

HB 4436

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4436

(By Delegates Shaver, M. Poling, Perry, Williams,
Ennis, Beach, Lawrence, Romine, Pethtel,
Paxton and Cann)



Passed March 11, 2010

In Effect Ninety Days From Passage

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PAXTON AND CANN)

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AN ACT to amend and reenact §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to promoting student achievement; revising accountability finding; clarifying optional usage of certain testing or assessment instruments; publishing and making such instruments available to curriculum teams and teacher collaborations; making exclusions from accreditation and evaluations for failure to use or exercise of discretion in using certain assessments, strategies and programs; adding circumstance to definition of low performing school; providing for state system of support for low performing schools and modifying process and time lines for improvement; requiring schools and school systems to work collaboratively with state system of support in certain circumstances; requiring school curriculum teams to review certain non required tests and assessments and providing it discretion to determine usage; authorizing team to request waiver of state and county requirements to use certain assessments, instructional strategies or programs; updating

waivers for instructional resources; providing for optional adoption by schools of process for teacher collaboration to replace or in addition to school curriculum team; and providing for membership, mission and structure.

Be it enacted by the Legislature of West Virginia:

That § 18-2E-5 and § 18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

1 (a) *Legislative findings, purpose and intent.* -- The
2 Legislature makes the following findings with respect to the
3 process for improving education and its purpose and intent in
4 the enactment of this section:

5 (1) The process for improving education includes four
6 primary elements, these being:

7 (A) Standards which set forth the knowledge and skills
8 that students should know and be able to do as the result of
9 a thorough and efficient education that prepares them for the
10 twenty-first century, including measurable criteria to evaluate
11 student performance and progress;

12 (B) Assessments of student performance and progress
13 toward meeting the standards;

14 (C) A system of accountability for continuous
15 improvement defined by high quality standards for schools
16 and school systems articulated by a rule promulgated by the
17 state board and outlined in subsection (c) of this section that
18 will build capacity in schools and districts to meet rigorous
19 outcomes that assure student performance and progress
20 toward obtaining the knowledge and skills intrinsic to a high
21 quality education rather than monitoring for compliance with
22 specific laws and regulations; and

23 (D) A method for building the capacity and improving
24 the efficiency of schools and school systems to improve
25 student performance and progress.

26 (2) As the Constitutional body charged with the general
27 supervision of schools as provided by general law, the state
28 board has the authority and the responsibility to establish the
29 standards, assess the performance and progress of students
30 against the standards, hold schools and school systems
31 accountable and assist schools and school systems to build
32 capacity and improve efficiency so that the standards are met,
33 including, when necessary, seeking additional resources in
34 consultation with the Legislature and the Governor.

35 (3) As the Constitutional body charged with providing for
36 a thorough and efficient system of schools, the Legislature
37 has the authority and the responsibility to establish and be
38 engaged constructively in the determination of the knowledge
39 and skills that students should know and be able to do as the
40 result of a thorough and efficient education. This determination
41 is made by using the process for improving education to
42 determine when school improvement is needed, by evaluating
43 the results and the efficiency of the system of schools, by
44 ensuring accountability and by providing for the necessary
45 capacity and its efficient use.

46 (4) In consideration of these findings, the purpose of this
47 section is to establish a process for improving education that
48 includes the four primary elements as set forth in subdivision
49 (1) of this subsection to provide assurances that the high
50 quality standards are, at a minimum, being met and that a
51 thorough and efficient system of schools is being provided
52 for all West Virginia public school students on an equal
53 education opportunity basis.

54 (5) The intent of the Legislature in enacting this section
55 and section five-c of this article is to establish a process
56 through which the Legislature, the Governor and the state
57 board can work in the spirit of cooperation and collaboration
58 intended in the process for improving education to consult
59 and examine the performance and progress of students,
60 schools and school systems and, when necessary, to consider
61 alternative measures to ensure that all students continue to
62 receive the thorough and efficient education to which they
63 are entitled. However, nothing in this section requires any
64 specific level of funding by the Legislature.

65 (b) *Electronic county and school strategic improvement*
66 *plans.* -- The state board shall promulgate a rule consistent
67 with the provisions of this section and in accordance with
68 article three-b, chapter twenty-nine-a of this code establishing
69 an electronic county strategic improvement plan for each
70 county board and an electronic school strategic improvement
71 plan for each public school in this state. Each respective plan
72 shall be a five-year plan that includes the mission and goals
73 of the school or school system to improve student, school or
74 school system performance and progress, as applicable. The
75 strategic plan shall be revised annually in each area in which
76 the school or system is below the standard on the annual
77 performance measures. The revised annual plan also shall
78 identify any deficiency which is reported on the check lists
79 identified in paragraph (G), subdivision (5), subsection (I) of
80 this section including any deficit more than a casual deficit

81 by the county board. The plan shall be revised when required
82 pursuant to this section to include each annual performance
83 measure upon which the school or school system fails to meet
84 the standard for performance and progress, the action to be
85 taken to meet each measure, a separate time line and a date
86 certain for meeting each measure, a cost estimate and, when
87 applicable, the assistance to be provided by the department
88 and other education agencies to improve student, school or
89 school system performance and progress to meet the annual
90 performance measure.

91 The department shall make available to all public schools
92 through its website or the West Virginia Education
93 Information System an electronic school strategic improvement
94 plan boilerplate designed for use by all schools to develop an
95 electronic school strategic improvement plan which
96 incorporates all required aspects and satisfies all improvement
97 plan requirements of the No Child Left Behind Act.

98 (c) *High quality education standards and efficiency*
99 *standards.* -- In accordance with the provisions of article
100 three-b, chapter twenty-nine-a of this code, the state board
101 shall adopt and periodically review and update high quality
102 education standards for student, school and school system
103 performance and processes in the following areas:

- 104 (1) Curriculum;
- 105 (2) Workplace readiness skills;
- 106 (3) Finance;
- 107 (4) Transportation;
- 108 (5) Special education;
- 109 (6) Facilities;

- 110 (7) Administrative practices;
- 111 (8) Training of county board members and administrators;
- 112 (9) Personnel qualifications;
- 113 (10) Professional development and evaluation;
- 114 (11) Student performance and progress;
- 115 (12) School and school system performance and progress;
- 116 (13) A code of conduct for students and employees;
- 117 (14) Indicators of efficiency; and
- 118 (15) Any other areas determined by the state board.

