## **WEST VIRGINIA LEGISLATURE**

# EIGHTY-FIRST LEGISLATURE REGULAR SESSION, 2013

ENROLLED

**COMMITTEE SUBSTITUTE** 

FOR

Senate Bill No. 431

(SENATORS JENKINS AND McCabe, ORIGINAL SPONSORS)

[Passed April 8, 2013; in effect ninety days from passage.]

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(SENATORS JENKINS AND MCCABE, original sponsors)

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[Passed April 8, 2013; in effect ninety days from passage.]

AN ACT 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 providing for 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.

- (a) A participating public employer of a public retirement system administered pursuant to this article that fails, for a period of sixty days, to pay: (i) An employee retirement contribution; (ii) an employer retirement contribution; (iii) a delinquency fee; (iv) any other fees, charges or costs related to the public retirement system; or (v) any combination of subdivisions (i) through (iv) of this subsection, is liable for the amount pursuant to this article.
- (b) If a participating public employer of a public retirement system administered pursuant to this article: (i) Sells all or substantially all of its stock or assets; (ii) merges with another entity; (iii) dissolves its business; or (iv) participates, voluntarily or involuntarily, in an event which causes its business to terminate, all unpaid employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges, or costs related to the public retirement system shall be paid within thirty days of the date of applicable event identified in subdivision (i) through (iv) of this subsection.
  - (c) A transferee, successor or assignee of a participating public employer of a public retirement system administered pursuant to this article is liable for the payment of all employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges or costs related to the public retirement system, if the participating public employer does not pay those amounts as provided in subsection (b) of this section.
  - (d) All amounts due to the Consolidated Public Retirement Board from a participating public employer under this article is a debt owed to the Consolidated Public Retirement Board enforceable by a lien on all assets of a participating public employer, or its transferee, successor or assignee within this state. The lien attaches to all assets of a participating public employer within this state, or all assets of

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35 its transferee, successor or assignee on the date that any 36 amount owed to the Consolidated Public Retirement Board is 37 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 Public 51 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.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

| Chairman Senate Committee           |
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|                                     |
| Chairman House Committee            |
| Originated in the Senate.           |
| In effect ninety days from passage. |
| Clerk of the Senate                 |
| Clerk of the House of Delegates     |
| President of the Senate             |
| Speaker of the House of Delegates   |
| The within this the                 |
| Day of, 2013.                       |
| Governor                            |