

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0575

SENATE ENGROSSED NO. **HB 1234** - 2/27/2012

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Education at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to provide incentives to teach in critical need areas, to  
2 provide for rewards for the best teachers and those teaching in math and science subject  
3 areas, to revise certain provisions regarding evaluation of teachers, to create a system for  
4 evaluating principals, to distinguish between tenured and nontenured teachers, to revise  
5 certain provisions regarding the employment of teachers, and to repeal provisions regarding  
6 the teacher compensation assistance program.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

8 Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Beginning in the 2013-2014 academic year, there is hereby established the South Dakota  
11 critical teaching needs scholarship program. The purpose of the program is to encourage South  
12 Dakota's high school graduates to obtain their postsecondary education in South Dakota for  
13 teaching, to remain in the state upon completion of their education, and to contribute to the state  
14 and its citizens by working in a critical need teaching area.

15 Section 2. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 The South Dakota critical teaching needs scholarship program shall be administered by the  
3 Critical Teaching Needs Scholarship Board which is hereby established. The board shall consist  
4 of five members appointed by the Governor for a term of five years, except that the initial  
5 appointments shall be for periods of one, two, three, four, and five years. A majority of the  
6 board shall be present either personally or by teleconference to constitute a quorum.

7 The Department of Education shall provide necessary support services to the board.

8 Section 3. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 From the total pool of applicants, the Critical Teaching Needs Scholarship Board shall  
11 award no more than one hundred critical teaching needs scholarships for each academic year.  
12 The board shall award scholarships based on the requirements of sections 5 and 6 of this Act,  
13 the filling of critical teaching needs areas, and other academic and personal characteristics of  
14 each applicant as determined by the board. Notwithstanding the provisions of this section, if the  
15 board rescinds a scholarship that has been awarded, the board may award the amount of the  
16 rescinded scholarship to an alternate.

17 Section 4. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 All accredited South Dakota public and nonpublic postsecondary institutions which offer  
20 a baccalaureate degree in elementary or secondary education are eligible to participate in the  
21 scholarship program. Each institution may choose whether to participate in the program and may  
22 limit the number of scholarship recipients the institution will accept in each academic year.

23 Section 5. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1 In order to be eligible for a critical teaching needs scholarship, a student shall:

2 (1) Agree, in writing, to stay in South Dakota and work in a critical teaching needs area  
3 for five years after graduation from a participating postsecondary institution;

4 (2) Agree, through a promissory note, that failure to abide by the provisions of  
5 subdivision (1) will result in the scholarship being converted into an interest bearing  
6 loan;

7 (3) Attend a participating South Dakota postsecondary institution as an undergraduate  
8 junior or senior and be accepted in an elementary or secondary education program at  
9 the institution that will prepare the student to work in a critical need teaching area;  
10 and

11 (4) Be a United States citizen or lawful permanent resident.

12 For purposes of subdivision (3), a junior is a student who has earned sixty credit hours prior  
13 to the beginning of the third year of instruction, and a senior is a student who has earned ninety  
14 credit hours prior to the fourth year of instruction.

15 A student is eligible to participate in the South Dakota critical teaching needs scholarship  
16 program for the equivalent of two academic years (four consecutive spring and fall terms) or  
17 until the attainment of a baccalaureate degree in elementary or secondary education in a critical  
18 teaching needs area, whichever comes first. However, the Critical Teaching Needs Scholarship  
19 Board may grant exceptions to the continuous enrollment requirements for good cause.

20 Scholarships are not provided for summer session students enrolled in traditional four year  
21 programs.

22 Section 6. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 In addition to the eligibility criteria identified in section 5 of this Act, the Critical Teaching

1 Needs Scholarship Board may require applicants to submit a written essay or other information  
2 by which to judge the academic and personal qualifications of the applicant.

3 Section 7. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The amount of the annual scholarship shall equal the tuition and generally applicable fees  
6 for thirty credit hours at a South Dakota public postsecondary institution as of July 1, 2013. The  
7 scholarship amount paid to a recipient attending a participating nonpublic postsecondary  
8 institution shall equal the amount paid to a recipient attending a public postsecondary  
9 institution.

10 One-half of the annual scholarship shall be paid to public postsecondary institutions on  
11 behalf of eligible students there enrolled or directly to eligible students enrolled at nonpublic  
12 postsecondary institutions at the beginning of the fall semester, and the other half shall be paid  
13 at the beginning of the spring semester.

14 If, in any year, the total funds available to fund the critical teaching needs scholarships are  
15 insufficient to permit each eligible recipient to receive the full amount provided in this section,  
16 the available moneys shall be prorated and distributed to each recipient in proportion to the  
17 entitlement contemplated by this section. The total amount of the scholarship may not exceed  
18 the amount stipulated in this section.

19 Section 8. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 In order to maintain eligibility for the critical teaching needs scholarship program, a student  
22 shall:

- 23 (1) Maintain a cumulative 2.8 grade point average on a 4.0 scale. The student shall  
24 complete consecutive spring and fall terms in order to remain eligible for

1 continuation of the scholarship program from term to term;

2 (2) Make satisfactory academic progress towards a degree by earning thirty credit hours  
3 per year;

4 (3) Attend and graduate from a participating South Dakota postsecondary institution with  
5 an elementary or secondary education degree which qualifies the student to teach in  
6 a critical teaching needs area in South Dakota; and

7 (4) Upon graduation, stay in South Dakota and teach in a critical teaching needs area for  
8 five years.

