

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 316

FISCAL
NOTE

BY SENATORS PLYMALE, WOELFEL, LINDSAY, STOLLINGS,
AND HAMILTON

[Introduced January 16, 2019; Referred
to the Committee on Pensions; and then to the Committee
on Finance]

1 A BILL to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended, relating
 2 to preserving previously approved pensions awarded through the state Municipal
 3 Policemen's or Municipal Firemen's Pension and Relief Funds.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND
 RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS
 FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR
 COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-27a. Correction of errors; underpayments; overpayments.

1 (a) *General rule.* — Upon learning of errors, the municipal policemen's pension and relief
 2 fund board of trustees or the municipal firemen's pension and relief fund board of trustees shall
 3 correct errors in the plan in a timely manner whether the individual, municipality or board of
 4 trustees was at fault for the error with the intent of placing the affected individual, municipality and
 5 pension board of trustees in the position each would have been in had the error not occurred.
 6 Should the municipal policemen's or firemen's pension and relief fund board of trustees fail to
 7 correct discovered errors, the Municipal Pensions Oversight Board shall have the authority to
 8 order the pension fund board of trustees to correct such errors. Any order issued by the Municipal
 9 Pensions Oversight Board shall be enforceable by an action at law.

10 (b) *Underpayments to the plan.* — Any error resulting in an underpayment to the plan may
 11 be corrected by the member or retirant remitting the required employee contribution or
 12 underpayment and the municipality remitting the required municipality contribution or
 13 underpayment. The rate of interest applicable to employer error payments in a Municipal
 14 Policemen's or Municipal Firemen's Pension and Relief Fund shall be the actuarial interest rate
 15 assumption as approved by the Municipal Pensions Oversight Board for completing the Actuarial
 16 Valuation for the plan year immediately preceding the first day of the plan year in which the

17 employer error payment is made, compounded per annum. Any accumulating interest owed on
18 the employee and employer contributions or underpayments resulting from an employer error
19 shall be the responsibility of the employer. The employer may remit total payment and the
20 employee reimburse the employer through payroll deduction over a period equivalent to the time
21 period during which the employer error occurred. If the correction of an error involving an
22 underpayment to the plan will result in the plan correcting an erroneous underpayment from the
23 plan, the correction of the underpayment from the plan shall be made only after the board of
24 Trustees receives full payment of all required employee and employer contributions or
25 underpayments, including interest.

26 (c) *Overpayments to the plan by an employee.* — When mistaken or excess employee
27 contributions or overpayments have been made to the plan, the municipal policemen's or
28 municipal firemen's pension and relief fund board of trustees shall have sole authority for
29 determining the means of return, offset or credit to or for the benefit of the individual making the
30 mistaken or excess employee contribution of the amounts, and may use any means authorized
31 or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and
32 guidance issued thereunder applicable to governmental plans. Alternatively, in its full and
33 complete discretion, the Municipal Policemen's or Municipal Firemen's Pension and Relief Fund
34 Board of Trustees may require the municipality employing the individual to pay the individual the
35 amounts as wages, with the board of trustees crediting the employer with a corresponding amount
36 to offset against its future contributions to the plan. If the municipality has no future liability for
37 municipality contributions to the plan, the board of trustees shall refund said amount directly to
38 the municipality: *Provided*, That the wages paid to the individual shall not be considered
39 compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or
40 credited under any of the means used by the board of trustees for returning employee
41 overpayments.

42 (d) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary,

43 entity or other individual receiving from the plan more than he would have been entitled to receive
44 had the error not occurred the board of trustees after learning of the error shall correct the error
45 in a timely manner. If correction of the error occurs after annuity payments to a retirant or
46 beneficiary have commenced, the board of trustees shall prospectively adjust the payment of the
47 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person
48 who received the overpayment from the plan shall repay the amount of any overpayment to the
49 municipal policemen's pension fund or municipal firemen's pension fund in any manner permitted
50 by the board of trustees of that fund. Interest shall not accumulate on any corrective payment
51 made to the plan pursuant to this subsection.

52 (e) *Underpayments from the plan.* — If any error results in any member, retirant,
53 beneficiary, entity or other individual receiving from the plan less than he would have been entitled
54 to receive had the error not occurred, the board of trustees, upon learning of the error, shall correct
55 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant
56 or beneficiary have commenced, the board of trustees shall prospectively adjust the payment of
57 the benefit to the correct amount. In addition, the board of trustees shall pay the amount of such
58 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall
59 not be paid on any corrective payment made by the municipal policemen's pension fund or
60 municipal firemen's pension fund pursuant to this subsection.

61 (f) It is the intent of the Legislature by enacting the amendment to this section during the
62 regular session of the Legislature of 2019, that the language of this section may not be construed
63 to authorize any reduction of a retirement benefit amount that was approved prior to the enactment
64 of this section during the regular legislative session of 2017. Therefore, notwithstanding any
65 provision of this section to the contrary, nothing herein authorizes the reduction of a previously
66 approved retirement benefit amount of any member, retirant, beneficiary, entity, or other individual
67 who retired prior to the effective date of this section, as enacted during the regular legislative
68 session of 2017.

NOTE: The purpose of this bill is to provide that changes to this section enacted during the 2017 Regular Legislative Session do not reduce previously approved pensions awarded through the Municipal Policemen's or Municipal Firemen's Pension and Relief Funds.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.