



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5818

Introduced 11/16/2022, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/240 new

Creates the Hydrogen Fuel Replacement Tax Credit Act. Provides that, for tax years ending on or after December 31, 2023, an income tax credit is allowed to 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 environmental justice community or the eligible taxpayer uses contractors or employs labor at a project location 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.

LRB102 29181 HLH 41125 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 citizens 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 or through methods involving
20 carbon capture and sequestration; and

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

1 This Act is intended to encourage the replacement of
2 fossil fuels with zero-carbon hydrogen for the purposes of
3 promoting decarbonization and improving the State's air
4 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 under Section 13;

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

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

18 "Eligible zero-carbon hydrogen use" means the consumption,
19 in Illinois, of zero-carbon hydrogen.

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

1 "Environmental justice community" has the meaning provided
2 in the Illinois Power Agency's long-term renewable resources
3 procurement plan.

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

5 "Renewable energy resource" has the same meaning as
6 provided in Section 1-10 of the Illinois Power Agency Act as
7 that Act exists on the effective date of this Act.

8 "Zero-carbon hydrogen" means hydrogen that is electrolyzed
9 using electricity generated by a zero-emission facility or a
10 renewable energy resource or hydrogen that is produced by a
11 process that results in a lifecycle greenhouse gas emissions
12 rate of less than 0.45 kilograms of CO₂e per kilogram of
13 hydrogen.

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

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

1 hydrogen for which a tax credit is claimed. In so attesting,
2 the producer may credit a portion of a monthly attribute
3 certificate to a specific hour within that month in an amount
4 equal to the generation quantity reflected in the certificate,
5 multiplied by the ratio of the zero-emission facility's or
6 renewable energy resource's total generation in that hour to
7 its total monthly generation.

8 Section 15. Allowable credit.

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

15 (b) The allowable credit provided in subsection (a) of
16 this Section shall be increased by \$0.15 per kilogram of
17 eligible zero-carbon hydrogen if the use of the zero-carbon
18 hydrogen by the eligible taxpayer occurs in an environmental
19 justice community.

20 (c) The allowable credit provided in subsection (a) of
21 this Section shall be increased by \$0.15 per kilogram of
22 eligible zero-carbon hydrogen if the eligible taxpayer uses
23 contractors or employs labor at a project location in an
24 equity investment eligible community, as defined in Section
25 5-5 of the Energy Transition Act on the effective date of this

1 Act, to convert existing equipment or install new equipment to
2 enable eligible zero-carbon hydrogen use for which a credit is
3 claimed under this Act.

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

15 (e) Labor performed on or after the effective date of this
16 Act to convert the eligible taxpayer's existing equipment or
17 install for the eligible taxpayer new equipment to enable
18 eligible zero-carbon hydrogen use for which a credit is
19 claimed under this Act shall be performed by general
20 contractors that enter into a project labor agreement, as
21 defined by the Illinois Power Agency Act, prior to
22 construction. The project labor agreement shall be filed with
23 the Department. At a minimum, the project labor agreement must
24 provide the names, addresses, and occupations of the owner of
25 the facilities and the individuals representing the labor
26 organization employees participating in the project labor

1 agreement consistent with the Project Labor Agreements Act.
2 The agreement must also specify the terms and conditions as
3 defined by the Illinois Power Agency Act. Any information
4 submitted pursuant to this subsection (e) shall be considered
5 commercially sensitive information.

6 Section 20. Credit availability. Beginning with the State
7 fiscal year ending June 30, 2024, and in each subsequent State
8 fiscal year, the total amount of tax credits to be allocated by
9 the Department to taxpayers for eligible zero-carbon hydrogen
10 use occurring in a tax year ending during that State fiscal
11 year shall not exceed \$100,000,000, plus the amount of tax
12 credits that were available to be allocated for eligible
13 zero-carbon hydrogen use in the tax year ending during the
14 prior State fiscal year but were not allocated.

15 Section 25. Credit allocation by the Department.

16 (a) Taxpayers shall notify the Department, by January 1,
17 2023, of the dollar amount of credit the taxpayer estimates it
18 will earn for eligible zero-carbon hydrogen use in tax years
19 ending on or after December 31, 2023 and ending on or before
20 June 30, 2024. For tax years ending on or after July 1, 2024,
21 taxpayers shall notify the Department of the dollar amount of
22 credit the taxpayer estimates it will earn for eligible
23 zero-carbon hydrogen use by January 1 immediately preceding
24 the first day of the fiscal year in which the tax year ends.

1 (b) The Department shall notify each taxpayer of the
2 dollar amount of credit allocated to that taxpayer for
3 zero-carbon hydrogen use. That notification shall occur by
4 March 1 following the date on which the taxpayer notifies the
5 Department of its estimated zero-carbon hydrogen use under
6 subsection (a). The taxpayer must notify the Department within
7 30 days after the notification by the Department under this
8 subsection (b) if it wishes to surrender its allocation.

