

AN ACT concerning State government.

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

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

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

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

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

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

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

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

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

Section 10. Definitions. As used in this Act:

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

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

"Eligible taxpayer" means a taxpayer that:

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

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

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

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

If the taxpayer is an individual, partnership, trust,

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

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

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

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

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

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

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

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

"MISO" means Midcontinent Independent System Operator, Inc.

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

"PJM" means PJM Interconnection, LLC, the regional

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

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

"Producer" means a producer of qualifying hydrogen.

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

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

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

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

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

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

Section 15. Allowable credit.

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

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

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

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

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

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

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

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

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

reduce the taxpayer's liability to less than zero.

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

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

Section 20. Credit availability; applications.

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

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

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

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

Section 25. Credit allocation by the Department.

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

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

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

(d) Subject to the limitations of this Section and

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

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

Section 27. Attestation and verification required.

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

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

(c) Each taxpayer seeking credits under this Act shall

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

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

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

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

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

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

prioritize allocation as follows:

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

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

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

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

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

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

(1) and (2) of this Section.

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

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

Section 36. Analysis of hydrogen production and utilization.

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

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

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

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

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

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

The report shall also include the following separate provisions:

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

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

(3) an analysis of whether energy sources other than

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

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

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

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

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

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

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

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

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

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

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

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

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

(35 ILCS 5/240 new)

Sec. 240. Hydrogen fuel replacement tax credits.

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

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

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

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

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

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