

## HOUSE BILL NO. HB0088

Public retirement plans-qualified plan status.

Sponsored by: Joint Appropriations Interim Committee

A BILL

for

1 AN ACT relating to public retirement plans; generally  
2 amending provisions to comply with internal revenue code  
3 qualified plan requirements; specifying distribution limits  
4 and qualified rollovers; providing for distribution upon  
5 program termination; amending obsolete provisions and  
6 conforming provisions to federal requirements; and  
7 providing for an effective date.

8

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

10

11 **Section 1.** W.S. 9-3-402(a) by creating new paragraphs  
12 (xxvii) and (xxviii), 9-3-407(c)(vi), 9-3-415(d),  
13 9-3-417(c), 9-3-418 by creating a new subsection (f),  
14 9-3-424(a), 9-3-428(a)(ii) and by creating new subsections  
15 (b) and (c), 9-3-430(c), 9-3-431 by creating a new  
16 subsection (h), 9-3-432 by creating a new subsection (n),  
17 9-3-436(a), 9-3-602(a) by creating new paragraphs (xix) and

1 (xx), 9-3-609(c), 9-3-610 by creating a new subsection (f),  
2 9-3-617(d), 9-3-707 by creating a new subsection (d),  
3 15-5-204 by creating a new subsection (g), 15-5-404 by  
4 creating a new subsection (d), 15-5-409 by creating a new  
5 subsection (d), 35-9-609 by creating a new subsection (m),  
6 35-29-101(a) by creating new paragraphs (xix) and (xx),  
7 35-29-106 by creating a new subsection (j) and 35-29-112  
8 are amended to read:

9

10 **9-3-402. Definitions.**

11

12 (a) As used in this article:

13

14 (xxvii) "Eligible retirement plan" means:

15

16 (A) An annuity contract described in  
17 section 403(b) of the Internal Revenue Code;

18

19 (B) An eligible plan under section 457(b)  
20 of the Internal Revenue Code which is maintained by a  
21 state, political subdivision of a state, or any agency or  
22 instrumentality of a state or political subdivision of a  
23 state;

24

1                   (C) An individual retirement account or  
2 annuity described in section 408(a) or 408(b) of the  
3 Internal Revenue Code that is eligible to be rolled over  
4 and would otherwise be includible in gross income; or

5  
6                   (D) A qualified plan described in section  
7 401(a) or 403(a) of the Internal Revenue Code.

8  
9                   (xxviii) "Rollover contribution" means the  
10 transfer of funds from an eligible retirement plan, in an  
11 amount eligible to be rolled over to a qualified trust in  
12 accordance with applicable law and for which the member  
13 provides evidence satisfactory to the system that such  
14 amount qualifies for rollover treatment.

15  
16           **9-3-407. Retirement board; control and management of**  
17 **account containing assets of retirement system; payments**  
18 **from account.**

19  
20           (c) From the retirement account shall be paid:

21  
22                   (vi) Reasonable administrative expenses under  
23 this article.

24

1           **9-3-415. When retirement permitted; service credit.**

2

3           (d) Any vested member may elect to make a one-time  
4 purchase of up to five (5) years of service credit as  
5 authorized and limited by section 415(c) and 415(n) of the  
6 Internal Revenue Code and established in rules promulgated  
7 by the board. Any member electing to purchase service  
8 credit shall pay into the account a single lump-sum amount  
9 equal to the actuarial equivalent of the benefits to be  
10 derived from the service credit computed on the basis of  
11 actuarial assumptions approved by the board and the  
12 individual's attained age and the benefit structure of the  
13 appropriate plan. A member may purchase service credit  
14 with personal funds or, subject to rules and regulations  
15 established by the board, through rollover contributions.  
16 Unless received by the system in the form of a direct  
17 rollover, the rollover contribution shall be paid to the  
18 system on or before sixty (60) days after the date it was  
19 received by the member. Service credit purchased under  
20 this subsection shall qualify as service credit defined in  
21 W.S. 9-3-402(a)(xxi), 9-3-602(a)(iii), 9-3-702(a)(iii) and  
22 15-5-402(a)(iv).