9 If factors beyond the control of a student who has been awarded a critical teaching needs  
10 scholarship prevent the student from meeting any of the requirements in subdivisions (1) to (3),  
11 the Critical Teaching Needs Scholarship Board may temporarily waive the requirements of those  
12 subdivisions. The board may rescind a scholarship award if the student does not maintain  
13 eligibility as prescribed in those subdivisions.

14 Failure to fulfill the requirements of subdivision (4) shall result in the critical teaching needs  
15 scholarship being converted into an interest bearing loan. The board shall set the rate of interest,  
16 as allowed by law. The five years of employment referenced in subdivision (4) shall be fulfilled  
17 consecutively unless the board waives this requirement for good cause, and the five years of  
18 employment may be fulfilled at more than one school district in South Dakota.

19 Section 9. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 The Department of Education may receive gifts, donations, grants, or endowments for the  
22 purposes of sections 1 to 8, inclusive, of this Act.

23 Section 10. The Board of Education may promulgate rules pursuant to chapter 1-26 to define  
24 areas of critical teaching need for the purposes of sections 1 to 8, inclusive, of this Act, to

1 establish application requirements for the critical teaching needs scholarship, and to further  
2 accomplish the purposes of sections 1 to 8, inclusive, of this Act.

3 Section 11. Beginning in the 2014-2015 school year, there is hereby created the math and  
4 science teacher incentive program within the Department of Education to provide funds to  
5 public school districts for the purpose of providing rewards to attract certified teachers who  
6 teach in math and science subject areas in middle school and high school or who are certified  
7 with a math or science specialist endorsement which they are utilizing for any grade,  
8 kindergarten through twelve. By January 31, 2014, the South Dakota Board of Education shall  
9 promulgate rules pursuant to chapter 1-26 establishing which courses qualify as math and  
10 science courses for purposes of the program. For purposes of this Act, math and science courses  
11 are those courses established by the Board of Education pursuant to this section. For purposes  
12 of this Act, middle school is a school consisting of any combination of two or more consecutive  
13 grades, five to eight, inclusive, and high school is a school consisting of any combination of  
14 three or more consecutive grades, including ninth grade to twelfth grade, inclusive.

15 Section 12. Participation in the math and science teacher incentive program is voluntary for  
16 teachers, and incentive rewards are to supplement but not replace what a teacher receives under  
17 a contract between the teacher and the school district or a collective bargaining agreement  
18 between a district and the district's teachers. No collective bargaining agreement between a  
19 district and the district's teachers may limit the ability of a teacher to qualify for or receive an  
20 incentive reward. Nothing in sections 11 to 16, inclusive, of this Act is intended to create a  
21 contractual right or property right in the math and science teacher incentive program.

22 Section 13. The Department of Education shall provide application forms for teachers  
23 wishing to participate in the math and science teacher incentive program. A teacher wishing to  
24 participate in the program shall complete and sign the form and provide the form to the business

1 office of the school district by the close of business on October first to be eligible for the  
2 program for that school year. A teacher wishing to participate shall submit a new application  
3 for each school year. Completed applications are a public record pursuant to chapter 1-27, but  
4 personal information in the applications may be redacted as allowed by that chapter.

5 Section 14. To be eligible for the math and science teacher incentive program, a teacher shall  
6 fulfill the following requirements:

- 7 (1) Comply with section 13 of this Act;
- 8 (2) Receive a distinguished rating or proficient rating, as referenced in section 38 of this  
9 Act, on the teacher's most recent evaluation;
- 10 (3) Teach math or science courses in middle school or high school for at least fifty  
11 percent of a full-time equivalent position's assignments submitted in the annual  
12 teacher data collection pursuant to § 13-3-51, and any rules promulgated pursuant  
13 thereto, and be currently certified with a middle school or high school endorsement  
14 to teach each course, or utilize a math or science specialist endorsement for any  
15 grade, kindergarten through twelve; and
- 16 (4) Be in full-time status for the entire school year.

17 Nothing in subdivision (3) shall entitle any teacher to receive more than the amount stipulated  
18 in section 16 of this Act.

19 Section 15. By September first of each year, the school board of each district shall submit to  
20 the Department of Education a copy of the application of each teacher eligible for the math and  
21 science teacher incentive program for the previous school year pursuant to the requirements of  
22 this Act. The Department of Education may require additional information from the district as  
23 necessary to verify each teacher's eligibility for the reward. The department may refuse to issue  
24 a reward for any teacher for whom the information required by this section is not provided by the

1 deadline.

2 Section 16. The amount of the reward under the math and science teacher incentive program  
3 is two thousand eight hundred fifty dollars per eligible teacher to be distributed as described in  
4 this section. No later than October first of each year, at the same time that foundation program  
5 state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the  
6 secretary of the Department of Education shall distribute funds for the math and science teacher  
7 incentive program for teachers that qualify pursuant to this Act. These funds shall be distributed  
8 in lump sum payments.

