

1 AN ACT concerning State government.

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) qualifying hydrogen can be produced through the
18 electrolysis of water using electricity generated by
19 emissions-free energy sources;

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

1 (5) qualifying hydrogen should be used only where it
2 will reduce carbon emissions and other air pollutants and
3 should primarily be used to replace hydrogen that is not
4 qualifying hydrogen or in sectors where direct
5 electrification is infeasible.

6 This Act is intended to encourage the replacement of
7 fossil fuels and hydrogen produced from fossil fuels with
8 qualifying hydrogen for the purposes of promoting
9 decarbonization and improving the State's air quality.

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

11 "Attestation" means a statement that is made under penalty
12 of perjury by a producer under Section 27.

13 "Department" means the Department of Commerce and Economic
14 Opportunity.

15 "Eligible taxpayer" means a taxpayer that:

16 (1) is subject to subsections (a) and (b) of Section
17 201 of the Illinois Income Tax Act;

18 (2) has eligible qualifying hydrogen use for which the
19 producer has provided an attestation and verification
20 under Section 27;

21 (3) complies with subsections (e) and (f) of Section
22 15 if applicable; and

23 (4) is allocated credits by the Department under
24 Section 25.

25 If the taxpayer is an individual, partnership, trust,

1 estate, or Subchapter S corporation, then the taxpayer is an
2 eligible taxpayer only to the extent that the taxpayer's
3 Illinois income tax liability is due to an equity interest in a
4 partnership that uses qualifying hydrogen, a Subchapter S
5 corporation that uses qualifying hydrogen, or a similar
6 pass-through entity that uses qualifying hydrogen.

7 "Eligible qualifying hydrogen use" means the use, in
8 Illinois, of qualifying hydrogen, except for the use of
9 qualifying hydrogen in the following sectors or for the
10 following purposes:

11 (1) the use of qualifying hydrogen in all vehicles
12 powered by combustion engines or in vehicles in classes 1,
13 2, 3, 4, 5, and 6 in the 8-category Gross Vehicle Weight
14 Rating (GVWR) classification system, where Class 1
15 includes vehicles with a GVWR of less than 6,000 pounds
16 (lbs); Class 2 includes vehicles with a GVWR of 6,001 to
17 10,000 lbs; Class 3 includes vehicles with a GVWR of
18 10,001 to 14,000 lbs; Class 4 includes vehicles with a
19 GVWR of 14,001 to 16,000 lbs; Class 5 includes vehicles
20 with a GVWR of 16,001 to 19,500 lbs; Class 6 includes
21 vehicles with a GVWR of 19,501 to 26,000 lbs; Class 7
22 includes vehicles with a GVWR of 26,001 to 33,000 lbs; and
23 Class 8 includes vehicles with a GVWR of greater than
24 33,001 lbs;

25 (2) the use of qualifying hydrogen in heating or
26 cooking in residential and commercial buildings, including

1 space heating, water heating, and clothes drying, or in
2 other cases where qualifying hydrogen is blended into the
3 gas distribution system of a residential or commercial
4 building; and

5 (3) the use of qualifying hydrogen for the production
6 of electricity generated using direct gas combustion,
7 except when that use is (A) for the purpose of emissions
8 reductions to achieve compliance with any rules or
9 regulations promulgated by the United States Environmental
10 Protection Agency, as interpreted and applied in State
11 Implementation Plans under those rules and regulations,
12 and (B) undertaken pursuant to an approved State
13 Implementation Plan for the State of Illinois.

14 "Environmental attribute credit" means a renewable energy
15 credit, zero-emission credit, or carbon mitigation credit, as
16 those terms are defined in Sections 1-10 and 1-75 of the
17 Illinois Power Agency Act, or any other environmental
18 attribute credit tracked by the Generation Attribute Tracking
19 System administered by PJM Interconnection, LLC.

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

22 "MISO" means Midcontinent Independent System Operator,
23 Inc.

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

26 "PJM" means PJM Interconnection, LLC, the regional

1 transmission organization (RTO) that coordinates the movement
2 of wholesale electricity for portions of 13 states, including
3 Illinois.

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

6 "Producer" means a producer of qualifying hydrogen.

7 "Qualified renewable energy resource" means an electric
8 generator that (1) is fueled by wind, solar thermal energy,
9 photovoltaic cells and panels, geothermal energy, or
10 hydropower that does not involve new construction or
11 significant expansion of hydropower dams; and (2) produces
12 renewable energy credits that are eligible to be counted
13 toward the renewable energy requirements in subsection (c) of
14 Section 1-75 of the Illinois Power Agency Act.

