the debt and the date when the debt became due and payable;
  - (iv) An explanation of what actions have been taken to collect the debt and why the debt has remained unpaid; and
  - (v) A declaration that the debt is uncollectible.
- (c) If the auditor agrees the debt is uncollectible, he shall direct that the debt be discharged and extinguished as an asset or account receivable of the state.
- (d) The facts and actions which are the basis for the decision that the debt is uncollectible shall be documented in writing and shall be maintained as required under W.S. 9-2-410.
- (e) Before any billing for services, collections or use of the services of a collection agency, state institutions shall first make an administrative determination that all statutory requirements relative to patient billing have been followed in each case. In the case of those state institutions defined by W.S. 25-11-101(a)(vii), the decision of

whether to contract with a collection agency shall be made by the department of health or the department of family services pursuant to W.S. 25-11-106.

- (f) No patient billing from the state hospital shall be collectible unless:
  - (i) A legally responsible person has been advised in writing before the treatment or stay at the hospital, at the time of admission or a reasonable time thereafter, of:
    - (A) The obligation to pay;
    - (B) The schedule of actual costs for treatment established by the department of health pursuant to W.S. 25-11-102(a);
    - (C) The sliding scale used to determine established charges pursuant to W.S. 25-11-103(a); and
    - (D) The right to appeal pursuant to W.S. 25-11-103.
  - (ii) The patient has been provided with a monthly billing statement; and
  - (iii) The statutory requirements for the determination of patient billing have been followed.

**9-1-416.** Local investment pool.

- (a) Upon request by any county, municipality, school district or any other local governmental entity, and as provided in W.S. 9-3-503(a), the state treasurer shall invest funds of one (1) or more of those entities on a pooled basis in the same manner as the state treasurer makes short term investments of state funds. The state treasurer shall adopt rules and regulations which:
  - (i) Provide for the transmittal of funds from the entities to the state treasurer for investment, the manner in which the funds may be withdrawn from the investment pool by entities, accounting and reporting procedures and any other provisions which will effectively carry out the purposes of this section; and
  - (ii) Establish fees to be charged to local governmental entities which request investment assistance under this section. The fees collected shall not exceed the direct costs incurred by the state treasurer in providing the investment assistance. Fees collected under this paragraph shall be deposited into an account to be known as the investment assistance account.
- (b) Nothing in this section shall be construed to require the state of Wyoming to reimburse government entities for any losses that may occur on investments under this section.

**9-1-417.** Interfund loans; repayment; maximum amount.

The state treasurer and the state auditor may utilize interfund loans from the general fund or the budget reserve account to any other fund or account to meet obligations which come due prior to receipt of revenues. The interfund loans shall be repaid as soon as the anticipated revenue is received. The total amount of interfund loans outstanding at one (1) time shall not exceed sixty million dollars (\$60,000,000.00). These loans shall not be used to fund shortages caused by expenditures exceeding projected revenues but are to be used only to fund temporary shortages caused by meeting obligations which come due prior to receipt of revenues.

**Title 9.** Administration of the Government

**Chapter 4.** Public Funds

**ARTICLE 2.** FUNDS CONSOLIDATION

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

- (a) through (r) Repealed by Laws 2005, ch. 231, 2.
- (t) As provided in subsection (s) of this section, the state auditor shall use the following fund types to classify state activities and programs for accounting purposes as specified:
  - (i) Governmental fund types:
    - (A) General fund - to account for the ordinary operation of state government, and shall receive all revenues and account for all expenditures not otherwise provided for by law in any other fund. General fund appropriations shall not be transferred to any other fund or account for expenditure except as otherwise provided by law;
  - (iii) Fiduciary fund types:
    - (A) Private-purpose trust funds - to account for any trust arrangement not properly reported in a pension trust fund or an investment trust fund under which principal and income benefit individuals, private organizations or other governments;
    - (B) Investment trust funds - to account for legally separate governments pooling their resources in an investment portfolio for the benefit of all participants;
    - (C) Pension and other employee benefit trust funds - to account for the assets held by state government as trustee for employee retirement systems;
    - (D) Agency funds - to account for assets that state government holds on behalf of others as their agent.
- (u) Other funds defined as follows shall be classified by the state auditor pursuant to subsections (s) and (t) of this section:
  - (iii) Permanent Wyoming mineral trust fund - to account for the proceeds from an excise tax levied by constitutional or statutory law, on the privilege of extracting or severing minerals designated by constitutional or statutory law. The proceeds of the fund are inviolate and constitute a permanent or perpetual trust fund which shall be invested, or loaned to political subdivisions of the state, only as the legislature directs. All income from the fund shall be deposited annually in the general fund;
  - (iv) Permanent land fund - to account for the resources received and held as trustee of the land grants made to the state by the federal government as provided by W.S. 9-4-305(b);
  - (v) Permanent land income fund - to account for the income from the permanent land fund, land grants and income from other sources as provided by W.S. 9-4-305(c);

**Title 9.** Administration of the Government

**Chapter 4.** Public Funds

**ARTICLE 7.** INVESTMENT OF STATE FUNDS

**9-4-701. through 9-4-712.** Repealed By Laws 2008, Ch. 113, § 4.

**9-4-713.** Renumbered by Laws 2008, Ch. 113, § 3 as W.S. 9-4-719.

**9-4-714.** Definitions.

- (a) As used in this act:

- (i) "Alternative investments" means investments in nontraditional asset classes or in traditional asset classes which are utilized in a nontraditional strategy;
- (ii) "Asset classes" means categories of securities with similar characteristics and properties, such as cash equivalents, stocks, bonds and real estate;
- (iii) "Board" means the state loan and investment board;
- (iv) "Fund" means as defined by W.S. 9-4-203(a)(vii);
- (v) "Permanent funds" means the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii), the Wyoming permanent land fund under W.S. 9-4-204(u)(iv), the excellence in higher education endowment fund under W.S. 9-4-204(u)(vi) and the Hathaway student scholarship endowment fund under W.S. 9-4-204(u)(vii);
- (vi) "This act" means W.S. 9-4-714 through 9-4-719.

**9-4-715. Permissible investments.**

- (a) The state treasurer is the chief investment officer of the state of Wyoming. The state treasurer's annual report shall include investment, income, individual and aggregate gains and losses by fund and the extent to which the state investment policy is being implemented. Subject to requirements of subsection (c) of this section, state funds may be invested in any investment:
  - (i) Authorized by the legislature; or
  - (ii) Authorized or approved by the board.
- (b) The state treasurer, or his designee, which shall be registered under the Investment Advisor's Act of 1940, or any bank as defined in that act, upon written authority, may invest monies of the permanent funds, in securities but not more than fifty-five percent (55%) shall be invested in common stocks.
- (c) The state treasurer shall obtain the approval of the board prior to the investment of funds in alternative investments, provided:
  - (i) The approval of the board shall be complete upon the review and written acceptance by the board of the material terms of the instruments governing the investment;
  - (ii) Any material adverse change to the terms of instruments governing investments, previously approved by the board, at any time while the investments are held by the state of Wyoming shall require the renewal of approval of such investments by the board.
- (d) When approving, acquiring, investing, reinvesting, exchanging, retaining, selling and managing investments of the state of Wyoming, the members of the board, the state treasurer, designees of the state treasurer or any other fiduciary appointed by the state treasurer or the board shall exercise the judgment and care of a prudent investor as specified by the Uniform Prudent Investor Act, W.S. 4-10-901 through 4-10-913.
- (e) Individual investments or groups of investments made under this act shall not be evaluated solely in isolation but also in the context of the entire investment portfolio and as part of an overall investment strategy of the trust or fund from which the investment is derived, consistent with the policies for such trust or fund established under W.S. 9-4-716 by the board. The purchase of a security or the making of any direct investment by the state treasurer or his designee in a security shall not constitute

a delegation of his duties under this article or under any rule promulgated under this article.

- (f) Repealed By Laws 2011, Ch. 129, § 207.
- (g) The state treasurer may pledge not to exceed three hundred million dollars (\$300,000,000.00) from the common school account in the permanent land fund to guarantee school district bonds under W.S. 9-4-1001(d). These funds shall be invested as other funds in that account, but the state treasurer shall ensure sufficient liquidity of investments to ensure required disbursements can be made.
- (h) The state treasurer may pledge not to exceed one hundred million dollars (\$100,000,000.00) from the Wyoming permanent mineral trust fund to guarantee local government bonds under W.S. 9-4-1002. These funds shall be invested as other funds in that fund, but the state treasurer shall ensure sufficient liquidity of investments to ensure required disbursements can be made.
- (j) The state treasurer may invest not to exceed two million dollars (\$2,000,000.00) from the permanent mineral trust fund in assignments from counties of their rights to reimbursement of deferred taxes and interest from taxpayers under W.S. 39-13-107(b)(iii)(F), including the right to any tax lien on those properties resulting from deferral of taxes and interest.
- (k) Except as provided in subsection (o) of this section, upon request of the board, the state treasurer may invest funds received from sales of state trust lands plus up to two million dollars (\$2,000,000.00) one-time seed money contained in the common school account within the permanent land fund, by purchasing land and improvements thereon within Wyoming as assets of the trust.
- (m) To promote economic development, the state treasurer may invest and keep invested not to exceed three hundred million dollars (\$300,000,000.00) of any state permanent funds through the purchase of industrial development bonds issued by joint powers boards, municipalities or counties under W.S. 15-1-701 through 15-1-710 subject to the terms and conditions specified under this subsection. The state treasurer may adopt rules as necessary to carry out his duties under this subsection. By December 31 of each calendar year, the state treasurer and the Wyoming business council shall each provide a report to the joint minerals, business and economic development interim committee on the effectiveness of the investment program authorized by this subsection. The reports shall include the costs incurred by the state to the permanent mineral trust fund, expenditures made from the account created under paragraph (v) of this subsection and the revenue received by the Wyoming business council through fees and businesses who utilized the program:
  - (i) No investment shall be made under this subsection without the recommendation of the Wyoming business council created by W.S. 9-12-103 and written approval of the governor;
  - (ii) No investment shall be made under this subsection unless:
    - (A) The bonds are to finance the cost of acquisition of land or rights-of-way and the purchase, construction, and installation of buildings, appurtenant personal property and equipment which will add economic value to goods, services or resources within or outside this state. Any right-of-way acquired under the provisions of this paragraph shall follow an existing utility corridor whenever

practical. The buildings, appurtenant personal property and equipment shall be used:

- (I) As part of the construction of a facility or infrastructure for manufacturing or processing or generating power, transporting oil or gas, transmitting electricity, providing telecommunications or utility services;
  - (II) For commercial or business enterprises or their infrastructure; or
  - (III) For reconstructing, remodeling, modernizing or expanding an existing facility or infrastructure.
- (B) The Wyoming business council shall establish guidelines dependent upon the type of business concerned in each project considered and shall set the maximum amount of the investment to be made by the state of Wyoming in each project. In setting the maximum amount of investment the business council shall consider the number of jobs created or preserved by the facility and the economic impact to the state which may result from the facility;
- (C) The bonds bear interest at a fixed or adjustable rate, indexed to the prime or ten (10) year treasury bill rate as determined by the state treasurer, which is reasonably commensurate with the risk, as recommended by the Wyoming business council; and
- (D) At least twenty-five percent (25%) of the total cost of the project is provided by the owner of the facility.
- (iii) No investment shall be made under this subsection unless the bonds provide:
- (A) The state of Wyoming shall not acquire an ownership interest in the facility being financed except to realize a security interest;
  - (B) The proceeds of the bonds shall not be made available to the facility owner until construction of the facility is ready to commence;
  - (C) The principal and interest are secured by a pledge of revenues from the operation of the facility or infrastructure and by a mortgage on the facility or other facilities or infrastructures with a loan-to-value ratio not exceeding seventy-five percent (75%) of the appraised value of the collateral;
  - (D) The principal and interest may be secured by additional security as required by the state treasurer or governor, upon recommendation of the Wyoming business council and with the approval as to form of the attorney general.
- (iv) As bonds invested in under this subsection are redeemed and the principal paid, that amount may be recommended by the Wyoming business council to purchase the bonds of other projects;
- (v) The Wyoming business council shall assess fees adequate to cover all reasonable direct and indirect costs for the services and application of state funds used under this subsection to be paid by the applicant. Payment of the fees assessed pursuant to this paragraph shall be secured by additional security as required by the state treasurer or governor, upon recommendation of the Wyoming business council and with the approval as to form of the attorney general. Fees collected pursuant to this paragraph shall be deposited with the state treasurer and credited to a separate account and are continuously appropriated to the business council to be expended for the actual direct and indirect costs of providing the services generating the fees;

- (vi) No investment shall be made under this subsection after June 30, 2017. Any investment under this subsection shall be subject to the prudent investor standard as specified in subsection (d) of this section;
- (vii) No investment in excess of one hundred million dollars (\$100,000,000.00) shall be made under this subsection in bonds for any one (1) project without specific legislative authorization.
- (n) The state treasurer shall not invest state funds for a specific public purpose authorized or directed by the legislature in excess of a total of six hundred million dollars (\$600,000,000.00), excluding investments made pursuant to W.S. 37-5-406. Prior to the convening of each general session, the state treasurer shall, after consultation with the board, recommend any adjustments to this allocated amount to the select committee on capital financing and investments.
- (o) Upon request of the board and when determined by the board to be consistent with the duties and obligations owed to beneficiaries of state trust land sales proceeds, the state treasurer shall invest funds received from the sale of state trust lands to the federal government by purchasing federal lands and improvements within Wyoming from the federal government.

