



Sen. David Koehler

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1 AMENDMENT TO HOUSE BILL 2204

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2204 by replacing  
3 everything after the enacting clause with the following:

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;

1           (3) qualifying hydrogen can be produced through the  
2           electrolysis of water using electricity generated by  
3           emissions-free energy sources;

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

8           (5) qualifying hydrogen should be used only where it  
9           will reduce carbon emissions and other air pollutants and  
10          should primarily be used to replace hydrogen that is not  
11          qualifying hydrogen or in sectors where direct  
12          electrification is infeasible.

13          This Act is intended to encourage the replacement of  
14          fossil fuels and hydrogen produced from fossil fuels with  
15          qualifying hydrogen for the purposes of promoting  
16          decarbonization and improving the State's air quality.

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

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

20          "Department" means the Department of Commerce and Economic  
21          Opportunity.

22          "Eligible taxpayer" means a taxpayer that:

23                 (1) is subject to subsections (a) and (b) of Section  
24                 201 of the Illinois Income Tax Act;

25                 (2) has eligible qualifying hydrogen use for which the

1 producer has provided an attestation and verification  
2 under Section 27;

3 (3) complies with subsections (e) and (f) of Section  
4 15 if applicable; and

5 (4) is allocated credits by the Department under  
6 Section 25.

7 If the taxpayer is an individual, partnership, trust,  
8 estate, or Subchapter S corporation, then the taxpayer is an  
9 eligible taxpayer only to the extent that the taxpayer's  
10 Illinois income tax liability is due to an equity interest in a  
11 partnership that uses qualifying hydrogen, a Subchapter S  
12 corporation that uses qualifying hydrogen, or a similar  
13 pass-through entity that uses qualifying hydrogen.

14 "Eligible qualifying hydrogen use" means the use, in  
15 Illinois, of qualifying hydrogen, except for the use of  
16 qualifying hydrogen in the following sectors or for the  
17 following purposes:

18 (1) the use of qualifying hydrogen in all vehicles  
19 powered by combustion engines or in vehicles in classes 1,  
20 2, 3, 4, 5, and 6 in the 8-category Gross Vehicle Weight  
21 Rating (GVWR) classification system, where Class 1  
22 includes vehicles with a GVWR of less than 6,000 pounds  
23 (lbs); Class 2 includes vehicles with a GVWR of 6,001 to  
24 10,000 lbs; Class 3 includes vehicles with a GVWR of  
25 10,001 to 14,000 lbs; Class 4 includes vehicles with a  
26 GVWR of 14,001 to 16,000 lbs; Class 5 includes vehicles

1 with a GVWR of 16,001 to 19,500 lbs; Class 6 includes  
2 vehicles with a GVWR of 19,501 to 26,000 lbs; Class 7  
3 includes vehicles with a GVWR of 26,001 to 33,000 lbs; and  
4 Class 8 includes vehicles with a GVWR of greater than  
5 33,001 lbs;

6 (2) the use of qualifying hydrogen in heating or  
7 cooking in residential and commercial buildings, including  
8 space heating, water heating, and clothes drying, or in  
9 other cases where qualifying hydrogen is blended into the  
10 gas distribution system of a residential or commercial  
11 building; and

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

21 "Environmental attribute credit" means a renewable energy  
22 credit, zero-emission credit, or carbon mitigation credit, as  
23 those terms are defined in Sections 1-10 and 1-75 of the  
24 Illinois Power Agency Act, or any other environmental  
25 attribute credit tracked by the Generation Attribute Tracking  
26 System administered by PJM Interconnection, LLC.

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

3 "MISO" means Midcontinent Independent System Operator,  
4 Inc.

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

7 "PJM" means PJM Interconnection, LLC, the regional  
8 transmission organization (RTO) that coordinates the movement  
9 of wholesale electricity for portions of 13 states, including  
10 Illinois.

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

13 "Producer" means a producer of qualifying hydrogen.

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

22 "Qualifying hydrogen" means hydrogen that (i) receives  
23 100% of the tax credit available under 26 U.S.C. 45V and (ii)  
24 meets the requirements of Section 27 of this Act. If any of the  
25 requirements of 26 U.S.C. 45v conflict with any of the  
26 requirements of Section 27, then the relevant requirement of

1 Section 27 shall govern for purposes of determining  
2 eligibility for the allowable credit established under this  
3 Act.

