

Senate Bill No. 362

(By Senators Boley, Blair, Karnes and Leonhardt)

[Introduced January 29, 2015; referred to the Committee on Education; and then to the
Committee on the Judiciary.]

**FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §18-1A-1, §18-1A-2, §18-1A-3, §18-1A-4, §18-1A-5, §18-1A-6, §18-1A-7,
12 §18-1A-8 and §18-1A-9, all relating to public school curricular standards and assessments;
13 prohibiting school board from ceding authority over curricular standards or student data to
14 federal government or private entities; prohibiting use of Common Core standards and
15 assessments; implementing temporary curricular standards; limiting use of statewide
16 assessments; prohibiting sharing of student-level data; creating the West Virginia Legislative
17 Education Standards Development Steering Commission and Education Standards
18 Development subcommittees; and prohibiting colleges in the state from denying admission
19 based on participation in Common Core programs or tests.

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

21 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
22 article, designated §18-1A-1, §18-1A-2, §18-1A-3, §18-1A-4, §18-1A-5, §18-1A-6, §18-1A-7,

1 §18-1A-8 and §18-1A-9, all to read as follows:

2 **ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.**

3 **§18-1A-1. Findings.**

4 The Legislature finds that parents have a right to direct the education of their children and
5 that, in order to exercise this right, parents must maintain the right to opt out of state assessments
6 without penalty to the student, teacher, school, school district or state.

7 **§18-1A-2. Definitions.**

8 For purposes of this section:

9 (a) "Commission" means the West Virginia Legislative Education Standards Development
10 Steering Commission.

11 (b) "Common Core" means the Common Core state standards adopted by the West Virginia
12 State Board of Education on May 12, 2010, and also referred to as the West Virginia Next
13 Generation Standards.

14 (c) "Common Core assessments" means the Smarter Balanced Assessments or any other
15 student assessments intended to measure student achievement in the common core standards.

16 (d) "Curricular plan" means the set of standards, developed by a standards subcommittee,
17 regarding the essential academic content and skills in a particular subject that students are expected
18 to know and be able to demonstrate at the completion of each grade level, as well as the method for
19 assessing whether students have attained such content and skills in the particular subject.

20 (e) "Curricular program" means the state's formal policy regarding the essential academic
21 content and skills that students are expected to know and be able to demonstrate at the completion
22 of each grade level, as well as the method for assessing whether students have attained such content

1 and skills.

2 (f) "Standards development subcommittee" means the English Language Arts Standards
3 Development Subcommittee or the Mathematics Standards Development Subcommittee.

4 **§18-1A-3. Development, establishment, and revision of curricular standards.**

5 (a) Notwithstanding any other provision of law to the contrary, effective July 1, 2015, the
6 State Board of Education may not continue to implement the academic content standards developed
7 by the Common Core State Standards Initiative in mathematics and English language arts or any
8 assessments currently implemented as part of the initiative. Any actions previously taken to adopt
9 or implement the common core state standards are void.

10 (b) Effective immediately, the West Virginia State Superintendent of Schools shall initiate
11 the procedure, outlined in the Smarter Balanced Assessment Consortium Governance Structure
12 Document (July 1, 2010, amended August 26, 2014), to withdraw the state from such consortium.
13 All statewide K12 tests and assessments shall be solely owned and solely controlled by the State of
14 West Virginia and may not be in any way conditioned on, linked to, or controlled by any government
15 or privately funded assessment consortium.

16 (c) The State of West Virginia shall retain sole control over the development, establishment,
17 and revision of curriculum standards established pursuant to this article. Neither the State Board of
18 Education nor any other state education entity, nor any state official, may join any consortium or any
19 other organization when participation in that consortium or organization would cede any measure
20 of control over any aspect of West Virginia public education to entities outside the state, nor may
21 any such person or entity condition or delay a decision on standards or curriculum on the decision
22 of any consortium, organization, any other state government, or the federal government. Only

1 curriculum standards that were developed under the sole authority of the State of West Virginia may
2 be adopted or implemented.

