

Senate Bill No. 342

(By Senators Gaunch, Trump and Plymale)

[Introduced January 28, 2015; referred to the Committee on Pensions; and then to the Committee
on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend
and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8 of said code; to amend
said code by adding thereto a new section, designated §8-22A-8a; to amend said code by
adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a
new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend
and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to
amend said code by adding thereto a new section, designated §51-9-18, all relating to
correction of errors under the West Virginia Public Employees Retirement System, 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,

1 the West Virginia State Police Retirement System and the Judges' Retirement System; and
 2 clarifying scope, application and requirements for error correction by the Consolidated Public
 3 Retirement Board.

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

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

13 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR.**
 14 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**
 15 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**
 16 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

17 **§5-10-44. Correction of errors; underpayments; overpayments.**

18 (a) General rule: ~~If any change or employer error in the records of any participating public~~
 19 ~~employer or the retirement system results in any member, retirant or beneficiary receiving from the~~
 20 ~~system more or less than he or she would have been entitled to receive had the records been correct,~~
 21 ~~the board shall correct the error. If correction of the error occurs after the effective retirement date~~

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

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

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

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

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

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

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

20 (e) Underpayments from the retirement system: If any error results in any member, retirant,
21 beneficiary, entity or other person receiving from the retirement system less than he, she or it would

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

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

1 employee contributions for such service, in accordance with subsection (b), including interest.

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

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

4 **§7-14D-7a. Correction of errors; underpayments; overpayments.**

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

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

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

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

1 employer overpayments to the plan.

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

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

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

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

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

8 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

11 **§8-22A-8. Members' contributions; employer contributions; ~~correction of errors.~~**

12 (a)(1) There shall be deducted from the monthly salary of each member and paid into the fund
 13 an amount equal to eight and one-half percent (or ten and one-half percent, if applicable) of his or
 14 her monthly salary. An additional amount shall be paid to the fund by the municipality or municipal
 15 subdivision in which the member is employed in covered employment in an amount determined by
 16 the board: *Provided*, That in no year may the total of the employer contributions provided in this
 17 section, to be paid by the municipality or municipal subdivision, exceed ten and one-half percent of
 18 the total payroll for the members in the employ of the municipality or municipal subdivision. Any
 19 active member who has concurrent employment in an additional job or jobs and the additional
 20 employment requires the police officer or firefighter to be a member of another retirement system
 21 which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter

1 five of this code shall contribute to the fund the sum of eight and one-half percent (or ten and
2 one-half percent, if applicable) of his or her monthly salary earned as a municipal police officer or
3 firefighter as well as the sum of eight and one-half percent (or ten and one-half percent, if applicable)
4 of his or her monthly salary earned from any additional employment which additional employment
5 requires the police officer or firefighter to be a member of another retirement system which is
6 administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of
7 this code. An additional amount as determined by the board, not to exceed ten and one-half percent
8 of the monthly salary of each member, shall be paid to the fund by the concurrent employer by which
9 the member is employed.

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

20 (b) All required deposits shall be remitted to the board no later than fifteen days following
21 the end of the calendar month for which the deposits are required. If the board on the

1 recommendation of the board actuary finds that the benefits provided by this article can be actuarially
2 funded with a lesser contribution, then the board shall reduce the required member and employer
3 contributions proportionally. Any municipality or municipal subdivision which fails to make any
4 payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day
5 following the end of each calendar month in which contributions are due may be required to pay the
6 actuarial rate of interest lost on the total amount owed for each day the payment is delinquent.
7 Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision
8 commences after the fifteenth day following the end of the calendar month in which contributions
9 are due and continues until receipt of the delinquent amount. Interest compounds daily and the
10 minimum surcharge is \$50.

