

# WEST VIRGINIA LEGISLATURE FILED

2019 REGULAR SESSION

2019 MAR 25 P 4: 22

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 316**

SENATORS PLYMALE, WOELFEL, LINDSAY, STOLLINGS,

AND HAMILTON, *original sponsors*

[Passed March 6, 2019; in effect from passage]

SB 316

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1 AN ACT to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended,  
2 relating to the corrections of overpayments made to retirants or beneficiaries of retirants;  
3 authorizing municipalities to continue certain overpayments; and authorizing a  
4 municipality to appoint additional members to a firemen's or a policemen's pension and  
5 relief fund board.

*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  
3 shall 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,  
5 and 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 order the pension fund  
8 board of trustees to correct such errors. In the event the Municipal Pensions Oversight Board  
9 issues an order pursuant to this section, the governing body of the city may by resolution  
10 temporarily appoint up to four additional members to the board of trustees for the purpose of  
11 implementing the provisions of the order. The additional board members shall serve until all  
12 corrective actions ordered by the Municipal Pensions Oversight Board are completed or until the  
13 municipality authorizes continued erroneous payments to retirants or beneficiaries of a retirant as

14 authorized by subsection (d) of this section. Any order issued by the Municipal Pensions Oversight  
15 Board shall be enforceable by an action at law.

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

32 (c) *Overpayments to the plan by an employee.* — When mistaken or excess employee  
33 contributions or overpayments have been made to the plan, the municipal policemen’s or  
34 municipal firemen’s pension and relief fund board of trustees shall have sole authority for  
35 determining the means of return, offset or credit to or for the benefit of the individual making the  
36 mistaken or excess employee contribution of the amounts, and may use any means authorized  
37 or permitted under the provisions of Section 401(a), *et seq.* of the Internal Revenue Code and  
38 guidance issued thereunder applicable to governmental plans. Alternatively, in its full and  
39 complete discretion, the municipal policemen’s or municipal firemen’s pension and relief fund

40 board of trustees may require the municipality employing the individual to pay the individual the  
41 amounts as wages, with the board of trustees crediting the employer with a corresponding amount  
42 to offset against its future contributions to the plan. If the municipality has no future liability for  
43 municipality contributions to the plan, the board of trustees shall refund said amount directly to  
44 the municipality: *Provided*, That the wages paid to the individual shall not be considered  
45 compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or  
46 credited under any of the means used by the board of trustees for returning employee  
47 overpayments.

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

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

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

FILED

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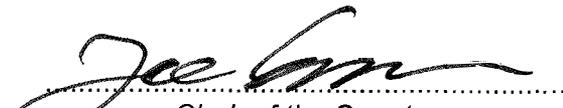
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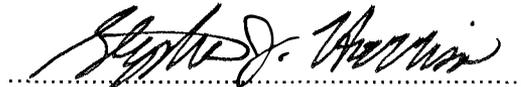
  
.....  
Chairman, Senate Committee

  
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Chairman, House Committee

Originated in the Senate.

In effect from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker of the House of Delegates

The within is approved..... this the 25<sup>th</sup>.....  
Day of March....., 2019.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2019

Time 3:52 pm