

HB3023



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3023

Introduced 2/16/2023, by Rep. Lawrence "Larry" Walsh, Jr.

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/234 new

Creates the Hydrogen Fuel Replacement Tax Credit Act. Creates an income tax credit 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 that the credit shall be increased by \$0.15 per kilogram of eligible zero-carbon hydrogen if the eligible taxpayer uses contractors or employs labor at a project location in an equity investment eligible community. Effective immediately.

LRB103 30261 HLH 56689 b

A BILL FOR

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, promote
3 decarbonization, and encourage the production and use of
4 zero-carbon hydrogen for the purpose of improving the State's
5 air quality.

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

7 "Attestation" means a statement that is made under penalty
8 of perjury by a producer under Section 13 and Section 30.

9 "Department" means the Department of Revenue.

10 "Eligible taxpayer" means a taxpayer that:

11 (1) is subject to subsections (a) and (b) of Section
12 201 of the Illinois Income Tax Act;

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

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

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

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

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

1 System run by PJM Interconnection, LLC.

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

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

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

9 "Zero-carbon hydrogen" means hydrogen that has a carbon
10 intensity of 0.45 or below and complies with the rules of the
11 hydrogen production tax credit available under 26 U.S.C. 45V.

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

15 Section 15. Attestation required. Each taxpayer seeking
16 credits under this Act shall submit with its application for
17 credits under this Act an attestation from the producer, made
18 under penalty of perjury, that the producer:

19 (a) has achieved a carbon intensity of 0.45 or below; and

20 (b) has complied with the rules of the hydrogen production
21 tax credit available under 26 U.S.C. 45V in determining the
22 carbon intensity.

23 Section 20. Allowable credit.

24 (a) For tax years ending on or after December 31, 2023, a

1 credit is allowed against the taxes imposed on an eligible
2 taxpayer under subsections (a) and (b) of Section 201 of the
3 Illinois Income Tax Act in an amount equal to \$1 per kilogram
4 of eligible zero-carbon hydrogen used by the eligible taxpayer
5 during the tax year for which a credit is sought.

6 (b) The allowable credit provided in subsection (a) of
7 this Section shall be increased by \$0.15 per kilogram of
8 eligible zero-carbon hydrogen if the use of the zero-carbon
9 hydrogen by the eligible taxpayer occurs in an environmental
10 justice community.

11 (c) The allowable credit provided in subsection (a) of
12 this Section shall be increased by \$0.15 per kilogram of
13 eligible zero-carbon hydrogen if the eligible taxpayer uses
14 contractors or employs labor at a project location in an
15 equity investment eligible community, as defined in Section
16 5-5 of the Energy Transition Act on the effective date of this
17 Act, to convert existing equipment or install new equipment to
18 enable eligible zero-carbon hydrogen use for which a credit is
19 claimed under this Act.

20 (d) An eligible taxpayer may not earn tax credits for
21 eligible zero-carbon hydrogen use in an amount that exceeds
22 the amount of tax credit allocated to it under Section 25. The
23 credit or credits may not reduce the taxpayer's liability to
24 less than zero. An eligible taxpayer may carry forward any tax
25 credit that has been earned but not used (or transferred
26 pursuant to Section 35) for a period of up to 5 tax years after

1 the last tax year in which a credit was earned by that taxpayer
2 for eligible zero-carbon hydrogen use. Unused credits that are
3 not transferred pursuant to Section 35 shall expire at the end
4 of this 5-year carryforward period.

5 (e) Labor performed on or after the effective date of this
6 Act to convert the eligible taxpayer's existing equipment or
7 to install for the eligible taxpayer new equipment that will
8 enable eligible zero-carbon hydrogen use for which a credit is
9 claimed under this Act shall be performed by general
10 contractors that enter into a project labor agreement, as
11 defined by the Illinois Power Agency Act, prior to
12 construction. The project labor agreement shall be filed with
13 the Department. At a minimum, the project labor agreement must
14 provide the names, addresses, and occupations of the owner of
15 the facilities and the individuals representing the labor
16 organization employees participating in the project labor
17 agreement consistent with the Project Labor Agreements Act.
18 The agreement must also specify the terms and conditions as
19 defined by the Illinois Power Agency Act. Any information
20 submitted pursuant to this subsection (e) shall be considered
21 commercially sensitive information.

