



# *South Dakota Legislative Research Council*

## *Issue Memorandum 95 - 06*

---

---

### **REPEAL OF K-12 EDUCATION MANDATES BY THE 1995 LEGISLATURE**

#### ***BACKGROUND***

Article VIII, Section 1 of the South Dakota Constitution directs the Legislature to "establish and maintain a general and uniform system of public schools" for the people of South Dakota. In recent years, the state's education community, along with its counterparts around the nation, has been at the center of numerous controversies, reform initiatives, and programs for improvement. Many of these issues are driven by fundamental differences in personal belief and ideology; and because they involve our children, it is to be expected that feelings on these issues will run high.

Recent education issues in South Dakota have included such diverse topics as education reform and modernization, school choice and voucher proposals, charter schools, the America 2000 and Goals 2000 reform proposals of Presidents Bush and Clinton, proposed changes in South Dakota's state aid to education formula, teacher salaries, second chance and youth-at-risk programs, site-based management, home schools, the teaching of morality and sexual abstinence as public school curriculum requirements, efforts to move education "back to the basics," and efforts to restore greater flexibility and control to local school districts by reducing the number and scope of state education requirements and restrictions.

As in many other states, South Dakota's state aid to education formula was challenged in court; but the formula was upheld by the court, partly because South Dakota's education statutes and

rules contributed toward the "general and uniform" system of public schools required by the state constitution. In general, education issues in South Dakota have centered around the somewhat conflicting goals of improving education through additional expenditures, increased teacher salaries, and additional programs and state requirements versus more flexibility and fewer restrictions for school districts and reduced local education costs and property taxes.

#### ***EDUCATION MANDATES AND THE 1995 LEGISLATIVE SESSION***

During the 1995 Legislative Session, significant action on education issues came in two major areas: revising South Dakota's state aid to education formula and the repeal of mandates or requirements placed on local school districts by state statutes and rules. During the 1995 Session, the state aid formula issue was linked with efforts to reduce property taxes, and HB 1351 and HB 1354 completely revised the state aid formula and the special education aid formula. The characteristics of the new formulas will be discussed in a separate paper.

One recurring theme during the 1995 Session was the desire to reduce state mandates on local entities, and the repeal of education mandates was driven to a large extent by this principle. Most of the changes to South Dakota's education laws came through HB 1328 and 1329, which repealed or amended statutory mandates, and HB 1330, which repealed or amended administrative rules related to education. These bills were

introduced at the request of Governor Janklow. Several other bills (HB 1107, HB 1117, HB 1243) attempted to address education mandates by creating a sunset process that would repeal education rules and statutes after a specified study period if the Legislature did not act to retain or amend them. These bills were defeated, and instead, the faster and more direct process of immediate repeal of statutes and rules was adopted with the passage of HBs 1328, 1329, and 1330. These three bills repealed approximately 100 statutes and 500 administrative rules.

Although HBs 1328, 1329, and 1330 repealed a large number of education statutes and rules, they did not constitute a blanket repeal of education law, and much material was left on the books. Also, Sections 9 and 10 of HB 1330 direct the State Board of Education to establish standards and measurements for school accreditation, certification of personnel, and eligibility for state aid and to report on its progress to the 1996 and 1997 Legislatures. The purpose is to develop new, less cumbersome procedures to carry out these functions, rather than simply resurrecting portions of the old rules, and to avoid promulgating rules that are not needed. In addition to repealing current education mandates, the 1995 legislation provides a process for scrutinizing South Dakota's education needs and creating a system that is appropriate to meet those needs.

***EDUCATION STATUTES REPEALED OR AMENDED BY HBs 1328 AND 1329 DURING THE 1995 LEGISLATIVE SESSION***

The statutes repealed by HB 1328 and 1329 represent a wide variety of education law. Some of the repealers eliminated or revised major programs and policies, such as the Modernization Program and teacher tenure or continuing contract provisions. Others cleaned up minor inconsistencies or removed archaic,

inefficient, or unneeded laws. A few other education requirements were repealed in the legislation dealing with the state aid formula and special education formula, but these were directly related to formula concerns and will not be addressed here. The repeals of education statutes in HBs 1328 and 1329 are summarized below by general category, with their SDCL citations and bill section numbers also provided. In addition to the statutory repealers, many of the administrative rules that were repealed in HB 1330 addressed subjects in these categories. Rules changes will be discussed in a separate section of this paper.