119 The standards, as applicable, shall incorporate the state's
120 21st Century Skills Initiative and shall assure that graduates
121 are prepared for continuing post-secondary education,
122 training and work and that schools and school systems are
123 making progress toward achieving the education goals of the
124 state.

125 (d) *Comprehensive statewide student assessment*
126 *program.* -- The state board shall promulgate a rule in
127 accordance with the provisions of article three-b, chapter
128 twenty-nine-a of this code establishing a comprehensive
129 statewide student assessment program to assess student
130 performance and progress in grades three through twelve.
131 The state board may require that student proficiencies be
132 measured through the ACT EXPLORE and the ACT PLAN
133 assessments or other comparable assessments, which are
134 approved by the state board and provided by future vendors.
135 The state board may require that student proficiencies be

136 measured through the West Virginia writing assessment at
137 any of the grade levels four, seven and ten determined by the
138 state board to be appropriate: *Provided*, That, effective July
139 1, 2008, the state board may require that student proficiencies
140 be measured through the West Virginia writing assessment at
141 any of the grade levels four, seven and eleven determined by
142 the state board to be appropriate. The state board may
143 provide through the statewide assessment program other
144 optional testing or assessment instruments applicable to grade
145 levels kindergarten through grade twelve which may be used
146 by each school to promote student achievement upon
147 approval by the school curriculum team or the process for
148 teacher collaboration to improve instruction and learning
149 established by the faculty senate as provided in section six,
150 article five-a of this chapter. The state board shall annually
151 publish and make available, electronically or otherwise, to
152 school curriculum teams and teacher collaborative processes
153 the optional testing and assessment instruments. The failure
154 of a school to use any optional testing and assessment may
155 not be cited as a deficiency in any accreditation review of the
156 school; nor may the exercise of its discretion, as provided in
157 section six, article five-a of this chapter, in using the
158 assessments and implementing the instructional strategies and
159 programs that it determines best to promote student
160 achievement at the school be cited as a deficiency in any
161 accreditation review of the school or in the personnel
162 evaluation of the principal. The use of assessment results are
163 subject to the following:

164 (1) The assessment results for grade levels three through
165 eight and eleven are the only assessment results which may
166 be used for determining whether any school or school system
167 has made adequate yearly progress (AYP);

168 (2) Only the assessment results in the subject areas of
169 reading/language arts and mathematics may be used for

170 determining whether a school or school system has made
171 adequate yearly progress (AYP);

172 (3) The results of the West Virginia writing assessment,
173 the ACT EXPLORE assessments and the ACT PLAN
174 assessments may not be used for determining whether a
175 school or school system has made adequate yearly progress
176 (AYP);

177 (4) The results of testing or assessment instruments
178 provided by the state board for optional use by schools and
179 school systems to promote student achievement may not be
180 used for determining whether a school or school system has
181 made adequate yearly progress (AYP); and

182 (5) All assessment provisions of the comprehensive
183 statewide student assessment program in effect for the school
184 year 2006-2007 shall remain in effect until replaced by the
185 state board rule.

186 (e) *Annual performance measures for Public Law 107-*
187 *110, the Elementary and Secondary Education Act of 1965,*
188 *as amended (No Child Left Behind Act of 2001).* -- The
189 standards shall include annual measures of student, school
190 and school system performance and progress for the grade
191 levels and the content areas defined by the act. The
192 following annual measures of student, school and school
193 system performance and progress shall be the only measures
194 for determining whether adequately yearly progress under the
195 No Child Left Behind Act has been achieved:

196 (1) The acquisition of student proficiencies as indicated
197 by student performance and progress on the required
198 accountability assessments at the grade levels and content
199 areas as required by the act subject to the limitations set forth
200 in subsection (d) of this section.

201 (2) The student participation rate in the uniform statewide
202 assessment must be at least ninety-five percent or the average
203 of the participation rate for the current and the preceding two
204 years is ninety-five percent for the school, county and state;

205 (3) Only for schools that do not include grade twelve, the
206 school attendance rate which shall be no less than ninety
207 percent in attendance for the school, county and state. The
208 following absences are excluded:

209 (A) Student absences excused in accordance with the
210 state board rule promulgated pursuant to section four, article
211 eight of this chapter;

212 (B) Students not in attendance due to disciplinary
213 measures; and

214 (C) Absent students for whom the attendance director has
215 pursued judicial remedies compelling attendance to the extent
216 of his or her authority; and

217 (4) The high school graduation rate which shall be no less
218 than eighty percent for the school, county and state; or if the
219 high school graduation rate is less than eighty percent, the
220 high school graduation rate shall be higher than the high
221 school graduation rate of the preceding year as determined
222 from information on the West Virginia Education Information
223 System on August 15.

224 (f) *State annual performance measures for school and*
225 *school system accreditation.* -- The state board shall establish
226 a system to assess and weigh annual performance measures
227 for state accreditation of schools and school systems in a
228 manner that gives credit or points such as an index to prevent
229 any one measure alone from causing a school to achieve less
230 than full accreditation status or a school system from

231 achieving less than full approval status: *Provided*, That a
232 school or school system that achieves adequate yearly
233 progress is eligible for no less than full accreditation or
234 approval status, as applicable, and the system established
235 pursuant to this subsection applies only to schools and school
236 systems that do not achieve adequate yearly progress.

