

# H. B. 2521

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(BY DELEGATE(S) CANTERBURY, PETHTEL,  
FOLK, WALTERS, HAMILTON, MARCUM AND HICKS )

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[Introduced January 30, 2015; referred to the  
Committee on Pensions and Retirement; then to  
the Committee on the Judiciary.]

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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 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; 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~~  
2 ~~records of any participating public employer or the retirement~~  
3 ~~system results in any member, retirant or beneficiary receiving~~  
4 ~~from the system more or less than he or she would have been~~  
5 ~~entitled to receive had the records been correct, the board shall~~  
6 ~~correct the error. If correction of the error occurs after the~~  
7 ~~effective retirement date of a retirant, and as far as is practicable,~~  
8 ~~the board shall adjust the payment of the benefit in a manner that~~  
9 ~~the actuarial equivalent of the benefit to which the retirant was~~  
10 ~~correctly entitled shall be paid.~~ The board shall correct errors of  
11 any kind involving the retirement system, including, but not

12 limited to, errors resulting in under payments or overpayments  
13 to the retirement system, errors resulting in under payments or  
14 overpayments from the retirement system, and errors regarding  
15 an individual's or entity's eligibility to participate in or receive  
16 benefits from the retirement system as a member, retirant,  
17 beneficiary or participating public employer. The provisions of  
18 this section apply regardless of whether the individual, entity or  
19 board was at fault for the error. It is the intent of this section that  
20 the board correct errors in a manner that, as close as reasonably  
21 possible and consistent with the provisions of this section, places  
22 the retirement system and any affected individual or entity in the  
23 position each would have been in had the error not occurred.

24 (b) Underpayments to the retirement system: Any error  
25 resulting in an underpayment to the retirement system ~~of~~  
26 ~~required contributions~~, may be corrected by the member or  
27 retirant remitting the required employee contribution or  
28 employee underpayment and the participating public employer  
29 remitting the required employer contribution or employer  
30 underpayment. Interest shall accumulate in accordance with the  
31 Legislative Rule 162 CSR 7 concerning retirement board refund,

32 reinstatement, retroactive service, ~~and~~ loan and correction of  
33 error interest factors and any accumulating interest owed on the  
34 employee and employer contributions or underpayments  
35 resulting from an employer error shall be the responsibility of  
36 the participating public employer. The participating public  
37 employer may remit total payment and the employee reimburse  
38 the participating public employer through payroll deduction over  
39 a period equivalent to the time period during which the employer  
40 error occurred. If the correction of an error involving an  
41 underpayment ~~of required contributions~~ to the retirement system  
42 will result in ~~increased payments to a retirant, including~~  
43 ~~increases to payments already made, any adjustments~~ the  
44 retirement system correcting an erroneous underpayment from  
45 the retirement system, the correction of the underpayment from  
46 the retirement system shall be made only after the board receives  
47 full payment of all required employee and employer  
48 contributions or underpayments, including interest.

49 (c) Overpayments to the retirement system: (1) When  
50 mistaken or excess employer contributions, ~~including any or~~  
51 other employer overpayments have been made to the retirement

52 system, ~~by a participating public employer, due to error or other~~  
53 ~~reason,~~ the board shall credit the ~~participating public employer~~  
54 with an amount equal to the ~~erroneous contributions~~  
55 overpayment, to be offset against the ~~participating public~~  
56 employer's future liability for employer contributions to the  
57 system. If the employer has no future liability for employer  
58 contributions to the retirement system, the board shall refund the  
59 erroneous contributions directly to the employer. Earnings or  
60 interest shall not be returned, offset or credited to the employer  
61 under any of the means used by the board for returning employer  
62 overpayments to the retirement system.

63 (2) When mistaken or excess employee contributions;  
64 ~~including any or other employee~~ overpayments, have been made  
65 to the retirement system, ~~due to error or other reason,~~ the board  
66 shall have sole authority for determining the means of return,  
67 offset or credit to or for the benefit of the ~~employee individual~~  
68 making the mistaken or excess employee contribution of the  
69 amounts, and may use any means authorized or permitted under  
70 the provisions of Section 401(a), et seq. of the Internal Revenue  
71 Code and guidance issued thereunder applicable to governmental

72 plans. Alternatively, in its full and complete discretion, the board  
73 may require the participating public employer employing the  
74 individual to pay the ~~employee~~ individual the amounts as wages,  
75 with the board crediting the participating public employer with  
76 a corresponding amount to offset against its future contributions  
77 to the plan. If the employer has no future liability for employer  
78 contributions to the retirement system, the board shall refund  
79 said amount directly to the employer: *Provided*, That the wages  
80 paid to the ~~employee~~ individual shall not be considered  
81 compensation for any purposes of this article. Earnings or  
82 interest shall not be returned, offset, or credited under any of the  
83 means ~~utilized~~ used by the board for returning ~~mistaken or~~  
84 ~~excess~~ employee contributions, ~~including any overpayments to~~  
85 ~~an employee.~~

86 (d) Overpayments from the retirement system: If any error  
87 results in any member, retirant, beneficiary, entity or other  
88 person receiving from the system more than he, she or it would  
89 have been entitled to receive had the error not occurred,  
90 including, but not limited to, an overpayment of one or more  
91 annuity payments, contributions, or a lump sum payment, the

92 board shall correct the error. If correction of the error occurs  
93 after annuity payments to a retirant or beneficiary have  
94 commenced, the board shall, as soon as practicable,  
95 prospectively adjust the payment of the benefit to the correct  
96 amount. In addition, the member, retirant, beneficiary, entity or  
97 other person who received the overpayment from the retirement  
98 system shall repay the amount of any overpayment to the  
99 retirement system in any manner permitted by the board. Interest  
100 shall not accumulate on any corrective payment made to the  
101 retirement system pursuant to this subsection.

102 (e) Underpayments from the retirement system: If any error  
103 results in any member, retirant, beneficiary, entity or other  
104 person receiving from the retirement system less than he, she or  
105 it would have been entitled to receive had the error not occurred,  
106 including, but not limited to, an underpayment of one or more  
107 annuity payments, contributions or a lump sum payment, the  
108 board shall correct the error. If correction of the error occurs  
109 after annuity payments to a retirant or beneficiary have  
110 commenced, the board shall, as soon as practicable,  
111 prospectively adjust the payment of the benefit to the correct



112 amount. In addition, the board shall pay the amount of such  
113 underpayment to the member, retirant, beneficiary or other  
114 person in a lump sum. Interest shall not be paid on any corrective  
115 payment made by the retirement system pursuant to this  
116 subsection.

117 (f) Eligibility errors: If the board determines that an  
118 individual or employer, or both, who has been participating in  
119 the retirement system was not eligible to so participate, the board  
120 shall as soon as practicable notify the individual and his or her  
121 employer of the determination, and terminate participation in the  
122 retirement system. Any erroneous payments to the retirement  
123 system shall be returned to the employer and individual in  
124 accordance with the methods described in subsection (c), and  
125 any erroneous payments from the retirement system to such  
126 individual shall be returned to the retirement system in  
127 accordance with the methods described in subsection (d). Any  
128 erroneous service credited to the individual shall be removed. If  
129 the board determines that an individual or employer, or both, has  
130 not been participating in the retirement system, but was eligible  
131 to and required to be participating in the retirement system, the

132 board shall as soon as practicable notify the individual and his or  
133 her employer of the determination, and the individual and his or  
134 her employer shall prospectively commence participation in the  
135 retirement system as soon as practicable. Service credit for  
136 service prior to the date on which the individual prospectively  
137 commences participation in the retirement system shall be  
138 granted only if the board receives the required employer and  
139 employee contributions for such service, in accordance with  
140 subsection (b), including interest.

