

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 499**

BY SENATORS BOLEY, BLAIR, FERNS, KARNES, SYPOLT,

TRUMP AND COLE (MR. PRESIDENT)

[Introduced February 3, 2016;

Referred to the Committee on Education.]

1 A BILL to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating  
2 generally to academic content standards and assessments in schools; removing a  
3 reference to the No Child Left Behind Act; addressing education standards; defining  
4 “learning standards”; defining “college and career ready”; making certain findings with  
5 respect to the state board’s adoption of Common Core State Standards; establishing a  
6 designated name to refer to West Virginia educational standards; requiring the state board  
7 to replace the current content standards and objectives for English language arts and  
8 mathematics with educational standards in effect prior to adoption of the Common Core  
9 State Standards; requiring the state board to withdraw from a Memorandum of Agreement  
10 relating to adoption of Common Core State Standards; requiring the state board to  
11 withdraw as a governing state in the Smarter Balanced Assessment Consortium; requiring  
12 the state board to withdraw any pending or effective policies and regulations aligning West  
13 Virginia’s educational standards with Common Core State Standards; prohibiting the state  
14 board from entering into any agreement, memorandum of understanding or contract which  
15 cedes or limits constitutional authority and obligation to provide a thorough and efficient  
16 system of education; requiring the state board to provide a report to the Legislative  
17 Oversight Commission on Education Accountability; requiring the state board to adopt new  
18 or revised educational standards that meet certain criteria; specifying that a certain  
19 process be followed prior to adopting new or revised educational standards; requiring that  
20 waivers for instructional resources be granted to teach new or revised standards; requiring  
21 guidelines be developed for county boards of education on informing the public and  
22 providing input at the local level; prohibiting evaluation of teachers based upon student  
23 achievement until training completed; requiring removal of Common Core based  
24 instructional resources from the state multiple list; establishing a process of notification  
25 and input for future changes to educational standards; addressing overlap of West Virginia  
26 educational standards with Common Core State Standards; addressing requests for

27 waiver from federal law; requiring consultation prior to adopting a comprehensive  
 28 statewide student assessment program that is aligned with West Virginia educational  
 29 standards; requiring that student assessments be limited to once a year in certain grades;  
 30 establishing the minimum criteria for student assessments; prohibiting use of Common  
 31 Core aligned assessments; and providing for assessment in transition period to new or  
 32 revised West Virginia educational standards.

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

1 That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and  
 2 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 Legislature makes the following findings  
 2 with respect to the process for improving education and its purpose and intent in the enactment  
 3 of this section:

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

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

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

9 (C) A system of accountability for continuous improvement defined by high-quality  
 10 standards for schools and school systems articulated by a rule promulgated by the state board  
 11 and outlined in subsection (c) of this section that will build capacity in schools and districts to meet  
 12 rigorous outcomes that assure student performance and progress toward obtaining the  
 13 knowledge and skills intrinsic to a high-quality successful education rather than monitoring for

14 compliance with specific laws and regulations; and

15 (D) A method for building the capacity and improving the efficiency of schools and school  
16 systems to improve student performance and progress;

17 (2) As the Constitutional body charged with the general supervision of schools as provided  
18 by general law, the state board has the authority and the responsibility to establish the standards,  
19 assess the performance and progress of students against the standards, hold schools and school  
20 systems accountable and assist schools and school systems to build capacity and improve  
21 efficiency so that the educational standards are met, including, when necessary, seeking  
22 additional resources in consultation with the Legislature and the Governor;

23 (3) As the Constitutional body charged with providing for a thorough and efficient system  
24 of schools, the Legislature has the authority and the responsibility to establish and be engaged  
25 constructively in the determination of the knowledge and skills that students should know and be  
26 able to do as the result of a thorough and efficient education. This determination is made by using  
27 the process for improving education to determine when school improvement is needed, by  
28 evaluating the results and the efficiency of the system of schools, by ensuring accountability and  
29 by providing for the necessary capacity and its efficient use;

30 (4) In consideration of these findings, the purpose of this section is to establish a process  
31 for improving education that includes the four primary elements as set forth in subdivision (1) of  
32 this subsection to provide assurances that the high-quality educational standards are, at a  
33 minimum, being met and that a thorough and efficient system of schools is being provided for all  
34 West Virginia public school students on an equal education opportunity basis; and

35 (5) The intent of the Legislature in enacting this section and section five-c of this article is  
36 to establish a process through which the Legislature, the Governor and the state board can work  
37 in the spirit of cooperation and collaboration intended in the process for improving education to  
38 consult and examine the performance and progress of students, schools and school systems and,  
39 when necessary, to consider alternative measures to ensure that all students continue to receive

40 the thorough and efficient education to which they are entitled. However, nothing in this section  
41 requires any specific level of funding by the Legislature.