23

1           9-3-417. Determination of eligibility for retirement;  
2 board to determine equivalent of years of service; credit  
3 for military service.

4  
5           (c) Credit shall be allowed for any period of time  
6 after commencement of participation in the retirement  
7 program which a member spends in active military or other  
8 emergency service of the United States in accordance with  
9 rules adopted by the board pursuant to the ~~Veterans'~~  
10 ~~Reemployment Rights Act (38 U.S.C. 4321, et seq. P.L.~~  
11 ~~93-508)~~ the Uniformed Services Employment and Reemployment  
12 Rights Act, 38 U.S.C. 4301 et seq. In accordance with rule  
13 and regulation of the board, until June 30, 2018 up to two  
14 (2) years of credit allowed under this subsection may be  
15 provided at no cost to the member. After June 30, 2010,  
16 each state agency, department or institution, including the  
17 University of Wyoming and the community colleges shall  
18 estimate the amount required for provision of credits under  
19 this subsection for the next biennium and shall include the  
20 estimate in the agency's biennial budget request. Provision  
21 for payment of employer's contributions under this  
22 subsection shall be as provided in W.S. 9-3-414.

23

1           **9-3-418. Amount of service retirement benefit;**  
2 **firefighter members excluded.**

3

4           (f) Benefits shall not be payable under the system to  
5 the extent that they exceed the limitations imposed by  
6 section 415(b) of the United States Internal Revenue Code.  
7 The board shall provide any benefits in excess of the  
8 limitations under special pay plans authorized under W.S.  
9 9-3-405(b) to the extent the benefits can be provided and  
10 the system retain qualified plan status under the Internal  
11 Revenue Code.

12

13           **9-3-424. Refund of contributions upon termination of**  
14 **employment; procedure; redeposit; limitation on refund.**

15

16           (a) Except as provided in subsection (b) of this  
17 section, any member covered by this article, including an  
18 at-will contract employee under W.S.  
19 9-2-1022(a)(xi)(F)(III) or (IV), who terminates his  
20 employment or any employee of the agricultural extension  
21 service of the University of Wyoming who has not elected to  
22 continue to be covered by this article is entitled to a  
23 refund of his account. In addition, any member who is  
24 entitled to a refund who is an at-will contract employee

1 under W.S. 9-2-1022(a)(xi)(F)(III), shall be entitled to a  
2 refund of all contributions made to his account plus any  
3 employer matching contributions made by that member. In  
4 addition, any member who is entitled to a refund who is an  
5 at-will contract employee under W.S.  
6 9-2-1022(a)(xi)(F)(IV), shall be entitled to a refund of  
7 all contributions made to his account including any  
8 employer matching contributions made by that member. The  
9 refunds shall be made only upon written request to the  
10 board. A member may elect, at the time and in the manner  
11 prescribed by the system, to have the refund of his  
12 account paid directly to an eligible retirement plan as  
13 specified by the member. Any member who withdraws from  
14 the system under this section shall forfeit all rights to  
15 further benefits, employer matching contributions and  
16 service credit under the system. Any person who later  
17 returns to service covered by this article may redeposit  
18 the amount of the contributions withdrawn, in lump sum,  
19 together with regular interest, and upon earning not less  
20 than two (2) years service credit, may reestablish his  
21 service credits as of the time of withdrawal of his  
22 contributions. For service prior to July 1, 2002, any law  
23 enforcement member covered under W.S. 9-3-432 may redeposit  
24 the amount of contributions withdrawn for service covered