237 The following types of measures, as may be appropriate
238 at the various programmatic levels, may be approved by the
239 state board for the school and school system accreditation:

240 (1) The acquisition of student proficiencies as indicated
241 by student performance and progress on the uniform
242 statewide assessment program at the grade levels as provided
243 in subsection (d) of this section. The state board may
244 approve providing bonus points or credits for students
245 scoring at or above mastery and distinguished levels;

246 (2) Writing assessment results in grades tested;

247 (3) School attendance rates;

248 (4) Percentage of courses taught by highly qualified
249 teachers;

250 (5) Percentage of students scoring at benchmarks on the
251 currently tested ACT EXPLORE and ACT PLAN assessments or
252 other comparable assessments, which are approved by the
253 state board and provided by future vendors;

254 (6) Graduation rates;

255 (7) Job placement rates for vocational programs;

256 (8) Percent of students passing end-of-course
257 career/technical tests;

258 (9) Percent of students not requiring college remediation
259 classes; and

260 (10) Bonus points or credits for subgroup improvement,
261 advanced placement percentages, dual credit completers and
262 international baccalaureate completers.

263 (g) *Indicators of exemplary performance and progress.* --
264 The standards shall include indicators of exemplary student,
265 school and school system performance and progress. The
266 indicators of exemplary student, school and school system
267 performance and progress shall be used only as indicators for
268 determining whether accredited and approved schools and
269 school systems should be granted exemplary status. These
270 indicators shall include, but are not limited to, the following:

271 (1) The percentage of graduates who declare their intent
272 to enroll in college and other post-secondary education and
273 training following high school graduation;

274 (2) The percentage of graduates who receive additional
275 certification of their skills, competence and readiness for
276 college, other post-secondary education or employment
277 above the level required for graduation; and

278 (3) The percentage of students who successfully complete
279 advanced placement, dual credit and honors classes.

280 (h) *Indicators of efficiency.* -- In accordance with the
281 provisions of article three-b, chapter twenty-nine-a of this
282 code, the state board shall adopt by rule and periodically
283 review and update indicators of efficiency for use by the
284 appropriate divisions within the department to ensure
285 efficient management and use of resources in the public
286 schools in the following areas:

287 (1) Curriculum delivery including, but not limited to, the
288 use of distance learning;

289 (2) Transportation;

290 (3) Facilities;

291 (4) Administrative practices;

292 (5) Personnel;

293 (6) Use of regional educational service agency programs
294 and services, including programs and services that may be
295 established by their assigned regional educational service
296 agency or other regional services that may be initiated
297 between and among participating county boards; and

298 (7) Any other indicators as determined by the state board.

299 (i) *Assessment and accountability of school and school*
300 *system performance and processes.* -- In accordance with the
301 provisions of article three-b, chapter twenty-nine-a of this
302 code, the state board shall establish by rule a system of
303 education performance audits which measures the quality of
304 education and the preparation of students based on the annual
305 measures of student, school and school system performance
306 and progress. The system of education performance audits
307 shall provide information to the state board, the Legislature
308 and the Governor, individually and collectively as the
309 Process for Improving Education Council, upon which they
310 may determine whether a thorough and efficient system of
311 schools is being provided. The system of education
312 performance audits shall include:

313 (1) The assessment of student, school and school system
314 performance and progress based on the annual measures set
315 forth in subsection (d) of this section;

316 (2) The evaluation of records, reports and other
317 information collected by the department upon which the
318 quality of education and compliance with statutes, policies
319 and standards may be determined;

320 (3) The review of school and school system electronic
321 strategic improvement plans; and

322 (4) The on-site review of the processes in place in schools
323 and school systems to enable school and school system
324 performance and progress and compliance with the standards.

325 (j) *Uses of school and school system assessment*
326 *information.* -- The state board and the Process for Improving
327 Education Council established pursuant to section five-c of
328 this article shall use information from the system of
329 education performance audits to assist them in ensuring that
330 a thorough and efficient system of schools is being provided
331 and to improve student, school and school system
332 performance and progress. Information from the system of
333 education performance audits further shall be used by the
334 state board for these purposes, including, but not limited to,
335 the following:

336 (1) Determining school accreditation and school system
337 approval status;

338 (2) Holding schools and school systems accountable for
339 the efficient use of existing resources to meet or exceed the
340 standards; and

341 (3) Targeting additional resources when necessary to
342 improve performance and progress.

343 The state board shall make accreditation information
344 available to the Legislature, the Governor, the general public

345 and to any individual who requests the information, subject
346 to the provisions of any act or rule restricting the release of
347 information.

348 (k) *Early detection and intervention programs.* -- Based
349 on the assessment of student, school and school system
350 performance and progress, the state board shall establish
351 early detection and intervention programs using the available
352 resources of the Department of Education, the regional
353 educational service agencies, the Center for Professional
354 Development and the Principals Academy, as appropriate, to
355 assist underachieving schools and school systems to improve
356 performance before conditions become so grave as to warrant
357 more substantive state intervention. Assistance shall include,
358 but is not limited to, providing additional technical assistance
359 and programmatic, professional staff development, providing
360 monetary, staffing and other resources where appropriate,
361 and, if necessary, making appropriate recommendations to
362 the Process for Improving Education Council.

363 (l) *Office of Education Performance Audits.* --

364 (1) To assist the state board and the Process for
365 Improving Education Council in the operation of a system of
366 education performance audits, the state board shall establish
367 an Office of Education Performance Audits consistent with
368 the provisions of this section. The Office of Education
369 Performance Audits shall be operated under the direction of
370 the state board independently of the functions and
371 supervision of the State Department of Education and state
372 superintendent. The Office of Education Performance Audits
373 shall report directly to and be responsible to the state board
374 and the Process for Improving Education Council created in
375 section five-c of this article in carrying out its duties under
376 the provisions of this section.

377 (2) The office shall be headed by a director who shall be
378 appointed by the state board and who shall serve at the will
379 and pleasure of the state board. The annual salary of the
380 director shall be set by the state board and may not exceed
381 eighty percent of the salary cap of the State Superintendent
382 of Schools.

383 (3) The state board shall organize and sufficiently staff
384 the office to fulfill the duties assigned to it by law and by the
385 state board. Employees of the State Department of Education
386 who are transferred to the Office of Education Performance
387 Audits shall retain their benefits and seniority status with the
388 Department of Education.