42       (b) *Electronic county and school strategic improvement plans.* -- The state board shall  
43 promulgate a rule consistent with the provisions of this section and in accordance with article  
44 three-b, chapter twenty-nine-a of this code establishing an electronic county strategic  
45 improvement plan for each county board and an electronic school strategic improvement plan for  
46 each public school in this state. Each respective plan shall be for a period of no more than five  
47 years and shall include the mission and goals of the school or school system to improve student,  
48 school or school system performance and progress, as applicable. The strategic plan shall be  
49 revised annually in each area in which the school or system is below the standard on the annual  
50 performance measures. The plan shall be revised when required pursuant to this section to  
51 include each annual performance measure upon which the school or school system fails to meet  
52 the standard for performance and progress, the action to be taken to meet each measure, a  
53 separate time line and a date certain for meeting each measure, a cost estimate and, when  
54 applicable, the assistance to be provided by the department and other education agencies to  
55 improve student, school or school system performance and progress to meet the annual  
56 performance measure.

57       The department shall make available to all public schools through its website or the West  
58 Virginia Education Information System an electronic school strategic improvement plan  
59 boilerplate designed for use by all schools to develop an electronic school strategic improvement  
60 plan which incorporates all required aspects and satisfies all improvement plan requirements of  
61 ~~the No Child Left Behind Act.~~

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

- 66 (1) Curriculum;
- 67 (2) Workplace readiness skills;
- 68 (3) Finance;
- 69 (4) Transportation;
- 70 (5) Special education;
- 71 (6) Facilities;
- 72 (7) Administrative practices;
- 73 (8) Training of county board members and administrators;
- 74 (9) Personnel qualifications;
- 75 (10) Professional development and evaluation;
- 76 (11) Student performance, progress and attendance;
- 77 (12) Professional personnel, including principals and central office administrators, and
- 78 service personnel attendance;
- 79 (13) School and school system performance and progress;
- 80 (14) A code of conduct for students and employees;
- 81 (15) Indicators of efficiency; and
- 82 (16) Any other areas determined by the state board.

83 (d) West Virginia Student Learning Standards. --

84 (1) For purposes of this subsection:

85 (A) "Learning Standards" are concise, written descriptions of what students are expected

86 to know and be able to do at a specific stage of their education. Learning standards describe

87 educational objectives, that is, what students should have learned by the end of a course, grade

88 level, or grade span;

89 (B) "College and career ready" means the standards that a high school graduate must

90 meet to obtain the requisite knowledge and skill to transition without remediation to postsecondary

91 education or training, and, ultimately, into a sustainable career.

92 (2) The Legislature's Constitutional authority and responsibility to provide a thorough and  
93 efficient system of schools includes establishing parameters within which the state board  
94 develops educational standards. In this regard, the Legislature makes the following findings:

95 (A) In 2009, Governors and state commissioners of education through their membership  
96 in the National Governors Association Center for Best Practices and the Council of Chief State  
97 School Officers, led an effort to develop Common Core State Standards. West Virginia  
98 participated as a sponsor state;

99 (B) Participation in the effort included entering into a Common Core Standards  
100 Memorandum Agreement which, among other things, required the state board to agree that  
101 Common Core State Standards represent 85 percent of West Virginia's educational standards in  
102 English language arts and mathematics and agree that the adoption process would not exceed  
103 three years;

104 (C) The next year at its meeting on May 12, 2010, the state board adopted the Common  
105 Core State Standards in English language arts and mathematics to be taught in West Virginia  
106 public schools;

107 (D) As part of the process of incorporating Common Core State Standards into West  
108 Virginia's educational standards, the state board filed regulations on July 15, 2011, naming the  
109 Common Core State Standards for English language arts and mathematics "Next Generation  
110 Content Standards and Objectives for English Language Arts In West Virginia Schools (2520.1A)"  
111 and "Next Generation Content Standards and Objectives for Mathematics In West Virginia  
112 Schools (2520.2B)". According to these regulations, the effective dates for the "Next Generation"  
113 content standards and objectives were August 15, 2011, for Kindergarten, July 1, 2012, for First  
114 Grade, July 1, 2013 for Second Grade, and July 1, 2014, for Third through Twelfth Grades;

115 (E) Despite their transformative nature, the state board adopted and implemented the  
116 Common Core State Standards without adequately articulating to parents and the general public  
117 what were the changes in curriculum and instructional strategies required by the new standards,

118 why the changes were made, and how parents could help their children succeed, all leading to  
119 confusion, lack of confidence and mistrust in the state's public schools;

120 (F) The state board's belated outreach in the summer and fall of 2015 in light of rising  
121 controversy and subsequent repeal of the Next Generation Content Standards and Objectives  
122 and adoption of the non-common core-based "West Virginia College – and – Career – Readiness  
123 Standards for English Language Arts (Policy 2520.1A)" and "West Virginia College – and – Career  
124 – Readiness Standards for Mathematics (Policy 2520.1B)" did not result in a meaningful  
125 evaluation of educational standards that are not Common Core aligned and led to more distrust,  
126 fear and worry;

127 (G) With the reauthorization of the federal Elementary and Secondary Education Act  
128 (ESEA) through the bipartisan "Every Student Succeeds Act" on December 10, 2015, West  
129 Virginia can establish rigorous educational standards, appropriately aligned assessments, and  
130 fair and reliable accountability measures with the flexibility it needs to ensure that West Virginia's  
131 students receive the benefits of a thorough and efficient education;

132 (H) To achieve this goal, given the circumstances set forth in the foregoing, the Legislature  
133 finds it necessary to obtain additional information regarding the rigor of standards in non-common  
134 core states, as well as in the states with the highest achieving students, to direct what educational  
135 standards will be in place during a transition to West Virginia educational standards, and to  
136 establish a process by which the state board adopts and implements educational standards in the  
137 future.

