

**H. B. 2521**

(By Delegates Canterbury, Pethtel, Folk, Walters, Hamilton,  
Marcum and Hicks )

[Introduced January 30, 2015; referred to the

Committee on Pensions and Retirement then the Judiciary.]

A BILL to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8; to amend said code by adding thereto a new section, designated §8-22A-8a of said code; to amend said code by adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to amend said code by adding thereto a new section, designated §51-9-18, all relating to the correction of errors under the West Virginia Public Employees Retirement System, the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, the West Virginia Emergency Medical Services Retirement System, the State Teachers Retirement System, the Teachers’ Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, the West Virginia State Police Retirement System and the Judges’ Retirement System; and clarifying the scope, application and requirements for error correction by the Consolidated

1 Public Retirement Board.

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

3 That §5-10-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
4 that §7-14D-7a of said code be amended and reenacted; that §8-22A-8 of said code be amended and  
5 reenacted; that said code be amended by adding thereto a new section, designated §8-22A-8a; that  
6 said code be amended by adding thereto a new section, designated §15-2-54; that said code be  
7 amended by adding thereto a new section, designated §15-2A-23; that §16-5V-8a of said code be  
8 amended and reenacted; that §18-7A-14c of said code be amended and reenacted; that §18-7B-21  
9 of said code be amended and reenacted; and that said code be amended by adding thereto a new  
10 section, designated §51-9-18, all to read as follows:

11 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR.**

12 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**

13 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

14 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

15 **§5-10-44. Correction of errors; underpayments; overpayments.**

16 (a) General rule: ~~If any change or employer error in the records of any participating public~~  
17 ~~employer or the retirement system results in any member, retirant or beneficiary receiving from the~~  
18 ~~system more or less than he or she would have been entitled to receive had the records been correct,~~  
19 ~~the board shall correct the error. If correction of the error occurs after the effective retirement date~~  
20 ~~of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner~~  
21 ~~that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.~~  
22 The board shall correct errors of any kind involving the retirement system, including, but not limited

1 to, errors resulting in under payments or overpayments to the retirement system, errors resulting in  
2 under payments or overpayments from the retirement system, and errors regarding an individual's  
3 or entity's eligibility to participate in or receive benefits from the retirement system as a member,  
4 retirant, beneficiary or participating public employer. The provisions of this section apply regardless  
5 of whether the individual, entity or board was at fault for the error. It is the intent of this section that  
6 the board correct errors in a manner that, as close as reasonably possible and consistent with the  
7 provisions of this section, places the retirement system and any affected individual or entity in the  
8 position each would have been in had the error not occurred.

9 (b) Underpayments to the retirement system: Any error resulting in an underpayment to the  
10 retirement system ~~of required contributions~~, may be corrected by the member or retirant remitting  
11 the required employee contribution or employee underpayment and the participating public employer  
12 remitting the required employer contribution or employer underpayment. Interest shall accumulate  
13 in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund,  
14 reinstatement, retroactive service, ~~and~~ loan and correction of error interest factors and any  
15 accumulating interest owed on the employee and employer contributions or underpayments resulting  
16 from an employer error shall be the responsibility of the participating public employer. The  
17 participating public employer may remit total payment and the employee reimburse the participating  
18 public employer through payroll deduction over a period equivalent to the time period during which  
19 the employer error occurred. If the correction of an error involving an underpayment ~~of required~~  
20 ~~contributions~~ to the retirement system will result in ~~increased payments to a retirant, including~~  
21 ~~increases to payments already made, any adjustments~~ the retirement system correcting an erroneous  
22 underpayment from the retirement system, the correction of the underpayment from the retirement

1 system shall be made only after the board receives full payment of all required employee and  
2 employer contributions or underpayments, including interest.

3 (c) Overpayments to the retirement system: (1) When mistaken or excess employer  
4 contributions, ~~including any or other employer~~ overpayments have been made to the retirement  
5 system, ~~by a participating public employer, due to error or other reason~~, the board shall credit the  
6 ~~participating public~~ employer with an amount equal to the ~~erroneous contributions~~ overpayment, to  
7 be offset against the ~~participating public~~ employer's future liability for employer contributions to the  
8 system. If the employer has no future liability for employer contributions to the retirement system,  
9 the board shall refund the erroneous contributions directly to the employer. Earnings or interest  
10 shall not be returned, offset or credited to the employer under any of the means used by the board  
11 for returning employer overpayments to the retirement system.

12 (2) When mistaken or excess employee contributions, ~~including any or other employee~~  
13 overpayments, have been made to the retirement system, ~~due to error or other reason~~, the board shall  
14 have sole authority for determining the means of return, offset or credit to or for the benefit of the  
15 ~~employee~~ individual making the mistaken or excess employee contribution of the amounts, and may  
16 use any means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal  
17 Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in  
18 its full and complete discretion, the board may require the participating public employer employing  
19 the individual to pay the ~~employee~~ individual the amounts as wages, with the board crediting the  
20 participating public employer with a corresponding amount to offset against its future contributions  
21 to the plan. If the employer has no future liability for employer contributions to the retirement  
22 system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid

1 to the ~~employee~~ individual shall not be considered compensation for any purposes of this article.  
2 Earnings or interest shall not be returned, offset, or credited under any of the means ~~utilized~~ used  
3 by the board for returning ~~mistaken or excess employee contributions, including any overpayments~~  
4 ~~to an employee.~~

5 (d) Overpayments from the retirement system: If any error results in any member, retirant,  
6 beneficiary, entity or other person receiving from the system more than he, she or it would have been  
7 entitled to receive had the error not occurred, including, but not limited to, an overpayment of one  
8 or more annuity payments, contributions, or a lump sum payment, the board shall correct the error.  
9 If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
10 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
11 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
12 overpayment from the retirement system shall repay the amount of any overpayment to the retirement  
13 system in any manner permitted by the board. Interest shall not accumulate on any corrective  
14 payment made to the retirement system pursuant to this subsection.

15 (e) Underpayments from the retirement system: If any error results in any member, retirant,  
16 beneficiary, entity or other person receiving from the retirement system less than he, she or it would  
17 have been entitled to receive had the error not occurred, including, but not limited to, an  
18 underpayment of one or more annuity payments, contributions or a lump sum payment, the board  
19 shall correct the error. If correction of the error occurs after annuity payments to a retirant or  
20 beneficiary have commenced, the board shall, as soon as practicable, prospectively adjust the  
21 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such  
22 underpayment to the member, retirant, beneficiary or other person in a lump sum. Interest shall not

1 be paid on any corrective payment made by the retirement system pursuant to this subsection.