389 (4) Under the direction of the state board, the Office of
390 Education Performance Audits shall receive from the West
391 Virginia education information system staff research and
392 analysis data on the performance and progress of students,
393 schools and school systems, and shall receive assistance, as
394 determined by the state board, from staff at the State
395 Department of Education, the regional education service
396 agencies, the Center for Professional Development, the
397 Principals Academy and the School Building Authority to
398 carry out the duties assigned to the office.

399 (5) In addition to other duties which may be assigned to
400 it by the state board or by statute, the Office of Education
401 Performance Audits also shall:

402 (A) Assure that all statewide assessments of student
403 performance used as annual performance measures are secure
404 as required in section one-a of this article;

405 (B) Administer all accountability measures as assigned
406 by the state board, including, but not limited to, the
407 following:

408 (i) Processes for the accreditation of schools and the
409 approval of school systems; and

410 (ii) Recommendations to the state board on appropriate
411 action, including, but not limited to, accreditation and
412 approval action;

413 (C) Determine, in conjunction with the assessment and
414 accountability processes, what capacity may be needed by
415 schools and school systems to meet the standards established
416 by the state board and recommend to the state board and the
417 Process for Improving Education Council plans to establish
418 those needed capacities;

419 (D) Determine, in conjunction with the assessment and
420 accountability processes, whether statewide system
421 deficiencies exist in the capacity of schools and school
422 systems to meet the standards established by the state board,
423 including the identification of trends and the need for
424 continuing improvements in education, and report those
425 deficiencies and trends to the state board and the Process for
426 Improving Education Council;

427 (E) Determine, in conjunction with the assessment and
428 accountability processes, staff development needs of schools
429 and school systems to meet the standards established by the
430 state board and make recommendations to the state board, the
431 Process for Improving Education Council, the Center for
432 Professional Development, the regional educational service
433 agencies, the Higher Education Policy Commission and the
434 county boards;

435 (F) Identify, in conjunction with the assessment and
436 accountability processes, exemplary schools and school
437 systems and best practices that improve student, school and
438 school system performance and make recommendations to

439 the state board and the Process for Improving Education
440 Council for recognizing and rewarding exemplary schools
441 and school systems and promoting the use of best practices.
442 The state board shall provide information on best practices to
443 county school systems and shall use information identified
444 through the assessment and accountability processes to select
445 schools of excellence; and

446 (G) Develop reporting formats, such as check lists, which
447 shall be used by the appropriate administrative personnel in
448 schools and school systems to document compliance with
449 various of the applicable laws, policies and process standards
450 as considered appropriate and approved by the state board,
451 including, but not limited to, the following:

452 (i) The use of a policy for the evaluation of all school
453 personnel that meets the requirements of sections twelve and
454 twelve-a, article two, chapter eighteen-a of this code;

455 (ii) The participation of students in appropriate physical
456 assessments as determined by the state board, which
457 assessment may not be used as a part of the assessment and
458 accountability system;

459 (iii) The appropriate licensure of school personnel; and

460 (iv) The school provides multicultural activities.

461 Information contained in the reporting formats is subject
462 to examination during an on-site review to determine
463 compliance with laws, policies and standards. Intentional
464 and grossly negligent reporting of false information are
465 grounds for dismissal.

466 (m) *On-site reviews.* --

467 (1) The system of education performance audits shall
468 include on-site reviews of schools and school systems which
469 shall be conducted only at the specific direction of the state
470 board upon its determination that the performance and
471 progress of the school or school system are persistently
472 below standard or that other circumstances exist that warrant
473 an on-site review. Any discussion by the state board of
474 schools to be subject to an on-site review or dates for which
475 on-site reviews will be conducted may be held in executive
476 session and is not subject to the provisions of article nine-a,
477 chapter six of this code relating to open governmental
478 proceedings. An on-site review shall be conducted by the
479 Office of Education Performance Audits of a school or
480 school system for the purpose of investigating the reasons for
481 performance and progress that are persistently below
482 standard and making recommendations to the school and
483 school system, as appropriate, and to the state board on such
484 measures as it considers necessary to improve performance
485 and progress to meet the standard. The investigation may
486 include, but is not limited to, the following:

487 (A) Verifying data reported by the school or county
488 board;

489 (B) Examining compliance with the laws and policies
490 affecting student, school and school system performance and
491 progress;

492 (C) Evaluating the effectiveness and implementation
493 status of school and school system electronic strategic
494 improvement plans;

495 (D) Investigating official complaints submitted to the
496 state board that allege serious impairments in the quality of
497 education in schools or school systems;

498 (E) Investigating official complaints submitted to the
499 state board that allege that a school or county board is in
500 violation of policies or laws under which schools and county
501 boards operate; and

502 (F) Determining and reporting whether required reviews
503 and inspections have been conducted by the appropriate
504 agencies, including, but not limited to, the State Fire Marshal,
505 the Health Department, the School Building Authority and
506 the responsible divisions within the Department of Education,
507 and whether noted deficiencies have been or are in the
508 process of being corrected. The Office of Education
509 Performance Audits may not conduct a duplicate review or
510 inspection of any compliance reviews or inspections
511 conducted by the department or its agents or other duly
512 authorized agencies of the state, nor may it mandate more
513 stringent compliance measures.

514 (2) The Director of the Office of Education Performance
515 Audits shall notify the county superintendent of schools five
516 school days prior to commencing an on-site review of the
517 county school system and shall notify both the county
518 superintendent and the principal five school days
519 before commencing an on-site review of an individual
520 school: *Provided*, That the state board may direct the Office
521 of Education Performance Audits to conduct an unannounced
522 on-site review of a school or school system if the state board
523 believes circumstances warrant an unannounced on-site
524 review.

525 (3) The Office of Education Performance Audits shall
526 conduct on-site reviews which are limited in scope to specific
527 areas in which performance and progress are persistently
528 below standard as determined by the state board unless
529 specifically directed by the state board to conduct a review
530 which covers additional areas.