3 **§18-1A-4. Temporary curricular standards.**

4 For academic school years beginning after July 1, 2015, and ending before July 1, 2018, the
5 State Board of Education shall adopt the official Massachusetts Curriculum Frameworks
6 implemented by the Massachusetts Department of Elementary and Secondary Education in the year
7 2004 as the mandatory curriculum frameworks for English language arts, mathematics, science and
8 technology, and history and social science, at all grade levels of the schools in this state, with the
9 exception that West Virginia history studies shall be substituted for Massachusetts History studies.

10 **§18-1A-5. Limitations on use of statewide assessments.**

11 (a) Effective immediately, statewide academic assessments may be administered to students
12 not more than once per year, and no earlier than the final month of the academic year. The results
13 of a statewide assessment may not be used to determine a student's grade, to prevent promotion of
14 a student to the next grade-level or as the sole consideration to determine a student's curricular path.

15 (b) Effective immediately, statewide academic assessment results of students may not be used
16 for the professional evaluation of a teacher or as a justification to withhold funding to a school
17 district.

18 **§18-1A-6. Education Standards Development Steering Commission; powers and duties;
19 composition.**

20 (a) Steering Commission. --

21 (1) Beginning on July 1, 2015, the state board shall establish an Education Standards
22 Development Steering Commission to advise the state board in creating and adopting world-class

1 curriculum content standards that will lead to a broad liberal-arts education, resulting in college and
2 career readiness, for all students. The commission will have the following powers and duties:

3 (A) To establish a statewide curricular program;

4 (B) To review and approve the selected membership of each subcommittee of the
5 commission;

6 (C) To oversee the development of curricular standards by commission staff and
7 subcommittee members;

8 (2) The commission will be chaired by the chancellor of the West Virginia Higher Education
9 Policy Commission and will have the following additional members:

10 (A) Two members of the House of Delegates, selected by the Speaker of the House;

11 (B) Two members of the Senate, selected by the President of the Senate;

12 (C) An English Language Arts Development Chair, selected by the chair of the committee
13 who meets the following qualifications:

14 (I) Is employed as a teaching faculty member of the English languages arts department of an
15 undergraduate institution, which does not include the Education department of the institution; and

16 (ii) Has been nominated by the president of a four-year accredited university or college where
17 the candidate is employed.

18 (D) A Mathematics Standards Development Chair, selected by the chair of the committee,
19 who meets the following qualifications:

20 (I) Is employed as a teaching faculty member of the mathematics, science or engineering
21 department of an undergraduate institution, which does not include the Education department of the
22 institution; and

1 (ii) Has been nominated by the president of a four-year accredited university or college where
2 the candidate is employed.

3 (3) On or before January 1, 2016, the commission chair shall select and hire an Executive
4 Director, who will report directly to the commission. The Executive Director will have the following
5 duties:

6 (A) Supervise and provide support for the statewide standards and assessment development
7 processes;

8 (B) Ensure that complete and accurate reports of the standards and assessment development
9 process are provided to the Legislature, the Governor and the public at large;

10 (C) Work directly with and supervise English and mathematics chairs of academic standards
11 development subcommittees; and

12 (D) Work directly with and supervise document scribes hired by the commission.

13 (4) The commission chair shall select and hire two document scribes: an English languages
14 arts scribe and a mathematics scribe. Each scribe must have an expertise in his or her assigned
15 subject matter and be adept at using digital technology. Document scribes will have the following
16 duties:

17 (A) Process nominations of individuals for participation in subcommittees and prepare a
18 database of all such nominations;

19 (B) Schedule, secure sites and arrange for meeting facilitators for all in-person and virtual
20 meetings of the commission;

21 (C) Take detailed notes and minutes for commission meetings;

22 (D) Provide on-going updates on the standards-writing process to subcommittees and create

1 public reports;

2 (E) Create and maintain a commission website;

3 (F) Compile and respond to any public comments; and

4 (G) Maintain all drafts and revisions of curricular plans throughout the standards
5 development process.

