

## **2012 Constitutional Amendments**

The following amendments to the State Constitution are submitted to the voters by the Legislature. The amendments will not become effective unless approved by majority vote.

### **Constitutional Amendment M**

**Title:** An Amendment to the South Dakota Constitution regarding certain provisions relating to corporations.

**Attorney General Explanation:**

The Constitution currently contains certain restrictions on the Legislature's authority to enact laws regarding corporations. For example, corporate directors must be elected by cumulative voting, in which a shareholder may choose to cast all votes for a single candidate or spread the votes among two or more candidates. Corporate stock or bonds may only be issued for money, labor or property received by the corporation. Corporate stock or debt may not be increased without prior notice to and consent of current stockholders.

Constitutional Amendment M removes these restrictions, and allows the Legislature to: (1) authorize alternative methods of voting in elections for corporate directors; (2) expand the types of contributions a corporation may receive for the issuance of stock or bonds; and (3) establish procedures governing the increase of corporate stock or debt.

A vote "Yes" will remove the constitutional restrictions.

A vote "No" will leave the Constitution as it is.

**Full Text of Constitutional Amendment M:**

That Article XVII, section 1 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 1. No corporation shall be created or have its charter extended, changed or amended by special laws, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state; but the Legislature shall provide, by general laws, for the organization of all corporations hereafter to be created. The Legislature shall have the authority to enact laws governing the operation and dissolution of corporations.

That Article XVII, section 5 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 5. In all elections for directors or managers of a corporation, each member or shareholder may cast ~~the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer~~ votes in the manner consistent with laws enacted by the Legislature.

That Article XVII, section 8 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received, or for the reasonable value of other contribution to the corporation; and all fictitious increase of stock or indebtedness shall be void. The stock

and indebtedness of corporations shall not be increased except in ~~pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days notice given in pursuance of law~~ the manner consistent with laws enacted by the Legislature.

## Constitutional Amendment N

**Title:** An Amendment to the South Dakota Constitution repealing certain reimbursement restrictions for travel by legislators to and from a legislative session.

**Attorney General Explanation:**

The Constitution fixes the mileage reimbursement rate for legislators at five cents per mile for their travel to and from a legislative session.

Constitutional Amendment N repeals this constitutional limitation and allows legislator travel reimbursement to be set by the Legislature.

A vote “Yes” will eliminate the fixed travel reimbursement rate.

A vote “No” will leave the Constitution as it is.

**Full Text of Constitutional Amendment N:**

That Article III, section 6 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 6. The terms of office of the members of the Legislature shall be two years; ~~they legislators shall receive for their services the salary fixed by law under the provisions of § 2 of article XXI of this Constitution, and five cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.~~

No person may serve more than four consecutive terms or a total of eight consecutive years in the senate and more than four consecutive terms or a total of eight consecutive years in the house of representatives. However, this restriction does not apply to partial terms to which a legislator may be appointed.

A regular session of the Legislature shall be held each year and shall not exceed forty legislative days, excluding Sundays, holidays and legislative recess, except in cases of impeachment, and members of the Legislature shall receive no other pay or perquisites except salary and mileage.

## Constitutional Amendment O

**Title:** An Amendment to the South Dakota Constitution changing the method for distributions from the cement plant trust fund.

**Attorney General Explanation:**

In 2001, the \$238 million in proceeds from the sale of the state cement plant were placed in a constitutionally created trust fund. Currently, the Constitution requires a yearly transfer of \$12 million from the cement plant trust fund to the state general fund. In addition, under certain circumstances the Legislature must authorize distributions of cement plant trust fund earnings for the support of education.

Amendment O replaces the existing method for cement trust fund distributions. The amendment would require a yearly transfer of 4% of the market value of the cement plant trust fund to the state general fund for the support of education.

A vote “Yes” is for changing the method for distributions from the cement plant trust fund.

A vote “No” will leave the Constitution as it is.