2 (f) Eligibility errors: If the board determines that an individual or employer, or both, who has  
3 been participating in the retirement system was not eligible to so participate, the board shall as soon  
4 as practicable notify the individual and his or her employer of the determination, and terminate  
5 participation in the retirement system. Any erroneous payments to the retirement system shall be  
6 returned to the employer and individual in accordance with the methods described in subsection (c),  
7 and any erroneous payments from the retirement system to such individual shall be returned to the  
8 retirement system in accordance with the methods described in subsection (d). Any erroneous  
9 service credited to the individual shall be removed. If the board determines that an individual or  
10 employer, or both, has not been participating in the retirement system, but was eligible to and  
11 required to be participating in the retirement system, the board shall as soon as practicable notify the  
12 individual and his or her employer of the determination, and the individual and his or her employer  
13 shall prospectively commence participation in the retirement system as soon as practicable. Service  
14 credit for service prior to the date on which the individual prospectively commences participation  
15 in the retirement system shall be granted only if the board receives the required employer and  
16 employee contributions for such service, in accordance with subsection (b), including interest.

17 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

18 **ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

19 **§7-14D-7a. Correction of errors; underpayments; overpayments.**

20 (a) ~~General rule: If any change or employer error in the records of any participating public~~  
21 ~~employer or the plan results in any member, retirant or beneficiary receiving from the plan more or~~  
22 ~~less than he or she would have been entitled to receive had the records been correct, the board shall~~

1 ~~correct the error. If correction of the error occurs after the effective retirement date of a retirant, and~~  
 2 ~~as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial~~  
 3 ~~equivalent of the benefit to which the retirant was correctly entitled shall be paid. The board shall~~  
 4 correct errors of any kind involving the plan, including, but not limited to, errors resulting in  
 5 underpayments or overpayments to the plan, errors resulting in underpayments or overpayments from  
 6 the plan, and errors regarding an individual's or entity's eligibility to participate in or receive benefits  
 7 from the plan as a member, retirant, beneficiary or participating public employer. The provisions  
 8 of this section shall apply regardless of whether the individual, entity or board was at fault for the  
 9 error. It is the intent of this section that the board correct errors in a manner that, as close as  
 10 reasonably possible and consistent with the provisions of this section, places the plan and any  
 11 affected individual or entity in the position each would have been in had the error not occurred.

12 (b) Underpayments to the plan: Any error resulting in an underpayment to the ~~retirement~~  
 13 ~~system of required contributions~~ plan may be corrected by the member or retirant remitting the  
 14 required employee contribution or employee underpayment and the participating public employer  
 15 remitting the required employer contribution or employer underpayment. Interest shall accumulate  
 16 in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund,  
 17 reinstatement, retroactive service, loan and ~~employer~~ correction of error interest factors and any  
 18 accumulating interest owed on the employee and employer contributions or underpayments resulting  
 19 from an employer error shall be the responsibility of the participating public employer. The  
 20 participating public employer may remit total payment and the employee reimburse the participating  
 21 public employer through payroll deduction over a period equivalent to the time period during which  
 22 the employer error occurred. If the correction of an error involving an underpayment ~~of required~~

1 contributions to the retirement system plan will result in increased payments to a retirant, including  
2 increases to payments already made, any adjustments the plan correcting an erroneous underpayment  
3 from the plan, the correction of the underpayment from the plan shall be made only after the board  
4 receives full payment of all required employee and employer contributions or underpayments,  
5 including interest.

6 (c) Overpayments to the plan: (1) When mistaken or excess employer contributions  
7 ~~including any or other employer~~ overpayments; have been made to the ~~retirement system by a~~  
8 ~~participating public employer, due to error or other reason,~~ plan, the board shall credit the  
9 ~~participating public~~ employer with an amount equal to the ~~erroneous contributions~~ overpayment, to  
10 be offset against the ~~participating public~~ employer's future liability for employer contributions to the  
11 ~~system~~ plan. If the employer has no future liability for employer contributions to the plan, the board  
12 shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be  
13 returned, offset or credited to the employer under any of the means used by the board for returning  
14 employer overpayments to the plan.

15 (2) When mistaken or excess employee contributions ~~including any or other employee~~  
16 overpayments have been made to the ~~retirement system, due to error or other reason,~~ plan, the board  
17 shall have sole authority for determining the means of return, offset or credit to or for the benefit of  
18 the ~~employee~~ individual making the mistaken or excess employee contribution of the amounts, and  
19 may use any means authorized or permitted under the provisions of Section 401(a), et seq. of the  
20 Internal Revenue Code and guidance issued thereunder applicable to governmental plans.  
21 Alternatively, in its full and complete discretion, the board may require the participating public  
22 employer employing the individual to pay the ~~employee~~ individual the amounts as wages, with the

1 board crediting the participating public employer with a corresponding amount to offset against its  
2 future contributions to the plan. If the employer has no future liability for employer contributions  
3 to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages  
4 paid to the ~~employee~~ individual shall not be considered compensation for any purposes under this  
5 article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized  
6 by the board for returning ~~mistaken or excess employee contributions, including any overpayments.~~  
7 to an employee.

8 (d) Overpayments from the plan: If any error results in any member, retirant, beneficiary,  
9 entity or other person receiving from the system more than he, she or it would have been entitled to  
10 receive had the error not occurred, including, but not limited to, an overpayment of one or more  
11 annuity payments, contributions, or a lump sum payment, the board shall correct the error. If  
12 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
13 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
14 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
15 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner  
16 permitted by the board. Interest shall not accumulate on any corrective payment made to the plan  
17 pursuant to this subsection.

18 (e) Underpayments from the plan: If any error results in any member, retirant, beneficiary,  
19 entity or other person receiving from the plan less than he, she or it would have been entitled to  
20 receive had the error not occurred, including, but not limited to, an underpayment of one or more  
21 annuity payments, contributions or a lump sum payment, the board shall correct the error. If  
22 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,

1 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
2 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,  
3 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made  
4 by the plan pursuant to this subsection.

5 (f) Eligibility errors: If the board determines that an individual or employer, or both, who has  
6 been participating in the plan was not eligible to so participate, the board shall as soon as practicable  
7 notify the individual and his or her employer of the determination, and terminate participation in the  
8 plan. Any erroneous payments to the plan shall be returned to the employer and individual in  
9 accordance with the methods described in subsection (c), and any erroneous payments from the plan  
10 to such individual shall be returned to the plan in accordance with the methods described in  
11 subsection (d). Any erroneous service credited to the individual shall be removed. If the board  
12 determines that an individual or employer, or both, has not been participating in the plan, but was  
13 eligible to and required to be participating in the plan, the board shall as soon as practicable notify  
14 the individual and his or her employer of the determination and the individual and his or her  
15 employer shall prospectively commence participation in the plan as soon as practicable. Service  
16 credit for service prior to the date on which the individual prospectively commences participation  
17 in the plan shall be granted only if the board receives the required employer and employee  
18 contributions for such service, in accordance with subsection (b), including interest.

