

**2010 Legal and Public Notices**

ers 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 sin 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 develop-

**2010 Legal and Public Notices**

ment 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.

**2010 Legal and Public Notices**

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

**2010 Legal and Public Notices**

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

**2010 Legal and Public Notices**

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 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 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

**2010 Legal and Public Notices**

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