



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2051

Introduced 2/7/2023, by Rep. Terra Costa Howard

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/240 new

Creates the Hydrogen Fuel Replacement Tax Credit Act. Creates an income tax credit for eligible taxpayers in an amount equal to \$1 per kilogram of eligible zero-carbon hydrogen used by the eligible taxpayer during the tax year for which a credit is sought. Provides for additional credits if the use of the zero-carbon hydrogen by the eligible taxpayer occurs in an equity investment eligible community. Provides that the total amount of tax credits to be allocated by the Department of Revenue to taxpayers for eligible zero-carbon hydrogen use occurring in the tax year ending during that State fiscal year shall not exceed \$100,000,000, plus the amount of tax credits that were available to be allocated for eligible zero-carbon hydrogen use in the tax year ending during the prior State fiscal year but were not allocated. Effective immediately.

LRB103 05879 HLH 50900 b

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Hydrogen Fuel Replacement Tax Credit Act.

6 Section 5. Legislative findings; purpose. The General
7 Assembly finds that:

8 (1) the health, welfare, and prosperity of all
9 Illinois residents require that the State of Illinois act
10 to reduce carbon emissions and other air pollutants in the
11 State;

12 (2) the State currently invests in a variety of
13 strategies to reduce carbon emissions and other air
14 pollutants, including, but not limited to, strategies that
15 encourage the use of renewable energy, nuclear energy,
16 energy efficient processes, and low-emission vehicles;

17 (3) zero-carbon hydrogen can be produced through the
18 electrolysis of water using electricity generated by
19 emissions-free energy sources; and

20 (4) replacing fossil fuels and hydrogen produced from
21 fossil fuels with zero-carbon hydrogen will reduce carbon
22 emissions and other air pollutants and benefit the
23 environment and public health of this State.

1 This Act is intended to encourage the replacement of
2 fossil fuels and hydrogen produced from fossil fuels with
3 zero-carbon hydrogen for the purposes of promoting
4 decarbonization and improving the State's air quality.

5 Section 10. Definitions. As used in this Act:

6 "Attestation" means a statement that is made under penalty
7 of perjury by a producer under Section 13.

8 "Department" means the Department of Revenue.

9 "Eligible taxpayer" means a taxpayer that:

10 (1) is subject to subsections (a) and (b) of Section
11 201 of the Illinois Income Tax Act;

12 (2) has eligible zero-carbon hydrogen use for which
13 the producer has provided an attestation and verification
14 under Section 13;

15 (3) complies with subsection (e) of Section 15 if
16 applicable; and

17 (4) is allocated credits by the Department under
18 Section 25.

19 If the taxpayer is an individual, partnership, trust,
20 estate, or Subchapter S corporation, then the taxpayer is an
21 eligible taxpayer only to the extent that the taxpayer's
22 Illinois income tax liability is due to an equity interest in a
23 partnership that uses zero-carbon hydrogen, a Subchapter S
24 corporation that uses zero-carbon hydrogen, or a similar
25 pass-through entity that uses zero-carbon hydrogen.

1 "Eligible zero-carbon hydrogen use" means the consumption,
2 in Illinois, of zero-carbon hydrogen.

3 "Environmental attribute credit" means a renewable energy
4 credit, zero-emission credit, or carbon mitigation credit, as
5 those terms are defined in Sections 1-10 and 1-75 of the
6 Illinois Power Agency Act, or any other environmental
7 attribute credit tracked by the Generation Attribute Tracking
8 System administered by PJM Interconnection, LLC.

9 "Equity investment eligible community" has the meaning
10 provided in Section 5-5 of the Energy Transition Act.

11 "MISO" means Midcontinent Independent System Operator,
12 Inc.

13 "MISO maximum generation event" has the same meaning as in
14 MISO's Reliability Operating Procedures.

15 "PJM performance assessment interval" has the same meaning
16 as provided in the PJM Open Access Transmission Tariff.

17 "Producer" means a zero-carbon hydrogen producer.

18 "Qualified renewable energy resource" means an electric
19 generator that (1) is fueled by wind, solar thermal energy,
20 photovoltaic cells and panels, geothermal energy, or
21 hydropower that does not involve new construction or
22 significant expansion of hydropower dams; and (2) produces
23 renewable energy credits that are eligible to be counted
24 toward the renewable energy requirements in subsection (c) of
25 Section 1-75 of the Illinois Power Agency Act.

