

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 342

(By Senators Gaunch, Trump and Plymale)

[Originating in the Committee on Pensions;
reported February 19, 2015.]

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 of said code; to amend said code by adding thereto a new section, designated §8-22A-8a; 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 correction of errors under the West Virginia Public Employees Retirement System, West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System, West Virginia Emergency Medical Services Retirement System, the State Teachers Retirement System, Teachers' Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, West Virginia State Police Retirement System and the Judges' Retirement System; and clarifying scope, application and requirements for error correction by Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §5-10-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted;

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR. SECRETARY OF STATE
AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

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

1 (a) General rule: ~~If any change or employer error in the records of any participating public~~
2 ~~employer or the retirement system results in any member, retirant or beneficiary receiving from the~~
3 ~~system more or less than he or she would have been entitled to receive had the records been correct,~~
4 ~~the board shall correct the error. If correction of the error occurs after the effective retirement date~~
5 ~~of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner~~
6 ~~that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.~~
7 Upon learning of any errors, the board shall correct errors in the retirement system in a timely
8 manner whether an individual, entity or board was at fault for the error with the intent of placing the
9 affected individual, entity and retirement board in the position each would have been in had the error
10 not occurred.

11 (b) Underpayments to the retirement system: Any error resulting in an underpayment to the

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

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

24 ~~(2)~~ (d) Overpayments to the retirement system by an employee: When mistaken or excess
25 employee contributions, ~~including any or overpayments,~~ have been made to the retirement system,

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1 ~~due to error or other reason~~, the board shall have sole authority for determining the means of return,
2 offset or credit to or for the benefit of the ~~employee~~ individual making the mistaken or excess
3 employee contribution of the amounts, and may use any means authorized or permitted under the
4 provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder
5 applicable to governmental plans. Alternatively, in its full and complete discretion, the board may
6 require the participating public employer employing the individual to pay the ~~employee~~ individual
7 the amounts as wages, with the board crediting the participating public employer with a
8 corresponding amount to offset against its future contributions to the plan. If the employer has no
9 future liability for employer contributions to the retirement system, the board shall refund said
10 amount directly to the employer. *Provided,* That the wages paid to the ~~employee~~ 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 ~~utilized~~ used by the board for returning ~~mistaken~~
13 ~~or excess~~ employee contributions, ~~including any overpayments to an employee.~~

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

23 (f) Underpayments from the retirement system: If any error results in any member, retirant,
24 beneficiary, entity or other individual receiving from the retirement system less than he would have
25 been entitled to receive had the error not occurred, the board shall correct the error in a timely

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1 manner. If correction of the error occurs after annuity payments to a retiree or beneficiary have
2 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
3 In addition, the board shall pay the amount of such underpayment to the member, retiree,
4 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment
5 made by the retirement system pursuant to this subsection.

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

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

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

24 **§7-14D-7a. Correction of errors; underpayments; overpayments.**

25 (a) General rule: If any change or employer error in the records of any participating public

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1 employer or the plan results in any member, retirant or beneficiary receiving from the plan more or
2 less than he or she would have been entitled to receive had the records been correct, the board shall
3 correct the error. If correction of the error occurs after the effective retirement date of a retirant, and
4 as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial
5 equivalent of the benefit to which the retirant was correctly entitled shall be paid. Upon learning of
6 errors, the board shall correct errors in the retirement plan in a timely manner whether the individual,
7 entity or board was at fault for the error with the intent of placing the affected individual, entity and
8 board in the position each would have been in had the error not occurred.

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

24 (c) Overpayments to the plan by an employer: ~~(1)~~ When mistaken or excess employer
25 contributions, ~~including any~~ or other employer overpayments have been made to the ~~retirement~~

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1 system, by a participating public employer, ~~due to error or other reason, plan,~~ the board shall credit
2 the participating public employer with an amount equal to the ~~erroneous contributions~~ overpayment,
3 to be offset against the participating public employer's future liability for employer contributions to
4 the ~~system~~ plan. If the employer has no future liability for employer contributions to the retirement
5 system, the board shall refund the erroneous contributions directly to the employer. Earnings or
6 interest shall not be returned, offset or credited to the employer under any of the means used by the
7 board for returning employer overpayments made to the plan.

