



HOUSE BILL 1234

House Bill 1234 is a sweeping education reform measure passed during the 2012 Legislative Session. Though the law is scheduled to become effective July 1, 2012, many of the law's components are delayed until the 2013-14, 14-15, and 16-17 school years. This issue brief is intended to explain the law's main components, outlines remaining questions and provide a detailed section-by-section analysis.

OVERVIEW

House Bill 1234 alters the way teachers and principals are evaluated, eliminates state laws guaranteeing continuing contract and due process rights for veteran teachers, establishes alternative teacher compensation policies. The major components of the measure are summarized below.

CRITICAL-NEED TEACHING AREAS SCHOLARSHIPS

House Bill 1234 authorizes the establishment of a scholarship program that will provide two years of college tuition reimbursement for teachers entering critical need subjects and agree to teach in South Dakota for five years.

ALTERNATIVE TEACHER COMPENSATION

House Bill 1234 creates a statewide performance pay program that would give 20 percent of the state's top teachers a \$5,000 one-year bonus. School districts can opt-out of the statewide performance plan or design a local reward plan that is based on student achievement growth, teacher leadership or filling critical-need teaching positions.

STAFF EVALUATION

House Bill 1234 mandates that all districts adopt a uniform evaluation instrument, process and procedures for teachers and principals. For teachers, school districts must base 50 percent of every evaluation on quantitative data that measure's the teacher's ability to improve student achievement. If the state provides a student achievement assessment, the school district must use that test to measure teacher performance. If the state does not provide an assessment, districts will have to develop their own.

CONTINUING CONTRACT REFORMS

House Bill 1234 eliminates a state mandate granting teachers continuing contract and due process rights in the teacher's fourth consecutive year of employment.

REMAINING QUESTIONS

The passage of HB 1234 establishes general direction in several reform areas, but significant questions remain prior to implementation, including:

- **Will the measure survive referral?** Shortly after enactment, the South Dakota Education Association announced intentions to refer the law to a public vote. If the referral effort is successful, the fate of the bill will be settled in the November general election.
- **Will the measure be funded, and for how long?** Though the bill promises additional funding for teacher compensation, the bill does not contain a legislative appropriation. Appropriations require a two-thirds majority, but the bill passed by a very narrow margin. The last attempt to provide districts with resources to increase teacher compensation – the TCAP program – was promised for five years, but funding was eliminated after just two years.
- **Do schools have the financial resources?** The staff evaluation mandates have the potential to be significantly expensive to implement. Given the current state of school funding, the cost of the staff evaluation mandate will likely further stress school budgets.

| HOUSE BILL 1234 SECTION-BY-SECTION ANALYSIS | |
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| CRITICAL TEACHING NEEDS SCHOLARSHIP PROGRAM Sections 1-10 detail a new state-run scholarship program designed to incentivize individuals to work in critical need teaching positions. | |
| <u>SECTION</u> | <u>DESCRIPTION</u> |
| Section 1 | Creates the South Dakota Teaching Needs Scholarship Program, which will begin in the 2013-14 academic year. |
| Section 2 | Creates the Critical Teaching Needs Scholarship Board, which will administer the new scholarship program. The board's five members will be appointed by the governor. |
| Section 3 | Authorizes the board to award up to 100 scholarships each year. Scholarships will be based on the individual's pursuit of a degree filling a critical teaching need and other academic and personal characteristics. |
| Section 4 | Enables South Dakota public and private universities that offer degrees in elementary and secondary education to participate in the scholarship program. |
| Section 5 | Sets forth criteria that must be met to qualify for the scholarship program. <ol style="list-style-type: none"> 1. The scholarship is available to college juniors and seniors that agree to stay in work in a critical teaching needs area for five years after graduation, but the law does not contain a requirement that the individual must teach in a South Dakota public school. 2. If the recipient does not remain employed as a teacher, the scholarship is converted into an interest-bearing loan. |
| Section 6 | Give the authority for the oversight board to require a written essay or to provide any additional information the board needs to judge the qualifications of the application. |
| Section 7 | Outlines the value of the scholarship. The amount will equal the tuition and fees for thirty credit hours as of July 1, 2013. State money is distributed to the university – not the individual teacher – and the amount paid is uniform, regardless of whether the program is housed at a private or public university. If the legislature does not appropriate sufficient funding to cover the cost of the scholarship program, the awards may be prorated. |
| Section 8 | Establishes criteria that guarantees continued eligibility for the scholarship. A student must maintain a 2.8 GPA, must earn 30 credit hours per year and teach in a critical needs teaching area for five years. Grants the oversight board to waive eligibility requirements if necessary, or rescind the scholarship if the requirements aren't met. Provides for a scholarship to be converted into an interest-bearing loan at a rate of interest established by the oversight board. Requires new teachers to remain consecutively employed to remain eligible, but the board may waive that requirement for good cause. |
| Section 9 | Allows the Department of Education to receive gifts, donations, grants or endowments for the purposes of providing the scholarship. |
| Section 10 | Grants authority for the South Dakota board of Education to adopt rules to define critical teaching needs. Does not require the Secretary of Education to consult with school districts to determine areas of critical need. |

