

1 **H. B. 2331**

2
3 (By Delegate Michael)

4 [Introduced January 12, 2011; referred to the
5 Committee on Pensions and Retirement then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §5-10-17 of the Code of West Virginia,
11 1931, as amended, relating to mental hygiene commissioners
12 eligibility for membership in the Public Employees Retirement
13 System.

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

15 That §5-10-17 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

18 **§5-10-17. Retirement system membership.**

19 The membership of the retirement system consists of the
20 following persons:

21 (a) All employees, as defined in section two of this article,
22 who are in the employ of a political subdivision the day preceding
23 the date it becomes a participating public employer and who

1 continue in the employ of the participating public employer on and
2 after that date shall become members of the retirement system; and
3 all persons who become employees of a participating public employer
4 on or after that date shall thereupon become members of the system;
5 except as provided in subdivisions (b) and (c) of this section.

6 (b) The membership of the Public Employees Retirement System
7 shall not include any person who is an active contributing member
8 of, or who has been retired by, any of the state teachers
9 retirement systems, the judges retirement system, any retirement
10 system of the West Virginia State Police, the deputy sheriff
11 retirement system or any municipal retirement system for either, or
12 both, police or firefighter; and the Bureau of Employment Programs,
13 by the Commissioner of the Bureau, may elect whether its employees
14 will accept coverage under this article or be covered under the
15 authorization of a separate enactment. ~~Provided, That~~ These
16 exclusions of membership do not apply to any member of the State
17 Legislature, the Clerk of the House of Delegates, the Clerk of the
18 State Senate or to any member of the legislative body of any
19 political subdivision provided he or she once becomes a
20 contributing member of the retirement system. ~~Provided, however,~~
21 ~~That~~ However, any retired member of the State Police Death,
22 Disability and Retirement Fund, the West Virginia State Police
23 Retirement System, the Deputy Sheriff Retirement System and any
24 retired member of any municipal retirement system for either, or

1 both, police or firefighter may on and after the effective date of
2 this section become a member of the retirement system as provided
3 in this article, without receiving credit for prior service as a
4 municipal police officer or firefighter or as a member of the State
5 Police Death, Disability and Retirement Fund, the West Virginia
6 State Police Retirement System or the Deputy Sheriff Retirement
7 System. ~~Provided further, That~~ Also, any retired member of the
8 State Police Death, Disability and Retirement Fund, the West
9 Virginia State Police Retirement System, the Deputy Sheriff
10 Retirement System and any retired member of any municipal
11 retirement system for either, or both, police or firefighters, who
12 begins participation in the retirement system established in this
13 article on or after July 1, 2005, may not receive a combined
14 retirement benefit in excess of one hundred five percent of the
15 member's highest annual salary earned while either a member of the
16 retirement system established in this article or while a member of
17 the other retirement system or systems from which he or she
18 previously retired when adding the retirement benefit from the
19 retirement system created in this article to the retirement benefit
20 received by that member from the other retirement system or systems
21 set forth herein from which he or she previously retired. ~~And~~
22 ~~provided further, That~~ In addition, the membership of the
23 retirement system does not include any person who becomes employed
24 by the Prestera Center for Mental Health Services, Valley

1 Comprehensive Mental Health Center, Westbrook Health Services or
2 Eastern Panhandle Mental Health Center on or after July 1, 1997.
3 ~~And provided further, That~~ Finally, membership of the retirement
4 system does not include any person who becomes a member of the
5 federal Railroad Retirement Act on or after July 1, 2000.

6 (c) Any member of the State Legislature, the Clerk of the
7 House of Delegates, the Clerk of the State Senate and any employee
8 of the State Legislature whose employment is otherwise classified
9 as temporary and who is employed to perform services required by
10 the Legislature for its regular sessions or during the interim
11 between regular sessions and who has been or is employed during
12 regular sessions or during the interim between sessions in seven
13 consecutive calendar years, as certified by the Clerk of the House
14 in which the employee served, or any member of the legislative body
15 of any other political subdivision shall become a member of the
16 retirement system provided he or she notifies the retirement system
17 in writing of his or her intention to be a member of the system and
18 files a membership enrollment form as prescribed by the Board of
19 Trustees, and each person, upon filing his or her written notice to
20 participate in the retirement system, shall by that act authorize
21 the Clerk of the House of Delegates or the Clerk of the State
22 Senate or such person or legislative agency as the legislative body
23 of any other political subdivision shall designate to deduct the
24 member's contribution, as provided in section twenty-nine-b of this

1 article, and after the deductions have been made from the member's
2 compensation, the deductions shall be forwarded to the retirement
3 system.

4 (d) Any mental hygiene commissioner appointed by a circuit
5 court shall be eligible for membership if he or she has been
6 appointed as a mental hygiene commissioner and served in that
7 position continuously for five consecutive years and if he or she
8 notifies the retirement system in writing of his or her intention
9 to be a member of the system and files a membership enrollment form
10 as prescribed by the Board of Trustees, and each person, upon
11 filing his or her written notice to participate in the retirement
12 system, shall by that act authorize the Supreme Court of Appeals to
13 deduct the member's contribution, as provided in section twenty-
14 nine-b of this article, and after the deductions have been made
15 from the member's compensation, the deductions shall be forwarded
16 to the retirement system. However, a mental hygiene commissioner
17 may only be credited one year of service for each two years of work
18 as a mental hygiene commissioner.

19 ~~(d)~~ (e) If question arises regarding the membership status of
20 any employee, the Board of Trustees has the final power to decide
21 the question.

22 ~~(e)~~ (f) Any individual who is a leased employee is not
23 eligible to participate in the system. For the purposes of this
24 article, the term "leased employee" means any individual who

1 performs services as an independent contractor or pursuant to an
2 agreement with an employee leasing organization or other similar
3 organization. If a question arises regarding the status of an
4 individual as a leased employee, the board has final authority to
5 decide the question.

NOTE: The purpose of this bill is to provide that certain
mental hygiene commissioners are eligible for membership in the
Public Employees Retirement System.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.