4 "Regional grid" means the territory served by a specific  
5 regional transmission organization.

6 "Regional transmission organization" means PJM  
7 Interconnection, LLC; Midcontinent Independent System  
8 Operator; or any other entity charged with regional real-time  
9 balancing of electricity generation and load.

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

13 Section 15. Allowable credit.

14 (a) For tax years ending on or after December 31, 2027 and  
15 beginning before January 1, 2029, a credit is allowed against  
16 the taxes imposed on an eligible taxpayer under subsections  
17 (a) and (b) of Section 201 of the Illinois Income Tax Act in an  
18 amount equal to \$1 per kilogram of eligible qualifying  
19 hydrogen used by the eligible taxpayer during the immediately  
20 preceding calendar year. If the use of the qualifying hydrogen  
21 by a taxpayer occurs in or impacts one or more equity  
22 investment eligible communities, then, to be eligible for this  
23 credit, the taxpayer must submit to the Department and make  
24 publicly available documentation that demonstrates that the  
25 use has led to a net reduction of negative environmental

1 impacts in each impacted equity investment eligible community  
2 and demonstrates that all application requirements detailed in  
3 this Act, including those in subsection (c), have been met for  
4 the year in which the credit is sought. Those impacts shall  
5 include direct, indirect, and cumulative impacts, including,  
6 but not limited to, impacts from using, transporting, and  
7 storing qualifying hydrogen, and impacts to air, water,  
8 traffic, noise, and public health. This documentation must be  
9 specific, quantifiable, measurable, and verifiable. Continued  
10 receipt of tax credits is contingent upon the taxpayer making  
11 this demonstration each year. Failure to demonstrate a  
12 reduction of negative environmental impacts in each impacted  
13 equity investment eligible community shall result in the  
14 denial or forfeiture of tax credits.

15 (b) The allowable credit provided in subsection (a) of  
16 this Section shall be increased by \$0.15 per kilogram of  
17 eligible qualifying hydrogen for eligible qualifying hydrogen  
18 use impacting one or more equity investment eligible  
19 communities if an eligible taxpayer specifically,  
20 quantifiably, and verifiably demonstrates that the eligible  
21 qualifying hydrogen use satisfies both of the following  
22 criteria for the preceding tax year:

23 (1) The eligible taxpayer's project workforce meets  
24 the minimum equity standards for equity eligible persons  
25 and equity eligible contractors determined by the Illinois  
26 Power Agency pursuant to subsection (c-10) of Section 1-75

1 of the Illinois Power Agency Act. This requirement shall  
2 apply to both construction employment and ongoing  
3 employment in areas such as, but not limited to,  
4 operations, production, and maintenance.

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

21 (c) The Department shall develop an application process  
22 for tax credits under this Section that provides meaningful,  
23 timely, and effective public notice of a tax credit  
24 application to members of impacted communities, accounting for  
25 linguistic needs and other relevant characteristics, and  
26 provides meaningful opportunity for public comment on any tax



1 credit application. The public notice and tax credit  
2 application shall be translated into non-English languages in  
3 impacted communities where a language other than English is  
4 widely spoken. The notice must, at a minimum, include all of  
5 the following: the name of the applicant, the location of the  
6 use, a brief description of the use and its impacts, and a link  
7 to a website where the application and more detailed  
8 information on the use and its impacts can be found. The notice  
9 shall be written at a third or fourth grade reading level to  
10 ensure ease of understanding for all members of the public.  
11 The opportunity for public comment must, at a minimum, include  
12 a public meeting held in a location within an impacted equity  
13 investment community and easily accessible to residents of  
14 other impacted equity investment eligible communities. Such  
15 public meeting shall be held not less than 30 days after public  
16 notice is provided and not less than 30 days before a decision  
17 is made on the application. The Department shall consider  
18 comments received when determining whether the requirements of  
19 this Section have been met. Applications, supporting  
20 materials, and comments submitted with respect to applications  
21 shall be maintained on the Department website in a publicly  
22 accessible manner.

23 (d) An eligible taxpayer may not earn tax credits for a tax  
24 year for eligible qualifying hydrogen use in an amount that  
25 exceeds the amount of tax credit allocated to it for the tax  
26 year under Section 25. If the amount of the credit exceeds the

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

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

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

22 Section 20. Credit availability; applications.

23 (a) The total amount of tax credits that may be allocated  
24 by the Department to taxpayers for eligible qualifying  
25 hydrogen use occurring in a calendar year shall not exceed

1 \$10,000,000 per year, plus the amount of tax credits that were  
2 available under this Section to be allocated for eligible  
3 qualifying hydrogen use in the immediately preceding calendar  
4 year but were not allocated.

