



# North Dakota Legislative Council

Prepared for the Workforce Committee  
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## STATE OFFICE OF APPRENTICESHIP STUDY - BACKGROUND MEMORANDUM

Section 2 of Senate Bill No. 2170 (2023) ([appendix](#)) directs the Legislative Management to study the feasibility and desirability of creating a state office of apprenticeship. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the United States Department of Labor (DOL). The study also must identify areas in which the state may exercise more control over federal labor law to provide more flexibility as it applies to minors at least 16 years of age.

### BACKGROUND OF APPRENTICESHIPS IN THE UNITED STATES

The 1937 passage of the National Apprenticeship Act established the modern-day Registered Apprenticeship Program.<sup>1</sup> The Act provided authority to the DOL to regulate the health, safety, and welfare of apprentices and prevent discrimination in apprenticeship programs.<sup>2</sup> Early apprenticeships focused on the skilled trades, but since have expanded to cater to a number of industries and occupations to meet the needs of today's workforce.<sup>3</sup> The United States Department of Labor's Office of Apprenticeship (OA) oversees the national Registered Apprenticeship system.

In cooperation with the states, the OA registers apprenticeship programs that meet federal and state standards, assures all programs provide high-quality training to apprentices, issues certificates of completion to apprentices, encourages the development of new programs, and protects the safety and welfare of all apprentices.<sup>4</sup> Apprenticeship programs in the states either are regulated federally by the OA or by a recognized State Apprenticeship Agency (SAA).

Apprenticeship programs are overseen by the OA in Alaska, Arkansas, California, Georgia, Iowa, Idaho, Illinois, Indiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming. Apprenticeship programs are overseen by an SAA in Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New York, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, Washington D.C., and Wisconsin.

The United States Department of Labor has authority to grant recognition to an SAA under 29 CFR 29.13. A recognized SAA is authorized to determine whether an apprenticeship program conforms to published standards and is eligible for federal purposes. An agency must meet various requirements to be recognized as an SAA. An agency must submit a state apprenticeship law, whether instituted through statute, executive order, regulation, or other means, which conforms to the requirements of applicable federal regulations. An agency must establish and continue to use a state apprenticeship council, which operates under the direction of the SAA. The council may be either regulatory or advisory and must be composed of persons familiar with apprenticeable occupations. The council also must include an equal number of representatives of employer and employee organizations and include public members who may not number more than the number named to represent either employer or employee organizations. An agency also must submit a State Plan for Equal Employment Opportunity in Apprenticeship that conforms to the requirements published in 29 CFR 30. Additionally, an agency's submission must include a description of the basic standards, criteria, and requirements for program registration or approval and demonstrate linkages and coordination with the state's economic development strategies and publicly funded workforce

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<sup>1</sup> *Our History*, Apprenticeship USA, U.S. Department of Labor, September 26, 2023. (<https://www.apprenticeship.gov/about-us/our-history>)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Apprenticeships*, Job Service North Dakota, September 2023. (<https://www.jobsnd.com/job-seeker/apprenticeships>).

investment system. Lastly, an agency's submission must include a description of policies and operating procedures that depart from or impose requirements in addition to those prescribed under applicable federal regulations.

Recognition as an SAA by the OA is valid for 5 years. The Office of Apprenticeship reserves the right to monitor the recognized SAA's rules, policies, and procedures to ensure compliance with the National Apprenticeship System. Regardless of whether the OA recognizes an SAA, the OA "retains the full authority to register apprenticeship programs and apprentices in all States and Territories where the [OA] determines that such action is necessary to further the interests of the National Apprenticeship System."<sup>5</sup>

During a state agency's period of recognition as an SAA, to maintain that recognition, the state must:

- Maintain an administrative entity, the SAA, to perform the functions of a state registration agency.
- Provide sufficient resources to carry out the functions of the state registration agency, including outreach and education, registration of programs and apprentices, provision of technical assistance, and monitoring as required under federal law.
- Delineate the respective powers and duties of the state office, the SAA, and the state apprenticeship council.
- Establish policies and procedures to promote equality of opportunity in apprenticeship programs under a State Plan for Equal Employment Opportunity in Apprenticeship, which adopts and implements the requirements of 29 CFR 30, and to require apprenticeship programs to operate in conformity with the State Plan and 29 CFR 30.
- Prescribe the contents of apprenticeship agreements in conformity with federal law.
- Ensure that the registration of apprenticeship programs occurs only in apprenticeable occupations, as provided in 29 CFR 29.4, including occupations in high-growth and high-demand industries.
- Accord reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the OA or a state registration agency if the apprenticeship program sponsor requests such reciprocity. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal state.
- Provide for the cancellation and deregistration of programs and for temporary suspension, cancellation, and deregistration of apprenticeship agreements not in compliance.
- Submit all proposed modifications in legislation, regulations, policies, and operational procedures planned or anticipated by an SAA, either at the time of application for recognition or subsequently, to the OA for review and obtain the OA's concurrence before implementation.

