WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

COMPETEE SUBSTITUTE
FOR
House Bill No. 2934

(By Delegates Mezzatesta, Williams, Perry, Shaver and Beach)

Passed April 14, 2001
In Effect from Passage
AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto two new sections, designated sections five-a and five-b, all relating to the process for improving education; authorizing the state board to appoint a monitor at county expense to cause improvements at seriously impaired school; providing process for targeting state board and county board resources to correct deficiencies; providing effect of intervention in school system on superintendent’s contract; and review of the system of education performance audits.
Be it enacted by the Legislature of West Virginia:

That section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections five-a and five-b, all to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

(a) Legislative intent. — The purpose of this section is to establish a process for improving education that includes standards, assessment, accountability and capacity building to provide assurances that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met.

(b) State board rules. — The state board shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a unified school improvement plan for each public school in this state. The state board is not required to promulgate new rules if legislative rules meeting the requirements of article three-b, chapter twenty-nine-a of this code have been filed with the office of the secretary of state before the effective date of this section.

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

(1) Curriculum;
(2) Workplace readiness skills;
(3) Finance;
(4) Transportation;
(5) Special education;
(6) Facilities;
(7) Administrative practices;
(8) Training of county board members and administrators;
(9) Personnel qualifications;
(10) Professional development and evaluation;
(11) Student and school performance;
(12) A code of conduct for students and employees;
(13) Indicators of efficiency; and
(14) Any other areas determined by the state board.

(d) Performance measures. — The standards shall assure that all graduates are prepared for gainful employment or for continuing postsecondary education and training and that schools and school districts are making progress in achieving the education goals of the state.

The standards shall include measures of student performance to indicate when a thorough and efficient system of
schools is being provided and of school and school system performance and processes that enable student performance. The measures of student performance and school and school system performance and processes shall include, but are not limited to, the following:

(1) The acquisition of student proficiencies as indicated by student performance by grade level measured, where possible, by a uniform statewide assessment program;

(2) School attendance rates;

(3) Student dropout rate;

(4) Percent of students promoted to the next grade;

(5) Graduation rate;

(6) Average class size;

(7) Pupil-teacher ratio and number of exceptions to ratio requested by county boards and the number granted;

(8) Number of split-grade classrooms;

(9) Percentage of graduates who enrolled in college; the percentage of graduates who enrolled in other postsecondary education; and the percentage of graduates who become fully employed within one year of high school graduation all as reported by the graduates on the assessment form attached to their individualized student transition plan, pursuant to section eight of this article and the percentage of graduates reporting;

(10) Pupil-administrator ratio;

(11) Parent involvement;

(12) Parent, teacher and student satisfaction;
(13) Operating expenditures per pupil;

(14) Percentage of graduates who attain the minimum level of performance in the basic skills recognized by the state board as laying the foundation for further learning and skill development for success in college, other postsecondary education and gainful employment and the grade level distribution in which the minimum level of performance was met;

(15) Percentage of graduates who received additional certification of their skills, competence and readiness for college, other postsecondary education or employment above the minimum foundation level of basic skills; and

(16) Percentage of students in secondary and middle schools who are enrolled in advanced placement or honors classes, respectively.

(e) Indicators of efficiency. – The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, adopt and periodically review and update indicators of efficiency for student and school system performance and processes in the following areas:

(A) Curriculum delivery including, but not limited to, the use of distance learning;

(B) Transportation;

(C) Facilities;

(D) Administrative practices;

(E) Personnel;

(F) Utilization of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational
service agency, or other regional services that may be initiated between and among participating county boards; and

(G) Any other indicators as determined by the state board.

(f) Assessment and accountability of school and school system performance and processes. — The state board shall establish by rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, a system of education performance audits which measures the quality of education and the preparation of students based on the standards and measures of student, school and school system performance and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state board in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided. The system of education performance audits shall include: (1) The assessment of student, school and school system performance and the processes in place in schools and school systems which enable student performance; (2) the review of school and school system unified improvement plans; and (3) the periodic, random unannounced on-site review of school and school system performance and compliance with the standards.

(g) Uses of school and school system assessment information. — The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance, including, but not limited to, the following: (1) Determining school accreditation and school system approval status; (2) holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and (3) targeting additional resources when neces-
sary to improve performance. Primary emphasis in determining
school accreditation and school system approval status shall be
based on student, school and school system performance on
measures selected by the state board. The state board shall
make accreditation information available to the Legislature; the
governor; and to the general public and any individuals who
request the information, subject to the provisions of any act or
rule restricting the release of information. Based on the
assessment of student, school and school system performance,
the state board shall establish early detection and intervention
programs to assist underachieving schools and school systems
in improving performance before conditions become so grave
as to warrant more substantive state intervention, including, but
not limited to, making additional technical assistance, program-
matic, monetary and staffing resources available where appro-
priate.

