

E N G R O S S E D

COMMITTEE SUBSTITUTE

for

H. B. 2934

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HOWELL AND DUKE)

[Originating in the Committee on Education.]
(February 25, 2015)

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-5b, relating to repealing the common core standards; making findings with respect to a thorough and efficient education and role of the Legislature; making findings with respect to the Elementary and Secondary Education act and the affect of certain amendments; making findings with respect to changes in standards and assessments; making findings with respect to reverse in trend of

improving student National Assessment of Educational Progress scores and likely causes; making findings with respect to ESEA flexibility relief, state application and subsequent actions; and making findings with respect to school funding sources, the influence of federal funds and the use of federal funds to coerce changes in standards, assessments and accountability system; making findings with respect to inappropriate usurpation of state sovereignty over public education and results sufficient to impede process for improving education; directing certain actions by state board in response to findings; providing comprehensive review of standards by board to ensure repeal of certain common core standards, certain aligned college and career ready standards and revised as needed, adequate and appropriate curriculum and instructional strategies, sufficient training and professional development, and information and resources to engage and assist parents; requiring state board appoint stakeholder commission to participate in review with certain legislative member appointments; requiring state board appointment of standards development committees to advise and assist commission; requiring state board conduct regional town hall meetings with

certain format for discussion and input; suspending use of summative assessment scores except for certain purpose until certain date; prohibiting collection and disclosure of certain student information; requiring regular information to Legislature on actions with respect to standards, assessment, accountability and capacity building; providing for responsibilities, appointment and membership of standards development committees; directing certain actions in response to findings by Governor, Legislature, state board and state superintendent with respect to reauthorization of Elementary and Secondary Education Act; and requiring monitoring by Legislative Oversight commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

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

1 (a) The Legislature finds that:

2 (1) As the constitutional body charged with providing for a

3 thorough and efficient system of schools, the Legislature has

4 enacted, by general law, a process for improving education that
5 includes four primary elements, these being: Standards,
6 assessments, accountability and capacity building to ensure that
7 students attain the knowledge and skills that result from a
8 thorough and efficient system of education;

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

18 (3) Congressional reauthorization of the Elementary and
19 Secondary Education Act (ESEA), known as the No Child Left
20 Behind Act (NCLB), required states to implement state specific
21 criterion referenced summative assessment tests, establish
22 accountability measures and annual targets for adequate yearly
23 progress through a U. S. Department of Education approved

24 process, and impose designations and consequences on schools
25 for failure to meet the annual targets necessary for all students to
26 score at the proficient level on the tests by 2014;

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

31 (5) In March 2006, the West Virginia Board of Education
32 assembled teams of master teachers to develop 21st Century
33 Content Standards and Objectives for West Virginia Schools to
34 incorporate higher levels of critical thinking and problem solving
35 skills and improve alignment with other national and
36 international assessments. First placed on public comment for 60
37 days in July, 2005, these standards underwent several additional
38 reviews by state and national experts and the public and several
39 revisions before final adoption by the West Virginia Board of
40 Education and placed into effect July 1, 2008;

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

44 (7) Also in 2009, West Virginia joined other states in an
45 effort to develop Common Core State Standards. The West
46 Virginia Board of Education, as recorded in the minutes of its
47 May 12, 2010, meeting, unanimously approved the Common
48 Core State Standards for English Language Arts and Literacy in
49 History/Social Studies and Science and the Common Core State
50 Standards for Mathematics for alignment with West Virginia's
51 21st Century Content Standards and Objectives for
52 implementation beginning in fall 2011. Shortly thereafter,
53 separate committees in these two subject areas, each consisting
54 of classroom teachers and representatives of higher education
55 faculty, began this work and placed a particular standard into the
56 West Virginia framework only when the best available evidence
57 indicated that its mastery was essential for college and career
58 readiness;

59 (8) Following this process and a public comment period, the
60 West Virginia Board of Education adopted Next Generation
61 Content Standards and Objectives to take effect: Kindergarten -
62 August 15, 2011; first grade - July 1, 2012; second grade - July
63 1, 2013; and third through twelfth grades - July 1, 2014;

64 (9) A requirement for college and career readiness standards
65 enacted during the 2013 regular legislative session in §18-2-39
66 directs the state board, the Higher Education Policy Commission
67 and the Council for Community and Technical College
68 Education to collaborate in formally adopting uniform and
69 specific college and career readiness standards for
70 English/language arts and math that allow for a determination of
71 whether a student needs to enroll in a post-secondary remedial
72 course. The results on the statewide student assessment in grade
73 eleven must be used to determine whether a student has met the
74 college and career readiness standards in these subjects or allow
75 for the student's enrollment in transitional courses in the twelfth
76 grade if necessary;

77 (10) A decade-long trend of gradually closing the gap with
78 national averages in math and scoring near or above the national
79 averages in reading for West Virginia student scores on the
80 National Assessment of Educational Progress (NAEP) reversed
81 course beginning in 2001. This unintended negative consequence
82 was likely the result of accumulated inconsistencies and loss of
83 focus on sustained instructional improvement as teachers

84 continually readjusted to frequently changing standards and
85 assessments, and the system goal became how to avoid the harsh
86 consequences of failing to meet the AYP targets required by
87 NCLB as they increasing became statistically unattainable. As
88 the 2014 deadline approached for 100% of students scoring
89 proficient on the state summative assessment , it was apparent
90 that no schools in West Virginia would achieve this NCLB goal
91 and, therefore, all schools would be labeled as failing and face
92 the required sanctions. In the face of long over due
93 reauthorization of the Elementary and Secondary Education Act,
94 schools in West Virginia, like most across the country, had little
95 choice but to seek the relief offered under the ESEA Flexibility
96 process;