6 (b) Curricular Standards Development Subcommittees --

7 (1) The commission shall establish two curricular standards subcommittees: the English
8 Language Arts Standards Development Subcommittee and the Mathematics Standards Development
9 Subcommittee. The curricular standards subcommittees will be responsible for developing and
10 recommending to the commission a curricular plan for the subject areas within the subcommittee's
11 expertise.

12 (2) The English Language Arts Standards Development Subcommittee will be comprised of
13 the following members:

14 (A) The English language arts chair on the commission.

15 (B) An English language arts vice-chair, selected by the English language arts chair. The
16 vice-chair must be a teaching faculty member of the English language arts department of a four-year
17 undergraduate university or college, which does not include the education department of the
18 institution;

19 (C) Four teachers, nominated by the local superintendents and approved by the commission,
20 all of whom currently teach a grade in the Pre K to fifth grade range and have the following
21 qualifications:

22 (I) Completed seven years of experience teaching in the Pre K to fifth grade range; and

1 (ii) Completed reading methods courses during undergraduate studies.

2 (D) Four teachers, nominated by the local superintendents and approved by the commission,
3 all of whom currently teach a grade in the sixth grade to eighth grade range and have the following
4 qualifications:

5 (I) Completed seven years of experience teaching in the sixth grade to eighth grade range;

6 (ii) Majored or minored in English during undergraduate studies;

7 (iii) Completed courses in reading methods during undergraduate studies; and

8 (iv) Completed courses in literature, composition and rhetoric.

9 (E) Four teachers, nominated by local superintendents and approved by the commission, all
10 of whom currently teach a grade in the ninth grade to twelfth grade range and have the following
11 qualifications:

12 (I) Completed seven years of experience teaching in the ninth grade to twelfth grade range;

13 (ii) Majored or minored in English during undergraduate studies; and

14 (iii) Completed courses in literature, composition or rhetoric.

15 (F) One librarian, nominated by the West Virginia Library Association;

16 (2) The Mathematics Standards Development Subcommittee will be comprised of the
17 following members:

18 (A) The mathematics chair on the commission;

19 (B) A mathematics vice-chair, selected by the mathematics chair, who is currently a teaching
20 faculty member of the mathematics, science or engineering department of a four-year undergraduate
21 university or college, which does not include the education department of the institution;

22 (C) Four teachers, nominated by local superintendents and approved by the commission, all

1 of whom currently teach a grade in the Pre K to fifth grade range and have completed seven years
2 of experience teaching in the Pre K to fifth grade range; and

3 (D) Four teachers, nominated by local superintendents and approved by the commission, all
4 of whom currently teach a grade in the sixth grade to eighth grade range and have the following
5 qualifications:

6 (I) Completed seven years of experience teaching in the sixth grade to eighth grade range;
7 and

8 (ii) Majored or minored in mathematics, science or engineering.

9 (E) Four teachers, currently teaching a grade in the ninth grade to twelfth grade range,
10 including one Algebra I teacher, one Geometry teacher, one Algebra II, Trigonometry or Precalculus
11 teacher, and one integrated mathematics teacher, nominated by local superintendents and approved
12 by the commission, all of whom have the following qualifications:

13 (I) Completed seven years of experience teaching in the ninth grade to twelfth grade range;
14 and

15 (ii) Majored or minored in mathematics, science or engineering.

16 (F) One engineer, nominated by the West Virginia Board of Registration for Professional
17 Engineers.

18 (c) Draft Review Subcommittees. --

19 (1) The commission shall establish two draft review subcommittees, a First Draft Review
20 Subcommittee and a Second Draft Review Subcommittee, responsible for reviewing preliminary
21 drafts of the commission's curricular plan.

22 (2) The First Draft Review Committee will be comprised of all standards development

1 subcommittee nominees who were not selected to serve on those subcommittees. The First Draft
2 Review Committee has the following responsibilities:

3 (A) Review all standards in the individual members' educational level expertise and
4 subject-matter expertise for appropriateness.

5 (B) Review all language in the draft for grammar and accuracy.