9 Subject to the requirements of this Act, the department shall pay to the school district two  
10 thousand eight hundred fifty dollars per eligible teacher in that district. Within thirty days of  
11 receipt from the department, the school district shall distribute the funds as follows:

- 12 (1) Two thousand five hundred dollars shall be paid to each eligible teacher in the district;  
13 and  
14 (2) Three hundred fifty dollars may be retained by the district to pay the district's share  
15 of applicable federal taxes, the district's share of contribution to the South Dakota  
16 Retirement System, and administrative costs.

17 Section 17. Beginning in the 2014-2015 school year, there is hereby created the top teachers  
18 reward program within the Department of Education to provide funds to public school districts  
19 for the purpose of providing top teacher rewards for certified teachers.

20 Section 18. Participation in the top teachers reward program is voluntary for teachers, and  
21 such rewards shall supplement but not replace what a teacher receives under a contract between  
22 the teacher and the school district or a collective bargaining agreement between a district and the  
23 district's teachers. No collective bargaining agreement between a district and the district's  
24 teachers may limit the ability of a teacher to qualify for or receive a top teacher reward. Nothing

1 in sections 17 to 25, inclusive, of this Act is intended to create a contractual right or property  
2 right in the top teachers reward program.

3 Section 19. In each school year, up to twenty percent of each school district's full-time  
4 equivalent certified teaching positions, as measured by the district's annual teacher data collection  
5 pursuant to § 13-3-51 and any rules promulgated pursuant to that section, shall be eligible to  
6 receive a top teacher reward, subject to the requirements of this Act. The Department of  
7 Education shall multiply the number of full-time equivalent certified teaching positions in the  
8 district by twenty percent. If this calculation results in a fraction, the maximum number of  
9 eligible positions may not exceed the next lowest whole number. If there are fewer than five  
10 full-time equivalent certified teaching positions in a school district, the maximum number of  
11 eligible positions shall be one.

12 Section 20. No later than May first of each year, at the same time that foundation program  
13 state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the  
14 secretary of the Department of Education shall inform each school district of the number of  
15 eligible positions in that district for the current school year, based on the calculation in section  
16 19 of this Act, and distribute to each school district five thousand seven hundred dollars per  
17 eligible position. These funds shall be distributed in lump sum payments. The school district  
18 shall retain these funds until distribution pursuant to section 21 of this Act.

19 Section 21. No later than September first of each year, the school district shall distribute the  
20 funds received pursuant to section 20 of this Act as follows:

- 21 (1) Five thousand dollars shall be paid to each teacher selected for a top teacher reward  
22 pursuant to section 24 of this Act for the previous school year; and
- 23 (2) Seven hundred dollars may be retained by the district to pay the district's share of  
24 applicable federal taxes, the district's share of contribution to the South Dakota

1 Retirement System, and administrative costs.

2 Any funds received pursuant to section 20 of this Act which are not distributed according to  
3 this section shall be returned to the Department of Education within thirty days.

4 Section 22. The Department of Education shall provide application forms for teachers  
5 wishing to participate in the top teachers reward program. A teacher wishing to participate in the  
6 program shall complete and sign the form and provide the form to the business office of the  
7 school district by the close of business on October first to be eligible for the program for that  
8 school year. A teacher wishing to participate shall submit a new application for each school year.  
9 Completed applications are a public record pursuant to chapter 1-27, but personal information  
10 in the applications may be redacted pursuant to that chapter.

11 Section 23. A participating teacher shall be full-time and receive a distinguished rating, as  
12 referenced in section 38 of this Act, on the teacher's most recent evaluation to be eligible for a  
13 top teacher reward. In addition, a distinguished teacher's selection for the reward may be based  
14 on consideration of the following factors as determined by the school board:

- 15 (1) Mentoring of less experienced teachers;
- 16 (2) Curriculum development;
- 17 (3) Assessment development;
- 18 (4) Data analysis;
- 19 (5) Service to the local district, state, or national committees or task forces;
- 20 (6) Leadership in a professional learning community;
- 21 (7) National board certification;
- 22 (8) Other leadership activities or recognitions; and
- 23 (9) Other additional criteria as determined by the school board.

24 Section 24. No later than August first of each year, the school board of each school district

1 shall determine which participating teachers, if any, are selected to receive top teacher rewards  
2 for the previous school year according to the criteria in section 23 of this Act. The number of  
3 teachers selected may not exceed the number of eligible positions referenced in sections 19 and  
4 20 of this Act.

5 Section 25. Department of Education may require each school district to provide any  
6 information necessary to verify the district's compliance with sections 20 to 24, inclusive, of this  
7 Act. Upon a finding of noncompliance, the department may require the district to return any  
8 funds distributed contrary to the requirements of this Act.

9 Section 26. Notwithstanding any other provisions of this Act, public school districts may opt  
10 out of the top teacher reward program by providing written notice to the Department of  
11 Education. The notice shall be approved by a majority of the school board and signed by the  
12 school board president. The department shall provide forms for this purpose. Beginning in 2014,  
13 the notice shall be postmarked no earlier than January first, and no later than January thirty-first,  
14 of each year in order to be effective for the next school year. The district shall provide a separate  
15 form for each school year for which the district desires to opt out. If a school district fails to  
16 follow the requirements of this section, the attempt to opt out is void, and the district shall  
17 comply with the requirements of the top teacher reward program.

