

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2409**

BY DELEGATE LOVEJOY, LINVILLE, HORNBUCKLE, MILLER,  
PETHTEL, WORRELL, MANDT, WILLIAMS, ROHRBACH AND  
CANESTRARO

[Introduced January 15, 2019; Referred  
to the Committee on Pensions and Retirement then  
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.