531 (4) An on-site review of a school or school system shall
532 include a person or persons from the Department of
533 Education or a public education agency in the state who has
534 expert knowledge and experience in the area or areas to be
535 reviewed and who has been trained and designated by the
536 state board to perform such functions. If the size of the
537 school or school system and issues being reviewed
538 necessitate the use of an on-site review team or teams, the
539 person or persons designated by the state board shall advise
540 and assist the director to appoint the team or teams. The
541 person or persons designated by the state board shall be the
542 team leaders.

543 The persons designated by the state board shall be
544 responsible for completing the report on the findings and
545 recommendations of the on-site review in their area of
546 expertise. It is the intent of the Legislature that the persons
547 designated by the state board participate in all on-site reviews
548 that involve their area of expertise, to the extent practicable,
549 so that the on-site review process will evaluate compliance
550 with the standards in a uniform, consistent and expert
551 manner.

552 (5) The Office of Education Performance Audits shall
553 reimburse a county board for the costs of substitutes required
554 to replace county board employees while they are serving on
555 a review team.

556 (6) At the conclusion of an on-site review of a school
557 system, the director and team leaders shall hold an exit
558 conference with the superintendent and shall provide an
559 opportunity for principals to be present for at least the portion
560 of the conference pertaining to their respective schools. In
561 the case of an on-site review of a school, the exit conference
562 shall be held with the principal and curriculum team of the
563 school and the superintendent shall be provided the

564 opportunity to be present. The purpose of the exit conference
565 is to review the initial findings of the on-site review, clarify
566 and correct any inaccuracies and allow the opportunity for
567 dialogue between the reviewers and the school or school
568 system to promote a better understanding of the findings.

569 (7) The Office of Education Performance Audits shall
570 report the findings of an on-site review to the county
571 superintendent and the principals whose schools were
572 reviewed within thirty days following the conclusion of the
573 on-site review. The Office of Education Performance Audits
574 shall report the findings of the on-site review to the state
575 board within forty-five days after the conclusion of the on-
576 site review. A copy of the report shall be provided to the
577 Process for Improving Education Council at its request. A
578 school or county that believes one or more findings of a
579 review are clearly inaccurate, incomplete or misleading,
580 misrepresent or fail to reflect the true quality of education in
581 the school or county or address issues unrelated to the health,
582 safety and welfare of students and the quality of education,
583 may appeal to the state board for removal of the findings.
584 The state board shall establish a process for it to receive,
585 review and act upon the appeals. The state board shall report
586 to the Legislative Oversight Commission on Education
587 Accountability during its July interim meetings, or as soon
588 thereafter as practical, on each appeal during the preceding
589 school year.

590 (8) The Legislature finds that the accountability and
591 oversight of the following activities and programmatic areas
592 in the public schools is controlled through other mechanisms
593 and that additional accountability and oversight are not only
594 unnecessary but counterproductive in distracting necessary
595 resources from teaching and learning. Therefore,
596 notwithstanding any other provision of this section to the
597 contrary, the following activities and programmatic areas are

598 not subject to review by the Office of Education Performance

599 Audits:

600 (A) Work-based learning;

601 (B) Use of advisory councils;

602 (C) Program accreditation and student credentials;

603 (D) Student transition plans;

604 (E) Graduate assessment form;

605 (F) Casual deficit;

606 (G) Accounting practices;

607 (H) Transportation services;

608 (I) Special education services;

609 (J) Safe, healthy and accessible facilities;

610 (K) Health services;

611 (L) Attendance director;

612 (M) Business/community partnerships;

613 (N) Pupil-teacher ratio/split grade classes;

614 (O) Local school improvement council, faculty senate,

615 student assistance team and curriculum team;

616 (P) Planning and lunch periods;

- 617 (Q) Skill improvement program;
- 618 (R) Certificate of proficiency;
- 619 (S) Training of county board members;
- 620 (T) Excellence in job performance;
- 621 (U) Staff development; and
- 622 (V) Preventive discipline, character education and student
623 and parental involvement.

624 (n) *School accreditation.* -- The state board annually shall
625 review the information from the system of education
626 performance audits submitted for each school and shall issue
627 to every school one of the following approval levels:
628 Exemplary accreditation status, distinction accreditation
629 status, full accreditation status, temporary accreditation
630 status, conditional accreditation status or low performing
631 accreditation status.

632 (1) Full accreditation status shall be given to a school
633 when the school's performance and progress meet or exceed
634 the standards adopted by the state board pursuant to
635 subsection (e) or (f), as applicable, of this section and it does
636 not have any deficiencies which would endanger student
637 health or safety or other extraordinary circumstances as
638 defined by the state board. A school that meets or exceeds
639 the performance and progress standards but has the other
640 deficiencies shall remain on full accreditation status for the
641 remainder of the accreditation period and shall have an
642 opportunity to correct those deficiencies, notwithstanding
643 other provisions of this subsection.

644 (2) Temporary accreditation status shall be given to a
645 school when the school's performance and progress are

646 below the level required for full accreditation status.
647 Whenever a school is given temporary accreditation status,
648 the county board shall ensure that the school's electronic
649 strategic improvement plan is revised in accordance with
650 subsection (b) of this section to increase the performance and
651 progress of the school to a full accreditation status level. The
652 revised plan shall be submitted to the state board for
653 approval.

654 (3) Conditional accreditation status shall be given to a
655 school when the school's performance and progress are
656 below the level required for full accreditation, but the
657 school's electronic strategic improvement plan meets the
658 following criteria:

659 (A) The plan has been revised to improve performance
660 and progress on the standard or standards by a date or dates
661 certain;

662 (B) The plan has been approved by the state board; and

663 (C) The school is meeting the objectives and time line
664 specified in the revised plan.

665 (4) Exemplary accreditation status shall be given to a
666 school when the school's performance and progress
667 substantially exceed the standards adopted by the state board
668 pursuant to subsections (f) and (g) of this section. The state
669 board shall promulgate legislative rules in accordance with
670 the provisions of article three-b, chapter twenty-nine-a of this
671 code designated to establish standards of performance and
672 progress to identify exemplary schools.