15 "Qualifying hydrogen" means hydrogen that (i) receives
16 100% of the tax credit available under 26 U.S.C. 45V and (ii)
17 meets the requirements of Section 27 of this Act. If any of the
18 requirements of 26 U.S.C. 45v conflict with any of the
19 requirements of Section 27, then the relevant requirement of
20 Section 27 shall govern for purposes of determining
21 eligibility for the allowable credit established under this
22 Act.

23 "Regional grid" means the territory served by a specific
24 regional transmission organization.

25 "Regional transmission organization" means PJM
26 Interconnection, LLC; Midcontinent Independent System

1 Operator; or any other entity charged with regional real-time
2 balancing of electricity generation and load.

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

6 Section 15. Allowable credit.

7 (a) For tax years ending on or after December 31, 2027 and
8 beginning before January 1, 2029, a credit is allowed against
9 the taxes imposed on an eligible taxpayer under subsections
10 (a) and (b) of Section 201 of the Illinois Income Tax Act in an
11 amount equal to \$1 per kilogram of eligible qualifying
12 hydrogen used by the eligible taxpayer during the immediately
13 preceding calendar year. If the use of the qualifying hydrogen
14 by a taxpayer occurs in or impacts one or more equity
15 investment eligible communities, then, to be eligible for this
16 credit, the taxpayer must submit to the Department and make
17 publicly available documentation that demonstrates that the
18 use has led to a net reduction of negative environmental
19 impacts in each impacted equity investment eligible community
20 and demonstrates that all application requirements detailed in
21 this Act, including those in subsection (c), have been met for
22 the year in which the credit is sought. Those impacts shall
23 include direct, indirect, and cumulative impacts, including,
24 but not limited to, impacts from using, transporting, and
25 storing qualifying hydrogen, and impacts to air, water,

1 traffic, noise, and public health. This documentation must be
2 specific, quantifiable, measurable, and verifiable. Continued
3 receipt of tax credits is contingent upon the taxpayer making
4 this demonstration each year. Failure to demonstrate a
5 reduction of negative environmental impacts in each impacted
6 equity investment eligible community shall result in the
7 denial or forfeiture of tax credits.

8 (b) The allowable credit provided in subsection (a) of
9 this Section shall be increased by \$0.15 per kilogram of
10 eligible qualifying hydrogen for eligible qualifying hydrogen
11 use impacting one or more equity investment eligible
12 communities if an eligible taxpayer specifically,
13 quantifiably, and verifiably demonstrates that the eligible
14 qualifying hydrogen use satisfies both of the following
15 criteria for the preceding tax year:

16 (1) The eligible taxpayer's project workforce meets
17 the minimum equity standards for equity eligible persons
18 and equity eligible contractors determined by the Illinois
19 Power Agency pursuant to subsection (c-10) of Section 1-75
20 of the Illinois Power Agency Act. This requirement shall
21 apply to both construction employment and ongoing
22 employment in areas such as, but not limited to,
23 operations, production, and maintenance.

24 (2) At least 40% of the total benefits provided by the
25 use are received by the equity investment eligible
26 communities impacted by the eligible qualifying hydrogen

1 use. Benefits to be considered shall include, but are not
2 limited to: a decrease in the percentage of household
3 income spent on energy costs; a decrease in environmental
4 exposures and burdens; an increase in access to low-cost
5 capital; an increase in employment and job training for
6 residents; an increase in clean energy enterprise creation
7 and contracting; increases in community energy ownership;
8 increased parity in clean energy technology and adoption;
9 and an increase in energy resilience. As used in this item
10 (2), "energy resilience" means the ability to operate
11 energy services in response to a major disruption.
12 Employment and contracting benefits provided pursuant to
13 paragraph (1) shall count toward this 40% requirement.

14 (c) The Department shall develop an application process
15 for tax credits under this Section that provides meaningful,
16 timely, and effective public notice of a tax credit
17 application to members of impacted communities, accounting for
18 linguistic needs and other relevant characteristics, and
19 provides meaningful opportunity for public comment on any tax
20 credit application. The public notice and tax credit
21 application shall be translated into non-English languages in
22 impacted communities where a language other than English is
23 widely spoken. The notice must, at a minimum, include all of
24 the following: the name of the applicant, the location of the
25 use, a brief description of the use and its impacts, and a link
26 to a website where the application and more detailed

1 information on the use and its impacts can be found. The notice
2 shall be written at a third or fourth grade reading level to
3 ensure ease of understanding for all members of the public.
4 The opportunity for public comment must, at a minimum, include
5 a public meeting held in a location within an impacted equity
6 investment community and easily accessible to residents of
7 other impacted equity investment eligible communities. Such
8 public meeting shall be held not less than 30 days after public
9 notice is provided and not less than 30 days before a decision
10 is made on the application. The Department shall consider
11 comments received when determining whether the requirements of
12 this Section have been met. Applications, supporting
13 materials, and comments submitted with respect to applications
14 shall be maintained on the Department website in a publicly
15 accessible manner.

