

1 **ENGROSSED**

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 common core standards; making findings
13 with respect to a thorough and efficient education and role of the Legislature; making
14 findings with respect to the Elementary and Secondary Education act and the affect of certain
15 amendments; making findings with respect to changes in standards and assessments; making
16 findings with respect to reverse in trend of improving student National Assessment of
17 Educational Progress scores and likely causes; making findings with respect to ESEA
18 flexibility relief, state application and subsequent actions; and making findings with respect
19 to school funding sources, the influence of federal funds and the use of federal funds to
20 coerce changes in standards, assessments and accountability system; making findings with
21 respect to inappropriate usurpation of state sovereignty over public education and results
22 sufficient to impede process for improving education; directing certain actions by state board
23 in response to findings; providing comprehensive review of standards by board to ensure

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

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

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

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

20 **§18-2E-5b. Legislative findings and direction with respect to ending federal intrusion on**
21 **West Virginia’s process for improving education.**

22 **(a) The Legislature finds that:**

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

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

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

18 (4) West Virginia moved to the new curriculum-based testing program during the 2003-04
19 school year with the WESTEST developed under a contract with CTB/McGraw Hill as a part of its
20 compliance plan to meet the NCLB requirements;

21 (5) In March 2006, the West Virginia Board of Education assembled teams of master teachers
22 to develop 21st Century Content Standards and Objectives for West Virginia Schools to incorporate

1 higher levels of critical thinking and problem solving skills and improve alignment with other
2 national and international assessments. First placed on public comment for 60 days in July, 2005,
3 these standards underwent several additional reviews by state and national experts and the public and
4 several revisions before final adoption by the West Virginia Board of Education and placed into
5 effect July 1, 2008;

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

8 (7) Also in 2009, West Virginia joined other states in an effort to develop Common Core
9 State Standards. The West Virginia Board of Education, as recorded in the minutes of its May 12,
10 2010, meeting, unanimously approved the Common Core State Standards for English Language Arts
11 and Literacy in History/Social Studies and Science and the Common Core State Standards for
12 Mathematics for alignment with West Virginia's 21st Century Content Standards and Objectives for
13 implementation beginning in fall 2011. Shortly thereafter, separate committees in these two subject
14 areas, each consisting of classroom teachers and representatives of higher education faculty, began
15 this work and placed a particular standard into the West Virginia framework only when the best
16 available evidence indicated that its mastery was essential for college and career readiness;

17 (8) Following this process and a public comment period, the West Virginia Board of
18 Education adopted Next Generation Content Standards and Objectives to take effect: Kindergarten -
19 August 15, 2011; first grade - July 1, 2012; second grade - July 1, 2013; and third through twelfth
20 grades - July 1, 2014;

21 (9) A requirement for college and career readiness standards enacted during the 2013 regular
22 legislative session in §18-2-39 directs the state board, the Higher Education Policy Commission and

1 the Council for Community and Technical College Education to collaborate in formally adopting
2 uniform and specific college and career readiness standards for English/language arts and math that
3 allow for a determination of whether a student needs to enroll in a post-secondary remedial course.
4 The results on the statewide student assessment in grade eleven must be used to determine whether
5 a student has met the college and career readiness standards in these subjects or allow for the
6 student's enrollment in transitional courses in the twelfth grade if necessary;

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

20 (11) West Virginia applied for flexibility during the 3rd application window, due September
21 6, 2012. The ESEA Flexibility Request required states to address three principles:

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

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

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

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

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

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

18 (b) The Legislature further finds that the funding for West Virginia public schools comes
19 from about 59% state and 31% local revenue sources with the federal government contributing only
20 about 10% of the state's total school funding. The federal funding amounted to about \$362 million
21 for the 2012-13 school year. However, heavy reliance on this federal funding to supplement the
22 education of disadvantaged and special needs students and for child nutrition has provided leverage

1 for the federal government to exert substantial influence over state policy and spending in the areas
2 of standards, assessment, accountability and capacity building. Whereas the federal government may
3 require accountability for the funds it expends for certain educational purposes, its use of these funds
4 to coerce fundamental changes in state standards, assessments, accountability and capacity building,
5 the core components of the process for improving education recognized by the court as the
6 Legislature's method for fulfilling its obligation under the West Virginia Constitution to provide for
7 a thorough and efficient education, is a highly inappropriate usurpation of state sovereignty over
8 public education. However well intentioned the efforts outlined in the above findings may have
9 been, the accumulated inconsistencies, the loss of focus on sustained instructional improvement and
10 the continuing discord among parents, citizens and educators surrounding the standards, the
11 curriculum, the instructional strategies being employed to teach them and the assessments of student
12 learning, are sufficient so as to impede the process for improving education, result in student
13 performance below what is expected from a thorough and efficient system of schools, and erode
14 public support.

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

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

18 (A) The Common Core Standards as approved by the Board in May, 2010, and the
19 subsequent Next Generation Content Standards and Objectives as approved by the Board in August
20 2011, are repealed;

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

1 schools;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) Each district superintendent may nominate one teacher for each subgroup in the English

1 language arts development committee and one teacher for each subgroup in the Math development
2 committee. The superintendents shall use the one page nomination form developed by the state
3 Board;

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

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

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

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

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

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

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

19 (6) The members of the Mathematics subgroups shall:

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

22 (B) Have a current teaching assignment at one of the grade levels of the subgroup in which

1 they seek to participate; and

2 (C) For those seeking placement in either the grades six through eight subgroup or the grades
3 nine through twelve subgroup, possess at least a minor in mathematics, science, or engineering.

4 (7) The English Language Arts Standards Development Committee will be comprised of the
5 following members:

6 (A) The English Language Arts chair on the commission, who will chair the English
7 Language Arts Development Committee;

8 (B) An English Language Arts vice-chair, selected by the English language arts chair. The
9 vice-chair must be a teaching faculty member of the English language arts department of a four-year
10 undergraduate university or college and shall not be a member of the faculty of the education
11 department of the institution;

12 (C) English Language Arts Subgroup 1: Four current teachers from PreK through fifth grade;

13 (D) English Language Arts Subgroup 2: Four current middle school teachers grades six
14 through eight;

15 (E) English Language Arts Subgroup 3: Four current high school teachers at each grade level
16 nine through twelve; and

17 (F) One Librarian nominated by the West Virginia Library Association; and

18 (8) The Mathematics Standards Development committee will be comprised of the following
19 members:

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

22 (B) The mathematics vice-chair who will be selected by the mathematics chair and who is

1 currently a teaching faculty member in an undergraduate mathematics department of a four-year
2 university or college with a dissertation in mathematics and who shall not be a member of the
3 Education Department of the institution;

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

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

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

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

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

18 (1) Recognizes that the federal government has no constitutional authority to set state
19 educational standards, to mandate the use or adoption of any common core standards, or to determine
20 how the state's children will be educated. Any partnership with the federal government is solely at
21 the discretion of the state;

22 (2) Recognizes that the selection of educational standards and assessments for the public

1 schools is the exclusive right of state and local education authorities; and

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

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