



# Ohio Legislative Service Commission

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## Bill Analysis

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### H.B. 360

128th General Assembly  
(As Introduced)

**Reps.** Snitchler and Morgan, Boose, Grossman, Lehner, J. Adams, Derickson, Combs, Blair, Mecklenborg, Huffman, Stebelton, Blessing, Baker, Sears, Uecker, Beck, Martin

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## BILL SUMMARY

- Prohibits the Apprenticeship Council from adopting standards for apprenticeship ratios that are stricter than those requirements specified in the federal regulations governing apprenticeship programs.
  - Prohibits the Council from adopting apprenticeship program or agreement standards that discriminate against open or merit shops unless the Council is otherwise required to do so to comply with federal regulations.
  - Prohibits the Executive Secretary of the Council, when registering an apprenticeship program or agreement, from discriminating against an employer because that employer operates an open or merit shop.
  - Authorizes an income tax credit eliminating tax liability for six years for an individual who obtains journeyman status and who resides in Ohio.<sup>1</sup>
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## CONTENT AND OPERATION

### Background--the federal National Apprenticeship Act

The National Apprenticeship Act, also known as the Fitzgerald Act, requires the United States Secretary of Labor to do all of the following:

(1) Formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices;

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<sup>1</sup> The bill's title erroneously states the tax credit applies for five years.

(2) Extend the application of those standards by encouraging parties to include those standards in contracts of apprenticeship;

(3) Bring together employers and labor for the formulation of apprenticeship programs;

(4) Cooperate with state agencies engaged in the formulation and promotion of apprenticeship standards (29 U.S.C. 50).

The Secretary has adopted those regulations (see 29 C.F.R. Parts 29 and 30).

A state with an approved state apprenticeship agency has the power to determine whether an apprenticeship program submitted by a sponsor (a person, association, committee, or organization) satisfies the requirements established by the Secretary, which are the minimum requirements for the program (29 C.F.R. 29.2 and 29.13). To be an approved state apprenticeship agency, the agency must satisfy several requirements and duties, including prescribing the contents of apprenticeship agreements in accordance with the federal requirements. The agency may prescribe requirements in addition to those specified in the federal regulations. (29 C.F.R. 29.7 and 29.13.) Additionally, notwithstanding any grant of recognition to a state apprenticeship agency under the regulations, the Office of Apprenticeship within the United States Department of Labor retains the full authority to register apprenticeship programs and apprentices in all states and territories where the Office determines that such action is necessary to further the interests of the National Apprenticeship System. (29 C.F.R. 29.13(i) and (j).)

Ohio has an approved state agency--the State Apprenticeship Council. The Ohio Apprenticeship Law (R.C. Chapter 4139.) specifically states that registration with the Council is voluntary (R.C. 4139.06).

### **Apprentice to journey person ratios**

(R.C. 4139.03 and 4139.05(B))

Under continuing law, the Council may establish minimum standards for apprenticeship programs and may formulate policies and issue rules as may be necessary to carry out the purpose of the Ohio Apprenticeship Law. Additionally, the Council's Executive Secretary, in addition to performing other duties specified in continuing law, is required to register any apprenticeship programs and agreements that meet the minimum standards established by the Council. Under the bill, if the Council adopts minimum standards for apprenticeship programs, the Council must not impose any requirements to specify apprentice to journey person ratios that are stricter than those requirements specified in regulations adopted by the Secretary pursuant to

the National Apprenticeship Act. Currently, under the Secretary's regulations, a sponsor must include in the sponsor's program a "numeric ratio of apprentices to journeyworkers" consistent with all of the following: proper supervision, training, safety, employment continuity, and any applicable collective bargaining agreement provisions. The ratio requirement does not apply if such a ratio is expressly prohibited by the applicable collective bargaining agreement. Under the regulations, the language concerning ratios must be specific and must clearly describe the ratio's applicability to job site, workforce, department, or plant. (29 C.F.R. 29.13(b)(7).) Under the rules adopted by the Council, if a sponsor is bound to a collective bargaining agreement, the sponsor must conform the ratio to the applicable provision in the agreement. If the sponsor is not bound to such an agreement, the sponsor must conform the ratio to either the applicable terms of the agreement or agreements affecting the pertinent occupations in the geographic area nearest to the job site or the standard formula of one journeyperson for the first apprentice counted at the job site at a given time, and three journeypersons for each additional apprentice at the job site at that time. The Council reserves the right to deny registration to any program that utilizes a ratio that does not ensure adequate safety and supervision of the apprentices. (O.A.C. 5101:11-3-01.)

In adopting standards for apprenticeship programs, the bill prohibits the Council from prescribing requirements that discriminate against an employer that operates an open or merit shop,<sup>2</sup> unless the Council is required to adopt such a requirement to comply with the regulations adopted by the Secretary. Additionally, the bill prohibits the Executive Secretary, when registering an apprenticeship program or agreement, from discriminating against an employer because that employer operates an open or merit shop.

### **Journeyperson tax credit**

(R.C. 5747.08, 5747.81, and 5747.98)

The bill authorizes an income tax credit for an individual who, on or after the bill's effective date, completes an apprenticeship program registered with the Ohio State Apprenticeship Council and who resides in Ohio. The credit eliminates the individual's net tax liability for six years. The individual must claim the credit for the individual's taxable year that includes the date the credit application was approved and for each of the succeeding five taxable years.

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<sup>2</sup> A "merit shop" is a type of "open shop." An "open shop" is a "shop in which union membership is not a condition of employment" (BLACK'S LAW DICTIONARY (7th Ed. Rev. 1999) 1384). A "merit shop" is an open shop that generally sets an employee's wages based on the employee's performance (see Associated Builders and Contractors, "ABC and the Merit Shop Philosophy," available at [http://www.abc.org/About\\_ABC/ABC\\_and\\_the\\_Merit\\_Philosophy.aspx](http://www.abc.org/About_ABC/ABC_and_the_Merit_Philosophy.aspx) (visited October 20, 2009)).

## **Clawback**

(R.C. 5747.81(A)(2))

If during the first five years of the credit period, the individual leaves Ohio to reside in another state, the individual is liable to the state for credit taken and forfeits all unused credit. The liability may be collected by assessment.

## **Application**

(R.C. 5747.81(B))

The individual must apply to the Director of Job and Family Services for the credit within one year after completing the apprenticeship program. If the individual is entitled to the credit, the Director shall issue a tax credit certificate to the individual, which must state the individual's name and social security number, the date the credit application was approved, and the taxable years for which the credit must be claimed.

## **Director of Job and Family Services**

(R.C. 5747.81(C))

The Director may designate an entity, including a nonprofit private organization, to perform the Director's administrative duties under the credit program.

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## **HISTORY**

| <b>ACTION</b> | <b>DATE</b> |
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| Introduced    | 11-10-09    |

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