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

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

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

1 (a) ~~General rule: If any change or employer error in the~~  
2 ~~records of any participating public employer or the plan results~~  
3 ~~in any member, retirant or beneficiary receiving from the plan~~  
4 ~~more or less than he or she would have been entitled to receive~~  
5 ~~had the records been correct, the board shall correct the error. If~~  
6 ~~correction of the error occurs after the effective retirement date~~  
7 ~~of a retirant, and as far as is practicable, the board shall adjust~~  
8 ~~the payment of the benefit in a manner that the actuarial~~

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

23 (b) Underpayments to the plan: Any error resulting in an  
24 underpayment to the ~~retirement system of required contributions~~  
25 plan may be corrected by the member or retirant remitting the  
26 required employee contribution or employee underpayment and  
27 the participating public employer remitting the required  
28 employer contribution or employer underpayment. Interest shall

29 accumulate in accordance with the Legislative Rule 162 CSR 7  
30 concerning retirement board refund, reinstatement, retroactive  
31 service, loan and ~~employer~~ correction of error interest factors  
32 and any accumulating interest owed on the employee and  
33 employer contributions or underpayments resulting from an  
34 employer error shall be the responsibility of the participating  
35 public employer. The participating public employer may remit  
36 total payment and the employee reimburse the participating  
37 public employer through payroll deduction over a period  
38 equivalent to the time period during which the employer error  
39 occurred. If the correction of an error involving an  
40 ~~underpayment of required contributions to the retirement system~~  
41 plan will result in ~~increased payments to a retirant, including~~  
42 ~~increases to payments already made, any adjustments~~ the plan  
43 correcting an erroneous underpayment from the plan, the  
44 correction of the underpayment from the plan shall be made only  
45 after the board receives full payment of all required employee  
46 and employer contributions or underpayments, including  
47 interest.

48 (c) Overpayments to the plan: (1) When mistaken or excess  
49 employer contributions ~~including any~~ or other employer  
50 overpayments; have been made to the ~~retirement system by a~~  
51 ~~participating public employer, due to error or other reason;~~ plan,  
52 the board shall credit the ~~participating public~~ employer with an  
53 amount equal to the ~~erroneous contributions~~ overpayment, to be  
54 offset against the ~~participating public~~ employer's future liability  
55 for employer contributions to the ~~system~~ plan. If the employer  
56 has no future liability for employer contributions to the plan, the  
57 board shall refund the erroneous contributions directly to the  
58 employer. Earnings or interest shall not be returned, offset or  
59 credited to the employer under any of the means used by the  
60 board for returning employer overpayments to the plan.

61 (2) When mistaken or excess employee contributions  
62 ~~including any~~ or other employee overpayments have been made  
63 to the ~~retirement system, due to error or other reason;~~ plan, the  
64 board shall have sole authority for determining the means of  
65 return, offset or credit to or for the benefit of the ~~employee~~  
66 individual making the mistaken or excess employee contribution  
67 of the amounts, and may use any means authorized or permitted

68 under the provisions of Section 401(a), et seq. of the Internal  
69 Revenue Code and guidance issued thereunder applicable to  
70 governmental plans. Alternatively, in its full and complete  
71 discretion, the board may require the participating public  
72 employer employing the individual to pay the ~~employee~~  
73 individual the amounts as wages, with the board crediting the  
74 participating public employer with a corresponding amount to  
75 offset against its future contributions to the plan. If the employer  
76 has no future liability for employer contributions to the plan, the  
77 board shall refund said amount directly to the employer:  
78 *Provided,* That the wages paid to the ~~employee~~ individual shall  
79 not be considered compensation for any purposes under this  
80 article. Earnings or interest shall not be returned, offset, or  
81 credited under any of the means utilized by the board for  
82 returning ~~mistaken or excess employee contributions, including~~  
83 ~~any overpayments. to an employee.~~

84 (d) Overpayments from the plan: If any error results in any  
85 member, retirant, beneficiary, entity or other person receiving  
86 from the system more than he, she or it would have been entitled  
87 to receive had the error not occurred, including, but not limited

88 to, an overpayment of one or more annuity payments,  
89 contributions, or a lump sum payment, the board shall correct the  
90 error. If correction of the error occurs after annuity payments to  
91 a retirant or beneficiary have commenced, the board shall, as  
92 soon as practicable, prospectively adjust the payment of the  
93 benefit to the correct amount. In addition, the member, retirant,  
94 beneficiary, entity or other person who received the overpayment  
95 from the plan shall repay the amount of any overpayment to the  
96 plan in any manner permitted by the board. Interest shall not  
97 accumulate on any corrective payment made to the plan pursuant  
98 to this subsection.

99       (e) Underpayments from the plan: If any error results in any  
100 member, retirant, beneficiary, entity or other person receiving  
101 from the plan less than he, she or it would have been entitled to  
102 receive had the error not occurred, including, but not limited to,  
103 an underpayment of one or more annuity payments,  
104 contributions or a lump sum payment, the board shall correct the  
105 error. If correction of the error occurs after annuity payments to  
106 a retirant or beneficiary have commenced, the board shall, as  
107 soon as practicable, prospectively adjust the payment of the

108 benefit to the correct amount. In addition, the board shall pay the  
109 amount of such underpayment to the member, retirant,  
110 beneficiary or other person in a lump sum. Interest shall not be  
111 paid on any corrective payment made by the plan pursuant to this  
112 subsection.

113 (f) Eligibility errors: If the board determines that an  
114 individual or employer, or both, who has been participating in  
115 the plan was not eligible to so participate, the board shall as soon  
116 as practicable notify the individual and his or her employer of  
117 the determination, and terminate participation in the plan. Any  
118 erroneous payments to the plan shall be returned to the employer  
119 and individual in accordance with the methods described in  
120 subsection (c), and any erroneous payments from the plan to  
121 such individual shall be returned to the plan in accordance with  
122 the methods described in subsection (d). Any erroneous service  
123 credited to the individual shall be removed. If the board  
124 determines that an individual or employer, or both, has not been  
125 participating in the plan, but was eligible to and required to be  
126 participating in the plan, the board shall as soon as practicable  
127 notify the individual and his or her employer of the



128 determination and the individual and his or her employer shall  
129 prospectively commence participation in the plan as soon as  
130 practicable. Service credit for service prior to the date on which  
131 the individual prospectively commences participation in the plan  
132 shall be granted only if the board receives the required employer  
133 and employee contributions for such service, in accordance with  
134 subsection (b), including interest.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

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

1       (a) (1) There shall be deducted from the monthly salary of  
2 each member and paid into the fund an amount equal to eight  
3 and one-half percent (or ten and one-half percent, if applicable)  
4 of his or her monthly salary. An additional amount shall be paid  
5 to the fund by the municipality or municipal subdivision in  
6 which the member is employed in covered employment in an  
7 amount determined by the board: *Provided*, That in no year may  
8 the total of the employer contributions provided in this section,  
9 to be paid by the municipality or municipal subdivision, exceed

10 ten and one-half percent of the total payroll for the members in  
11 the employ of the municipality or municipal subdivision. Any  
12 active member who has concurrent employment in an additional  
13 job or jobs and the additional employment requires the police  
14 officer or firefighter to be a member of another retirement  
15 system which is administered by the Consolidated Public  
16 Retirement Board pursuant to article ten-d, chapter five of this  
17 code shall contribute to the fund the sum of eight and one-half  
18 percent (or ten and one-half percent, if applicable) of his or her  
19 monthly salary earned as a municipal police officer or firefighter  
20 as well as the sum of eight and one-half percent (or ten and  
21 one-half percent, if applicable) of his or her monthly salary  
22 earned from any additional employment which additional  
23 employment requires the police officer or firefighter to be a  
24 member of another retirement system which is administered by  
25 the Consolidated Public Retirement Board pursuant to article  
26 ten-d, chapter five of this code. An additional amount as  
27 determined by the board, not to exceed ten and one-half percent  
28 of the monthly salary of each member, shall be paid to the fund  
29 by the concurrent employer by which the member is employed.