(h) Office of education performance audits. — To assist the
state board in the operation of the system of education perfor-
mance audits and in making determinations regarding the
accreditation status of schools and the approval status of school
systems, the state board shall establish an office of education
performance audits which shall be operated under the direction
of the state board independently of the functions and supervi-
sion of the state department of education and state superinten-
dent. The office of education performance audits shall report
directly to and be responsible to the state board in carrying out
its duties under the provisions of this section. The office shall
be headed by a director who shall be appointed by the state
board and shall serve at the will and pleasure of the state board.
The salary of the director shall not exceed the salary of the state
superintendent of schools. The state board shall organize and
sufficiently staff the office to fulfill the duties assigned to it by
this section and the state board. Employees of the state depa-
tment of education who are transferred to the office of education
performance audits shall retain their benefit and seniority status
with the department of education. Under the direction of the
state board, the office of education performance audits shall
receive from the West Virginia education information system
staff research and analysis data on the performance of students,
schools and school systems, and shall receive assistance from
staff at the state department of education and the state school
building authority to carry out the duties assigned to the office.
In addition to other duties which may be assigned to it by the
state board or by statute, the office of education performance
audits also shall:

(1) Assure that all statewide assessments of student
performance are secure as required in section one-a of this
article;

(2) Administer all accountability measures as assigned by
the state board, including, but not limited to, processes for the
accreditation of schools and the approval of school systems, and
recommend to the state board appropriate action, including, but
not limited to, accreditation and approval action;

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

(4) Determine, in conjunction with the assessment and
accountability processes, whether statewide system deficiencies
exist in the capacity to establish and maintain a thorough and
efficient system of schools, including the identification of
trends and the need for continuing improvements in education,
and report those deficiencies and trends to the state board;

(5) Determine, in conjunction with the assessment and
accountability processes, staff development needs of schools
and school systems to meet the standards established by the Legislature and the state board, and make recommendations to the state board, the center for professional development, regional educational service agencies, higher education governing boards and county boards; and

(6) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance, and make recommendations to the state board for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence.

(i) On-site reviews. — At the direction of the state board or by weighted, random selection by the office of education performance audits, an unannounced on-site review shall be conducted by the office of education performance audits of any school or school system for purposes, including, but not limited to, the following: (1) Verifying data reported by the school or county board; (2) documenting compliance with policies and laws; (3) evaluating the effectiveness and implementation status of school and school system unified improvement plans; (4) investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems; and (5) investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate. The random selection of schools and school systems for an on-site review shall use a weighted random sample so that those with lower performance indicators and those that have not had a recent on-site review have a greater likelihood of being selected. Under the direction
of the state board, the office of education performance audits shall appoint an education standards compliance review team to assist it in conducting on-site reviews. The teams shall be composed of an adequate number of persons who possess the necessary knowledge, skills and experience to make an accurate assessment of education programs and who are drawn from a trained cadre established by the office of education performance audits. The state board shall have discretion in determining the number of persons to serve on a standards compliance review team based on the size of the school or school system as applicable. The teams shall be led by a member of the office of education performance audits. The state board shall reimburse a county board for the costs of substitutes required to replace county board employees while they are serving on an education standards compliance review team. The office of education performance audits shall report the findings of the on-site reviews to the state board for inclusion in the evaluation and determination of a school’s or county board’s accreditation or approval status as applicable.

(j) School accreditation. — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school: Exemplary accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or shall declare the education programs at the school to be seriously impaired.

(1) Full accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section is at a level which would be expected when all of the high quality education standards are being met.

(2) Temporary accreditation status shall be given to a school when the measure of the school’s performance is below
the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s unified improvement plan is revised to increase the performance of the school to a full accreditation status level. The revised unified school improvement plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, cost estimates, and a date certain for achieving full accreditation. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board is below the level required for full accreditation, but the school’s unified improvement plan has been revised to achieve full accreditation status by a date certain, the plan has been approved by the state board and the school is meeting the objectives and time line specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section substantially exceeds the minimal level which would be expected when all of the high quality education standards are being met. The state board shall propose legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a, designated to establish standards of performance to identify exemplary schools.

(5) The state board shall establish and adopt standards of performance to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board.

(A) These circumstances shall include, but are not limited to, (i) the failure of a school on temporary accreditation status
to obtain approval of its revised unified school improvement plan within a reasonable time period as defined by the state board; (ii) the failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan; or (iii) the failure to achieve full accreditation by the date specified in the revised plan.

(B) Whenever the state board determines that the quality of education in a school is seriously impaired, the state board shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the impairment as determined by the state board is not made within six months from the time the county board receives the recommendations, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to: (i) improve personnel management; (ii) establish more efficient financial management practices; (iii) improve instructional programs and rules; or (iv) make any other improvements that are necessary to correct the impairment.

