

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 342

(Senators Gaunch, Trump and Plymale, *original sponsors*)

[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT 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;

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: Upon learning of any errors, the board shall correct errors in the retirement
2 system in a timely manner whether an individual, entity or board was at fault for the error with the
3 intent of placing the affected individual, entity and retirement board in the position each would have
4 been in had the error not occurred.

5 (b) Underpayments to the retirement system: Any error resulting in an underpayment to the
6 retirement system may be corrected by the member or retirant remitting the required employee
7 contribution or underpayment and the participating public employer remitting the required employer
8 contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162
9 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction
10 of error interest factors and any accumulating interest owed on the employee and employer
11 contributions or underpayments resulting from an employer error shall be the responsibility of the
12 participating public employer. The participating public employer may remit total payment and the

1 employee reimburse the participating public employer through payroll deduction over a period
2 equivalent to the time period during which the employer error occurred. If the correction of an error
3 involving an underpayment to the retirement system will result in the retirement system paying a
4 retirant an additional amount, this additional payment shall be made only after the board receives full
5 payment of all required employee and employer contributions or underpayments, including interest.

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

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

1 overpayments .

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

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

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

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

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

11 **§7-14D-7a. Correction of errors; underpayments; overpayments.**

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

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

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

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

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

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
26 error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall

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

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

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

1 of this section, including interest.

2 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

5 **§8-22A-8. Members' contributions; employer contributions.**

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

25 (2) The board may, on the recommendation of the board's actuary, increase the employees'
26 contribution rate from eight and one-half percent to ten and one-half percent should the plan not be

1 seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and
2 one-half percent on July 1 following the acceptance by the board of an actuarial valuation
3 determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial
4 valuation date falls below seventy percent, the employee rate of contribution shall be increased to
5 ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The
6 board shall change the employee contribution rate on July 1 following the board's acceptance of the
7 actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer
8 contribution.

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

21 **§8-22A-8a. Correction of errors; underpayments; overpayments.**

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

26 (b) Underpayments to the plan: Any error resulting in an underpayment to the plan may be

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

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

19 (d) Overpayments to the plan by an employee: When mistaken or excess employee
20 contributions or overpayments have been made to the plan, the board shall have sole authority for
21 determining the means of return, offset or credit to or for the benefit of the individual making the
22 mistaken or excess employee contribution of the amounts, and may use any means authorized or
23 permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance
24 issued thereunder applicable to governmental plans. Alternatively, in its full and complete
25 discretion, the board may require the employer employing the individual to pay the individual the
26 amounts as wages, with the board crediting the employer with a corresponding amount to offset

1 against its future contributions to the plan. If the employer has no future liability for employer
2 contributions to the plan, the board shall refund said amount directly to the employer: *Provided,*
3 That the wages paid to the individual shall not be considered compensation for any purposes of this
4 article. Earnings or interest shall not be returned, offset, or credited under any of the means used by
5 the board for returning employee overpayments.

6 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,
7 entity or other individual receiving from the plan more than he would have been entitled to receive
8 had the error not occurred the board after 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 member, retirant, beneficiary, entity or other person who received the overpayment
12 from the plan shall repay the amount of any overpayment to the retirement system in any manner
13 permitted by the board. Interest shall not accumulate on any corrective payment made to the plan
14 pursuant to this subsection.

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

23 (g) Eligibility errors: If the board finds that an individual, employer, or both individual and
24 employer formerly or currently participating in the plan is not eligible to participate, the board shall
25 notify the individual and his or her employer of the determination, and terminate participation in the
26 plan. Any erroneous payments to the plan shall be returned to the employer and individual in

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

12 **CHAPTER 15. PUBLIC SAFETY.**

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

14 **§15-2-54. Correction of errors; underpayments; overpayments.**

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

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

1 period during which the employer error occurred. If the correction of an error involving an
2 underpayment to the system will result in the system correcting an erroneous underpayment from the
3 system, the correction of the underpayment from the system shall be made only after the board
4 receives full payment of all required employee and employer contributions or underpayments,
5 including interest.

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

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

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

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

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

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

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

8 **§15-2A-23. Correction of errors; underpayments; overpayments.**

9 (a) General rule: Upon learning of any errors, the board shall correct errors in the retirement
10 system in a timely manner whether the individual, entity or board was at fault for the error with the
11 intent of placing the affected individual, entity and retirement board in the position each would have
12 been in 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 shall be the responsibility of the employer. The employer may remit total payment
20 and the employee reimburse the employer through payroll deduction over a period equivalent to the
21 time 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.

26 (c) Overpayments to the system by an employer: When mistaken or excess employer

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

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

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

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

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

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

1 used by the board for returning employer overpayments to the retirement system.

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

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

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

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

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

20 **CHAPTER 18. EDUCATION.**

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

22 **§18-7A-14c. Correction of errors; underpayments; overpayments.**

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

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

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

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

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

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

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

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

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

23 (b) Underpayments to the system: Any error resulting in an underpayment to the system, may
24 be corrected by the member or retirant remitting the required employee contribution or underpayment
25 and the existing employer remitting the required employer contribution or underpayment. Interest
26 shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board

1 Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors and any
2 accumulating interest owed on the employee and employer contributions or underpayments resulting
3 from an employer error shall be the responsibility of the participating public employer. The
4 participating public employer may remit total payment and the employee reimburse the participating
5 public employer through payroll deduction over a period equivalent to the time period during which
6 the employer error occurred. If the correction of an error involving an underpayment to the system
7 will result in the system paying the retirant an additional amount, this additional payment shall be
8 made only after the board receives full payment of all required employee and employer contributions
9 or underpayments, including interest.

10 (c) Overpayments to the system by an employer: When mistaken or excess employer
11 contributions or other employer overpayments have been made to the system, the board shall credit
12 the employer with an amount computed by the board, to be offset against the employer's future
13 liability for employer contributions to the system. If the employer has no future liability for
14 employer contributions to the retirement system, the board shall refund the erroneous contributions
15 directly to the employer.

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

1 compensation for any purposes of this article.

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

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

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

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

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

6 **§51-9-18. Correction of errors; underpayments; overpayments.**

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

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

24 (c) Overpayments to the retirement system by an employer: When mistaken or excess
25 employer contributions, including any overpayments have been made to the retirement system by
26 a participating public employer, the board, upon learning of the error, shall credit the participating

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

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

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

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

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

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