1 under W.S. 9-3-432, in a lump sum, together with regular  
2 interest and the actuarial equivalent of the difference  
3 between the benefit provided under W.S. 9-3-415 through  
4 9-3-419 and the benefit provided under W.S. 9-3-432, and  
5 upon earning not less than two (2) years service credit,  
6 may reestablish his service credit as of the time of  
7 withdrawal of his contributions. Any redeposit payment  
8 pursuant to this subsection shall be made not later than  
9 seven (7) years following the date of reemployment or prior  
10 to retirement, whichever first occurs. A member may make a  
11 redeposit under this subsection with personal funds or,  
12 subject to rules and regulations established by the board,  
13 through rollover contributions. Unless received by the  
14 system in the form of a direct rollover, the rollover  
15 contribution shall be paid to the system on or before sixty  
16 (60) days after the date it was received by the member.  
17 Unless otherwise permitted by section 401(a)(8) of the  
18 Internal Revenue Code, forfeitures shall not be applied  
19 to increase the benefits that any employee would  
20 otherwise receive under the system.

21

22 **9-3-428. Construction of article; limitation of**  
23 **liability of state; termination of system.**

24



1 (a) Nothing in this article shall be construed to:

2

3 (ii) Constitute a contract or binding obligation  
4 of any kind whatsoever or, except as provided in subsection  
5 (b) of this section to create or grant any vested right or  
6 interest in any individual, corporation or body politic.

7

8 (b) If the system is terminated, all affected  
9 members have a nonforfeitable interest in their benefits  
10 that were accrued and funded to date. The value of the  
11 accrued benefits to be credited to the account of each  
12 affected member shall be calculated as of the date of  
13 termination.

14

15 (c) Subject to subsection (a) of this section and  
16 W.S. 9-3-429(b), the legislature declares its intent that  
17 the system is intended to be a permanent system and has not  
18 been created for the purpose of income tax benefits.

19

20 **9-3-430. Application for benefits; benefit payment**  
21 **effective dates; minimum distribution rules.**

22

23 (c) Benefit payments under the system shall begin by  
24 the later of April 1 of the calendar year following the

1 year in which the member reaches age seventy and one-half  
2 (70 1/2) years or retires. The member's entire interest in  
3 the system shall be distributed over the life of the member  
4 or the lives of the member and a designated beneficiary,  
5 over a period not extending beyond the life expectancy of  
6 the member or the life expectancy of the member and  
7 designated beneficiary. If a member dies after  
8 distribution of benefits has begun, the remaining portion  
9 of the member's interest shall be distributed at least as  
10 rapidly as under the method of distribution prior to the  
11 member's death. If a member dies before distribution of  
12 benefits has begun, the entire interest of the member shall  
13 be distributed within five (5) years of the member's death.  
14 The five (5) year payment rule shall not apply to any  
15 portion of the member's interest which is payable to a  
16 designated beneficiary over the life or life expectancy of  
17 the beneficiary and which begins within one (1) year after  
18 the date of the member's death. The five (5) year payment  
19 rule shall not apply to any portion of the member's  
20 interest which is payable to a surviving spouse payable  
21 over the life or life expectancy of the spouse which begins  
22 not later than the date the member would have reached age  
23 seventy and one-half (70 1/2) years. The board may by rule  
24 and regulation modify distributions under this section in

1 order to provide minimum distributions required by section  
2 401(a)(9) of the Internal Revenue Code or as otherwise  
3 necessary to retain qualified plan status under the  
4 Internal Revenue Code.

5  
6 **9-3-431. Firefighter members; contributions; benefit**  
7 **eligibility; service and disability retirement benefits;**  
8 **termination of benefits upon failure to make timely**  
9 **contribution payments.**

10  
11 (h) Benefits shall not be payable under the system to  
12 the extent that they exceed the limitations imposed by  
13 section 415(b) of the Internal Revenue Code. The board  
14 shall provide any benefits in excess of the limitations  
15 under special pay plans authorized under W.S. 9-3-405(b) to  
16 the extent the benefits can be provided and the system  
17 retain qualified plan status under the Internal Revenue  
18 Code.

