

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 431**

(By Senators Jenkins and McCabe)

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[Originating in the Committee on Finance;  
reported March 22, 2013.]

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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 enforcement and collection of the costs by the Consolidated Public Retirement Board.

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

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

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

**§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.**

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

9 (b) If a participating public employer of a public  
10 retirement system administered pursuant to this article: (i)  
11 Sells all or substantially all of its stock or assets; (ii) merges  
12 with another entity; (iii) dissolves its business; or (iv)

13 participates, voluntarily or involuntarily, in an event which  
14 causes its business to terminate, all unpaid employee  
15 retirement contributions, employer retirement contributions,  
16 delinquency fees and other fees, charges, or costs related to  
17 participation in the public retirement system, shall be paid  
18 within thirty days of the date of applicable event identified in  
19 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  
22 pursuant to this article is liable for the payment of all  
23 employee retirement contributions, employer retirement  
24 contributions, delinquency fees and other fees, charges or  
25 costs related to participate in the public retirement system, if  
26 the participating public employer does not pay those amounts  
27 as provided in subsection (b) of this section.

28 (d) All amounts due to the Consolidated Public  
29 Retirement Board from a participating public employer under  
30 this article is a debt owed to the Consolidated Public  
31 Retirement Board enforceable by a lien on all assets of a

32 participating public employer, or its transferee, successor or  
33 assignee within this state. The lien attaches to all assets of a  
34 participating public employer within this state, or all assets of  
35 its transferee, successor or assignee on the date that any  
36 amount owed to the Consolidated Public Retirement Board  
37 is due. If a participating public employer, or its transferee,  
38 successor or assignee fails to pay an amount owed to the  
39 Consolidated Public Retirement Board under this article for  
40 a period of more than sixty days, the Consolidated Public  
41 Retirement Board may enforce the lien against the  
42 participating public employer, or its transferee, successor or  
43 assignee by instituting an action in the Circuit Court of  
44 Kanawha County. In the event that the Consolidated Public  
45 Retirement Board institutes an action against a participating  
46 public employer, or its transferee, successor or assignee to  
47 enforce a lien, the Consolidated Public Retirement Board is  
48 entitled to recover the amounts identified in subsection (a) of  
49 this section and in addition to those amounts, is entitled to

50 recover all fees and costs incurred by the Consolidated Public  
51 Retirement Board during the pendency of the action,  
52 including, without limitation, accrued interest, expert witness  
53 costs, filing fees, deposition costs and reasonable attorney  
54 fees.

55 (e) If a section, subsection, subdivision, provision, clause  
56 or phrase of this article or its application to any person or  
57 circumstance is held unconstitutional or invalid, the  
58 unconstitutionality or invalidity does not affect other  
59 sections, subsections, subdivisions, provisions, clauses or  
60 phrases or applications of the article, and to this end each and  
61 every section, subsection, subdivision, provision, clause and  
62 phrase of this article are declared to be severable. The  
63 Legislature declares that it would have enacted the remaining  
64 sections, subsections, subdivisions, provisions, clauses and  
65 phrases of this article even if it had known that any sections,  
66 subsections, subdivisions, provisions, clauses and phrases of  
67 this article would be declared to be unconstitutional or

68    invalid, and that it would have enacted this article even if it  
69    had known that its application to any person or circumstance  
70    would be held to be unconstitutional or invalid.