**9-4-716.** State investment policy; investment consultant.

- (a) The board shall adopt investment policy statements for state funds and shall review those policy statements at least annually. These policy statements shall be subject to the following:
  - (i) The board may specify groupings of state funds for which separate investment policy statements are appropriate. At a minimum, those groupings shall include state funds for which there is a trust obligation, short term funds for operations and all other funds. The board may determine criteria under which certain funds shall be separately managed;
  - (ii) Nothing in this section shall be construed to prevent the state treasurer from pooling any state funds for investment purposes, including meeting cash flow requirements in accordance with approved investment policy statements.
- (b) The investment policy statements shall include the following:
  - (i) Nominal return benchmarks;
  - (ii) Definition of risk and of return;
  - (iii) Risk tolerance;
  - (iv) Permissible investments and quality standards;
  - (v) Liquidity requirements;
  - (vi) Cash flow projections for the grouping of funds;
  - (vii) Procedures for selecting and dismissing investment managers when utilized;
  - (viii) Indices or benchmarks against which the returns will be measured.
- (c) The state treasurer shall develop and submit proposed investment policy statements for each grouping of state funds specified in subsection (a) of this section and may contract for assistance in developing proposals or in making suggestions for modifications to existing investment policy statements. The state treasurer shall report quarterly to the board regarding the performance of investments with respect to each grouping of state

funds specified by the board under subsection (a) of this section and such other information as may be required by the board.

- (d) The board:
  - (i) Shall procure the services of a qualified entity to evaluate:
    - (A) At least annually, the reasonableness and comprehensiveness of the investment policy statements required under this section; and
    - (B) At least quarterly, the performance of the investments for each grouping based upon recognized indices and the reasonableness of the mix of assets in light of anticipated cash flow requirements and the investment policy statements.
  - (ii) Shall require competition to procure those services required under paragraph (i) of this subsection at least every four (4) years;
  - (iii) Shall receive an appropriation directed to the office of state lands and investments to be used to compensate the entity retained under paragraph (i) of this subsection for its services.

**9-4-719. Investment earnings spending policy - permanent funds.**

- (a) The purpose of this section is to establish a spending policy for earnings on permanent fund investments to provide, in descending order of importance:
  - (i) Consistent, sustainable flow of earnings for expenditure over time;
  - (ii) Protection of the corpus of the permanent funds against inflation; and
  - (iii) To the extent practicable, increases in earnings available for expenditure to offset the effects of inflation.
- (b) There is created the permanent Wyoming mineral trust fund reserve account. Beginning July 1, 2016 for fiscal year 2017 and each fiscal year thereafter, the state treasurer shall transfer unobligated funds from this account to the general fund as necessary to ensure that an amount equal to the spending policy amount specified in subsection (d) of this section calculated on the first day of the fiscal year, reduced by the amount credited to the legislative stabilization reserve account and the strategic investments and projects account by subsection (q) of this section, is available for expenditure annually during each fiscal year. As soon as possible after the end of each of the fiscal years beginning on and after July 1, 2000, revenues in this account in excess of ninety percent (90%) of the spending policy amount in subsection (d) of this section shall be credited to the permanent Wyoming mineral trust fund.
- (c) The earnings from the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii) during each fiscal year beginning July 1, 2001, in excess of the spending policy established in subsection (d) of this section are appropriated from the general fund to the permanent Wyoming mineral trust fund reserve account. The appropriation shall be credited to the 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.
- (d) The annual spending policy for the permanent Wyoming mineral trust fund is as follows for each fiscal year (FY):
  - (i) Repealed by Laws 2002, Ch. 80, § 2.
  - (ii) Repealed By Laws 2004, Chapter 9, § 2.
  - (iii) Repealed By Laws 2004, Chapter 9, § 2.

- (iv) Repealed By Laws 2002, Ch. 80, § 2.
  - (v) FY2004 and each fiscal year thereafter - an amount equal to five percent (5%) of the previous five (5) year average market value of the trust fund, calculated from the first day of the fiscal year.
- (e) Repealed By Laws 2007, Ch. 148, § 2.
- (f) There is created the common school permanent fund reserve account. Beginning July 1, 2015 for fiscal year 2016 and each fiscal year thereafter, the state treasurer shall transfer unobligated funds from this account to the common school account within the permanent land income fund as necessary to ensure that an amount equal to two and one-half percent (2.5%) of the previous five (5) year average market value of the common school account within the permanent land fund, calculated from the first day of the fiscal year is available for expenditure annually during the fiscal year. As soon as possible after the end of each of the fiscal years beginning on and after July 1, 2000, revenues in this account in excess of ninety percent (90%) of the spending policy amount shall be credited to the common school account within the permanent land fund.
- (g) There is annually appropriated to the common school permanent fund reserve account an amount determined under this subsection from funds as provided in W.S. 9-4-601(d)(vi). The amount shall be computed and calculated by the state treasurer. The amount shall be equal to the extent to which earnings from the common school account within the permanent land fund under W.S. 9-4-204(u)(iv) exceed the spending policy established in subsection (h) of this section for that fiscal year. The appropriation shall be credited to the 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.
- (h) The annual spending policy for the common school account within the permanent land fund is as follows for each fiscal year (FY):
- (i) Repealed By Laws 2002, Ch. 80, § 2.
  - (ii) Repealed By Laws 2004, Chapter 9, § 2.
  - (iii) Repealed By Laws 2004, Chapter 9, § 2.
  - (iv) Repealed By Laws 2002, Ch. 80, § 2.
  - (v) FY2004 and each fiscal year thereafter - an amount equal to five percent (5%) of the previous five (5) year average market value of the account, calculated from the first day of the fiscal year.
- (j) Repealed By Laws 2007, Ch. 148, § 2.
- (k) There is created the excellence in higher education endowment reserve account. Interest and other earnings on funds within the account shall be credited to the 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, joint appropriations interim committee, joint education interim committee and select committee on capital financing and investments no later than November 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 November 1, 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.
- (q) The earnings from the permanent Wyoming mineral trust fund under W.S. 9-4-204(u)(iii) during each fiscal year beginning July 1, 2016, which are less than the spending policy established in subsection (d) of this section are appropriated from the general fund subject to the following:
  - (i) Any earnings in excess of two and one-half percent (2.5%) of the previous five (5) year average market value of the trust fund, calculated from the first day of the fiscal year and less than or equal to the spending policy amount specified in subsection (d) of this section shall be credited to the legislative stabilization reserve account created by W.S. 9-4-219 and the strategic investments and projects account created by W.S. 9-4-220 in equal amounts; and
  - (ii) The appropriations in this subsection shall be credited to the designated 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.
- (r) Beginning July 1, 2015 for fiscal year 2016 and each fiscal year thereafter, there is appropriated to the school foundation program reserve account created by W.S. 21-13-306.1 amounts determined under this subsection not to exceed available funds provided by W.S. 9-4-601(a)(xi) and (d)(viii). The amount of the appropriation shall be calculated by the state treasurer subject to the following:

- (i) The amount shall be equal to the extent to which earnings from the common school account within the permanent land fund under W.S. 9-4-204(u)(iv) exceed three percent (3%) of the previous five (5) year average market value of the common school account within the permanent land fund, calculated from the first day of the fiscal year, and are less than or equal to the spending policy amount in subsection (h) of this section for the fiscal year; and
- (ii) The appropriation shall be credited to the 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.

**TITLE 9. Administration of the Government**

**CHAPTER 4. Public Funds**

**ARTICLE 8. DEPOSITS AND DEPOSITORIES**

**9-4-831. Investment of public funds.**

- (a) The state treasurer, or treasurer of any political subdivision, municipality or special district of this state, and the various boards of trustees and boards of directors of county hospitals, airports, fairs and other duly constituted county boards and commissions, may invest in:
  - (i) United States treasury bills, notes or bonds, including stripped principal or interest obligations of such issuances, or any other obligation or security issued by the United States treasury or any other obligation guaranteed as to principal and interest by the United States;
  - (ii) Bonds, notes, debentures, or any other obligations or securities issued by or guaranteed by any federal government agency or instrumentality, including but not limited to the following to the extent that they remain federal government agencies or instrumentalities, federal national mortgage association, federal home loan bank, federal farm credit bank, federal home loan mortgage corporation and government national mortgage association. All federal agency securities shall be direct issuances of federal agencies or instrumentalities;
  - (iii) Repurchase agreements involving securities which are authorized investments under paragraphs (i) and (ii) of this subsection. The securities may be held in a custodial arrangement with a member bank of the federal reserve system or in a segregated account at a federal reserve system bank. The repurchase agreement must provide for daily valuation and have a minimum excess market price reserve of one hundred two percent (102%) of the investment;
  - (iv) In accordance with W.S. 9-4-803 with respect to the state and W.S. 9-4-817 with respect to local governments, deposits in financial institutions located within the state of Wyoming which offer federal deposit insurance corporation insurance on deposits in the institutions;
  - (v) Mortgage backed securities that are obligations of or guaranteed or insured issues of the United States, its agencies, instrumentalities or organizations created by an act of congress excluding those defined as high risk. High risk mortgage backed securities are defined as any security which meets either of the following criteria:
    - (A) Is rated V-6 or higher by Fitch Investors Service or at an equivalent rating by another nationally recognized rating service; or
    - (B) Is defined as a high risk mortgage security under Section III of the Supervisory Policy Concerning Selection of Securities Dealers and

Unsuitable Investment Practices, as amended by the Federal Financial Institutions Examination Council as created under 12 U.S.C. 3301, et seq., or its successor.

- (vi) In bankers acceptances of United States banks eligible for purchase by the federal reserve system;
- (vii) In a guaranteed investment contract if issued and guaranteed by a United States commercial bank or a United States insurance company. The credit quality of the issuer and guarantor shall be the highest category of either A. M. Best, Moody's or Standard and Poor's rating service. The contract shall provide the governmental entity a nonpenalized right of withdrawal of the investment if the credit quality of the investment is downgraded;
- (viii) A commingled fund of eligible securities listed in this section if the securities are held through a trust department of a bank authorized to do business in this state or through a trust company authorized to do business in this state with total capital of at least ten million dollars (\$10,000,000.00) or which has an unconditional guarantee with respect to those securities from an entity with total capital of at least one hundred million dollars (\$100,000,000.00);
- (ix) Interest bearing deposits of a savings and loan association or a federal savings bank authorized to do business in this state to the extent that they are fully insured by the federal deposit insurance corporation, or:
  - (A) Secured by a pledge of assets and the federal savings bank or savings and loan association is otherwise authorized as a depository as prescribed by law; or
  - (B) The federal savings bank or savings and loan association is otherwise authorized as a depository as prescribed by law and:
    - (I) In lieu of a pledge of assets securing an interest bearing deposit, a selected savings and loan association or federal savings bank shall arrange for the deposit of the public funds in interest bearing deposits in one (1) or more banks or savings and loan associations or federal savings banks wherever located in the United States, for the account of the public funds depositor;
    - (II) At the same time the public funds are deposited pursuant to this subparagraph, the selected savings and loan association or federal savings bank shall receive an amount of deposits from customers of other financial institutions equal to the amount of the public funds initially placed by the public funds depositor;
    - (III) Each interest bearing deposit shall be insured by the federal deposit insurance corporation; and
    - (IV) The selected savings and loan association or federal savings bank shall act as custodian for the public funds depositor with respect to the interest bearing deposits placed in the public funds depositor's account.
- (x) Interest bearing deposits of a bank authorized to do business in this state to the extent that they are fully insured by the federal deposit insurance corporation or:

- (A) Secured by a pledge of assets and the bank is otherwise authorized as a depository as prescribed by law; or
- (B) The bank is otherwise authorized as a depository as prescribed by law and:
  - (I) In lieu of a pledge of assets securing an interest bearing deposit, a selected bank shall arrange for the deposit of the public funds in interest bearing deposits in one (1) or more banks or savings and loan associations or federal savings banks wherever located in the United States, for the account of the public funds depositor;
  - (II) At the same time the public funds are deposited pursuant to this subparagraph, the selected bank shall receive an amount of deposits from customers of other financial institutions equal to the amount of the public funds initially placed by the public funds depositor;
  - (III) Each interest bearing deposit shall be insured by the federal deposit insurance corporation; and
  - (IV) The selected bank shall act as custodian for the public funds depositor with respect to the interest bearing deposits placed in the public funds depositor's account.
- (xi) As authorized by W.S. 37-5-206 and 37-5-406, bonds of the Wyoming pipeline authority and the Wyoming infrastructure authority;
- (xii) Shares of a money market fund as specified in subsection (g) of this section;
- (xiii) – (xviii) Repealed By Laws 1996, ch. 112, § 3
- (xix) Amended and Renumbered as (ix) by Laws 1996, ch. 112, § 2.
- (xx) Amended and Renumbered as (x) by Laws 1996, ch. 112, § 2.
- (xxi) Amended and Renumbered as (xi) by Laws 1996, ch. 112, § 2.
- (xxii) – (xxv) Repealed By Laws 1996, ch. 112, § 3
- (xxvi) Commercial paper of corporations organized and existing under the laws of any state of the United States, provided that at the time of purchase, the commercial paper shall:
  - (A) Have a maturity of not more than two hundred seventy (270) days; and
  - (B) Be rated by Moody's as P-1 or by Standard & Poor's as A-1+ or equivalent ratings indicating that the commercial paper issued by a corporation is of the highest quality rating.
- (b) No investment of public funds under this section shall be made by any of the officials above designated, until the affected fiscal board of the state of Wyoming, the board of county commissioners, the municipal council or the school district board of trustees as the case may be, has first authorized the same.
- (c) Repealed By Laws 1996, ch. 112, § 3.
- (d) Repealed By Laws 1997, ch. 63, § 2.
- (e) Repealed By Laws 1996, ch. 112, § 3.
- (f) Repealed By Laws 1996, ch. 112, § 3.
- (g) Investments in shares of a diversified money market fund are authorized except that no entity of Wyoming government shall at any time own more than ten percent (10%) of the fund's net assets or shares outstanding. Investments under this subsection are limited to

a diversified money market fund which seeks to maintain a stable share value of one dollar (\$1.00), is registered under the Securities Act of 1933 and Investment Company Act of 1940, as amended, and has qualified under state registration requirements, if any, to sell shares in the state and which:

- (i) Invests its assets:
  - (A) Solely in securities or instruments that have a remaining maturity of three hundred ninety-seven (397) days or less at the time of purchase of shares;
  - (B) Solely in securities issued by the United States treasury, obligations or securities issued by or guaranteed by any federal government agency or instrumentality, and repurchase agreements collateralized by such instruments at not less than the repurchase price including accrued interest;
  - (C) So that an average dollar weighted maturity of ninety (90) days or less is maintained at all times; and
  - (D) Under limitations such that the fund may borrow funds for temporary purposes only by entering into repurchase agreements and only to the extent permitted by federal law.
- (ii) Does not impose a sales charge;
- (iii) Maintains the highest quality rating from at least one (1) of the nationally recognized rating organizations, such as Standard & Poor's Corporation or Moody's Investor Services;
- (iv) Has an operating history of not less than five (5) consecutive years;
- (v) Requires submission of sixty (60) days advance notice of any investment policy change, in the case where such policy changes may be approved without approval of the fund's shareholders or requires approval by shareholders entitled to vote a majority, as the term is defined under the Investment Company Act of 1940, as amended, of the fund's shares;
- (vi) Is purchased from a person licensed to sell securities in Wyoming through or for an account with an entity which, at the time the investment is made by the state or local government:
  - (A) Has been continuously engaged in the business of selling securities in Wyoming for the preceding two (2) years or a financial institution authorized to do business in Wyoming and qualified by law to act as a depository of public funds in this state; and
  - (B) Currently, and during the preceding two (2) years, continuously had at least one (1) established place of business in this state. As used in this subparagraph, "established place of business" means a place in this state which is actually occupied either continuously or at regular periods by employees or agents of the entity who are licensed to sell securities in this state and where a large share of the entity's business in this state is actually conducted.
- (h) Every political subdivision shall have on file a "Statement of Investment Policy." Except for investments by special hospital district boards pursuant to W.S. 35-2-403(d) or county memorial hospitals pursuant to W.S. 18-8-104(d), this policy shall be at least as restrictive with respect to the types of investments authorized as those listed under subsection (a) of this section. The policy shall require that before any person effects any

investment transaction on behalf of a political subdivision or offers any investment advice to the governing body of a political subdivision, that person shall sign a statement indicating that he has read the policy and agrees to abide by applicable state law with respect to advice he gives and the transactions he undertakes on behalf of the political subdivision. As used in this subsection, "person" does not include any officer, employee or member of the governing board of the political subdivision for which the investment is made or to which advice is given. As used in this subsection and subsection (j), "political subdivision" means the local government entities listed in the introductory paragraph of subsection (a) of this section. As used in this subsection, "investment" for the purpose of "investment transactions" and "investment advice" does not include deposits in financial institutions as authorized by law. As used in this subsection and paragraph (a)(iv) of this section, "financial institution" means as defined in W.S. 13-1-101(a)(ix).

- (j) To enhance the background and working knowledge of political subdivision treasurers in governmental accounting, portfolio reporting and compliance, and investments and cash management, the state auditor and the state treasurer shall conduct voluntary education programs for persons elected or appointed for the first time to any office or as an employee of any political subdivision where the duties of that office or position of employment include taking actions related to investment of public funds and shall also hold annual voluntary continuing education programs for persons continuing to hold those offices and positions of employment. The state treasurer and state auditor may contract with other persons with special knowledge in this area to provide the training and may also charge a fee for attendance sufficient to defray the cost of the educational program. Nothing in this subsection shall be construed as preventing the state auditor and state treasurer from allowing the general public to attend these education programs upon payment of the appropriate fee.
- (k) In connection with, or incidental to, the issuance or carrying of bonds, but only for the purpose of reducing the amount or duration of payment, interest rate, spread or similar risk, or to result in a lower cost of borrowing, and not for purposes of investment, the state treasurer or treasurer of any political subdivision, municipality or special district of this state and the various boards of trustees and boards of directors of county hospitals, airports, fairs and other duly constituted county boards and commissions may enter into contracts which are determined to be necessary or appropriate to hedge risk or to place the obligation of the bonds, in whole or in part, on the interest rate, cash flow or other basis desired, including, but not limited to, contracts commonly known as interest rate swap agreements, interest rate caps or floors, forward payment conversion agreements, futures or hedge contracts.

**9-4-832.** Repealed by Laws 1986, Sp. Sess., ch. 5, § 2.

**9-4-833.** Investment of permanent funds. [Inactive]

**9-4-834.** Repealed By Laws 2008, Ch. 113, § 4.

# Wyoming Statute and Session Law Provisions – Specific Public Purpose Investments (Includes Currently Authorized, Repealed, and Unused)

## Ongoing Programs

Aeronautics Loan program .....	W.S. 9-12-703
Area Redevelopment program .....	W.S. 11-34-303
Clean Coal Investment program (Repealed 2005).....	W.S. 9-4-701(a)(iv)(c)
Community College Bond program.....	W.S. 21-18-314
Deferred Property Tax program.....	W.S. 9-4-715(j)
Direct Student Loan program (Repealed 2008).....	W.S. 9-4-701(f)
Drainage District Bond program.....	W.S. 41-9-256
Economic (Industrial) Development Bonds – Agriculture, 1995 .....	.....
.....	W.S. 9-4-701(o) from 1995 Laws, Ch. 208
Economic (Industrial) Development Bonds, 1991.....	W.S. 9-4-701(h) from 1991 Laws, Ch. 124
Farm Loan program .....	W.S. 11-34-109 through 113
Home Mortgage Loan program (Repealed 2008).....	9-4-701(d)
Hot Springs State Park Loan program .....	W.S. 36-8-318
Hydro-Power Development Loan program .....	W.S. 11.34-306
Industrial Development Bonds (current) .....	W.S. 9-4-715(m) from 2008 Laws, Ch. 113
Interfund Borrowing .....	.....
.....	W.S. 9-1-417 and 9-3-205(e) and 21-13-316 and 27-3-208 and 27-3-303(e)
Irrigation Loan program.....	W.S. 11-34-301 through 302
Joint Powers Act Loan program .....	W.S. 16-1-109
Link Deposit program (Repealed 1993) .....	W.S. 9-4-832
Local Government Bond Guarantee program.....	W.S. 9-4-1002
School District Bond Guarantee program.....	W.S. 9-4-1001
Small Business Assistance Act Loan program (Repealed 2008).....	W.S. 9-4-701(e)
Student Loan Stand-by program .....	W.S. 21-16-113 (matched with 21-16-714)
Time Deposit, Open Account program.....	W.S. 9-4-803 and 809 through 811
University of Wyoming Advance Payment Contract program.....	W.S. 21-16-502
University of Wyoming Bond program .....	W.S. 21-17-447
Wyoming Real Estate Land purchases .....	W.S. 9-4-715(k)

## Projects

Basin Power Electric Bond .....	W.S. 37-5-406
Cheyenne Stage II Water project .....	1980 Laws, Ch. 72; W.S. 41-2-209 through 211

Cheyenne Water Treatment Plant – Sherard project.....1998 Wyo. Sess. Laws Ch. 104

Gillette-Madison Pipeline project .....  
2009 Session Laws Ch. 103; 2010, Session Laws Ch. 115; 2011 Session Laws Ch. 61; 2012  
Session Laws Ch. 26-27; 2013 Session Laws Ch.26; 2014 Session Laws Ch. 26

Green River/Rock Springs Water Treatment project.....1995 Laws, Ch. 201

Natrona County Regional Water Treatment project .....1995 Laws, Ch.194

Sheridan Area Water Treatment project .....1989 Laws, Ch. 230

Shoshone Municipal Water Treatment project .....  
.....1987 Laws, Ch. 117 and as amended by 1990 Laws, Ch. 123 and 1994 Laws, Ch. 28

University of Wyoming American Heritage Center/Art Museum.....1990 Laws, Ch. 105

---

# Appendix B

---

## Master Investment Policy (*selected excerpts*)

---

Policy effective as of April 9, 2015

### Section 1. Introduction

The purpose of this document is to establish the Master Investment Policy and Sub Investment Policies for the State of Wyoming State Loan and Investment Board (herein referred to as the "Board"). The Board is comprised of five elected officials: Wyoming's Governor as chairman of the Board, Secretary of State, State Auditor, State Treasurer and State Superintendent of Public Instruction. The Board is responsible for the fiduciary oversight of these invested public funds. The Board has chosen these policies as the most appropriate policies to achieve the investment objectives described below. Wyoming Statute (W.S.) 9-4-716 states that the Board shall adopt investment policy statements for Wyoming State funds and shall review these policy statements at least annually.

### Section 2. Investment Objectives and Achieving Return Objectives

**2.1 Investment Policy.** It is the investment policy for the Board to invest public funds of the State of Wyoming (the "State") in a manner that strives for maximum safety, provides adequate liquidity to meet all operating requirements, and achieves the highest possible investment return consistent with the primary objectives of safety and liquidity.

**2.2 Investment Objectives and Priorities.** The current Wyoming State portfolio consists of the Permanent Mineral Trust Fund, the Permanent Land Fund, the Common School Permanent Land Fund, the University Permanent Land Fund, the Hathaway Scholarship Fund, the Higher Education Endowment Fund, the State Agency Pool, the Workers' Compensation Fund, the Tobacco Settlement Trust Fund and the Wyoming State Treasurer's Asset Reserve (WYO-STAR). All available funds shall be invested with the following objectives and priorities:

- a) Safety of principal. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio;
- b) Liquidity requirements of anticipated and unanticipated expenditures;
- c) Yield;
- d) Recognition of differing objectives and needs of various fund portfolios;
- e) Conformance with State law and other pertinent legal restrictions;
- f) Maximization of the total rate of return on investment consistent with the foregoing objectives;
- g) Diversification by asset type, security and investment manager in order to smooth the volatility of quarterly returns.

These objectives and priorities apply to the funds as a whole. Specific objectives and priorities are further delineated in each fund's sub-policy. Specific objectives and priorities for individual asset managers are delineated by mandate.

### Section 3. Prudence, Responsibilities and Controls

**3.1 Prudence.** All participants in the investment process shall act responsibly as custodians of the public trust. The standard of prudence to be applied by the officers of the State Treasurer's

Office and external service providers shall be as required under W.S. 9-4-715(d). The Board, the State Treasurer, all designees of the State Treasurer and any other fiduciary appointed by the State Treasurer shall exercise the judgment and care of a prudent investor as required under the prudent investor rule set forth in the Uniform Prudent Advisor Act, W.S. 4-10-901 to 4-10-913. This Act states that "[a] trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust." W.S. 4-10-901. Investments or groups of investments shall not be evaluated in isolation but in the context of the entire investment portfolio and as part of an overall investment strategy of the trust or fund from which the Board.

The purchase of a security or the making of any direct investment by the State Treasurer or the State Treasurer's designee in a security shall not constitute a delegation of the State Treasurer's duties. The State Treasurer may delegate investment and management functions that a prudent investor of comparable skills could properly delegate under the circumstances. The State Treasurer shall exercise reasonable care, skill and caution in:

- a) Selecting an agent;
- b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

### **3.2 Ethics and Professionalism.**

- a) General. Members of the Board, its staff, the State Treasurer's Office and the Consultant (as hereinafter defined) responsible for investment decisions or who influence investment decisions (hereafter referred to as "Individuals") will be held to the highest standards of professional and ethical conduct and should be committed to a culture of honesty, integrity and accountability. Individuals shall not engage in any professional conduct involving dishonesty, fraud, deceit or misrepresentation or commit any act that reflects adversely on their honesty, trustworthiness or professional competence. Individuals shall be governed by applicable State statutes, including without limitation W.S. 6-5-118, W.S. 9-13-101 et seq. and W.S. 16-6-118.
- b) Compliance with Laws, Rules, Regulations and Policies. Individuals must comply with both the letter and spirit of all applicable laws, rules and regulations and the terms and provisions of this policy.
- c) Conflicts of Interest. Individuals have a duty to avoid financial, business or other relationships which might cause a conflict with the performance of their duties or could reasonably be expected to interfere with their duties or their ability to make unbiased and objective recommendations and decisions. Individuals should conduct themselves in a manner that avoids even the appearance of conflict between their personal interests and their duties as a public official or employee of the State. Conflicts of interest may arise in many ways. Examples include, but are not limited to:
  - i) Acceptance of gifts, payments or services from those seeking to do business with the State as described in more detail in Section 3.3 below;
  - ii) Placement of business with an entity owned or controlled by an Individual or an Individual's family;
  - iii) Ownership of, or personal interest in, a company which is a vendor of the State;
  - iv) Ownership of, or personal interest in, any security purchased directly by the State through the State Treasurer's Office or at the direction of the Board; and

- v) Compensation to an Individual by a vendor or potential vendor of the State.
- d) Confidentiality. Individuals shall not disclose to any other person official information which Individuals obtain through or in connection with their duties, unless the information is available to the general public or unless the disclosure is authorized by law.

