

1 **SECOND ENGROSSMENT**

2 **Committee Substitute**

3 **for**

4 **H. B. 2934**

5  
6 (By Delegates Pasdon, Butler, Moffatt, Waxman, Storch, Espinosa,  
7 Lane, Kessinger, Sobonya, Howell and Duke)

8 [Originating in the Committee on Education.]

9 (February 25, 2015)

10  
11 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
12 designated §18-2E-5b, relating to repealing the certain common core standards and certain  
13 subsequent standards; making findings with respect to a thorough and efficient education and  
14 role of the Legislature; making findings with respect to the Elementary and Secondary  
15 Education act and the affect of certain amendments; making findings with respect to changes  
16 in standards and assessments; making findings with respect to reverse in trend of improving  
17 student National Assessment of Educational Progress scores and likely causes; making  
18 findings with respect to ESEA flexibility relief, state application and subsequent actions; and  
19 making findings with respect to school funding sources, the influence of federal funds and  
20 the use of federal funds to coerce changes in standards, assessments and accountability  
21 system; making findings with respect to inappropriate usurpation of state sovereignty over  
22 public education and results sufficient to impede process for improving education; directing  
23 certain actions by state board in response to findings; directing comprehensive review of

1 standards by board to ensure repeal of certain common core standards and certain subsequent  
2 standards; prohibiting certain assessments; ensuring certain college and career ready  
3 standards are aligned and revised as needed; ensuring adequate and appropriate curriculum  
4 and instructional strategies, sufficient training and professional development, and  
5 information and resources to engage and assist parents; directing state board appoint  
6 stakeholder commission to participate in review with certain legislative member  
7 appointments; directing state board appointment of standards development committees to  
8 advise and assist commission and providing for member selection and qualifications;  
9 directing state board conduct regional town hall meetings with certain format for discussion  
10 and input; directing suspension of use of summative assessment scores except for certain  
11 purpose until certain date; directing limit on number of statewide summative assessment per  
12 year; directing prohibition of collection and disclosure of certain student information;  
13 directing regular information to Legislature on actions with respect to standards, assessment,  
14 accountability and capacity building; providing responsibilities and structure of standards  
15 development committees; directing certain actions in response to findings by Governor,  
16 Legislature, state board and state superintendent with respect to reauthorization of  
17 Elementary and Secondary Education Act; and requiring monitoring by legislative oversight  
18 commission.

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

20 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
21 section, designated §18-2E-5b, to read as follows:

22 **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

1 **§18-2E-5b. Legislative findings and direction with respect to ending federal intrusion on**

2 **West Virginia's process for improving education.**

3 (a) The Legislature finds that:

4 (1) As the constitutional body charged with providing for a thorough and efficient system of  
5 schools, the Legislature has enacted, by general law, a process for improving education that includes  
6 four primary elements, these being: Standards, assessments, accountability and capacity building  
7 to ensure that students attain the knowledge and skills that result from a thorough and efficient  
8 system of education;

9 (2) The Legislature has the authority and the responsibility to establish and be engaged  
10 constructively in the determination of the knowledge and skills that students should know and be  
11 able to do as the result of a thorough and efficient education and this determination is made by using  
12 the process for improving education to determine when school improvement is needed, by evaluating  
13 the results and the efficiency of the system of schools, by ensuring accountability and by providing  
14 for the necessary capacity and its efficient use;

15 (3) Congressional reauthorization of the Elementary and Secondary Education Act (ESEA),  
16 known as the No Child Left Behind Act (NCLB), required states to implement state specific criterion  
17 referenced summative assessment tests, establish accountability measures and annual targets for  
18 adequate yearly progress through a U. S. Department of Education approved process, and impose  
19 designations and consequences on schools for failure to meet the annual targets necessary for all  
20 students to score at the proficient level on the tests by 2014;

21 (4) West Virginia moved to the new curriculum-based testing program during the 2003-04  
22 school year with the WESTEST developed under a contract with CTB/McGraw Hill as a part of its

1 compliance plan to meet the NCLB requirements;

2 (5) In March 2006, the West Virginia Board of Education assembled teams of master teachers  
3 to develop 21<sup>st</sup> Century Content Standards and Objectives for West Virginia Schools to incorporate  
4 higher levels of critical thinking and problem solving skills and improve alignment with other  
5 national and international assessments. First placed on public comment for 60 days in July, 2005,  
6 these standards underwent several additional reviews by state and national experts and the public and  
7 several revisions before final adoption by the West Virginia Board of Education and placed into  
8 effect July 1, 2008;

9 (6) In May 2009, WESTEST 2, a new statewide assessment aligned with the new 21<sup>st</sup> Century  
10 Content Standards and Objectives, was administered for the first time.