18 If a district opts out pursuant to this section, the teachers employed in the district are not  
19 eligible to participate in the top teacher reward program. The district shall provide written notice  
20 to each certified teacher of the teacher's ineligibility for the program before executing a teaching  
21 contract with the teacher for the school year for which the opt out is effective.

22 School districts may not opt out of the math and science teacher incentive program  
23 established pursuant to this Act.

24 Section 27. If a school district opts out pursuant to section 26 of this Act, all funds which the

1 district would have been eligible to receive for the top teacher program pursuant to this Act shall  
2 be redistributed as follows:

3 (1) To obtain the redistribution amount, the Department of Education shall calculate the  
4 number of positions that would have been eligible for the top teacher reward program  
5 in each opt out district pursuant to section 19 of this Act, and multiply that calculation  
6 by five thousand seven hundred dollars;

7 (2) No later than May first of each year, at the same time that foundation program state  
8 aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive,  
9 the department shall allocate the redistribution amount, on a pro rata basis, to each  
10 public school district that did not opt out of the top teacher reward program or is  
11 participating in a local teacher reward program pursuant to sections 28 to 35,  
12 inclusive, of this Act. Each district's pro rata share of the redistribution amount shall  
13 be based on the number of full-time equivalent certified teacher positions in the  
14 district, as measured by the district's annual teacher data collection pursuant to  
15 § 13-3-51 and any rules promulgated pursuant to that section; and

16 (3) No later than September first of each year, the redistribution amount received by each  
17 district pursuant to subdivision (2) shall be distributed equally among all teachers  
18 receiving top teacher rewards in the district pursuant to sections 17 to 25, inclusive,  
19 of this Act, or among all teachers receiving local teacher rewards pursuant to sections  
20 28 to 35, inclusive, of this Act, but each district may withhold an amount necessary  
21 to pay the district's share of applicable federal taxes, the district's share of  
22 contributions to the South Dakota Retirement System, and administrative costs. Any  
23 funds not distributed according to this subdivision shall be returned to the Department  
24 of Education within thirty days.

1 Section 28. Notwithstanding any other provision of this Act, a public school district may  
2 create a local teacher reward plan to act as a substitute for the top teacher reward program  
3 beginning in the 2014-2015 school year. If the local teacher reward plan is developed in  
4 compliance with sections 28 to 35, inclusive, of this Act, the district may utilize the local teacher  
5 reward plan to provide the district with the flexibility to use the funds that would otherwise be  
6 provided to the district through the top teachers reward program.

7 Participation in the local teacher reward plan is voluntary. Rewards shall supplement but not  
8 replace what a teacher receives under a contract between the teacher and the school district or  
9 a collective bargaining agreement between a district and the district's teachers. No collective  
10 bargaining agreement between a district and the district's teachers may limit the ability of a  
11 teacher to qualify for or receive a local teacher reward. Nothing in sections 28 to 35, inclusive,  
12 of this Act, is intended to create a contractual right or property right in local teacher rewards.

13 Teachers in the district may not participate in the top teacher reward program for any school  
14 year for which the district has adopted a local teacher reward plan. The district shall provide  
15 written notice to each certified teacher of the teacher's ineligibility for the top teacher reward  
16 program and provide a copy of the district's local teacher reward plan to each certified teacher  
17 before executing a teaching contract with the teacher for the school year for which the local  
18 teacher reward plan is effective.

19 Section 29. The local teacher reward plan shall reward certified teachers in the district based  
20 upon one or more of the following criteria:

- 21 (1) Demonstrating an impact on student achievement;
- 22 (2) Demonstrating teacher leadership; or
- 23 (3) Market based needs of the school district based upon critical teaching area needs of  
24 the school district.

1 Section 30. There is hereby established the Local Teacher Reward Plan Advisory Council.  
2 The council shall provide input in developing one or more model local teacher reward plan  
3 applications based upon the criteria in section 29 of this Act. The work group shall be appointed  
4 by the secretary of education and consist of the following members:

- 5 (1) A combination of six principals and superintendents: two from an elementary school,  
6 two from a middle school, and two from a high school;
- 7 (2) Six teachers: two from an elementary school, two from a middle school, and two from  
8 a high school; and
- 9 (3) Three school board members: one from a small school district, one from a medium-  
10 sized school district, and one from a large school district.

11 Section 31. The Board of Education shall promulgate rules, pursuant to chapter 1-26,  
12 establishing the application form for the local teacher reward plan, further guidelines for district  
13 applications based on the criteria in section 29 of this Act, a system to monitor whether each  
14 participating school district is complying with the local teacher reward plan, and penalties for  
15 noncompliance.

16 Section 32. There is hereby established the Local Teacher Reward Plan Oversight Board. The  
17 board shall consist of the following members:

- 18 (1) One member of the Senate appointed by the president pro tempore of the Senate;
- 19 (2) One member of the House of Representatives appointed by the speaker of the House  
20 of Representatives;
- 21 (3) Two representatives of the business community appointed by the Governor;
- 22 (4) One representative of an educational association appointed by the Governor;
- 23 (5) One current or former teacher appointed by the Governor; and
- 24 (6) The secretary of the Department of Education.

1 Section 33. A school district shall submit the local teacher reward plan application to the  
2 Department of Education no later than January thirty-first of each year, beginning in 2014, to be  
3 eligible to apply the local teacher reward plan to the upcoming school year.