19 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

20 **ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND**  
21 **FIREFIGHTERS RETIREMENT SYSTEM.**

22 **§8-22A-8. Members' contributions; employer contributions; ~~correction of errors.~~**

1           (a) (1) There shall be deducted from the monthly salary of each member and paid into the  
2 fund an amount equal to eight and one-half percent (or ten and one-half percent, if applicable) of his  
3 or her monthly salary. An additional amount shall be paid to the fund by the municipality or  
4 municipal subdivision in which the member is employed in covered employment in an amount  
5 determined by the board: *Provided*, That in no year may the total of the employer contributions  
6 provided in this section, to be paid by the municipality or municipal subdivision, exceed ten and  
7 one-half percent of the total payroll for the members in the employ of the municipality or municipal  
8 subdivision. Any active member who has concurrent employment in an additional job or jobs and  
9 the additional employment requires the police officer or firefighter to be a member of another  
10 retirement system which is administered by the Consolidated Public Retirement Board pursuant to  
11 article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half  
12 percent (or ten and one-half percent, if applicable) of his or her monthly salary earned as a municipal  
13 police officer or firefighter as well as the sum of eight and one-half percent (or ten and one-half  
14 percent, if applicable) of his or her monthly salary earned from any additional employment which  
15 additional employment requires the police officer or firefighter to be a member of another retirement  
16 system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d,  
17 chapter five of this code. An additional amount as determined by the board, not to exceed ten and  
18 one-half percent of the monthly salary of each member, shall be paid to the fund by the concurrent  
19 employer by which the member is employed.

20           (2) The board may, on the recommendation of the board's actuary, increase the employees'  
21 contribution rate from eight and one-half percent to ten and one-half percent should the plan not be  
22 seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and

1 one-half percent on July 1 following the acceptance by the board of an actuarial valuation  
2 determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial  
3 valuation date falls below seventy percent, the employee rate of contribution shall be increased to  
4 ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The  
5 board shall change the employee contribution rate on July 1 following the board's acceptance of the  
6 actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer  
7 contribution.

8 (b) All required deposits shall be remitted to the board no later than fifteen days following  
9 the end of the calendar month for which the deposits are required. If the board on the  
10 recommendation of the board actuary finds that the benefits provided by this article can be actuarially  
11 funded with a lesser contribution, then the board shall reduce the required member and employer  
12 contributions proportionally. Any municipality or municipal subdivision which fails to make any  
13 payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day  
14 following the end of each calendar month in which contributions are due may be required to pay the  
15 actuarial rate of interest lost on the total amount owed for each day the payment is delinquent.  
16 Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision  
17 commences after the fifteenth day following the end of the calendar month in which contributions  
18 are due and continues until receipt of the delinquent amount. Interest compounds daily and the  
19 minimum surcharge is \$50.

20 ~~(c) If any change or employer error in the records of any participating public employer or the~~  
21 ~~retirement system results in any member or retirant receiving from the system more or less than he~~  
22 ~~or she would have been entitled to receive had the records been correct, the board shall correct the~~

1 error and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial  
 2 equivalent of the benefit to which the member or retirant was correctly entitled shall be paid. Any  
 3 employer error resulting in an underpayment to the retirement system may be corrected by the  
 4 member or retirant remitting the required employee contribution and the participating public  
 5 employer remitting the required employer contribution. Interest shall accumulate in accordance with  
 6 the legislative rule 162 CSR 7 (retirement board reinstatement interest) and any accumulating  
 7 interest owed on the employee and employer contributions resulting from the employer error shall  
 8 be the responsibility of the participating public employer. The participating public employer may  
 9 remit total payment and the employee reimburse the participating public employer through payroll  
 10 deduction over a period equivalent to the time period during which the employer error occurred.

11 **§8-22A-8a. Correction of errors; underpayments; overpayments.**

12 (a) General rule: The board shall correct errors of any kind involving the plan, including, but  
 13 not limited to, errors resulting in underpayments or overpayments to the plan, errors resulting in  
 14 underpayments or overpayments from the plan, and errors regarding an individual's or entity's  
 15 eligibility to participate in or receive benefits from the plan as a member, retirant, beneficiary or  
 16 participating public employer. The provisions of this section apply regardless of whether the  
 17 individual, entity or board was at fault for the error. It is the intent of this section that the board  
 18 correct errors in a manner that, as close as reasonably possible and consistent with the provisions of  
 19 this section, places the plan and any affected individual or entity in the position each would have  
 20 been in had the error not occurred.

21 (b) Underpayments to the plan: Any error resulting in an underpayment to the plan may be  
 22 corrected by the member or retirant remitting the required employee contribution or employee

1 underpayment and the participating public employer remitting the required employer contribution  
2 or employer underpayment. Interest shall accumulate in accordance with the Legislative Rule 162  
3 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction  
4 of error interest factors, and any accumulating interest owed on the employee and employer  
5 contributions or underpayments resulting from an employer error shall be the responsibility of the  
6 participating public employer. The participating public employer may remit total payment and the  
7 employee reimburse the participating public employer through payroll deduction over a period  
8 equivalent to the time period during which the employer error occurred. If the correction of an error  
9 involving an underpayment to the plan will result in the plan correcting an erroneous underpayment  
10 from the plan, the correction of the underpayment from the plan shall be made only after the board  
11 receives full payment of all required employee and employer contributions or underpayments,  
12 including interest.

13 (c) Overpayments to the plan: (1) When mistaken or excess employer contributions or other  
14 employer overpayments have been made to the plan, the board shall credit the employer with an  
15 amount equal to the overpayment, to be offset against the employer's future liability for employer  
16 contributions to the plan. If the employer has no future liability for employer contributions to the  
17 plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest  
18 shall not be returned, offset or credited to the employer under any of the means used by the board  
19 for returning employer overpayments to the retirement system.

20 (2) When mistaken or excess employee contributions or other employee overpayments have  
21 been made to the plan, the board has sole authority for determining the means of return, offset or  
22 credit to or for the benefit of the individual making the mistaken or excess employee contribution

1 of the amounts, and may use any means authorized or permitted under the provisions of Section  
2 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to  
3 governmental plans. Alternatively, in its full and complete discretion, the board may require the  
4 participating public employer employing the individual to pay the individual the amounts as wages,  
5 with the board crediting the participating public employer with a corresponding amount to offset  
6 against its future contributions to the plan. If the employer has no future liability for employer  
7 contributions to the plan, the board shall refund said amount directly to the employer: *Provided,*  
8 That the wages paid to the individual shall not be considered compensation for any purposes under  
9 this article. Earnings or interest shall not be returned, offset, or credited under any of the means  
10 utilized by the board for returning employee overpayments.

11 (d) Overpayments from the plan: If any error results in any member, retirant, beneficiary,  
12 entity or other person receiving from the plan more than he, she or it would have been entitled to  
13 receive had the error not occurred, including, but not limited to, an overpayment of one or more  
14 annuity payments, contributions, or a lump sum payment, the board shall correct the error. If  
15 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
16 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
17 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
18 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner  
19 permitted by the board. Interest shall not accumulate on any corrective payment made to the plan  
20 pursuant to this subsection.

21 (e) Underpayments from the plan: If any error results in any member, retirant, beneficiary,  
22 entity or other person receiving from the plan less than he, she or it would have been entitled to

1 receive had the error not occurred, including, but not limited to, an underpayment of one or more  
2 annuity payments, contributions or a lump sum payment, the board shall correct the error. If  
3 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
4 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
5 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,  
6 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made  
7 by the plan pursuant to this subsection.