30       (2) The board may, on the recommendation of the board's  
31   actuary, increase the employees' contribution rate from eight and  
32   one-half percent to ten and one-half percent should the plan not  
33   be seventy percent funded by July 1, 2014. The board shall  
34   decrease the contribution rate to eight and one-half percent on  
35   July 1 following the acceptance by the board of an actuarial  
36   valuation determining that the plan is seventy-five percent  
37   funded. If the plan funding level at a later actuarial valuation  
38   date falls below seventy percent, the employee rate of  
39   contribution shall be increased to ten and one-half percent of  
40   salary until the seventy-five percent level of funding is achieved.  
41   The board shall change the employee contribution rate on July  
42   1 following the board's acceptance of the actuarial valuation. At  
43   no time may the rate of employee contribution exceed the rate of  
44   employer contribution.

45       (b) All required deposits shall be remitted to the board no  
46   later than fifteen days following the end of the calendar month  
47   for which the deposits are required. If the board on the  
48   recommendation of the board actuary finds that the benefits  
49   provided by this article can be actuarially funded with a lesser

50 contribution, then the board shall reduce the required member  
51 and employer contributions proportionally. Any municipality or  
52 municipal subdivision which fails to make any payment due the  
53 Municipal Police Officers and Firefighters Retirement Fund by  
54 the fifteenth day following the end of each calendar month in  
55 which contributions are due may be required to pay the actuarial  
56 rate of interest lost on the total amount owed for each day the  
57 payment is delinquent. Accrual of the loss of earnings owed by  
58 the delinquent municipality or municipal subdivision  
59 commences after the fifteenth day following the end of the  
60 calendar month in which contributions are due and continues  
61 until receipt of the delinquent amount. Interest compounds daily  
62 and the minimum surcharge is \$50.

63 ~~(c) If any change or employer error in the records of any~~  
64 ~~participating public employer or the retirement system results in~~  
65 ~~any member or retirant receiving from the system more or less~~  
66 ~~than he or she would have been entitled to receive had the~~  
67 ~~records been correct, the board shall correct the error and as far~~  
68 ~~as is practicable shall adjust the payment of the benefit in a~~  
69 ~~manner that the actuarial equivalent of the benefit to which the~~

70 ~~member or retirant was correctly entitled shall be paid. Any~~  
71 ~~employer error resulting in an underpayment to the retirement~~  
72 ~~system may be corrected by the member or retirant remitting the~~  
73 ~~required employee contribution and the participating public~~  
74 ~~employer remitting the required employer contribution. Interest~~  
75 ~~shall accumulate in accordance with the legislative rule 162 CSR~~  
76 ~~7 (retirement board reinstatement interest) and any accumulating~~  
77 ~~interest owed on the employee and employer contributions~~  
78 ~~resulting from the employer error shall be the responsibility of~~  
79 ~~the participating public employer. The participating public~~  
80 ~~employer may remit total payment and the employee reimburse~~  
81 ~~the participating public employer through payroll deduction over~~  
82 ~~a period equivalent to the time period during which the employer~~  
83 ~~error occurred.~~

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

1       (a) General rule: The board shall correct errors of any kind  
2 involving the plan, including, but not limited to, errors resulting  
3 in underpayments or overpayments to the plan, errors resulting  
4 in underpayments or overpayments from the plan, and errors  
5 regarding an individual's or entity's eligibility to participate in

6 or receive benefits from the plan as a member, retirant,  
7 beneficiary or participating public employer. The provisions of  
8 this section apply regardless of whether the individual, entity or  
9 board was at fault for the error. It is the intent of this section that  
10 the board correct errors in a manner that, as close as reasonably  
11 possible and consistent with the provisions of this section, places  
12 the plan and any affected individual or entity in the position each  
13 would have been in had the error not occurred.

14 (b) Underpayments to the plan: Any error resulting in an  
15 underpayment to the plan may be corrected by the member or  
16 retirant remitting the required employee contribution or  
17 employee underpayment and the participating public employer  
18 remitting the required employer contribution or employer  
19 underpayment. Interest shall accumulate in accordance with the  
20 Legislative Rule 162 CSR 7 concerning retirement board refund,  
21 reinstatement, retroactive service, loan and correction of error  
22 interest factors, and any accumulating interest owed on the  
23 employee and employer contributions or underpayments  
24 resulting from an employer error shall be the responsibility of  
25 the participating public employer. The participating public

26 employer may remit total payment and the employee reimburse  
27 the participating public employer through payroll deduction over  
28 a period equivalent to the time period during which the employer  
29 error occurred. If the correction of an error involving an  
30 underpayment to the plan will result in the plan correcting an  
31 erroneous underpayment from the plan, the correction of the  
32 underpayment from the plan shall be made only after the board  
33 receives full payment of all required employee and employer  
34 contributions or underpayments, including interest.

35 (c) Overpayments to the plan: (1) When mistaken or excess  
36 employer contributions or other employer overpayments have  
37 been made to the plan, the board shall credit the employer with  
38 an amount equal to the overpayment, to be offset against the  
39 employer's future liability for employer contributions to the  
40 plan. If the employer has no future liability for employer  
41 contributions to the plan, the board shall refund the erroneous  
42 contributions directly to the employer. Earnings or interest shall  
43 not be returned, offset or credited to the employer under any of  
44 the means used by the board for returning employer  
45 overpayments to the retirement system.

46       (2) When mistaken or excess employee contributions or  
47 other employee overpayments have been made to the plan, the  
48 board has sole authority for determining the means of return,  
49 offset or credit to or for the benefit of the individual making the  
50 mistaken or excess employee contribution of the amounts, and  
51 may use any means authorized or permitted under the provisions  
52 of Section 401(a), et seq. of the Internal Revenue Code and  
53 guidance issued thereunder applicable to governmental plans.  
54 Alternatively, in its full and complete discretion, the board may  
55 require the participating public employer employing the  
56 individual to pay the individual the amounts as wages, with the  
57 board crediting the participating public employer with a  
58 corresponding amount to offset against its future contributions  
59 to the plan. If the employer has no future liability for employer  
60 contributions to the plan, the board shall refund said amount  
61 directly to the employer: *Provided*, That the wages paid to the  
62 individual shall not be considered compensation for any  
63 purposes under this article. Earnings or interest shall not be  
64 returned, offset, or credited under any of the means utilized by  
65 the board for returning employee overpayments.



66       (d) Overpayments from the plan: If any error results in any  
67 member, retirant, beneficiary, entity or other person receiving  
68 from the plan more than he, she or it would have been entitled to  
69 receive had the error not occurred, including, but not limited to,  
70 an overpayment of one or more annuity payments, contributions,  
71 or a lump sum payment, the board shall correct the error. If  
72 correction of the error occurs after annuity payments to a retirant  
73 or beneficiary have commenced, the board shall, as soon as  
74 practicable, prospectively adjust the payment of the benefit to  
75 the correct amount. In addition, the member, retirant,  
76 beneficiary, entity or other person who received the overpayment  
77 from the plan shall repay the amount of any overpayment to the  
78 plan in any manner permitted by the board. Interest shall not  
79 accumulate on any corrective payment made to the plan pursuant  
80 to this subsection.

81       (e) Underpayments from the plan: If any error results in any  
82 member, retirant, beneficiary, entity or other person receiving  
83 from the plan less than he, she or it would have been entitled to  
84 receive had the error not occurred, including, but not limited to,  
85 an underpayment of one or more annuity payments,

86 contributions or a lump sum payment, the board shall correct the  
87 error. If correction of the error occurs after annuity payments to  
88 a retirant or beneficiary have commenced, the board shall, as  
89 soon as practicable, prospectively adjust the payment of the  
90 benefit to the correct amount. In addition, the board shall pay the  
91 amount of such underpayment to the member, retirant,  
92 beneficiary or other person in a lump sum. Interest shall not be  
93 paid on any corrective payment made by the plan pursuant to this  
94 subsection.