138 (3) Therefore, the state board shall:

139 (A) Hereafter name and refer to any educational standards it adopts as "West Virginia  
140 Student Learning Standards";

141 (B) Replace, for the 2016-2017 school year, all content standards and objectives in  
142 English language arts and mathematics which are based upon the Common Core State  
143 Standards with the educational standards in effect prior to May 12, 2010;



144 (C) Withdraw from the Memorandum of Agreement entered into with the Council of Chief  
145 State School Officers and The National Governors Association for Best Practices which required  
146 the state board to agree that common core represents 85 percent of West Virginia's standards in  
147 English language arts and mathematics and withdraw as a governing state in the Smarter  
148 Balanced Assessment Consortium;

149 (D) Withdraw the pending or effective policies and regulations relating to adoption and  
150 implementation of content standards and objectives aligned with the Common Core State  
151 Standards;

152 (E) Not enter into any agreement, memorandum of understanding or contract with any  
153 federal agency or private entity which in any way cedes or limits the Legislature's or the state  
154 board's Constitutional authority and obligation to provide a thorough and efficient system of  
155 education particularly relating to the development, adoption, revision or implementation of  
156 educational standards in English language arts and mathematics, including any agreements,  
157 memoranda of understanding or contracts entered into which impose obligations in exchange for  
158 funding for public schools and programs. If the state board is currently a party to any such  
159 agreement, memorandum of understanding or contract on the effective date of this subsection,  
160 the state board shall initiate necessary efforts to amend or cancel any such agreement,  
161 memorandum of understanding or contract to comply with the requirements of this subsection;

162 (F) On or before December 31, 2016, provide a report to the Legislative Oversight  
163 Commission on Education and Accountability which analyzes how closely West Virginia's  
164 pre-May 12, 2010, educational standards for English language arts and mathematics align with  
165 the educational standards in place in the states that did not adopt the Common Core State  
166 Standards, as well as the standards of the top five states in student achievement using the  
167 National Assessment of Educational Progress (NAEP) test;

168 (G) Prior to the 2017-2018 school year, develop, adopt, and implement new or revised  
169 educational standards, where warranted, based upon the analysis and reporting undertaken in

170 paragraph (F), subdivision (3), subsection (d) of this section in English language arts and  
171 mathematics to ensure that those standards meet the following criteria:

172 (i) Reflect West Virginia’s priorities, including, but not limited to, the priorities set forth in  
173 subsections (a), (b) and (c) of this section;

174 (ii) Are age level and developmentally appropriate, particularly as it relates to sequencing  
175 of content standards and the measurement of student performance;

176 (iii) Are research and/or evidence based;

177 (iv) Are internationally benchmarked;

178 (v) Are understandable to teachers, parents, and taxpayers;

179 (vi) Are developed with the goal of active citizenship and college and career readiness as  
180 set forth in section thirty-nine, article two of chapter eighteen of this Code;

181 (vii) Are among the best in the nation.

182 (H) Any newly developed or revised educational standards shall be published, via  
183 electronic or other means, with a jargon free explanation of the need for the inclusion of or change  
184 in a standard so that parents, teachers, local Board of Education members, business and  
185 community leaders and the general public can feel confident that the standards in place have  
186 been thoroughly vetted, meet West Virginia’s priorities, and are appropriate for West Virginia’s  
187 school children;

188 (I) Before adopting and implementing new or revised educational standards for the  
189 2017-2018 school year, conduct at least five hearings geographically dispersed throughout the  
190 state and anonymously survey teachers, administrators, county boards of education, parents and  
191 any other interested stakeholders for the purpose of informing the public and receiving input;

192 (J) Grant all necessary waivers to county boards of education to obtain instructional  
193 resources needed to teach the “West Virginia Student Learning Standards”;

194 (K) Develop guidelines for county boards of education that will ensure that parents and  
195 interested parties at the local level are fully informed and have the opportunity to give input;

196 (L) Not base any percentage of a teacher's evaluation on student achievement or  
197 proficiency using the "West Virginia Student Learning Standards" until training is completed; and

198 (M) Remove any instructional resources on the state multiple list that have the primary  
199 purpose of teaching Common Core State Standards. *Provided*, That nothing in this paragraph  
200 shall prohibit the state board from listing an instructional resource that teaches a Common Core  
201 State Standard if that standard also coincides with a West Virginia Student Learning Objective  
202 that has been independently determined to comply with the criteria set forth in paragraph (G),  
203 subdivision (3), subsection (d) of this section.

204 (4) After the 2017-18 school year and any school year thereafter, the state board shall  
205 notify the Governor and the Legislative Oversight Committee on Educational Accountability when  
206 it feels there is need for changes to the West Virginia Student Learning Standards for English  
207 language arts and mathematics. The state board shall also develop a time frame for adoption  
208 that is clearly and widely communicated to the public. Adoption of changes to West Virginia  
209 Student Learning Standards in English language arts and mathematics shall include regional  
210 meetings designed to education the public and provide input.

211 (5) To the extent possible, the state board should coordinate adoption and implementation  
212 of new or revised educational standards with the adoption cycle for instructional resources set  
213 forth in section two, article two-a of chapter eighteen of this code.

