Committee Substitute

for

House Bill 2601

BY DELEGATES WALTERS, FOLK, ANDERSON, HAMILTON, O'NEAL, E. EVANS AND PETHTEL

(BY REQUEST OF THE MUNICIPAL PENSIONS OVERSIGHT BOARD)

[Passed April 8, 2017; in effect ninety days from passage.]
Committee Substitute for House Bill 2601

By Delegates Walters, Folk, Anderson, Hamilton, O'Neal, E. Evans and Pethtel

(By Request of the Municipal Pensions Oversight Board)

[Passed April 8, 2017; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §8-22-27a and §8-22-27b, all relating to administration of municipal pensions; establishing procedures to correct errors in the administration of municipal pensions; making the act of fraud in relation to a record of a municipal pension a misdemeanor; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two 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.

(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 have the authority to order the pension fund board of trustees to correct such errors. 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 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 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. 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. 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 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.

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

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of a municipal policemen’s or municipal firemen’s pension and relief fund in any attempt to defraud that system is guilty of a misdemeanor and, upon conviction thereof, shall
Enr. CS for HB 2601

be fined not more than $1,000 or confined in jail not more than one year, or both fined and
confined. Any increased benefit received by any person as a result of the falsification or fraud
shall be returned to the fund on demand by the board of trustees or by demand of the Municipal
Pensions Oversight Board.
Enr. CS for HB 2601

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 24th day of April, 2017.

Governor