95 (f) Eligibility errors: If the board determines that an  
96 individual or employer, or both, who has been participating in  
97 the plan was not eligible to so participate, the board shall, as  
98 soon as practicable, notify the individual and his or her employer  
99 of the determination, and terminate participation in the plan. Any  
100 erroneous payments to the retirement system shall be returned to  
101 the employer and individual in accordance with the methods  
102 described in subsection (c), and any erroneous payments from  
103 the retirement system to such individual shall be returned to the  
104 retirement system in accordance with the methods described in  
105 subsection (d). Any erroneous service credited to the individual

106 shall be removed. If the board determines that an individual or  
107 employer, or both, has not been participating in the plan, but was  
108 eligible to and required to be participating in the plan, the board  
109 shall, as soon as practicable, notify the individual and his or her  
110 employer of the determination and the individual and his or her  
111 employer shall prospectively commence participation in the plan  
112 as soon as practicable. Service credit for service prior to the date  
113 on which the individual prospectively commences participation  
114 in the plan shall be granted only if the board receives the  
115 required employer and employee contributions for such service,  
116 in accordance with subsection (b), including interest.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. WEST VIRGINIA STATE POLICE.

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

1       (a) General rule: The board shall correct errors of any kind  
2 involving the system, including, but not limited to, errors  
3 resulting in underpayments or overpayments to the system,  
4 errors resulting in underpayments or overpayments from the  
5 system, and errors regarding an individual's eligibility to  
6 participate in or receive benefits from the system as a member,

7 retirant, or beneficiary. The provisions of this section apply  
8 regardless of whether the individual, entity or board was at fault  
9 for the error. It is the intent of this section that the board correct  
10 errors in a manner that, as close as reasonably possible and  
11 consistent with the provisions of this section, places the system  
12 and any affected individual or entity in the position each would  
13 have been in had the error not occurred.

14 (b) Underpayments to the system: Any error resulting in an  
15 underpayment to the system, may be corrected by the member or  
16 retirant remitting the required employee contribution or  
17 employee underpayment and the participating public employer  
18 remitting the required employer contribution or employer  
19 underpayment. Interest shall accumulate in accordance with the  
20 Legislative Rule 162 CSR 7 concerning retirement board refund,  
21 reinstatement, retroactive service, loan and correction of error  
22 interest factors and any accumulating interest owed on the  
23 employee and employer contributions or underpayments  
24 resulting from an employer error is the responsibility of the  
25 participating public employer. The participating public employer  
26 may remit total payment and the employee reimburse the

27 participating public employer through payroll deduction over a  
28 period equivalent to the time period during which the employer  
29 error occurred. If the correction of an error involving an  
30 underpayment to the system will result in the system correcting  
31 an erroneous underpayment from the system, the correction of  
32 the underpayment from the system shall be made only after the  
33 board receives full payment of all required employee and  
34 employer contributions or underpayments, including interest.

35 (c) Overpayments to the system: (1) When mistaken or  
36 excess employer contributions or other employer overpayments  
37 have been made to the system, the board shall credit the  
38 employer with an amount equal to the overpayment, to be offset  
39 against the employer's future liability for employer contributions  
40 to the system. If the employer has no future liability for  
41 employer contributions to the system, the board shall refund the  
42 erroneous contributions directly to the employer. Earnings or  
43 interest shall not be returned, offset or credited to the employer  
44 under any of the means used by the board for returning employer  
45 overpayments to the system. (2) When mistaken or excess  
46 employee contributions or other employee overpayments have

47 been made to the system, the board has sole authority for  
48 determining the means of return, offset or credit to or for the  
49 benefit of the individual making the mistaken or excess  
50 employee contribution of the amounts, and may use any means  
51 authorized or permitted under the provisions of Section 401(a),  
52 et seq. of the Internal Revenue Code and guidance issued  
53 thereunder applicable to governmental plans. Alternatively, in its  
54 full and complete discretion, the board may require the  
55 participating public employer employing the individual to pay  
56 the individual the amounts as wages, with the board crediting the  
57 participating public employer with a corresponding amount to  
58 offset against its future contributions to the plan. If the employer  
59 has no future liability for employer contributions to the system,  
60 the board shall refund said amount directly to the employer:  
61 *Provided,* That the wages paid to the individual shall not be  
62 considered compensation for any purposes of this article.  
63 Earnings or interest shall not be returned, offset or credited under  
64 any of the means used by the board for returning employee  
65 overpayments.

66       (d) Overpayments from the system: If any error results in  
67 any member, retirant, beneficiary, entity or other person  
68 receiving from the system more than he, she or it would have  
69 been entitled to receive had the error not occurred, including, but  
70 not limited to, an overpayment of one or more annuity payments,  
71 contributions, or a lump sum payment, the board shall correct the  
72 error. If correction of the error occurs after annuity payments to  
73 a retirant or beneficiary have commenced, the board shall, as  
74 soon as practicable, prospectively adjust the payment of the  
75 benefit to the correct amount. In addition, the member, retirant,  
76 beneficiary, entity or other person who received the overpayment  
77 from the system shall repay the amount of any overpayment to  
78 the system in any manner permitted by the board. Interest shall  
79 not accumulate on any corrective payment made to the system  
80 pursuant to this subsection.

81       (e) Underpayments from the system: If any error results in  
82 any member, retirant, beneficiary, entity or other person  
83 receiving from the system less than he, she or it would have been  
84 entitled to receive had the error not occurred, including, but not  
85 limited to, an underpayment of one or more annuity payments,

86 contributions or a lump sum payment, the board shall correct the  
87 error. If correction of the error occurs after annuity payments to  
88 a retirant or beneficiary have commenced, the board shall, as  
89 soon as practicable, prospectively adjust the payment of the  
90 benefit to the correct amount. In addition, the board shall pay the  
91 amount of such underpayment to the member, retirant,  
92 beneficiary or other person in a lump sum. Interest shall not be  
93 paid on any corrective payment made by the system pursuant to  
94 this subsection.

95 (f) Eligibility errors: If the board determines that an  
96 individual who has been participating in the system was not  
97 eligible to so participate, the board shall as soon as practicable  
98 notify the individual and his or her employer of the  
99 determination, and terminate participation in the system. Any  
100 erroneous payments to the system shall be returned to the  
101 employer and individual in accordance with the methods  
102 described in subsection (c), and any erroneous payments from  
103 the system to such individual shall be returned to the system in  
104 accordance with the methods described in subsection (d). Any  
105 erroneous service credited to the individual shall be removed. If



106 the board determines that an individual has not been  
107 participating in the system, but was eligible to and required to be  
108 participating in the system, the board shall as soon as practicable  
109 notify the individual and his or her employer of the  
110 determination, and the individual and his or her employer shall  
111 prospectively commence participation in the system as soon as  
112 practicable. Service credit for service prior to the date on which  
113 the individual prospectively commences participation in the  
114 system shall be granted only if the board receives the required  
115 employer and employee contributions for such service, in  
116 accordance with subsection (b), including interest.

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

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

1       (a) General rule: The board shall correct errors of any kind  
2 involving the system, including, but not limited to, errors  
3 resulting in underpayments or overpayments to the system,  
4 errors resulting in underpayments or overpayments from the  
5 system, and errors regarding an individual's eligibility to  
6 participate in or receive benefits from the system as a member,  
7 retirant, or beneficiary. The provisions of this section shall apply

8 regardless of whether the individual, entity or board was at fault  
9 for the error. It is the intent of this section that the board correct  
10 errors in a manner that, as close as reasonably possible and  
11 consistent with the provisions of this section, places the system  
12 and any affected individual or entity in the position each would  
13 have been in had the error not occurred.

