ORIGINAL SENATE **ENGROSSED**
FILE NO. 0059

ENROLLED ACT NO. 66, SENATE

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2012 BUDGET SESSION

AN ACT relating to public employee retirement plans; repealing provisions relating to cost-of-living increases for specified plans; providing findings; providing parameters for future benefit increases; requiring information to be provided to employees; providing for a study; making conforming amendments; specifying applicability; and providing for an effective date.

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

Section 1. W.S. 9-3-453 and 9-3-454 are created to read:

9-3-453. Public employee retirement plans; funding; legislative findings; required determinations for benefit increases.

(a) The legislature finds:

(i) Wyoming public employee retirement plans' actuarial funding levels are higher than many public employee retirement plans in other states, but as constructed by statute, the Wyoming plans were not intended to and cannot support cost of living or other benefit increases. Numerous indicators support this conclusion;

(ii) The ratio of the actuarial value of assets to the actuarial accrued liability, or the "funded ratio" is a standard measure of a plan's funded status at a given point in time. Funded ratios of the various retirement plans were as follows:

(A) The public employee retirement plan administered by the Wyoming retirement board under W.S. 9-3-401 through 9-3-430 had a funded ratio of eighty-four and six-tenths percent (84.6%) as of January 1, 2011, down from eighty-seven and five-tenths percent (87.5%) on January 1, 2010. On a market value of assets basis, the plan's funded ratio was eighty and one-tenth percent (80.1%) as of January 1, 2011, an improvement from seventy-five and seven-tenths percent (75.7%) as of January 1, 2010;

(B) The Wyoming state highway patrol, game and fish warden and criminal investigator retirement plan administered by the Wyoming retirement board under W.S. 9-3-601 through 9-3-620, had a funded ratio of eighty-four and one-tenth percent (84.1%) as of January 1, 2011, down from eighty-seven and four-tenths percent (87.4%) on January 1, 2010. On a market value of assets basis, the funded ratio was seventy-nine and four-tenths percent (79.4%) as of January 1, 2011, an improvement from seventy-five and three-tenths percent (75.3%) as of January 1, 2010;

(C) The law enforcement plan administered by the Wyoming retirement board under W.S. 9-3-401 through 9-3-432, had a funded ratio of ninety-nine and nine-tenths percent (99.9%) as of January 1, 2011, down from one hundred two and two-tenths percent (102.2%) as of January 1, 2010. On a market value of assets basis, the plan's funded ratio was ninety-five and three-tenths percent (95.3%) as of January 1, 2011, an improvement from eighty-nine percent (89.0%) as of January 1, 2010;

(D) The judicial retirement plan administered by the Wyoming retirement board under W.S. 9-3-701 through 9-3-713, had a funded ratio of one hundred eight and five-tenths percent (108.5%) as of January 1, 2011, slightly up from one hundred eight and two-tenths percent (108.2%) on January 1, 2010. On a market value of assets basis, the plan's funded ratio was one hundred four and four-tenths percent (104.4%) as of January 1, 2011 an improvement from ninety-five and one-tenth percent (95.1%) as of January 1, 2010;

(E) The paid firemen plan B, administered by the Wyoming retirement board under W.S. 15-5-401 through 15-5-422, had a funded ratio of one hundred fifteen and seven-tenths percent (115.7%) as of January 1, 2011, down from one hundred sixteen and two-tenths percent (116.2%) as of January 1, 2010. On a market value of assets basis, the plan's funded ratio was one hundred eleven and three-tenths percent (111.3%) as of January 1, 2011, an improvement from one hundred two percent (102.0%) as of January 1, 2010;

(F) The air national guard firefighters plan administered by the Wyoming retirement board under W.S. 9-3-401 through 9-3-431 had a funded ratio of seventy-seven and four-tenths percent (77.4%) as of January 1, 2011. On a market value of assets basis, the plan's funded ratio was eighty and one-tenth percent (80.1%) as of January 1, 2011. 2011 was the first year this plan was isolated for review from the public employees plan under W.S. 9-3-401 through 9-3-430;

(G) The paid firemen plan A administered by the Wyoming retirement board under W.S. 15-5-201 through 15-5-209, had a funded ratio of eighty-five and six-tenths percent (85.6%) as of January 1, 2011 down from ninety-one and two-tenths percent (91.2%) as of January 1, 2010. On a market value of assets basis, the plan's funded ratio was seventy-eight and nine-tenths percent (78.9%) as of January 1, 2011, an improvement from seventy-six and seven-tenths percent (76.7%) as of January 1, 2010;

(H) The volunteer firefighters plan administered by the volunteer fireman's pension board under W.S. 35-9-601 through 35-9-615, had a funded ratio of one hundred four and six-tenths percent (104.6%) as of January 1, 2011, down from one hundred eight and nine-tenths percent (108.9%) as of January 1, 2010. On a market value of assets basis, the plan's funded ratio was ninety-eight and six-tenths percent (98.6%) as of January 1, 2011, an improvement from ninety-three and five-tenths percent (93.5%) as of January 1, 2010;

