

1 **H. B. 4383**

2
3 (By Delegates Butler, Ireland, Hamrick,
4 Cadle, Pasdon, Ellem, Gearheart, Cooper,
5 Storch, Folk and Armstead)
6

7 [Introduced January 31, 2014; referred to the
8 Committee on Education then Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §18-1-5, relating to
12 public school curricular standards and assessments;
13 establishing a Legislative Common Core Study Committee to
14 study issues relating to implementation of Common Core
15 standards and assessments in West Virginia and report to the
16 Governor and Legislature no later than six months after the
17 final public hearing, or on or before the first day of the
18 2016 Regular Session of the Legislature, whichever comes
19 first; requiring State Board of Education to undertake a study
20 of fiscal costs associated with implementing Common Core
21 standards and assessments and report to the Governor and
22 Legislature on or before the first day of the 2016 Regular
23 Session; placing a two-year moratorium on implementation of
24 Common Core assessments; prohibiting the State Board of
25 Education from sharing personally identifiable information of

1 students or teachers except as provided; and definitions.

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

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new section, designated §18-1-5, to read as
5 follows:

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

8 **§18-1-5. Public school curricular standards and assessments.**

9 (a) For purposes of this section:

10 (1) "Longitudinal data system" means the West Virginia
11 Longitudinal Data System, as well as any other data warehouse
12 containing West Virginia student information, including regional,
13 interstate or federal data warehouse organizations under contract
14 to or with a memorandum of understanding with the West Virginia
15 Department of Education or the State of West Virginia.

16 (2) "Educational agency or institution" means any public or
17 private elementary or secondary school or institution of higher
18 education.

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

22 (4) "Common Core Assessments" means the Smarter Balanced
23 Assessments or any other student assessments intended to measure

1 student achievement in the common core standards.

2 (b) Notwithstanding any other provision of law to the
3 contrary, the State Board of Education may not continue to
4 implement the Common Core Assessments currently scheduled for
5 school year 2014-2015 as part of the Common Core State Standards
6 Initiative, for two years to allow for the following to occur:

7 (1) The appointment of a Legislative Common Core Study
8 Committee which shall hold at least one public hearing in each
9 congressional district of the state at which public and expert
10 comment shall be taken on the Common Core standards and the
11 associated assessments in the state's public schools to determine
12 the consequences of that implementation for academic achievement in
13 the state, the ramifications of implementation, including those
14 concerning loss of state sovereignty and control over any aspects
15 of public education, and student data collection, storage and
16 disclosure. The committee shall be comprised of seven members of
17 the West Virginia State Senate Education Committee, who shall be
18 appointed by the President of the Senate, and seven members of the
19 West Virginia House of Delegates Education Committee, who shall be
20 appointed by the Speaker of the House of Delegates. The Senate
21 President and the House Speaker may not appoint more than four
22 members of the same political party from their respective seven
23 appointees. The committee shall make a final report of its
24 findings, conclusions and recommendations to the Governor and

1 Legislature no later than six months after the final public
2 hearing, or on or before the first day of the 2016 Regular Session
3 of the Legislature, whichever comes first; and

4 (2) A fiscal analysis of the past, present, and future cost of
5 implementation of the Common Core standards, and associated
6 assessments, including, but not limited to, curriculum, testing,
7 data collection and storage, additional personnel, training,
8 materials, equipment, hardware, software and computer upgrades,
9 shall be presented to the Governor and the Legislature on or before
10 the first day of the 2016 Regular Session. The West Virginia
11 Department of Education shall contract with an independent entity
12 with expertise in the development, implementation, and assessments
13 to conduct the fiscal analysis.

14 (c) The state board may not adopt any national standards in
15 curricular areas other than English Language Arts and Mathematics
16 or any standards modeled on such national standards that are
17 substantially identical to those national standards, without
18 completing the process outlined in subsection (b).

19 (d) Pending the committee's report of findings, the state
20 shall reserve the right to withdraw from the Smarter Balance
21 Assessment Consortium (SBAC) and may not implement the SBAC
22 assessments aligned to the Common Core standards, and shall
23 instead, adopt and implement new assessments that provide valid,
24 reliable, and timely testing of student performance, focusing

1 primarily on academic content knowledge.