### **Full Text of Constitutional Amendment O:**

That Article XIII, section 20 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 20. The net proceeds derived from the sale of state cement enterprises shall be deposited by the South Dakota Cement Commission in a trust fund hereby created to benefit the citizens of South Dakota. The South Dakota Investment Council or its successor shall invest the trust fund in stocks, bonds, mutual funds, and other financial instruments as provided by law. ~~Each fiscal year beginning in fiscal year 2001, a transfer of twelve million dollars shall be made from the trust fund to the state general fund as provided by law.~~

That Article XIII, section 21 of the Constitution of the State of South Dakota, be amended to read as follows:

~~§ 21. Except as provided in Article XIII, section 20 of the Constitution of the State of South Dakota, the original principal of the trust fund shall forever remain inviolate. However, the The Legislature shall, by appropriation, make distributions from the difference between the twelve million dollar annual general fund transfer and five percent of the market value of the trust fund for the support of education, but not for the replacement of state aid to general education or special education, if the increase in the market value of the trust fund in that fiscal year was sufficient to maintain the original principal of the trust fund after such distributions. Beginning with fiscal year 2006, the market value of the trust fund shall be determined by adding the market value of the trust fund at the end of the sixteen most recent calendar quarters, and dividing that sum by sixteen transfer from the trust fund to the state general fund four percent of the lesser of the average market value of the trust fund determined by adding the market value of the trust fund at the end of the sixteen most recent calendar quarters as of December thirty-first of that year and dividing that sum by sixteen, or the market value of the trust fund at the end of that calendar year for the support of education in South Dakota. The transfer shall be made prior to June thirtieth of the subsequent calendar year.~~

### **Constitutional Amendment P**

**Title:** An Amendment to the South Dakota Constitution adding balanced budget requirements.

#### **Attorney General Explanation:**

While the constitution currently restricts the State from incurring debt, it does not expressly require the State to have a balanced budget. Amendment P requires the Governor to propose a balanced budget. In addition, Amendment P prohibits legislative

appropriations from exceeding anticipated revenues and existing available funds. The amendment is not intended to affect other constitutional provisions

A vote "Yes" will include balanced budget requirements in the Constitution.

A vote "No" will leave the Constitution as it is.

#### **Full Text of Constitutional Amendment P:**

That Article XII of the Constitution of the State of South Dakota, be amended by adding a NEW SECTION to read as follows:

§ 7. The Governor shall propose a budget in which expenditures or appropriations may not exceed anticipated revenue and existing funds available for expenditure or appropriation. Appropriations by the Legislature may not exceed anticipated revenue and existing funds available for expenditure or appropriation. Nothing in this section is intended to limit, restrict, expand, modify, or otherwise affect any other provision of this Constitution, including Article XIII.

### **2012 Initiated Measure**

The following initiated measure was proposed by petition for submission to the voters. This initiated measure will not become effective unless approved by majority vote.

#### **Initiated Measure 15**

**Title:** An initiated measure to increase state general sales and use taxes for additional K-12 public education and Medicaid funding

#### **Attorney General Explanation:**

The initiated measure increases the state general sales and use tax rate from 4% to 5%. The additional tax revenue will be split evenly between K-12 public education and Medicaid. The education funds will be provided to school districts based on enrollment, to be spent on improving education as school boards determine. The Medicaid funds will be spent only on payments to Medicaid providers and related state expenses.

The additional funds cannot replace or reduce state funding levels set for fiscal year 2012 relating to existing Medicaid and K-12 public education programs, including state aid to education. Currently, state aid is to be adjusted annually by 3% or the rate of inflation, whichever is less. Under the measure, this annual adjustment cannot exceed the growth rate in state general fund revenues. Any resulting shortfall in state aid will be made up in subsequent years.

A vote "Yes" is for the proposed law.

A vote "No" is against the proposed law.

#### **Full Text of Initiated Measure 15:**

1. Commencing January 1, 2013, twenty percent of the monies collected pursuant to the South Dakota sales and use taxes imposed by SDCL chapters 10-45 and 10-46 shall be placed in a special fund known as the Moving South Dakota Forward fund. The monies in the Moving South Dakota Forward fund shall be allocated into the following

two subfunds within the Moving South Dakota Forward fund (1) fifty percent shall be allocated to the Moving K-12 Education Forward subfund; and (2) fifty percent shall be allocated to the Moving Healthcare Forward subfund.