673 (5) Distinction accreditation status shall be given to a
674 school when the school's performance and progress exceed
675 the standards adopted by the state board. The state board

676 shall promulgate legislative rules in accordance with the
677 provisions of article three-b, chapter twenty-nine-a of this
678 code establishing standards of performance and progress to
679 identify schools of distinction.

680 (6) Low-performing accreditation status shall be given to
681 a school whenever extraordinary circumstances exist as
682 defined by the state board.

683 (A) These circumstances shall include, but are not limited
684 to, any one or more of the following:

685 (i) The failure of a school on temporary accreditation
686 status to obtain approval of its revised electronic school
687 strategic improvement plan within a reasonable time period
688 as defined by the state board;

689 (ii) The failure of a school on conditional accreditation
690 status to meet the objectives and time line of its revised
691 electronic school strategic improvement plan;

692 (iii) The failure of a school to meet a standard by the date
693 specified in the revised plan; and

694 (iv) The results of the most recent statewide assessment
695 in reading and math or other multiple measures as determined
696 by the state board that identify the school as low performing
697 at its programmatic level in three of the last five years.

698 (B) Whenever the state board determines that the quality
699 of education in a school is low performing, the state board
700 shall appoint a team of improvement consultants from the
701 West Virginia Department of Education State System of
702 Support to make recommendations for correction of the low
703 performance. These recommendations shall be communicated to
704 the county board and a process shall be established in

705 conjunction with the State System of Support to correct the
706 identified deficiencies. If progress in correcting the low
707 performance as determined by the state board is not made
708 within one year following the implementation of the
709 measures adopted to correct the identified deficiencies or by
710 a date certain established by the state board after at least one
711 year of implementation, the state board shall place the county
712 board on temporary approval status and provide consultation
713 and assistance to the county board to assist it in the following
714 areas:

715 (i) Improving personnel management;

716 (ii) Establishing more efficient financial management
717 practices;

718 (iii) Improving instructional programs and rules; or

719 (iv) Making any other improvements that are necessary
720 to correct the low performance.

721 (C) If the low performance is not corrected by a date
722 certain as set by the state board:

723 (i) The state board shall appoint a monitor who shall be
724 paid at county expense to cause improvements to be made at
725 the school to bring it to full accreditation status within a
726 reasonable time period as determined by the state board. The
727 monitor's work location shall be at the school and the
728 monitor shall work collaboratively with the principal. The
729 monitor shall, at a minimum, report monthly to the state
730 board on the measures being taken to improve the school's
731 performance and the progress being made. The reports may
732 include requests for additional assistance and
733 recommendations required in the judgment of the monitor to
734 improve the school's performance, including, but not limited

735 to, the need for targeting resources strategically to eliminate
736 deficiencies;

737 (ii) The state board may make a determination, in its sole
738 judgment, that the improvements necessary to provide a
739 thorough and efficient education to the students at the school
740 cannot be made without additional targeted resources, in
741 which case it shall establish a plan in consultation with the
742 county board that includes targeted resources from sources
743 under the control of the state board and the county board to
744 accomplish the needed improvements. Nothing in this
745 subsection shall be construed to allow a change in personnel
746 at the school to improve school performance and progress,
747 except as provided by law;

748 (iii) If the low performance is not corrected within one
749 year after the appointment of a monitor, the state board may
750 make a determination, in its sole judgment, that continuing a
751 monitor arrangement is not sufficient to correct the low
752 performance and may intervene in the operation of the school
753 to cause improvements to be made that will provide
754 assurances that a thorough and efficient system of schools
755 will be provided. This intervention may include, but is not
756 limited to, establishing instructional programs, taking such
757 direct action as may be necessary to correct the low
758 performance, declaring the position of principal is vacant and
759 assigning a principal for the school who shall serve at the will
760 and pleasure of and, under the sole supervision of, the state
761 board: *Provided*, That prior to declaring that the position of
762 the principal is vacant, the state board must make a
763 determination that all other resources needed to correct the
764 low performance are present at the school. If the principal
765 who was removed elects not to remain an employee of the
766 county board, then the principal assigned by the state board
767 shall be paid by the county board. If the principal who was
768 removed elects to remain an employee of the county board,
769 then the following procedure applies:

770 (I) The principal assigned by the state board shall be paid
771 by the state board until the next school term, at which time
772 the principal assigned by the state board shall be paid by the
773 county board;

774 (II) The principal who was removed is eligible for all
775 positions in the county, including teaching positions, for
776 which the principal is certified, by either being placed on the
777 transfer list in accordance with section seven, article two,
778 chapter eighteen-a of this code, or by being placed on the
779 preferred recall list in accordance with section seven-a, article
780 four, chapter eighteen-a of this code; and

781 (III) The principal who was removed shall be paid by the
782 county board and may be assigned to administrative duties,
783 without the county board being required to post that position
784 until the end of the school term.

785 (6) The county board shall take no action nor refuse any
786 action if the effect would be to impair further the school in
787 which the state board has intervened.

788 (7) The state board may appoint a monitor pursuant to the
789 provisions of this subsection to assist the school principal
790 after intervention in the operation of a school is completed.

791 (o) *Transfers from low-performing schools.* -- Whenever
792 a school is determined to be low performing and fails to
793 improve its status within one year, following state
794 intervention in the operation of the school to correct the low
795 performance, any student attending the school may transfer
796 once to the nearest fully accredited school in the county,
797 subject to approval of the fully accredited school and at the
798 expense of the school from which the student transferred.

799 (p) *School system approval.* -- The state board annually
800 shall review the information submitted for each school

801 system from the system of education performance audits and
802 issue one of the following approval levels to each county
803 board: Full approval, temporary approval, conditional
804 approval or nonapproval.

805 (1) Full approval shall be given to a county board whose
806 schools have all been given full, temporary or conditional
807 accreditation status and which does not have any deficiencies
808 which would endanger student health or safety or other
809 extraordinary circumstances as defined by the state board. A
810 fully approved school system in which other deficiencies are
811 discovered shall remain on full accreditation status for the
812 remainder of the approval period and shall have an
813 opportunity to correct those deficiencies, notwithstanding
814 other provisions of this subsection.