214 (6) Nothing in this subsection shall prohibit the state board from adopting and  
215 implementing West Virginia Student Learning Standards for English language arts and  
216 mathematics or any other subject matter that may coincidentally align with a Common Core State  
217 Standard so long as the new or revised West Virginia Student Learning Standards meet the  
218 criteria set forth in paragraph (G), subdivision (3), subsection (d) of this section.

219 (7) Nothing in this subsection shall be construed to prohibit the state board from seeking  
220 or being granted a waiver from federal law, provided that the conditions for the waiver do not  
221 require the State of West Virginia to cede or limit its Constitutional obligation to provide a thorough

222 and efficient system of education, particularly as it relates to educational standards.

223 ~~(d)~~(e) Comprehensive statewide student assessment program. -- The state board shall in  
224 consultation with the Higher Education Policy Commission, the Council for Community and  
225 Technical College Education, and any or all four-year public colleges, establish a comprehensive  
226 statewide student assessment program to assess student performance and progress in grades  
227 three through eight and once in grades nine through twelve. The assessment program is subject  
228 to the following:

229 (1) The state board shall promulgate a rule in accordance with the provisions of article  
230 three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student  
231 assessment program;

232 (2) Prior to the ~~2014-2015~~ 2017-2018 school year, the state board shall align the  
233 comprehensive statewide student assessment for all grade levels in which the test is given with  
234 ~~the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter~~  
235 ~~or develop other aligned tests to be required at each grade level so that progress toward college~~  
236 ~~readiness in English/language arts and math can be measured~~ West Virginia Student Learning  
237 Standards adopted through the process set forth in subdivision (3), subsection (d) of this section;

238 ~~(3) The state board may require that student proficiencies be measured through the ACT~~  
239 ~~EXPLORE and the ACT PLAN assessments or other comparable assessments, which are~~  
240 ~~approved by the state board and provided by future vendors;~~ The comprehensive statewide  
241 assessment shall be a summative assessment given once a year that is a rigorous, achievement  
242 assessment that measures student proficiency in the West Virginia Student Learning Standards,  
243 that provides timely reporting of results to boards of education, administrators, teachers, parents  
244 and students, and that measures each student's progress toward college and career readiness;

245 (4) The state board shall not acquire or implement any assessment instrument or  
246 instruments developed to specifically align with the Common Core State Standards including  
247 Smarter Balanced Assessment or Partnership for Assessment of Readiness for College and

248 Careers (PARCC). Assessments for the 2016-2017 school year shall align with the educational  
249 standards in effect prior to May 12, 2010;

250 ~~(4)~~ (5) The state board may require that student proficiencies be measured through the  
251 West Virginia writing assessment at any grade levels determined by the state board to be  
252 appropriate; ~~and~~

253 (6) The state board may provide through the statewide assessment program other optional  
254 testing or assessment instruments applicable to grade levels kindergarten through eight and  
255 grade eleven which may be used by each school to promote student achievement. The state  
256 board annually shall publish and make available, electronically or otherwise, to school curriculum  
257 teams and teacher collaborative processes the optional testing and assessment instruments;

258 (7) The state board shall not enter into any agreement, memorandum of understanding or  
259 contract to provide summative assessments in the grades in which the test is being given with  
260 any federal agency or private entity which in any way cedes or limits the Legislature's or the state  
261 board's Constitutional obligation to provide a thorough and efficient system of education. If the  
262 state board is a party to such an agreement, memorandum of understanding or contract on the  
263 effective date of this subsection, the state board shall initiate necessary efforts to amend or cancel  
264 the agreement, memorandum of understanding or contract to comply with the requirements of  
265 this subsection; and

266 (8) The state board shall provide parents the option of opting their student out of the  
267 statewide summative assessment.

268 ~~(e)~~ (f) *State annual performance measures for school and school system accreditation. --*

269 The state board shall promulgate a rule in accordance with the provisions of article three-b,  
270 chapter twenty-nine-a of this code that establishes a system to assess and weigh annual  
271 performance measures for state accreditation of schools and school systems. The state board  
272 also may establish performance incentives for schools and school systems as part of the state  
273 accreditation system. On or before December 1, 2013, the state board shall report to the Governor

274 and to the Legislative Oversight Commission on Education Accountability the proposed rule for  
275 establishing the measures and incentives of accreditation and the estimated cost therefore, if any.  
276 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative  
277 Oversight Commission on Education Accountability on the impact and effectiveness of the  
278 accreditation system. The rule for school and school system accreditation proposed by the board  
279 may include, but is not limited to, the following measures:

- 280 (1) Student proficiency in English and language arts, math, science and other subjects  
281 determined by the board;
- 282 (2) Graduation and attendance rate;
- 283 (3) Students taking and passing AP tests;
- 284 (4) Students completing a career and technical education class;
- 285 (5) Closing achievement gaps within subgroups of a school=s student population; and
- 286 (6) Students scoring at or above average attainment on SAT or ACT tests.