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

23 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,
24 entity or other individual receiving from the system more than he would have been entitled to receive
25 had the error not occurred the board shall correct the error in a timely manner. If correction of the

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

6 (f) Underpayments from the plan: If any error results in any member, retirant, beneficiary,
7 entity or other individual receiving from the plan less than he would have been entitled to receive
8 had the error not occurred, the board, upon learning of the error, shall correct the error in a timely
9 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have
10 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
11 In addition, the board shall pay the amount of such underpayment to the member, retirant,
12 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment
13 made by the plan pursuant to this subsection.

14 (g) Eligibility errors: If the board finds that an individual, employer, or both individual and
15 employer formerly or currently participating in the plan is not eligible to participate, the board shall
16 notify the individual and his or her employer of the determination, and terminate participation in the
17 plan. Any erroneous payments to the retirement system shall be returned to the employer and
18 individual in accordance with the methods described in subsections (c) and (d) of this section and
19 any erroneous payments from the plan to such individual shall be returned to the plan in accordance
20 with the methods described in subsection (e) of this section. Any erroneous service credited to the
21 individual shall be removed. If the board determines that an individual or employer, or both, has not
22 been participating in the plan, but was eligible to and required to be participating in the plan, the
23 board shall as soon as practicable notify the individual and his or her employer of the determination,
24 and the individual and his or her employer shall prospectively commence participation in the plan
25 as soon as practicable. Service credit for service prior to the date on which the individual

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1 prospectively commences participation in the plan shall be granted only if the board receives the
2 required employer and employee contributions for such service, in accordance with subsection (b)
3 of this section, including interest.

4 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

5 **ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND**
6 **FIREFIGHTERS RETIREMENT SYSTEM.**

7 **§8-22A-8. Members' contributions; employer contributions.**

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

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1 the member is employed.

2 (2) The board may, on the recommendation of the board's actuary, increase the employees'
3 contribution rate from eight and one-half percent to ten and one-half percent should the plan not be
4 seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and
5 one-half percent on July 1 following the acceptance by the board of an actuarial valuation
6 determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial
7 valuation date falls below seventy percent, the employee rate of contribution shall be increased to
8 ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The
9 board shall change the employee contribution rate on July 1 following the board's acceptance of the
10 actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer
11 contribution.

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

24 ~~(c) If any change or employer error in the records of any participating public employer or the~~
25 ~~retirement system results in any member or retirant receiving from the system more or less than he~~

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

12 **§8-22A-8a. Correction of errors; underpayments; overpayments.**

13 (a) General rule: Upon learning of errors, the board shall correct errors in the plan in a timely
14 manner whether the individual, entity or board was at fault for the error with the intent of placing
15 the affected individual, entity and retirement board in the position each would have been in had the
16 error not occurred.

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

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1 underpayment to the plan will result in the plan correcting an erroneous underpayment from the plan,
2 the correction of the underpayment from the plan shall be made only after the board receives full
3 payment of all required employee and employer contributions or underpayments, including interest.

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

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

24 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,
25 entity or other individual receiving from the plan more than he would have been entitled to receive

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

8 (f) Underpayments from the plan: If any error results in any member, retirant, beneficiary,
9 entity or other individual receiving from the plan less than he would have been entitled to receive
10 had the error not occurred, the board, upon learning of the error, shall correct the error in a timely
11 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have
12 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
13 In addition, the board shall pay the amount of such underpayment to the member, retirant,
14 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment
15 made by the retirement system pursuant to this subsection.