11 ~~(c) If any change or employer error in the records of any participating public employer or the~~
12 ~~retirement system results in any member or retirant receiving from the system more or less than he~~
13 ~~or she would have been entitled to receive had the records been correct, the board shall correct the~~
14 ~~error and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial~~
15 ~~equivalent of the benefit to which the member or retirant was correctly entitled shall be paid. Any~~
16 ~~employer error resulting in an underpayment to the retirement system may be corrected by the~~
17 ~~member or retirant remitting the required employee contribution and the participating public~~
18 ~~employer remitting the required employer contribution. Interest shall accumulate in accordance with~~
19 ~~the legislative rule 162-CSR-7 (retirement board reinstatement interest) and any accumulating~~
20 ~~interest owed on the employee and employer contributions resulting from the employer error shall~~
21 ~~be the responsibility of the participating public employer. The participating public employer may~~

1 remit total payment and the employee reimburse the participating public employer through payroll
2 deduction over a period equivalent to the time period during which the employer error occurred.

3 **§8-22A-8a. Correction of errors; underpayments; overpayments.**

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

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

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

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

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

1 contributions to the plan, the board shall refund said amount directly to the employer: *Provided*,
2 That the wages paid to the individual shall not be considered compensation for any purposes under
3 this article. Earnings or interest shall not be returned, offset, or credited under any of the means
4 utilized by the board for returning employee overpayments.

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

1 beneficiary or other person in a lump sum. Interest shall not be paid on any corrective payment made
2 by the plan pursuant to this subsection.

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

18 **CHAPTER 15. PUBLIC SAFETY.**

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

20 **§15-2-54. Correction of errors; underpayments; overpayments.**

21 (a) General rule: The board shall correct errors of any kind involving the system, including,

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

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

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

21 (d) Overpayments from the system: If any error results in any member, retirant, beneficiary,

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

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

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

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

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

13 **§15-2A-23. Correction of errors; underpayments; overpayments.**

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

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

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

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

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

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

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

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

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

5 **CHAPTER 16. PUBLIC HEALTH.**

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

7 **§16-5V-8a. Correction of errors; underpayments; overpayments.**

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

1 occurred.

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

18 (c) Overpayments from the plan: (1) When mistaken or excess employer contributions;
19 ~~including any~~ or other employer overpayments have been made to the ~~retirement system by a~~
20 ~~participating public employer, due to error or other reason,~~ plan, the board shall credit the
21 ~~participating public employer~~ with an amount equal to the ~~erroneous contributions~~ overpayment, to

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

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

21 (d) Overpayments from the plan: If any error results in any member, retirant, beneficiary,

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

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

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

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

13 **CHAPTER 18. EDUCATION.**

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

15 **§18-7A-14c. Correction of errors; underpayments; overpayments.**

16 (a) ~~General rule: If any change or employer error in the records of any employer or the~~
17 ~~retirement system results in any member, retirant or beneficiary receiving from the plan more or less~~
18 ~~than he or she would have been entitled to receive had the records been correct, the board shall~~
19 ~~correct the error. If correction of the error occurs after the effective retirement date of a retirant, and~~
20 ~~as far as is practicable, the retirement board shall adjust the payment of the benefit in a manner that~~
21 ~~the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid. The~~

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

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

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

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

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

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

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

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

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

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

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

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

3 **§18-7B-21. Correction of errors; underpayments; overpayments**

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

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

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

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

21 (2) When mistaken or excess employee contributions ~~including any~~ or other employee

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

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

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

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

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

1 board shall as soon as practicable notify the individual and his or her employer of the determination
2 and the individual and his or her employer shall prospectively commence participation in the
3 retirement system as soon as practicable. Service credit for service prior to the date on which the
4 individual prospectively commences participation in the retirement 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), including interest.

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

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

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

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

18 (b) Underpayments to the system: Any error resulting in an underpayment to the system, may
19 be corrected by the member or retirant remitting the required employee contribution or employee
20 underpayment and the participating public employer remitting the required employer contribution
21 or employer underpayment. Interest shall accumulate in accordance with the Legislative Rule 162

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

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

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

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

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

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

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

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

§8-22A-8a, §15-2-54, §15-2A-23 and §51-9-18 are new; therefore, strike-throughs and underscoring have been omitted.