**3.5 Board Responsibility.** The Board responsibilities shall include but not be limited to the following:

- a) Advisor/consultant selection;
- b) Annual review of master investment policy and sub-policies;
- c) Termination and hiring of investment managers.

The Board may sue and be sued in the name of the Wyoming State Loan and Investment Board in the courts of this state and in no other jurisdiction on any mortgage, contract of sale or lease issued by the Board. The Governor is Chairman of the Board but in his absence from any meeting any of the Board members may act as Chairman Pro Tempore and preside at meetings. The Director of the State Land and Investment Office is the Chief Executive Officer of the Board. Prior to April 1, 1997, the Board was known and referred to as the Farm Loan Board.

**3.6 Appropriation.** The Board shall receive an appropriation directed to the Office of State Land and Investments to be used to compensate an investment consultant (the "Consultant") for its services.

**3.7 Treasurer Responsibility.** The State Treasurer's responsibilities are detailed in the following statutes:

- a) W.S. 9-4-715 Permissible Investments;
- b) W.S. 9-4-716 State Investment Policy; Investment Consultant;
- c) W.S. 9-4-717 Additional Investment Matters;
- d) W.S. 9-4-718 Investment Managers;
- e) W.S. 9-4-831 Investment of Public Funds.

In addition, the State Treasurer will have the following responsibilities:

- a) Authority to Invest.
  - i) Designate in writing those Treasury Office personnel authorized to invest on behalf of the State. Authority to manage the investment program is granted to the State Treasurer derived from the above statutes;
  - ii) Establish and carry out written procedures and internal controls for the operation of the investment program consistent with this investment policy. Procedures should include references to: safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements, banking services contracts, and portfolio rebalancing;
  - iii) Refrain from engaging in an investment transaction except as provided under the terms of this policy and the procedures established by the State Treasurer;
  - iv) Be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials;
  - v) Monitor the commission recapture and discount brokerage programs and issue directed brokerage letters (limited to the commission recapture program) to the managers on an annual basis;

- vi) Monitor the quality of investment manager trade execution through a trading cost evaluation survey;
  - vii) Monitor performance reports from the Consultant;
  - viii) Select and review custodian and securities lending agent;
  - ix) Recommend termination to the Board of investment managers when appropriate.
- b) Internal Controls. The State Treasurer will establish a system of internal controls. The controls shall be designed to prevent losses of funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by staff. Such controls shall provide for but are not limited to:
- i) Separation of transaction authority;
  - ii) Appropriate segregation of other related duties;
  - iii) Custodial safekeeping of securities;
  - iv) Holding of bearer form securities;
  - v) Clear delegation of investment authority;
  - vi) Frequent reconciliation of investment and accounting records;
  - vii) Written confirmation of transactions;
  - viii) Supervisory controls;
  - ix) Control of collusion;
  - x) Development of electronic fund transfer agreements with lead banks and/or third party custodians.

**3.8 Board Staff Responsibilities.** The staff of the Board is retained and authorized by the Board to support and maintain the integrity of the investment program. In striving for management quality, it is the policy of the Board to attract and retain qualified investment staff and to promote, encourage, and provide continuing education for the staff.

**3.9 Treasurer's Office Staff Responsibilities.** The Treasurer's Office staff responsibilities shall be to monitor the investment program. Those responsibilities shall include:

- a) Investment research;
- b) Monitoring of Consultant recommendations;
- c) Monitor trade execution;
- d) Developing and recommending policy, asset allocation, portfolio structure.

## **Section 4. Fund Categories**

The following is a list of the various funds and the classification to which each fund belongs. Each fund has a separate sub-policy at the end of this Master Investment Policy, which addresses issues that are specific to each fund.

- a) State Agency Pool: A non-permanent fund which dispenses income and capital gains;
- b) Permanent Mineral Trust Fund: A permanent fund which dispenses income and capital gains;
- c) Permanent Land Fund: A permanent fund which dispenses income and capital gains;
- d) Common School Permanent Land Fund: A permanent fund which dispenses income and capital gains;
- e) University Permanent Land Fund: A permanent fund which dispenses income and capital gains;
- f) Hathaway Scholarship Fund: A permanent fund which dispenses income and capital gains;

- g) Higher Education Endowment Fund: A permanent fund which dispenses income and capital gains;
- h) Workers' Compensation: A non-permanent fund which retains income and capital gains within the fund's portfolio;
- i) Tobacco Settlement Trust Fund: A non-permanent fund which dispenses income and capital gains;
- j) WYO-STAR: A non-permanent fund which dispenses income and capital gains.

## **Section 5. Asset Allocation Guidelines and Rebalancing Policy**

The target asset allocation guidelines are outlined in the sub-policy for each separate fund. The Treasurer's Office shall maintain internal policies and procedures with regards to rebalancing.

## **Section 6. Cash Holdings**

It is the policy of the Board for equity managers to be fully invested at all times, except in anticipation of large withdrawals. Equity managers should maintain less than five percent (5%) of their portfolios in cash equivalents except for periods of short-term portfolio repositioning not to exceed five (5) trading days, unless the contract with the equity manager specifically provides otherwise.. Fixed income managers can maintain higher cash balances (i.e. barbell strategies necessitate this exposure to cash). An exception will be made for Alternative Investments.

## **Section 8. Permissible Investments**

**8.1 Statutory Provisions.** The investment of funds by the Treasurer's Office and managers shall comply with applicable statutory provisions. Some of these statutes are listed below:

- a) W.S. 2-3-301 Standard for Fiduciaries;
- b) W.S. 9-4-715 Permissible Investments;
- c) W.S. 9-4-716 State Investment Policy; Investment Consultants;
- d) W.S. 9-4-717 Additional Investment Matters;
- e) W.S. 9-4-718 Investment Managers;
- f) W.S. 9-4-831 Investment of Public Funds;
- g) Title 9, Chapter 4, Article 11 Tax and Revenue Anticipation Notes.

**8.2 Public Equity Security Restrictions.** All public equity investments, over-the-counter (OTC) securities, and other equity related securities shall be limited to securities that are actively traded on U.S. exchanges or Non-U.S. exchanges including the NASDAQ. Public equity holdings shall be restricted to companies which have a history of more than three years continuous operation (current firm and/or predecessor firm), unless the contract with the investment manager specifically provides otherwise. Furthermore, securities that are acquired as the result of corporate actions are permitted.

As stated in W.S. 9-4-715(b):

The state treasurer, or his designee, which shall be registered under the Investment Adviser's Act of 1940, or any bank as defined in that act, upon written authority, may invest monies of the permanent funds, in securities but not more than fifty-five percent (55%) shall be invested in common stocks.

**8.3 Alternative Investment Restrictions.** Alternative Investments which the State obtains in the form of a security shall follow the process outlined in W.S. 9-4-715(a), W.S. 9-4-715(c) and W.S. 9-4-715(e). Alternative Investments and strategies encompass a broad range of securities and investments. No specific restrictions are made except that leverage, if utilized, must be

limited to less than fifty percent (50%) at the limited partnership level in which the State is an investor; provided, however, for core real estate investments, leverage should not exceed forty percent (40%) across the entire portfolio and for non-core real estate managers, there are no specific limits on leverage.

## **Section 9. Prohibited Investments for Separate Account Situations**

**9.5 Commodities.** Commodities or commodity contracts are prohibited. An exception is made if the investment is part of an Alternative Investment.

**9.6 Real Estate.** Real Estate, either private or public, is prohibited. An exception is made if an external investment manager that has been retained as a dedicated real estate investment manager manages the account, if the investment is part of an Alternative Investment or as provided in W.S. 9-4-715(k), or if Real Estate Investment Trusts (REITs) are included in the composition of the manager's stated benchmark.

**9.7 Natural Resources.** Natural resource properties such as oil, gas or timber are prohibited. An exception is made if the investment is part of an Alternative Investment or a Wyoming Investment.

**9.8 Short Sales and Margin Transactions.** Short sales and margin transactions are prohibited. An exception is made for external fixed income managers' short positions using futures, forwards, options, and swaps; or if the investment is part of an Alternative Investment.

## **Section 11. Portfolio Guidelines**

### **11.1 Pertaining to the Overall Investment Program.**

- a) Not more than one percent (1%) of the outstanding common shares of any corporation shall be owned by the State. An exception may be made for Alternative Investments and for companies with a market capitalization below \$5 Billion as described in Section 11.2.(g)(iv).
- b) Not more than one and one-half percent (1.5%) of the total book value of permanent funds shall be invested in the common stock of any corporation. An exception may be made for Alternative Investments;
- c) The State Treasurer or designee can invest in any class of security not otherwise authorized by law, provided the security was authorized by law at the time it was acquired and the total book value of all securities not authorized by law shall not exceed one percent (1%) of the total book value of the permanent fund accounts, and provided further that any such investment shall be in accordance with the fiduciary standards specified in W.S. 2-3-301. An exception may be made for Alternative Investments;
- d) Not more than fifty-five percent (55%) of the total book value of permanent funds shall be invested in equities; and
- e) Security selection, portfolio structure and timing of purchase and sales are delegated to the manager.
- f) The Board is concerned with terrorism and human rights violations occurring worldwide, yet recognizes its fiduciary responsibility to invest only in the best economic interest of the portfolio. While the Board cannot make investments based on social or political objectives, it does consider the economic effects of social and humanitarian issues in the analysis of investments. The Board seeks to avoid investments that support

terrorism or the violation of human rights. As such, the Board will require its investment managers to acknowledge that they will seek to avoid such investments. Specifically, Investment Managers are required to check portfolio holdings no less frequently than quarterly against the companies listed on the Specially Designated Nationals List and the countries listed on the Lists of Sanctioned Countries, maintained by the U.S. Treasury Department Office of Foreign Assets Control (OFAC), to ensure that the companies or countries on the list are not represented in the portfolios. If a current holding appears on the list at the time of the quarterly check, the Manager will eliminate the position from the portfolio within a reasonable period of time and will not make additional purchases unless the issuer is removed from the OFAC list.

## **Section 12. Risk Management**

**12.1 Issuer or Secondary Source Failure.** The State Treasurer shall seek to control the risk of loss due to the failure of a security issuer or secondary source. Such risk shall be controlled by constructing investment portfolios using the prudent investor rule, by ensuring adequate portfolio diversification, by collateralization as required by law and by statutory guidelines.

## **Section 17. Liquidity**

Liquidity shall be achieved by investing in securities with active secondary markets with the exception of Alternative Investments. A security may be liquidated to meet unanticipated cash requirements, to re deploy cash into other investments expected to outperform current holdings, or to otherwise adjust the portfolio. Sufficient liquidity must be maintained to ensure payment to the State of the interest received from investments and any capital gains which occur from trading in the portfolio. This liquidity is the responsibility of the manager.

## **Section 21. Sub-Policies on Funds**

### **21.2 Sub-Policy for the Permanent Mineral Trust Fund**

1. Fund Description. This sub-policy applies to the funds of the Permanent Mineral Trust Fund administered by the State Treasurer. This fund is a permanent fund, which dispenses income and capital gains.
2. Philosophy and Investment Strategy. The corpus of the Permanent Mineral Trust Fund must be held inviolate. The Wyoming State Legislature has allocated, at times, a large portion of it to directed investments. Therefore, only the remaining portion is available for discretionary investments by the State Treasurer's Office. The fund must be managed to allow an extensive range of investment maturities that will provide for funds availability for directed investments as they come into existence as mandated by the Legislature. These funds are to be invested for the long term to produce a higher return without the cash flow or Wyoming Investments.
  - a) Primary Investment Goal. The primary investment goals are capital appreciation, total return, and protection against inflation.
  - b) Target Asset Allocation. The asset allocation is restricted by State statutes to no more than fifty-five percent (55%) equities. The target asset allocation is as follows:

Global Equity 3.1%

All Cap U.S. Equity 15.1%

Passively Managed 11.5%

Actively Managed 3.6%  
 Small Cap U.S. Equity 1.3%  
 International Equity 11.5%  
 Private Equity 4.0%  
 Real Estate 7.5%  
 Absolute Return 7.5%  
 Convertibles 2.0%  
 Fixed Income\* 45.0%  
 Core 31.4%  
     TIPS 3.6%  
     Credit 4.5%  
     Internal Portfolio 1.8%  
     EMD-Local 2.3%  
     Opportunistic 1.4%  
 Cash Equivalents 3.0%

\* The total Fixed Income allocation is reduced by Wyoming Investments.