8 (f) Eligibility errors: If the board determines that an individual or employer, or both, who  
9 has been participating in the plan was not eligible to so participate, the board shall, as soon as  
10 practicable, notify the individual and his or her employer of the determination, and terminate  
11 participation in the plan. Any erroneous payments to the retirement system shall be returned to the  
12 employer and individual in accordance with the methods described in subsection (c), and any  
13 erroneous payments from the retirement system to such individual shall be returned to the retirement  
14 system in accordance with the methods described in subsection (d). Any erroneous service credited  
15 to the individual shall be removed. If the board determines that an individual or employer, or both,  
16 has not been participating in the plan, but was eligible to and required to be participating in the plan,  
17 the board shall, as soon as practicable, notify the individual and his or her employer of the  
18 determination and the individual and his or her employer shall prospectively commence  
19 participation in the plan as soon as practicable. Service credit for service prior to the date on which  
20 the individual prospectively commences participation in the plan shall be granted only if the board  
21 receives the required employer and employee contributions for such service, in accordance with  
22 subsection (b), including interest.

1 **CHAPTER 15. PUBLIC SAFETY.**

2 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

3 **§15-2-54. Correction of errors; underpayments; overpayments.**

4 (a) General rule: The board shall correct errors of any kind involving the system, including,  
5 but not limited to, errors resulting in underpayments or overpayments to the system, errors resulting  
6 in underpayments or overpayments from the system, and errors regarding an individual's eligibility  
7 to participate in or receive benefits from the system as a member, retirant, or beneficiary. The  
8 provisions of this section apply regardless of whether the individual, entity or board was at fault for  
9 the error. It is the intent of this section that the board correct errors in a manner that, as close as  
10 reasonably possible and consistent with the provisions of this section, places the system and any  
11 affected individual or entity in the position each would have been in had the error not occurred.

12 (b) Underpayments to the system: Any error resulting in an underpayment to the system, may  
13 be corrected by the member or retirant remitting the required employee contribution or employee  
14 underpayment and the participating public employer remitting the required employer contribution  
15 or employer underpayment. Interest shall accumulate in accordance with the Legislative Rule 162  
16 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction  
17 of error interest factors and any accumulating interest owed on the employee and employer  
18 contributions or underpayments resulting from an employer error is the responsibility of the  
19 participating public employer. The participating public employer may remit total payment and the  
20 employee reimburse the participating public employer through payroll deduction over a period  
21 equivalent to the time period during which the employer error occurred. If the correction of an error  
22 involving an underpayment to the system will result in the system correcting an erroneous

1 underpayment from the system, the correction of the underpayment from the system shall be made  
2 only after the board receives full payment of all required employee and employer contributions or  
3 underpayments, including interest.

4       (c) Overpayments to the system: (1) When mistaken or excess employer contributions or  
5 other employer overpayments have been made to the system, the board shall credit the employer with  
6 an amount equal to the overpayment, to be offset against the employer's future liability for employer  
7 contributions to the system. If the employer has no future liability for employer contributions to the  
8 system, the board shall refund the erroneous contributions directly to the employer. Earnings or  
9 interest shall not be returned, offset or credited to the employer under any of the means used by the  
10 board for returning employer overpayments to the system. (2) When mistaken or excess employee  
11 contributions or other employee overpayments have been made to the system, the board has sole  
12 authority for determining the means of return, offset or credit to or for the benefit of the individual  
13 making the mistaken or excess employee contribution of the amounts, and may use any means  
14 authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue Code  
15 and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and  
16 complete discretion, the board may require the participating public employer employing the  
17 individual to pay the individual the amounts as wages, with the board crediting the participating  
18 public employer with a corresponding amount to offset against its future contributions to the plan.  
19 If the employer has no future liability for employer contributions to the system, the board shall  
20 refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall  
21 not be considered compensation for any purposes of this article. Earnings or interest shall not be  
22 returned, offset or credited under any of the means used by the board for returning employee

1 overpayments.

2       (d) Overpayments from the system: If any error results in any member, retirant, beneficiary,  
3 entity or other person receiving from the system more than he, she or it would have been entitled to  
4 receive had the error not occurred, including, but not limited to, an overpayment of one or more  
5 annuity payments, contributions, or a lump sum payment, the board shall correct the error. If  
6 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
7 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
8 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
9 overpayment from the system shall repay the amount of any overpayment to the system in any  
10 manner permitted by the board. Interest shall not accumulate on any corrective payment made to the  
11 system pursuant to this subsection.

12       (e) Underpayments from the system: If any error results in any member, retirant, beneficiary,  
13 entity or other person receiving from the system less than he, she or it would have been entitled to  
14 receive had the error not occurred, including, but not limited to, an underpayment of one or more  
15 annuity payments, contributions or a lump sum payment, the board shall correct the error. If  
16 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
17 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
18 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,  
19 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made  
20 by the system pursuant to this subsection.

21       (f) Eligibility errors: If the board determines that an individual who has been participating  
22 in the system was not eligible to so participate, the board shall as soon as practicable notify the

1 individual and his or her employer of the determination, and terminate participation in the system.  
2 Any erroneous payments to the system shall be returned to the employer and individual in  
3 accordance with the methods described in subsection (c), and any erroneous payments from the  
4 system to such individual shall be returned to the system in accordance with the methods described  
5 in subsection (d). Any erroneous service credited to the individual shall be removed. If the board  
6 determines that an individual has not been participating in the system, but was eligible to and  
7 required to be participating in the system, the board shall as soon as practicable notify the individual  
8 and his or her employer of the determination, and the individual and his or her employer shall  
9 prospectively commence participation in the system as soon as practicable. Service credit for service  
10 prior to the date on which the individual prospectively commences participation in the system shall  
11 be granted only if the board receives the required employer and employee contributions for such  
12 service, in accordance with subsection (b), including interest.

13 **ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.**

14 **§15-2A-23. Correction of errors; underpayments; overpayments.**

15 (a) General rule: The board shall correct errors of any kind involving the system, including,  
16 but not limited to, errors resulting in underpayments or overpayments to the system, errors resulting  
17 in underpayments or overpayments from the system, and errors regarding an individual's eligibility  
18 to participate in or receive benefits from the system as a member, retirant, or beneficiary. The  
19 provisions of this section shall apply regardless of whether the individual, entity or board was at fault  
20 for the error. It is the intent of this section that the board correct errors in a manner that, as close as  
21 reasonably possible and consistent with the provisions of this section, places the system and any  
22 affected individual or entity in the position each would have been in had the error not occurred.

1       (b) Underpayments to the system: Any error resulting in an underpayment to the system,  
2 may be corrected by the member or retirant remitting the required employee contribution or  
3 employee underpayment and the participating public employer remitting the required employer  
4 contribution or employer underpayment. Interest shall accumulate in accordance with the Legislative  
5 Rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and  
6 correction of error interest factors and any accumulating interest owed on the employee and employer  
7 contributions or underpayments resulting from an employer error shall be the responsibility of the  
8 participating public employer. The participating public employer may remit total payment and the  
9 employee reimburse the participating public employer through payroll deduction over a period  
10 equivalent to the time period during which the employer error occurred. If the correction of an error  
11 involving an underpayment to the system will result in the system correcting an erroneous  
12 underpayment from the system, the correction of the underpayment from the system shall be made  
13 only after the board receives full payment of all required employee and employer contributions or  
14 underpayments, including interest.