287 ~~(f)~~ (g) *Indicators of efficiency.* -- In accordance with the provisions of article three-b, chapter  
288 twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update  
289 indicators of efficiency for use by the appropriate divisions within the department to ensure  
290 efficient management and use of resources in the public schools in the following areas:

- 291 (1) Curriculum delivery including, but not limited to, the use of distance learning;
- 292 (2) Transportation;
- 293 (3) Facilities;
- 294 (4) Administrative practices;
- 295 (5) Personnel;
- 296 (6) Use of regional educational service agency programs and services, including programs  
297 and services that may be established by their assigned regional educational service agency or  
298 other regional services that may be initiated between and among participating county boards; and
- 299 (7) Any other indicators as determined by the state board.

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

308 (1) The assessment of student, school and school system performance and progress  
309 based on the annual measures established pursuant to subsection ~~(e)~~ (f) of this section;

310 (2) The evaluation of records, reports and other information collected by the Office of  
311 Education Performance Audits upon which the quality of education and compliance with statutes,  
312 policies and standards may be determined;

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

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

316 ~~(h)~~(i) *Uses of school and school system assessment information.* -- The state board shall  
317 use information from the system of education performance audits to assist it in ensuring that a  
318 thorough and efficient system of schools is being provided and to improve student, school and  
319 school system performance and progress. Information from the system of education performance  
320 audits further shall be used by the state board for these purposes, including, but not limited to,  
321 the following:

322 (1) Determining school accreditation and school system approval status;

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

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

326           The state board shall make accreditation information available to the Legislature, the  
327 Governor, the general public and to any individual who requests the information, subject to the  
328 provisions of any act or rule restricting the release of information.

329           ~~(i)~~(j) *Early detection and intervention programs.* -- Based on the assessment of student,  
330 school and school system performance and progress, the state board shall establish early  
331 detection and intervention programs using the available resources of the Department of  
332 Education, the regional educational service agencies, the Center for Professional Development  
333 and the Principals Academy, or other resources as appropriate, to assist underachieving schools  
334 and school systems to improve performance before conditions become so grave as to warrant  
335 more substantive state intervention. Assistance shall include, but is not limited to, providing  
336 additional technical assistance and programmatic, professional staff development, providing  
337 monetary, staffing and other resources where appropriate.

338           ~~(j)~~(k) *Office of Education Performance Audits.* --

339           (1) To assist the state board in the operation of a system of education performance audits,  
340 the state board shall establish an Office of Education Performance Audits consistent with the  
341 provisions of this section. The Office of Education Performance Audits shall be operated under  
342 the direction of the state board independently of the functions and supervision of the state  
343 Department of Education and state superintendent. The Office of Education Performance Audits  
344 shall report directly to and be responsible to the state board in carrying out its duties under the  
345 provisions of this section.

346           (2) The office shall be headed by a director who shall be appointed by the state board and  
347 who serves at the will and pleasure of the state board. The annual salary of the director shall be  
348 set by the state board and may not exceed eighty percent of the salary of the state superintendent  
349 of Schools.

350           (3) The state board shall organize and sufficiently staff the office to fulfill the duties  
351 assigned to it by law and by the state board. Employees of the state Department of Education



352 who are transferred to the Office of Education Performance Audits shall retain their benefits and  
353 seniority status with the Department of Education.

354 (4) Under the direction of the state board, the Office of Education Performance Audits shall  
355 receive from the West Virginia education information system staff research and analysis data on  
356 the performance and progress of students, schools and school systems, and shall receive  
357 assistance, as determined by the state board, from staff at the state Department of Education,  
358 the regional education service agencies, the Center for Professional Development, the Principals  
359 Academy and the School Building Authority to carry out the duties assigned to the office.

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

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

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

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

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

369 (C) Determine, in conjunction with the assessment and accountability processes, what  
370 capacity may be needed by schools and school systems to meet the standards established by  
371 the state board and recommend to the state board plans to establish those needed capacities;

372 (D) Determine, in conjunction with the assessment and accountability processes, whether  
373 statewide system deficiencies exist in the capacity of schools and school systems to meet the  
374 standards established by the state board, including the identification of trends and the need for  
375 continuing improvements in education, and report those deficiencies and trends to the state  
376 board;

377 (E) Determine, in conjunction with the assessment and accountability processes, staff

378 development needs of schools and school systems to meet the standards established by the state  
379 board and make recommendations to the state board, the Center for Professional Development,  
380 the regional educational service agencies, the Higher Education Policy Commission and the  
381 county boards;

382 (F) Identify, in conjunction with the assessment and accountability processes, school  
383 systems and best practices that improve student, school and school system performance and  
384 communicate those to the state board for promoting the use of best practices. The state board  
385 shall provide information on best practices to county school systems; and

386 (G) Develop reporting formats, such as check lists, which shall be used by the appropriate  
387 administrative personnel in schools and school systems to document compliance with applicable  
388 laws, policies and process standards as considered appropriate and approved by the state board,  
389 which may include, but is not limited to, the following:

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

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

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

396 (iv) The appropriate provision of multicultural activities.

397 Information contained in the reporting formats is subject to examination during an on-site  
398 review to determine compliance with laws, policies and standards. Intentional and grossly  
399 negligent reporting of false information are grounds for dismissal of any employee.

