

H. B. 2934

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

[Introduced February 24, 2015; referred to the
Committee on Education.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-5b, relating to repealing the common core standards; making findings with respect to frequent changes in standards and assessments, increasing federal intrusion on West Virginia's Process for Improving Education, including standards, assessments and accountability system; making findings with respect to inappropriate usurpation of state sovereignty over public education; making findings with respect to school funding sources; making findings with respect to ESEA flexibility relief; directing actions by Governor, Legislature, state board and state superintendent with respect to reauthorization of Elementary and Secondary Education Act; directing comprehensive standards review by state board; directing repeal of Common Core Standards; directing college and career standards; suspending use of state summative assessment results except for limited purposes; requiring information and reporting; and monitoring by Legislative Oversight commission.

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

1 section, designated §18-2E-5b, to read as follows:

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

3 **§18-2E-5b. Legislative findings and direction with respect to ending federal intrusion on**
4 **West Virginia's process for improving education.**

5 (a) The Legislature finds that:

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

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

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

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

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

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

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

22 (8) Following this process and a public comment period, the West Virginia Board of

1 Education adopted Next Generation Content Standards and Objectives to take effect: Kindergarten -
2 August 15, 2011; first grade - July 1, 2012; second grade - July 1, 2013; and third through twelfth
3 grades - July 1, 2014;

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

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

1 Secondary Education Act, schools in West Virginia, like most across the country, had little choice
2 but to seek the relief offered under the ESEA Flexibility process;

3 (11) West Virginia applied for flexibility during the 3rd application window, due September
4 6, 2012. The ESEA Flexibility Request required states to address three principles:

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

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

7 and

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

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

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

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

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

20 (c) In response to the foregoing findings, the Legislature hereby directs the following:

21 (1) The Governor, the Legislature, the West Virginia Board of Education and the State
22 Superintendent of Schools, individually and through their membership in their respective national

1 organizations, the National Governor's Association, the National Conference of State Legislatures,
2 the National Association of State Boards of Education, and the Council of Chief State School
3 Officers, shall advise the state's congressional delegation and implore Congress and the President
4 to proceed expeditiously with reauthorization of the Elementary and Secondary Education Act in a
5 manner that:

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

10 (B) Recognizes that the selection of educational standards and assessments for the public
11 schools is the exclusive right of state and local education authorities; and

12 (C) Voids all current processes and agreements under which federal monitoring and prior
13 approval of state initiatives in the broad areas of standards, assessments, accountability and capacity
14 building exceed the scope necessary for federal accountability for federal funds for the purposes
15 allocated.

16 (2) The West Virginia Board of Education shall:

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

18 (i) The Common Core Standards, as approved by the board in May, 2010, are repealed;

19 (ii) The standards are adequate and appropriately aligned college and career ready standards
20 for West Virginia as required in section thirty-nine, article two of this chapter;

21 (iii) The West Virginia college and career ready standards are revised as needed to ensure that
22 West Virginia students will be adequately prepared for college and careers;

- 1 (iv) School systems in West Virginia have adequate and appropriate curriculum and
2 instructional strategies to provide instruction that will enable students to achieve the standards;
- 3 (v) Sufficient training and professional development has been provided to enable teachers
4 and leaders to accurately articulate the standards and objectives of the curriculum and instructional
5 strategies, to implement them and to improve teaching and learning; and
- 6 (vi) Schools and school systems have information and resources appropriate to engage and
7 assist parents with helping improve the learning of their children;
- 8 (B) Appoint a stakeholder body including parents, educators, administrators and legislators
9 to participate in the standards review, except that the legislator appointments shall be three Senators
10 appointed by the President of the Senate, one of whom shall be the chair of the Senate Education
11 Committee, and three Delegates appointed by the Speaker of the House, one of whom shall be the
12 chair of the House Education Committee;
- 13 (C) Conduct at least four regional town hall style meetings that include both the presentation
14 of information on West Virginia's college and career ready standards and an opportunity for
15 discussion and input from the public in a small group format. This input shall be incorporated in the
16 comprehensive review undertaken by the state board;
- 17 (D) Except for the purposes of section thirty-nine, article two of this chapter, suspend the use
18 of student test score results on any state summative assessment for any purpose other than strategic
19 planning for school improvement and professional development until school year 2016-17; and
- 20 (E) Regularly inform the Legislature of any actions taken with respect to standards,
21 assessments, accountability and capacity building through reporting to the Legislative Oversight
22 Commission on Education Accountability.

- 1 (3) The Legislative Oversight Commission on Education Accountability shall monitor and
- 2 inform the Legislature on implementation of this section.

NOTE: The purpose of this bill is to repeal the Common Core State Standards. The bill establishes through a series of findings the increasing federal intrusion on West Virginia's Process for Improving Education, including its standards, assessments and accountability system and some of the negative consequences. It also makes findings with respect to this inappropriate usurpation of state sovereignty over public education. The bill directs action by the Governor, Legislature, state board and state superintendent with respect to reauthorization of Elementary and Secondary Education Act to recognize that standards, assessments, accountability and capacity building are the exclusive right of state and local education authorities and void processes and agreements that involve federal monitoring and approval. Finally, the bill requires a comprehensive review of the state standards, including appointment of a stakeholder body with legislator participation and town hall meetings, to ensure that West Virginia has adequate and appropriately aligned College and Career Ready Standards supported with curriculum, instructional strategies, professional development and parent resources. The use of state summative assessment results except for limited purposes are suspended until the 2016-17 school year.

This section is new; therefore it has been completely underscored.