(J) The volunteer emergency medical technician's plan, administered by the volunteer emergency medical technician's pension board under W.S. 35-29-101 through 35-29-112, had a funded ratio of one hundred seventeen and eight-tenths percent (117.8%) as of January 1, 2011, up from eighty-three and six-tenths percent (83.6%) as of January 1, 2010. On a market value of assets basis, the plan's funded ratio was one hundred twenty-nine and five-tenths percent (129.5%) as of January 1, 2011, an improvement from ninety and seven-tenths percent (90.7%) as of January 1, 2010. While the funded ratio has increased, reliance on the improvement as an indication of this plan's financial health would be misplaced as the legislation establishing the plan provided a general fund appropriation of nine hundred seventy-eight thousand two hundred dollars ($978,200.00) to fund the difference between the actuarially determined premium for participation in the plan and the contributions required by law. The contributions required by law are insufficient to support the stated benefits under the plan and no long term external funding source was provided when the plan was established, nor thereafter.

(iii) All of the funded ratios specified in paragraph (ii) of this subsection, except for the paid firemen's plan A, were calculated with the assumptions of no benefit increases or additional cost-of-living adjustment increases;

(iv) Actuarial funded ratios at any single point in time disclose only a portion of the soundness of the retirement plans. Underlying the ratios is an assumed eight percent (8%) investment return (composed of a three and one-half percent (3.5%) inflation rate and a four and one-half percent (4.5%) net real rate of return) on each of the various funds. The average market value returns for the largest plan under the board's administration has been three and sixty-three hundredths percent (3.63%) for the last five (5) years and four and twenty-three hundredths percent (4.23%) for the last ten (10) years, both well below the assumed eight percent (8%). The retirement system's actuary has stated: "Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods." Investment returns of less than one-half (1/2) of the assumed rate is a major deviation from assumptions;

(v) Where the current actuarial value of assets is higher than the market value of assets, continued recovery in the investment markets will be needed over the next few years, annual returns in excess of the assumed investment return of eight percent (8.0%), to keep the plans' funded ratios and unfunded actuarial accrued liability relatively stable in the short term;

(vi) While investments in markets have been authorized by constitutional amendment for retirement funds and supported by legislative authorization, if annual realized returns are lower than assumed or higher than assumed, the funded ratios are respectively overstated or understated;

(vii) The public employee plan administered under W.S. 9-3-401 through 9-3-430 has by far the largest membership as it contains eighty-eight and six-tenths percent (88.6%) of the membership of all public employee retirement plans administered by the Wyoming retirement board. The actuarial funded ratio for this plan has dropped from one hundred thirteen and seventy-seven hundredths percent (113.77%) in 2001 to eighty-four and fifty-nine hundredths percent (84.59%) in 2011, even though the actuarial accrued liability in 2001 was calculated using the maximum cost-of-living adjustment authorized by statute and the 2011 liability was calculated using no cost-of-living liability. In light of the lower funded ratio, the Wyoming retirement board recommended and the Legislature enacted in 2010 a combined employer and employee contribution increase from eleven and twenty-five hundredths percent (11.25%) to fourteen and twelve hundredths percent (14.12%) effective September 1, 2010;

(viii) Actuarial funded ratios have fallen over the past decade for all other plans identified in this section, other than the judicial retirement plan. The funded ratio of the volunteer firefighter's plan and the firefighter's plan B have dropped by over fifty (50) percentage points. These decreases were incurred in spite of a change in assumptions from a maximum cost-of-living increase allowed by statute to no cost-of-living increase, except for the paid firemen plan A;

(ix) From 1991 through 2008, cost-of-living increases ranging from one percent (1%) to three percent (3%) were provided for eighteen (18) consecutive years in the largest public employee retirement plan, resulting in cumulative increases in an employee's benefit amount ranging from one and three-hundredths (1.03%) for employees first eligible for a cost-of-living adjustment in 2008 to thirty-four percent (34%) for those eligible for a cost-of-living adjustment in 1991;

(x) Other benefit increases have been provided by legislation, including a 2001 enactment of an increased benefit multiplier for each year of service in the largest plan, which resulted in an increased cost of over five hundred twenty-one million dollars ($521,000,000.00) through July 1, 2011. An ad hoc increase of three dollars ($3.00) per month per year of service made in the same legislation resulted in over two hundred seventeen million dollars ($217,000,000.00) in increased costs to the plan over the same period;

(xi) As of January 1, 2011, it is estimated that over forty (40) years will be required until the largest public employee plan currently administered by the Wyoming retirement board meets a one hundred percent (100%) actuarial funded ratio. Other plans administered by the Wyoming retirement board, volunteer firefighters pension board and volunteer emergency medical technician's pension board have higher or lower funded ratios;

(xii) Stability in providing stated benefits is a critical feature of a retirement plan. With large portions of public employee retirement plans invested in markets and with market fluctuations having a significant effect on funded ratios, actuarial funded ratios in excess of one hundred percent (100%) are necessary to maximize stability in providing stated benefits;

(xiii) It is the intent of the legislature that all public employee retirement plans be managed to maintain an actuarial funded ratio of not less than one hundred percent (100%) and that the retirement board determine from time to time an appropriate level of funding sufficient to withstand market fluctuations without experiencing reductions below the desired one hundred percent (100%) funding ratio;

(xiv) It is the intent of the legislature that cost-of-living increases and changes to multipliers be allowed only in the event that the actuarial funded level for the affected plan remains above one hundred percent (100%), plus the additional percentage the retirement board determines is reasonably necessary to withstand market fluctuations. This determination is to be made for the entire amortization period affected by the change using then current actuarial assumptions.