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

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

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

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

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

117 (13) The state board has since also modified West Virginia's
118 accountability system by adopting an A-F grading system for
119 schools to replace the success, transition, focus, support and
120 priority designations approved in the initial flexibility request. It
121 also has modified it's rules for Next Generation Standards to
122 comply with WV Code by adding twelfth grade transition

123 courses in English Language Arts and Mathematics for students

124 below the college and career ready level; and

125 (14) ESEA Flexibility is subject to continued monitoring by

126 the U. S. Department of Education and is subject to renewal due

127 March 31, 2015.

128 (b) The Legislature further finds that the funding for West

129 Virginia public schools comes from about 59% state and 31%

130 local revenue sources with the federal government contributing

131 only about 10% of the state's total school funding. The federal

132 funding amounted to about \$362 million for the 2012-13 school

133 year. However, heavy reliance on this federal funding to

134 supplement the education of disadvantaged and special needs

135 students and for child nutrition has provided leverage for the

136 federal government to exert substantial influence over state

137 policy and spending in the areas of standards, assessment,

138 accountability and capacity building. Whereas the federal

139 government may require accountability for the funds it expends

140 for certain educational purposes, its use of these funds to coerce

141 fundamental changes in state standards, assessments,

142 accountability and capacity building, the core components of the

143 process for improving education recognized by the court as the
144 Legislature’s method for fulfilling its obligation under the West
145 Virginia Constitution to provide for a thorough and efficient
146 education, is a highly inappropriate usurpation of state
147 sovereignty over public education. However well intentioned the
148 efforts outlined in the above findings may have been, the
149 accumulated inconsistencies, the loss of focus on sustained
150 instructional improvement and the continuing discord among
151 parents, citizens and educators surrounding the standards, the
152 curriculum, the instructional strategies being employed to teach
153 them and the assessments of student learning, are sufficient so as
154 to impede the process for improving education, result in student
155 performance below what is expected from a thorough and
156 efficient system of schools, and erode public support.

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

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

162 (A) The Common Core Standards as approved by the Board
163 in May, 2010, and the subsequent Next Generation Content
164 Standards and Objectives as approved by the Board in August
165 2011, are repealed;

166 (B) No assessments designed to assess student learning
167 based on the common core standards, including but not limited
168 to the Smarter Balanced Assessment, will be used in West
169 Virginia public schools;

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

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

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

179 (F) Sufficient training and professional development has
180 been provided to enable teachers and leaders to accurately
181 articulate the standards and objectives of the curriculum and

182 instructional strategies, to implement them and to improve
183 teaching and learning; and

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

187 (2) Appoint a stakeholder commission including parents,
188 educators, teacher organizations, administrators, a representative
189 of the West Virginia School Board Association, employers and
190 legislators to participate in the standards review, except that the
191 legislator appointments shall be three Senators appointed by the
192 President of the Senate, one of whom shall be the chair of the
193 Senate Education Committee and one of whom shall be a
194 member of the minority party, and three Delegates appointed by
195 the Speaker of the House, one of whom shall be the chair of the
196 House Education Committee and one of whom shall be a
197 member of the minority party;

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

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

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

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

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

219 (8) Regularly inform the Legislature of any actions taken
220 with respect to standards, assessments, accountability and

221 capacity building through reporting to the Legislative Oversight
222 Commission on Education Accountability.

223 (d) The State Board shall establish two standards
224 development committees: the English Language Arts Standards
225 Development Committee and the Mathematics Standards
226 Development Committee. The standards committees are
227 responsible for developing standards for the subject area within
228 the committee's expertise to advise and assist the commission in
229 recommending West Virginia college and career ready standards
230 to the State Board. To establish the committees, the State Board
231 shall:

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

234 (2) Each district superintendent may nominate one teacher
235 for each subgroup in the English language arts development
236 committee and one teacher for each subgroup in the Math
237 development committee. The superintendents shall use the one
238 page nomination form developed by the state Board;

239 (3) Each standards development committee shall include
240 three subgroups; one for standards in grades PreK through five,

241 one for grades six through eight and one for grades nine through
242 twelve.

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

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

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

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

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

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

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

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

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

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

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

271 (A) The English Language Arts chair on the commission,
272 who will chair the English Language Arts Development
273 Committee;

274 (B) An English Language Arts vice-chair, selected by the
275 English language arts chair. The vice-chair must be a teaching
276 faculty member of the English language arts department of a
277 four-year undergraduate university or college and shall not be a
278 member of the faculty of the education department of the
279 institution;

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

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

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

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

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

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

292 (B) The mathematics vice-chair who will be selected by the
293 mathematics chair and who is currently a teaching faculty
294 member in an undergraduate mathematics department of a four-
295 year university or college with a dissertation in mathematics and
296 who shall not be a member of the Education Department of the
297 institution;

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

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

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

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

308 (e) In response to the foregoing findings, the Legislature
309 hereby further directs that the Governor, the Legislature, the
310 West Virginia Board of Education and the State Superintendent
311 of Schools, individually and through their membership on their
312 respective national organizations, the National Governor's
313 Association, the National Conference of State Legislatures, the
314 National Association of State Boards of Education, and the
315 Council of Chief State School Officers, shall advise the state's
316 congressional delegation and implore Congress and the President
317 to proceed expeditiously with reauthorization of the Elementary
318 and Secondary Education Act in a manner that:

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

325 (2) Recognizes that the selection of educational standards
326 and assessments for the public schools is the exclusive right of
327 state and local education authorities; and

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

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