16 (g) Eligibility errors: If the board finds that an individual, employer, or both individual and
17 employer formerly or currently participating in the plan is not eligible to participate, the board shall
18 notify the individual and his or her employer of the determination, and terminate participation in the
19 plan. Any erroneous payments to the plan shall be returned to the employer and individual in
20 accordance with the methods described in subsections (c) and (d) of this section, and any erroneous
21 payments from the plan to such individual shall be returned to the plan in accordance with the
22 methods described in subsection (e) of this section. Any erroneous service credited to the individual
23 shall be removed. If the board determines that an individual or employer, or both, has not been
24 participating in the retirement plan, but was eligible to and required to be participating in the plan,
25 the board shall as soon as practicable notify the individual and his or her employer of the

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

6 **CHAPTER 15. PUBLIC SAFETY.**

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

8 **§15-2-54. Correction of errors; underpayments; overpayments.**

9 (a) General rule: Upon learning of any errors, the board shall correct errors in the system in
10 a timely manner whether the individual, entity or board was at fault for the error with the intent of
11 placing the affected individual, entity and retirement board in the position each would have been in
12 had the error not occurred.

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

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

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

22 (e) Overpayments from the system: If any error results in any member, retirant, beneficiary,
23 entity or other individual receiving from the system more than he would have been entitled to receive
24 had the error not occurred the board, upon learning of the error, shall correct the error in a timely
25 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have

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1 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
2 In addition, the member, retirant, beneficiary, entity or other person who received the overpayment
3 from the system shall repay the amount of any overpayment to the system in any manner permitted
4 by the board. Interest shall not accumulate on any corrective payment made to the system pursuant
5 to this subsection.

6 (f) Underpayments from the system: If any error results in any member, retirant, beneficiary,
7 entity or other individual receiving from the retirement system less than he would have been entitled
8 to receive had the error not occurred, the board, upon learning of the error, shall correct the error in
9 a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary
10 have commenced, the board shall prospectively adjust the payment of the benefit to the correct
11 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,
12 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment
13 made by the system pursuant to this subsection.

14 (g) Eligibility errors: If the board finds that an individual, employer, or both individual and
15 employer currently or formerly participating in the retirement system is not eligible to participate,
16 the board shall notify the individual and his or her employer of the determination, and terminate
17 participation in the system. Any erroneous payments to the system shall be returned to the employer
18 and individual in accordance with the methods described in subsections (c) and (d) of this section
19 and any erroneous payments from the system to such individual shall be returned to the system in
20 accordance with the methods described in subsection (e) of this section. Any erroneous service
21 credited to the individual shall be removed. If the board determines that an individual or employer,
22 or both, has not been participating in the system, but was eligible to and required to be participating
23 in the system, the board shall as soon as practicable notify the individual and his or her employer of
24 the determination, and the individual and his or her employer shall prospectively commence
25 participation in the system as soon as practicable. Service credit for service prior to the date on

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1 which the individual prospectively commences participation in the system shall be granted only if
2 the board receives the required employer and employee contributions for such service, in accordance
3 with subsection (b) in this section, including interest.

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

5 **§15-2A-23. Correction of errors; underpayments; overpayments.**

6 (a) General rule: Upon learning of any errors, the board shall correct errors in the retirement
7 system in a timely manner whether the individual, entity or board was at fault for the error with the
8 intent of placing the affected individual, entity and retirement board in the position each would have
9 been in had the error not occurred.

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

23 (c) Overpayments to the system by an employer: When mistaken or excess employer
24 contributions or other overpayments have been made to the system by an employer, the board shall
25 credit the employer with an amount equal to the overpayment, to be offset against the employer's

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1 future liability for employer contributions to the system. If the employer has no future liability for
2 employer contributions to the retirement system, the board shall refund the erroneous contributions
3 directly to the employer. Earnings or interest shall not be returned, offset or credited to the
4 employer under any of the means used by the board for returning employer overpayments to the
5 retirement system.