15       (c) Overpayments to the system: (1) When mistaken or excess employer contributions or  
16 other employer overpayments have been made to the system, the board shall credit the employer with  
17 an amount equal to the overpayment, to be offset against the employer's future liability for employer  
18 contributions to the system. If the employer has no future liability for employer contributions to the  
19 system, the board shall refund the erroneous contributions directly to the employer. Earnings or  
20 interest shall not be returned, offset or credited to the employer under any of the means used by the  
21 board for returning employer overpayments to the system. (2) When mistaken or excess employee  
22 contributions or other employee overpayments have been made to the system, the board shall have

1 sole authority for determining the means of return, offset or credit to or for the benefit of the  
2 individual making the mistaken or excess employee contribution of the amounts, and may use any  
3 means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue  
4 Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and  
5 complete discretion, the board may require the participating public employer employing the  
6 individual to pay the individual the amounts as wages, with the board crediting the participating  
7 public employer with a corresponding amount to offset against its future contributions to the plan.  
8 If the employer has no future liability for employer contributions to the system, the board shall  
9 refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall  
10 not be considered compensation for any purposes of this article. Earnings or interest shall not be  
11 returned, offset or credited under any of the means used by the board for returning employee  
12 overpayments.

13 (d) Overpayments from the system: If any error results in any member, retirant, beneficiary,  
14 entity or other person receiving from the system more than he, she or it would have been entitled to  
15 receive had the error not occurred, including, but not limited to, an overpayment of one or more  
16 annuity payments, contributions, or a lump sum payment, the board shall correct the error. If  
17 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
18 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
19 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
20 overpayment from the system shall repay the amount of any overpayment to the system in any  
21 manner permitted by the board. Interest shall not accumulate on any corrective payment made to the  
22 system pursuant to this subsection.

1           (e) Underpayments from the system: If any error results in any member, retirant, beneficiary,  
2 entity or other person receiving from the system less than he, she or it would have been entitled to  
3 receive had the error not occurred, including, but not limited to, an underpayment of one or more  
4 annuity payments, contributions or a lump sum payment, the board shall correct the error. If  
5 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
6 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
7 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,  
8 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made  
9 by the system pursuant to this subsection.

10           (f) Eligibility errors: If the board determines that an individual who has been participating  
11 in the system was not eligible to so participate, the board shall as soon as practicable notify the  
12 individual and his or her employer of the determination, and terminate participation in the system.  
13 Any erroneous payments to the system shall be returned to the employer and individual in  
14 accordance with the methods described in subsection (c), and any erroneous payments from the  
15 system to such individual shall be returned to the system in accordance with the methods described  
16 in subsection (d). Any erroneous service credited to the individual shall be removed. If the board  
17 determines that an individual has not been participating in the system, but was eligible to and  
18 required to be participating in the system, the board shall as soon as practicable notify the individual  
19 and his or her employer of the determination, and the individual and his or her employer shall  
20 prospectively commence participation in the system as soon as practicable. Service credit for service  
21 prior to the date on which the individual prospectively commences participation in the system shall  
22 be granted only if the board receives the required employer and employee contributions for such

1 service, in accordance with subsection (b), including interest.

2 **CHAPTER 16. PUBLIC HEALTH.**

3 **ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.**

4 **§16-5V-8a. Correction of errors; underpayments; overpayments.**

5 (a) General rule: If any change or employer error in the records of any participating public  
6 employer or the plan results in any member, retirant or beneficiary receiving from the plan more or  
7 less than he or she would have been entitled to receive had the records been correct, the board shall  
8 correct the error. If correction of the error occurs after the effective retirement date of a retirant, and  
9 as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial  
10 equivalent of the benefit to which the retirant was correctly entitled shall be paid. The board shall  
11 correct errors of any kind involving the plan, including, but not limited to, errors resulting in  
12 underpayments or overpayments to the plan, errors resulting in underpayments or overpayments from  
13 the plan, and errors regarding an individual's or entity's eligibility to participate in or receive benefits  
14 from the plan as a member, retirant, beneficiary or participating public employer. The provisions  
15 of this section shall apply regardless of whether the individual, entity or board was at fault for the  
16 error. It is the intent of this section that the board correct errors in a manner that, as close as  
17 reasonably possible and consistent with the provisions of this section, places the retirement system  
18 and any affected individual or entity in the position each would have been in had the error not  
19 occurred.

20 (b) Underpayments to the plan: Any error resulting in an underpayment to the ~~retirement~~  
21 ~~system of required contributions plan~~ may be corrected by the member or retirant remitting the  
22 required employee contribution or employee underpayment and the participating public employer

1 remitting the required employer contribution or employer underpayment. Interest shall accumulate  
 2 in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund,  
 3 reinstatement, retroactive service, loan and ~~employer~~ correction of error interest factors and any  
 4 accumulating interest owed on the employee and employer contributions or underpayments resulting  
 5 from an employer error shall be the responsibility of the participating public employer. The  
 6 participating public employer may remit total payment and the employee reimburse the participating  
 7 public employer through payroll deduction over a period equivalent to the time period during which  
 8 the employer error occurred. If the correction of an error involving an underpayment ~~of required~~  
 9 ~~contributions to the retirement system plan~~ will result in increased payments to a retirant, including  
 10 ~~increases to payments already made, any adjustments the plan correcting an erroneous underpayment~~  
 11 from the plan, the correction of the underpayment from the plan shall be made only after the board  
 12 receives full payment of all required employee and employer contributions or underpayments,  
 13 including interest.

14 (c) Overpayments from the plan: (1) When mistaken or excess employer contributions;  
 15 ~~including any or other employer~~ overpayments have been made to the ~~retirement system by a~~  
 16 ~~participating public employer, due to error or other reason, plan,~~ plan, the board shall credit the  
 17 ~~participating public employer with an amount equal to the erroneous contributions~~ overpayment, to  
 18 be offset against the ~~participating public employer's~~ future liability for employer contributions to the  
 19 ~~system plan~~. If the employer has no future liability for employer contributions to the plan, the board  
 20 shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be  
 21 returned, offset or credited to the employer under any of the means used by the board for returning  
 22 employer overpayments to the plan.

1           (2) When mistaken or excess employee contributions, ~~including any or other employee~~  
2 overpayments have been made to the ~~retirement system, due to error or other reason, plan,~~ the board  
3 shall have sole authority for determining the means of return, offset or credit to or for the benefit of  
4 the ~~employee~~ individual making the mistaken or excess employee contribution of the amounts, and  
5 may use any means authorized or permitted under the provisions of Section 401(a), et seq. of the  
6 Internal Revenue Code and guidance issued thereunder applicable to governmental plans.  
7 Alternatively, in its full and complete discretion, the board may require the participating public  
8 employer employing the individual to pay the ~~employee individual~~ the amounts as wages, with the  
9 board crediting the participating public employer with a corresponding amount to offset against its  
10 future contributions to the plan. If the employer has no future liability for employer contributions  
11 to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages  
12 paid to the ~~employee~~ individual shall not be considered compensation for any purposes under this  
13 article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized  
14 by the board for returning ~~mistaken or excess employee contributions, including any~~ overpayments.  
15 to an employee.