| HOUSE BILL 1234 SECTION-BY-SECTION ANALYSIS | |
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| INCENTIVES FOR MATH AND SCIENCE TEACHERS Sections 11 - 16 detail a new, state-funded alternative compensation system for math and science teachers. | |
| Section 11 | Creates the Math and Science Teacher Incentive Program, effective beginning in the 2014-15 school year, which offers financial rewards to middle and high school math and science teachers, or any teacher who uses a K-12 math or science specialist endorsement. Gives the South Dakota Board of Education rule-making authority to determine which math and science courses qualify. |

| (incentives continued) | |
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| Section 12 | Clarifies that the program is voluntary for teachers and that any reward distributed through the program cannot replace teacher compensation received from a local school district. Further stipulates that collective bargaining agreements may not limit a teacher's ability to qualify for the award and that the new law does not create a contractual or property right to the reward distributed through the program. |
| Section 13 | Creates the mechanism for teachers to apply for the program. Teachers must submit an application through the local school district's business office by Oct. 1 of each year. An application must be submitted each year, and applications and public records. |
| Section 14 | Outlines program eligibility requirements. Teachers must be full-time, receive a rating of proficient or advanced on a new statewide mandated teacher performance evaluation system and teach math or science at least 50 percent of the time. |
| Section 15 | Establishes reporting timelines. Requires schools, by Sept. 1 of each year, to submit to the state the list of eligible teachers for the previous year. Teachers that apply and qualify will receive the reward during the next fiscal year. |
| Section 16 | Establishes the amount and distribution of awards. Districts will receive \$2,850 per eligible teacher, with \$2,500 going to the staff member and the remainder retained by the district to pay applicable federal taxes and retirement system contributions. |

| HOSUE BILL 1234 SECTION-BY-SECTION ANALYSIS | | |
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| DIFFERENTIATED PAY FOR TEACHERS | | |
| Sections 17-36 outline various alternative teacher compensation systems, including a state-led effort and a program that gives some flexibility to local school boards. | | |
| STATE MERIT PAY PROGRAM | <u>SECTION</u> | <u>DESCRIPTION</u> |
| | Section 17 | Creates the state-led Top Teachers Reward Program effective beginning the 2014-15 school year. |
| | Section 18 | Participation in the state-led program is voluntary for teachers. Clarifies that the performance rewards cannot replace compensation received from local school districts. Collective bargaining agreements cannot prevent a teacher from qualifying for the award and teachers do not have a contractual or property right to any performance reward distributed through the program. |
| | Section 19 | Stipulates that up to 20 percent of a school district's teaching staff is eligible for the performance rewards from the state-led program. |
| | Section 20 | Outlines the distribution of state funds through the top teacher reward program. Districts will receive \$5,700 per eligible teacher no later than the first of May each year. |
| | Section 21 | Outlines how local school districts must distribute top teacher reward program funds. No later than Sep. 1, districts may award \$5,000 to each eligible teacher from the previous school year, and the district retains \$700 to pay the district's share of federal taxes and retirement system contributions. Any funds not distributed must be sent back to the state. |
| | Section 22 | Teachers must apply by Oct. 1 of any given year and must apply each year. Applications are public records. |
| | Section 23 | Sets for the requirements for teachers to qualify to receive the performance-based bonus. Teachers must have earned the highest rating on a new state-mandated teacher performance evaluation system. School districts may use other criteria to determine which staff members qualify. |
| | Section 24 | No later than Aug. 1 of each year, the school board must decide which teachers are selected to receive performance pay bonuses for the previous school year. |