5 (b) In order to qualify for a tax credit under this Act,  
6 the applicant must apply with the Department on a form  
7 prescribed by the Department by rule. The application shall  
8 contain information necessary to calculate the tax credit and  
9 any additional information required by the Department.

10 (c) Upon satisfactory review of the application, the  
11 Department shall issue a tax credit certificate to the  
12 applicant stating the amount of the tax credit to which the  
13 applicant is entitled. The certificate shall be attached to  
14 the applicant's income tax return under the Illinois Income  
15 Tax Act.

16 Section 25. Credit allocation by the Department.

17 (a) As part of its application under Section 20, the  
18 taxpayer shall certify to the Department the amount of  
19 eligible qualifying hydrogen, in kilograms, used during the  
20 immediately preceding calendar year for which the application  
21 is filed.

22 (b) The Department shall notify each taxpayer of the  
23 dollar amount of credit allocated to that taxpayer under this  
24 Act. The taxpayer must notify the Department within 30 days  
25 after the notification by the Department under this subsection

1 (b) if it wishes to surrender its allocation.

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

7 (d) Subject to the limitations of this Section and  
8 Sections 20 and 30, the amount of the credit allocated to a  
9 taxpayer by the Department in subsection (b) of this Section  
10 shall be the maximum credit that the taxpayer is permitted to  
11 earn for the calendar year.

12 (e) Allocations may not be rolled forward to a subsequent  
13 year.

14 Section 27. Attestation and verification required.

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

1           (b) Each taxpayer seeking credits under this Act shall  
2 submit with its application for credits under this Act  
3 documentation verifiably demonstrating that the hydrogen use  
4 or uses for which the tax credit is sought was entirely used  
5 for an eligible qualifying hydrogen use, as defined in Section  
6 10 of this Act.

7           (c) Each taxpayer seeking credits under this Act shall  
8 submit with its application for credits under this Act  
9 verifiable documentation of the following information, to be  
10 provided to the taxpayer by the producer:

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

14           (ii) the year or years in which the power generation  
15 source or sources identified in item (i) went into  
16 operation;

17           (iii) if the power generation identified in item (i)  
18 would have been curtailed or otherwise would not have  
19 occurred but for the production of qualifying hydrogen, to  
20 the extent determined by PJM, MISO, or another grid  
21 operator; and

22           (iv) to the extent available, the marginal emissions  
23 intensity of the regional grid in the same location where  
24 the qualifying hydrogen was produced during each hour that  
25 the qualifying hydrogen was produced, as determined by the  
26 marginal fuel type reported by PJM, MISO, or another grid

1 operator, as appropriate, and an average emissions  
2 intensity for that fuel.

3 Section 30. Prioritization of tax credit allocation. If  
4 the total amount of tax credits sought by taxpayers under  
5 Section 25 exceeds the total amount of tax credits that are  
6 allowed to be allocated under Section 20, the Department shall  
7 prioritize allocation as follows:

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

11 (A) taxpayers who participate in a United States  
12 Department of Energy Hydrogen Hub for their associated  
13 eligible qualifying hydrogen use;

14 (B) taxpayers who purchase hydrogen from a  
15 participant in a United States Department of Energy  
16 Hydrogen Hub for their associated qualifying hydrogen  
17 use; or

18 (C) taxpayers who purchase electricity to produce  
19 and use qualifying hydrogen from a participant in a  
20 United States Department of Energy Hydrogen Hub for  
21 their associated eligible qualifying hydrogen use.

22 (2) Next, any remaining credits shall be allocated to  
23 eligible taxpayers who do not qualify under paragraph (1);  
24 however, if there are insufficient remaining credits  
25 available to make the allocations under this paragraph

1 (2), then the remaining credits shall be allocated in  
2 proportion to the requested allocation up to the eligible  
3 taxpayer's requested allocation.

4 (3) Next, any remaining credits shall be allocated to  
5 taxpayers in proportion to their requested allocation, up  
6 to their requested allocation, excluding any amount  
7 already allocated to a taxpayer pursuant to subsections  
8 (1) and (2) of this Section.