16           (d) Overpayments from the plan: If any error results in any member, retirant, beneficiary,  
17 entity or other person receiving from the system more than he, she or it would have been entitled to  
18 receive had the error not occurred, including, but not limited to, an overpayment of one or more  
19 annuity payments, contributions, or a lump sum payment, the board shall correct the error. If  
20 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
21 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
22 amount. In addition, the member, retirant, beneficiary, entity or other person who received the

1 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner  
2 permitted by the board. Interest shall not accumulate on any corrective payment made to the plan  
3 pursuant to this subsection.

4 (e) Underpayments from the plan: If any error results in any member, retirant, beneficiary,  
5 entity or other person receiving from the plan less than he, she or it would have been entitled to  
6 receive had the error not occurred, including, but not limited to, an underpayment of one or more  
7 annuity payments, contributions or a lump sum payment, the board shall correct the error. If  
8 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
9 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
10 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,  
11 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made  
12 by the plan pursuant to this subsection.

13 (f) Eligibility errors: If the board determines that an individual or employer, or both, who  
14 has been participating in the plan was not eligible to so participate, the board shall, as soon as  
15 practicable, notify the individual and his or her employer of the determination, and terminate  
16 participation in the plan. Any erroneous payments to the retirement system shall be returned to the  
17 employer and individual in accordance with the methods described in subsection (c), and any  
18 erroneous payments from the retirement system to such individual shall be returned to the retirement  
19 system in accordance with the methods described in subsection (d). Any erroneous service credited  
20 to the individual shall be removed. If the board determines that an individual or employer, or both,  
21 has not been participating in the plan, but was eligible to and required to be participating in the plan,  
22 the board shall as soon as practicable notify the individual and his or her employer of the

1 determination and the individual and his or her employer shall prospectively commence participation  
2 in the plan as soon as practicable. Service credit for service prior to the date on which the individual  
3 prospectively commences participation in the plan shall be granted only if the board receives the  
4 required employer and employee contributions for such service, in accordance with subsection (b),  
5 including interest.

## 6 **CHAPTER 18. EDUCATION.**

### 7 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

#### 8 **§18-7A-14c. Correction of errors; underpayments; overpayments.**

9 (a) General rule: ~~If any change or employer error in the records of any employer or the~~  
10 ~~retirement system results in any member, retirant or beneficiary receiving from the plan more or less~~  
11 ~~than he or she would have been entitled to receive had the records been correct, the board shall~~  
12 ~~correct the error. If correction of the error occurs after the effective retirement date of a retirant, and~~  
13 ~~as far as is practicable, the retirement board shall adjust the payment of the benefit in a manner that~~  
14 ~~the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid. The~~  
15 retirement board shall correct errors of any kind involving the retirement system, including, but not  
16 limited to, errors resulting in underpayments or overpayments to the retirement system, errors  
17 resulting in underpayments or overpayments from the retirement system, and errors regarding an  
18 individual's or entity's eligibility to participate in or receive benefits from the retirement system as  
19 a member, retirant, beneficiary or participating public employer. The provisions of this section  
20 apply regardless of whether the individual, entity or retirement board was at fault for the error. It is  
21 the intent of this section that the retirement board correct errors in a manner that, as close as  
22 reasonably possible and consistent with the provisions of this section, places the retirement system

1 and any affected individual or entity in the position each would have been in had the error not  
2 occurred.

3 (b) Underpayments to the retirement system: Any error resulting in an underpayment to the  
4 retirement system of ~~required contributions~~ may be corrected by the member or retirant remitting the  
5 required employee contribution or employee underpayment and the employer remitting the required  
6 employer contribution or employer underpayment. Interest shall accumulate in accordance with the  
7 Legislative Rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service,  
8 loan and ~~employer correction of error~~ interest factors and any accumulating interest owed on the  
9 member and employer contributions or underpayments resulting from an employer error shall be the  
10 responsibility of the participating public employer. The employer may remit total payment and the  
11 member reimburse the employer through payroll deduction over a period equivalent to the time  
12 period during which the employer error occurred. If the correction of an error involving an  
13 underpayment of ~~required contributions~~ to the retirement system will result in ~~increased payments~~  
14 ~~to a retirant, including increases to payments already made, any adjustments~~ the plan correcting an  
15 erroneous underpayment from the plan, the correction of the underpayment from the plan shall be  
16 made only after the retirement board receives full payment of all required member and employer  
17 contributions or underpayments, including interest.

18 (c) Overpayments to the retirement system: (1) When mistaken or excess employer  
19 contributions, ~~including any or other employer~~ overpayments, have been made to the retirement  
20 system ~~by an employer, due to error or other reason,~~ the retirement board shall credit the employer  
21 with an amount equal to the erroneous ~~contributions~~ overpayment, to be offset against the employer's  
22 future liability for employer contributions to the retirement system. If the employer has no future

1 liability for employer contributions to the retirement system, the retirement board shall refund the  
 2 erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset  
 3 or credited to the employer under any of the means used by the retirement board for returning  
 4 employer overpayments to the retirement system.

5 (2) When mistaken or excess member contributions, ~~including any~~ or other employee  
 6 overpayments, have been made to the retirement system, due to error or other reason the retirement  
 7 board shall have sole authority for determining the means of return, offset or credit to or for the  
 8 benefit of the ~~member~~ individual making the mistaken or excess employee contribution of the  
 9 amounts, and may use any means authorized or permitted under the provisions of Section 401(a),  
 10 et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental  
 11 plans. Alternatively, in its full and complete discretion, the retirement board may require the  
 12 employer employing the individual to pay the ~~member~~ individual the amounts as wages, with the  
 13 retirement board crediting the employer with a corresponding amount to offset against its future  
 14 contributions to the plan. If the employer has no future liability for employer contributions to the  
 15 retirement system, the retirement board shall refund said amount directly to the employer: *Provided,*  
 16 That the wages paid to the ~~member~~ individual shall not be considered compensation for any purposes  
 17 under this article. Earnings or interest shall not be returned, offset; or credited under any of the  
 18 means used by the retirement board for returning ~~mistaken or excess member contributions,~~  
 19 ~~including any overpayments. to a member.~~

20 (d) Overpayments from the retirement system: If any error results in any member, retirant,  
 21 beneficiary, entity or other person receiving from the system more than he, she or it would have been  
 22 entitled to receive had the error not occurred, including, but not limited to, an overpayment of one

1 or more annuity payments, contributions, or a lump sum payment, the retirement board shall correct  
2 the error. If correction of the error occurs after annuity payments to a retirant or beneficiary have  
3 commenced, the board shall, as soon as practicable, prospectively adjust the payment of the benefit  
4 to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who  
5 received the overpayment from the plan shall repay the amount of any overpayment to the retirement  
6 system in any manner permitted by the retirement board. Interest shall not accumulate on any  
7 corrective payment made to the retirement system pursuant to this subsection.