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| STATE MERIT PAY PROGRAM | (state merit pay program continued) | |
| | Section 25 | Grants the state education department the authority to ensure school districts comply with the parameters of the state performance pay program. |
| | Section 26 | Creates a mechanism for local school districts to opt-out of the state-led performance pay program. Opting out requires a majority vote of the local school board, and school districts must opt-out every year. If a district declines to participate, all teachers must be notified. Clarifies that school districts are not able to decline incentives for math and science teachers, which are established in earlier sections of the bill. |
| | Section 27 | Establishes a way to redistribute funds from non-participating districts to those choosing to participate in the program. If redistribution occurs, the money will be distributed on a per-teacher basis to eligible districts, and the money must be divided equally among teachers qualifying for the performance bonuses. |
| LOCAL DIFFERENTIAL COMPENSATION SYSTEMS | Section 28 | Permits local school districts to create a Local Teacher Reward Plan as a substitute for the state-led performance pay program, allowing school districts flexibility to use the funds that would have normally been provided through the state performance pay program. Clarifies that participation in the local teacher reward plan is voluntary for teachers, that the money must be in addition to compensation already received by the district, and that collective bargaining cannot limit a teacher's ability to qualify for the bonus. Also stipulates that teachers cannot obtain a contractual or property right to the money awarded through a local reward plan. If the district creates a local reward plan, teachers must be notified that they are no longer eligible for the state performance pay plan and must be provided with a copy of the local reward plan. |
| | Section 29 | Creates criteria for the local teacher reward plans. District plans must distribute rewards based on one or more of the following criteria: <ol style="list-style-type: none"> 1. Demonstrating an impact on student achievement; 2. Demonstrating teacher leadership; or 3. Market-based needs of the school district based up critical teaching are needs of the school district. |
| | Section 30 | Creates the Local Teacher Reward Advisory Council, which is tasked with giving input in the development of one or more local teacher reward programs. The work group will contain six principals and superintendents, six teachers and three school board members from various grade levels and school size categories. |
| | Section 31 | Grants the South Dakota Board of Education the authority to establish the application form and guidelines, as well as a system to monitor whether schools comply with the provisions of the plans. |
| | Section 32 | Creates the Local Teacher Reward Plan Oversight Board, including two members appointed by the legislature, two business people appointed by the governor, one representative of an education association appointed by the governor, one current or former teacher appointed by the governor, and the Secretary of Education. |
| | Section 33 | Requires schools to submit local reward plans to the state education department by Jan. 31 to be eligible to participate in the following year. The plans must be reviewed by the oversight board by March 15 of each year, and districts must be notified of the acceptance or rejection by April 1 of each year. If an application is denied, a school district can opt-out of the program or adopt one of the model plans established by the workgroup. |
| | Section 34 | If the district's plan is approved, funds must be distributed to school districts no later than May 1. The amount of money a district receives is based on the award the district would have received if the district participated in the state-led performance pay program. |

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| (local differential compensation continued) | | |
| | Section 35 | Districts have until Sep. 1 to distribute program funds to eligible teachers. The district may retain funds to pay taxes, retirement system contributions and administrative costs. |
| | Section 36 | Clarifies that teachers are eligible to receive math and science incentives in addition to any rewards distributed through the state performance pay program or the local teacher reward plans. |

| HOUSE BILL 1234 SECTION-BY-SECTION ANALYSIS | | |
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| MANDATORY STAFF EVALUATION SYSTEMS | | |
| Sections 37-46 – impose new uniform, state-mandated staff evaluation systems that will apply to public school teachers and principals. | | |
| TEACHER EVALUATION | <u>SECTION</u> | <u>DESCRIPTION</u> |
| | Section 37 | Provides for a transition from current staff evaluation requirements to the new uniform mandated teacher evaluation system. Modifies current mandate for school boards to adopt evaluation procedures, now making it optional for boards to adopt the policies for the 2012-13 and 2013-14 school years. During the transition period, probationary teachers must be evaluated once a year and continuing contract teachers must be evaluated at least once every other year. |
| | Section 38 | <p>This section is the heart of the teacher evaluation mandate. Establishes that every teacher must be evaluated every year, beginning in the 2014-15 school year. Also requires that school districts must adopt the model evaluation instrument adopted by the South Dakota Board of Education. Also requires that school districts must adopt evaluation procedures that:</p> <ol style="list-style-type: none"> 1. Are based on the professional teacher standards adopted by the State Board of Education 2. Require multiple measures of performance. <ol style="list-style-type: none"> a. Fifty percent of the evaluation will be based on quantitative measures of student growth, based on a single year or multiple years of data. The quantitative data must be based on reports of student performance on state validated assessments, which are essentially the math and English-language arts state assessments given in grades 3-8 and grade 11. If there is no state assessment, teachers are required to demonstrate their ability to improve student performance on portfolio assessments, end-of-course exams, or other district-created assessments. b. The other 50 percent of the evaluation will be based on qualitative evidence. The observations may be dictated by the state mandated evaluation instrument, but evaluators may also include classroom drop-ins, parent surveys, student surveys, portfolios or peer review. 3. Evaluations must serve as the basis for programs to increase professional growth and development of certified teachers 4. Must include a plan of assistance for any teacher that does not meet the school district's performance standards 5. Teacher performance must be categorized into one of for state-established performance standards – distinguished, proficient, basic or unsatisfactory. |
| | Section 39 | Reaffirms that the uniform teaching evaluation mandate is effective July 1, 2014. |
| | Section 40 | Redefines a teacher evaluation workgroup and tasks them with helping to implement the teaching evaluation mandate, evaluation instrument and four-tiered rating system. |
| | Section 41 | Give the South Dakota Board of education the authority to establish the four-tiered rating system and the model evaluation instrument. |
| | Section 42 | Prohibits the new evaluation system from being collectively bargained. |