26 "Regional grid" means the territory served by a specific

1 regional transmission organization.

2 "Regional transmission organization" means PJM
3 Interconnection, LLC; Midcontinent Independent System
4 Operator; or any other entity charged with regional real-time
5 balancing of electricity generation and load.

6 "Zero-carbon hydrogen" means hydrogen that is produced
7 through electrolysis by an electrolyzer powered from
8 electricity generated by one or more zero-emission facilities
9 or qualified renewable energy resources that, in either
10 instance, are located in the same regional grid where the
11 zero-carbon hydrogen is produced.

12 "Zero-emission facility" has the same meaning as provided
13 in Section 1-10 of the Illinois Power Agency Act as that Act
14 exists on the effective date of this Act.

15 Section 13. Attestation and verification required. Each
16 taxpayer seeking credits under this Act shall submit with its
17 application for credits under this Act an attestation from the
18 producer, made under penalty of perjury, that the producer or
19 its electricity supplier has retired environmental attribute
20 credits associated with generation from a zero-emission
21 facility or a qualified renewable energy resource facility,
22 located in the same regional grid where the zero-carbon
23 hydrogen is produced, during each hour in which the hydrogen
24 for which a tax credit is claimed is produced, in an amount at
25 least as great as the energy consumed in that hour for

1 production of the volume of hydrogen for which a tax credit is
2 claimed. The attestation shall also confirm that the hydrogen
3 for which a tax credit is claimed has not been produced during
4 an applicable PJM performance assessment interval or an
5 applicable MISO maximum generation event. In so attesting, the
6 producer may credit a portion of a monthly attribute
7 certificate to a specific hour within that month in an amount
8 equal to the generation quantity reflected in the certificate,
9 multiplied by the ratio of the zero-emission facility's or
10 qualified renewable energy resource's total generation in that
11 hour to its total monthly generation. Each taxpayer seeking
12 credits under this Act shall also be required to submit to the
13 Department, at the time of the tax filing for the applicable
14 year, documentation verifying the facts set forth in the
15 attestation required by this Section.

16 Section 15. Allowable credit.

17 (a) For tax years ending on or after December 31, 2023, a
18 credit is allowed against the taxes imposed on an eligible
19 taxpayer under subsections (a) and (b) of Section 201 of the
20 Illinois Income Tax Act in an amount equal to \$1 per kilogram
21 of eligible zero-carbon hydrogen used by the eligible taxpayer
22 during the tax year for which a credit is sought.

23 (b) The allowable credit provided in subsection (a) of
24 this Section shall be increased by \$0.15 per kilogram of
25 eligible zero-carbon hydrogen if the use of the zero-carbon

1 hydrogen by the eligible taxpayer occurs in an equity
2 investment eligible community, after consultation with the
3 community and reasonable efforts to accommodate the community.

4 (c) The allowable credit provided in subsection (a) of
5 this Section shall be increased by \$0.15 per kilogram of
6 eligible zero-carbon hydrogen if the eligible taxpayer uses
7 contractors or employs labor at a project location in an
8 equity investment eligible community, as defined in Section
9 5-5 of the Energy Transition Act on the effective date of this
10 Act, to convert existing equipment or install new equipment to
11 enable eligible zero-carbon hydrogen use for which a credit is
12 claimed under this Act.

13 (d) An eligible taxpayer may not earn tax credits for a tax
14 year for eligible zero-carbon hydrogen use in an amount that
15 exceeds the amount of tax credit allocated to it for the tax
16 year under Section 25. The credit or credits may not reduce the
17 taxpayer's liability to less than zero. An eligible taxpayer
18 may carry forward any tax credit that has been earned but not
19 used (or transferred pursuant to Section 35) for a period of up
20 to 5 tax years after the last tax year in which a credit was
21 earned by that taxpayer for eligible zero-carbon hydrogen use.
22 Unused credits that are not transferred pursuant to Section 35
23 shall expire at the end of this 5-year carryforward period.

