

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0575

## HOUSE BILL NO. 1234

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

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

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

7 Section 1. Beginning in the 2013-2014 school year, there is hereby created the math and  
8 science teacher incentive program within the Department of Education to provide funds to  
9 public school districts for the purpose of providing rewards to certified teachers who teach in  
10 math and science subject areas in middle school and high school. By January 31, 2013, the  
11 South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 regarding  
12 which courses shall qualify as math and science courses for purposes of the program. For  
13 purposes of this Act, math and science courses are those courses established by the Board of  
14 Education pursuant to this section. For purposes of this Act, middle school is a school consisting  
15 of any combination of two or more consecutive grades, five to eight, inclusive, and high school



1 is a school consisting of any combination of three or more consecutive grades, including ninth  
2 grade to twelfth grade, inclusive.

3 Section 2. Participation in the math and science teacher incentive program is voluntary, and  
4 incentive rewards are to supplement but not replace what a teacher receives under a contract  
5 between the teacher and the school district or a collective bargaining agreement between a  
6 district and the district's teachers. No collective bargaining agreement between a district and the  
7 district's teachers may limit the ability of a teacher to qualify for or receive an incentive reward.  
8 Nothing in sections 1 to 6, inclusive, of this Act is intended to create a contractual right or  
9 property right in the math and science teacher incentive program.

10 Section 3. The Department of Education shall provide application forms for teachers  
11 wishing to participate in the math and science teacher incentive program. A teacher wishing to  
12 participate in the program shall complete and sign the form and provide the form to the business  
13 office of the school district by the close of business on October first to be eligible for the  
14 program for that school year. A teacher wishing to participate shall submit a new application  
15 for each school year. Completed applications are a public record pursuant to chapter 1-27, but  
16 personal information in the applications may be redacted as allowed by that chapter.

17 Section 4. To be eligible for the math and science teacher incentive program, a teacher shall  
18 fulfill the following requirements:

- 19 (1) Comply with section 3 of this Act;
- 20 (2) Be assigned to teach math or science courses, or a combination of such courses, in  
21 middle school or high school for at least fifty-one percent of a full-time equivalent  
22 position's assignments submitted in the annual teacher data collection pursuant to  
23 § 13-3-51 and any rules promulgated pursuant to that section; and
- 24 (3) Be currently certified with a middle school or high school endorsement to teach each

1 math and science course.

2 Section 5. By March first of each year, the school board of each district shall submit to the  
3 Department of Education a copy of the application of each teacher eligible for the math and  
4 science teacher incentive program for the current school year pursuant to the requirements of  
5 this Act. The Department of Education may require additional information from the district as  
6 necessary to verify each teacher's eligibility for the reward. The department may refuse to issue  
7 a reward for any teacher for whom the information required by this section is not provided by  
8 the deadline.

9 Section 6. The amount of the reward under the math and science teacher incentive program  
10 is three thousand nine hundred eighty dollars per eligible teacher to be distributed as described  
11 in this section. No later than May first of each year, at the same time that foundation program  
12 state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the  
13 secretary of the Department of Education shall distribute funds for the math and science teacher  
14 incentive program for teachers that qualify pursuant to this Act. These funds shall be distributed  
15 in lump sum payments.

16 Subject to the requirements of this Act, the department shall pay to the school district three  
17 thousand nine hundred eighty dollars per eligible teacher in that district. Within thirty days of  
18 receipt from the department, the school district shall distribute the funds as follows:

19 (1) Three thousand five hundred dollars shall be paid to each eligible teacher in the  
20 district; and

21 (2) Four hundred eighty dollars may be retained by the district to pay the district's share  
22 of applicable federal taxes, the district's share of contribution to the South Dakota  
23 Retirement System, and administrative costs.

24 Section 7. Beginning in the 2014-2015 school year, there is hereby created the top teachers

1 reward program within the Department of Education to provide funds to public school districts  
2 for the purpose of providing top teacher rewards for certified teachers.

3 Section 8. Participation in the top teachers reward program is voluntary, and such rewards  
4 shall supplement but not replace what a teacher receives under a contract between the teacher  
5 and the school district or a collective bargaining agreement between a district and the district's  
6 teachers. No collective bargaining agreement between a district and the district's teachers may  
7 limit the ability of a teacher to qualify for or receive a top teacher reward. Nothing in sections  
8 7 to 15, inclusive, of this Act is intended to create a contractual right or property right in the top  
9 teachers reward program.