11 (7) Also in 2009, West Virginia joined other states in an effort to develop Common Core  
12 State Standards. The West Virginia Board of Education, as recorded in the minutes of its May 12,  
13 2010, meeting, unanimously approved the Common Core State Standards for English Language Arts  
14 and Literacy in History/Social Studies and Science and the Common Core State Standards for  
15 Mathematics for alignment with West Virginia's 21st Century Content Standards and Objectives for  
16 implementation beginning in fall 2011. Shortly thereafter, separate committees in these two subject  
17 areas, each consisting of classroom teachers and representatives of higher education faculty, began  
18 this work and placed a particular standard into the West Virginia framework only when the best  
19 available evidence indicated that its mastery was essential for college and career readiness;

20 (8) Following this process and a public comment period, the West Virginia Board of  
21 Education adopted Next Generation Content Standards and Objectives to take effect: Kindergarten -  
22 August 15, 2011; first grade - July 1, 2012; second grade - July 1, 2013; and third through twelfth

1 grades - July 1, 2014;

2 (9) A requirement for college and career readiness standards enacted during the 2013 regular  
3 legislative session in §18-2-39 directs the state board, the Higher Education Policy Commission and  
4 the Council for Community and Technical College Education to collaborate in formally adopting  
5 uniform and specific college and career readiness standards for English/language arts and math that  
6 allow for a determination of whether a student needs to enroll in a post-secondary remedial course.  
7 The results on the statewide student assessment in grade eleven must be used to determine whether  
8 a student has met the college and career readiness standards in these subjects or allow for the  
9 student's enrollment in transitional courses in the twelfth grade if necessary;

10 (10) A decade-long trend of gradually closing the gap with national averages in math and  
11 scoring near or above the national averages in reading for West Virginia student scores on the  
12 National Assessment of Educational Progress (NAEP) reversed course beginning in 2001. This  
13 unintended negative consequence was likely the result of accumulated inconsistencies and loss of  
14 focus on sustained instructional improvement as teachers continually readjusted to frequently  
15 changing standards and assessments, and the system goal became how to avoid the harsh  
16 consequences of failing to meet the AYP targets required by NCLB as they increasing became  
17 statistically unattainable. As the 2014 deadline approached for 100% of students scoring proficient  
18 on the state summative assessment , it was apparent that no schools in West Virginia would achieve  
19 this NCLB goal and, therefore, all schools would be labeled as failing and face the required  
20 sanctions. In the face of long over due reauthorization of the Elementary and Secondary Education  
21 Act, schools in West Virginia, like most across the country, had little choice but to seek the relief  
22 offered under the ESEA Flexibility process;

1           (11) West Virginia applied for flexibility during the 3<sup>rd</sup> application window, due September  
2 6, 2012. The ESEA Flexibility Request required states to address three principles:

3           (A) Principle 1: College and Career-Ready Expectations for All Students;

4           (B) Principle 2: State-Developed Differentiated Recognition, Accountability and Support;  
5 and

6           (C) Principle 3: Supporting Effective Instruction and Leadership;

7           (12) West Virginia met Principle 1 with the adopted Next Generation Standards for English  
8 Language Arts and Mathematics, met Principle 2 by designing an accountability method and support  
9 system for schools recognized as success, transition, focus, support or priority schools based on rates  
10 of student academic growth and achievement, and met Principle 3 by modifying the statutory  
11 professional personnel performance evaluation system to place the entire measure of student learning  
12 for teachers of English Language Arts and Mathematics in the tested grades on the state summative  
13 assessment. West Virginia's ESEA Flexibility was approved in May, 2013;

14           (13) The state board has since also modified West Virginia's accountability system by  
15 adopting an A-F grading system for schools to replace the success, transition, focus, support and  
16 priority designations approved in the initial flexibility request. It also has modified it's rules for  
17 Next Generation Standards to comply with WV Code by adding twelfth grade transition courses in  
18 English Language Arts and Mathematics for students below the college and career ready level; and

19           (14) ESEA Flexibility is subject to continued monitoring by the U. S. Department of  
20 Education and is subject to renewal due March 31, 2015.