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| PRINCIPAL EVALUATION | Section 43 | Gives the South Dakota Board of Education the authority to adopt performance standards for principals and for developing best practices that school districts must use to evaluate principals. Also gives the state board authority to adopt a four-tiered rating system and a model evaluation instrument. |
| | Section 44 | This section is the heart of the principal evaluation mandate. Mandates that all principals shall be evaluated using the state-created principal evaluation system at least every other year, effective in the 2014-15 school year. Requires all schools to adopt a uniform principal evaluation instrument and procedures for evaluation that: <ol style="list-style-type: none"> 1. Are based on minimum professional performance standards 2. Require multiple measures of performance 3. Serve as the basis for professional growth 4. Include a plan of assistance for any principal whose performance does not meet the school district's standards 5. Are based on a four-tier rating system – distinguished, proficient, basic and unsatisfactory. |
| | Section 45 | Creates a workgroup to give input on the mandated principal evaluation standards, procedures and instruments. The workgroup will include six principals, three teachers, two superintendents, two school board members, four parents, and representatives from three education organizations. |
| | Section 46 | Mandates that all individuals evaluating principals must first undergo training. |

HOUSE BILL 1234 SECTION-BY-SECTION ANALYSIS

CONTINUING CONTRACT REFORMS

Sections 47-54 and section 63 remove state requirements that grant veteran teachers continuing contract and due process rights.

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| Section 47 | Defines tenured teacher as any teacher who is on or beyond the fourth consecutive term of employment prior to July 1, 2016. Clarifies that teachers that have earned continuing contract status as of July 1, 2016 are tenured teachers and will retain continuing contract and due process rights. Going forward, school boards have the option to offer the protection. |
| Section 48 | Clarifies that all teacher contracts are one-year contracts, eliminating the concept of continuing contract. |
| Section 49 | Clarifies that employment contracts must still be terminated for just cause, which includes breach of contract, poor performance incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or violation of any school district policy or regulation. |
| Section 50 | Adds the definition of tenured teachers to sections of laws requiring notice of intent to nonrenew the contract of a tenured teacher. |
| Section 51 | Removes the probationary period that currently exists before teachers are granted continuing contract. Gives school boards wide authority to nonrenew contracts for nontenured teachers without having to prove just cause. For tenured teachers, school districts will still have to show just cause. The definition of just cause is expanded to include two consecutive unsatisfactory evaluations on the new state-mandated teacher performance evaluation system. Clarifies that notification requirements only apply to recommendations to nonrenew a tenured teacher's contract. |
| Section 52 | Updates legal citations that apply to notification requirements for reduction in force, which will not change under the law. |
| Section 53 | Clarifies that collective bargaining cannot limit the district's right to terminate or nonrenew the contract of a tenured or nontenured teacher. |
| Section 54 | Clarifies that school term means the school term as defined by law. |
| Section 63 | Clarifies that the continuing contract reforms are effective July 1, 2016. |

HOUSE BILL 1234 SECTION-BY-SECTION ANALYSIS

REPEAL OF THE TEACHER COMPENSATION ASSISTANCE PROGRAM

Sections 55-61 repeal the Teacher Compensation Assistance Program, an alternative compensation assistance program that was cut due to state budget cuts.

HOUSE BILL 1234 SECTION-BY-SECTION ANALYSIS

IMPLEMENTATION ADVISORY GROUPS

Section 62 and sections 64-65 establish timelines for workgroups and advisory councils to report to the Legislature on work being done

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| | Section 62 | Requires all workgroups, boards and advisory councils to issue progress reports to the Legislature no later than Jan. 15, 2013. |
| | Section 64 | Creates the South Dakota education Reform Advisory Council, which is tasked with advising the implementation of HB 1234. Initial findings must be submitted to the Legislature and governor no later than Dec. 1, 2012. The group will also have to consider: <ol style="list-style-type: none">1. The advantages and disadvantages of initiatives designed to provide for increased compensation for teachers.2. Teaching areas of critical needs and solutions to recruit, retain and train teachers in critical need areas.3. Other ideas to improve student achievement. |
| | Section 65 | Establishes the members of the South Dakota Education Reform Council, which will include: Three members of the Senate and House, the Secretary of Education, three superintendents, five teachers, three school board members, a representative of the Board of Regents, a representative of the postsecondary technical institutes, one representative of each of the three major education associations. |