24 (e) Labor performed on or after the effective date of this
25 Act to convert the eligible taxpayer's existing equipment or
26 install for the eligible taxpayer new equipment to enable

1 eligible zero-carbon hydrogen use for which a credit is
2 claimed under this Act shall be performed by general
3 contractors that enter into a project labor agreement, as
4 defined by the Illinois Power Agency Act, prior to
5 construction. The project labor agreement shall be filed with
6 the Department. At a minimum, the project labor agreement must
7 provide the names, addresses, and occupations of the owner of
8 the facilities and the individuals representing the labor
9 organization employees participating in the project labor
10 agreement consistent with the Project Labor Agreements Act.
11 The agreement must also specify the terms and conditions as
12 defined by the Illinois Power Agency Act. Any information
13 submitted pursuant to this subsection (e) shall be considered
14 commercially sensitive information.

15 Section 20. Credit availability. Beginning with the State
16 fiscal year ending on June 30, 2024, and in each subsequent
17 State fiscal year, the total amount of tax credits to be
18 allocated by the Department to taxpayers for eligible
19 zero-carbon hydrogen use occurring in a tax year ending during
20 that State fiscal year shall not exceed \$100,000,000, plus the
21 amount of tax credits that were available under this Section
22 to be allocated for eligible zero-carbon hydrogen use in the
23 tax year ending during the prior State fiscal year but were not
24 allocated.

1 Section 25. Credit allocation by the Department.

2 (a) Taxpayers shall notify the Department, by July 1,
3 2023, of the dollar amount of credit the taxpayer estimates it
4 will earn for eligible zero-carbon hydrogen use in tax years
5 ending on or after December 31, 2023 and ending on or before
6 June 30, 2024. For tax years ending on or after July 1, 2024,
7 taxpayers shall notify the Department of the dollar amount of
8 credit the taxpayer estimates it will earn for eligible
9 zero-carbon hydrogen use by January 1 immediately preceding
10 the first day of the fiscal year in which the tax year ends.

11 (b) The Department shall notify each taxpayer of the
12 dollar amount of credit allocated to that taxpayer for
13 zero-carbon hydrogen use. That notification shall occur by
14 March 1 following the date on which the taxpayer notifies the
15 Department of its estimated zero-carbon hydrogen use under
16 subsection (a). The taxpayer must notify the Department within
17 30 days after the notification by the Department under this
18 subsection (b) if it wishes to surrender its allocation.

19 (c) The Department shall not allocate any credit under
20 this Act to a taxpayer for a tax year that ends on or after
21 December 31, 2032 if the taxpayer has not previously claimed a
22 credit under this Act for eligible zero-carbon hydrogen use.

23 (d) Notwithstanding any other provision of this Section or
24 Section 30, the Department shall not allocate credits under
25 this Act to a taxpayer for more than 10 years.

26 (e) The amount of credit allocated to a taxpayer by the

1 Department in subsection (b) of this Section shall be the
2 maximum credit that the taxpayer is permitted to earn for the
3 tax year ending in the State fiscal year for which credits are
4 allocated.

5 (f) In years when the total allocation of credits sought
6 by taxpayers exceeds the available credits to be allocated to
7 all taxpayers under Section 20, a taxpayer that fails to earn
8 credit for eligible zero-carbon hydrogen use for at least 90%
9 of the credit allocated to that taxpayer shall pay a penalty
10 equal to the dollar amount of tax credit allocated but
11 unearned. This subsection shall not apply if a taxpayer's
12 failure to use its full allocation of credits is due to an
13 extraordinary event that was unforeseen at the time of the
14 requested allocation under subsection (a) of this Section or
15 the 30-day surrender period in subsection (b) of this Section,
16 such as an unexpected outage of the generator providing
17 electricity used to produce zero-carbon hydrogen, an
18 unexpected outage of the hydrogen production facility, or an
19 unexpected outage of the taxpayer's facility using the
20 zero-carbon hydrogen.

21 (g) Except as provided in Section 35, an allocation may
22 not be transferred, sold, or otherwise conveyed, nor may an
23 allocation be rolled forward to a subsequent year.