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

28 a period equivalent to the time period during which the employer  
29 error occurred. If the correction of an error involving an  
30 underpayment to the system will result in the system correcting  
31 an erroneous underpayment from the system, the correction of  
32 the underpayment from the system shall be made only after the  
33 board receives full payment of all required employee and  
34 employer contributions or underpayments, including interest.

35 (c) Overpayments to the system: (1) When mistaken or  
36 excess employer contributions or other employer overpayments  
37 have been made to the system, the board shall credit the  
38 employer with an amount equal to the overpayment, to be offset  
39 against the employer's future liability for employer contributions  
40 to the system. If the employer has no future liability for  
41 employer contributions to the system, the board shall refund the  
42 erroneous contributions directly to the employer. Earnings or  
43 interest shall not be returned, offset or credited to the employer  
44 under any of the means used by the board for returning employer  
45 overpayments to the system. (2) When mistaken or excess  
46 employee contributions or other employee overpayments have  
47 been made to the system, the board shall have sole authority for

48 determining the means of return, offset or credit to or for the  
49 benefit of the individual making the mistaken or excess  
50 employee contribution of the amounts, and may use any means  
51 authorized or permitted under the provisions of Section 401(a),  
52 et seq. of the Internal Revenue Code and guidance issued  
53 thereunder applicable to governmental plans. Alternatively, in its  
54 full and complete discretion, the board may require the  
55 participating public employer employing the individual to pay  
56 the individual the amounts as wages, with the board crediting the  
57 participating public employer with a corresponding amount to  
58 offset against its future contributions to the plan. If the employer  
59 has no future liability for employer contributions to the system,  
60 the board shall refund said amount directly to the employer:  
61 *Provided, That the wages paid to the individual shall not be*  
62 considered compensation for any purposes of this article.  
63 Earnings or interest shall not be returned, offset or credited under  
64 any of the means used by the board for returning employee  
65 overpayments.

66 (d) Overpayments from the system: If any error results in  
67 any member, retirant, beneficiary, entity or other person

68 receiving from the system more than he, she or it would have  
69 been entitled to receive had the error not occurred, including, but  
70 not limited to, an overpayment of one or more annuity payments,  
71 contributions, or a lump sum payment, the board shall correct the  
72 error. If correction of the error occurs after annuity payments to  
73 a retirant or beneficiary have commenced, the board shall, as  
74 soon as practicable, prospectively adjust the payment of the  
75 benefit to the correct amount. In addition, the member, retirant,  
76 beneficiary, entity or other person who received the overpayment  
77 from the system shall repay the amount of any overpayment to  
78 the system in any manner permitted by the board. Interest shall  
79 not accumulate on any corrective payment made to the system  
80 pursuant to this subsection.

81 (e) Underpayments from the system: If any error results in  
82 any member, retirant, beneficiary, entity or other person  
83 receiving from the system less than he, she or it would have been  
84 entitled to receive had the error not occurred, including, but not  
85 limited to, an underpayment of one or more annuity payments,  
86 contributions or a lump sum payment, the board shall correct the  
87 error. If correction of the error occurs after annuity payments to

88 a retirant or beneficiary have commenced, the board shall, as  
89 soon as practicable, prospectively adjust the payment of the  
90 benefit to the correct amount. In addition, the board shall pay the  
91 amount of such underpayment to the member, retirant,  
92 beneficiary or other person in a lump sum. Interest shall not be  
93 paid on any corrective payment made by the system pursuant to  
94 this subsection.

95 (f) Eligibility errors: If the board determines that an  
96 individual who has been participating in the system was not  
97 eligible to so participate, the board shall as soon as practicable  
98 notify the individual and his or her employer of the  
99 determination, and terminate participation in the system. Any  
100 erroneous payments to the system shall be returned to the  
101 employer and individual in accordance with the methods  
102 described in subsection (c), and any erroneous payments from  
103 the system to such individual shall be returned to the system in  
104 accordance with the methods described in subsection (d). Any  
105 erroneous service credited to the individual shall be removed. If  
106 the board determines that an individual has not been  
107 participating in the system, but was eligible to and required to be

108 participating in the system, the board shall as soon as practicable  
109 notify the individual and his or her employer of the  
110 determination, and the individual and his or her employer shall  
111 prospectively commence participation in the system as soon as  
112 practicable. Service credit for service prior to the date on which  
113 the individual prospectively commences participation in the  
114 system shall be granted only if the board receives the required  
115 employer and employee contributions for such service, in  
116 accordance with subsection (b), including interest.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

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

1 (a) General rule: ~~If any change or employer error in the~~  
2 ~~records of any participating public employer or the plan results~~  
3 ~~in any member, retirant or beneficiary receiving from the plan~~  
4 ~~more or less than he or she would have been entitled to receive~~  
5 ~~had the records been correct, the board shall correct the error. If~~  
6 ~~correction of the error occurs after the effective retirement date~~  
7 ~~of a retirant, and as far as is practicable, the board shall adjust~~

8 ~~the payment of the benefit in a manner that the actuarial~~  
9 ~~equivalent of the benefit to which the retirant was correctly~~  
10 ~~entitled shall be paid.~~ The board shall correct errors of any kind  
11 involving the plan, including, but not limited to, errors resulting  
12 in underpayments or overpayments to the plan, errors resulting  
13 in underpayments or overpayments from the plan, and errors  
14 regarding an individual's or entity's eligibility to participate in  
15 or receive benefits from the plan as a member, retirant,  
16 beneficiary or participating public employer. The provisions of  
17 this section shall apply regardless of whether the individual,  
18 entity or board was at fault for the error. It is the intent of this  
19 section that the board correct errors in a manner that, as close as  
20 reasonably possible and consistent with the provisions of this  
21 section, places the retirement system and any affected individual  
22 or entity in the position each would have been in had the error  
23 not occurred.

24 (b) Underpayments to the plan: Any error resulting in an  
25 underpayment to the retirement system of required contributions  
26 plan may be corrected by the member or retirant remitting the  
27 required employee contribution or employee underpayment and



28 the participating public employer remitting the required  
29 employer contribution or employer underpayment. Interest shall  
30 accumulate in accordance with the Legislative Rule 162 CSR 7  
31 concerning retirement board refund, reinstatement, retroactive  
32 service, loan and ~~employer~~ correction of error interest factors  
33 and any accumulating interest owed on the employee and  
34 employer contributions or underpayments resulting from an  
35 employer error shall be the responsibility of the participating  
36 public employer. The participating public employer may remit  
37 total payment and the employee reimburse the participating  
38 public employer through payroll deduction over a period  
39 equivalent to the time period during which the employer error  
40 occurred. If the correction of an error involving an  
41 underpayment of ~~required contributions to the retirement system~~  
42 plan will result in ~~increased payments to a retirant, including~~  
43 ~~increases to payments already made, any adjustments~~ the plan  
44 correcting an erroneous underpayment from the plan, the  
45 correction of the underpayment from the plan shall be made only  
46 after the board receives full payment of all required employee

47 and employer contributions or underpayments, including  
48 interest.

49 (c) Overpayments from the plan: (1) When mistaken or  
50 excess employer contributions;~~including any~~ or other employer  
51 overpayments have been made to the ~~retirement system by a~~  
52 ~~participating public employer, due to error or other reason;~~ plan,  
53 the board shall credit the ~~participating public~~ employer with an  
54 amount equal to the ~~erroneous contributions~~ overpayment, to be  
55 offset against the ~~participating public~~ employer's future liability  
56 for employer contributions to the ~~system~~ plan. If the employer  
57 has no future liability for employer contributions to the plan, the  
58 board shall refund the erroneous contributions directly to the  
59 employer. Earnings or interest shall not be returned, offset or  
60 credited to the employer under any of the means used by the  
61 board for returning employer overpayments to the plan.