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

19 (e) Overpayments from the system: If any error results in any member, retirant, beneficiary,
20 entity or other individual receiving from the system more than he would have been entitled to receive
21 had the error not occurred the board, upon learning of the error, shall correct the error in a timely
22 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have
23 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
24 In addition, the member, retirant, beneficiary, entity or other person who received the overpayment
25 from the system shall repay the amount of any overpayment to the system in any manner permitted

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1 by the board. Interest shall not accumulate on any corrective payment made to the system pursuant
2 to this subsection.

3 (f) Underpayments from the system: If any error results in any member, retirant, beneficiary,
4 entity or other individual receiving from the system less than he would have been entitled to receive
5 had the error not occurred, the board shall correct the error in a timely manner. If correction of the
6 error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall
7 prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall
8 pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a
9 lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this
10 subsection.

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

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

(a) General rule: ~~If any change or employer error in the records of any participating public employer or the plan results in any member, retirant or beneficiary receiving from the plan more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error. If correction of the error occurs after the effective retirement date of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid. Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.~~

(b) Underpayments to the plan: Any error resulting in an underpayment to the retirement plan ~~of required contributions~~, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment ~~of required contributions~~ to the retirement system will result in ~~increased payments to a retirant, including increases to payments already made, any adjustments~~ the plan paying the retirant an additional amount, this additional payment shall be made only after the board

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1 receives full payment of all required employee and employer contributions or underpayments,
2 including interest.

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

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

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1 ~~including any overpayments. to an employee.~~

2 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,
3 entity or other individual receiving from the system more than he would have been entitled to receive
4 had the error not occurred the board upon learning of the error shall correct the error in a timely
5 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have
6 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
7 In addition, the member, retirant, beneficiary, entity or other person who received the overpayment
8 from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the
9 board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this
10 subsection.

11 (f) Underpayments from the retirement system: If any error results in any member, retirant,
12 beneficiary, entity or other individual receiving from the plan less than he would have been entitled
13 to receive had the error not occurred, the board, upon learning of the error, shall correct the error in
14 a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary
15 have commenced, the board shall prospectively adjust the payment of the benefit to the correct
16 amount. In addition, the board shall pay the amount of such underpayment to the member, retirant,
17 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment
18 made by the plan pursuant to this subsection.

19 (g) Eligibility errors: If the board finds that an individual, employer, or both individual and
20 employer, participating in the plan is not eligible to participate, the board shall notify the individual
21 and his or her employer of the determination and terminate participation in the plan. Any erroneous
22 payments to the plan shall be returned to the employer and individual in accordance with the
23 methods described in subsections (c) and (d) of this section and any erroneous payments from the
24 plan to such individual shall be returned to the plan in accordance with the methods described in
25 subsection (e) of this section. Any erroneous service credited to the individual shall be removed.

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1 If the board determines that an individual or employer, or both, has not been participating in the plan,
2 but was eligible to and required to be participating in the plan, the board shall as soon as practicable
3 notify the individual and his or her employer of the determination, and the individual and his or her
4 employer shall prospectively commence participation in the plan as soon as practicable. Service
5 credit for service prior to the date on which the individual prospectively commences participation
6 in the plan shall be granted only if the board receives the required employer and employee
7 contributions for such service, in accordance with subsection (b) of this section, including interest.

8 **CHAPTER 18. EDUCATION.**

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

10 **§18-7A-14c. Correction of errors; underpayments; overpayments.**

11 (a) ~~General rule: If any change or employer error in the records of any employer or the~~
12 ~~retirement system results in any member, retirant or beneficiary receiving from the plan more or less~~
13 ~~than he or she would have been entitled to receive had the records been correct, the board shall~~
14 ~~correct the error. If correction of the error occurs after the effective retirement date of a retirant, and~~
15 ~~as far as is practicable, the retirement board shall adjust the payment of the benefit in a manner that~~
16 ~~the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid. Upon~~
17 learning of any errors, the board shall correct errors in the retirement system in a timely manner
18 whether the individual, entity or board was at fault for the error with the intent of placing the affected
19 individual, entity and retirement board in the position each would have been in had the error not
20 occurred.

