

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 a: (I) Employee retirement
6 contribution; (ii) employer retirement contribution; (iii)
7 delinquency fee; (iv) other fees, charges or costs related thereto;
8 or (v) any combination of (I) through (iv), 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 thereto, shall be paid within thirty days
18 of the date of applicable event identified in (I) through (iv).

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

1 amounts as provided in subsection (b) of this 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

1 interest, expert witness costs, filing fees, deposition costs and
2 reasonable attorney fees.

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

NOTE: The purpose of this bill is to hold liable any participating public employer owing delinquent retirement contributions to the board, to provide that a public employer's successor is liable for all delinquent retirement contributions and associated fees to be paid to the board within thirty days of termination of business, to provide that all debts owed the board be enforceable in county circuit court by attaching a lien on all assets of a public employer or its successor and creating a severability clause.

§5-10D-11 is new; therefore, it has been completely underscored.

The Committee on Finance moves to amend the title of the bill to read as follows:

H. B. 2822 - "A BILL 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."