24 Section 30. Prioritization of tax credit allocation. If
25 the total amount of tax credits sought by taxpayers under

1 Section 25 exceeds the total amount of tax credits that are
2 allowed to be allocated under Section 20, the Department shall
3 prioritize allocation as follows:

4 (1) First, tax credits shall be allocated to eligible
5 taxpayers who (i) participate in a United States
6 Department of Energy Hydrogen Hub for their associated
7 eligible zero-carbon hydrogen use, (ii) purchase hydrogen
8 from a participant in a United States Department of Energy
9 Hydrogen Hub for their associated eligible zero-carbon
10 hydrogen use, or (iii) purchase electricity to produce and
11 use zero-carbon hydrogen from a participant in a United
12 States Department of Energy Hydrogen Hub for their
13 associated eligible zero-carbon hydrogen use.

14 (2) Next, any remaining credits shall be allocated to
15 eligible taxpayers who previously received a credit
16 allocation and who engaged in eligible zero-carbon
17 hydrogen use in the prior calendar year, in an amount
18 equal to the most recent allocation; however, if there are
19 insufficient remaining credits available, then priority
20 shall be given to such eligible taxpayers based on the
21 amount of eligible zero-carbon hydrogen they used in the
22 prior calendar year, in order from greatest to least.

23 (3) Finally, any remaining credits shall be allocated
24 to taxpayers in proportion to their requested allocation,
25 excluding any amount already allocated to a taxpayer
26 pursuant to subsections (1) and (2) of this Section.

1 Section 35. Transfer of credits.

2 (a) Any eligible taxpayer earning tax credits under this
3 Act (referred to in this Section as the assignor), which tax
4 credits have been allocated and earned but not yet used by the
5 eligible taxpayer against its tax liability for any tax year
6 and which have not expired, may sell, assign, convey, or
7 otherwise transfer such credits. The taxpayer acquiring the
8 credits (referred to in this Section as the assignee) may use
9 the amount of the acquired credits against the tax imposed
10 under subsections (a) and (b) of Section 201 of the Illinois
11 Income Tax Act for the tax year in which the assignee acquired
12 the credit and may carry forward any unused credit for 5 tax
13 years after the tax year in which the assignee acquired the
14 credit.

15 (b) The Department shall certify the eligibility of the
16 credit to be transferred by the assignor upon assignor's
17 application to the Department. The application shall set forth
18 the hydrogen producer's name and attestation, the amount of
19 all credits earned and previously used by the assignor, the
20 amount of all credits earned and unused by the assignor, the
21 amount of credits proposed to be transferred, and the
22 assignee's name and tax identification number. The Department
23 shall thereafter certify whether the amount of credits
24 proposed to be transferred to the assignee is available to the
25 assignor.

1 Section 37. Rules. The Department may adopt rules to
2 implement and administer this Act.

3 Section 40. Severability. If any provision of this Act or
4 its application to any person or circumstance is held invalid,
5 the invalidity of that provision or application does not
6 affect other provisions or applications of this Act that can
7 be given effect without the invalid provision or application.

8 Section 900. The Illinois Income Tax Act is amended by
9 adding Section 240 as follows:

10 (35 ILCS 5/240 new)

11 Sec. 240. Hydrogen fuel replacement tax credits.

12 (a) For tax years ending on or after December 31, 2023 and
13 before January 1, 2043, an eligible taxpayer who qualifies for
14 a credit under the Hydrogen Fuel Replacement Tax Credit Act is
15 entitled to a credit against the taxes imposed under
16 subsections (a) and (b) of Section 201 of this Act as provided
17 in that Act. If the eligible taxpayer is a partnership or
18 Subchapter S corporation, the credit shall be allowed to the
19 partners or shareholders in accordance with the determination
20 of income and distributive share of income under Sections 702
21 and 704 and Subchapter S of the Internal Revenue Code.

22 (b) If the amount of any tax credit awarded under this

1 Section exceeds the qualified taxpayer's income tax liability
2 for the year, the excess amount may be carried forward as
3 provided in the Hydrogen Fuel Replacement Tax Credit Act.

4 (c) The Department shall allocate available credits to
5 taxpayers in accordance with the Hydrogen Fuel Replacement Tax
6 Credit Act.

7 (d) A sale, assignment, or transfer of the tax credit may
8 be made in accordance with the Hydrogen Fuel Replacement Tax
9 Credit Act by the taxpayer earning the credit.

10 (e) The Department shall certify the available credit for
11 transfer by an assignor in accordance with the Hydrogen Fuel
12 Replacement Tax Credit Act.

13 Section 999. Effective date. This Act takes effect upon
14 becoming law.