21 (b) Underpayments to the retirement system: Any error resulting in an underpayment to the
22 retirement system ~~of required contributions~~, may be corrected by the member or retirant remitting
23 the required employee contribution or underpayment and the participating public employer remitting
24 the required employer contribution or underpayment. Interest shall accumulate in accordance with
25 the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service,

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1 loan and correction of error interest factors and any accumulating interest owed on the employee and
2 employer contributions or underpayments resulting from an employer error shall be the responsibility
3 of the participating public employer. The participating public employer may remit total payment and
4 the employee reimburse the participating public employer through payroll deduction over a period
5 equivalent to the time period during which the employer error occurred. If the correction of an error
6 involving an underpayment of ~~required contributions~~ to the retirement system will result in ~~increased~~
7 ~~payments to a retirant, including increases to payments already made, any adjustments~~ the plan
8 paying the retirant an additional amount, this additional payment shall be made only after the board
9 receives full payment of all required employee and employer contributions or underpayments,
10 including interest.

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

20 ~~(2)~~ (d) Overpayments to the retirement system by an employee: When mistaken or excess
21 employee contributions, ~~including any or~~ overpayments, have been made to the retirement system,
22 ~~due to error or other reason,~~ the board shall have sole authority for determining the means of return,
23 offset or credit to or for the benefit of the ~~employee~~ individual making the mistaken or excess
24 employee contribution of the amounts and may use any means authorized or permitted under the
25 provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder

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1 applicable to governmental plans. Alternatively, in its full and complete discretion, the board may
2 require the employer employing the individual to pay the ~~member~~ individual the amounts as wages,
3 with the retirement board crediting the participating public employer with a corresponding amount
4 to offset against its future contributions to the plan. If the employer has no future liability for
5 employer contributions to the retirement system, the retirement board shall refund said amount
6 directly to the employer: *Provided*, That the wages paid to the ~~member~~ individual shall not be
7 considered compensation for any purposes of this article. Earnings or interest shall not be returned,
8 offset, or credited under any of the means used by the retirement board for returning ~~mistaken or~~
9 ~~excess member contributions, including any overpayments. to an employee.~~

10 (e) Overpayments from the retirement system: If any error results in any member, retirant,
11 beneficiary, entity or other individual receiving from the system more than he would have been
12 entitled to receive had the error not occurred the board , upon learning of the error, shall correct the
13 error in a timely manner. If correction of the error occurs after annuity payments to a retirant or
14 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the
15 correct amount. In addition, the member, retirant, beneficiary, entity or other person who received
16 the overpayment from the retirement system shall repay the amount of any overpayment to the
17 retirement system in any manner permitted by the board. Interest shall not accumulate on any
18 corrective payment made to the retirement system pursuant to this subsection.

19 (f) Underpayments from the retirement system: If any error results in any member, retirant,
20 beneficiary, entity or other individual receiving from the retirement system less than he would have
21 been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct
22 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or
23 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the
24 correct amount. In addition, the board shall pay the amount of such underpayment to the member,
25 retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective

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1 payment made by the retirement system pursuant to this subsection.

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

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

19 **§18-7B-21. Correction of errors; underpayments; overpayments**

20 ~~(a) General rule: If any change or employer error in the records of any existing employer or~~
21 ~~the retirement system results in a member, retirant or beneficiary receiving from the system more or~~
22 ~~less than he or she would have been entitled to receive had the records been correct, the board shall~~
23 ~~correct the error. If correction of the error occurs after retirement, the board shall adjust the payment~~
24 ~~of the benefit in an amount computed by the board to which the retirant was correctly entitled. Upon~~
25 ~~learning of any errors, the board shall correct errors in the retirement system in a timely manner~~

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1 whether the individual, entity or board was at fault for the error with the intent of placing the affected
2 individual, entity and retirement board in the position each would have been in had the error not
3 occurred.