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

19 Section 10. No later than May first of each year, at the same time that foundation program  
20 state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the  
21 secretary of the Department of Education shall inform each school district of the number of  
22 eligible positions in that district for the current school year, based on the calculation in section  
23 9 of this Act, and distribute to each school district five thousand seven hundred dollars per  
24 eligible position. These funds shall be distributed in lump sum payments. The school district

shall retain these funds until distribution pursuant to section 11 of this Act.

Section 11. No later than September first of each year, the school district shall distribute the funds received pursuant to section 10 of this Act as follows:

(1) Five thousand dollars shall be paid to each teacher selected for a top teacher reward pursuant to section 14 of this Act for the previous school year; and

(2) Seven hundred dollars may be retained by the district to pay the district's share of applicable federal taxes, the district's share of contribution to the South Dakota Retirement System, and administrative costs.

Any funds received pursuant to section 10 of this Act which are not distributed according to this section shall be returned to the Department of Education within thirty days.

Section 12. The Department of Education shall provide application forms for teachers wishing to participate in the top teachers reward program. A teacher wishing to participate in the program shall complete and sign the form and provide the form to the business office of the school district by the close of business on October first to be eligible for the program for that school year. A teacher wishing to participate shall submit a new application for each school year. Completed applications are a public record pursuant to chapter 1-27, but personal information in the applications may be redacted pursuant to that chapter.

Section 13. A participating teacher shall be full-time and receive a distinguished rating, as referenced in section 18 of this Act, on the teacher's most recent evaluation to be eligible for a top teacher reward. In addition, a distinguished teacher's selection for the reward may be based on consideration of the following factors as determined by the school board:

(1) Mentoring of less experienced teachers;

(2) Curriculum development;

(3) Assessment development;

- 1 (4) Data analysis;
- 2 (5) Service to the local district, state, or national committees or task forces;
- 3 (6) Leadership in a professional learning community;
- 4 (7) National board certification;
- 5 (8) Other leadership activities or recognitions; and
- 6 (9) Other additional criteria as determined by the school board.

7 Section 14. No later than August first of each year, the school board of each school district  
8 shall determine which participating teachers, if any, are selected to receive top teacher rewards  
9 for the previous school year according to the criteria in section 13 of this Act. The number of  
10 teachers selected may not exceed the number of eligible positions referenced in sections 9 and  
11 10 of this Act.

12 Section 15. The Department of Education may require each school district to provide any  
13 information necessary to verify the district's compliance with sections 10 to 14, inclusive, of this  
14 Act. Upon a finding of noncompliance, the department may require the district to return any  
15 funds distributed contrary to the requirements of this Act.

16 Section 16. A teacher may apply for both the math and science teacher incentive program  
17 and the top teachers reward program established pursuant to this Act.

18 Section 17. That § 13-42-34 be amended to read as follows:

19 13-42-34. Any public school district seeking state accreditation shall evaluate the  
20 performance of each certified teacher in years one ~~through~~ to three, inclusive, not less than  
21 annually, and each certified teacher in the fourth contract year or beyond, not less than every  
22 other year.

23 ~~Each~~ For the 2012-2013 school year and the 2013-2014 school year, each school district  
24 ~~shall~~ may adopt procedures for evaluating the performance of certified teachers employed by

the school district that:

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

Section 18. That § 13-42-34 be amended to read as follows:

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

Each school district shall adopt the model evaluation instrument required by section 20 of this Act and procedures for evaluating the performance of certified teachers employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;
- (2) Require multiple measures of performance as follows:
  - (a) Fifty percent of the evaluation of a teacher shall be based on quantitative measures of student growth, based on a single year or multiple years of data.
  - This quantitative data shall be based on reports of student performance on state validated assessments established pursuant to § 13-3-55. For those

teachers in grades and subjects for which there is no state-validated assessment for the quantitative portion of the evaluation, teachers shall demonstrate success in improving student achievement using objective measures, which can include portfolio assessments, end-of-course exams, or other district approved assessments which demonstrate student growth; and

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

(i) Classroom drop-ins;

(ii) Parent surveys;

(iii) Student surveys;

(iv) Portfolios; or

(v) Peer review;

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

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

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

(a) Distinguished;

(b) Proficient;

(c) Basic; and

1           (d)    Unsatisfactory.