815 (2) Temporary approval shall be given to a county board
816 whose education system is below the level required for full
817 approval. Whenever a county board is given temporary
818 approval status, the county board shall revise its electronic
819 county strategic improvement plan in accordance with
820 subsection (b) of this section to increase the performance and
821 progress of the school system to a full approval status level.
822 The revised plan shall be submitted to the state board for
823 approval.

824 (3) Conditional approval shall be given to a county board
825 whose education system is below the level required for full
826 approval, but whose electronic county strategic improvement
827 plan meets the following criteria:

828 (i) The plan has been revised in accordance with
829 subsection (b) of this section;

830 (ii) The plan has been approved by the state board; and

831 (iii) The county board is meeting the objectives and time
832 line specified in the revised plan.

833 (4) Nonapproval status shall be given to a county board
834 which fails to submit and gain approval for its electronic
835 county strategic improvement plan or revised electronic
836 county strategic improvement plan within a reasonable time
837 period as defined by the state board or which fails to meet the
838 objectives and time line of its revised electronic county
839 strategic improvement plan or fails to achieve full approval
840 by the date specified in the revised plan.

841 (A) The state board shall establish and adopt additional
842 standards to identify school systems in which the program
843 may be nonapproved and the state board may issue
844 nonapproval status whenever extraordinary circumstances
845 exist as defined by the state board.

846 (B) Whenever a county board has more than a casual
847 deficit, as defined in section one, article one of this chapter,
848 the county board shall submit a plan to the state board
849 specifying the county board's strategy for eliminating the
850 casual deficit. The state board either shall approve or reject
851 the plan. If the plan is rejected, the state board shall
852 communicate to the county board the reason or reasons for
853 the rejection of the plan. The county board may resubmit the
854 plan any number of times. However, any county board that
855 fails to submit a plan and gain approval for the plan from the
856 state board before the end of the fiscal year after a deficit
857 greater than a casual deficit occurred or any county board
858 which, in the opinion of the state board, fails to comply with
859 an approved plan may be designated as having nonapproval
860 status.

861 (C) Whenever nonapproval status is given to a school
862 system, the state board shall declare a state of emergency in

863 the school system and shall appoint a team of improvement
864 consultants to make recommendations within sixty days of
865 appointment for correcting the emergency. When the state
866 board approves the recommendations, they shall be
867 communicated to the county board. If progress in correcting
868 the emergency, as determined by the state board, is not made
869 within six months from the time the county board receives
870 the recommendations, the state board shall intervene in the
871 operation of the school system to cause improvements to be
872 made that will provide assurances that a thorough and
873 efficient system of schools will be provided. This
874 intervention may include, but is not limited to, the following:

875 (i) Limiting the authority of the county superintendent
876 and county board as to the expenditure of funds, the
877 employment and dismissal of personnel, the establishment
878 and operation of the school calendar, the establishment of
879 instructional programs and rules and any other areas
880 designated by the state board by rule, which may include
881 delegating decision-making authority regarding these matters
882 to the state superintendent;

883 (ii) Declaring that the office of the county superintendent
884 is vacant;

885 (iii) Delegating to the state superintendent both the
886 authority to conduct hearings on personnel matters and
887 school closure or consolidation matters and, subsequently, to
888 render the resulting decisions and the authority to appoint a
889 designee for the limited purpose of conducting hearings while
890 reserving to the state superintendent the authority to render
891 the resulting decisions;

892 (iv) Functioning in lieu of the county board of education
893 in a transfer, sale, purchase or other transaction regarding real
894 property; and

895 (v) Taking any direct action necessary to correct the
896 emergency including, but not limited to, the following:

897 (I) Delegating to the state superintendent the authority to
898 replace administrators and principals in low performing
899 schools and to transfer them into alternate professional
900 positions within the county at his or her discretion; and

901 (II) Delegating to the state superintendent the authority to
902 fill positions of administrators and principals with individuals
903 determined by the state superintendent to be the most
904 qualified for the positions. Any authority related to
905 intervention in the operation of a county board granted under
906 this paragraph is not subject to the provisions of article four,
907 chapter eighteen-a of this code;

908 (q) Notwithstanding any other provision of this section,
909 the state board may intervene immediately in the operation of
910 the county school system with all the powers, duties and
911 responsibilities contained in subsection (p) of this section, if
912 the state board finds the following:

913 (1) That the conditions precedent to intervention exist as
914 provided in this section; and that delaying intervention for
915 any period of time would not be in the best interests of the
916 students of the county school system; or

917 (2) That the conditions precedent to intervention exist as
918 provided in this section and that the state board had
919 previously intervened in the operation of the same school
920 system and had concluded that intervention within the
921 preceding five years.

922 (r) *Capacity*. -- The process for improving education
923 includes a process for targeting resources strategically to
924 improve the teaching and learning process. Development of

925 electronic school and school system strategic improvement
926 plans, pursuant to subsection (b) of this section, is intended,
927 in part, to provide mechanisms to target resources
928 strategically to the teaching and learning process to improve
929 student, school and school system performance. When
930 deficiencies are detected through the assessment and
931 accountability processes, the revision and approval of school
932 and school system electronic strategic improvement plans
933 shall ensure that schools and school systems are efficiently
934 using existing resources to correct the deficiencies. When the
935 state board determines that schools and school systems do not
936 have the capacity to correct deficiencies, the state board shall
937 work with the county board to develop or secure the
938 resources necessary to increase the capacity of schools and
939 school systems to meet the standards and, when necessary,
940 seek additional resources in consultation with the Legislature
941 and the Governor.