The target established above represents the long-term asset allocation objectives for the fund. However, the State Treasurer's Office shall have the right to make periodic adjustments to the above-listed allocations as they see fit, commensurate with the economic environment, ongoing cash flow activity, and the liquidity needs of the fund. It is also understood that the strategic allocation to alternative assets may differ from the target outlined for limited periods of time, due to the illiquid nature of these asset classes. Further, during the initial implementation of alternative asset classes, the allocation will fall below the minimum range until the program can be fully established.

- c) Liquidity Requirements. Liquidity shall be maintained to facilitate trading, to move money between asset classes, and to meet cash needs as determined by the State Treasurer's Office. Liquidity must be maintained to move income generated during the year out of the fund.
- d) Maturity. This pool is designed to be a long-term investment pool with the main objective to grow the capital over time. The average duration of the bond portfolio should be plus or minus twenty percent (20%) of the duration of the Barclays U.S. Aggregate Bond Index or Custom Index, whichever is applicable.
- e) Diversification. The State Treasurer shall diversify the securities held in this fund to avoid a concentration of any single security type.
- f) Risk. The fund has a diversified asset allocation to limit the degree of uncertainty in the pursuit of return. The equity cap also prohibits exacerbated levels of risk in the fund.
- g) Return Expectations. The long-term return expectation will be four hundred (400) basis points above the CPI.
- h) Benchmark. Custom Index weighting the fixed income allocation by the Barclays U.S. Aggregate Bond Index, the domestic equity allocation by the Russell 3000, the global equity allocation by the MSCI ACW Index, the international equity allocation by the

MSCI ACW ex U.S. Index, the private equity allocation by the State's actual private equity investment returns, the core real estate allocation by the NCREIF Fund Index – Open-End Diversified Core Equity, the non-core real estate allocation by the NCREIF Property Index, the absolute return allocation by the HFN Fund of Funds Multi-Strategy Index, the convertibles allocation by the BofA Merrill Lynch All Convertibles All Quality Index, and the State Agency Pool allocation by the State Agency Pool Custom Index as defined in Section 21.1 Sub-Section 2(h).

- i) Spending Policy. The spending policy set by legislative determination is five percent (5%) of the previous five (5) year average market value of the fund, calculated on the first day of the fiscal year. Amounts spent must be sourced from investment income. Earnings in excess of the spending policy are appropriated from the general fund to the reserve account. When the reserve account reaches a balance that exceeds seventy-five percent (75%) of the current fiscal year's spending policy, the excess funds will be transferred from the reserve account to corpus.



---

# Appendix C

---

## Wyoming Investments Program and Project Summaries

---

The summaries provided in this appendix are intended to show the variety, depth, and breadth of the State’s commitment of permanent funds to finance Wyoming-specific programs and projects. The summaries include current public purpose investments as well as other commitments of permanent funds that may not be specifically applicable as “public purpose investments” under W.S. 9-4-715(n). The summaries also provide brief updates of past Wyoming investments as reviewed by the Legislature in the 1997 *Legislatively Designated Investments* program evaluation.

The basic structure of each summary includes: 1) statutory or session law authority for the investment; 2) year originated; 3) administering agency; 4) outstanding balance, if any; 5) allowable allocation or commitment; 6) applicable interest rate(s); 7) applicable State fund; and 8) description of purpose and process for utilizing State permanent funds.

### Programs

---

#### Aeronautics Loan Program

Statutory Authority: W.S. 9-12-703  
Year Authorized: 2000  
Administering Agency: OSLI  
Outstanding Balance: \$4,292,917  
Allowable Commitment: \$10,000,000  
Interest Rate(s): 5%  
Applicable Fund: PWMTF

This program provides loans for the construction, development, and improvement of airport facilities. In addition, this program was audited as part of the 2012 LSO audit of the Aeronautics Commission. During the 2013 General Session, the program’s administration was moved from the Aeronautics Commission to the OSLI. The Aeronautics Commission does continue to have a consulting role in approving these loans.

---

#### Area Redevelopment Program

Statutory Authority: W.S. 11-34-303  
Year Authorized: 1963  
Administering Agency: OSLI  
Outstanding Balance: \$0  
Allowable Commitment: \$300,000  
Interest Rate(s): reasonable interest rate  
Applicable Fund: Any Permanent Fund

This program provides loans to departments and agencies of state, local government, persons, corporations, and associations for the cost of any project within a redevelopment area for industrial or commercial usage as outlined in a federal program (repealed 1965). These loans shall be “at a reasonable rate of interest” and not exceed forty years for repayment. The OSLI/SLIB has administrative authority while the WBC is intended to provide consulting and recommend projects under this program.

---

#### Clean Coal Investment Program (Repealed 2005)

Statutory Authority: W.S. 9-4-701(a)(iv)(c)

This program allowed the STO to invest in the bonds of projects that enhance the value of and open new markets for Wyoming Coal. The intent was increased job

Year Authorized: 1987  
Administering Agency: STO  
Outstanding Balance: \$0  
Allowable Commitment: \$30,000,000  
Interest Rate(s): Not less than the average rate of return on State investments for the preceding year  
Applicable Fund: PWMTF

creation and economic value to the State. The State ultimately committed \$20.7 million.

---

### **Community College Bond Program**

Statutory Authority: W.S. 21-18-314  
Year Authorized: 1967  
Administering Agency: STO  
Outstanding Balance: \$0  
Allowable Commitment: None listed  
Interest Rate(s): Not to exceed 10%  
Applicable Fund: PLF, CSA

This program allowed community colleges to obtain permanent funds to finance construction and improvement of facilities. The last known use of this program was in the 1970s with the last outstanding balance repaid in full in 2010.

---

### **Deferred Property Tax Program**

Statutory Authority: W.S. 9-4-715(j)  
Year Authorized: 1995  
Administering Agency: STO  
Outstanding Balance: \$0  
Allowable Commitment: \$2,000,000  
Interest Rate(s): None specified; Last Investment was at 4%  
Applicable Fund: PWMTF

The purpose of the program is to fill the gap for counties when property taxes are deferred according to statutorily allowed conditions for taxpayers. These taxes are only deferred, not forgiven, so the county theoretically would use this program as bridge funding until past due taxes are later paid by the taxpayers. Only two counties ever used this program, Teton County and Sheridan County. Total loaned funds to these counties amounted to about \$22,500, only \$319 was from Sheridan County. All outstanding loans and interest was repaid by 2010.

---

### **Direct Student Loan Program (Repealed 2011)**

Statutory Authority: W.S. 9-4-701(f)  
Year Authorized: 1977; 1985  
Administering Agency: STO  
Outstanding Balance: N/A  
Allowable Commitment: \$14,484,760  
Interest Rate(s): none specified  
Applicable Fund: PWMTF

The State was authorized to purchase any nondelinquent federally guaranteed or insured student loans from any non-profit Wyoming corporation.

---

### **Drainage District Bond Program**

Statutory Authority: W.S. 41-9-256

While the STO does not have explicit authority to invest in drainage district bonds, the State chose to do so in the

Year Authorized: 1930s  
Administering Agency: STO  
Outstanding Balance: \$24,000  
Allowable Commitment: No cap  
Interest Rate(s): 2%-4%  
Applicable Fund: No Fund Specified;  
Fund used is CSA and PLF<sup>5</sup>

early part of the 20th century. The bond purchases were to finance local districts' costs to construct, repair, reconstruct, enlarge, extend, or improve drainage systems. No new investments have been made under this program in over fifty years. Currently, there is only one outstanding bond that matured in 1974 and according to the State Treasurer's Office is considered uncollectable. The uncollectable amount is \$24,000 of loan principal as of FY2014.

---

### **Economic (Industrial) Development Bonds, 1991**

Statutory Authority: W.S. 9-4-701(h) from 1991 Laws, Ch. 124  
Year Authorized: 1991  
Administering Agency: STO  
Outstanding Balance: N/A  
Allowable Commitment: \$25,000,000  
Interest Rate(s): 6%  
Applicable Fund: PWMTF

This program was created to promote economic development in Wyoming. The first of the industrial development bond programs. Funds were dependent on the number of employees retained or full-time positions created. This program was repealed and re-codified in 1999; current effective statute is W.S. 9-4-715(m).

---

### **Economic (Industrial) Development Bonds – Agriculture, 1995 (Repealed 1999)**

Statutory Authority: W.S. 9-4-701(o) from 1995 Laws, Ch. 208  
Year Authorized: 1995  
Administering Agency: STO  
Outstanding Balance: N/A  
Allowable Commitment: \$10,000,000  
Interest Rate(s): 8%  
Applicable Fund: PWMTF

The second iteration of Industrial Bond Program allowed for the construction or reconstruction of agricultural processing facilities.

---

### **Farm Loan Program**

Statutory Authority: W.S. 11-34-109 through 113  
Year Authorized: 1921  
Administering Agency: OSLI  
Outstanding Balance: \$25,636,676  
Allowable Commitment: \$275,000,000  
Interest Rate(s): 4% - 10%<sup>6</sup>

This program provides loans for agricultural operators to purchase land, equipment, buildings, or the liquidation of previous debt. Eligible applicants must demonstrate they are qualified electors of the State and are or soon will become engaged in the development of the mortgaged land. The SLIB approves these loans, made through non-negotiable debenture bonds, on advice and recommendation by the OSLI. The program allocates funding for three main purposes: 1) regular

---

<sup>5</sup> There is no specific statutory requirement or allowance for the STO to invest in drainage district bonds; the PWMTF did not exist when these investments were made in the early 1900s.

Applicable Fund: Any Permanent Fund; Currently Uses PWMTF

farm loans; 2) beginning agricultural producer; and 3) livestock loans. Loan can be anywhere from \$10,000 to \$800,000, may be between five and thirty years long for farm or beginning agriculture producer loans and up to seven years for livestock loans, and cannot exceed 70% of the appraised value. Repayment on loaned funds may be interest-only for the first five years under special conditions and the program allows for borrowers to re-amortize the loan with the approval of the SLIB. Revenue from application fees and a 1% loan origination fee are placed into a loan-loss reserve account.

---

### Home Mortgage Loan Program (Repealed 2003)

Statutory Authority: 9-4-701(d)  
Repealed 2008 Wyo. Sess. Laws. Ch. 113 §4

Year Authorized: 1981

Administering Agency: STO

Outstanding Balance: \$0

Allowable Commitment: \$10,000,000

Interest Rate(s): Not less than 10.1%

Applicable Fund: PWMTF

Now repealed, the STO was authorized to invest in home mortgage loans or loan pools for eligible individuals. It set maximum income and home purchase price conditions.

---

### Hot Springs State Park Loan Program:

Statutory Authority: W.S. 36-8-318

Year Authorized: 1967

Administering Agency: OSLI;  
Cultural Resources

Outstanding Balance: \$5,461

Allowable Commitment: Less than \$1,000,000 per loan with a cap at \$2,000,000

Interest Rate(s): 6%-12%

Applicable Fund: Any Permanent Fund; Currently Use PWMTF

Loans issued under the Hot Springs State Park Loan program in order to improve and upgrade the business enterprises and guest accommodations at the Hot Springs State Park near Thermopolis, Wyoming.

---

### Hydro-Power Development Loan Program

Statutory Authority: W.S. 11.34-306 This program was created to provide loans to municipalities, irrigation districts, or other special

---

<sup>6</sup> Rates provided do not include Beginning Agriculture Producer loans that are currently set at “the lower of 8% or the average yield on a ten (10) year U.S. Treasury Bond for the previous year, rounded to two (2) decimals,” for the first ten years; after ten years the rate is 8%.

Year Authorized: 2011  
Administering Agency: OSLI  
Outstanding Balance: \$0 (OSLI has never received an application to provide funding under this program)  
Allowable Commitment: \$10,000,000 per loan (no aggregate program funding cap)  
Interest Rate(s): 4% - 6%  
Applicable Fund: Any Permanent Fund; Currently Use PWMTF

districts with a purpose of hydropower development. The SLIB approves these loans on advice and recommendation by the OSLI. Loans may be for up to a thirty year term and can only be approved after a Wyoming Water Development Commission feasibility study has been performed. Revenue from application fees and a 1% loan origination fee are placed into a loan-loss reserve account.

---

### Industrial Development Bonds (current)

Statutory Authority: W.S. 9-4-715(m) from 2008 Laws, Ch. 113  
Year Authorized:  
Administering Agency: STO  
Outstanding Balance: \$52,301,399  
Allowable Commitment: \$300,000,000  
Interest Rate(s): Fixed or Indexed to ten-year Treasury Bill.  
Applicable Fund: PWMTF (or any permanent fund)

Authorizes the State Treasurer to purchase bonds issued by a local entity for specific development projects. The WBC and the STO share the processes and administrative duties of the program.

During the 2013 Legislative Session, the IDB program cap was decreased from \$600,000,000 to \$300,000,000. Additionally, no single project may be authorized in the excess of \$100,000,000 without legislative approval. The funds for the program are specified to come from any State permanent funds; also, 25% of total project costs must be paid by the project owner.