16 (d) An eligible taxpayer may not earn tax credits for a tax
17 year for eligible qualifying hydrogen use in an amount that
18 exceeds the amount of tax credit allocated to it for the tax
19 year under Section 25. If the amount of the credit exceeds the
20 tax liability for the year, the excess may be carried forward
21 and applied to the tax liability of the 5 taxable years
22 following the excess credit year. The credit shall be applied
23 to the earliest year for which there is a tax liability. If
24 there are credits from more than one tax year that are
25 available to offset a liability, the earlier credit shall be
26 applied first. In no event shall a credit under this Section

1 reduce the taxpayer's liability to less than zero.

2 (e) Labor performed on or after the effective date of this
3 Act to convert the eligible taxpayer's existing equipment or
4 to install new equipment for the eligible taxpayer to enable
5 eligible qualifying hydrogen use for which a credit is claimed
6 under this Act shall be performed by general contractors that
7 enter into a project labor agreement, as defined by the
8 Illinois Power Agency Act, prior to construction. The project
9 labor agreement shall be filed with the Department.

10 (f) Notwithstanding any provision of law to the contrary,
11 any eligible taxpayer receiving tax credits under this Act
12 shall be required to enter into a labor peace agreement with
13 any bona fide labor organization that represents or is
14 attempting to represent any of its employees.

15 Section 20. Credit availability; applications.

16 (a) The total amount of tax credits that may be allocated
17 by the Department to taxpayers for eligible qualifying
18 hydrogen use occurring in a calendar year shall not exceed
19 \$10,000,000 per year, plus the amount of tax credits that were
20 available under this Section to be allocated for eligible
21 qualifying hydrogen use in the immediately preceding calendar
22 year but were not allocated.

23 (b) In order to qualify for a tax credit under this Act,
24 the applicant must apply with the Department on a form
25 prescribed by the Department by rule. The application shall

1 contain information necessary to calculate the tax credit and
2 any additional information required by the Department.

3 (c) Upon satisfactory review of the application, the
4 Department shall issue a tax credit certificate to the
5 applicant stating the amount of the tax credit to which the
6 applicant is entitled. The certificate shall be attached to
7 the applicant's income tax return under the Illinois Income
8 Tax Act.

9 Section 25. Credit allocation by the Department.

10 (a) As part of its application under Section 20, the
11 taxpayer shall certify to the Department the amount of
12 eligible qualifying hydrogen, in kilograms, used during the
13 immediately preceding calendar year for which the application
14 is filed.

15 (b) The Department shall notify each taxpayer of the
16 dollar amount of credit allocated to that taxpayer under this
17 Act. The taxpayer must notify the Department within 30 days
18 after the notification by the Department under this subsection
19 (b) if it wishes to surrender its allocation.

20 (c) In each State fiscal year for which tax credits are
21 available pursuant to this Act, the Department shall not
22 allocate more than 10% of the total amount of tax credits
23 available under this Act to the use of qualifying hydrogen for
24 electricity generation that uses direct gas combustion.

25 (d) Subject to the limitations of this Section and

1 Sections 20 and 30, the amount of the credit allocated to a
2 taxpayer by the Department in subsection (b) of this Section
3 shall be the maximum credit that the taxpayer is permitted to
4 earn for the calendar year.

5 (e) Allocations may not be rolled forward to a subsequent
6 year.

7 Section 27. Attestation and verification required.

8 (a) Each taxpayer seeking credits under this Act shall
9 submit with its application for credits under this Act an
10 attestation from the producer, made under penalty of perjury.
11 The attestation shall also confirm that the hydrogen for which
12 a tax credit is claimed has not been produced during an
13 applicable PJM performance assessment interval or an
14 applicable MISO maximum generation event. Each taxpayer
15 seeking credits under this Act shall also be required to
16 submit to the Department, at the time of the tax filing for the
17 applicable year, documentation verifying the facts set forth
18 in the attestation required by this Section.

19 (b) Each taxpayer seeking credits under this Act shall
20 submit with its application for credits under this Act
21 documentation verifiably demonstrating that the hydrogen use
22 or uses for which the tax credit is sought was entirely used
23 for an eligible qualifying hydrogen use, as defined in Section
24 10 of this Act.

