



Ohio Legislative Service Commission

Bill Analysis

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H.B. 63

130th General Assembly
(As Introduced)

Reps. Cera and O'Brien, Rogers, R. Hagan

BILL SUMMARY

- Provides a \$2,500 per-employee nonrefundable commercial activity tax credit for companies involved in horizontal well drilling or related oil and gas production services that hire Ohio residents or dislocated workers.
- Qualifying employees must be employed full-time for at least three consecutive months, be paid at a rate at least 250% of the federal minimum wage, and have completed or be enrolled in a federally registered apprenticeship program.

CONTENT AND OPERATION

Horizontal well hiring credit

The bill authorizes a nonrefundable commercial activity tax credit for owners of horizontal oil and gas wells and other businesses providing drilling, pipeline, transportation, process, or construction services relating to horizontal wells. The credit is available to a horizontal well employer that employs an Ohio resident or a dislocated worker who has completed or is enrolled in a federally registered apprenticeship program. The employee must be employed at least 35 hours per week for at least three consecutive months and paid at a rate of at least 250% of the federal minimum wage. The amount of the credit equals \$2,500 per qualifying employee hired by a horizontal well employer. Any unused amount of the credit may not be carried forward.¹

¹ R.C. 5751.55.

Horizontal well employer

To be eligible to claim the credit, an employer must be an owner of a horizontal well or engaged in horizontal well services. A horizontal well is a well drilled in the Point Pleasant, Utica, or Marcellus formation for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position and that is exploited through hydraulic fracturing operations or another method of stimulating production.² An employer engaged in horizontal well service is defined as an employer that engages in any of the following:

- (1) Operations involving the extraction of natural gas, oil, or other hydrocarbons by a horizontal well.
- (2) Preparation of the area that is cleared or prepared for the drilling of one or more horizontal wells ("well pad") or the means of access to the well pad.
- (3) Transportation of equipment, materials, or supplies to the well site or of the products of the well from the well site, including well products transported by piping.
- (4) Processing the raw materials of the horizontal well to produce pipeline quality natural gas, either at the wellhead or another site.
- (5) Operating or servicing equipment used for any of the purposes above.

Qualifying employee

To qualify for the credit, a horizontal well employer must hire an Ohio resident or a person that meets the federal definition of a dislocated worker – generally a person who has been terminated or laid off, or has received a notice of termination or layoff from employment and is deemed unlikely to return to his or her prior occupation.³ The horizontal well employer must employ the resident or worker for at least 35 hours per week for three consecutive months. The employee must receive wages or salary that is equivalent to at least 250% of the federal minimum wage for an employee who works 35 hours or more per week. Additionally, the employee must be enrolled in or have completed a horizontal well service apprenticeship program that is registered with the federal Office of Apprenticeship or a partnering state agency, such as the Ohio State Apprenticeship Council.⁴ The training must be in the field of horizontal well service for which the employee is primarily employed.

² R.C. 1509.01(Z) and (GG) (not in the bill).

³ See 29 U.S.C. 2801.

⁴ 29 C.F.R. 29.3.



COMMENT

Restricting the credit in part to the hiring of Ohio residents may conflict with the "dormant" Commerce Clause or Privileges and Immunities Clause of the United States Constitution. The dormant Commerce Clause imposes a number of constraints on a state's power to tax activities affecting interstate commerce. Specifically, a tax that, by its terms or operations, imposes greater burdens on out-of-state goods, activities, or enterprises than on competing in-state goods, activities, or enterprises is unconstitutional under the dormant Commerce Clause.⁵ Similarly, tax laws that favor state residents relative to nonresidents have been found to violate the Privileges and Immunities Clause unless the state can show that there is a substantial reason to treat them differently and that the differential treatment bears a "substantial relationship" to the law's objective.⁶

HISTORY

ACTION	DATE
Introduced	02-14-13

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⁵ See *GMC v. Tracy*, 519 U.S. 278 (1997).

⁶ See *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998).