9-3-454. Required determinations for recommended benefit increases.

(a) In accordance with the findings specified in W.S. 9-3-453:

(i) All plans shall be managed to maintain their actuarial funded ratio at or above one hundred percent (100%) throughout the life of the plan. The actual funded ratio recommended by the board shall provide for an appropriate margin above this funding ratio to allow for market fluctuations above the one hundred percent (100%) base;

(ii) No benefit changes, including cost-of-living increases and changes to multipliers, shall be recommended for implementation by the legislature unless the system's actuaries provide an opinion that the funded ratio of the plan will remain above the funding level set out in paragraph (i) of this subsection throughout the life of the benefit change;

(iii) Any analysis upon which a proposed benefit change is proposed shall include a decision matrix which shall include the following minimum elements:

(A) Consideration of the current actuarial value in relation to current market value of assets;

(B) A fully amortized cost over the full applicable term of the benefit increase;

(C) Current and expected actuarial funded ratios with and without the increase;

(D) A review of assumptions made in determining funded ratios and a review of anticipated funded ratios with differing investment return assumptions;

(E) Recognition of potential effects of the increase on plan participants' working and retirement periods;

(F) The potential isolation, by establishment of separate accounts, of the liability incurred as a result of the cost of living or other benefit increase;

(G) The appropriate level of actuarial funding ratio above one hundred percent (100%) needed to buffer the plan from market fluctuations.

(b) Nothing in this section shall affect the authority of the board to grant a cost-of-living adjustment as authorized by W.S. 15-5-204.

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Section 2. W.S. 9-3-405(a) by creating a new paragraph (vii), 9-3-425 and 9-3-708(b) are amended to read:

9-3-405. Retirement board duties and powers.

(a) In addition to any other duties prescribed by law, the board shall:

(vii) In collaboration with participating employers, provide information, through a variety of methods including a mandatory education program, to all employees who are members as of July 1, 2012, and to all members initially enrolling after July 1, 2012. The information and program shall review retirement benefits, costs expected to be incurred in retirement and income amounts anticipated to be necessary to maintain the member's preretirement standard of living. The information and program shall:

(A) Emphasize that benefits provided under the plans administered by the Wyoming retirement board should not be expected to provide one hundred percent (100%) of the member's required income in retirement;

(B) Advise that no future cost-of-living increases or other benefit increases are incorporated into the plans as constructed;

(C) Contain citation to and the language of W.S. 9-3-428 providing that nothing in Wyoming statutes title 9, chapter 3, article 4, shall be construed to acknowledge any past, present or future liability of or obligate the state of Wyoming for contribution except the employer's contributions provided for in that article, to either the Wyoming retirement system provided by that article or any other retirement system previously existing in the state of Wyoming.

9-3-425. Right of members retired under terminated systems to retirement benefits from account; no prohibition to increase provided in W.S. 9-3-419.

Any member retired under one (1) of the terminated systems or continued in retirement under the system is entitled to receive service or disability retirement benefits from the retirement account in accordance with the terminated systems. This section does not prohibit an increase in benefits as provided for in W.S. ~~9-3-419~~ 9-3-419(a).

9-3-708. Death benefits; survivor's benefits.

(b) Upon the death of a former employee who is receiving a retirement allowance under this act, the employee's survivor shall receive a monthly retirement allowance during the survivor's life equal to fifty percent (50%) of the allowance received by the former employee under this act at the time of the employee's death. ~~Survivor's benefits are subject to the adjustment under W.S. 9-3-707(b).~~

Section 3. W.S. 9-3-419(b), 9-3-432(g), 9-3-610(d), 9-3-707(b), 15-5-416, 35-9-608(k) and 35-29-106(g) are repealed.

Section 4.

(a) The joint appropriations interim committee shall study cost efficiencies of the following:

(i) Implementation of an annual cost-of-living adjustment, offered through the current defined benefit plan and paid for with employer and employee contributions;

(ii) The implementation of a supplemental defined contribution plan with employee and matching employer contributions as an alternative to addressing cost-of-living increases in the plans subject to this act; and

(iii) Other types of pension plans. The committee may develop legislation for introduction in the 2013 general session.

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Section 5. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: __________

DATE APPROVED: __________

I hereby certify that this act originated in the Senate.

Chief Clerk