21           (b) The Legislature further finds that the funding for West Virginia public schools comes  
22 from about 59% state and 31% local revenue sources with the federal government contributing only

1 about 10% of the state’s total school funding. The federal funding amounted to about \$362 million  
2 for the 2012-13 school year. However, heavy reliance on this federal funding to supplement the  
3 education of disadvantaged and special needs students and for child nutrition has provided leverage  
4 for the federal government to exert substantial influence over state policy and spending in the areas  
5 of standards, assessment, accountability and capacity building. Whereas the federal government may  
6 require accountability for the funds it expends for certain educational purposes, its use of these funds  
7 to coerce fundamental changes in state standards, assessments, accountability and capacity building,  
8 the core components of the process for improving education recognized by the court as the  
9 Legislature’s method for fulfilling its obligation under the West Virginia Constitution to provide for  
10 a thorough and efficient education, is a highly inappropriate usurpation of state sovereignty over  
11 public education. However well intentioned the efforts outlined in the above findings may have  
12 been, the accumulated inconsistencies, the loss of focus on sustained instructional improvement and  
13 the continuing discord among parents, citizens and educators surrounding the standards, the  
14 curriculum, the instructional strategies being employed to teach them and the assessments of student  
15 learning, are sufficient so as to impede the process for improving education, result in student  
16 performance below what is expected from a thorough and efficient system of schools, and erode  
17 public support.

18 (c) In response to the foregoing findings, the Legislature hereby directs that the West Virginia  
19 Board of Education shall on or before July 16, 2015:

20 (1) Undertake a comprehensive review of the standards to ensure that:

21 (A) The Common Core Standards as approved by the Board in May, 2010, and the  
22 subsequent Next Generation Content Standards and Objectives as approved by the Board in August

1 2011, are repealed;

2 (B) No assessments designed to assess student learning based on the common core standards,  
3 including but not limited to the Smarter Balanced Assessment, will be used in West Virginia public  
4 schools;

5 (C) West Virginia’s standards are adequate and appropriately aligned college and career ready  
6 standards for West Virginia as required in section thirty-nine, article two of this chapter;

7 (D) West Virginia’s college and career ready standards are revised as needed to ensure that  
8 West Virginia students will be adequately prepared for college and careers;

9 (E) School systems in West Virginia have adequate and appropriate curriculum and  
10 instructional strategies to provide instruction that will enable students to achieve the standards;

11 (F) Sufficient training and professional development has been provided to enable teachers  
12 and leaders to accurately articulate the standards and objectives of the curriculum and instructional  
13 strategies, to implement them and to improve teaching and learning; and

14 (G) Schools and school systems have information and resources appropriate to engage and  
15 assist parents with helping improve the learning of their children;

16 (2) Appoint a stakeholder commission including parents, educators, teacher organizations,  
17 administrators, a representative of the West Virginia School Board Association, employers and  
18 legislators to participate in the standards review, except that the legislator appointments shall be  
19 three Senators appointed by the President of the Senate, one of whom shall be the chair of the Senate  
20 Education Committee and one of whom shall be a member of the minority party, and three Delegates  
21 appointed by the Speaker of the House, one of whom shall be the chair of the House Education  
22 Committee and one of whom shall be a member of the minority party;

1           (3) Appoint standards development committees as provided in subsection (d) of this section  
2 to advise and assist the commission in developing and recommending West Virginia college and  
3 career ready standards to the State Board;

4           (4) Conduct at least four regional town hall style meetings that include both the presentation  
5 of information on West Virginia's college and career ready standards and an opportunity for  
6 discussion and input from the public in a small group format. This input shall be incorporated in the  
7 comprehensive review undertaken by the state board;

8           (5) Except for the purposes of section thirty-nine, article two of this chapter, suspend the use  
9 of student test score results on any state summative assessment for any purpose other than strategic  
10 planning for school improvement, required reporting and professional development until school year  
11 2016-17;

12           (6) Not require more than one statewide summative assessment per school year;

13           (7) Prohibit the collection of confidential student information and the disclosure of personally  
14 identifiable student information in accordance with section five-h, article two of this chapter; and

15           (8) Regularly inform the Legislature of any actions taken with respect to standards,  
16 assessments, accountability and capacity building through reporting to the Legislative Oversight  
17 Commission on Education Accountability.

18           (d) The State Board shall establish two standards development committees: the English  
19 Language Arts Standards Development Committee and the Mathematics Standards Development  
20 Committee. The standards committees are responsible for developing standards for the subject area  
21 within the committee's expertise to advise and assist the commission in recommending West  
22 Virginia college and career ready standards to the State Board. To establish the committees, the

1 State Board shall:

2 (1) Request district superintendents to nominate teachers for participation on standards  
3 development committees;

4 (2) Each district superintendent may nominate one teacher for each subgroup in the English  
5 language arts development committee and one teacher for each subgroup in the Math development  
6 committee. The superintendents shall use the one page nomination form developed by the state  
7 Board;

8 (3) Each standards development committee shall include three subgroups; one for standards  
9 in grades PreK through five, one for grades six through eight and one for grades nine through twelve.