6 (3) The Second Draft Review Committee will be comprised of representatives of educational
7 and professional organizations with expertise in education or the academic subjects included in the
8 curricular plan, selected by the commission chair. The Second Draft Review Committee has the
9 following responsibilities:

10 (I) Review the curricular plan and advise on classroom application;

11 (ii) Review the curricular plan and advise on vertical alignment;

12 (iii) Provide comments on how the standards will affect the population the member
13 represents;

14 (d) External Evaluation Panel. --

15 (1) The commission shall establish the External Evaluation Panel, comprised of two
16 members, one of whom is a distinguished expert in English Language Arts and one of whom is a
17 distinguished expert in mathematics or science. The members of the External Evaluation Panel will
18 be selected by the commission based on their qualifications.

19 (2) The External Evaluation Panel shall review and revise the second draft of the curricular
20 plan. The External Evaluation Panel shall submit the final draft, along with a report on the quality
21 of the academic standards in the final draft, to the commission and to the Legislature.

22 **§18-1A-7. Procedure for development of curricular standards.**

1 (a) Each standards development subcommittee shall select for use a highly-rated set of pre-
2 2009 set of state standards as the foundation blueprint for an academic plan.

3 (1) The set of state standards used for an English language arts blueprint shall be drawn from:
4 the pre-2010 California standards; the 2006 Indiana standards; the Massachusetts 2001 standards;
5 or "An English Language Arts Curriculum Framework for American Schools: A Model," released
6 by Sandra Stotsky in 2013.

7 (2) The set of state standards used for mathematics shall be drawn from: the pre-2010
8 California standards; the 2006 Indiana standards; the Massachusetts 2001 standards; the Washington
9 2008 standards; or the current Minnesota standards.

10 (b) The commission shall submit the finalized statewide curricular plan to the Legislative
11 Oversight Commission on Education Accountability.

12 (c) The commission shall publicly post the final draft of the curricular program for a
13 forty-five day public comment period and shall schedule a public hearing for the proposed plan at
14 the State Capitol.

15 (d) After reviewing the curricular plan, the Legislative Oversight Commission on Education
16 Accountability may make any changes to the curricular program needed to comply with statutory
17 law.

18 (e) After the Legislature has approved the curricular plan during a regular legislative session,
19 the curricular plan will be the official curricular plan for the state, beginning on June 1 of that year.
20 The curricular plan may not be revised or altered without legislative approval, but must be reviewed
21 on a timely basis following the same steps used for initial development of the standards.

22 **§18-1A-8. Restrictions on collection and sharing of personally identifiable data.**

1 (a) No person, private or public entity, or governmental agency including, but not limited to,
2 the State Board of Education, the State Department of Education, local Boards of Education, local
3 District Schools, Regional Education Agencies and contractors or vendors who have access to
4 student information may divulge, or in any manner allow access to, student level data or personally
5 identifiable information to anyone, including, but not limited to, persons, private or public entities,
6 and governmental agencies not authorized by this chapter to have access to such information without
7 first obtaining the informed written consent of the parent or guardian of the student: *Provided*, That
8 a student that has attained the age of majority may provide the written informed consent required by
9 this section. In any other case, only aggregate level data may be divulged.

10 (b) On and after July 1, 2015, neither the state board, the department, nor any other education
11 entity shall:

12 (1) Collect personally identifiable information on any student or teacher without receiving
13 prior affirmative written consent, and only after providing the parent or teacher with a written
14 explanation of why the information is being requested, and what it will be used for;

15 (2) Expend any funds, whether from federal grants, American Recovery and Reinvestment
16 Act Funds, or elsewhere, on construction, enhancement, or expansion of any state-wide longitudinal
17 data system designed to track students beyond their K-12 careers, or to compile their personal,
18 nonacademic information beyond what is necessary either for administrative functions directly
19 related to the student's education, for evaluation of academic programs and student progress, or for
20 compliance with the requirements of the United States Department of Education as outlined in
21 subdivision (6) of this subsection;

22 (3) Share any personally identifiable information compiled on students or teachers with any