(C) If the impairment is not corrected by a date certain set by the state board the state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor’s work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school’s performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgement of the monitor to improve the school’s performance, including, but not limited to, the need for targeting resources
strategically to eliminate deficiencies. If the state board
determines that the improvements necessary to provide a
thorough and efficient education to the students at the school
can not be made without additional targeted resources, it shall
establish a plan in consultation with the county board that
includes targeted resources from sources under the control of
the state board and the county board to accomplish the needed
improvements. Nothing in this section shall be construed to
allow a change in personnel at the school to improve school
performance, except as provided by law.

(k) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to
improve its status within one year, any student attending the
school may transfer once to the nearest fully accredited school,
subject to approval of the fully accredited school and at the
expense of the school from which the student transferred.

(l) School system approval. — The state board annually
shall review the information submitted for each school system
from the system of education performance audits and issue one
of the following approval levels to each county board: Full
approval, temporary approval, conditional approval, or
nonapproval.

(1) Full approval shall be given to a county board whose
education system meets or exceeds all of the high quality
standards for student, school and school system performance
and processes adopted by the state board and whose schools
have all been given full, temporary or conditional accreditation
status.

(2) Temporary approval shall be given to a county board
whose education system is below the level required for full
approval. Whenever a county board is given temporary ap-
proval status, the county board shall revise its unified county
improvement plan to increase the performance of the school system to a full approval status level. The revised plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, a cost estimate, and a date certain for achieving full approval. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria: (i) The plan has been revised to achieve full approval status by a date certain; (ii) the plan has been approved by the state board; and (iii) the county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county improvement plan or revised unified county improvement plan within a reasonable time period as defined by the state board or fails to meet the objectives and time line of its revised unified county improvement plan or fails to achieve full approval by the date specified in the revised plan. The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board. Furthermore, whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board’s strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval
for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status. Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following: (i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule; (ii) taking any direct action necessary to correct the emergency; and (iii) declaring that the office of the county superintendent is vacant.

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

(1) That the conditions precedent to intervention exist as provided in this section; and
(2) That delaying intervention for any period of time would not be in the best interests of the students of the county school system.

(n) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor.

The state board shall recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities, methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes by:

(1) Examining reports and unified improvement plans regarding the performance of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;
(2) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance of students or the deficiencies of the school or school system;

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

(4) Requesting technical assistance from the school building authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the school building authority based on identified needs;

(6) Requesting special staff development programs from the center for professional development, higher education, regional educational service agencies and county boards based on identified needs;

(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

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

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and
Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

§18-2E-5a. County superintendent employment contract.

(a) The Legislature previously granted authority to the state board to intervene in the operation of a county school system in section five, article two-e of this chapter. Part of the authority given is the authority of the state board to declare that the office of the county superintendent is vacant. County boards enter into contracts to employ persons as superintendents for a term of years which creates substantial rights and obligations. Although the statute provides that the state board may declare the office of the county superintendent vacant, the statute did not specifically give the state board authority to void the contract of the county superintendent. The intent of this section is to clarify what contractual obligations continue after removal.

(b) Whenever the state board intervenes in the operation of a school system and the office of the county superintendent is declared vacant pursuant to section five, article two-e of this chapter, the state board may, for any intervention which is instituted after the effective date of this section, void any existing employment contract between the county board and the county superintendent.

(c) Whenever a county board elects a county superintendent and enters into a written contract of employment with the superintendent, the county board shall include within the contract a conspicuous clause that informs the superintendent that if the state board intervenes in the operation of the county school system pursuant to section five, article two-e of this chapter, the state board may vacate the office and void the employment contract.
§18-2E-5b. Review of system of education performance audits by the state board; reports to legislative oversight commission on education accountability.

(a) The Legislature finds that the system of education performance audits is a valuable tool for determining the quality of education provided in the public schools of our state and for holding schools accountable.

(b) Essential goals for a system of education performance audits include the following:

1. To assure that the measures used to evaluate performance are clearly aligned with the education goals and expectations established for student, school and school system performance, including student success in postsecondary education and work;

2. To assure that the measures used reflect a priority for student progress and safety; and

3. To assure that the measures used are limited in number and easily comparable to national performance indicators.

(c) The state board shall conduct a review of the system of education performance audits with the objective of achieving the goals set forth in subsection (b) of this section and shall submit progress reports on its work as requested by the legislative oversight commission on education accountability. The state board shall submit a final report including, but not limited to, any necessary revisions of its policy on the system of education performance audits and any recommendations for statutory changes to the legislative oversight commission on education accountability by the first day of December, two thousand one.
(d) In conducting its review, the state board shall examine for potential use in the system of education performance audits, any indicators used by various organizations to compare the performance of state education systems.

(e) The state board also shall consider methods for assigning accreditation status, such as weighting the attainment of performance standards, so that high performing schools and school systems can be fully accredited while correcting deficiencies on the process standards: Provided, That process standards affecting the safety of students are weighted equally with the performance standards.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 2nd day of May, 2001.

Governor