

**Senate Bill No. 429**

(By Senators Boley, Nohe, Barnes, Blair, Carmichael, Cole, M.  
Hall, Jenkins, Sypolt and Walters)

[Introduced January 24, 2014; referred to the Committee on  
Education; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §18-1-5, relating to  
public school curricular standards and assessments;  
establishing a Legislative Common Core Study Committee to  
study issues relating to implementation of Common Core  
standards and assessments in West Virginia and report to the  
Governor and Legislature no later than six months after the  
final public hearing, or on or before the first day of the  
2016 Regular Session of the Legislature, whichever comes  
first; requiring State Board of Education to undertake a study  
of fiscal costs associated with implementing Common Core  
standards and assessments and report to the Governor and  
Legislature on or before the first day of the 2016 Regular  
Session; placing a two-year moratorium on implementation of  
Common Core assessments; prohibiting the State Board of

1 Education from sharing personally identifiable information of  
2 students or teachers except as provided; and definitions.

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

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

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

8 **EDUCATION.**

9 **§18-1-5. Public school curricular standards and assessments.**

10 (a) For purposes of this section:

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

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

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

23 (4) "Common Core assessments" means the Smarter Balanced

1 Assessments or any other student assessments intended to measure  
2 student achievement in the common core standards.

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

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

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

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

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

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

1 reliable, and timely testing of student performance, focusing  
2 primarily on academic content knowledge.

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

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

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

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

24 (2) Collect any new, share, or allow access to any personally

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

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

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

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

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

1 (C) Using the transfer of information for economic or  
2 workforce development planning.

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

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

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

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

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

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

23 (iv) In the event that a parent or guardian gives prior  
24 affirmative written consent the United States Department of

1 Education will inform the parent or guardian as to each data point  
2 that will be shared, and the purpose for each.

3 (v) That it will destroy the information upon completion of  
4 the evaluation of the program or program 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, strike-throughs and underscoring have been omitted.