---

### Inter-fund Borrowing

Statutory Authority: W.S. 9-1-417, 9-3-205(e), 21-13-316, 27-3-208, and 27-3-303(e)  
Year Authorized: 1987; 2010 (School districts to group insurance); 1983 (federal trust fund advance)  
Administering Agency: STO  
Outstanding Balance: \$225,000,000 (school foundation borrowing)  
Allowable Commitment: \$60,000,000 generally and for school district group insurance; however, no limit set for CSPLF  
Interest Rate(s): 6%  
Applicable Fund: CSA of the PLF

The STO and SAO may use loans from State funds to meet obligations that come due prior to receipt of revenue. Typically, the borrowing occurs between the Common School Permanent Land Fund and School Foundation Fund and this appears to be the only program currently using this authority. However, statute also permits the governor's ability to receive advances from the federal unemployment trust fund and allowed the funds to be borrowed when school districts joined the employee group insurance plan.

---

## **Irrigation (small water development projects) Loan Program**

Statutory Authority: W.S. 11-34-301 through 302

Year Authorized: 1955

Administering Agency: OSLI

Outstanding Balance: \$708,661

Allowable Commitment: \$20,000,000

Interest Rate(s): 4% - 8%

Applicable Fund: Any Permanent Fund; Currently use PWMTF

This program provides loans that may not exceed \$150,000 for individual small water development projects where the developed water is used for agricultural, recreational, or municipal purposes. Borrowers may include water districts and State and local government agencies, and individuals, corporations, and associations that are qualified electors in the State. The SLIB approves these loans, made through non-negotiable debenture bonds, on advice and recommendation by the OSLI. Loans may be for up to a forty-year term, can be repaid as interest only if the project is within a governor-approved drought or emergency area. Revenue from application fees and a 1% loan origination fee are placed into a loan-loss reserve account. The Wyoming Water Development Commission (WWDC) is required to provide technical assistance to the OSLI and the SLIB as requested.

---

## **Joint Powers Act Loan Program**

Statutory Authority: W.S. 16-1-109

Year Authorized: 1974

Administering Agency: OSLI

Outstanding Balance: \$6,403,216

Allowable Commitment: \$60,000,000

Interest Rate(s): Variable<sup>7</sup>

Applicable Fund: Any Permanent Fund; Currently Use PWMTF

This program provides loans for facilities generating user fees, to the extent that the user fees will repay the loan.

Any portion of the revenue generating facility unable to be financed by user fees may be financed by a grant under W.S. 9-4-604(g) and (h) to agencies and joint powers boards otherwise authorized to receive grants under those provisions;

Loans shall be made to the governmental entity or entities whose inhabitants receive a direct service or benefit from the revenue generating facility;

May refinance any delinquent loan and reamortize the loan over not more than thirty years from the date of refinancing. All costs of refinancing the loan shall be paid by the borrowing entity and no loan shall be refinanced where it appears refinancing will jeopardize the collection of the loan. An additional fee of 1% of the amount of the re-amortized loan shall be paid. Revenue from a 1% loan origination fee is placed into a loan-loss reserve account.

---

<sup>7</sup> JPA interest rate is specified to be set at rates of interest for similar securities on the commercial market, not be less than the average rate of return realized on all permanent mineral trust fund investments as determined by the state treasurer for the five (5) calendar years immediately preceding the year in which the loan is made.

---

**Link Deposit Program (Repealed 1993)**

Statutory Authority: W.S. 9-4-832

Year Authorized: 1986-1993

Administering Agency: STO

Outstanding Balance: \$0

Allowable Commitment: \$5,055,306

Interest Rate(s): None specified

Applicable Fund: Operating funds

Program was created to provide reduced rate loans to businesses, which were to use the funds to create or retain jobs in Wyoming.

---

**Local Government Bond Guarantee Program**

Statutory Authority: W.S. 9-4-1002

Year Authorized: 1994

Administering Agency: OSLI

Outstanding Balance: \$0

Allowable Commitment:  
\$100,000,000

Interest Rate(s): N/A

Applicable Fund: PWMTF (if State is required to make bond payments)

This program is intended to guarantee local bonds issued under W.S. 15-7-101 through 15-7-114 (for cities to make public improvements) or 18-4-301 through 18-4-506 (for county finances).

---

**School District Bond Guarantee Program**

Statutory Authority: W.S. 9-4-1001

Year Authorized: 1994

Administering Agency: OSLI

Outstanding Balance: \$2,277,845  
(\$2,160,000 principal; \$117,845 interest)

Allowable Commitment:  
\$100,000,000

Interest Rate(s): Equal to the average interest earned on investments in the CSA in the four quarters preceding the quarter in which the loan occurred.

Applicable Fund: CSA, PLF

This provision applies to school district bonds issued under W.S. 21-13-701 through 21-13-721 (for the purpose of capital improvements). The Legislature no longer guarantees new school district bonds as of November 1, 2001 (2002 Laws, Ch. 51). The STO anticipates the last of the bonds guaranteed under this program will mature in June 2020.

---

**Small Business Assistance Act Loan Program (Repealed 2008)**

Statutory Authority: W.S. 9-4-701(e)

Year Authorized: 1984

Administering Agency: STO

Statute authorized the STO to invest in the federally guaranteed portion of the U.S. Small Business Administration and Farmer's Home Administration, business and industry loans. The program provided

Outstanding Balance: \$64,928  
Allowable Commitment: \$9,629,651  
Interest Rate(s): 6.15%<sup>8</sup> (last used)  
Applicable Fund: Any Permanent Fund; Currently Use PWMTF

fixed, reduced-interest rate loans on small businesses for the first five years. The STO purchased the guaranteed portions of these loans from local financial institutions with the State Industrial Development Corporation servicing the loans. The principal was returned to purchase other loans in the program.

There were several extensions to the sunset date of the program, with the last one occurring in 2000. Only one outstanding loan exists today, with an outstanding balance of \$64,928.24 and is to be paid in full in 2018.

---

### Student Loan Stand-by Program

Statutory Authority: W.S. 21-16-113 (matched with 21-16-714)  
Year Authorized: 1984  
Administering Agency: STO  
Outstanding Balance: \$0  
Allowable Commitment: \$175,000,000  
Interest Rate(s): None specified  
Applicable Fund: PWMTF or CSA-PLF

This program was intended to provide the lowest-possible interest on bonds issued by the Wyoming Student Loan Corporation (WSLC). This program's maximum commitment level was later attached and cross-referenced for the Wyoming Higher Education Assistance Authority. The State could make payment due to bondholders if the stand-by commitment was exercised. Currently, that State holds no commitments under this the program.

---

### Time Deposit, Open Account Program

Statutory Authority: W.S. 9-4-803 and 809 through 811  
Year Authorized: 1907  
Administering Agency: STO  
Outstanding Balance: \$159,950,000  
Allowable Commitment: \$0  
Interest Rate(s): Determined quarterly  
Applicable Fund: operating and permanent funds

This program allows the Treasurer to deposit State funds with Wyoming financial institutions for the fiscal year at rates based on the 90-day Treasury bill yield for the previous quarter. Participating banks must sign a contract, collateralize the deposits, and pay interest to the State quarterly. This program provides banks with stable, consistently priced funding.

---

### University of Wyoming Advance Payment Contract Program

Statutory Authority: W.S. 21-16-502  
Year Authorized: 1995  
Administering Agency: STO  
Outstanding Balance: \$1,468,667

The Program was established to allow for advance payment of higher education through contracts with future attendees' families. According to the University, the first contract was sold in August 1987. The final contract was sold in March 1995.

---

<sup>8</sup> SBAA loans' interest rate was to be not less than the yield of the five year Treasury bond for the first 5 years, and adjusted to the current rate of the note and loan agreement after 5 years

(ending market value as of 6/30/2013) The program is scheduled to terminate on 7/31/2020 (7 years after the final two contracts' start date of 8/1/13).  
Allowable Commitment: \$10,000,000  
Interest Rate(s): 4%  
Applicable Fund: N/A

---

### **Wyoming Real Estate Land Purchases:**

Statutory Authority: W.S. 9-4-715(k)  
Year Authorized: 2008  
Administering Agency: OSLI  
Outstanding Balance: \$18,335,738  
Allowable Commitment: aggregate  
Interest Rate(s): N/A  
Applicable Fund: PLF

The State Treasurer is authorized to invest funds received from sales of State trust lands and statutory allotment, upon request of the SLIB. Statute requires that the investment be a purchase of lands and improvements within Wyoming, including lands and improvements from the federal government.

Acquisitions are to be purchased at no more than the appraised fair market value. Furthermore, the transactions are evaluated with the State Trust Land Management Objectives established by the SLIB in 2005.

---

## **Projects**

---

### **Basin Power Electric Bond**

Authority: W.S. 37-5-406  
Year Authorized: 2005  
Administering Agency: STO  
Outstanding Balance:  
Allowable Commitment: \$27,555,000  
Interest Rates: 4.69%  
Applicable Fund: PWMTF

Exempt from PPI \$600 million maximum allocation

The Treasurer, with written approval of the SLIB and the Attorney General, is permitted to invest funds from the PWMTF in bonds issued by the WIA at a minimum interest rate of 4%. In 2005, the statutory cap for WIA bonds approved by the SLIB and Attorney General could not to exceed \$1 billion pursuant to W.S. 37-5-403(a). The Treasurer purchased the Basin Electric bond from the Wyoming Infrastructure Authority (WIA) for \$34,500,000 at a 4.69% interest rate with a maturity date of 9/15/2025. The bond proceeds were intended to be used to fund construction of the transmission line to connect the Hughes substation, north of Rozet, to the Carr Dar substation west of Gillette and a proposed substation north of Sheridan.

---

### **Cheyenne Stage II Water Project**

Authority: 1980 Laws, Ch. 72, W.S. 41-2-209 through 211  
Year Authorized: 1980  
Administering Agency: STO

Project was authorized to expand the city's water supply by constructing facilities to collect and hold additional water from the Little Snake River and Douglas Creek drainages. While Douglas Creek water is diverted to the Cheyenne water system, the Little Snake River water replaces this diverted water for the North Platte River

Outstanding Balance: \$0  
Allowable Commitment: \$0  
Interest Rates: 6.5%  
Applicable Fund: PWMTF

basin. In 1988, the STO converted this investment into a guarantee investment contract with the same terms as the original investment, but also received a \$3.6 million premium profit. This GIC was fully repaid in 2014.

---

### **Gillette-Madison Project**

Authority: 2009 Session Laws Ch. 103, 2010 Session Laws Ch. 115, 2011 Session Laws Ch. 61, 2012 Session Laws Ch. 26-27, 2013 Session Laws Ch.26, 2014 Session Laws Ch. 26  
Year Authorized: 2009  
Administering Agency: WWDO/C  
Outstanding Balance: \$29,552,239  
Allowable Commitment: 29,552,239  
Interest Rate(s): 4%<sup>9</sup>  
Applicable Fund: PWMTF

Intended to fund design, groundwater exploration and drilling, permit procurement, project land procurement, construction engineering and construction of municipal wells, transmission pipelines, pump stations and appurtenances to the municipal and domestic water supply. The outstanding balance will not begin to be repaid, and no interest will begin to accrue until the WWDC determines the project is substantially complete and begins to provide benefit to the sponsor.

---

### **Green River/Rock Springs Water Treatment Project**

Authority: 1995 Laws, Ch. 201  
Year Authorized: 1995  
Administering Agency: WWDO/C  
Outstanding Balance: \$0  
Allowable Commitment: \$24,000,000  
Interest Rate(s): 8%  
Applicable Fund: PWMTF

Project provided water treatment as part of a regional project to improve intake and transmission capabilities. AML funds were also used for this project. The project was repaid shortly after the loan was made by the State and no interest was earned on the loan.

---

### **Natrona County Regional Water Treatment Project**

Authority: 1995 Laws, Ch.194  
Year Authorized: 1995  
Administering Agency: WWDO/C  
Outstanding Balance: \$0  
Allowable Commitment: \$23,000,000  
Interest Rate(s): 4%-8%

After studies from the WWDC provided information on the need for a regional water treatment system, funds were loaned to construct this project. The project was repaid shortly after the loan was made by the State and no interest was earned on the loan.

---

<sup>9</sup> No interest is accruing on the Gillette Madison water project loan until the project is deemed substantially complete and beneficial to the project sponsor as determined by the Wyoming Water Development Commission.

Applicable Fund: PWMFT

---

### **Sheridan Area Water Treatment Project**

Authority: 1989 Laws, Ch. 230

Year Authorized: 1989

Administering Agency: WWDO/C

Outstanding Balance: \$0

Allowable Commitment: \$6,750,000

Interest Rate(s): 4%

Applicable Fund: PWMTF

---

Provided water supply and treatment to address water quality problems that included violations of the Safe Drinking Water Act. The outstanding balance on this loan was repaid in 2013.

### **Shoshone Municipal Water Treatment Project**

Authority: 1987 Laws, Ch. 117 and as amended by 1990 Laws, Ch. 123 and 1994 Laws, Ch. 28

Year Authorized: 1987

Administering Agency: WWDO/C

Outstanding Balance: \$12,335,128

Allowable Commitment: \$16,500,000

Interest Rates: 4%

Applicable Fund: PWMTF

---

The project complemented the Shoshone municipal pipeline project that provides water from Buffalo Bill Dam to Cody, Powell, Byron, Lovell, Deaver, and Frannie. Both the pipeline and the water treatment project were approved by the Legislature.

