

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 431**

5 (SENATORS JENKINS AND MCCABE, *original sponsors*)

6 _____
7 [Passed April 8, 2013; in effect ninety days from passage.]
8 _____
9

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

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

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

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

22 **§5-10D-11. Liability of participating public employer for**
23 **delinquent retirement contributions; liability of**
24 **participating public employer's successor for**
25 **delinquent retirement contributions; lien for**

1 **delinquent contributions; collection by suit.**

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

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

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

1 section.

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

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