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

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

16 (e) The amount of credit allocated to a taxpayer by the
17 Department in subsection (b) of this Section shall be the
18 maximum credit that the taxpayer is permitted to earn for the
19 tax year ending in the State fiscal year for which credits are
20 allocated.

21 (f) In years when the total allocation of credits sought
22 by taxpayers exceeds the available credits to be allocated to
23 all taxpayers under Section 20, a taxpayer that fails to earn
24 credit for eligible zero-carbon hydrogen use for at least 90%
25 of the credit allocated to that taxpayer shall pay a penalty
26 equal to the dollar amount of tax credit allocated but

1 unearned. This subsection shall not apply if a taxpayer's
2 failure to use its full allocation of credits is due to an
3 extraordinary event that was unforeseen at the time of the
4 requested allocation under subsection (a) of this Section or
5 the 30-day surrender period in subsection (b) of this Section,
6 such as an unexpected outage of the generator providing
7 electricity used to produce zero-carbon hydrogen, an
8 unexpected outage of the hydrogen production facility, or an
9 unexpected outage of the taxpayer's facility using the
10 zero-carbon hydrogen.

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

14 Section 30. Prioritization of tax credit allocation. If
15 the total amount of tax credits sought by taxpayers under
16 Section 25 exceeds the total amount of tax credits that are
17 allowed to be allocated under Section 20, the Department shall
18 prioritize allocation as follows:

19 (1) first, tax credits shall be allocated to eligible
20 taxpayers participating in, or purchasing hydrogen or
21 electricity from participants in, a United States
22 Department of Energy Hydrogen Hub for their associated
23 eligible zero-carbon hydrogen use;

24 (2) next, any remaining credits shall be allocated to
25 eligible taxpayers who previously received a credit

1 allocation and who engaged in eligible zero-carbon
2 hydrogen use in the prior calendar year, in an amount
3 equal to the most recent allocation; however, if there are
4 insufficient remaining credits available, then priority
5 shall be given to such eligible taxpayers based on the
6 amount of eligible zero-carbon hydrogen they used in the
7 prior calendar year, in order from greatest to least; and

8 (3) finally, any remaining credits for the fiscal year
9 shall be allocated to taxpayers in proportion to their
10 requested allocation, excluding any amount already
11 allocated to a taxpayer pursuant to subsections (1) and
12 (2) of this Section.

13 Section 35. Transfer of credits.

14 (a) Any eligible taxpayer earning tax credits under this
15 Act (referred to in this Section as the assignor), which tax
16 credits have been allocated and earned but not yet used by the
17 eligible taxpayer against its tax liability for any tax year
18 and which have not expired, may sell, assign, convey, or
19 otherwise transfer such credits. The taxpayer acquiring the
20 credits (referred to in this Section as the assignee) may use
21 the amount of the acquired credits against the tax imposed
22 under subsections (a) and (b) of Section 201 of the Illinois
23 Income Tax Act for the tax year in which the assignee acquired
24 the credit and may carry forward any unused credit for 5 tax
25 years after the tax year in which the assignee acquired the

1 credit.

2 (b) The Department shall certify the eligibility of the
3 credit to be transferred by the assignor upon assignor's
4 application to the Department. The application shall set forth
5 the hydrogen producer's name and attestation, the amount of
6 all credits earned and previously used by the assignor, the
7 amount of all credits earned and unused by the assignor, the
8 amount of credits proposed to be transferred, and the
9 assignee's name and tax identification number. The Department
10 shall thereafter certify whether the amount of credits
11 proposed to be transferred to the assignee is available to the
12 assignor.

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

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

20 (35 ILCS 5/240 new)

21 Sec. 240. Hydrogen fuel replacement tax credits.

22 (a) For tax years ending on or after December 31, 2023 and
23 prior to January 1, 2043, an eligible taxpayer who qualifies

1 for a credit under the Hydrogen Fuel Replacement Tax Credit
2 Act is entitled to a credit against the taxes imposed under
3 subsections (a) and (b) of Section 201 of this Act as provided
4 in that Act. If the eligible taxpayer is a partnership or
5 Subchapter S corporation, the credit shall be allowed to the
6 partners or shareholders in accordance with the determination
7 of income and distributive share of income under Sections 702
8 and 704 and Subchapter S of the Internal Revenue Code.

9 (b) If the amount of any tax credit awarded under this
10 Section exceeds the qualified taxpayer's income tax liability
11 for the year, the excess amount may be carried forward as
12 provided in the Hydrogen Fuel Replacement Tax Credit Act.

13 (c) The Department shall allocate available credit to
14 taxpayers in accordance the rules set forth in the Hydrogen
15 Fuel Replacement Tax Credit Act.

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

19 (e) The Department shall certify the available credit for
20 transfer by an assignor in accordance with the rules set forth
21 in the Hydrogen Fuel Replacement Tax Credit Act.

22 (f) The Department may adopt rules to implement the
23 Hydrogen Fuel Replacement Tax Credit Act.

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