22 Section 25. Credit availability. Beginning with the State
23 fiscal year ending June 30, 2024, and in each subsequent State
24 fiscal year, the total amount of tax credits to be allocated by
25 the Department to taxpayers for eligible zero-carbon hydrogen

1 use occurring in a tax year ending during that State fiscal
2 year shall not exceed \$100,000,000, plus the amount of tax
3 credits that were available to be allocated for eligible
4 zero-carbon hydrogen use in the tax year ending during the
5 prior State fiscal year but were not allocated.

6 Section 30. Credit allocation by the Department.

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

16 (b) The Department shall notify each taxpayer of the
17 dollar amount of credit allocated to that taxpayer for
18 zero-carbon hydrogen use. That notification shall occur by
19 March 1 following the date on which the taxpayer notifies the
20 Department of its estimated zero-carbon hydrogen use under
21 subsection (a). The taxpayer must notify the Department within
22 30 days after the notification by the Department under this
23 subsection (b) if it wishes to surrender its allocation.

24 (c) The Department shall not allocate any credit under
25 this Act to a taxpayer for a tax year that ends on or after

1 December 31, 2032 if the taxpayer has not previously claimed a
2 credit under this Act for eligible zero-carbon hydrogen use.

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

6 (e) The amount of credit allocated to a taxpayer by the
7 Department in subsection (b) of this Section shall be the
8 maximum credit that the taxpayer is permitted to earn for the
9 tax year ending in the State fiscal year for which credits are
10 allocated.

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

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

4 Section 35. Prioritization of tax credit allocation. If
5 the total amount of tax credits sought by taxpayers under
6 Section 25 exceeds the total amount of tax credits that are
7 allowed to be allocated under Section 20, the Department shall
8 prioritize allocation as follows:

9 (1) any credits shall be allocated to eligible
10 taxpayers who previously received a credit allocation and
11 who engaged in eligible zero-carbon hydrogen use in the
12 prior calendar year, up to a maximum amount equal to their
13 most recent allocation. If there are insufficient credits
14 available, then each taxpayer's allocation shall be
15 pro-rated by the same percentage reduction.

16 (2) any remaining credits for the fiscal year shall be
17 allocated to taxpayers in proportion to their requested
18 allocation, excluding any amount already allocated to a
19 taxpayer pursuant to subsections (1) of this Section. To
20 the extent there are remaining credits available, any such
21 allocation shall be conducted on a quarterly basis.

22 (3) Any eligible taxpayer seeking an allocation under
23 this section shall provide to the Department an
24 attestation that such taxpayer has the intent and
25 capability to use the entirety of any such allotment of

1 eligible zero-carbon hydrogen.

2 (4) Report. On an annual basis, the Department shall
3 publish a report describing the total aggregate
4 allocations requested by all taxpayers, the total
5 aggregate allocations granted by the Department, the total
6 aggregate credits actually claimed by taxpayers and the
7 total penalties due pursuant to Section 25f.

8 Section 40. Transfer of credits.

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

22 (b) The Department shall certify the eligibility of the
23 credit to be transferred by the assignor upon assignor's
24 application to the Department. The application shall set forth
25 the hydrogen producer's name and attestation, the amount of

1 all credits earned and previously used by the assignor, the
2 amount of all credits earned and unused by the assignor, the
3 amount of credits proposed to be transferred, and the
4 assignee's name and tax identification number. The Department
5 shall thereafter certify whether the amount of credits
6 proposed to be transferred to the assignee is available to the
7 assignor.

8 Section 45. Severability. If any provision of this Act or
9 its application to any person or circumstance is held invalid,
10 the invalidity of that provision or application does not
11 affect other provisions or applications of this Act that can
12 be given effect without the invalid provision or application.

13 Section 900. The Illinois Income Tax Act is amended by
14 adding Section 234 as follows:

15 (35 ILCS 5/234 new)

16 Sec. 234. Hydrogen Fuel Replacement Tax Credit Act.
17 Taxpayers who are awarded a credit under the Hydrogen Fuel
18 Replacement Tax Credit Act are entitled to a credit as
19 provided in that Act.

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