2           Section 19. The provisions of section 18 of this Act are effective July 1, 2014.

3           Section 20. That § 13-42-35 be amended to read as follows:

4           13-42-35. A work group appointed by the secretary of education shall provide input in  
5   developing the standards for defining the four-tier rating system required by section 18 of this  
6   Act and shall develop in developing a model evaluation instrument that ~~may~~ shall be used by  
7   school districts for the 2014-2015 school year and subsequent school years. The work group  
8   shall consist of the following:

- 9           (1)   Six teachers: two from an elementary school, two from a middle school, and two  
10           from a high school;
- 11          (2)   Three principals: one from an elementary school, one from a middle school, and one  
12           from a high school;
- 13          (3)   Two superintendents;
- 14          (4)   Two school board members;
- 15          (5)   Four parents who have students in various levels of the K-12 system;
- 16          (6)   One representative of the South Dakota Education Association;
- 17          (7)   One representative of the School Administrators of South Dakota; and
- 18          (8)   One representative of the Associated School Boards of South Dakota.

19          Section 21. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as  
20   follows:

21          Pursuant to chapter 1-26, the South Dakota Board of Education shall promulgate rules  
22   regarding standards for defining the four-tier rating system required by section 18 of this Act  
23   and adopting the model evaluation instrument referenced in section 20 of this Act.

24          Section 22. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Beginning with the 2014-2015 school year, the procedures for evaluation and the model  
3 evaluation instrument referenced in sections 18 to 21, inclusive, of this Act may not be the  
4 subject of any collective bargaining agreement between a district and the district's teachers.

5 Section 23. The Board of Education shall promulgate rules pursuant to chapter 1-26 to  
6 establish minimum professional performance standards for certified principals in South Dakota  
7 public schools, and to establish best practices for the evaluation of the performance of certified  
8 principals that shall be used by individual school districts. The South Dakota Board of  
9 Education shall promulgate rules pursuant to chapter 1-26 regarding standards for defining the  
10 four-tier rating system required by section 24 of this Act and adopting the model evaluation  
11 instrument referenced in section 25 of this Act.

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

15 Each school district shall adopt the model evaluation instrument required by section 25 of  
16 this Act and procedures for evaluating the performance of certified principals employed by the  
17 school district that:

- 18 (1) Are based on the minimum professional performance standards established by the  
19 Board of Education pursuant to section 23 of this Act;
- 20 (2) Require multiple measures of performance;
- 21 (3) Serve as the basis for programs to increase professional growth and development of  
22 certified principals; and
- 23 (4) Are based on the following four-tier rating system:
  - 24 (a) Distinguished;

- 1 (b) Proficient;
- 2 (c) Basic; and
- 3 (d) Unsatisfactory.

4 Section 25. A work group appointed by the secretary of education shall provide input in  
5 developing the standards referenced in section 23 of this Act, the four-tier rating system required  
6 by section 24 of this Act, and in developing a model instrument for principal evaluation that  
7 shall be used by school districts for the 2014-2015 school year and each school year thereafter.  
8 The work group shall consist of the following:

- 9 (1) Six principals: two from an elementary school, two from a middle school, and two  
10 from a high school;
- 11 (2) Three teachers: one from an elementary school, one from a middle school, and one  
12 from a high school;
- 13 (3) Two superintendents;
- 14 (4) Two school board members;
- 15 (5) Four parents who have students in various levels of the K-12 system;
- 16 (6) One representative of the South Dakota Education Association;
- 17 (7) One representative of the School Administrators of South Dakota; and
- 18 (8) One representative of the Associated School Boards of South Dakota.

19 Section 26. All persons conducting teacher or principal evaluations required by sections 18  
20 to 25, inclusive, of this Act shall participate in training conducted by the Department of  
21 Education before conducting the evaluations.

22 Section 27. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 For purposes of this chapter, the term, tenured teacher, means a teacher who is in or beyond

1 the fourth consecutive term of employment as a teacher with the school district prior to July 1,  
2 2012. If, prior to July 1, 2012, the school district and the teacher have entered into a contract  
3 pursuant to §§ 13-43-4 and 13-43-5 for the teacher's fourth consecutive term of employment  
4 with the district or a subsequent consecutive term of employment with the district, then that  
5 teacher is a tenured teacher for purposes of this chapter. The term, nontenured teacher, means  
6 a teacher who is not yet in or beyond the fourth consecutive term of employment as a teacher  
7 with the school district prior to July 1, 2012. Any teacher who is not in or beyond the fourth  
8 consecutive term of employment with the school district prior to July 1, 2012, may not acquire  
9 continuing contract status under this chapter.

10 Section 28. That § 13-43-6 be amended to read as follows:

11 13-43-6. The contract shall specify the date at or about which the school shall begin, the  
12 term of employment, the wages per month, and the time of payment ~~thereof; such of wages. The~~  
13 contract shall be signed in duplicate and one copy filed in the office of the business manager and  
14 the other retained by the teacher. ~~Such~~ The contract may be issued covering any period of ~~years;~~  
15 ~~not to exceed three~~ employment up to one year, over which a teacher holds a certificate which  
16 ~~will~~ shall remain valid without renewal.