1 entity outside the State of West Virginia, except as provided in this section: *Provided*, That this
2 does not include hard data storage located in safe locations outside the state, or cloud data storage
3 as long as the cloud computing provider agrees in writing that it will not redisclose such information
4 or use the information for any secondary purposes that benefit the provider or any third party,
5 including, but not limited to, online behavioral advertising, creating or correcting an individual or
6 household profile primarily for the provider's benefit, the sale of data for any commercial purpose,
7 or any other commercial for-profit activity;

8 (4) Share any personally identifiable information about any student or teacher with any entity
9 that will use that information for development of commercial products or services or that will
10 transfer that data to any other entity for use in development of commercial products or services;

11 (5) Share any personally identifiable information about any student or teacher with any entity
12 inside the State of West Virginia unless that entity is an education agency or institution that will not:

13 (A) Use the data to develop commercial products or services;

14 (B) Transfer the data to any other entity to use in development of commercial products or
15 services; or

16 (C) Use or transfer the data pursuant to any economic or workforce development research
17 or initiatives.

18 (6) Share any personally identifiable information on students and teachers with the United
19 States Department of Education unless:

20 (A) Such sharing is required by the United States Department of Education as a condition of
21 receiving a federal education grant;

22 (B) The United States Department of Education agrees in writing to use the data only to

1 evaluate the program or programs funded by the grant;

2 (C) The United States Department of Education agrees in writing that the data will not be
3 used for any research beyond that related to evaluation of the program or programs funded by the
4 grant, unless the parent or guardian of any student, and any teacher, whose data will be used for such
5 research affirmatively consents in writing to that use;

6 (D) The United States Department of Education agrees in writing to destroy the data upon
7 completion of the evaluation of the program or programs for which the data were compiled; and

8 (E) The grant or program in connection with which the data are required is one authorized
9 by federal statute or by federal rule properly promulgated under the federal Administrative Procedure
10 Act, 5 U.S.C. §§500, *et seq.*

11 (b) If the United States Department of Education requires, as a condition of making a federal
12 education grant, that the grant recipient shares student level data or personally identifiable
13 information of students or teachers under circumstances that do not comply with subdivision (6) of
14 subsection (b) of this section, the grant recipient shall provide aggregate data only. The grant
15 applicant shall not divulge student level data or personally identifiable information of any student
16 without first obtaining informed written consent as specified in subsection (a). The grant applicant
17 shall not divulge personally identifiable information of any teacher without first obtaining informed
18 written consent of the teacher whose personally identifiable information is to be divulged. The grant
19 recipient shall provide written notification to the parents or guardians of every student whose data
20 will be shared or every teacher whose data will be shared of the following:

21 (1) That the grant recipient has been required to turn over the student's or teacher's data to
22 the United States Department of Education;

1 (2) That neither the grant recipient nor any other entity within the State of West Virginia will
2 have control over the use or further sharing of that data; and

3 (3) The contact information, including telephone number and e-mail address, of the United
4 States Department of Education official who demands the data.

5 (c) No state or national student assessment may be adopted or administered in this state that
6 collects any type of psychological data, including assessment of noncognitive skills or attributes,
7 psychological resources, mindsets, learning strategies, effortful control, attitudes, dispositions, social
8 skills, or other interpersonal or intra personal resources.

9 **§18-1A-9. College admissions; use of common core standards prohibited.**

10 Notwithstanding any other provision of this code, a higher education institution in this state
11 may not deny admission to any applicant based solely on the student's nonparticipation in a common
12 core educational program or assessment.

NOTE: The purpose of this bill is to develop better West Virginia Educational Standards tailored to West Virginia students, developed by West Virginia education professionals; to promote involvement of local educators and parents; to prohibit the school board from ceding authority over curricular standards or student data to federal government or private entities; to prohibit the use of common core standards and assessments; to implement temporary curricular standards; to limit the use of statewide assessments; to prohibit the sharing of student level data; to create the West Virginia Legislative Education Standards Development Steering Commission and Education Standards Development Subcommittees; and to prohibit colleges in this state from denying admission based on participation in common core programs or tests.

These sections are new; therefore, strike-throughs and underscoring have been omitted.