

1 **Senate Bill No. 431**

2 (By Senators Jenkins and McCabe)

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4 [Introduced March 4, 2013; referred to the Committee on Pensions;

5 and then to the Committee on Finance.]

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**FISCAL
NOTE**

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10 A BILL 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 enforcement and
15 collection of the costs by the Consolidated Public Retirement
16 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**

1 **participating public employer's successor for**
2 **delinquent retirement contributions; lien for**
3 **delinquent contributions; collection by suit.**

4 (a) A participating public employer of a public retirement
5 system administered pursuant to this article that fails, for a
6 period of sixty days, to pay a: (i) Employee retirement
7 contribution; (ii) employer retirement contribution; (iii)
8 delinquency fee; (iv) other fees, charges or costs related thereto;
9 or (v) any combination of (i) through (iv), 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 thereto, shall be paid within thirty days
19 of the date of applicable event identified in (i) through (iv).

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

1 thereto, if the participating public employer does not pay those
2 amounts as provided in subsection (b) of this 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

1 the pendency of the action, including, without limitation, accrued
2 interest, expert witness costs, filing fees, deposition costs and
3 reasonable attorney fees.

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