

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 393

BY SENATORS GAUNCH AND MARONEY

[Introduced February 22, 2017; Referred
to the Committee on Pensions; and then to the
Committee on 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 administration of municipal
 3 pensions; establishing procedures to correct errors in the administration of municipal
 4 pensions; making the act of fraud in relation to a record of a municipal pension a felony;
 5 and providing for 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
 3 shall correct errors in the plan in a timely manner, regardless of whether the individual,
 4 municipality or board of trustees was at fault for the error, with the intent of placing the affected
 5 individual, municipality and pension board of trustees in the position each would have been in had
 6 the error not occurred. Should the Municipal Policemen's or Firemen's Pension and Relief Fund
 7 board of trustees fail to correct discovered errors, the Municipal Pensions Oversight Board shall
 8 have the authority to order the pension fund board of trustees to correct such errors. Any order
 9 issued by the Municipal 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 Pensions 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 received 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 amount 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 or she would have been entitled to
44 receive had the error not occurred, the board of trustees, after learning of the error, shall correct
45 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant
46 or beneficiary have commenced, the board of trustees shall prospectively adjust the payment of
47 the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other
48 person who received the overpayment from the plan shall repay the amount of any overpayment
49 to the Municipal Policemen's Pension Fund or Municipal Firemen's Pension Fund in any manner
50 permitted by the board of trustees of that fund. Interest shall not accumulate on any corrective
51 payment 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 or she would have been
54 entitled to receive had the error not occurred, the board of trustees, upon learning of the error,
55 shall correct the error in a timely manner. If correction of the error occurs after annuity payments
56 to a retirant or beneficiary have commenced, the board of trustees shall prospectively adjust the
57 payment of the benefit to the correct amount. In addition, the board of trustees shall pay the
58 amount of such underpayment to the member, retirant, beneficiary or other individual in a lump
59 sum. Interest shall not be paid on any corrective payment made by the Municipal Policemen's
60 Pension Fund or Municipal Firemen's Pension Fund pursuant to this subsection.

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

1 (a) 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
3 with the intent 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 a fine and confinement. Upon conviction of said felony, the employee, retirant or pensioner
6 shall be subject to disqualification pursuant to the provisions of article ten-a, chapter five of this
7 code.

8 (b) In addition to the fines and imprisonment imposed by this section, in all cases of
9 conviction for the offense described in this section, upon demand of the board of trustees or the
10 Municipal Pensions Oversight Board, the court shall order the defendant to pay to the fund an
11 amount equal to the value of any increased benefit received as a result of the offense.

NOTE: The purpose of this bill is to establish procedures to correct errors in the administration of municipal pensions; make the act of fraud in relation to a record of a municipal pension a felony; and provide for criminal penalties.

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