62 (2) When mistaken or excess employee contributions;  
63 ~~including any~~ or other employee overpayments have been made  
64 to the ~~retirement system, due to error or other reason;~~ plan, the  
65 board shall have sole authority for determining the means of  
66 return, offset or credit to or for the benefit of the ~~employee~~

67 individual making the mistaken or excess employee contribution  
68 of the amounts, and may use any means authorized or permitted  
69 under the provisions of Section 401(a), et seq. of the Internal  
70 Revenue Code and guidance issued thereunder applicable to  
71 governmental plans. Alternatively, in its full and complete  
72 discretion, the board may require the participating public  
73 employer employing the individual to pay the ~~employee~~  
74 individual ~~the~~ amounts as wages, with the board crediting the  
75 participating public employer with a corresponding amount to  
76 offset against its future contributions to the plan. If the employer  
77 has no future liability for employer contributions to the plan, the  
78 board shall refund said amount directly to the employer:  
79 *Provided,* That the wages paid to the ~~employee~~ individual shall  
80 not be considered compensation for any purposes under this  
81 article. Earnings or interest shall not be returned, offset, or  
82 credited under any of the means utilized by the board for  
83 returning ~~mistaken or excess employee contributions, including~~  
84 ~~any overpayments. to an employee.~~

85 (d) Overpayments from the plan: If any error results in any  
86 member, retirant, beneficiary, entity or other person receiving

87 from the system more than he, she or it would have been entitled  
88 to receive had the error not occurred, including, but not limited  
89 to, an overpayment of one or more annuity payments,  
90 contributions, or a lump sum payment, the board shall correct the  
91 error. If correction of the error occurs after annuity payments to  
92 a retirant or beneficiary have commenced, the board shall, as  
93 soon as practicable, prospectively adjust the payment of the  
94 benefit to the correct amount. In addition, the member, retirant,  
95 beneficiary, entity or other person who received the overpayment  
96 from the plan shall repay the amount of any overpayment to the  
97 plan in any manner permitted by the board. Interest shall not  
98 accumulate on any corrective payment made to the plan pursuant  
99 to this subsection.

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

107 a retirant or beneficiary have commenced, the board shall, as  
108 soon as practicable, prospectively adjust the payment of the  
109 benefit to the correct amount. In addition, the board shall pay the  
110 amount of such underpayment to the member, retirant,  
111 beneficiary or other person in a lump sum. Interest shall not be  
112 paid on any corrective payment made by the plan pursuant to this  
113 subsection.

114 (f) Eligibility errors: If the board determines that an  
115 individual or employer, or both, who has been participating in  
116 the plan was not eligible to so participate, the board shall, as  
117 soon as practicable, notify the individual and his or her employer  
118 of the determination, and terminate participation in the plan. Any  
119 erroneous payments to the retirement system shall be returned to  
120 the employer and individual in accordance with the methods  
121 described in subsection (c), and any erroneous payments from  
122 the retirement system to such individual shall be returned to the  
123 retirement system in accordance with the methods described in  
124 subsection (d). Any erroneous service credited to the individual  
125 shall be removed. If the board determines that an individual or  
126 employer, or both, has not been participating in the plan, but was

127 eligible to and required to be participating in the plan, the board  
128 shall as soon as practicable notify the individual and his or her  
129 employer of the determination and the individual and his or her  
130 employer shall prospectively commence participation in the plan  
131 as soon as practicable. Service credit for service prior to the date  
132 on which the individual prospectively commences participation  
133 in the plan shall be granted only if the board receives the  
134 required employer and employee contributions for such service,  
135 in accordance with subsection (b), including interest.

## CHAPTER 18. EDUCATION.

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

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

1 (a) ~~General rule: If any change or employer error in the~~  
2 ~~records of any employer or the retirement system results in any~~  
3 ~~member, retirant or beneficiary receiving from the plan more or~~  
4 ~~less than he or she would have been entitled to receive had the~~  
5 ~~records been correct, the board shall correct the error. If~~  
6 ~~correction of the error occurs after the effective retirement date~~  
7 ~~of a retirant, and as far as is practicable, the retirement board~~  
8 ~~shall adjust the payment of the benefit in a manner that the~~

9 ~~actuarial equivalent of the benefit to which the retirant was~~  
10 ~~correctly entitled shall be paid.~~ The retirement board shall  
11 correct errors of any kind involving the retirement system,  
12 including, but not limited to, errors resulting in underpayments  
13 or overpayments to the retirement system, errors resulting in  
14 underpayments or overpayments from the retirement system, and  
15 errors regarding an individual's or entity's eligibility to  
16 participate in or receive benefits from the retirement system as  
17 a member, retirant, beneficiary or participating public employer.  
18 The provisions of this section apply regardless of whether the  
19 individual, entity or retirement board was at fault for the error.  
20 It is the intent of this section that the retirement board correct  
21 errors in a manner that, as close as reasonably possible and  
22 consistent with the provisions of this section, places the  
23 retirement system and any affected individual or entity in the  
24 position each would have been in had the error not occurred.

25 (b) Underpayments to the retirement system: Any error  
26 resulting in an underpayment to the retirement system ~~of~~  
27 ~~required contributions~~ may be corrected by the member or  
28 retirant remitting the required employee contribution or

29 employee underpayment and the employer remitting the required  
30 employer contribution or employer underpayment. Interest shall  
31 accumulate in accordance with the Legislative Rule 162 CSR 7  
32 concerning retirement board refund, reinstatement, retroactive  
33 service, loan and ~~employer~~ correction of error interest factors  
34 and any accumulating interest owed on the member and  
35 employer contributions or underpayments resulting from an  
36 employer error shall be the responsibility of the participating  
37 public employer. The employer may remit total payment and the  
38 member reimburse the employer through payroll deduction over  
39 a period equivalent to the time period during which the employer  
40 error occurred. If the correction of an error involving an  
41 underpayment ~~of required contributions~~ to the retirement system  
42 will result in ~~increased payments to a retirant, including~~  
43 ~~increases to payments already made, any adjustments~~ the plan  
44 correcting an erroneous underpayment from the plan, the  
45 correction of the underpayment from the plan shall be made only  
46 after the retirement board receives full payment of all required  
47 member and employer contributions or underpayments,  
48 including interest.



49 (c) Overpayments to the retirement system: (1) When  
50 mistaken or excess employer contributions, ~~including any or~~  
51 other employer overpayments, have been made to the retirement  
52 system ~~by an employer, due to error or other reason~~, the  
53 retirement board shall credit the employer with an amount equal  
54 to the erroneous ~~contributions~~ overpayment, to be offset against  
55 the employer's future liability for employer contributions to the  
56 retirement system. If the employer has no future liability for  
57 employer contributions to the retirement system, the retirement  
58 board shall refund the erroneous contributions directly to the  
59 employer. Earnings or interest shall not be returned, offset or  
60 credited to the employer under any of the means used by the  
61 retirement board for returning employer overpayments to the  
62 retirement system.