25 (c) Each taxpayer seeking credits under this Act shall

1 submit with its application for credits under this Act
2 verifiable documentation of the following information, to be
3 provided to the taxpayer by the producer:

4 (i) the type of power generation used to produce the
5 qualifying hydrogen during each hour that the qualifying
6 hydrogen was produced, if this information is available;

7 (ii) the year or years in which the power generation
8 source or sources identified in item (i) went into
9 operation;

10 (iii) if the power generation identified in item (i)
11 would have been curtailed or otherwise would not have
12 occurred but for the production of qualifying hydrogen, to
13 the extent determined by PJM, MISO, or another grid
14 operator; and

15 (iv) to the extent available, the marginal emissions
16 intensity of the regional grid in the same location where
17 the qualifying hydrogen was produced during each hour that
18 the qualifying hydrogen was produced, as determined by the
19 marginal fuel type reported by PJM, MISO, or another grid
20 operator, as appropriate, and an average emissions
21 intensity for that fuel.

22 Section 30. Prioritization of tax credit allocation. If
23 the total amount of tax credits sought by taxpayers under
24 Section 25 exceeds the total amount of tax credits that are
25 allowed to be allocated under Section 20, the Department shall

1 prioritize allocation as follows:

2 (1) Up to 90% of the tax credits shall be allocated to
3 the following eligible taxpayers in proportion to their
4 requested allocation up to their requested allocation:

5 (A) taxpayers who participate in a United States
6 Department of Energy Hydrogen Hub for their associated
7 eligible qualifying hydrogen use;

8 (B) taxpayers who purchase hydrogen from a
9 participant in a United States Department of Energy
10 Hydrogen Hub for their associated qualifying hydrogen
11 use; or

12 (C) taxpayers who purchase electricity to produce
13 and use qualifying hydrogen from a participant in a
14 United States Department of Energy Hydrogen Hub for
15 their associated eligible qualifying hydrogen use.

16 (2) Next, any remaining credits shall be allocated to
17 eligible taxpayers who do not qualify under paragraph (1);
18 however, if there are insufficient remaining credits
19 available to make the allocations under this paragraph
20 (2), then the remaining credits shall be allocated in
21 proportion to the requested allocation up to the eligible
22 taxpayer's requested allocation.

23 (3) Next, any remaining credits shall be allocated to
24 taxpayers in proportion to their requested allocation, up
25 to their requested allocation, excluding any amount
26 already allocated to a taxpayer pursuant to subsections

1 (1) and (2) of this Section.

2 (4) Finally, any remaining credits shall be allocated
3 to taxpayers receiving an allocation pursuant to
4 subsection (1) in proportion to their requested
5 allocation, such that the allocation provided under
6 subsection (1) and subsection (4) combined does not exceed
7 their requested allocation.

8 Section 35. Transfer of credits. A transfer of credits
9 earned under this Act may be made, in accordance with rules
10 adopted by the Department, by the taxpayer earning the credits
11 within one year after the credits are awarded. The Department
12 shall issue a certificate of transfer to each transferor and
13 transferee, identifying the amount of the credit transferred.
14 The transfer certificate shall be attached to the transferor's
15 and transferee's income tax return under the Illinois Income
16 Tax Act.

17 Section 36. Analysis of hydrogen production and
18 utilization.

19 (a) No later than April 1, 2028, the Illinois
20 Environmental Protection Agency, in consultation with the
21 Department, the Illinois Power Agency, the Illinois Commerce
22 Commission, and other State agencies, as needed, shall publish
23 a report analyzing the greenhouse gas and copollutant
24 emissions impacts of hydrogen production and utilization in

1 the State from January 1, 2026 through December 31, 2027. The
2 report shall separately measure each of the following:

3 (1) life-cycle greenhouse gas and copollutant emission
4 impacts of producing qualifying hydrogen;

5 (2) life-cycle greenhouse gas and copollutant emission
6 impacts of eligible qualifying hydrogen use for which an
7 eligible taxpayer receives a credit under this Act;

8 (3) any greenhouse gas and copollutant emissions
9 avoided by eligible use of qualifying hydrogen, such as by
10 displacing diesel in long-haul, heavy-duty trucking and
11 displacing hydrogen created using fossil fuel feedstock or
12 through electrolysis powered by fossil-fuel generated
13 electricity, where avoidance can be determined with
14 reasonable certainty; and

15 (4) economic activity and jobs attributable to
16 investments in qualifying hydrogen production and eligible
17 qualifying hydrogen use in the State across sectors.