All apprenticeship programs, regardless of whether the OA or an SAA regulates the program, must abide by numerous standards of apprenticeship pursuant to 29 CFR 29.5. A program must have organized program standards embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program. A program's standards must contain provisions that address the training of an apprentice and whether an apprentice will be measured under a time-based approach, competency-based approach, or hybrid approach. The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule. The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of the registered apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies. The hybrid approach measures the individual apprentice's skill acquisition through a combination of the specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

A program also must outline the work processes in which the apprentice will receive supervised work experience and on-the-job training and the allocation of the approximate amount of time to be spent in each major process. A program must include provisions for organized instruction in technical subjects related to the occupation, including the medium of the education and the temporal requirement to complete the program. A program must include a progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired and consistent with the Fair Labor Standards Act. A program must include review and evaluation procedures for the

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<sup>5</sup> 29 CFR § 29.13

apprentice's performance on the job, including a reasonable probationary period and an adequate ratio of journeyworkers to apprentices. The probationary period cannot exceed 25 percent of the length of the program, or 1 year, whichever is shorter. A program must provide an apprentice participating in the program with adequate and safe equipment on the job and related safety instruction.

A program may place an apprentice, no younger than 16 years of age, under a written apprenticeship agreement that meets the requirements of 29 CFR 29.7 or the state apprenticeship law of a recognized SAA. The agreement must directly, or by reference, incorporate the program's standards as part of the agreement. A program must provide mechanisms for apprentices to transfer between other registered apprenticeships in addition to the opportunity for advancement based on demonstrated competency. A program must furnish a certificate for successful completion of an apprenticeship through the competency-based approach, time-based approach, or hybrid approach. A program must provide for the registration, cancellation, and deregistration of the program or apprenticeship agreement and for the prompt submission of any program standard modification or amendment to the registration agency for approval. A program must comply with all federal regulations governing apprenticeship and provide identifying information for individuals processing and receiving complaints.

In North Dakota, apprenticeship programs are regulated federally by the OA. Under North Dakota Century Code Section 54-60-17, the Department of Commerce's Workforce Development Division is required to administer a program to grow the use of internships, apprenticeships, and work experience opportunities in target industries for college and upper-level high school students. Job Service North Dakota also connects applicants to apprenticeships in North Dakota through its several offices across the state and its online database.

## **APPROACHES BY SURROUNDING STATES**

### **Minnesota**

In Minnesota, the Department of Labor and Industry regulates and oversees the state apprenticeship program. Minnesota Statutes Chapter 178 governs apprentice training in Minnesota. Section 178.01 states the purpose of the chapter is:

[T]o open to all people regardless of race, sex, creed, color or national origin, the opportunity to obtain training and on-the-job learning that will equip them for profitable employment and citizenship; to establish as a means to this end, a program of voluntary apprenticeship under approved apprenticeship agreements providing facilities for their training and guidance in the arts, skills, and crafts of industry and trade or occupation, with concurrent, supplementary instruction in related subjects; to promote apprenticeship opportunities under conditions providing adequate training and on-the-job learning and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an Apprenticeship Board and apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a Division of Labor Standards and Apprenticeship within the Department of Labor and Industry; to provide for reports to the legislature regarding the status of apprentice training in the state; to establish a procedure for the determination of apprenticeship agreement controversies; and to accomplish related ends.

Section 178.012 requires the apprenticeship program conform with applicable federal regulations while providing the Commissioner of the Department of Industry and Labor flexibility to adopt rules governing the apprenticeship program which do not conflict with federal law.

Section 178.02 creates an Apprenticeship Advisory Board. The board is composed of three representatives each from employer and employee organizations and two representatives from the general public. A designee of the Commissioner of Education responsible for career and technical education is an ex officio board member and serves only in an advisory capacity. The board is tasked with proposing occupational classifications for apprenticeship programs and minimum standards for apprenticeship programs and agreements. The board also advises on establishing the policies, procedures, and necessary rules to implement the apprenticeship program.