63 (2) When mistaken or excess member contributions;  
64 ~~including any or other employee~~ overpayments; have been made  
65 to the retirement system, ~~due to error or other reason~~ the  
66 retirement board shall have sole authority for determining the  
67 means of return, offset or credit to or for the benefit of the  
68 ~~member~~ individual making the mistaken or excess employee

69 contribution of the amounts, and may use any means authorized  
70 or permitted under the provisions of Section 401(a), et seq. of the  
71 Internal Revenue Code and guidance issued thereunder  
72 applicable to governmental plans. Alternatively, in its full and  
73 complete discretion, the retirement board may require the  
74 employer employing the individual to pay the ~~member~~ individual  
75 the amounts as wages, with the retirement board crediting the  
76 employer with a corresponding amount to offset against its  
77 future contributions to the plan. If the employer has no future  
78 liability for employer contributions to the retirement system, the  
79 retirement board shall refund said amount directly to the  
80 employer: *Provided*, That the wages paid to the member  
81 individual shall not be considered compensation for any  
82 purposes under this article. Earnings or interest shall not be  
83 returned, offset, or credited under any of the means used by the  
84 retirement board for returning ~~mistaken or excess~~ member  
85 ~~contributions, including any overpayments, to a member.~~

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

89 have been entitled to receive had the error not occurred,  
90 including, but not limited to, an overpayment of one or more  
91 annuity payments, contributions, or a lump sum payment, the  
92 retirement board shall correct the error. If correction of the error  
93 occurs after annuity payments to a retirant or beneficiary have  
94 commenced, the board shall, as soon as practicable,  
95 prospectively adjust the payment of the benefit to the correct  
96 amount. In addition, the member, retirant, beneficiary, entity or  
97 other person who received the overpayment from the plan shall  
98 repay the amount of any overpayment to the retirement system  
99 in any manner permitted by the retirement board. Interest shall  
100 not accumulate on any corrective payment made to the  
101 retirement system pursuant to this subsection.

102 (e) Underpayments from the retirement system: If any error  
103 results in any member, retirant, beneficiary, entity or other  
104 person receiving from the retirement system less than he, she or  
105 it would have been entitled to receive had the error not occurred,  
106 including, but not limited to, an underpayment of one or more  
107 annuity payments, contributions or a lump sum payment, the  
108 retirement board shall correct the error. If correction of the error

109 occurs after annuity payments to a retirant or beneficiary have  
110 commenced, the retirement board shall, as soon as practicable,  
111 prospectively adjust the payment of the benefit to the correct  
112 amount. In addition, the retirement board shall pay the amount  
113 of such underpayment to the member, retirant, beneficiary or  
114 other person in a lump sum. Interest shall not be paid on any  
115 corrective payment made by the retirement system pursuant to  
116 this subsection.

117 (f) Eligibility errors: If the retirement board determines that  
118 an individual or employer, or both, who has been participating  
119 in the retirement system was not eligible to so participate, the  
120 retirement board shall as soon as practicable notify the  
121 individual and his or her employer of the determination, and  
122 terminate participation in the retirement system. Any erroneous  
123 payments to the retirement system shall be returned to the  
124 employer and individual in accordance with the methods  
125 described in subsection (c), and any erroneous payments from  
126 the retirement system to such individual shall be returned to the  
127 retirement system in accordance with the methods described in  
128 subsection (d). Any erroneous service credited to the individual

129 shall be removed. If the retirement board determines that an  
130 individual or employer, or both, has not been participating in the  
131 retirement system, but was eligible to and required to be  
132 participating in the retirement system, the retirement board shall  
133 as soon as practicable notify the individual and his or her  
134 employer of the determination and the individual and his or her  
135 employer shall prospectively commence participation in the  
136 retirement system as soon as practicable. Service credit for  
137 service prior to the date on which the individual prospectively  
138 commences participation in the retirement system shall be  
139 granted only if the retirement board receives the required  
140 employer and employee contributions for such service, in  
141 accordance with subsection (b), including interest.

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

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

1 (a) General rule: ~~If any change or employer error in the~~  
2 ~~records of any existing employer or the retirement system results~~  
3 ~~in a member, retirant or beneficiary receiving from the system~~  
4 ~~more or less than he or she would have been entitled to receive~~

5 ~~had the records been correct, the board shall correct the error. If~~  
6 ~~correction of the error occurs after retirement, the board shall~~  
7 ~~adjust the payment of the benefit in an amount computed by the~~  
8 ~~board to which the retirant was correctly entitled. The board~~  
9 shall correct errors of any kind involving the defined  
10 contribution system, including, but not limited to, errors  
11 resulting in underpayments or overpayments to the defined  
12 contribution system, errors resulting in underpayments or  
13 overpayments from the defined contribution system, and errors  
14 regarding an individual's or entity's eligibility to participate in  
15 or receive benefits from the defined contribution system as a  
16 member, retirant, beneficiary or existing employer. The  
17 provisions of this section apply regardless of whether the  
18 individual, entity or board was at fault for the error. It is the  
19 intent of this section that the board correct errors in a manner  
20 that, as close as reasonably possible and consistent with the  
21 provisions of this section, places the defined contribution system  
22 and any affected individual or entity in the position each would  
23 have been in had the error not occurred.

24 (b) Underpayments to the defined contribution system: Any  
25 error resulting in an underpayment to the ~~retirement~~ defined  
26 contribution system ~~of required contributions~~ may be corrected  
27 by the member or retirant remitting the required employee  
28 contribution or employee underpayment and the existing  
29 employer remitting the required employer contribution or  
30 employer underpayment. Interest accumulates in accordance  
31 with the ~~board's~~ Legislative Rule 162 CSR 7 concerning  
32 retirement board Refund, Reinstatement, Retroactive Service,  
33 Loan and Employer Correction of Error Interest Factors ~~162~~  
34 ~~CSR 7~~, and any accumulating interest owed on the employee and  
35 employer contributions or underpayments resulting from an  
36 employer error is the responsibility of the participating public  
37 employer. The existing employer may remit total payment and  
38 the employee may reimburse the existing employer through  
39 payroll deduction over a period equivalent to the time period  
40 during which the employer error occurred. If the correction of an  
41 error involving an underpayment ~~of required contributions~~ to the  
42 ~~retirement~~ defined contribution system will result in ~~increased~~  
43 ~~payments to a retirant, including increases to payments already~~

44 ~~made, any adjustments may~~ the defined contribution system  
45 correcting an erroneous underpayment from the defined  
46 contribution system, the correction of the underpayment from the  
47 defined contribution system shall be made only after the board  
48 receives full payment of all required employee and employer  
49 contributions or underpayments, including interest.

50 (c) Overpayments to the defined contribution system: (1)  
51 When mistaken or excess employer contributions ~~including any~~  
52 or other employer overpayments have been made to the  
53 ~~retirement~~ defined contribution system ~~by an existing employer,~~  
54 ~~due to error or other reason,~~ the board shall credit the ~~existing~~  
55 employer with an amount computed by the board, to be offset  
56 against the ~~existing~~ employer's future liability for employer  
57 contributions to the ~~retirement~~ defined contribution system. If  
58 the employer has no future liability for employer contributions  
59 to the defined contribution system, the board shall refund the  
60 erroneous contributions directly to the employer.

61 (2) When mistaken or excess employee contributions  
62 ~~including any~~ or other employee overpayments have been made  
63 to the retirement system, ~~due to error or other reason,~~ the



64 retirement board has sole authority for determining the means of  
65 return, offset or credit to or for the benefit of the ~~employee~~  
66 individual making the mistaken or excess employee contribution  
67 of the amounts, and may use any means authorized or permitted  
68 under the provisions of Section 401(a), et seq. of the Internal  
69 Revenue Code and guidance issued thereunder applicable to  
70 governmental plans. Alternatively, in its full and complete  
71 discretion, the retirement board may require the existing  
72 employer employing the individual to pay the ~~employee~~  
73 individual the amounts as wages, with the board crediting the  
74 existing employer with ~~an~~ a corresponding amount to offset  
75 against its future contributions to the plan. If the employer has  
76 no future liability for employer contributions to the retirement  
77 system, the retirement board shall refund said amount directly to  
78 the employer: Provided, That the wages paid to the member  
79 individual are not considered compensation for any purposes  
80 under this article.