2. Monies allocated in Section 1 of this initiated measure shall be disbursed as follows:

(1) Monies in the Moving K-12 Education Forward sub-fund are continuously appropriated to the public school districts of South Dakota, to be distributed pro rata based upon each school district's relative share of fall enrollment as defined in SDCL chapter 13-13, compared to the fall enrollment of all school districts. Funds deposited in the Moving K-12 Education Forward subfund in the preceding calendar quarter shall be distributed, provided above, to the public school districts of South Dakota by the first business day of February, May, August, and November of each year, commencing May 1, 2013. Funds received by a school district from the Moving K-12 Education Forward subfund shall be used at the sole discretion of the public school district's governing board for the purpose of improving public education;

(2) Eighty percent of the monies in the Moving Healthcare Forward subfund shall be spent only for the purpose of funding payments to providers to the South Dakota Medicaid program, which are incurred due to increases in expenses related to the reimbursement rates paid to service providers per unit of service in excess of such reimbursement rates in effect as of July 1, 2011; and

(3) Twenty percent of the monies in the Moving Health Care Forward subfund shall be spent only for the purpose of funding expenses related to payments to providers to the South Dakota Medicaid Program, which are incurred due to increases in the case load volume experienced by the South Dakota Medicaid program from the case levels as of July 1, 2011.

3. No monies deposited in the Moving K-12 Education Forward subfund may be spent in any way, either directly or indirectly, to reduce, supplant, or replace appropriations for any state K-12 education program in existence for state fiscal year 2012, including specifically the state aid to education and special education programs established in SDCL chapters 13-13 and 13-37. The per student allocation in SDCL chapter 13-13 and the per student allocation for each specified disability in SDCL chapter 13-37 shall be adjusted by the annual application of their respective index factors, as set forth in SDCL subdivisions 13-13-10.1(3) and 13-37-35.1(6), as in effect on July 1, 2011. However, the index factor adjustment shall, in no case, exceed the actual percentage growth in state general fund revenues for the most recently completed fiscal year. If the percentage growth in state general fund revenues is less than the index factor in any year, the difference shall be made up in the immediately following years to the extent the percentage growth in state general fund revenues exceeds the index factors.

4. No monies deposited in the Moving Health Care Forward subfund may be spent in any way, either directly or indirectly, to reduce, supplant, or replace state appropriations for any state Medicaid program in existence for state fiscal year 2012.

5. Effective January 1, 2013, any sales or use tax imposed at a rate of four percent by the provisions of SDCL chapters 10-45 or 10-46 are hereby increased by one percent each to a total rate of five percent each.

## 2012 Referred Laws

The following laws were adopted by the Legislature and referred to the voters by petition. These laws will not become effective unless approved by majority vote.

## **Referred Law 14**

**Title:** An Act to establish the Large Project Development Fund.

**Attorney General Explanation:**

The referred law establishes the “Large Project Development Fund.” Beginning January 1, 2013, 22% of contractors’ excise tax revenues would be transferred from the state general fund to the Large Project Development Fund.

The South Dakota Board of Economic Development would use Large Project Development Fund monies to provide grants for the construction of large economic development projects within the state. To be eligible, a project must have a cost exceeding \$5 million. Examples of eligible projects include laboratories and facilities for testing, manufacturing, power generation, power transmission, agricultural processing, and wind energy. Examples of ineligible projects include retail establishments; residential housing; and facilities for lodging, health care services and the raising or feeding of livestock.

A vote “Yes” is for the establishment of the Large Project Development Fund.

A vote “No” is against the referred law.

**Full Text of Referred Law 14:**

Section 1. That § 1-16G-1.2 be amended to read as follows:

1-16G-1.2. The Board of Economic Development may take title by foreclosure to any property given as security if the acquisition is necessary to protect any economic development grant or loan or any large project development grant made under pursuant to the provisions of this chapter, and may sell, transfer, or convey any such property to any responsible buyer. Any sale of property hereunder pursuant to the provisions of this chapter shall be performed in a commercially reasonable manner. If the sale, transfer, or conveyance cannot be effected with reasonable promptness, the board may, in order to prevent financial loss and sustain employment, lease the property to a responsible tenant or tenants.

