

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **House Bill 2601**

**FISCAL  
NOTE**

BY DELEGATES WALTERS, FOLK, ANDERSON, HAMILTON,

O'NEAL, E. EVANS AND PETHTEL

[By Request of the Municipal Pensions

Oversight Board]

[Introduced February 21, 2017; Referred

to the Committee Pensions and Retirement then

Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new  
 2 sections, designated §8-22-27a and §8-22-27b, all relating to municipal policemen’s or  
 3 municipal firemen’s pension and relief funds; providing mechanism for the correction of  
 4 errors; and providing criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto two  
 2 new sections, designated §8-22-27a and §8-22-27b, all to read as follows:

**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.

**§8-22-27b. Fraud; penalties; and repayment.**

1 Any person who knowingly makes any false statement or who falsifies or permits to be  
2 falsified any record of a municipal policemen's or municipal firemen's pension and relief fund in  
3 any attempt to defraud that system is guilty of a felony and, on conviction thereof, shall be  
4 punished by a fine not to exceed \$5,000, by confinement in jail not to exceed five years, or by

5 both fine and confinement. Any increased benefit received by any person as a result of the  
6 falsification or fraud shall be returned to the fund on demand by the board of trustees or by  
7 demand of the Municipal Pensions Oversight Board. Upon conviction of said felony, the  
8 employee, retirant or pensioner shall be subject to disqualification pursuant to the provisions of  
9 article ten-a, chapter five of this code.

NOTE: The introduction of this bill was requested by the Municipal Pensions Oversight Board. The purpose of this bill is to provide a mechanism of correcting errors in payments to and from a municipal policemen's or firemen's pension fund and to provide a criminal offense for knowingly making a false statement in an attempt to defraud a municipal pension fund.

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