4 By March fifteenth of each year, the Local Teacher Reward Plan Oversight Board shall  
5 review all applications to determine compliance with this Act, and any rules promulgated thereto.  
6 The board may request additional information from the district as part of the review of the  
7 application. By April first of each year, the board shall inform each district whether the district's  
8 local teacher reward plan has been approved for the upcoming school year. If the application is  
9 denied, the district may adopt a model plan established pursuant to section 30 of this Act or opt  
10 out pursuant to sections 26 and 27 of this Act.

11 Section 34. If a district's local teacher reward plan is approved, the Department of Education  
12 shall calculate the number of positions in the district that would have been eligible for the top  
13 teacher reward program pursuant to section 19 of this Act and multiply that calculation by five  
14 thousand seven hundred dollars. No later than May first of each year, at the same time that  
15 foundation program state aid is distributed to the district pursuant to §§ 13-13-10.1 to 13-13-41,  
16 inclusive, the secretary of the Department of Education shall distribute this amount to the district  
17 in a lump sum payment.

18 Section 35. No later than September first of each year, the district shall distribute the funds  
19 received pursuant to section 34 of this Act to each certified teacher selected for a reward under  
20 the local teacher reward program for the previous school year, but the district may withhold an  
21 amount necessary to pay the district's share of applicable federal taxes, the district's share of  
22 contributions to the South Dakota Retirement System, and administrative costs. Any funds not  
23 distributed according to this section shall be returned to the Department of Education within  
24 thirty days.

1 Section 36. A teacher may apply for both the math and science teacher incentive program and  
2 the top teachers reward program established pursuant to this Act or both the math and science  
3 teacher incentive program and the local teacher reward plan established pursuant to this Act.

4 Section 37. That § 13-42-34 be amended to read as follows:

5 13-42-34. Any public school district seeking state accreditation shall evaluate the  
6 performance of each certified teacher in years one ~~through~~ to three, inclusive, not less than  
7 annually, and each certified teacher in the fourth contract year or beyond, not less than every  
8 other year.

9 ~~Each~~ For the 2012-2013 school year and the 2013-2014 school year, each school district ~~shall~~  
10 may adopt procedures for evaluating the performance of certified teachers employed by the  
11 school district that:

- 12 (1) Are based on the minimum professional performance standards established by the  
13 Board of Education pursuant to § 13-42-33;
- 14 (2) Require multiple measures;
- 15 (3) Serve as the basis for programs to increase professional growth and development of  
16 certified teachers; and
- 17 (4) Include a plan of assistance for any certified teacher, who is in the fourth or  
18 subsequent year of teaching, and whose performance does not meet the school  
19 district's performance standards.

20 Section 38. That § 13-42-34 be amended to read as follows:

21 13-42-34. Any public school district seeking state accreditation shall evaluate the  
22 performance of each certified teacher ~~in years one through three not less than annually, and each~~  
23 ~~certified teacher in the fourth contract year or beyond, not less than every other year.~~ Beginning  
24 in the 2014-2015 school year, each certified teacher shall be evaluated on an annual basis.

1 Each school district shall adopt the model evaluation instrument required by section 40 of  
2 this Act and procedures for evaluating the performance of certified teachers employed by the  
3 school district that:

4 (1) Are based on the minimum professional performance standards established by the  
5 Board of Education pursuant to § 13-42-33;

6 (2) Require multiple measures of performance as follows:

7 (a) Fifty percent of the evaluation of a teacher shall be based on quantitative  
8 measures of student growth, based on a single year or multiple years of data.  
9 This quantitative data shall be based on reports of student performance on state  
10 validated assessments established pursuant to § 13-3-55. For those teachers in  
11 grades and subjects for which there is no state-validated assessment for the  
12 quantitative portion of the evaluation, teachers shall demonstrate success in  
13 improving student achievement using objective measures, which can include  
14 portfolio assessments, end-of-course exams, or other district approved  
15 assessments which demonstrate student growth; and

16 (b) Fifty percent of the evaluation of a teacher shall be based on qualitative,  
17 observable, evidence-based characteristics of good teaching and classroom  
18 practices as further defined in the model evaluation instrument referenced in  
19 section 40 of this Act. Districts may collect additional evidence using any of the  
20 following if not required by the model evaluation instrument:

21 (i) Classroom drop-ins;

22 (ii) Parent surveys;

23 (iii) Student surveys;

24 (iv) Portfolios; or

1                   (v) Peer review;

2           (3)   Serve as the basis for programs to increase professional growth and development of  
3           certified teachers; and

4           (4)   Include a plan of assistance for any certified teacher, ~~who is in the fourth or~~  
5           ~~subsequent year of teaching, and~~ whose performance does not meet the school  
6           district's performance standards; and

7           (5)   Are based on the following four-tier rating system:

8                   (a)   Distinguished;

9                   (b)   Proficient;

10                  (c)   Basic; and

11                  (d)   Unsatisfactory.