**Education Innovation or Assistance Programs**

Repeal the Modernization Program. Enacted in 1991, the Modernization Program grew out of national Goals 2000 and America 2000 efforts. The program involved a number of pilot sites around the state, as well as a program to relink schools and communities. The Modernization Program sparked controversy in some areas over curriculum and methods and over what some viewed as the teaching of particular sets of values in the schools. (SDCL 13-13-59 to 62; HB 1328, Sec 7-10)

Repeal grant programs for dropout prevention and alternative high schools. (13-14-10 and 11; HB 1328/11-12)

Repeal superior teacher program. (13-43-51 to 54; HB 1328/21-24)

Repeal the mentor teacher program. (13-43-55; HB 1328/25)

Repeal the superior scholar program. (13-55C-1 to 7; HB 1328/45-51)

Repeal the educational excellence and financial assistance program. (13-55D-1 to 5; HB 1328/52-56)

Repeal school report card program. Under

this program, the Department of Education and Cultural Affairs (DECA) collected data and information on performance and other school-related information for the accredited elementary and secondary schools in the state and prepared a report on each school. (13-1-41 and 42; HB 1329/1A-1B)

### **Curriculum and Educational Materials**

Repeal provisions relating to review and ban of certain "undesirable" books and materials by the state Board of Education and requirement that districts provide equipment, books, and facilities recommended by the board. (13-24-18, 13-34-11; HB 1328/18, HB 1329/38)

DECA to prepare voluntary academic content standards rather than course guidelines. (13-3-48; HB1329/4)

Repeal various curriculum and course requirements, including instruction in patriotism, morality, tree planting, free enterprise, and certain environmental issues, and requirements on textbook recycling. (13-33-5, 6, 8, 12, 13, and 18; HB 1329/45-50, 54)

### **Personnel**

Repeal requirement that school districts have business managers and related requirements on business manager duties and bonding. (13-8-11, 17, 27, and 28; HB 1329/22-25)

Repeal requirements related to hiring of superintendents and principals. (13-10-2.1; HB 1329/28)

Repeal requirement that district provide sick leave for certificated employees. (13-10-10;

HB 1329/29)

Repeal requirement that district establish written policy for teacher staff reduction and recall. (13-10-11; HB 1329/30)

Repeal evaluation policy provisions of the Professional Teachers Practices and Standards Commission and the Professional Administrators Practices and Standards Commission. (13-43-25.1, 26, 46, and 47; HB 1329/76-79)

### **Continuing Contract Provisions**

Repeal continuing contract law for teachers. (13-43-9.1, 10, 10.1, 10.2, 11, 11.1, 12, and 13; HB 1329/67-75, effective 1-1-97)

Create new continuing contract provisions for teachers. (HB 1329/ 75A-75G, effective 1-1-97)

### **School District Operations and Administration**

Repeal provisions granting full eligibility for state aid to school districts that contributed to construction of school buildings in adjoining states. (13-13-24.2; HB 1328/6)

Repeal school census authorization. Other school census statutes were repealed in 1974 and 1982. (13-22-1; HB 1328/13)

Repeal prohibition of sales solicitation at rural schools. (13-26-8; HB 1328/17)

Repeal provisions related to recommendations by the state board to the Legislature and Governor and repeal certain advisory requirements of DECA. (13-3-53, 13-39-25; HB 1328/20, HB 1329/7)

Repeal salary of superintendent of education as obsolete. (13-3-1.2; HB 1329/2)

Repeal certain DECA recordkeeping requirements and requirements that DECA provide forms for conducting school business. (13-2-52, 13-3-45; HB 1329/3, 6)