942 The state board shall recommend to the appropriate body
943 including, but not limited to, the Process for Improving
944 Education Council, the Legislature, county boards, schools
945 and communities methods for targeting resources
946 strategically to eliminate deficiencies identified in the
947 assessment and accountability processes. When making
948 determinations on recommendations, the state board shall
949 include, but is not limited to, the following methods:

950 (1) Examining reports and electronic strategic
951 improvement plans regarding the performance and progress
952 of students, schools and school systems relative to the
953 standards and identifying the areas in which improvement is
954 needed;

955 (2) Determining the areas of weakness and of
956 ineffectiveness that appear to have contributed to the
957 substandard performance and progress of students or the

958 deficiencies of the school or school system and requiring the
959 school or school system to work collaboratively with the
960 West Virginia Department of Education State System of
961 Support to correct the deficiencies;

962 (3) Determining the areas of strength that appear to have
963 contributed to exceptional student, school and school system
964 performance and progress and promoting their emulation
965 throughout the system;

966 (4) Requesting technical assistance from the School
967 Building Authority in assessing or designing comprehensive
968 educational facilities plans;

969 (5) Recommending priority funding from the School
970 Building Authority based on identified needs;

971 (6) Requesting special staff development programs from
972 the Center for Professional Development, the Principals
973 Academy, higher education, regional educational service
974 agencies and county boards based on identified needs;

975 (7) Submitting requests to the Legislature for
976 appropriations to meet the identified needs for improving
977 education;

978 (8) Directing county boards to target their funds
979 strategically toward alleviating deficiencies;

980 (9) Ensuring that the need for facilities in counties with
981 increased enrollment are appropriately reflected and
982 recommended for funding;

983 (10) Ensuring that the appropriate person or entity is held
984 accountable for eliminating deficiencies; and

985 (11) Ensuring that the needed capacity is available from
986 the state and local level to assist the school or school system
987 in achieving the standards and alleviating the deficiencies.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-6. Establishment of school curriculum teams; process for teacher collaboration to improve learning.

1 (a) There shall be established at each school in the state
2 a school curriculum team composed of the school principal,
3 the counselor designated to serve that school and no fewer
4 than three teachers representative of the grades taught at the
5 school and chosen by the faculty senate: *Provided*, That for
6 a school curriculum team established at an elementary school
7 or a combination elementary and middle school, when the
8 counselor is not assigned to the school on at least a one-half
9 time basis, the curriculum team may meet on days when the
10 counselor is not at the school and the principal shall consult
11 with the counselor on the issues relevant to the meeting
12 agenda.

13 The school curriculum team shall establish the programs
14 and methods for implementing a curriculum based on state-
15 approved content standards based on the needs of the
16 individual school with a focus on reading, composition,
17 mathematics, science and technology. The curriculum thus
18 established shall be submitted to the county board for
19 approval or for return to the school for reconsideration.

20 The school curriculum team shall review the list of other
21 non required testing and assessment instruments provided by
22 the state board through the statewide assessment program as
23 provided in section five, article two-e of this chapter and may
24 select one or more of them that are applicable to the grade
25 levels at the school for use at the school to improve student

26 learning. The school has the discretion to use the
27 assessments and implement the instructional strategies and
28 programs, upon approval by the school curriculum team, that
29 it determines best to promote student achievement at the
30 school. The school curriculum team may apply for a waiver
31 of any state or county policy requiring it to assess students
32 using any specific assessment except the WESTEST2, the
33 Alternative Performance Task Assessment, the Online
34 Writing Assessment, and the National Assessment of
35 Educational Progress (NAEP), or to employ any specific
36 instructional strategy or program to achieve content standards
37 for courses required by the state board. Attainment by the
38 school of at least full accreditation status for the previous
39 year shall be the factor considered for granting the waiver
40 request.

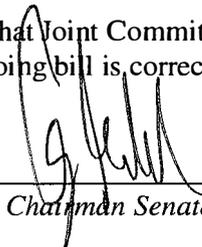
41 The school curriculum team also may apply for a waiver
42 for instructional resources approved and adopted pursuant to
43 article two-a of this chapter if, in the judgment of the team,
44 the instructional resources necessary for the implementation
45 of the instructional strategies and programs best suited to
46 teach the school's curriculum are not available through the
47 normal adoption process.

48 School curriculum teams may request waivers of non-
49 state mandated tests listed in their county board policies. The
50 determination of whether to grant the request shall be based
51 on the school's accreditation status. Waivers are in effect for
52 one year only. School curriculum teams may resubmit the
53 same or additional waiver requests the following year.

54 The school team may apply for a grant from the state
55 board for the development or implementation, or both, of
56 remedial and accelerated programs to meet the needs of the
57 students at the individual school.

58 (b) Each faculty senate with approval of the principal
59 may, in addition to or as an alternative to the school
60 curriculum team provided for in subsection (a) of this section,
61 establish a process for teacher collaboration to improve
62 instruction and learning. The mission of the collaboration
63 process is to review student academic performance based on
64 multiple measures, to identify strategies to improve student
65 performance and make recommendations for improvement to
66 be implemented subject to approval of the principal. The
67 collaborative process shall include such members as
68 determined necessary by the faculty senate to address the
69 needed improvements in the academic performance of
70 students at the school and, if applicable, may consist of
71 multiple subject area subcommittees which may meet
72 independently.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

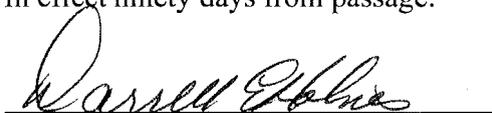


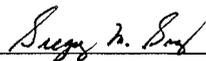
Chairman Senate Committee

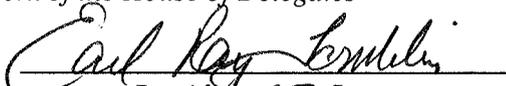

Chairman House Committee

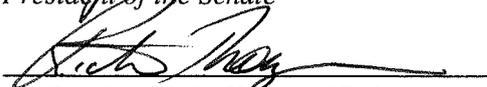
Originating in the House.

In effect ninety days from passage.

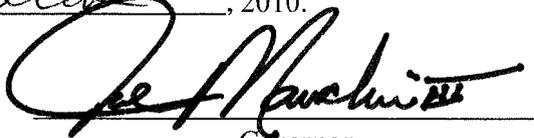

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 19th
day of March, 2010.


Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 10:40am