8 (e) Underpayments from the retirement system: If any error results in any member, retirant,  
9 beneficiary, entity or other person receiving from the retirement system less than he, she or it would  
10 have been entitled to receive had the error not occurred, including, but not limited to, an  
11 underpayment of one or more annuity payments, contributions or a lump sum payment, the  
12 retirement board shall correct the error. If correction of the error occurs after annuity payments to  
13 a retirant or beneficiary have commenced, the retirement board shall, as soon as practicable,  
14 prospectively adjust the payment of the benefit to the correct amount. In addition, the retirement  
15 board shall pay the amount of such underpayment to the member, retirant, beneficiary or other person  
16 in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system  
17 pursuant to this subsection.

18 (f) Eligibility errors: If the retirement board determines that an individual or employer, or  
19 both, who has been participating in the retirement system was not eligible to so participate, the  
20 retirement board shall as soon as practicable notify the individual and his or her employer of the  
21 determination, and terminate participation in the retirement system. Any erroneous payments to the  
22 retirement system shall be returned to the employer and individual in accordance with the methods

1 described in subsection (c), and any erroneous payments from the retirement system to such  
 2 individual shall be returned to the retirement system in accordance with the methods described in  
 3 subsection (d). Any erroneous service credited to the individual shall be removed. If the retirement  
 4 board determines that an individual or employer, or both, has not been participating in the retirement  
 5 system, but was eligible to and required to be participating in the retirement system, the retirement  
 6 board shall as soon as practicable notify the individual and his or her employer of the determination  
 7 and the individual and his or her employer shall prospectively commence participation in the  
 8 retirement system as soon as practicable. Service credit for service prior to the date on which the  
 9 individual prospectively commences participation in the retirement system shall be granted only if  
 10 the retirement board receives the required employer and employee contributions for such service,  
 11 in accordance with subsection (b), including interest.

12 **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

13 **§18-7B-21. Correction of errors; underpayments; overpayments**

14 (a) ~~General rule: If any change or employer error in the records of any existing employer or~~  
 15 ~~the retirement system results in a member, retirant or beneficiary receiving from the system more or~~  
 16 ~~less than he or she would have been entitled to receive had the records been correct, the board shall~~  
 17 ~~correct the error. If correction of the error occurs after retirement, the board shall adjust the payment~~  
 18 ~~of the benefit in an amount computed by the board to which the retirant was correctly entitled. The~~  
 19 board shall correct errors of any kind involving the defined contribution system, including, but not  
 20 limited to, errors resulting in underpayments or overpayments to the defined contribution system,  
 21 errors resulting in underpayments or overpayments from the defined contribution system, and errors  
 22 regarding an individual's or entity's eligibility to participate in or receive benefits from the defined

1 contribution system as a member, retirant, beneficiary or existing employer. The provisions of this  
 2 section apply regardless of whether the individual, entity or board was at fault for the error. It is the  
 3 intent of this section that the board correct errors in a manner that, as close as reasonably possible  
 4 and consistent with the provisions of this section, places the defined contribution system and any  
 5 affected individual or entity in the position each would have been in had the error not occurred.

6 (b) Underpayments to the defined contribution system: Any error resulting in an  
 7 underpayment to the ~~retirement~~ defined contribution system ~~of required contributions~~ may be  
 8 corrected by the member or retirant remitting the required employee contribution or employee  
 9 underpayment and the existing employer remitting the required employer contribution or employer  
 10 underpayment. Interest accumulates in accordance with the ~~board's~~ Legislative Rule 162 CSR 7  
 11 concerning retirement board Refund, Reinstatement, Retroactive Service, Loan and Employer  
 12 Correction of Error Interest Factors 162 CSR 7, and any accumulating interest owed on the employee  
 13 and employer contributions or underpayments resulting from an employer error is the responsibility  
 14 of the participating public employer. The existing employer may remit total payment and the  
 15 employee may reimburse the existing employer through payroll deduction over a period equivalent  
 16 to the time period during which the employer error occurred. If the correction of an error involving  
 17 an underpayment ~~of required contributions~~ to the ~~retirement~~ defined contribution system will result  
 18 in ~~increased payments to a retirant, including increases to payments already made, any adjustments~~  
 19 ~~may~~ the defined contribution system correcting an erroneous underpayment from the defined  
 20 contribution system, the correction of the underpayment from the defined contribution system shall  
 21 be made only after the board receives full payment of all required employee and employer  
 22 contributions or underpayments, including interest.

1           (c) Overpayments to the defined contribution system: (1) When mistaken or excess employer  
2 contributions ~~including any~~ or other employer overpayments have been made to the ~~retirement~~  
3 defined contribution system ~~by an existing employer, due to error or other reason,~~ the board shall  
4 credit the ~~existing~~ employer with an amount computed by the board, to be offset against the ~~existing~~  
5 employer's future liability for employer contributions to the ~~retirement~~ defined contribution system.  
6 If the employer has no future liability for employer contributions to the defined contribution system,  
7 the board shall refund the erroneous contributions directly to the employer.

8           (2) When mistaken or excess employee contributions ~~including any~~ or other employee  
9 overpayments have been made to the retirement system, ~~due to error or other reason,~~ the retirement  
10 board has sole authority for determining the means of return, offset or credit to or for the benefit of  
11 the ~~employee~~ individual making the mistaken or excess employee contribution of the amounts, and  
12 may use any means authorized or permitted under the provisions of Section 401(a), et seq. of the  
13 Internal Revenue Code and guidance issued thereunder applicable to governmental plans.  
14 Alternatively, in its full and complete discretion, the retirement board may require the existing  
15 employer employing the individual to pay the ~~employee~~ individual the amounts as wages, with the  
16 board crediting the existing employer with ~~an~~ a corresponding amount to offset against its future  
17 contributions to the plan. If the employer has no future liability for employer contributions to the  
18 retirement system, the retirement board shall refund said amount directly to the employer: *Provided,*  
19 That the wages paid to the ~~member~~ individual are not considered compensation for any purposes  
20 under this article.

21           (d) Overpayments from the retirement system: If any error results in any member, retirant,  
22 beneficiary, entity or other person receiving from the system more than he, she or it would have been

1 entitled to receive had the error not occurred, including, but not limited to, an overpayment of one  
2 or more annuity payments, contributions, or a lump sum payment, the retirement board shall correct  
3 the error. If correction of the error occurs after annuity payments to a retirant or beneficiary have  
4 commenced, the retirement board shall, as soon as practicable, prospectively adjust the payment of  
5 the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other  
6 person who received the overpayment from the plan shall repay the amount of any overpayment to  
7 the retirement system in any manner permitted by the board. Interest shall not accumulate on any  
8 corrective payment made to the retirement system pursuant to this subsection.

