

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 316

SENATORS PLYMALE, WOELFEL, LINDSAY, STOLLINGS,

AND HAMILTON, *original sponsors*

[Originating in the Committee on Finance; Reported

on February 21, 2019]

1 A BILL to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended, relating
2 to municipal options to recalculate or preserve previously approved pensions awarded
3 through the state Municipal Policemen's or Municipal Firemen's Pension and Relief Funds
4 prior to effective date of §8-22-27a as enacted during the regular legislative session of
5 2017.

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
3 shall 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,
5 and 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. In the event the Municipal
9 Pensions Oversight Board issues an order pursuant to this section, the governing body of the city
10 may by resolution temporarily appoint up to four additional members to the board of trustees for
11 the purpose of implementing the provisions of the order. The additional board members shall
12 serve until all corrective actions ordered by the Municipal Pensions Oversight Board are
13 completed or until the municipality authorizes continued erroneous payments to retirants or

14 beneficiaries of a retirant as authorized by subsection (d) of this section. Any order issued by the
15 Municipal Pensions Oversight Board shall be enforceable by an action at law.

16 (b) *Underpayments to the plan.* — Any error resulting in an underpayment to the plan may
17 be corrected by the member or retirant remitting the required employee contribution or
18 underpayment and the municipality remitting the required municipality contribution or
19 underpayment. The rate of interest applicable to employer error payments in a municipal
20 policemen’s or municipal firemen’s pension and relief fund shall be the actuarial interest rate
21 assumption as approved by the Municipal Pensions Oversight Board for completing the actuarial
22 valuation for the plan year immediately preceding the first day of the plan year in which the
23 employer error payment is made, compounded per annum. Any accumulating interest owed on
24 the employee and employer contributions or underpayments resulting from an employer error
25 shall be the responsibility of the employer. The employer may remit total payment and the
26 employee reimburse the employer through payroll deduction over a period equivalent to the time
27 period during which the employer error occurred. If the correction of an error involving an
28 underpayment to the plan will result in the plan correcting an erroneous underpayment from the
29 plan, the correction of the underpayment from the plan shall be made only after the board of
30 trustees receives full payment of all required employee and employer contributions or
31 underpayments, including interest.

32 (c) *Overpayments to the plan by an employee.* — When mistaken or excess employee
33 contributions or overpayments have been made to the plan, the municipal policemen’s or
34 municipal firemen’s pension and relief fund board of trustees shall have sole authority for
35 determining the means of return, offset or credit to or for the benefit of the individual making the
36 mistaken or excess employee contribution of the amounts, and may use any means authorized
37 or permitted under the provisions of Section 401(a), *et seq.* of the Internal Revenue Code and
38 guidance issued thereunder applicable to governmental plans. Alternatively, in its full and
39 complete discretion, the municipal policemen’s or municipal firemen’s pension and relief fund

40 board of trustees may require the municipality employing the individual to pay the individual the
41 amounts as wages, with the board of trustees crediting the employer with a corresponding amount
42 to offset against its future contributions to the plan. If the municipality has no future liability for
43 municipality contributions to the plan, the board of trustees shall refund said amount directly to
44 the municipality: *Provided*, That the wages paid to the individual shall not be considered
45 compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or
46 credited under any of the means used by the board of trustees for returning employee
47 overpayments.

48 (d) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary,
49 entity, or other individual receiving from the plan more than he or she would have been entitled to
50 receive had the error not occurred, the board of trustees, after learning of the error, shall correct
51 the error in a timely manner. Unless otherwise authorized by the governing body of the city in
52 which the fund was established as provided herein, if correction of the error occurs after annuity
53 payments to a retirant or beneficiary have commenced, the board of trustees shall prospectively
54 adjust the payment of the benefit to the correct amount. In addition, the member, retirant,
55 beneficiary, entity, or other person who received the overpayment from the plan shall repay the
56 amount of any overpayment to the municipal policemen's pension fund or municipal firemen's
57 pension fund in any manner permitted by the board of trustees of that fund. The governing body
58 of the city in which the overpaying municipal fund is established may, by majority vote, authorize
59 continued overpayment of retirement benefits for any member, retirant, beneficiary, entity, or
60 individual who retired prior to the effective date of this section as enacted during the regular
61 legislative session of 2017: *Provided*, That where the governing body of the city authorizes
62 continued overpayment, it shall also authorize continued payment into the fund in an amount
63 equal to that which it would be responsible to pay under the applicable actuarial method used by
64 the city without reduction to any retirement benefit. Interest shall not accumulate on any corrective
65 payment made to the plan pursuant to this subsection.

66 (e) *Underpayments from the plan.* — If any error results in any member, retirant,
67 beneficiary, entity, or other individual receiving from the plan less than he or she would have been
68 entitled to receive had the error not occurred, the board of trustees, upon learning of the error,
69 shall correct the error in a timely manner. If correction of the error occurs after annuity payments
70 to a retirant or beneficiary have commenced, the board of trustees shall prospectively adjust the
71 payment of the benefit to the correct amount. In addition, the board of trustees shall pay the
72 amount of such underpayment to the member, retirant, beneficiary, or other individual in a lump
73 sum. Interest shall not be paid on any corrective payment made by the municipal policemen’s
74 pension fund or municipal firemen’s pension fund pursuant to this subsection.

NOTE: The purpose of this bill is to provide municipalities the option of recalculating overpayments of previously awarded retirement benefits, or upon a majority vote, authorizing continued overpayments of retirement benefits at the expense of the municipality. The option to authorize continued overpayments applies only to those members, retirants, beneficiaries, entities, or individuals who retired prior to the effective date of §8-22-27a as enacted during the regular legislative session of 2017.

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