

H. B. 2822

(BY DELEGATE(S) PETHTEL, JONES, CRAIG, CANTERBURY,
KUMP, LYNCH AND STOWERS)

**[BY REQUEST OF THE CONSOLIDATED
PUBLIC RETIREMENT BOARD]**

[Introduced March 5, 2013; referred to the
Committee on Pensions and Retirement then Finance.]

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 a: (i) Employee retirement contribu-
4 tion; (ii) employer retirement contribution; (iii) delinquency fee;
5 (iv) other fees, charges or costs related thereto; or (v) any
6 combination of (i) through (iv), is liable for the amount pursuant
7 to this article.

8 (b) If a participating public employer of a public retirement
9 system administered pursuant to this article: (i) Sells all or
10 substantially all of its stock or assets; (ii) merges with another
11 entity; (iii) dissolves its business; or (iv) participates, voluntarily
12 or involuntarily, in an event which causes its business to
13 terminate, all unpaid employee retirement contributions,
14 employer retirement contributions, delinquency fees and other

15 fees, charges, or costs related thereto, shall be paid within thirty
16 days of the date of applicable event identified in (i) through (iv).

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

24 (d) All amounts due to the Consolidated Public Retirement
25 Board from a participating public employer under this article is
26 a debt owed to the Consolidated Public Retirement Board
27 enforceable by a lien on all assets of a participating public
28 employer, or its transferee, successor or assignee within this
29 state. The lien attaches to all assets of a participating public
30 employer within this state, or all assets of its transferee, succes-
31 or or assignee on the date that any amount owed to the Consoli-
32 dated Public Retirement Board is due. If a participating public
33 employer, or its transferee, successor or assignee fails to pay an
34 amount owed to the Consolidated Public Retirement Board under

35 this article for a period of more than sixty days, the Consolidated
36 Public Retirement Board may enforce the lien against the
37 participating public employer, or its transferee, successor or
38 assignee by instituting an action in the Circuit Court of Kanawha
39 County. In the event that the Consolidated Public Retirement
40 Board institutes an action against a participating public em-
41 ployer, or its transferee, successor, or assignee to enforce a lien,
42 the Consolidated Public Retirement Board is entitled to recover
43 the amounts identified in subsection (a) of this section and in
44 addition to those amounts, is entitled to recover all fees and costs
45 incurred by the Consolidated Public Retirement Board during the
46 pendency of the action, including, without limitation, accrued
47 interest, expert witness costs, filing fees, deposition costs and
48 reasonable attorney fees.

49 (e) If a section, subsection, subdivision, provision, clause or
50 phrase of this article or its application to any person or circum-
51 stance is held unconstitutional or invalid, the unconstitutionality
52 or invalidity does not affect other sections, subsections, subdivi-
53 sions, provisions, clauses or phrases or applications of the
54 article, and to this end each and every section, subsection,

55 subdivision, provision, clause and phrase of this article are
56 declared to be severable. The Legislature declares that it would
57 have enacted the remaining sections, subsections, subdivisions,
58 provisions, clauses and phrases of this article even if it had
59 known that any sections, subsections, subdivisions, provisions,
60 clauses and phrases of this article would be declared to be
61 unconstitutional or invalid, and that it would have enacted this
62 article even if it had known that its application to any person or
63 circumstance would be held to be unconstitutional 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."

