

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 431**

5 (By Senators Jenkins and McCabe)

6 \_\_\_\_\_  
7 [Originating in the Committee on Finance;  
8 reported March 22, 2013.]  
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10  
11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new section, designated §5-10D-11, relating  
13 to the liability of a participating public employer and its  
14 successor to pay delinquent retirement contributions,  
15 delinquency fees and related costs; and enforcement and  
16 collection of the costs by the Consolidated Public Retirement  
17 Board.

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

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

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

23 **§5-10D-11. Liability of participating public employer for**  
24 **delinquent retirement contributions; liability of**  
25 **participating public employer's successor for**

1                   **delinquent retirement contributions; lien for**  
2                   **delinquent contributions; collection by suit.**

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

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

21          (c) A transferee, successor or assignee of a participating  
22 public employer of a public retirement system administered pursuant  
23 to this article is liable for the payment of all employee  
24 retirement contributions, employer retirement contributions,  
25 delinquency fees and other fees, charges or costs related to the  
26 public retirement system, if the participating public employer does

1 not pay those amounts as provided in subsection (b) of this  
2 section.

3 (d) All amounts due to the Consolidated Public Retirement  
4 Board from a participating public employer under this article is a  
5 debt owed to the Consolidated Public Retirement Board enforceable  
6 by a lien on all assets of a participating public employer, or its  
7 transferee, successor or assignee within this state. The lien  
8 attaches to all assets of a participating public employer within  
9 this state, or all assets of its transferee, successor or assignee  
10 on the date that any amount owed to the Consolidated Public  
11 Retirement Board is due. If a participating public employer, or  
12 its transferee, successor or assignee fails to pay an amount owed  
13 to the Consolidated Public Retirement Board under this article for  
14 a period of more than sixty days, the Consolidated Public  
15 Retirement Board may enforce the lien against the participating  
16 public employer, or its transferee, successor or assignee by  
17 instituting an action in the Circuit Court of Kanawha County. In  
18 the event that the Consolidated Public Retirement Board institutes  
19 an action against a participating public employer, or its  
20 transferee, successor or assignee to enforce a lien, the  
21 Consolidated Public Retirement Board is entitled to recover the  
22 amounts identified in subsection (a) of this section and in  
23 addition to those amounts, is entitled to recover all fees and  
24 costs incurred by the Consolidated Public Retirement Board during  
25 the pendency of the action, including, without limitation, accrued  
26 interest, expert witness costs, filing fees, deposition costs and

1 reasonable attorney fees.

2       (e) If a section, subsection, subdivision, provision, clause  
3 or phrase of this article or its application to any person or  
4 circumstance is held unconstitutional or invalid, the  
5 unconstitutionality or invalidity does not affect other sections,  
6 subsections, subdivisions, provisions, clauses or phrases or  
7 applications of the article, and to this end each and every  
8 section, subsection, subdivision, provision, clause and phrase of  
9 this article are declared to be severable. The Legislature  
10 declares that it would have enacted the remaining sections,  
11 subsections, subdivisions, provisions, clauses and phrases of this  
12 article even if it had known that any sections, subsections,  
13 subdivisions, provisions, clauses and phrases of this article would  
14 be declared to be unconstitutional or invalid, and that it would  
15 have enacted this article even if it had known that its application  
16 to any person or circumstance would be held to be unconstitutional  
17 or invalid.