Section 178.03 establishes a Division of Labor Standards and Apprenticeship in the Department of Labor and Industry. The division is administered by a director, who is under the supervision of the Commissioner of the Minnesota Department of Industry and Labor. A key duty of the division is to administer a program as prescribed by Chapter 178, and in accordance with the 29 CFR 29. The division also is required to promote equal employment opportunity in apprenticeship and other on-the-job learning and establish a Minnesota plan for equal employment opportunity in apprenticeship, which must be consistent with federal standards. The director is required to make wage determinations consistent with federal and state law. The division also is responsible for issuing certificates of registration and completion as well as approving and terminating any apprenticeship agreements in Minnesota.

Section 178.035 provides the application, review, modification, and notice procedures that apply when applying for an apprenticeship in Minnesota. The application must comply with the apprenticeship standards within 29 CFR 29.5 and Section 178.036. Section 178.036 provides the apprenticeship standards program in Minnesota. Section 178.036(1) incorporates federal apprenticeship standards into the state apprenticeship program. The remainder of Section 178.036 adds additional criteria for the program relating to related instruction, job process schedules, ratios, graduated schedule of wages, probationary periods, dispute resolution, terms of an apprenticeship, training cycles, responsibilities of an apprentice, and coordination of apprentices. Section 178.044 outlines the maximum hours an apprentice may work during a given week. This section also covers overtime procedures and journeyworker wage rates under the state apprenticeship program.

Section 178.07 requires a registered apprenticeship agreement to be executed between the Division of Labor Standards and Apprenticeship, the sponsor operating the apprenticeship, and the apprentice, or if the apprentice is a minor, the apprentice's parent or legal guardian. Section 178.07(3) outlines the requirements of each apprenticeship agreement. If the agreement's contents comply with Section 178.07 and are in the best interest of the apprentice, the division shall approve the agreement.

Section 178.09 authorizes the Director of the Division of Labor Standards and Apprenticeship to investigate purported violations and enforce the terms of an apprenticeship agreement. The division director must make a determination on a complaint within 90 days after receipt of a complaint. An aggrieved party may appeal the director's determination to the Commissioner of the Department of Labor and Industry within 10 days of the director's determination. If the determination is timely appealed, the Commissioner of the Department of Labor shall appoint and convene a hearing board composed of three members of the Apprenticeship Advisory Board, one member being a representative of an employer organization, one representative being a member of an employee organization, and one member representing the general public. The board must hold a hearing on the appeal after notice to the interested parties and submit to the Commissioner of the Department of Labor and Industry findings of fact and a recommended decision accompanied by an explanatory memorandum. Within 30 days after submission, the Commissioner of the Department of Labor and Industry may adopt the board's recommended decision or disregard the board's recommended decision and prepare a decision based on the findings of fact and accompanied by an explanatory memorandum.

Section 178.091 authorizes the Commissioner of the Department of Industry and Labor to investigate registered apprenticeship programs and applicants for program registration to determine whether there are any grounds for deregistration of a registered program or the denial of an application.

Under Section 178.10, apprenticeships covered by the Commissioner of Corrections are not subject to Chapter 178. Chapter 178 also does not apply to an apprenticeship provision in a collective bargaining agreement between employers and employees establishing higher apprenticeship standards or any special provision for veterans, minority persons, or women in the standards, apprentice qualifications, or operation of the program or in the apprenticeship agreement, which is not otherwise prohibited by law.

### **Montana**

Similar to Minnesota, Montana also has an SAA. Montana's registered apprentice program, the State Apprenticeship and Training Program (SATP), is housed under the Montana Department of Labor and Industry (MTDLI). The State Apprenticeship and Training Program is a recognized SAA by the DOL, which allows MTDLI to monitor apprenticeships and award apprenticeship credentials. Montana Code Annotated Title 39, Chapter 6 governs SATP. Section 39-06-101 requires MTDLI to create, register, modify, and, when applicable, terminate, any apprenticeship agreement in Montana. The Montana Department of Labor and Industry also is required to set standards in relation to prevailing wage rates, maintain records of employers and employees operating under an apprenticeship agreement, and adopt rules necessary to carry out the program.

Section 39-06-102 allows MTDLI to receive state and federal funds to administer the apprenticeship program in Montana. The Montana Department of Labor and Industry also may act to settle differences arising out of the apprenticeship agreement if the differences cannot be addressed locally or in accordance with the established occupational procedure.