All sale proceeds or lease payments received by the board pursuant to this section shall be deposited in the fund from which the original grant or loan was made.

Section 2. That § 1-16G-8 be amended to read as follows:

1-16G-8. The Board of Economic Development shall promulgate rules pursuant to chapter 1-26 concerning the following:

- (1) The existing barriers to economic growth and development in the state;
- (2) Developing investment in research and development in high technology industries;
- (3) The submission of business plans prior to the approval of economic development grants or loans or large project development grants. Business plans shall include the products or services to be offered by the applicant, job descriptions with

attendant salary or wage information by job category, educational requirements by job category, methods of accounting, financing other than that provided by the economic development grant or loan or a large project development grant, and marketing, sales, merchandising, and other disciplines proposed to be used for business growth and expansion;

(4) The cooperation between agencies of state government and applicant businesses for nonfinancial services including loan packaging, marketing assistance, research assistance, and assistance with finding solutions for complying with environmental, energy, health, safety, and other federal, state, and local laws and regulations;

(5) Regular performance monitoring and reporting systems for participating businesses to assure compliance with their business plans and, terms of repayment of an economic development loan and compliance with terms of an economic development grant or a large project development grant;

(6) Establish eligibility criteria for grants and loans;

(7) Establish application procedures for grants and loans, including a requirement that grant and loan applications be signed under penalty of perjury;

(8) Establish criteria to determine which applicants will receive grants or loans;

(9) Govern the use of proceeds of grants and loans;

(10) Establish criteria for the terms and conditions upon which loans shall be made, including matching requirements, interest rates, repayment terms, and the terms of security given to secure such loans; and

(11) Establish criteria for the terms and conditions upon which grants shall be made, including permitted uses, performance criteria, and matching requirements; and

(12) Establish criteria for the terms and conditions upon which grants shall be repaid for noncompliance with the terms and conditions upon which the grant was made.

Section 3. That § 1-16G-16.1 be amended to read as follows:

1-16G-16.1. The Board of Economic Development may use the revolving economic development and initiative fund for the purpose of paying taxes and liens and for the procuring of legal services and other services necessary to protect, recover, maintain, and liquidate the assets of the revolving economic development and initiative fund and the large project development fund. Such costs may be incurred and paid up to ten percent of the loan or grant balance with a majority vote of the board of economic development. Costs in excess of ten percent shall be approved by a two-thirds vote of the board. Such services are not subject to state bid laws so long as such services are procured in a commercially acceptable manner.

Section 4. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act Mean:

(1) "Large project," a project with a total project cost exceeding five million dollars; and

(2) "Project cost," the amount paid in money, credits, property, or other money's worth for a project.

Section 5. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, project, means a new building or structure or the expansion of an existing building or structure, the construction of which is subject to the contractor's excise tax imposed by chapters 10-46A or 10-46B. A project includes laboratory and testing facilities, manufacturing facilities, power generation facilities, power transmission facilities, agricultural processing facilities, and wind energy facilities. A project does not include any building or structure:

- (1) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, to individual consumers;
- (2) Used predominantly for residential housing or transient lodging;
- (3) Used predominantly to provide health care services;
- (4) Constructed for raising or feeding of livestock; or
- (5) That is not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts.

Section 6. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

There is established in the state treasury a fund to be known as the large project development fund for the purpose of making grants for large project development.

Section 7. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

The Board of Economic Development may make grants from the large project development fund for the purpose of promoting large project development in South Dakota.

Section 8. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

All money in the fund is hereby appropriated for the purpose of making grants as provided in this Act. Any repayment of grants from the large project development fund and any interest thereon shall be receipted into the large project development fund.

Section 9. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

The Board of Economic Development may accept and expend for the purposes of sections 6 and 7 of this Act, inclusive, any funds obtained from federal sources, gifts, contributions, or any source if such acceptance and expenditure is approved in accordance with § 4-8B-10.

Section 10. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

There is hereby continuously appropriated to the large project development fund the amount of twenty-two percent of all deposits into the general fund of the contractors' excise tax imposed by chapter 10-46A and the alternate contractors' excise tax imposed by chapter 10-46B. Transfers from the general fund to the large project development fund pursuant to this provision shall be made on a monthly basis by the Bureau of Finance and Management.