### **University of Wyoming American Heritage Center/Art Museum**

Authority: 1990 Laws, Ch. 105

Year Authorized: 1990

Administering Agency: STO

Outstanding Balance: \$0

Allowable Commitment: \$6,000,000

Interest Rates: 6%

Applicable Fund: PLF- University Account

---

The University was allowed to borrow up to \$6 million from the University's account within the Permanent Land Fund to construct this facility. This served essentially as a bridge loan and the entire loan of \$1,050,000 was repaid in the late 1990s.



# Appendix D

## Other States Use and Investment of Permanent Funds

State → Subject ↓	Alaska	Montana	New Mexico	North Dakota	Utah	Wyoming
<b>Trust fund name</b>	Alaska Permanent Fund	Coal Severance Tax Trust Fund	Severance Tax Permanent Fund	Legacy Fund	State Endowment Fund	Permanent Mineral Trust Fund
<b>Year(s) created</b>	1976 by constitutional amendment	1976 by constitutional amendment	1973 by statute; 1976 by constitutional amendment	2010 by constitutional amendment	2008 by constitutional amendment	1974 by constitutional amendment
<b>Market Fund Value</b>	\$54.5 billion 2015	\$1 billion 2015	\$4.1 billion 2015	\$3 billion 2015	\$159.5 million 2015	\$7.2 billion (March 31, 2015)
<b>Source Of Revenue</b>	At least 25% of mineral-related (oil) income and legislative appropriations	50% of severance tax collections on coal	12.5% of severance tax collections coal, natural gas, oil, and other minerals	30% of coal and oil severance tax collections	Severance tax revenues in excess of \$71 million from oil & gas, and \$27.6 million from coal.	2.5% severance tax assessed on gas, oil, coal and other minerals as directed by the Legislature <sup>1</sup>
<b>Annual Tax Inflows</b>	\$887 million (FY2011)	\$22 million (FY2010)	\$3.5 million (FY2010)	\$613 million (FY11-13)	\$0 (FY2011)	\$352.8 million (FY2014)
<b>Asset Allocation</b>	Fixed income, equities, real estate, other	In-state investments, loans, short-term investment and bond pool, other	Domestic and non-US equity, real estate, fixed income, in-state investments, other	N/A	Local Government Investment Pool (money markets)	Equities, fixed income (including PPIs), cash
<b>Amount of Distribution Appropriated</b>	\$814 million (FY2011)	\$45 million (FY2011)	\$183 million (FY2010)	\$0 (FY11-13)	\$0 (FY2011)	\$284.3 million Spending Policy Amount (FY2015)
<b>Disbursement Formula</b>	Average investment income earned on 5 previous years	Various formulas	4.7% of 5-year market value	N/A	N/A	Spending Policy Amount = 5% of rolling 5-year average market value
<b>Use of Earnings</b>	Citizen dividends, inflation-proofing, and general fund	General fund, education, infrastructure, remediation, and economic development	General fund, education, infrastructure, and economic development	General fund, property tax relief, infrastructure, remediation, research	Economic diversification, capital and infrastructure	General Fund Initially, subject to additional statutory or Legislative direction
<b>Action Required to Disburse Principal</b>	Public vote	¾ vote of legislature	Public vote	Public vote	Public vote	Public vote

**Source:** Legislative Service Office summary of other individual states' information as derived and updated from the Creating an Economic Diversification Trust Fund by West Virginia Center on Budget and Policy (2012).

<sup>1</sup> The PWMTF has also received direct appropriations from the Legislature as well as investment income after General Fund and other legislative distributions are met.

---

## Individual State Summaries

### Alaska

**Name of Fund:**

Alaska Permanent Fund (APF)

**Year Established:**

1976

**Statutory Authority:**

Article 9, Section 15

**Similar PPI Programs:**

None

### Funding

Alaska's Permanent Fund (APF) receives at least 25% of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses. Additional appropriations of \$7.04 billion were made to the fund from 1978 to 2011. The fund market value is \$54.6 billion.

### Investing

Investments are managed through the Alaska Permanent Fund Corporation (APFC). The entire fund is managed as a single investment pool. Current asset allocations include: stocks (36%), bonds and cash (20%), real estate (12%), private equity (6%), infrastructure (4%), absolute return (6%), and other (16%).

### Investment Requirements

Investment requirements pursuant to Alaska's Constitution and state law include:

- Investments must be income-producing
- The safety of principal must be maintained while maximizing total return
- All investments must conform to the prudent investor rule.

### Use of Fund Earnings

Principal is inviolate. The earnings in the earnings reserve account may be spent by the Legislature for any public purpose. To date,

the earnings have been limited to Permanent Fund Dividend program, inflation proofing, and operating expenses.

### Similar in practice or program to Wyoming's PPI

Alaska does not have a specific legal definition of a "public purpose investment" and does not use their permanent trust funds in similar ways to Wyoming.

### State Managing Entity

APFC is an independent yet state-owned corporation comprised of a six member Board of Trustees appointed by the Governor. The Board hires an Executive Director who manages about thirty-five staff and a number of external money managers. The Board's goal is to achieve a real rate of return of 5% per year, which is computed as total rate of return minus rate of inflation. Over time, the fund has beaten the 5% target, averaging a real rate of return over 24 years of about 6.7%.

### Reporting

Reporting and monitoring of performance measures and risk benchmarks are specific to each asset type. The APFC Investment Policy delineates the performance requirements and reporting of asset classes to the Board of Trustees. The Board submits investment reports to the Legislative Budget and Audit Committee at least quarterly.

### Summary

APF is used for both savings and spending. The principal is inviolate. Investment earnings flow into the earnings reserved account which has spending restrictions currently dedicated to the Permanent Fund Dividend program, inflation proofing and operating expenses.

# Montana

**Name of Fund:**

Coal Severance Tax Trust Fund

**Year Established:**

1975

**Statutory Authority:**

Article IX, Section 5

**Similar PPI Programs:**

Bonds, Loans, Grants for economic development projects

## Funding

In 1975, The Montana Constitution article IX, Section 5 directed 50% of the total coal severance tax revenue to coal severance tax trust fund which then flows into five sub-trust funds. The principal of all sub-trust funds remain inviolate. The Fund will reach \$1 billion by the end of FY2015.

## Investing

By state laws, a unified investment program is required for all public funds; funds cannot be invested in equities. Trust investments are managed through the Montana Board of Investments under a program called “In-State Investments.” 84% of the funds are in the Trust Funds Investment Pool, which invests in securities and cash. This pool is managed for income generation over rate of return. The remaining 16% of the funds is invested to generate earnings used “to diversify, strengthen, and stabilize” the Montana economy. Funded projects must demonstrate an economic benefit (e.g. job creation). With job creation, private entities are given tax incentives and lower interest rates.

## State Managing Entity and Investment Requirements

The Board has the sole authority to invest states funds and manages a portfolio of approximately \$15.9 billion and operates under a prudent expert principle. Its primary role is managing the state’s unified investment program and to assist in

Montana’s economic development through the “In-State Investments” program.

An investment policy is adopted by the Board for each individual fund it invests. Policies are tailored to the specific needs of the fund and include asset allocations, investment timelines, and benchmarks are established against which investment performance is measured.

This board is comprised of nine Governor appointed members and two non-voting legislative liaisons.

## Use of Fund Earnings

Uses of fund earning vary by each sub-fund. In general, funds are used to finance projects dealing with renewable resources, local government infrastructure, drinking water systems, and new job creation.

## Similar in practice or program to Wyoming’s PPI

Montana does not have a clear definition of “public purpose investments,” but the use of permanent fund earnings is similar, i.e., bonds, loans, and grants for economic development projects.

## Reporting

An Annual Report is required by law, which discloses investment performance, summarizes the in-state investment activities, and provides public access to audited financial statements. This report provides the cumulative outstanding balance for each program, the loan yield, the percentage of loans 90 days in arrears, and the number of loan losses.

## Summary

The Coal Severance Tax Trust Fund is used for both savings and spending. The principal remains inviolate. The Fund is directed into five sub-funds where earnings are used to finance projects for a public purpose (e.g. building infrastructure and Montana’s economy).

## **New Mexico**

***Name of Fund:***

Severance Tax Permanent Fund

***Year Established:***

1975

***Statutory Authority:***

NMSA 7-27-3 (1973)

Article VIII, Section 10 (1976)

***Similar PPI Programs:***

ETIs for economic development projects

### **Funding**

In 1973, the New Mexico Severance Tax Permanent Fund (STPF) was established and became part of the Constitution in 1976. The fund was created using severance tax receipts in excess of those prioritized for deposit in the Severance Tax Bonding Fund. In 2011, about 2.2% of the severance tax receipts were projected for the STPF. STPF value on June 30, 2013 was \$4.147 billion.

### **Investing**

New Mexico state law requires STPF investments for (1) the purpose of providing income to the fund and (2) to stimulate the state's economy. Recent reports indicate 57% of the STPF is invested in public equities (domestic and international), 23% in fixed income/bonds/cash, and 20% in alternatives, that is, private equity, hedge funds, real estate and Economically Targeted Investments (ETIs). ETIs are 2% of the total investments.

### **Investment Requirements**

STPF is one of four permanent funds managed by New Mexico State Investment Council. Collectively these funds total \$19 billion; \$770 million are distributed to state operations every year, serving as a significant resource to government and various beneficiaries, including public schools, state universities and other beneficiaries.

New Mexico's investment policy specifically identifies ETIs. The nature, types, amounts and restrictions of these investments are controlled by statute, which specifically

allows the Council additional latitude when choosing ETI investments, including consideration of additional external investment benefits beyond pure return on investment, such as economic development. These statutory authorizations allow the Council to make ETI investments at differential, or "below market" rates, if additional benefits are apparent.

There are two ETI programs currently in operation: (1) The Small Business Investment Corporation (SBIC) offers business loans to small businesses and receives an allocation of 1% of the total STPF. Current market value allocation is \$37 million. (2) The New Mexico Private Equity Investment program (NMPEIP) offers venture capital equity and receives up to 9% of the STPF. Its market value today is \$256 million with another \$55 million committed.

### **Use of Fund Earnings**

Earnings from investments are credited to the principal of the STPF. An annual distribution equal to 4.7% of the average year-end market values is made to the general fund of which half goes to education. Average distributions from STPF are \$182 million/year.

### **Similar in practice or program to Wyoming's PPI**

New Mexico has ETIs, which are similar to Wyoming's PPIs. The ETI venture capital program can loosely relate to IDBs and the SBIC is similar to the Wyoming Business Council.

### **State Managing Entity**

Legislation in 2010 changed the State Investment Council administrative structure from what had been a primarily executive agency, into a balanced governing entity with a Council comprised of three elected officials, and four appointees each by the Governor and Legislature. The Board's primary responsibility is management of the four permanent funds.

## Reporting

Annual reporting to the legislature is required, but is limited to investment returns and updated valuations, in addition to job creation and economic impact data. Both ETI Programs require annual audits in accordance with GAAP standards. Additionally, the NMPEIP program provides quarterly investment performance reporting, monthly activity summary of capital calls, and distributions. The SBIC is required to provide annual reporting and monthly financials.

## Summary

The Severance Tax Permanent Fund is used for both savings and spending. The principal remains inviolate. The STPF is directly linked to the Severance Tax Bond Fund and both compete for severance tax revenue. New Mexico has ETI programs, which are loosely related to Wyoming's PPIs: IDBs and projects through the WBC.

### **North Dakota**

***Name of Fund:***

Legacy Fund

***Year Established:***

2010

***Statutory Authority:***

Article X, Section 26

***Similar PPI Programs:***

None

## Funding

North Dakota's Legacy Fund receives 30% of its total revenue from oil and gas revenues. The fund was established in 2010 and the initial deposit of \$34.3 million was made in September 2011. During the first 24 months of its existence, more than \$1.3 billion was deposited in the fund. The fund market value in May, 2015 exceeded \$3 billion.

## Investing

Investments are managed through the North Dakota State Investment Board (SIB). Asset mix includes: domestic large/small cap equity

(28%), international equity (19%), fixed income (24%), short term fixed income (22%), real estate (5%), inflation protection (1%), and cash equivalents (1%).

## Investment Requirements

The mission of the Legacy Fund is to "preserve the real, inflation-adjusted purchasing power of the monies deposited while maximizing total return." Legacy fund assets may be pooled with other funds. Risk tolerance is low. All investments must conform to the prudent investor rule. Economically targeted investing is prohibited unless it meets four conditions within the exclusion benefit rule.

## Use of Fund Earnings

The principal and earnings of the fund may not be spent until after June 30, 2017. Interest earning accruing after that time will be transferred to the general fund as the end of each biennium. Although there is a great deal of discussion about how to spend the Legacy Fund, there appears to be greater focus of making sure this fund is allowed to grow at the present time.

## Similar in practice or program to Wyoming's PPI

North Dakota's management of their permanent fund has been restricted to building the principal through investments with no provisions for spending.

## State Managing Entity

The SIB is responsible for managing Legacy Fund investments. Professional investment managers, consultants and custodians are retained to assist in the implementation of the investment program. The North Dakota Retirement and Investment Office assist the SIB in carrying out its investment responsibilities.

## Reporting

Investment management is evaluated against investment objectives and performance standards. Emphasis is placed on 5-year and

10-year results. Performance reports are provided to the SIB quarterly and annually. SIB is notified of any substantial deviation, including notable losses, gains, or liquidation of assets within 30 days of occurrence.

