

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 431

(By Senators Jenkins and McCabe)

[Originating in the Committee on Finance;
reported March 22, 2013.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-11, relating to the liability of a participating public employer and its successor to pay delinquent retirement contributions, delinquency fees and related costs; and enforcement and collection of the costs by the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10D-11, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

1 (a) A participating public employer of a public retirement
2 system administered pursuant to this article that fails, for a
3 period of sixty days, to pay: (i) An employee retirement
4 contribution; (ii) an employer retirement contribution; (iii) a
5 delinquency fee; (iv) any other fees, charges or costs related
6 to the public retirement system; or (v) any combination of
7 subdivisions (i) through (iv) of this subsection, is liable for
8 the amount pursuant to this article.

9 (b) If a participating public employer of a public
10 retirement system administered pursuant to this article: (i)
11 Sells all or substantially all of its stock or assets; (ii) merges
12 with another entity; (iii) dissolves its business; or (iv)
13 participates, voluntarily or involuntarily, in an event which
14 causes its business to terminate, all unpaid employee
15 retirement contributions, employer retirement contributions,
16 delinquency fees and other fees, charges, or costs related to
17 the public retirement system shall be paid within thirty days
18 of the date of applicable event identified in subdivision (i)
19 through (iv) of this subsection.

20 (c) A transferee, successor or assignee of a participating
21 public employer of a public retirement system administered
22 pursuant to this article is liable for the payment of all
23 employee retirement contributions, employer retirement
24 contributions, delinquency fees and other fees, charges or
25 costs related to the public retirement system, if the
26 participating public employer does not pay those amounts as
27 provided in subsection (b) of this section.

28 (d) All amounts due to the Consolidated Public
29 Retirement Board from a participating public employer under
30 this article is a debt owed to the Consolidated Public
31 Retirement Board enforceable by a lien on all assets of a
32 participating public employer, or its transferee, successor or
33 assignee within this state. The lien attaches to all assets of a
34 participating public employer within this state, or all assets
35 of its transferee, successor or assignee on the date that any
36 amount owed to the Consolidated Public Retirement Board
37 is due. If a participating public employer, or its transferee,
38 successor or assignee fails to pay an amount owed to the
39 Consolidated Public Retirement Board under this article for
40 a period of more than sixty days, the Consolidated Public
41 Retirement Board may enforce the lien against the
42 participating public employer, or its transferee, successor or
43 assignee by instituting an action in the Circuit Court of
44 Kanawha County. In the event that the Consolidated Public
45 Retirement Board institutes an action against a participating

46 public employer, or its transferee, successor or assignee to
47 enforce a lien, the Consolidated Public Retirement Board is
48 entitled to recover the amounts identified in subsection (a) of
49 this section and in addition to those amounts, is entitled to
50 recover all fees and costs incurred by the Consolidated
51 Public Retirement Board during the pendency of the action,
52 including, without limitation, accrued interest, expert witness
53 costs, filing fees, deposition costs and reasonable attorney
54 fees.

55 (e) If a section, subsection, subdivision, provision, clause
56 or phrase of this article or its application to any person or
57 circumstance is held unconstitutional or invalid, the
58 unconstitutionality or invalidity does not affect other
59 sections, subsections, subdivisions, provisions, clauses or
60 phrases or applications of the article, and to this end each and
61 every section, subsection, subdivision, provision, clause and
62 phrase of this article are declared to be severable. The
63 Legislature declares that it would have enacted the remaining

64 sections, subsections, subdivisions, provisions, clauses and
65 phrases of this article even if it had known that any sections,
66 subsections, subdivisions, provisions, clauses and phrases of
67 this article would be declared to be unconstitutional or
68 invalid, and that it would have enacted this article even if it
69 had known that its application to any person or circumstance
70 would be held to be unconstitutional or invalid.