Repeal requirements that school districts publish notice concerning voter registration, repeal limitation on newspaper publication rates paid by school districts, repeal requirements for notice by DECA to counties regarding overlapping school districts or areas omitted from districts, and other notice and publication requirements. (13-3-50, 13-6-9.1, 13-7-47.1, 13-8-36; HB 1328/1, 5; HB 1329/20, 27)

Repeal school board rural representation requirement. (13-8-6; HB 1329/21)

Repeal provisions related to vote required for school board actions and effective date of actions. (13-8-33; HB 1329/26)

Repeal provision that prevented schools from making up required time by lengthening the school day. (13-26-5; HB 1329/42)

Repeal requirement that districts provide appropriate educational programs to all resident children. (13-37-14.1; HB 1329/55)

Repeal requirement that unanimous vote of the school board is needed in order to employ a relative of school board member. (13-43-2; HB 1329/65)

### **Attendance Centers, Joint Operation and Cooperation, Reorganization**

Repeal provision allowing establishment of elementary schools by petition of residents living within one mile of each other. (13-23-9; HB 1328/14)

Repeal 1-24-18, which placed conditions and restrictions on joint operation of secondary

schools. (1-24-18; HB 1329/1)

Amend provisions governing cooperative educational service units to provide greater flexibility at local level. Schools will be free to share services and resources without approval of the state. (13-5-31, 32.1, and 33; HB 1329/11-13)

Repeal requirement to operate schools operated by former common school districts. (13-6-9; HB 1329/14)

Repeal provisions governing situations in which a school district fails to operate a school program meeting accreditation standards or fails to operate a school. (13-6-9.3 and 9.4; HB 1329/15-16)

Repeal requirement for informational meetings on school reorganization plans. (13-6-15; HB 1329/17)

Amendment to require a simple majority, rather than sixty percent, of voters to reorganize a school district. (13-6-47; HB 1329/18)

Repeal requirement to operate school in municipality if the school was operating before reorganization of school district. (13-6-91; HB 1329/19)

Repeal authorization for the formation of cooperative special education units. (13-37-14.2; HB 1329/56)

### **Nonpublic Schools**

Repeal reporting and certification procedures, accreditation requirements, reporting requirements, and sanctions for nonpublic schools. (13-4-1, 2, 3, 4, 5, and 6; HB 1328/2-4, HB 1329/8-10)

### **Facilities, Health, Safety**

Repeal certain provisions and requirements relating to industrial quality eye protection devices. (13-24-18.1, 18.2, 18.3, and 18.4; HB 1328/15-16, HB 1329/39-40)

Repeal provisions related to dormitories furnished by school districts. (13-24-19; HB 1329/41)

## **Vocational Education**

Repeal various vocational education requirements, including assistance by the director to state agencies, director's duty to execute state laws and policies, preparation and submission to federal agencies of vocational education plans, research, coordination of vocational education and apprentice programs, linking vocational course offerings with state and national labor needs, fiscal procedures, reports and recommendations, and vocational teacher preparation. (13-39-7, 11, 14, 16, 17, 22, 23, 24, and 32; HB 1328/22, HB 1329/57-64)

### ***EDUCATION ADMINISTRATIVE RULES REPEALED OR AMENDED DURING THE 1995 LEGISLATIVE SESSION BY HB 1330***

**Education Rules.** Administrative rules are adopted by executive agencies, in this case the State Board of Education and the Department of Education and Cultural Affairs, under a grant of authority from the Legislature. Administrative rules have the force of law and may only be adopted if statutory authority exists and the agency has followed proper public notice and hearing procedures. The Legislature, because it granted the rulemaking authority in the first place, may also repeal, amend, or adopt administrative rules directly.

In HB 1330, the 1995 Legislature repealed a large body of education rules, nearly 500 rule sections. In several major functional areas, such as school accreditation, pupil transportation, vocational education, and teacher education

programs, entire titles were repealed, with minor exceptions; and new policy concepts, reflected in new rules, will be needed to address issues in these areas.

