

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

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 If any participating public employer fails to make any payment due any retirement system
 2 administered by the Consolidated Public Retirement Board for a period of 60 days after the
 3 payment is due, the participating public employer shall become delinquent, and such delinquency
 4 shall be certified by the Consolidated Public Retirement Board to the State Auditor, the county
 5 commission of the county in which the participating public employer is located, and/or the sheriff
 6 of the county in which the participating public employer is located. If any participating public
 7 employer becomes delinquent, as provided herein, the State Auditor, county commission, and/or

8 sheriff is authorized and directed to withhold any money due such participating public employer
 9 by the state or county until such delinquency, together with regular interest thereon, from the date
 10 due until the delinquency is satisfied. Such money so withheld by the state auditor, county
 11 commission, and/or sheriff shall be paid to the applicable retirement system on behalf of the
 12 participating public 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 thirty days after such payments are
 5 required to be made, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be
 6 fined 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 public official who is responsible for ensuring that a public entity comply with the
 10 general laws and provisions of a public pension plan administered by the Consolidated Public
 11 Retirement Board pursuant to §5-10D-1 et seq. of this code who knowingly and willfully fails to
 12 make employee or employer contributions to the retirement plan shall be guilty of the larceny of
 13 the contributions owed, and, if the amount is \$1,000 or more, such public official shall be guilty of
 14 a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one
 15 nor more than 10 years, or, in the discretion of the court, be confined in jail not more than one
 16 year and shall be fined not more than \$2,500. If the amount is less than \$1,000, such public official
 17 shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term

18 not to exceed one year or fined not to exceed \$2,500, or both, in the discretion of the court.

NOTE: The purpose of this bill is to make it a criminal offense for any participating public employer of any retirement system administered by the Consolidated Public Retirement Board to fail to make required contributions, and authorizes the State Auditor, county commission and sheriff to withhold any money due the participating public employer by the state or county and to remit the monies to the applicable retirement system.

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