10 (4) Each subgroup shall be comprised of four teachers from nominees by the district  
11 superintendents, selected by the State Board in conjunction with the chair and vice chair of each  
12 respective committee;

13 (5) The members of the English language arts subgroups shall:

14 (A) Have seven years of teaching experience at the educational level of the subgroup in  
15 which they seek to participate;

16 (B) Have a current teaching assignment at one of the grade levels of the subgroup in which  
17 they seek to participate;

18 (C) For those seeking placement in either the grades six through eight subgroup or the grades  
19 nine through twelve subgroup, possess either at least Minor in English or listed courses completed  
20 in literature, composition or rhetoric; and

21 (D) For those in the PreK through grade five subgroup, have completed reading methods  
22 course work;

- 1           (6) The members of the Mathematics subgroups shall:
- 2           (A) Have seven years experience at the educational level of the subgroup in which they seek  
3 to participate;
- 4           (B) Have a current teaching assignment at one of the grade levels of the subgroup in which  
5 they seek to participate; and
- 6           (C) For those seeking placement in either the grades six through eight subgroup or the grades  
7 nine through twelve subgroup, possess at least a minor in mathematics, science, or engineering.
- 8           (7) The English Language Arts Standards Development Committee will be comprised of the  
9 following members:
- 10          (A) The English Language Arts chair on the commission, who will chair the English  
11 Language Arts Development Committee;
- 12          (B) An English Language Arts vice-chair, selected by the English language arts chair. The  
13 vice-chair must be a teaching faculty member of the English language arts department of a four-year  
14 undergraduate university or college and shall not be a member of the faculty of the education  
15 department of the institution;
- 16          (C) English Language Arts Subgroup 1: Four current teachers from PreK through fifth grade;
- 17          (D) English Language Arts Subgroup 2: Four current middle school teachers grades six  
18 through eight;
- 19          (E) English Language Arts Subgroup 3: Four current high school teachers at each grade level  
20 nine through twelve; and
- 21          (F) One Librarian nominated by the West Virginia Library Association; and
- 22          (8) The Mathematics Standards Development committee will be comprised of the following

1 members:

2 (A) The mathematics chair on the commission who will chair the Mathematics Standards  
3 Development Committee;

4 (B) The mathematics vice-chair who will be selected by the mathematics chair and who is  
5 currently a teaching faculty member in an undergraduate mathematics department of a four-year  
6 university or college with a dissertation in mathematics and who shall not be a member of the  
7 Education Department of the institution;

8 (C) Mathematics Subgroup 1: Four current teachers from the grades PreK through grade five;

9 (D) Mathematics Subgroup 2: Four current middle school teachers grades six through eight;

10 (E) Mathematics Subgroup 3: Four current high school teachers at each grade level nine  
11 through twelve, including one Algebra I teacher, one Geometry teacher, one Algebra II teacher, and  
12 one Precalculus or Trigonometry teacher; and

13 (F) One Engineer nominated by a state engineering professional organization or university  
14 faculty.

15 (e) In response to the foregoing findings, the Legislature hereby further directs that the  
16 Governor, the Legislature, the West Virginia Board of Education and the State Superintendent of  
17 Schools, individually and through their membership on their respective national organizations, the  
18 National Governor's Association, the National Conference of State Legislatures, the National  
19 Association of State Boards of Education, and the Council of Chief State School Officers, shall  
20 advise the state's congressional delegation and implore Congress and the President to proceed  
21 expeditiously with reauthorization of the Elementary and Secondary Education Act in a manner that:

22 (1) Recognizes that the federal government has no constitutional authority to set state

1 educational standards, to mandate the use or adoption of any common core standards, or to determine  
2 how the state’s children will be educated. Any partnership with the federal government is solely at  
3 the discretion of the state;

4 (2) Recognizes that the selection of educational standards and assessments for the public  
5 schools is the exclusive right of state and local education authorities; and

6 (3) Voids all current processes and agreements under which federal monitoring and prior  
7 approval of state initiatives in the broad areas of standards, assessments, accountability and capacity  
8 building exceed the scope necessary for federal accountability for federal funds for the purposes  
9 allocated.

10 (f) The Legislative Oversight Commission on Education Accountability shall monitor and  
11 inform the Legislature on implementation of this section.