19  
20 **9-3-432. Law enforcement officers; contributions;**  
21 **benefit eligibility; service and disability benefits; death**  
22 **benefits; benefit options.**

23

1       (n) Benefits shall not be payable under the system to  
2 the extent that they exceed the limitations imposed by  
3 section 415(b) of the Internal Revenue Code. The board  
4 shall provide any benefits in excess of the limitations  
5 under special pay plans authorized under W.S. 9-3-405(b) to  
6 the extent the benefits can be provided and the system  
7 retain qualified plan status under the Internal Revenue  
8 Code.

9

10       **9-3-436. Establishment of trust.**

11

12       (a) Except as otherwise provided in subsection (b) of  
13 this section, all assets of a retirement system are held in  
14 trust for the exclusive benefit of the members, retirees  
15 and beneficiaries of the system, including reasonable  
16 administrative expenses. The trustee has the exclusive  
17 authority, subject to this act, to invest and manage those  
18 assets.

19

20       **9-3-602. Definitions.**

21

22       (a) As used in this article:

23

1           (xix) "Eligible retirement plan" means as  
2 defined in W.S. 9-3-402(a) (xxvii);

3

4           (xx) "Rollover contribution" means as defined in  
5 W.S. 9-3-402(a) (xxviii).

6

7           **9-3-609. Determination of years of service by board;**  
8 **credit for time spent in military service.**

9

10           (c) Credit shall be allowed for any period of time  
11 after commencement of participation in the retirement  
12 program which an employee spends in active military or  
13 other emergency service of the United States ~~approved in~~  
14 accordance with rules adopted by the retirement board, ~~if~~  
15 ~~the employee does not withdraw his accumulated~~  
16 ~~contributions and makes payments equal to the deductions~~  
17 ~~which would have been made during his absence within such~~  
18 ~~time as the board prescribes after his return to service.~~  
19 ~~In the absence of payments instead of deductions, the~~  
20 ~~period of time shall be credited for the purpose of~~  
21 ~~eligibility for retirement allowances under W.S. 9-3-607~~  
22 ~~and 9-3-608, but not for the purpose of the computation of~~  
23 ~~those allowances under W.S. 9-3-610~~ pursuant to the

1 Uniformed Services Employment and Reemployment Rights Act,  
2 38 U.S.C. 4301 et seq.

3

4 **9-3-610. Amount of benefit.**

5

6 (f) Benefits and allowances shall not be payable  
7 under this article to the extent that they exceed the  
8 limitations imposed by section 415(b) of the Internal  
9 Revenue Code.

10

11 **9-3-617. Refund of contributions upon termination of**  
12 **employment; redeposit of withdrawn contributions; purchase**  
13 **of service credits.**

14

15 (d) Any employee may elect to purchase up to five (5)  
16 years of service credit for full-time employment in law  
17 enforcement which is performed for another state or  
18 political subdivision of another state, the federal  
19 government or for any public law enforcement agency in  
20 Wyoming as authorized and limited by section 415(c) and  
21 415(n) of the Internal Revenue Code and if the employee  
22 does not vest in any retirement plan of the agency for  
23 which the prior service being purchased was earned. Any  
24 employee electing to purchase service credit shall pay into

1 the account a single lump-sum amount equal to the actuarial  
2 equivalent of the benefits to be derived from the service  
3 credit computed on the basis of actuarial assumptions  
4 approved by the board and the individual's attained age and  
5 average salary for the highest three (3) continuous years  
6 of covered service. The lump sum may be paid with personal  
7 funds or, subject to rules and regulations established by  
8 the board, through rollover contributions. Unless received  
9 by the retirement program in the form of a direct rollover,  
10 the rollover contribution shall be paid to the program on  
11 or before sixty (60) days after the date it was received by  
12 the member. Service credit purchased under this subsection  
13 shall not be used to determine vested eligibility to  
14 receive benefits under this article.