400 ~~(k)(l)~~ *On-site reviews.* --

401 (1) The system of education performance audits shall include on-site reviews of schools  
402 and school systems which shall be conducted only at the specific direction of the state board upon  
403 its determination that circumstances exist that warrant an on-site review. Any discussion by the

404 state board of schools to be subject to an on-site review or dates for which on-site reviews will be  
405 conducted may be held in executive session and is not subject to the provisions of article nine-a,  
406 chapter six of this code relating to open governmental proceedings. An on-site review shall be  
407 conducted by the Office of Education Performance Audits of a school or school system for the  
408 purpose of making recommendations to the school and school system, as appropriate, and to the  
409 state board on such measures as it considers necessary. The investigation may include, but is  
410 not limited to, the following:

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

412 (B) Examining compliance with the laws and policies affecting student, school and school  
413 system performance and progress;

414 (C) Evaluating the effectiveness and implementation status of school and school system  
415 electronic strategic improvement plans;

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

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

421 (F) Determining and reporting whether required reviews and inspections have been  
422 conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the  
423 Health Department, the School Building Authority and the responsible divisions within the  
424 Department of Education, and whether noted deficiencies have been or are in the process of  
425 being corrected.

426 (2) The Director of the Office of Education Performance Audits shall notify the county  
427 superintendent of schools five school days prior to commencing an on-site review of the county  
428 school system and shall notify both the county superintendent and the principal five school days  
429 before commencing an on-site review of an individual school: *Provided*, That the state board may

430 direct the Office of Education Performance Audits to conduct an unannounced on-site review of  
431 a school or school system if the state board believes circumstances warrant an unannounced  
432 on-site review.

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

437 (4) The Office of Education Performance Audits shall reimburse a county board for the  
438 costs of substitutes required to replace county board employees who serve on a review team.

439 (5) At the conclusion of an on-site review of a school system, the director and team leaders  
440 shall hold an exit conference with the superintendent and shall provide an opportunity for  
441 principals to be present for at least the portion of the conference pertaining to their respective  
442 schools. In the case of an on-site review of a school, the exit conference shall be held with the  
443 principal and curriculum team of the school and the superintendent shall be provided the  
444 opportunity to be present. The purpose of the exit conference is to review the initial findings of the  
445 on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between  
446 the reviewers and the school or school system to promote a better understanding of the findings.

447 (6) The Office of Education Performance Audits shall report the findings of an on-site  
448 review to the county superintendent and the principals whose schools were reviewed within thirty  
449 days following the conclusion of the on-site review. The Office of Education Performance Audits  
450 shall report the findings of the on-site review to the state board within forty-five days after the  
451 conclusion of the on-site review. A school or county that believes one or more findings of a review  
452 are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of  
453 education in the school or county or address issues unrelated to the health, safety and welfare of  
454 students and the quality of education, may appeal to the state board for removal of the findings.  
455 The state board shall establish a process for it to receive, review and act upon the appeals. The

456 state board shall report to the Legislative Oversight Commission on Education Accountability  
457 during its July interim meetings, or as soon thereafter as practical, on each appeal during the  
458 preceding school year.

459 (7) The Legislature finds that the accountability and oversight of some activities and  
460 programmatic areas in the public schools are controlled through other mechanisms and agencies  
461 and that additional accountability and oversight may be unnecessary, counterproductive and  
462 impair necessary resources for teaching and learning. Therefore, the Office of Education  
463 Performance Audits may rely on other agencies and mechanisms in its review of schools and  
464 school systems.

465 ~~(+)(m)~~ *School accreditation.* --

466 (1) The state board shall establish levels of accreditation to be assigned to schools. The  
467 establishment of levels of accreditation and the levels shall be subject to the following:

468 (A) The levels will be designed to demonstrate school performance in all the areas outlined  
469 in this section and also those established by the state board;

470 (B) The state board shall promulgate legislative rules in accordance with the provisions of  
471 article three-b, chapter twenty-nine-a of this code to establish the performance and standards  
472 required for a school to be assigned a particular level of accreditation; and

473 (C) The state board will establish the levels of accreditation in such a manner as to  
474 minimize the number of systems of school recognition, both state and federal, that are employed  
475 to recognize and accredit schools.

476 (2) The state board annually shall review the information from the system of education  
477 performance audits submitted for each school and shall issue to every school a level of  
478 accreditation as designated and determined by the state board.

479 (3) The state board, in its exercise of general supervision of the schools and school  
480 systems of West Virginia, may exercise any or all of the following powers and actions:

481 (A) To require a school to revise its electronic strategic plan;

482 (B) To define extraordinary circumstances under which the state board may intervene  
483 directly or indirectly in the operation of a school;

484 (C) To appoint monitors to work with the principal and staff of a school where extraordinary  
485 circumstances are found to exist, and to appoint monitors to assist the school principal after  
486 intervention in the operation of a school is completed;

487 (D) To direct a county board to target resources to assist a school where extraordinary  
488 circumstances are found to exist;

489 (E) To intervene directly in the operation of a school and declare the position of principal  
490 vacant and assign a principal for the school who will serve at the will and pleasure of the state  
491 board. If the principal who was removed elects not to remain an employee of the county board,  
492 then the principal assigned by the state board shall be paid by the county board. If the principal  
493 who was removed elects to remain an employee of the county board, then the following procedure  
494 applies:

495 (i) The principal assigned by the state board shall be paid by the state board until the next  
496 school term, at which time the principal assigned by the state board shall be paid by the county  
497 board;

498 (ii) The principal who was removed is eligible for all positions in the county, including  
499 teaching positions, for which the principal is certified, by either being placed on the transfer list in  
500 accordance with section seven, article two, chapter eighteen-a of this code, or by being placed  
501 on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of  
502 this code; and

503 (iii) The principal who was removed shall be paid by the county board and may be  
504 assigned to administrative duties, without the county board being required to post that position  
505 until the end of the school term; and

506 (F) Other powers and actions the state board determines necessary to fulfill its duties of  
507 general supervision of the schools and school systems of West Virginia.

