

**S E C O N D  
E N G R O S S M E N T**

COMMITTEE SUBSTITUTE

for

**H. B. 2934**

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

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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 certain common core standards and certain subsequent 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; directing comprehensive review of standards by board to ensure repeal of certain common core standards and certain subsequent standards; prohibiting certain assessments; ensuring certain college and career ready standards are aligned and revised as needed; ensuring adequate and appropriate curriculum and instructional strategies, sufficient training and professional development, and information and resources to engage and assist parents; directing state board appoint stakeholder commission to

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participate in review with certain legislative member appointments; directing state board appointment of standards development committees to advise and assist commission and providing for member selection and qualifications; directing state board conduct regional town hall meetings with certain format for discussion and input; directing suspension of use of summative assessment scores except for certain purpose until certain date; directing limit on number of statewide summative assessment per year; directing prohibition of collection and disclosure of certain student information; directing regular information to Legislature on actions with respect to standards, assessment, accountability and capacity building; providing responsibilities and structure 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 21<sup>st</sup> 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 21<sup>st</sup> 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 3<sup>rd</sup>  
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, required reporting  
212 and professional 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.