WEST VIRGINIA CODE: §8-22-27A

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

(a) General rule. — Upon learning of errors, the Municipal Policemen's Pension and Relief Fund Board of Trustees or the Municipal Firemen's Pension and Relief Fund Board of Trustees shall correct errors in the plan in a timely manner whether the individual, municipality, or board of trustees was at fault for the error with the intent of placing the affected individual, municipality, and pension board of trustees in the position each would have been in had the error not occurred. Should the municipal policemen's or firemen's pension and relief fund board of trustees fail to correct discovered errors, the Municipal Pensions Oversight Board shall order the pension fund board of trustees to correct such errors. In the event the Municipal Pensions Oversight Board issues an order pursuant to this section, the governing body of the city may by resolution temporarily appoint up to four additional members to the board of trustees for the purpose of implementing the provisions of the order. The additional board members shall serve until all corrective actions ordered by the Municipal Pensions Oversight Board are completed or until the municipality authorizes continued erroneous payments to retirants or beneficiaries of a retirant as authorized by subsection (d) of this section. Any order issued by the Municipal Pensions Oversight Board shall be enforceable by an action at law.

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

(c) Overpayments to the plan by an employee. — When mistaken or excess employee contributions or overpayments have been made to the plan, the municipal policemen's or municipal firemen's pension and relief fund board of trustees shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any

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means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the municipal policemen's or municipal firemen's pension and relief fund board of trustees may require the municipality employing the individual to pay the individual the amounts as wages, with the board of trustees crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the municipality has no future liability for municipality contributions to the plan, the board of trustees shall refund said amount directly to the municipality: Provided, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board of trustees for returning employee overpayments.

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

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

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