12           Section 39. The provisions of section 38 of this Act are effective July 1, 2014.

13           Section 40. That § 13-42-35 be amended to read as follows:

14           13-42-35. A work group appointed by the secretary of education shall provide input in  
15           developing the standards for defining the four-tier rating system required by section 38 of this  
16           Act and shall develop in developing a model evaluation instrument that ~~may~~ shall be used by  
17           school districts for the 2014-2015 school year and subsequent school years. The work group shall  
18           consist of the following members:

19           (1)   Six teachers: two from an elementary school, two from a middle school, and two from  
20           a high school;

21           (2)   Three principals: one from an elementary school, one from a middle school, and one  
22           from a high school;

23           (3)   Two superintendents;

24           (4)   Two school board members;

- 1 (5) Four parents who have students in various levels of the K-12 system:
- 2 (6) One representative of the South Dakota Education Association;
- 3 (7) One representative of the School Administrators of South Dakota; and
- 4 (8) One representative of the Associated School Boards of South Dakota.

5 Section 41. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Pursuant to chapter 1-26, the South Dakota Board of Education shall promulgate rules  
8 establishing standards for defining the four-tier rating system required by section 38 of this Act  
9 and adopting the model evaluation instrument referenced in section 40 of this Act.

10 Section 42. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Beginning with the 2014-2015 school year, the procedures for evaluation and the model  
13 evaluation instrument referenced in sections 38 to 41, inclusive, of this Act may not be the  
14 subject of any collective bargaining agreement between a district and the district's teachers.

15 Section 43. The Board of Education shall promulgate rules pursuant to chapter 1-26 to  
16 establish minimum professional performance standards for certified principals in South Dakota  
17 public schools, and to establish best practices for the evaluation of the performance of certified  
18 principals that shall be used by individual school districts. The South Dakota Board of Education  
19 shall promulgate rules pursuant to chapter 1-26 establishing standards for defining the four-tier  
20 rating system required by section 44 of this Act and adopting the model evaluation instrument  
21 referenced in section 45 of this Act.

22 Section 44. Beginning in the 2014-2015 school year, any public school district seeking state  
23 accreditation shall evaluate the performance of each certified principal not less than every other  
24 year.

1 Each school district shall adopt the model evaluation instrument required by section 45 of  
2 this Act and procedures for evaluating the performance of certified principals employed by the  
3 school district that:

- 4 (1) Are based on the minimum professional performance standards established by the  
5 Board of Education pursuant to section 43 of this Act;
- 6 (2) Require multiple measures of performance;
- 7 (3) Serve as the basis for programs to increase professional growth and development of  
8 certified principals;
- 9 (4) Include a plan of assistance for any certified principal whose performance does not  
10 meet the school district's performance standards; and
- 11 (5) Are based on the following four-tier rating system:
  - 12 (a) Distinguished;
  - 13 (b) Proficient;
  - 14 (c) Basic; and
  - 15 (d) Unsatisfactory.

16 Section 45. A work group appointed by the secretary of education shall provide input in  
17 developing the standards referenced in section 43 of this Act, the four-tier rating system required  
18 by section 44 of this Act, and in developing a model instrument for principal evaluation that  
19 shall be used by school districts for the 2014-2015 school year and each school year thereafter.

20 The work group shall consist of the following members:

- 21 (1) Six principals: two from an elementary school, two from a middle school, and two  
22 from a high school;
- 23 (2) Three teachers: one from an elementary school, one from a middle school, and one  
24 from a high school;

- 1       (3)   Two superintendents;
- 2       (4)   Two school board members;
- 3       (5)   Four parents who have students in various levels of the K-12 system;
- 4       (6)   One representative of the South Dakota Education Association;
- 5       (7)   One representative of the School Administrators of South Dakota; and
- 6       (8)   One representative of the Associated School Boards of South Dakota.

7       Section 46. All persons conducting teacher or principal evaluations required by sections 38  
8 to 45, inclusive, of this Act shall participate in training conducted by the Department of  
9 Education before conducting the evaluations.

10       Section 47. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12       For purposes of this chapter, the term, tenured teacher, means a teacher who is in or beyond  
13 the fourth consecutive term of employment as a teacher with the school district prior to July 1,  
14 2016. If, prior to July 1, 2016, the school district and the teacher have entered into a contract  
15 pursuant to §§ 13-43-4 and 13-43-5 for the teacher's fourth consecutive term of employment with  
16 the district or a subsequent consecutive term of employment with the district, then that teacher  
17 is a tenured teacher for purposes of this chapter. The term, nontenured teacher, means a teacher  
18 who is not yet in or beyond the fourth consecutive term of employment as a teacher with the  
19 school district prior to July 1, 2016. Any teacher who is not in or beyond the fourth consecutive  
20 term of employment with the school district prior to July 1, 2016, need not acquire continuing  
21 contract status under this chapter. Nothing in this section or section 53 of this Act prohibits a  
22 school district from choosing to provide continuing contract to a nontenured teacher beyond what  
23 is provided for in this chapter.

24       Section 48. That § 13-43-6 be amended to read as follows:

1 13-43-6. The contract shall specify the date at or about which the school shall begin, the term  
2 of employment, the wages per month, and the time of payment ~~thereof, such~~ of wages. The  
3 contract shall be signed in duplicate and one copy filed in the office of the business manager and  
4 the other retained by the teacher. ~~Such~~ The contract may be issued covering any period of ~~years,~~  
5 ~~not to exceed three~~ employment up to one year, over which a teacher holds a certificate which  
6 ~~will~~ shall remain valid without renewal.