### Summary

The Legacy Fund is used for savings and investments only.

<p><b>Utah</b> <i>Name of Fund:</i> State Permanent Fund <i>Year Established:</i> 2008 <i>Statutory Authority:</i> Article XXII, Section 4 <i>Similar PPI Programs:</i> State appropriations for capital and infrastructure development; and economic diversification investments</p>
---

### Funding

Annually, a proportion of Utah’s severance tax flows into the State Permanent Fund, which was created in 2008 under Utah Constitution Article XXII, Section 4. Severance tax revenue must exceed statutory base amounts, which are set high, for deposits to be made into the account fund. This fund includes both mineral severance taxes and federal tobacco settlement funds. Interest and dividends are credited to the General Fund’s Infrastructure and Economic Diversification Investment Account. Fund balance is \$159.5 million.

### Investing

Utah Code, Title 51-7b-201 requires the State Treasurer to invest fund money with the primary goal of providing for the stability, income, and growth of the fund’s principal. Specific asset allocation is not publically reported, but generally stated to be 56% stocks, 39% bonds, and 5% other.

### Investment Requirements

The Utah State Treasurer is expected to consider the following in making investment decisions:

- General economic conditions
- Effects of inflation and deflation
- Role of each investment in the overall permanent fund portfolio
- An expected total return on income and appreciation of capital
- Needs for liquidity, regularity of income, and preservation or appreciation of capital

All investments must conform to the prudent investor standard. Utah Code, Title 51-7b-202 determines whether the State Treasurer has met the standard of care of a prudent investor through finder of fact criteria.

### Use of Fund Earnings

Principal is inviolate. Interest and dividends are credited to a restricted account within the General Fund. The legislature appropriates money from this account for “infrastructure and economic diversification investment projects.” At least 25% must be used for projects within areas of the state that produced the severance tax revenues.

### Similar in practice or program to Wyoming’s PPI

Yes. State law allows appropriations for capital and infrastructure development, as well as economic diversification investments. It is unknown if any disbursements have been made.

### State Managing Entity

The Utah State Treasurer manages the State Permanent Fund.

### Summary

Utah has enjoyed spending severance tax revenues through their General Fund with limited flow into the permanent fund. The fund is used for both savings and spending. The principal is inviolate.

# Appendix E

## LSO Opportunity Cost Methodology and Factors

The most basic concern with performing opportunity cost analysis is that it relies on the supposition of how much money the State is foregoing if the money invested in public purpose investments (PPIs) were funneled elsewhere in the Permanent Wyoming Mineral Trust Fund (PWMTF) portfolio. In the past, these have been called “unrecognized losses.” However, the State Treasurer’s Office (STO) explained that it is difficult or impossible for the State to more flexibly manage PPIs since they are typically illiquid and likely carry non-market bearable risks (otherwise, PPIs would be funded on the open market). This analysis also indicates that depending on the timeframe under consideration when looking at comparator investments, the “cost” to the State will vary from year-to-year, biennium-to-biennium, and market-cycle to market-cycle.

LSO’s approach to opportunity cost was to show the potential cash yield to the PWMTF if PPIs outstanding investment balances were invested at the PWMTF yield. LSO also compared these PPI balances against example equity and fixed income investment manager yields as defined by the STO.

This analysis required six steps to complete:

1. Calculate the PWMTF yield rate (used as a percentage for effective rate of return to the fund) by dividing PWMTF income into the average annual fiscal year balance of the fund (cost-value, not market value); compared LSO’s calculated yield to the yield calculated by the STO<sup>10</sup>;
2. Calculate the average annual fiscal year balance for each PPI, shown in Table E.1, below, which is funded out of the PWMTF;

**Table E.1.**  
**PPI programs reviewed by LSO for potential opportunity costs to the PWMTF.**

Administering Agency	PPI Program
OSLI	Aeronautics Loan program
	Farm Loan program
	Irrigation Loan program
	Joint Powers Loan program
	Hot Springs State Park Loan program
STO (WBC)	Industrial Development Bonds
STO	Deferred Property Tax program
	Cheyenne Stage II Water project/GIC
	Metropolitan Life GIC
	Wyoming Territorial Park loan
	Small Business Assistance Act Loan program
WWDC	Gillette-Madison Pipeline project
	Sheridan Area Water Treatment Plant

<sup>10</sup> For all fiscal years except 2006, the difference between LSO and the STO yield calculation were less than 1/10<sup>th</sup> of one percent (<0.01%).

Administering Agency	PPI Program
	Shoshone Municipal Water Treatment project

Source: Legislative Service Office summary.

3. Multiply the PWMTF yield rate by each PPI's outstanding average annual balance to calculate expected PWMTF income for each PPI;
4. Subtract the actual PPI income from the expected PWMTF income for each PPI to calculate the estimated dollar cost or gain from investing PWMTF monies in the PPI;
5. Sum the individual PPI opportunity cost/gain totals to calculate aggregate annual opportunity cost/gain to the PWMTF;
6. Sum all fiscal year opportunity cost/gain totals to calculate ten-year opportunity cost/gain amount for PPIs funded out of the PWMTF. Table E.2, below, provides the final summary of this process.

**Table E.2**  
**Potential Foregone Earnings for the PWMTF from**  
**PPIs, FY2006 – 2015 (through February 2015)**

Fiscal Year	PPI Effective Yield	PWMTF Yield	Rate Differential (PWMTF Minus PPI)	PPI Income	Expected PWMTF Income (est.)	Income Differential (PWMTF Minus PPI)
2006	5.61%	4.55%	-1.06%	\$6,359,442.45	\$5,158,156.40	(\$1,201,286.05)
2007	7.78%	4.77%	-3.02%	\$8,285,597.68	\$5,074,317.97	(\$3,211,279.71)
2008	6.06%	8.88%	2.82%	\$6,181,048.02	\$9,062,298.80	\$2,881,250.78
2009	5.68%	3.32%	-2.37%	\$5,319,128.91	\$3,103,076.75	(\$2,216,052.16)
2010	5.44%	3.16%	-2.28%	\$4,874,897.44	\$2,834,219.24	(\$2,040,678.20)
2011	4.72%	4.49%	-0.23%	\$4,582,569.19	\$4,361,914.99	(\$220,654.20)
2012	4.17%	4.50%	0.33%	\$4,040,476.35	\$4,361,152.43	\$320,676.08
2013	4.06%	6.47%	2.41%	\$3,610,969.37	\$5,750,915.27	\$2,139,945.90
2014	3.31%	6.45%	3.14%	\$3,762,311.30	\$7,333,168.95	\$3,570,857.65
2015	3.29%	4.96%	1.67%	\$4,452,150.81	\$6,706,775.56	\$2,254,624.75
<b>Total</b>	<b>4.76%</b>	<b>5.19%</b>	<b>0.43%</b>	<b>\$51,468,591.52</b>	<b>\$53,745,996.37</b>	<b>\$2,277,404.85</b>

Source: Legislative Service Office analysis of State Treasurer's Office data and reports.

LSO notes the following caveats, conditions, or limitations to this analysis:

- PPIs are not tracked according to market value since they are typically illiquid and not able to be sold on the open market;
- Total return and appreciation of conventional investments was not taken into account;
- Income to the PWMTF is generally net of investment manager fees;
- PPI administrative expenses among the PPI administering agencies are not overtly tracked and allocated or attributed to these investments, though if they were, the effective rate of return would be lower;

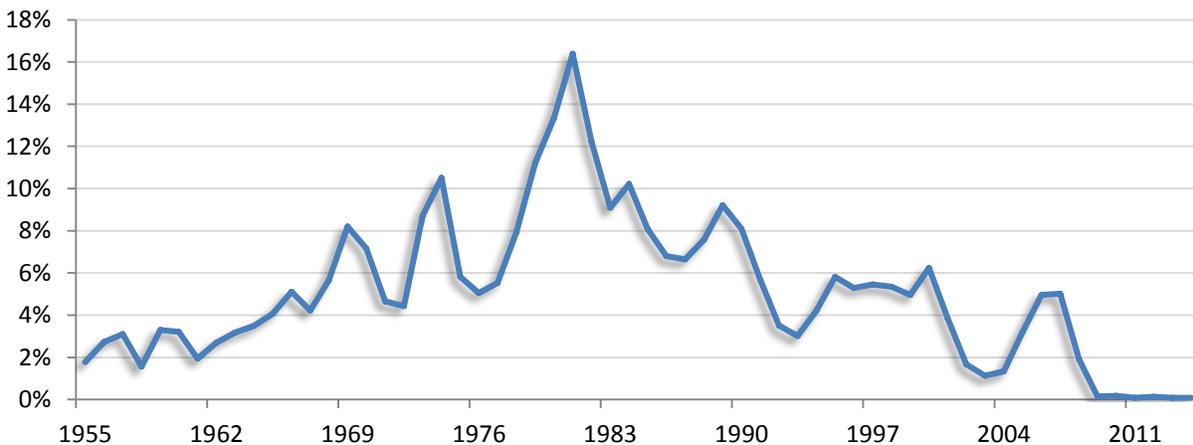
- The analysis makes no connection qualification as to the “public purpose” or “public benefit” side of these investments;
- PPI income totals included when income was actually received, not accrued, by the State;
- Since FY2015 is not yet complete, the opportunity cost comparison would include data through February 2015;
- This analysis does not attempt to separate out the PPI-specific balances and income from the overall PWMTF balances and income to arrive at a PPI-free balance and interest rate yield for the benchmark comparator.

Two additional factors influence the extent to which PPIs may underperform when compared to other investments or benchmarks:

1. The general investment process is dynamic and fluid within the larger portfolio and each manager employed by the STO may make *active* (or more active than PPIs) investment decisions that both positively and negatively impact the portfolio’s overall success (influencing the benchmark return).
2. On a more macro level, state, national, and international market cycles impact the conditions under which all of these investments are made from year-to-year.

Finally, this analysis should be viewed in context with local or national interest rates on the expected rates of returns for any investment, but particularly debt vehicle investments – bonds and loans. While in the 1980s and 1990s, private market interest rates for different types of investments were high, comparatively, so were interest rates on some PPIs. However, in recent years, particularly since 2009, interest rates on many investments related to loans have been very low. Figure E.1, below, summarizes the U.S. Federal Reserve’s Federal Funds interest rate since 1955. This figure clearly indicates that interest rates expected from investments that may be influenced or based on this rate will be lower for borrowers until the rate likely begins to rise in the future.

**Figure E.1  
Federal Funds Interest Rate, 1955-Present**



Source: U.S. Federal Reserve.



# Recent Program Evaluations

Wyoming State Archives .....	May 2000
Turnover and Retention in Four Occupations .....	May 2000
Placement of Deferred Compensation .....	October 2000
Employees' Group Health Insurance .....	December 2000
State Park Fees .....	May 2001
Childcare Licensing .....	July 2001
Wyoming Public Television .....	January 2002
Wyoming Aeronautics Commission .....	May 2002
Attorney General's Office: Assignment of Attorneys and Contracting for Legal Representation .....	November 2002
Game & Fish Department: Private Lands Public Wildlife Access Program .....	December 2002
Workers' Compensation Claims Processing .....	June 2003
Developmental Disabilities Division Adult Waiver Program .....	January 2004
Court-Ordered Placements at Residential Treatment Centers .....	November 2004
Wyoming Business Council .....	June 2005
Foster Care .....	September 2005
State-Level Education Governance .....	December 2005
HB 59: Substance Abuse Planning and Accountability .....	January 2006
Market Pay for State Employees .....	July 2006
Wyoming Drug Courts .....	July 2006
A&I HRD Role in State Hiring .....	December 2006
Kid Care CHIP: Wyoming's State Children's Health Insurance Program .....	June 2007
Wyoming Retirement System: Public Employee Plan .....	August 2007
WYDOT and General Fund Appropriations for Highways .....	May 2008
Wyoming Child Protective Services .....	September 2008
Department of Fire Prevention and Electrical Safety .....	December 2008
Office of Health Care Licensing and Surveys .....	July 2009
Victim Services Division: Phase I .....	August 2009
Victim Services Division: Phase II .....	February 2010

Reading Assessment and Intervention Program .....	February 2010
Office of State Lands & Investments: Management of State Trust Lands .....	June 2010
Proficiency Assessments for Wyoming Students (PAWS) .....	December 2010
Wyoming Unemployment Insurance Program .....	December 2010
Department of Administration and Information: Information Technology Division and Office of Chief Information Officer .....	July 2011
Wyoming Department of Health: Veterans' Home of Wyoming.....	November 2011
Wyoming Aeronautics Commission .....	September 2012
Wyoming Boards and Commissions.....	June 2013
Wyoming's Interim Budget Process to Modify Legislatively Appropriated Funds .....	November 2013
Wyoming Aeronautics Commission (Follow-up Evaluation) .....	November 2013
University of Wyoming: Effectiveness of Block Grant Funding (with Supplement).....	January 2015

**Evaluation reports can be obtained from:**

*Wyoming Legislative Service Office*  
 213 State Capitol Building Cheyenne, Wyoming 82002  
 Telephone: 307-777-7881 Fax: 307-777-5466  
 Website: <http://legisweb.state.wy.us>