18 The report shall also include the following separate
19 provisions:

20 (1) an analysis of opportunities to increase the
21 production of qualifying hydrogen from electrolysis that
22 is powered entirely by electricity generated from
23 qualified renewable energy resources in the State;

24 (2) a comparison of the cost of qualifying hydrogen to
25 the cost of hydrogen produced from fossil fuels;

26 (3) an analysis of whether energy sources other than

1 hydrogen are available alternatives for qualified uses,
2 and if so, whether those alternatives would achieve
3 greater emissions reductions, economic savings, or both;

4 (4) an analysis of the efficacy of this tax credit at
5 incentivizing the transition of industries with eligible
6 uses to use clean hydrogen as a means of decarbonization;

7 (5) an analysis of Illinois' competitiveness in the
8 clean hydrogen economy relative to other states; this
9 analysis shall include, but not be limited to, a review of
10 the Department of Energy's Hydrogen Hub awards, other
11 states' incentives for clean hydrogen, the amount of
12 eligible use of clean hydrogen in Illinois relative to
13 other states, and the amount of production of clean
14 hydrogen in Illinois relative to other states; this
15 analysis should also recommend policy changes the State
16 can make to be more competitive with other states in the
17 clean hydrogen economy to the extent that such
18 competitiveness is consistent with the State's emissions
19 reductions goals and is economically beneficial;

20 (6) an analysis of areas where clean hydrogen use,
21 clean energy use, or both can increase emissions
22 reduction, and policy measures the State can take to
23 incentivize those uses, including, but not limited to, an
24 extension of this tax credit and changes to the total
25 annual amount of this tax credit; and

26 (7) an analysis of the expected arc of production,

1 relative costs of different methods of hydrogen
2 production, relative costs and emissions reductions
3 benefits of clean energy produced by other methods,
4 including renewables, for eligible and other uses to help
5 right-size the total tax credit amount.

6 The Illinois Environmental Protection Agency may consider
7 application and attestation information provided by eligible
8 taxpayers pursuant to this Act and any other data it deems
9 relevant.

10 Data relied upon for the report and methods of measurement
11 shall be identified in the report and be made publicly
12 available in easily accessible, machine-readable format.

13 The Illinois Environmental Protection Agency shall
14 determine and state in its report the impact of the production
15 of qualifying hydrogen and eligible qualifying hydrogen uses
16 receiving a tax credit pursuant to this Act on greenhouse gas
17 and copollutant emissions.

18 (b) A draft of the report shall be made available for
19 public comment no less than 30 days prior to its final
20 publication. The final report and comments received shall be
21 made publicly available in both English and Spanish, and
22 copies of the final report shall be filed with the General
23 Assembly and the Governor.

24 Section 37. Rules. The Department may adopt rules to
25 implement and administer this Act.

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

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

8 (35 ILCS 5/240 new)

9 Sec. 240. Hydrogen fuel replacement tax credits.

10 (a) For tax years ending on or after December 31, 2027 and
11 beginning before January 1, 2029, an eligible taxpayer who
12 qualifies for a credit under the Hydrogen Fuel Replacement Tax
13 Credit Act is entitled to a credit against the taxes imposed
14 under subsections (a) and (b) of Section 201 of this Act as
15 provided in that Act. If the eligible taxpayer is a
16 partnership or Subchapter S corporation, the credit shall be
17 allowed to the partners or shareholders in accordance with the
18 determination of income and distributive share of income under
19 Sections 702 and 704 and Subchapter S of the Internal Revenue
20 Code.

21 (b) If the amount of the credit exceeds the tax liability
22 for the year, the excess may be carried forward and applied to
23 the tax liability of the 5 taxable years following the excess

1 credit year. The credit shall be applied to the earliest year
2 for which there is a tax liability. If there are credits from
3 more than one tax year that are available to offset a
4 liability, the earlier credit shall be applied first. In no
5 event shall a credit under this Section reduce the taxpayer's
6 liability to less than zero.

7 (c) A sale, assignment, or transfer of the tax credit may
8 be made by the taxpayer earning the credit within one year
9 after the credit is awarded in accordance with rules adopted
10 by the Department of Commerce and Economic Opportunity.

11 (d) A person claiming the credit allowed under this
12 Section shall attach to its Illinois income tax return a copy
13 of the tax credit certificate or the transfer certificate
14 issued by the Department of Commerce and Economic Opportunity.

15 Section 999. Effective date. This Act takes effect upon
16 becoming law.