As noted earlier, HB 1330 directs the State Board of Education to devise new standards and measurements for accreditation of schools, standards for the preparation of certified personnel, and procedures for determining the eligibility of school districts to receive state formula aid. In addition, some issues in pupil transportation and safety and vocational education may need to be resolved.

The repeal of education administrative rules in HB 1330 was not intended to abolish state oversight of public education and abrogate the state's constitutional responsibility to provide for a uniform system of public schools. Rather, the 1995 education legislation was an attempt to eliminate outdated rules and statutes and create processes and policies that are better suited to South Dakota's needs. The purpose was to provide more control for local school districts and to make schools more accountable for the results of their educational programs.

**Provisions of HB 1330.** HB 1330 provided for the following changes to South Dakota's administrative rules in the field of education:

Repeal ARSD 24:01 governing the SD Board of Education. The repeal of these rules does not affect the board's statutory responsibilities. (HB1330/1)

- Organization and operation of the Board
- Contested case procedures

Repeal ARSD 23:03 regarding school accreditation, except for ARSD 24:03:06:06.01, which specifies high school graduation requirements for individual students. (HB 1330/2)

- Philosophy and purpose
- Administration and administrative staff

Instructional and other staff  
Curriculum  
Nursery schools

contract language from these provisions. (ARSD 24:08:01:01, :05:05, :05:06, :05:11, :05:14, and :05:15; ARSD 24:11:01:01, :05:05, :05:06, :05:09, and :05:10; HB 1330/ 4A-4E, 6A-6F)

Repeal ARSD 23:06, pupil transportation. (HB 1330/3)

General provisions and certification requirements  
School bus chassis and body standards  
Special education bus standards  
Operations

**Rules Not Repealed** . The following administrative rules governing K-12 education were not repealed by the 1995 legislation:

High School Graduation Requirements. ARSD 24:03:06:06.01 (a single rule)

Repeal ARSD 24:09, educational cooperatives. (HB 1330/5)

Cooperative educational service units

Special Education and Early Intervention (Part H). ARSD 24:05 and 24:14.

Teacher Certification. ARSD 24:02

Repeal ARSD 24:10, vocational education. (HB 1330/6)

General provisions  
Multidistrict centers  
Secondary vocational programs  
Postsecondary vocational programs  
Associate degrees  
Vocational or technical teacher certification

Student Due Process. ARSD 24:07

Professional Practices (teachers). ARSD 24:08 (amended)

Professional Practices (administrators). ARSD 24:11 (amended)

Repeal ARSD 24:12, community education program. (HB 1330/7)

### ***SUMMARY***

Repeal ARSD 24:13, Modernizing K-12 Education (Modernization Program). (HB 1330/8)

The 1995 Legislature's repeal and amendment of education statutes and administrative rules is a major effort to reexamine the relationship between the state and local school districts and to change the way that public education is conducted in South Dakota. The changes created by the repeal of state education mandates will probably not cause fundamental change in the structure of our education system, but it does provide the opportunity to increase local control and responsibility, remove unnecessary and inefficient rules and policies, and remove outdated requirements and procedures.

Repeal ARSD 24:19, teacher education program approval requirements. (HB 1330/9)

Basic teacher education programs  
Special education teacher education programs  
Advanced teacher education programs  
Requirements for innovative and experimental teacher education programs

The 1995 legislation will also force a reexamination of existing education policies and provides the opportunity to create an education system that is more rational, more responsive, and less cumbersome, and that allows school

Amend and repeal rules dealing with evaluation requirements of the Professional Teachers Practices and Standards Commission and the Professional Administrators Practices and Standards Commission. Remove the continuing

districts to carry out their responsibilities with more flexibility and less restriction from the state. As always, the state must strike a balance between its constitutional obligation to maintain a general and uniform system of public education while maximizing local communities' control over their schools.

---

**This issue memorandum was written by Tom Magedanz, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

---