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

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

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

14 (e) Overpayments from the retirement system: If any error results in any member, retirant
15 beneficiary, entity or other individual receiving from the system more than he would have been
16 entitled to receive had the error not occurred the board upon learning of the error shall correct the
17 error in a timely manner. If correction of the error occurs after annuity payments to a retirant or
18 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the
19 correct amount. In addition, the member, retirant, beneficiary, entity or other person who received
20 the overpayment from the retirement system shall repay the amount of any overpayment to the
21 retirement system in any manner permitted by the board. Interest shall not accumulate on any
22 corrective payment made to the retirement system pursuant to this subsection.

23 (f) Underpayments from the retirement system: If any error results in any member, retirant,
24 beneficiary, entity or other individual receiving from the retirement system less than he would have
25 been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct

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1 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or
2 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the
3 correct amount. In addition, the board shall pay the amount of such underpayment to the member,
4 retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective
5 payment made by the retirement system pursuant to this subsection.

6 (g) Eligibility errors: If the board finds that an individual, employer, or both individual and
7 employer currently or formerly participating in the retirement system is not eligible to participate,
8 the board shall notify the individual and his or her employer of the determination, and terminate
9 participation in the retirement system. Any erroneous payments to the retirement system shall be
10 returned to the employer and individual in accordance with the methods described in subsections (c)
11 and (d) of this section and any erroneous payments from the retirement system to such individual
12 shall be returned to the retirement system in accordance with the methods described in subsection
13 (e) of this section. Any erroneous service credited to the individual shall be removed. Service credit
14 for service prior to the date on which the individual prospectively commences participation in the
15 retirement system shall be granted only if the board receives the required employer and employee
16 contributions for such service, in accordance with subsection (b) of this section, including interest.

17 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

18 **ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

19 **§51-9-18. Correction of errors; underpayments; overpayments.**

20 (a) General rule: Upon learning of any errors, the board shall correct errors in the retirement
21 system in a timely manner whether the individual, entity or board was at fault for the error with the
22 intent of placing the affected individual, entity and retirement board in the position each would have
23 been in had the error not occurred.

24 (b) Underpayments to the system: Any error resulting in an underpayment to the system, may
25 be corrected by the member or retirant remitting the required employee contribution or underpayment

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1 and the participating public employer remitting the required employer contribution or underpayment.
2 Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement
3 board refund, reinstatement, retroactive service, loan and 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 to the system
9 will result in the system correcting an erroneous underpayment from the system, the correction of
10 the underpayment from the system shall be made only after the board receives full payment of all
11 required employee and employer contributions or underpayments, including interest.

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

21 (d) Overpayments to the retirement system by an employee: When mistaken or excess
22 employee contributions or overpayments have been made to the retirement system, the board, upon
23 learning of the error, shall have sole authority for determining the means of return, offset or credit
24 to or for the benefit of the individual making the mistaken or excess employee contribution of the
25 amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et*

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

10 (e) Overpayments from the retirement system: If any error results in any member, retirant,
11 beneficiary, entity or other individual receiving from the system more than he would have been
12 entitled to receive had the error not occurred the board, upon learning of the error, shall correct the
13 error in a timely manner. If correction of the error occurs after annuity payments to a retirant or
14 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the
15 correct amount. In addition, the member, retirant, beneficiary, entity or other person who received
16 the overpayment from the retirement system shall repay the amount of any overpayment to the
17 retirement system in any manner permitted by the board. Interest shall not accumulate on any
18 corrective payment made to the retirement system pursuant to this subsection.

19 (f) Underpayments from the retirement system: If any error results in any member, retirant,
20 beneficiary, entity or other individual receiving from the retirement system less than he would have
21 been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct
22 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or
23 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the
24 correct amount. In addition, the board shall pay the amount of such underpayment to the member,
25 retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective

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1 payment made by the retirement system pursuant to this subsection.

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