

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Engrossed**

## **Senate Bill 551**

BY SENATORS KARNES AND CLINE

[Introduced February 15, 2018; Referred  
to the Committee on Pensions; and then to the Committee  
on the Judiciary]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §5-10D-13; and to amend and reenact §61-10-20 of said code, all relating to  
3 failure of employers to make contributions on behalf of employees to a retirement plan  
4 administered by the Consolidated Public Retirement Board; authorizing the State Auditor,  
5 county commission, or sheriff of the county to withhold moneys due to a public employer  
6 that is delinquent in required contributions to a retirement plan after the Consolidated  
7 Public Retirement Board has certified the delinquency; authorizing withheld moneys to be  
8 applied to the retirement system the delinquent payments would have been made to;  
9 providing for interest on delinquencies; making it a criminal offense for employers to  
10 knowingly and willfully fail to make required contributions; and providing criminal penalties.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

**§5-10D-13. Withholding state and county money to satisfy delinquencies.**

1 (a) If any employer participating in a retirement plan, administered by the Consolidated  
2 Public Retirement Board pursuant to §5-10D-1 et seq. of this code, fails to make any payment  
3 due to the retirement system for a period of 60 days after the payment is due, the participating  
4 employer shall become delinquent and such delinquency shall be certified by the Consolidated  
5 Public Retirement Board to the State Auditor, the county commission of the county in which the  
6 participating employer is located, and the sheriff of the county in which the participating employer  
7 is located. If any participating employer becomes delinquent as provided herein, the State

8 Auditor, county commission, or sheriff is authorized and directed to withhold any money due such  
9 participating employer by the state or county until such delinquency, together with regular interest  
10 thereon, from the date due until the delinquency is satisfied. The money withheld by the State  
11 Auditor, county commission, or sheriff shall be paid to the applicable retirement system on behalf  
12 of the participating employer.

13 (b) The Consolidated Public Retirement Board, 30 days prior to certifying delinquency  
14 under this section, shall provide notice to the participating employer.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

#### **§61-10-20. Failure of employers to provide certain benefits for employees.**

1 (a) In addition to any other penalty or punishment otherwise prescribed by law, any  
2 employer who is party to an agreement to pay or provide benefits or wage supplements and who  
3 without reasonable justification willfully fails or refuses to pay the amount or amounts necessary  
4 to provide such benefits or furnish such supplements within 30 days after such payments are  
5 required to be made shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined  
6 not less than \$100 nor more than \$500. When such employer is a corporation, the president,  
7 secretary, treasurer, or officer exercising responsibility for such nonpayment shall be guilty of the  
8 offense prohibited by this section.

9 (b) Any person who is responsible for ensuring that an entity complies with the  
10 requirements of a retirement plan administered by the Consolidated Public Retirement Board  
11 pursuant to §5-10D-1 et seq. of this code who knowingly and willfully fails to make employee or  
12 employer contributions to the retirement plan for a period of 60 days after the payment is due  
13 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100  
14 nor more than \$500 or shall be confined in jail for not more than six months, or both fined and  
15 confined.

- 16            (c) Conviction of a violation of §61-10-20(b) of this code constitutes prima facie evidence  
17   of official misconduct.