9 (4) Finally, any remaining credits shall be allocated  
10 to taxpayers receiving an allocation pursuant to  
11 subsection (1) in proportion to their requested  
12 allocation, such that the allocation provided under  
13 subsection (1) and subsection (4) combined does not exceed  
14 their requested allocation.

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

24 Section 36. Analysis of hydrogen production and

1 utilization.

2 (a) No later than April 1, 2028, the Illinois  
3 Environmental Protection Agency, in consultation with the  
4 Department, the Illinois Power Agency, the Illinois Commerce  
5 Commission, and other State agencies, as needed, shall publish  
6 a report analyzing the greenhouse gas and copollutant  
7 emissions impacts of hydrogen production and utilization in  
8 the State from January 1, 2026 through December 31, 2027. The  
9 report shall separately measure each of the following:

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

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

15 (3) any greenhouse gas and copollutant emissions  
16 avoided by eligible use of qualifying hydrogen, such as by  
17 displacing diesel in long-haul, heavy-duty trucking and  
18 displacing hydrogen created using fossil fuel feedstock or  
19 through electrolysis powered by fossil-fuel generated  
20 electricity, where avoidance can be determined with  
21 reasonable certainty; and

22 (4) economic activity and jobs attributable to  
23 investments in qualifying hydrogen production and eligible  
24 qualifying hydrogen use in the State across sectors.

25 The report shall also include the following separate  
26 provisions:



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

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

7           (3) an analysis of whether energy sources other than  
8 hydrogen are available alternatives for qualified uses,  
9 and if so, whether those alternatives would achieve  
10 greater emissions reductions, economic savings, or both;

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

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

1           (6) an analysis of areas where clean hydrogen use,  
2           clean energy use, or both can increase emissions  
3           reduction, and policy measures the State can take to  
4           incentivize those uses, including, but not limited to, an  
5           extension of this tax credit and changes to the total  
6           annual amount of this tax credit; and

7           (7) an analysis of the expected arc of production,  
8           relative costs of different methods of hydrogen  
9           production, relative costs and emissions reductions  
10          benefits of clean energy produced by other methods,  
11          including renewables, for eligible and other uses to help  
12          right-size the total tax credit amount.

13          The Illinois Environmental Protection Agency may consider  
14          application and attestation information provided by eligible  
15          taxpayers pursuant to this Act and any other data it deems  
16          relevant.

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

20          The Illinois Environmental Protection Agency shall  
21          determine and state in its report the impact of the production  
22          of qualifying hydrogen and eligible qualifying hydrogen uses  
23          receiving a tax credit pursuant to this Act on greenhouse gas  
24          and copollutant emissions.

25          (b) A draft of the report shall be made available for  
26          public comment no less than 30 days prior to its final

1 publication. The final report and comments received shall be  
2 made publicly available in both English and Spanish, and  
3 copies of the final report shall be filed with the General  
4 Assembly and the Governor.

5 Section 37. Rules. The Department may adopt rules to  
6 implement and administer this Act.

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

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

14 (35 ILCS 5/240 new)

15 Sec. 240. Hydrogen fuel replacement tax credits.

16 (a) For tax years ending on or after December 31, 2027 and  
17 beginning before January 1, 2029, an eligible taxpayer who  
18 qualifies for a credit under the Hydrogen Fuel Replacement Tax  
19 Credit Act is entitled to a credit against the taxes imposed  
20 under subsections (a) and (b) of Section 201 of this Act as  
21 provided in that Act. If the eligible taxpayer is a  
22 partnership or Subchapter S corporation, the credit shall be

1 allowed to the partners or shareholders in accordance with the  
2 determination of income and distributive share of income under  
3 Sections 702 and 704 and Subchapter S of the Internal Revenue  
4 Code.

5 (b) If the amount of the credit exceeds the tax liability  
6 for the year, the excess may be carried forward and applied to  
7 the tax liability of the 5 taxable years following the excess  
8 credit year. The credit shall be applied to the earliest year  
9 for which there is a tax liability. If there are credits from  
10 more than one tax year that are available to offset a  
11 liability, the earlier credit shall be applied first. In no  
12 event shall a credit under this Section reduce the taxpayer's  
13 liability to less than zero.

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

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

22 Section 999. Effective date. This Act takes effect upon  
23 becoming law."