9 (e) Underpayments from the retirement system: If any error results in any member, retirant,  
10 beneficiary, entity or other person receiving from the retirement system less than he, she or it would  
11 have been entitled to receive had the error not occurred, including, but not limited to, an  
12 underpayment of one or more annuity payments, contributions or a lump sum payment, the  
13 retirement board shall correct the error. If correction of the error occurs after annuity payments to  
14 a retirant or beneficiary have commenced, the retirement board shall, as soon as practicable,  
15 prospectively adjust the payment of the benefit to the correct amount. In addition, the retirement  
16 board shall pay the amount of such underpayment to the member, retirant, beneficiary or other person  
17 in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system  
18 pursuant to this subsection.

19 (f) Eligibility errors: If the retirement board determines that an individual or employer, or  
20 both, who has been participating in the retirement system was not eligible to so participate, the  
21 retirement board shall as soon as practicable notify the individual and his or her employer of the  
22 determination, and terminate participation in the retirement system. Any erroneous payments to the

1 retirement system shall be returned to the employer and individual in accordance with the methods  
2 described in subsection (c), and any erroneous payments from the retirement system to such  
3 individual shall be returned to the retirement system in accordance with the methods described in  
4 subsection (d). Any erroneous service credited to the individual shall be removed. If the retirement  
5 board determines that an individual or employer, or both, has not been participating in the retirement  
6 system, but was eligible to and required to be participating in the retirement system, the retirement  
7 board shall as soon as practicable notify the individual and his or her employer of the determination  
8 and the individual and his or her employer shall prospectively commence participation in the  
9 retirement system as soon as practicable. Service credit for service prior to the date on which the  
10 individual prospectively commences participation in the retirement system shall be granted only if  
11 the board receives the required employer and employee contributions for such service, in accordance  
12 with subsection (b), including interest.

### 13 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

#### 14 **ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

##### 15 **§51-9-18. Correction of errors; underpayments; overpayments.**

16 (a) General rule: The board shall correct errors of any kind involving the system, including,  
17 but not limited to, errors resulting in underpayments or overpayments to the system, errors resulting  
18 in underpayments or overpayments from the system, and errors regarding an individual's eligibility  
19 to participate in or receive benefits from the system as a member, retirant, or beneficiary. The  
20 provisions of this section apply regardless of whether the individual, entity or board was at fault for  
21 the error. It is the intent of this section that the board correct errors in a manner that, as close as  
22 reasonably possible and consistent with the provisions of this section, places the system and any

1 affected individual or entity in the position each would have been in had the error not occurred.

2 (b) Underpayments to the system: Any error resulting in an underpayment to the system, may  
3 be corrected by the member or retirant remitting the required employee contribution or employee  
4 underpayment and the participating public employer remitting the required employer contribution  
5 or employer underpayment. Interest shall accumulate in accordance with the Legislative Rule 162  
6 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction  
7 of error interest factors and any accumulating interest owed on the employee and employer  
8 contributions or underpayments resulting from an employer error shall be the responsibility of the  
9 participating public employer. The participating public employer may remit total payment and the  
10 employee reimburse the participating public employer through payroll deduction over a period  
11 equivalent to the time period during which the employer error occurred. If the correction of an error  
12 involving an underpayment to the system will result in the system correcting an erroneous  
13 underpayment from the system, the correction of the underpayment from the system shall be made  
14 only after the board receives full payment of all required employee and employer contributions or  
15 underpayments, including interest.

16 (c) Overpayments to the system: (1) When mistaken or excess employer contributions or  
17 other employer overpayments have been made to the system, the board shall credit the employer with  
18 an amount equal to the overpayment, to be offset against the employer's future liability for employer  
19 contributions to the system. If the employer has no future liability for employer contributions to the  
20 system, the board shall refund the erroneous contributions directly to the employer. Earnings or  
21 interest shall not be returned, offset or credited to the employer under any of the means used by the  
22 board for returning employer overpayments to the system. (2) When mistaken or excess employee

1 contributions or other employee overpayments have been made to the system, the board shall have  
2 sole authority for determining the means of return, offset or credit to or for the benefit of the  
3 individual making the mistaken or excess employee contribution of the amounts, and may use any  
4 means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue  
5 Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and  
6 complete discretion, the board may require the participating public employer employing the  
7 individual to pay the individual the amounts as wages, with the board crediting the participating  
8 public employer with a corresponding amount to offset against its future contributions to the plan.  
9 If the employer has no future liability for employer contributions to the system, the board shall  
10 refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall  
11 not be considered compensation for any purposes of this article. Earnings or interest shall not be  
12 returned, offset or credited under any of the means used by the board for returning employee  
13 overpayments.

14 (d) Overpayments from the system: If any error results in any member, retirant, beneficiary,  
15 entity or other person receiving from the system more than he, she or it would have been entitled to  
16 receive had the error not occurred, including, but not limited to, an overpayment of one or more  
17 annuity payments, contributions, or a lump sum payment, the board shall correct the error. If  
18 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
19 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
20 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
21 overpayment from the system shall repay the amount of any overpayment to the system in any  
22 manner permitted by the board. Interest shall not accumulate on any corrective payment made to the

1 system pursuant to this subsection.

2 (e) Underpayments from the system: If any error results in any member, retirant, beneficiary,  
3 entity or other person receiving from the system less than he, she or it would have been entitled to  
4 receive had the error not occurred, including, but not limited to, an underpayment of one or more  
5 annuity payments, contributions or a lump sum payment, the board shall correct the error. If  
6 correction of the error occurs after annuity payments to a retirant or beneficiary have commenced,  
7 the board shall, as soon as practicable, prospectively adjust the payment of the benefit to the correct  
8 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,  
9 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made  
10 by the system pursuant to this subsection.

11 (f) Eligibility errors: If the board determines that an individual who has been participating  
12 in the system was not eligible to so participate, the board shall as soon as practicable notify the  
13 individual and his or her employer of the determination, and terminate participation in the system.  
14 Any erroneous payments to the system shall be returned to the employer and individual in  
15 accordance with the methods described in subsection (c), and any erroneous payments from the  
16 system to such individual shall be returned to the system in accordance with the methods described  
17 in subsection (d). Any erroneous service credited to the individual shall be removed. If the board  
18 determines that an individual has not been participating in the system, but was eligible to and  
19 required to be participating in the system, the board shall as soon as practicable notify the individual  
20 and his or her employer of the determination, and the individual and his or her employer shall  
21 prospectively commence participation in the system as soon as practicable. Service credit for service  
22 prior to the date on which the individual prospectively commences participation in the system shall

- 1 be granted only if the board receives the required employer and employee contributions for such
- 2 service, in accordance with subsection (b), including interest.

NOTE: The purpose of this bill is to clarify the scope, application and methods for error correction required by the CPRB as it relates to PERS, DSRS, MPFRS, TRS, TDC Plan, State Police (Plan A), State Police (Plan B) and JRS.

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

§8-22A-8a, §15-2-54, §15-2A-23 and §51-9-18 are new; therefore, they have been completely underscored.