17 Section 29. That § 13-43-6.1 be amended to read as follows:

18 13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any  
19 time for just cause, including breach of contract, poor performance, incompetency, gross  
20 immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any  
21 policy or regulation of the school district. ~~A school district may nonrenew a teacher who is in~~  
22 ~~or beyond the fourth consecutive term of employment as a teacher with the school district~~  
23 ~~pursuant to § 13-43-6.3 for just cause, including breach of contract, poor performance,~~  
24 ~~incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or~~

1 ~~the violation of any policy or regulation of the school district.~~

2 Section 30. That § 13-43-6.2 be amended to read as follows:

3 13-43-6.2. If nonrenewal of a tenured teacher is contemplated under ~~§ 13-43-6.1~~ § 13-43-  
4 6.3, the superintendent or chief executive officer shall give written notice of an intention to  
5 recommend nonrenewal to the teacher and the school board; a written statement of the reasons  
6 for the recommendation; access to the employment records of the teacher; the opportunity to the  
7 teacher for a hearing before the school board to present reasons in person or in writing why the  
8 nonrenewal should not occur; and the opportunity to be represented. The teacher shall request  
9 the hearing as provided in § 13-43-6.9. The school board shall conduct the hearing not sooner  
10 than fourteen days, nor later than forty-five days, after receipt of the teacher's request for  
11 hearing. The parties may waive the time limitations provided for in this section.

12 Section 31. That § 13-43-6.3 be amended to read as follows:

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

18 ~~After a teacher is in or beyond the fourth consecutive term of employment as a teacher with~~  
19 ~~the school district, §§ 13-43-6.1 and 13-43-6.2 apply to any nonrenewal of the teacher's contract.~~

20 A school board may refuse to renew the teacher's contract of a tenured teacher for just cause,  
21 including breach of contract, poor performance, a rating of unsatisfactory on two consecutive  
22 evaluations pursuant to section 18 of this Act, incompetency, gross immorality, unprofessional  
23 conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the  
24 school district. On or before April fifteenth, the superintendent or chief executive officer shall

1 notify the tenured teacher and the school board in writing of the recommendation to not renew  
2 the teacher's contract.

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

7 Section 32. That § 13-43-6.4 be amended to read as follows:

8 13-43-6.4. Notwithstanding ~~§§ 13-43-6.1 to § 13-43-6.2 and~~ 13-43-6.3, ~~inclusive~~, if a  
9 teacher's contract is not renewed due to a reduction in staff, only written notice is required,  
10 which shall be provided by the school board to the teacher by April fifteenth.

11 Section 33. That § 13-43-6.6 be amended to read as follows:

12 13-43-6.6. Although a collective bargaining agreement between a district and its teachers  
13 may set forth specific additional grounds for termination or set forth provisions as to the  
14 procedure or notice, no agreement may limit the district's right to terminate or refuse to renew  
15 the contract of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-  
16 43-6.3, inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-  
17 6.5.

18 Section 34. For purposes of this Act, the term, school year, means the regular school term  
19 as referenced in § 13-26-2.

20 Section 35. That § 13-3-73 be repealed.

21 ~~— 13-3-73. There is hereby created the teacher compensation assistance program within the~~  
22 ~~Department of Education to provide funds to school districts for the purpose of assisting school~~  
23 ~~districts with teacher compensation. School districts are eligible to receive funds from the~~  
24 ~~teacher compensation assistance program based on their fall enrollment numbers. The~~

~~department shall provide four-fifths of the funds for the teacher compensation assistance program to each participating school district. The Board of Education shall promulgate rules, pursuant to chapter 1-26, to create an oversight board appointed by the secretary of education for approval of applications as well as guidelines for district applications based on district instructional goals, market compensation or other specific district requirements as approved by the department. Participation in the program is discretionary. District applications shall be approved by the local board of education. The applications shall be reviewed by the teacher compensation assistance program oversight board and shall be recommended to the Board of Education for final approval.~~

~~—The Legislature shall review the teacher compensation assistance program in 2012 to determine its effectiveness and to determine whether to continue the program.~~

Section 36. That § 13-3-74 be repealed.

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

Section 37. That § 13-3-74.1 be repealed.

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

Section 38. That § 13-3-74.2 be repealed.

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

Section 39. That § 13-3-74.3 be repealed.

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

Section 40. That § 13-3-75 be repealed.

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

Section 41. That § 13-3-83.1 be repealed.

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

- 1 ~~Education may promulgate rules, pursuant to chapter 1-26, to establish the granting process.~~