2 (e) The State Board of Education may not enter into or renew
3 an agreement that cedes to an outside entity control over
4 curricular standards or assessments.

5 (f) The State of West Virginia affirms the parent or guardian
6 as the final authority in all matters of their student's education
7 and prohibits the access, release, or sharing of personally
8 identifiable information, student level data, or directory
9 information without prior written affirmative consent of the parent
10 or guardian.

11 (g) Notwithstanding any other provision of law to the
12 contrary, and pending the committee's report of findings to the
13 Governor and the Legislature, the superintendent of schools, the
14 state board, the department, or any other state entity that deals
15 with education may not do any of the following:

16 (1) Expend any funds on construction, enhancement, or
17 expansion of any statewide longitudinal data system designed to
18 track students, or compile personally identifiable student
19 information, beyond what is necessary for administrative functions
20 directly related to the student's education, academic evaluation of
21 programs and student progress, or for compliance as indicated in
22 subdivision (5) of this subsection (f).

23 (2) Collect any new, share, or allow access to any personally
24 identifiable information, directory information, or student level

1 information of students or teachers with any entity outside the
2 state without prior written affirmative consent of parent or
3 guardian or teacher, except as indicated in subdivision (5) of this
4 subsection (f).

5 (3) Share or allow access to any personally identifiable
6 information, student level data, or directory information of
7 students or teachers with any entity that intends to use that
8 information to develop, market, distribute, or promote commercial
9 products or services or that intends to transfer the information to
10 any other entity for use in developing, marketing, distributing or
11 promoting commercial products or service;

12 (4) Share or allow access to any personally identifiable
13 information, student level data, or directory information of
14 students or teachers with any entity within the state, unless that
15 entity is an educational agency or an institution which the state
16 expressly prohibits, in writing, the agency or institution from the
17 following:

18 (A) Transferring the information to any other entity
19 department agency or person;

20 (B) Using the information to develop, market, distribute, or
21 promote commercial products or services, or to transfer information
22 to any other entity for use in developing, marketing, distributing
23 or promoting commercial products or services;

24 (C) Using the transfer of information for economic or

1 workforce development planning.

2 (5) Share or allow access to any personally identifiable
3 information, student level data, or directory information of
4 students or teachers with the United States Department of Education
5 unless prior affirmative written consent of the parent or guardian
6 is obtained and all of the following apply:

7 (A) The sharing of information is required as a condition of
8 receiving a federal education grant.

9 (B) The United States Department of Education agrees, in
10 writing, to all of the following:

11 (i) To use the information only to evaluate the program or
12 programs funded by the grant;

13 (ii) That the information will not be used for any research
14 beyond that related to the evaluation of the program or programs
15 funded by the grant, unless the teacher and parent or guardian of
16 any student whose information will be used for the research
17 affirmatively consents to that use in writing;

18 (iii) That it will not share the information with any other
19 governmental or private entity, unless the teacher and parent or
20 guardian of any student whose information will be shared
21 affirmatively consents to that sharing in writing;

22 (iv) In the event that a parent or guardian gives prior
23 affirmative written consent the United States Department of
24 Education will inform the parent or guardian as to each data point

1 that will be shared, and the purpose for each.

2 (v) That it will destroy the information upon completion of

3 the evaluation of the program or programs funded by the grant.

NOTE: The purpose of this bill is to affirm the parent or guardian as the final authority in all matters of a student's education and to require prior parental or guardian written affirmative consent for disclosure of any student information other than aggregate data that is not personally identifiable. The bill prohibits the State Board of Education from continuing to implement the Common Core assessments, and requires the formation of a Legislative Common Core Committee to conduct statewide hearings on the common core standards and associated assessments and to make a public report of findings to the Governor and the Legislature. The bill also prohibits the State Board of Education from expending funds for a statewide longitudinal data system designed to track students pending the committee's report of findings, and requires a fiscal analysis of common core and associated assessment implementation.

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