15

16 **9-3-707. Amount of benefit; adjustments.**

17

18 (d) Benefits shall not be payable under the program  
19 to the extent that they exceed the limitations imposed by  
20 section 415(b) of the Internal Revenue Code. The board  
21 shall provide any benefits in excess of the limitations  
22 under special pay plans authorized under W.S. 9-3-405(b) to  
23 the extent the benefits can be provided and the program

1 retain qualified plan status under the Internal Revenue  
2 Code.

3

4 15-5-204. Pensions; amounts; qualifications; when  
5 paid; disability benefits; disqualifications; examinations;  
6 disallowance; actions; adjustment.

7

8 (h) The board shall adopt rules to allow service for  
9 any period of time, after commencement of participation  
10 under this article, which an employee spends in active  
11 military or other emergency service of the United States as  
12 required by the Uniformed Services Employment and  
13 Reemployment Rights Act, 38 U.S.C. 4301 et seq.

14

15 15-5-404. Vesting rights; return to service.

16

17 (c) The board shall adopt rules to allow service for  
18 any period of time, after commencement of participation  
19 under this article, which an employee spends in active  
20 military or other emergency service of the United States as  
21 required by the Uniformed Services Employment and  
22 Reemployment Rights Act, 38 U.S.C. 4301 et seq.

23

24 15-5-409. Amount of service pension.



1

2 (c) Benefits shall not be payable under the pension  
3 system to the extent that they exceed the limitations  
4 imposed by section 415(b) of the Internal Revenue Code.

5

6 **35-9-608. Benefits enumerated; death of participant**  
7 **or spouse; amount and payment of contributions; withdrawal**  
8 **from plan.**

9

10 (m) The board shall adopt rules to allow service for  
11 any period of time, after commencement of participation in  
12 this pension program, which an employee spends in active  
13 military or other emergency service of the United States as  
14 required by the Uniformed Services Employment and  
15 Reemployment Rights Act, 38 U.S.C. 4301 et seq.

16

17 **35-29-101. Definitions.**

18

19 (a) As used in this article:

20

21 (viii) "Eligible retirement plan" means as  
22 defined in W.S. 9-3-402(a)(xxvii);

23

1           (ix) "Rollover contribution" means as defined in  
2 W.S. 9-3-402(a) (xxviii).

3

4           **35-29-106. Benefits enumerated; death of participant**  
5 **or spouse; amount and payment of contributions; withdrawal**  
6 **from plan.**

7

8           (k) The board shall adopt rules to allow service for  
9 any period of time, after commencement of participation  
10 under this article, which an employee spends in active  
11 military or other emergency service of the United States as  
12 required by the Uniformed Services Employment and  
13 Reemployment Rights Act, 38 U.S.C. 4301 et seq.

14

15           **35-29-112. Purchase of service credit.**

16

17 Any member who has been a participating member for at least  
18 five (5) years may elect to make a one (1) time purchase of  
19 up to five (5) years of service credit as authorized and  
20 limited by section 415(c) and 415(n) of the Internal  
21 Revenue Code and as established in rules promulgated by the  
22 board. Any member electing to purchase service credit  
23 shall pay into the account a single lump sum amount equal  
24 to the actuarial equivalent of the benefits to be derived

1 from the service credit computed on the basis of actuarial  
2 assumptions approved by the board, the individual's  
3 attained age and the benefit structure at the time of  
4 purchase. A member may purchase service credit with  
5 personal funds or, subject to rules and regulations  
6 established by the board, through rollover contributions.  
7 Unless received by the fund in the form of a direct  
8 rollover, the rollover contribution shall be paid to the  
9 fund on or before sixty (60) days after the date it was  
10 received by the member.

11

12 **Section 2.** This act is effective July 1, 2010.

13

14

(END)