7 Section 49. That § 13-43-6.1 be amended to read as follows:

8 13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any  
9 time for just cause, including breach of contract, poor performance, incompetency, gross  
10 immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any  
11 policy or regulation of the school district. ~~A school district may nonrenew a teacher who is in or~~  
12 ~~beyond the fourth consecutive term of employment as a teacher with the school district pursuant~~  
13 ~~to § 13-43-6.3 for just cause, including breach of contract, poor performance, incompetency,~~  
14 ~~gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of~~  
15 ~~any policy or regulation of the school district.~~

16 Section 50. That § 13-43-6.2 be amended to read as follows:

17 13-43-6.2. If nonrenewal of a tenured teacher is contemplated under ~~§ 13-43-6.1~~ § 13-43-6.3,  
18 the superintendent or chief executive officer shall give written notice of an intention to  
19 recommend nonrenewal to the teacher and the school board; a written statement of the reasons  
20 for the recommendation; access to the employment records of the teacher; the opportunity to the  
21 teacher for a hearing before the school board to present reasons in person or in writing why the  
22 nonrenewal should not occur; and the opportunity to be represented. The teacher shall request  
23 the hearing as provided in § 13-43-6.9. The school board shall conduct the hearing not sooner  
24 than fourteen days, nor later than forty-five days, after receipt of the teacher's request for hearing.

1 The parties may waive the time limitations provided for in this section.

2 Section 51. That § 13-43-6.3 be amended to read as follows:

3 13-43-6.3. ~~Until a teacher is in or beyond the fourth consecutive term of employment as a~~  
4 ~~teacher with the school district, a~~ A school board may or may not renew the teacher's contract  
5 of a nontenured teacher. The superintendent or chief executive officer shall give written notice  
6 of nonrenewal by April fifteenth but is not required to give further process or a reason for  
7 nonrenewal.

8 ~~After a teacher is in or beyond the fourth consecutive term of employment as a teacher with~~  
9 ~~the school district, §§ 13-43-6.1 and 13-43-6.2 apply to any nonrenewal of the teacher's contract.~~  
10 A school board may refuse to renew the teacher's contract of a tenured teacher for just cause,  
11 including breach of contract, poor performance, a rating of unsatisfactory on two consecutive  
12 evaluations pursuant to section 38 of this Act, incompetency, gross immorality, unprofessional  
13 conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the  
14 school district. On or before April fifteenth, the superintendent or chief executive officer shall  
15 notify the tenured teacher and the school board in writing of the recommendation to not renew  
16 the teacher's contract.

17 Acceptance by ~~the~~ a tenured or nontenured teacher of an offer from the district to enter into  
18 a new contract with the teacher shall be in the manner specified in the offer. Failure of the teacher  
19 to accept the offer in the manner specified constitutes the termination of the existing contract  
20 between the teacher and the district at the end of its term.

21 Section 52. That § 13-43-6.4 be amended to read as follows:

22 13-43-6.4. Notwithstanding ~~§§ 13-43-6.1 to~~ §§ 13-43-6.2 and 13-43-6.3, ~~inclusive,~~ if a  
23 teacher's contract is not renewed due to a reduction in staff, only written notice is required, which  
24 shall be provided by the school board to the teacher by April fifteenth.

1 Section 53. That § 13-43-6.6 be amended to read as follows:

2 13-43-6.6. Although a collective bargaining agreement between a district and its teachers may  
3 set forth specific additional grounds for termination or set forth provisions as to the procedure  
4 or notice, no agreement may limit the district's right to terminate or refuse to renew the contract  
5 of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-43-6.3,  
6 inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-6.5.

7 Section 54. For purposes of this Act, the term, school year, means the regular school term as  
8 referenced in § 13-26-2.

9 Section 55. That § 13-3-73 be repealed.

10 ~~—13-3-73. There is hereby created the teacher compensation assistance program within the~~  
11 ~~Department of Education to provide funds to school districts for the purpose of assisting school~~  
12 ~~districts with teacher compensation. School districts are eligible to receive funds from the teacher~~  
13 ~~compensation assistance program based on their fall enrollment numbers. The department shall~~  
14 ~~provide four-fifths of the funds for the teacher compensation assistance program to each~~  
15 ~~participating school district. The Board of Education shall promulgate rules, pursuant to chapter~~  
16 ~~1-26, to create an oversight board appointed by the secretary of education for approval of~~  
17 ~~applications as well as guidelines for district applications based on district instructional goals,~~  
18 ~~market compensation or other specific district requirements as approved by the department.~~  
19 ~~Participation in the program is discretionary. District applications shall be approved by the local~~  
20 ~~board of education. The applications shall be reviewed by the teacher compensation assistance~~  
21 ~~program oversight board and shall be recommended to the Board of Education for final approval.~~  
22 ~~—The Legislature shall review the teacher compensation assistance program in 2012 to~~  
23 ~~determine its effectiveness and to determine whether to continue the program.~~

24 Section 56. That § 13-3-74 be repealed.

1 ~~— 13-3-74. The Teacher Compensation Assistance Program Oversight Board shall annually~~  
2 ~~monitor the progress of participating school districts with their teacher compensation assistance~~  
3 ~~plans, and submit its findings to the Board of Education.~~