Section 39-06-104 permits MTDLI to work with local governments, through the creation of local or state joint apprenticeship committees, to use apprentices in industries of need throughout the state. Sections 39-06-105 and 39-06-106 address the establishment and required contents of apprenticeship agreements under SATP. Section 39-06-108 addresses the minimum standards for apprentice wage rates under SATP.

Section 39-06-109 creates a tax credit for employers participating in SATP. An employer that employs an apprentice or a veteran apprentice who works in Montana as a new employee in a state-registered apprenticeship training program is eligible for an annual credit against income taxes. The amount of the credit is limited to \$750 for each employed apprentice or \$1,500 for each employed apprentice who is a veteran. A tax credit is not available to the employer until after the apprentice has completed the apprentice training program's probationary period or 6 months, whichever is earlier.

Administrative Rules of Montana Chapter 24.21 further elaborates on the duties of SATP. Section 24.21.202 provides SATP is responsible for:

- Approving apprenticeship standards.
- Adopting apprentice wage rates.
- Approving sponsors.
- Registering individual apprentices.
- Maintaining records related to an apprentice's progress and completion.
- Providing technical assistance to sponsors.
- Monitoring and evaluating apprentice and sponsor performance concerning an apprenticeship program, including:
  - Requiring corrective actions when appropriate and terminating or canceling an apprenticeship agreement;
  - Issuing completion certificates to apprentices as appropriate; and
  - Otherwise administering the state apprenticeship and training program, including promoting apprenticeship as a means of workforce training.

The State Apprenticeship and Training Program uses the State Apprenticeship Advisory Council in an advisory and consultative role regarding matters of interest to the program and the apprenticeship community. The Apprenticeship and Training Program uses the council to foster dialogue and communication between the program and sponsors, apprentices, employers, industry, and educators. Section 24.21.205 establishes the council. The council is a state apprenticeship council operating as an advisory body within the definitions contained in 29 CFR 29.2. The Commissioner of MTDLI appoints members of the council. The Commissioner of MTDLI must appoint members of the council that, to the extent possible, equitably reflect the geographic and social diversity of apprenticeship within the state and a balance between apprentice sponsors whose members are affiliated with labor organizations and those whose members are not signatories to collective bargaining agreements.

The State Apprenticeship Advisory Council consists of at least 7, but not more than 25, appointed, voting members. The members must be familiar with apprenticeable occupations. The council must have an equal number of representatives of employer and employee organizations. At least one member must be a public member who is not directly affiliated with an employer, a sponsor, or a labor organization. The total number of public members may not exceed the number of members who serve as a representative of an employee or an employer organization. The Commissioner of MTDLI, or the commissioner's delegate, serves as an ex officio council member.

### **South Dakota**

Similar to North Dakota, South Dakota's registered apprenticeship program is overseen by the federal OA rather than an SAA. The Start Today SD Apprenticeship Program strives to promote apprenticeship throughout the state of South Dakota by creating a skilled workforce and filling workforce needs, despite the lack of broadband infrastructure in certain areas of South Dakota.<sup>6</sup> In South Dakota, the South Dakota Department of Labor and Regulation, in conjunction with the Start Today SD Apprenticeship Program, are the entities carrying out the National Apprenticeship Act.

### **FEDERAL CHILD LABOR LAWS**

Federal child labor laws are outlined in the Fair Labor Standards Act. Under the Fair Labor Standards Act, for nonagricultural employment, a 14-year-old worker may work in certain occupations outside of school hours for limited periods of time. A 16-year-old worker may be employed for unlimited hours in any occupation other than one declared hazardous by the Secretary of Labor. At 18, an individual may work in any occupation, including those declared hazardous by the Secretary of Labor. However, both state and federal law allows 16 and 17-year-olds to

<sup>6</sup> *Apprenticeships in South Dakota*, Start Today SD Apprenticeship Program, September 26, 2023. (<https://starttodaySD.com/>).

work in certain hazardous occupations if the individual is employed as a registered apprentice or in the federal student learner program. In instances in which a state's child labor laws are less restrictive than federal law, federal law will apply. In instances in which a state's child labor laws are more restrictive than federal law, state law will apply.