Section 11. The provisions of section 10 of this Act are effective on January 1, 2013.

## Referred Law 16

**Title:** An education reform act to establish a teacher scholarship program; create a program for math and science teacher bonuses; create a program for teacher merit bonuses; mandate a uniform teacher and principal evaluation system; and eliminate state requirements for teacher tenure.

**Attorney General Explanation:**

Referred Law 16 is an education reform act with five key components. First, it establishes a scholarship program for eligible college students who commit to teach in South Dakota in critical need subject areas.

Second, the referred law creates a program to provide state-funded annual bonuses for eligible math and science teachers.

Third, the referred law develops a separate “Top Teachers” bonus program. This program provides annual state-funded merit bonuses for up to 20% of each school district’s full-time certified teachers, as awarded by the local school boards.

Alternatively, a school board may enact its own program for teacher bonuses, using these state-provided funds. A school board may opt out of these merit bonus programs altogether, resulting in re-allocation of its merit bonus funds to other participating school districts.

Fourth, the referred law mandates a uniform statewide system for evaluating teachers and principals, including a rating system.

Fifth, the referred law eliminates state requirements for continuing contracts (“tenure”) for teachers who do not achieve tenure by July 1, 2016. School boards may, in their discretion, choose to offer continuing contracts to non-tenured teachers.

A vote “Yes” is to enact the education reform act.

A vote “No” is against the referred law.

**Full Text of Referred Law 16:**

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

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

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

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

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

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

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

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

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

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

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

- (1) Agree, in writing, to stay in South Dakota and work in a critical teaching needs area for five years after graduation from a participating postsecondary institution;
- (2) Agree, through a promissory note, that failure to abide by the provisions of subdivision (1) will result in the scholarship being converted into an interest bearing loan;
- (3) Attend a participating South Dakota postsecondary institution as an undergraduate junior or senior and be accepted in an elementary or secondary education program at the institution that will prepare the student to work in a critical need teaching area; and
- (4) Be a United States citizen or lawful permanent resident.

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

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

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

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

In addition to the eligibility criteria identified in section 5 of this Act, the Critical Teaching Needs Scholarship Board may require applicants to submit a written essay or other information by which to judge the academic and personal qualifications of the applicant.

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

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

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

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

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

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

(1) Maintain a cumulative 2.8 grade point average on a 4.0 scale. The student shall complete consecutive spring and fall terms in order to remain eligible for continuation of the scholarship program from term to term;

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

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

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

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

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

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

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

Section 10. The Board of Education may promulgate rules pursuant to chapter 1-26 to define areas of critical teaching need for the purposes of sections 1 to 8, inclusive, of this Act, to establish application requirements for the critical teaching needs scholarship, and

to further accomplish the purposes of sections 1 to 8, inclusive, of this Act.

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

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

Section 13. The Department of Education shall provide application forms for teachers wishing to participate in the math and science teacher incentive 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 as allowed by that chapter.

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

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

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

Section 15. By September first of each year, the school board of each district shall submit to the Department of Education a copy of the application of each teacher eligible

for the math and science teacher incentive program for the previous school year pursuant to the requirements of this Act. The Department of Education may require additional information from the district as necessary to verify each teacher's eligibility for the reward. The department may refuse to issue a reward for any teacher for whom the information required by this section is not provided by the deadline.

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

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

- (1) Two thousand five hundred dollars shall be paid to each eligible teacher in the district; and
- (2) Three hundred fifty 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.

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

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

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

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

Section 20. No later than May first of each year, at the same time that foundation program state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of Education shall inform each school district of the number of eligible positions in that district for the current school year, based on the

calculation in section 19 of this Act, and distribute to each school district five thousand seven hundred dollars per eligible position. These funds shall be distributed in lump sum payments. The school district shall retain these funds until distribution pursuant to section 21 of this Act.

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

(1) Five thousand dollars shall be paid to each teacher selected for a top teacher reward pursuant to section 24 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 20 of this Act which are not distributed according to this section shall be returned to the Department of Education within thirty days.