508 (4) The county board may take no action nor refuse any action if the effect would be to  
509 impair further the school in which the state board has intervened.

510 ~~(m)~~(n) *School system approval.* -- The state board annually shall review the information  
511 submitted for each school system from the system of education performance audits and issue  
512 one of the following approval levels to each county board: Full approval, temporary approval,  
513 conditional approval or nonapproval.

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

520 (2) Temporary approval shall be given to a county board whose education system is below  
521 the level required for full approval. Whenever a county board is given temporary approval status,  
522 the county board shall revise its electronic county strategic improvement plan in accordance with  
523 subsection (b) of this section to increase the performance and progress of the school system to  
524 a full approval status level. The revised plan shall be submitted to the state board for approval.

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

528 (A) The plan has been revised in accordance with subsection (b) of this section;

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

530 (C) The county board is meeting the objectives and time line specified in the revised plan.

531 (4) Nonapproval status shall be given to a county board which fails to submit and gain  
532 approval for its electronic county strategic improvement plan or revised electronic county strategic  
533 improvement plan within a reasonable time period as defined by the state board or which fails to

534 meet the objectives and time line of its revised electronic county strategic improvement plan or  
535 fails to achieve full approval by the date specified in the revised plan.

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

539 (B) Whenever a county board has more than a casual deficit, as defined in section one,  
540 article one of this chapter, the county board shall submit a plan to the state board specifying the  
541 county board=s strategy for eliminating the casual deficit. The state board either shall approve or  
542 reject the plan. If the plan is rejected, the state board shall communicate to the county board the  
543 reason or reasons for the rejection of the plan. The county board may resubmit the plan any  
544 number of times. However, any county board that fails to submit a plan and gain approval for the  
545 plan from the state board before the end of the fiscal year after a deficit greater than a casual  
546 deficit occurred or any county board which, in the opinion of the state board, fails to comply with  
547 an approved plan may be designated as having nonapproval status.

548 (C) Whenever nonapproval status is given to a school system, the state board shall  
549 declare a state of emergency in the school system and shall appoint a team of improvement  
550 consultants to make recommendations within sixty days of appointment for correcting the  
551 emergency. When the state board approves the recommendations, they shall be communicated  
552 to the county board. If progress in correcting the emergency, as determined by the state board,  
553 is not made within six months from the time the county board receives the recommendations, the  
554 state board shall intervene in the operation of the school system to cause improvements to be  
555 made that will provide assurances that a thorough and efficient system of schools will be provided.  
556 This intervention may include, but is not limited to, the following:

557 (i) Limiting the authority of the county superintendent and county board as to the  
558 expenditure of funds, the employment and dismissal of personnel, the establishment and  
559 operation of the school calendar, the establishment of instructional programs and rules and any



560 other areas designated by the state board by rule, which may include delegating decision-making  
561 authority regarding these matters to the state superintendent;

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

563 (iii) Declaring that the positions of personnel who serve at the will and pleasure of the  
564 county superintendent as provided in section one, article two, chapter eighteen-a of this code, are  
565 vacant, subject to application and reemployment;

566 (iv) Delegating to the state superintendent both the authority to conduct hearings on  
567 personnel matters and school closure or consolidation matters and, subsequently, to render the  
568 resulting decisions and the authority to appoint a designee for the limited purpose of conducting  
569 hearings while reserving to the state superintendent the authority to render the resulting decisions;

570 (v) Functioning in lieu of the county board of education in a transfer, sale, purchase or  
571 other transaction regarding real property; and

572 (vi) Taking any direct action necessary to correct the emergency including, but not limited  
573 to, the following:

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

577 (II) Delegating to the state superintendent the authority to fill positions of administrators  
578 and principals with individuals determined by the state superintendent to be the most qualified for  
579 the positions. Any authority related to intervention in the operation of a county board granted  
580 under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this  
581 code.

582 ~~(n)~~(o) Notwithstanding any other provision of this section, the state board may intervene  
583 immediately in the operation of the county school system with all the powers, duties and  
584 responsibilities contained in subsection ~~(m)~~ (n) of this section, if the state board finds the following:

585 (1) That the conditions precedent to intervention exist as provided in this section; and that

586 delaying intervention for any period of time would not be in the best interests of the students of  
587 the county school system; or

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

591 ~~(e)~~(p) *Capacity*. -- The process for improving education includes a process for targeting  
592 resources strategically to improve the teaching and learning process. Development of electronic  
593 school and school system strategic improvement plans, pursuant to subsection (b) of this section,  
594 is intended, in part, to provide mechanisms to target resources strategically to the teaching and  
595 learning process to improve student, school and school system performance. When deficiencies  
596 are detected through the assessment and accountability processes, the revision and approval of  
597 school and school system electronic strategic improvement plans shall ensure that schools and  
598 school systems are efficiently using existing resources to correct the deficiencies. When the state  
599 board determines that schools and school systems do not have the capacity to correct  
600 deficiencies, When the state board determines that schools and school systems do not have the  
601 capacity to correct deficiencies, the state board shall take one or more of the following actions:

602 (1) Work with the county board to develop or secure the resources necessary to increase  
603 the capacity of schools and school systems to meet the standards and, when necessary, seek  
604 additional resources in consultation with the Legislature and the Governor;

605 (2) Recommend to the appropriate body including, but not limited to, the Legislature,  
606 county boards, schools and communities methods for targeting resources strategically to  
607 eliminate deficiencies identified in the assessment and accountability processes. When making  
608 determinations on recommendations, the state board shall include, but is not limited to, the  
609 following methods:

610 (A) Examining reports and electronic strategic improvement plans regarding the  
611 performance and progress of students, schools and school systems relative to the standards and

612 identifying the areas in which improvement is needed;

613 (B) Determining the areas of weakness and of ineffectiveness that appear to have  
614 contributed to the substandard performance and progress of students or the deficiencies of the  
615 school or school system and requiring the school or school system to work collaboratively with  
616 the West Virginia Department of Education State System of Support to correct the deficiencies;

617 (C) Determining the areas of strength that appear to have contributed to exceptional  
618 student, school and school system performance and progress and promoting their emulation  
619 throughout the system;

620 (D) Requesting technical assistance from the School Building Authority in assessing or  
621 designing comprehensive educational facilities plans;

622 (E) Recommending priority funding from the School Building Authority based on identified  
623 needs;

624 (F) Requesting special staff development programs from the Center for Professional  
625 Development, the Principals Academy, higher education, regional educational service agencies  
626 and county boards based on identified needs;

627 (G) Submitting requests to the Legislature for appropriations to meet the identified needs  
628 for improving education;

629 (H) Directing county boards to target their funds strategically toward alleviating  
630 deficiencies;

631 (I) Ensuring that the need for facilities in counties with increased enrollment are  
632 appropriately reflected and recommended for funding;

633 (J) Ensuring that the appropriate person or entity is held accountable for eliminating  
634 deficiencies; and

635 (K) Ensuring that the needed capacity is available from the state and local level to assist  
636 the school or school system in achieving the standards and alleviating the deficiencies.

637 (p) *Building leadership capacity* B To help build the governance and leadership capacity

638 of a county board during an intervention in the operation of its school system by the state board,  
639 and to help assure sustained success following return of control to the county board, the state  
640 board shall require the county board to establish goals and action plans, subject to approval of  
641 the state board, to improve performance sufficiently to end the intervention within a period of not  
642 more than five years. The state superintendent shall maintain oversight and provide assistance  
643 and feedback to the county board on development and implementation of the goals and action  
644 plans. At a minimum, the goals and action plans shall include:

645 (A) An analysis of the training and development activities needed by the county board and  
646 leadership of the school system and schools for effective governance and school improvement;

647 (B) Support for the training and development activities identified which may include those  
648 made available through the state superintendent, regional education service agencies, Center for  
649 Professional Development, West Virginia School Board Association, Office of Education  
650 Performance Audits, West Virginia Education Information System and other sources identified in  
651 the goals and action plans. Attendance at these activities included in the goals and action plans  
652 is mandatory as specified in the goals and action plans; and

653 (C) Active involvement by the county board in the improvement process, working in  
654 tandem with the county superintendent to gather, analyze and interpret data, write time-specific  
655 goals to correct deficiencies, prepare and implement action plans and allocate or request from  
656 the State Board of Education the resources, including board development training and coaching,  
657 necessary to achieve approved goals and action plans and sustain system and school  
658 improvement.

659 At least once each year during the period of intervention, the Office of Education  
660 Performance Audits shall assess the readiness of the county board to accept the return of control  
661 of the system or school from the state board and sustain the improvements, and shall make a  
662 report and recommendations to the state board supported by documented evidence of the  
663 progress made on the goals and action plans. The state board may end the intervention or return

664 any portion of control of the operations of the school system or school that was previously  
665 removed at its sole determination. If the state board determines at the fifth annual assessment  
666 that the county board is still not ready to accept return of control by the state board and sustain  
667 the improvements, the state board shall hold a public hearing in the affected county at which the  
668 attendance by all members of the county board is requested so that the reasons for continued  
669 intervention and the concerns of the citizens of the county may be heard. The state board may  
670 continue the intervention only after it holds the public hearing and may require revision of the  
671 goals and action plans.

672           Following the termination of an intervention in the operation of a school system and return  
673 of full control by the state board, the support for governance education and development shall  
674 continue as needed for up to three years. If at any time within this three years, the state board  
675 determines that intervention in the operation of the school system is again necessary, the state  
676 board shall again hold a public hearing in the affected county so that the reasons for the  
677 intervention and the concerns of the citizens of the county may be heard.

NOTE: The purpose of this bill is to prevent the State Board of Education from implementing common core academic standards and assessments; to establish a process and criteria for the state to develop alternate academic standards and assessments; to prohibit the state board from entering into any agreement which requires implementation of common core standards or limits Constitutional authority and obligation to provide a thorough and efficient system of education; and requiring the state board to report to the Legislative Oversight Commission on Education and Accountability.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.