North Dakota Century Code Chapter 34-07 houses North Dakota's state child labor laws. Section 1 of Senate Bill No. 2170 (2023) created a new section to Chapter 34-07, now codified as Section 34-07-17.2. Section 34-07-17.2 allows minors 16 and 17 years of age to work in a hazardous occupation if the minor is in a registered apprenticeship program or is a student learner of an approved career and technical education program. This section requires a parental signature for the minor to participate as an apprentice or student learner. A list of the 17 hazardous occupations can be found in Sections 570.51 through 570.68 of 29 CFR 570. Section 34-07-17.2 purports to allow any worker aged 16 and older to participate in a hazardous occupation if the individual is enrolled in a registered apprenticeship program or is a student learner. However, according to 29 CFR 570, subpart E, an apprentice or student learner only may participate in certain hazardous occupations in certain circumstances. It is important to note the provisions of 29 CFR 570, subpart E, declaring certain occupations to be particularly hazardous for the employment of minors between 16 and 18 years of age, do not apply to employment in agriculture. Youth workers aged 16 and above may work in any farm job at any time.

An apprentice may work in certain hazardous occupations if:

- The apprentice is employed in a craft recognized as an apprenticeable trade;
- The work of the apprentice in the occupations declared particularly hazardous is incidental to the apprentice's training;
- The work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and
- The apprentice is registered by the OA as employed by the standards established by the OA, is registered by an SAA as employed by the standards of the SAA recognized by the OA, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such federal or state standards.

A student learner may work in certain hazardous occupations if the student learner:

- Is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school; and
- Is employed under a written agreement which provides:

The work of the student learner in the occupations declared particularly hazardous will be incidental to the student learner's training;

The work will be intermittent and for short periods of time and under the direct and close supervision of a qualified and experienced person;

Safety instructions will be given by the school and correlated by the employer with on-the-job training; and

A schedule of organized and progressive work processes to be performed on the job will be prepared.

If an individual is participating as a student learner, a written agreement must contain the name of the student learner and must be signed by the employer and the school coordinator or principal. The school and the employer shall keep copies of each agreement on file. The exemption for the employment of student learners may be revoked in any situation in which it is found reasonable precautions have not been observed for the safety of the minors employed. A high school graduate who is under the age of 18 may be employed in an occupation in which the student has completed training.

Child Labor Bulletin No. 101, prepared by the DOL's Wage and Hour Division (WHD), offers guidance on the vocabulary used in 29 CFR 570, subpart E, relating to hazardous occupations. The Wage and Hour Division states:

Although the regulations do not provide definitions of the terms "intermittent" and "short periods of time," the WHD interprets those terms to mean that an apprentice or student-learner may not be the principal operator of prohibited machinery. The worker must work under the close supervision of a fully qualified, experienced adult, such as a journeyman. Further, the duties assigned to the minor

may not be such that they are constantly operating the prohibited machinery during the work shift, but only doing so as part of the training experience... The WHD considers the continuous performance of otherwise prohibited work that exceeds one hour a day to be more than "intermittent" and more than for "short periods of time." The WHD also considers the performance of otherwise work, which totals more than 20 percent of the student-learner's work shift, to be more than for "short periods of time." The WHD considers the requirement of "direct and close supervision" to be met when there is one journeyman or experienced adult working with the first apprentice or student-learner on site, and at least three journeyman or experienced adults working alongside each additional; apprentice or student-learner. The requirement for "direct and close supervision" applies only during the periods when the apprentice or student-learner is actually performing work that the hazardous occupation would otherwise prohibit.<sup>7</sup>

If an apprentice or student learner meets the requirements of 29 CFR 570.50, the individual may participate only in the following seven hazardous occupation areas--power-driven woodworking machines; power-driven metal forming, punching, and shearing machines; power-driven meat-processing machines, slaughtering and meat packing plants; balers, compactors, and power-driven paper-product machines; power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs; roofing operations and work performed on or about a roof; and trenching and excavation operations. Other exemptions exist for minors participating in hazardous occupations that are not tied to an apprenticeship of a student learner program.

### **SUGGESTED STUDY APPROACH**

In conducting this study, the committee may wish to receive testimony from representatives from:

- The North Dakota Department of Commerce;
- Job Service North Dakota;
- The North Dakota Department of Career and Technical Education;
- North Dakota businesses and industries with current, registered apprenticeship programs in this state; and
- North Dakota's Federal Office of Apprenticeship.

ATTACH:1

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<sup>7</sup>*Child Labor Provisions for Nonagricultural Occupations under the Fair Labor Standards Act: Child Labor Bulletin 101, Page 25, Wage and Hour Division, U.S. Department of Labor, November 2016.*  
(<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf>).