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

84 have been entitled to receive had the error not occurred,  
85 including, but not limited to, an overpayment of one or more  
86 annuity payments, contributions, or a lump sum payment, the  
87 retirement board shall correct the error. If correction of the error  
88 occurs after annuity payments to a retirant or beneficiary have  
89 commenced, the retirement board shall, as soon as practicable,  
90 prospectively adjust the payment of the benefit to the correct  
91 amount. In addition, the member, retirant, beneficiary, entity or  
92 other person who received the overpayment from the plan shall  
93 repay the amount of any overpayment to the retirement system  
94 in any manner permitted by the board. Interest shall not  
95 accumulate on any corrective payment made to the retirement  
96 system pursuant to this subsection.

97 (e) Underpayments from the retirement system: If any error  
98 results in any member, retirant, beneficiary, entity or other  
99 person receiving from the retirement system less than he, she or  
100 it would have been entitled to receive had the error not occurred,  
101 including, but not limited to, an underpayment of one or more  
102 annuity payments, contributions or a lump sum payment, the  
103 retirement board shall correct the error. If correction of the error

104 occurs after annuity payments to a retirant or beneficiary have  
105 commenced, the retirement board shall, as soon as practicable,  
106 prospectively adjust the payment of the benefit to the correct  
107 amount. In addition, the retirement board shall pay the amount  
108 of such underpayment to the member, retirant, beneficiary or  
109 other person in a lump sum. Interest shall not be paid on any  
110 corrective payment made by the retirement system pursuant to  
111 this subsection.

112 (f) Eligibility errors: If the retirement board determines that  
113 an individual or employer, or both, who has been participating  
114 in the retirement system was not eligible to so participate, the  
115 retirement board shall as soon as practicable notify the  
116 individual and his or her employer of the determination, and  
117 terminate participation in the retirement system. Any erroneous  
118 payments to the retirement system shall be returned to the  
119 employer and individual in accordance with the methods  
120 described in subsection (c), and any erroneous payments from  
121 the retirement system to such individual shall be returned to the  
122 retirement system in accordance with the methods described in  
123 subsection (d). Any erroneous service credited to the individual

124 shall be removed. If the retirement board determines that an  
125 individual or employer, or both, has not been participating in the  
126 retirement system, but was eligible to and required to be  
127 participating in the retirement system, the retirement board shall  
128 as soon as practicable notify the individual and his or her  
129 employer of the determination and the individual and his or her  
130 employer shall prospectively commence participation in the  
131 retirement system as soon as practicable. Service credit for  
132 service prior to the date on which the individual prospectively  
133 commences participation in the retirement system shall be  
134 granted only if the board receives the required employer and  
135 employee contributions for such service, in accordance with  
136 subsection (b), including interest.

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

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

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

- 1 (a) General rule: The board shall correct errors of any kind
- 2 involving the system, including, but not limited to, errors
- 3 resulting in underpayments or overpayments to the system,

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

14 (b) Underpayments to the system: Any error resulting in an  
15 underpayment to the system, may be corrected by the member or  
16 retirant remitting the required employee contribution or  
17 employee underpayment and the participating public employer  
18 remitting the required employer contribution or employer  
19 underpayment. Interest shall accumulate in accordance with the  
20 Legislative Rule 162 CSR 7 concerning retirement board refund,  
21 reinstatement, retroactive service, loan and correction of error  
22 interest factors and any accumulating interest owed on the  
23 employee and employer contributions or underpayments

24 resulting from an employer error shall be the responsibility of  
25 the participating public employer. The participating public  
26 employer may remit total payment and the employee reimburse  
27 the participating public employer through payroll deduction over  
28 a period equivalent to the time period during which the employer  
29 error occurred. If the correction of an error involving an  
30 underpayment to the system will result in the system correcting  
31 an erroneous underpayment from the system, the correction of  
32 the underpayment from the system shall be made only after the  
33 board receives full payment of all required employee and  
34 employer contributions or underpayments, including interest.

35 (c) Overpayments to the system: (1) When mistaken or  
36 excess employer contributions or other employer overpayments  
37 have been made to the system, the board shall credit the  
38 employer with an amount equal to the overpayment, to be offset  
39 against the employer's future liability for employer contributions  
40 to the system. If the employer has no future liability for  
41 employer contributions to the system, the board shall refund the  
42 erroneous contributions directly to the employer. Earnings or  
43 interest shall not be returned, offset or credited to the employer

44 under any of the means used by the board for returning employer  
45 overpayments to the system. (2) When mistaken or excess  
46 employee contributions or other employee overpayments have  
47 been made to the system, the board shall have sole authority for  
48 determining the means of return, offset or credit to or for the  
49 benefit of the individual making the mistaken or excess  
50 employee contribution of the amounts, and may use any means  
51 authorized or permitted under the provisions of Section 401(a),  
52 et seq. of the Internal Revenue Code and guidance issued  
53 thereunder applicable to governmental plans. Alternatively, in its  
54 full and complete discretion, the board may require the  
55 participating public employer employing the individual to pay  
56 the individual the amounts as wages, with the board crediting the  
57 participating public employer with a corresponding amount to  
58 offset against its future contributions to the plan. If the employer  
59 has no future liability for employer contributions to the system,  
60 the board shall refund said amount directly to the employer:  
61 *Provided, That the wages paid to the individual shall not be*  
62 *considered compensation for any purposes of this article.*  
63 Earnings or interest shall not be returned, offset or credited under

64 any of the means used by the board for returning employee  
65 overpayments.

66 (d) Overpayments from the system: If any error results in  
67 any member, retirant, beneficiary, entity or other person  
68 receiving from the system more than he, she or it would have  
69 been entitled to receive had the error not occurred, including, but  
70 not limited to, an overpayment of one or more annuity payments,  
71 contributions, or a lump sum payment, the board shall correct the  
72 error. If correction of the error occurs after annuity payments to  
73 a retirant or beneficiary have commenced, the board shall, as  
74 soon as practicable, prospectively adjust the payment of the  
75 benefit to the correct amount. In addition, the member, retirant,  
76 beneficiary, entity or other person who received the overpayment  
77 from the system shall repay the amount of any overpayment to  
78 the system in any manner permitted by the board. Interest shall  
79 not accumulate on any corrective payment made to the system  
80 pursuant to this subsection.

81 (e) Underpayments from the system: If any error results in  
82 any member, retirant, beneficiary, entity or other person  
83 receiving from the system less than he, she or it would have been



84 entitled to receive had the error not occurred, including, but not  
85 limited to, an underpayment of one or more annuity payments,  
86 contributions or a lump sum payment, the board shall correct the  
87 error. If correction of the error occurs after annuity payments to  
88 a retiree or beneficiary have commenced, the board shall, as  
89 soon as practicable, prospectively adjust the payment of the  
90 benefit to the correct amount. In addition, the board shall pay the  
91 amount of such underpayment to the member, retiree,  
92 beneficiary or other person in a lump sum. Interest shall not be  
93 paid on any corrective payment made by the system pursuant to  
94 this subsection.

95 (f) Eligibility errors: If the board determines that an  
96 individual who has been participating in the system was not  
97 eligible to so participate, the board shall as soon as practicable  
98 notify the individual and his or her employer of the  
99 determination, and terminate participation in the system. Any  
100 erroneous payments to the system shall be returned to the  
101 employer and individual in accordance with the methods  
102 described in subsection (c), and any erroneous payments from  
103 the system to such individual shall be returned to the system in

104 accordance with the methods described in subsection (d). Any  
105 erroneous service credited to the individual shall be removed. If  
106 the board determines that an individual has not been  
107 participating in the system, but was eligible to and required to be  
108 participating in the system, the board shall as soon as practicable  
109 notify the individual and his or her employer of the  
110 determination, and the individual and his or her employer shall  
111 prospectively commence participation in the system as soon as  
112 practicable. Service credit for service prior to the date on which  
113 the individual prospectively commences participation in the  
114 system shall be granted only if the board receives the required  
115 employer and employee contributions for such service, in  
116 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.