4 Section 57. That § 13-3-74.1 be repealed.

5 ~~— 13-3-74.1. There is hereby established the Teacher Compensation Assistance Program~~  
6 ~~Advisory Council. The council shall be under the supervision of the Department of Education.~~  
7 ~~The speaker of the House of Representative shall appoint three members of the House of~~  
8 ~~Representatives to the council, including at least one member from each political party, and the~~  
9 ~~president pro tempore of the Senate shall appoint three members of the Senate to the council,~~  
10 ~~including at least one member from each political party. The Governor shall appoint the~~  
11 ~~remaining members of the council, including at least one teacher, one school administrator, and~~  
12 ~~one representative of a statewide education organization.~~

13 Section 58. That § 13-3-74.2 be repealed.

14 ~~— 13-3-74.2. The council shall examine how teacher quality and teacher salaries in the state can~~  
15 ~~be enhanced, and how the funds appropriated in fiscal year 2010 and in subsequent fiscal years~~  
16 ~~by the state for the teacher compensation assistance program established in § 13-3-73 can best~~  
17 ~~be utilized to assist in that effort. The council shall consider a variety of issues surrounding~~  
18 ~~teachers including market compensation, a tiered licensure system, a system for evaluating~~  
19 ~~teachers, mentoring and induction programs for teachers, and continuing contracts for teachers.~~

20 Section 59. That § 13-3-74.3 be repealed.

21 ~~— 13-3-74.3. The council shall complete its work and the secretary of education shall provide~~  
22 ~~its recommendations to the Governor and to the Executive Board of the Legislative Research~~  
23 ~~Council no later than November 15, 2008.~~

24 Section 60. That § 13-3-75 be repealed.

1 ~~13-3-75. The South Dakota Board of Education shall promulgate rules pursuant to chapter~~  
2 ~~1-26 establishing the application process; application timelines; the guidelines for district~~  
3 ~~applications based on school district instructional goals or market compensation; and a system~~  
4 ~~to monitor the progress of participating school districts with their compensation assistance plans~~  
5 ~~and to ensure that each participating school district is complying with the plan as submitted to~~  
6 ~~the board.~~

7 Section 61. That § 13-3-83.1 be repealed.

8 ~~13-3-83.1. Once all the school districts with approved applications have received their~~  
9 ~~funding pursuant to § 13-3-73, the Department of Education may set aside from any funds~~  
10 ~~remaining, a sum not to exceed one hundred thousand dollars from the teacher compensation~~  
11 ~~assistance program appropriation for the purpose of providing grants to educational cooperatives~~  
12 ~~and multi-district centers that employ teachers for public schools. The South Dakota Board of~~  
13 ~~Education may promulgate rules, pursuant to chapter 1-26, to establish the granting process.~~

14 Section 62. The following groups shall, no later than January 15, 2013, provide a progress  
15 report to the Legislature outlining the work accomplished:

- 16 (1) The Critical Teaching Needs Scholarship Board, established in section 2 of this Act;
- 17 (2) The Local Teacher Reward Plan Advisory Council established in section 30 of this  
18 Act;
- 19 (3) The Local Teacher Reward Plan Oversight Board established in section 32 of this Act;
- 20 (4) The teacher evaluation work group appointed pursuant to section 40 of this Act; and
- 21 (5) The principal evaluation work group appointed pursuant to section 45 of this Act.

22 Section 63. Sections 47 to 53, inclusive, of this Act are effective on July 1, 2016.

23 Section 64. There is hereby established the South Dakota Education Reform Advisory  
24 Council. The council shall advise upon the implementation of this Act, and shall examine further

1 education reform issues including:

- 2 (1) The advantages and disadvantages of initiatives designed to provide for increased  
3 compensation for teachers;
- 4 (2) Future teaching areas of critical need, and solutions to recruit, retain, and train  
5 teachers in these critical need areas; and
- 6 (3) Other ideas to improve student achievement.

7 The council shall report its initial findings to the Legislature and the Governor no later than  
8 December 1, 2012.

9 Section 65. The South Dakota Education Reform Advisory Council established in section 64  
10 of this Act shall consist of the following members:

- 11 (1) Three members of the Senate, including at least one member of each political party,  
12 appointed by the president pro tempore of the Senate;
- 13 (2) Three members of the House of Representatives, including a member of each political  
14 party, appointed by the speaker of the House;
- 15 (3) The secretary of the Department of Education, who will serve as chair;
- 16 (4) Three superintendents, jointly appointed by the president pro tempore of the Senate  
17 and the speaker of the House;
- 18 (5) Three principals, one each from an elementary school, a middle school, and a high  
19 school, jointly appointed by the president pro tempore of the Senate and the speaker  
20 of the House;
- 21 (6) Five teachers, jointly appointed by the president pro tempore of the Senate and the  
22 speaker of the House;
- 23 (7) Three school board members, jointly appointed by the president pro tempore of the  
24 Senate and the speaker of the House;

- 1       (8)    One member of the Board of Regents, selected by the board;
- 2       (9)    One representative of the postsecondary technical institutes, selected by the presidents
- 3           of the respective institutions;
- 4       (10)   One representative selected by the School Administrators of South Dakota;
- 5       (11)   One representative selected by the South Dakota Education Association; and
- 6       (12)   One representative selected by the Associated School Boards of South Dakota.