Section 22. 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 23. A participating teacher shall be full-time and receive a distinguished rating, as referenced in section 38 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;
- (4) Data analysis;
- (5) Service to the local district, state, or national committees or task forces;
- (6) Leadership in a professional learning community;
- (7) National board certification;
- (8) Other leadership activities or recognitions; and
- (9) Other additional criteria as determined by the school board.

Section 24. No later than August first of each year, the school board of each school district shall determine which participating teachers, if any, are selected to receive top teacher rewards for the previous school year according to the criteria in section 23 of this Act. The number of teachers selected may not exceed the number of eligible positions referenced in sections 19 and 20 of this Act.

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

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

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

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

Section 27. If a school district opts out pursuant to section 26 of this Act, all funds which the district would have been eligible to receive for the top teacher program pursuant to this Act shall be redistributed as follows:

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

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

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

Section 28. Notwithstanding any other provision of this Act, a public school district may create a local teacher reward plan to act as a substitute for the top teacher reward program beginning in the 2014-2015 school year. If the local teacher reward plan is developed in compliance with sections 28 to 35, inclusive, of this Act, the district may

utilize the local teacher reward plan to provide the district with the flexibility to use the funds that would otherwise be provided to the district through the top teachers reward program.

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

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

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

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

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

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

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

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

- (1) One member of the Senate appointed by the president pro tempore of the Senate;
- (2) One member of the House of Representatives appointed by the speaker of the House of Representatives;
- (3) Two representatives of the business community appointed by the Governor;
- (4) One representative of an educational association appointed by the Governor;
- (5) One current or former teacher appointed by the Governor; and

(6) The secretary of the Department of Education.

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

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

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

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

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

Section 37. 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 to~~ three, inclusive, not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year.

~~Each~~ For the 2012-2013 school year and the 2013-2014 school year, each school district ~~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 38. 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 40 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 40 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
  - (d) Unsatisfactory.

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

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

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

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

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

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

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

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

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

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

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

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to section 43 of this Act;
- (2) Require multiple measures of performance;
- (3) Serve as the basis for programs to increase professional growth and development of certified principals;
- (4) Include a plan of assistance for any certified principal 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
- (d) Unsatisfactory.

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

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

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

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

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

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

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

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

13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any time for just cause, including breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the

violation of any policy or regulation of the school district. ~~A school district may nonrenew a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district pursuant to § 13-43-6.3 for just cause, including breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district.~~

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

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

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

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

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

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

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

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

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

13-43-6.6. Although a collective bargaining agreement between a district and its teachers may set forth specific additional grounds for termination or set forth provisions as to the procedure or notice, no agreement may limit the district's right to terminate or

refuse to renew the contract of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-43-6.3, inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-6.5.

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

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

~~— 13-3-73. There is hereby created the teacher compensation assistance program within the Department of Education to provide funds to school districts for the purpose of assisting school districts with teacher compensation. School districts are eligible to receive funds from the 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 Education may promulgate rules, pursuant to chapter 1-26, to establish the granting process.~~

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

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

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

Section 64. There is hereby established the South Dakota Education Reform Advisory Council. The council shall advise upon the implementation of this Act, and shall examine further education reform issues including:

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

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

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

- (1) Three members of the Senate, including at least one member of each political party, appointed by the president pro tempore of the Senate;
- (2) Three members of the House of Representatives, including a member of each political party, appointed by the speaker of the House;

- (3) The secretary of the Department of Education, who will serve as chair;
- (4) Three superintendents, jointly appointed by the president pro tempore of the Senate and the speaker of the House;
- (5) Three principals, one each from an elementary school, a middle school, and a high school, jointly appointed by the president pro tempore of the Senate and the speaker of the House;
- (6) Five teachers, jointly appointed by the president pro tempore of the Senate and the speaker of the House;
- (7) Three school board members, jointly appointed by the president pro tempore of the Senate and the speaker of the House;
- (8) One member of the Board of Regents, selected by the board;
- (9) One representative of the postsecondary technical institutes, selected by the presidents of the respective institutions;
- (10) One representative selected by the School Administrators of South Dakota;
- (11) One representative selected by the South Dakota Education Association; and
- (12) One representative selected by the Associated School Boards of South Dakota.