

# SB1711



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1711

Introduced 2/9/2023, by Sen. Laura Ellman

### SYNOPSIS AS INTRODUCED:

New Act  
35 ILCS 5/240 new

Creates the Hydrogen Fuel Replacement Tax Credit Act. Creates an income tax credit for 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 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.

LRB103 05880 HLH 50901 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 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) zero-carbon hydrogen can be produced through the  
18 electrolysis of water using electricity generated by  
19 emissions-free energy sources; and

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

1           This Act is intended to encourage the replacement of  
2 fossil fuels and hydrogen produced from fossil fuels with  
3 zero-carbon hydrogen for the purposes of promoting  
4 decarbonization and improving the State's air 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 and verification  
14 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           If the taxpayer is an individual, partnership, trust,  
20 estate, or Subchapter S corporation, then the taxpayer is an  
21 eligible taxpayer only to the extent that the taxpayer's  
22 Illinois income tax liability is due to an equity interest in a  
23 partnership that uses zero-carbon hydrogen, a Subchapter S  
24 corporation that uses zero-carbon hydrogen, or a similar  
25 pass-through entity that uses zero-carbon hydrogen.

1 "Eligible zero-carbon hydrogen use" means the consumption,  
2 in Illinois, of zero-carbon hydrogen.

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

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

11 "MISO" means Midcontinent Independent System Operator,  
12 Inc.

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

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

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

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

26 "Regional grid" means the territory served by a specific

1 regional transmission organization.

2 "Regional transmission organization" means PJM  
3 Interconnection, LLC; Midcontinent Independent System  
4 Operator; or any other entity charged with regional real-time  
5 balancing of electricity generation and load.

6 "Zero-carbon hydrogen" means hydrogen that is produced  
7 through electrolysis by an electrolyzer powered from  
8 electricity generated by one or more zero-emission facilities  
9 or qualified renewable energy resources that, in either  
10 instance, are located in the same regional grid where the  
11 zero-carbon hydrogen is produced.

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

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

1 production of the volume of hydrogen for which a tax credit is  
2 claimed. The attestation shall also confirm that the hydrogen  
3 for which a tax credit is claimed has not been produced during  
4 an applicable PJM performance assessment interval or an  
5 applicable MISO maximum generation event. In so attesting, the  
6 producer may credit a portion of a monthly attribute  
7 certificate to a specific hour within that month in an amount  
8 equal to the generation quantity reflected in the certificate,  
9 multiplied by the ratio of the zero-emission facility's or  
10 qualified renewable energy resource's total generation in that  
11 hour to its total monthly generation. Each taxpayer seeking  
12 credits under this Act shall also be required to submit to the  
13 Department, at the time of the tax filing for the applicable  
14 year, documentation verifying the facts set forth in the  
15 attestation required by this Section.

16 Section 15. Allowable credit.

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

23 (b) The allowable credit provided in subsection (a) of  
24 this Section shall be increased by \$0.15 per kilogram of  
25 eligible zero-carbon hydrogen if the use of the zero-carbon

1 hydrogen by the eligible taxpayer occurs in an equity  
2 investment eligible community, after consultation with the  
3 community and reasonable efforts to accommodate the community.

4 (c) The allowable credit provided in subsection (a) of  
5 this Section shall be increased by \$0.15 per kilogram of  
6 eligible zero-carbon hydrogen if the eligible taxpayer uses  
7 contractors or employs labor at a project location in an  
8 equity investment eligible community, as defined in Section  
9 5-5 of the Energy Transition Act on the effective date of this  
10 Act, to convert existing equipment or install new equipment to  
11 enable eligible zero-carbon hydrogen use for which a credit is  
12 claimed under this Act.

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

24 (e) Labor performed on or after the effective date of this  
25 Act to convert the eligible taxpayer's existing equipment or  
26 install for the eligible taxpayer new equipment to enable

1 eligible zero-carbon hydrogen use for which a credit is  
2 claimed under this Act shall be performed by general  
3 contractors that enter into a project labor agreement, as  
4 defined by the Illinois Power Agency Act, prior to  
5 construction. The project labor agreement shall be filed with  
6 the Department. At a minimum, the project labor agreement must  
7 provide the names, addresses, and occupations of the owner of  
8 the facilities and the individuals representing the labor  
9 organization employees participating in the project labor  
10 agreement consistent with the Project Labor Agreements Act.  
11 The agreement must also specify the terms and conditions as  
12 defined by the Illinois Power Agency Act. Any information  
13 submitted pursuant to this subsection (e) shall be considered  
14 commercially sensitive information.

15 Section 20. Credit availability. Beginning with the State  
16 fiscal year ending on June 30, 2024, and in each subsequent  
17 State fiscal year, the total amount of tax credits to be  
18 allocated by the Department to taxpayers for eligible  
19 zero-carbon hydrogen use occurring in a tax year ending during  
20 that State fiscal year shall not exceed \$100,000,000, plus the  
21 amount of tax credits that were available under this Section  
22 to be allocated for eligible zero-carbon hydrogen use in the  
23 tax year ending during the prior State fiscal year but were not  
24 allocated.



1 Section 25. Credit allocation by the Department.

2 (a) Taxpayers shall notify the Department, by July 1,  
3 2023, of the dollar amount of credit the taxpayer estimates it  
4 will earn for eligible zero-carbon hydrogen use in tax years  
5 ending on or after December 31, 2023 and ending on or before  
6 June 30, 2024. For tax years ending on or after July 1, 2024,  
7 taxpayers shall notify the Department of the dollar amount of  
8 credit the taxpayer estimates it will earn for eligible  
9 zero-carbon hydrogen use by January 1 immediately preceding  
10 the first day of the fiscal year in which the tax year ends.

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

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

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

26 (e) The amount of credit allocated to a taxpayer by the

1 Department in subsection (b) of this Section shall be the  
2 maximum credit that the taxpayer is permitted to earn for the  
3 tax year ending in the State fiscal year for which credits are  
4 allocated.

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

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

24 Section 30. Prioritization of tax credit allocation. If  
25 the total amount of tax credits sought by taxpayers under

1 Section 25 exceeds the total amount of tax credits that are  
2 allowed to be allocated under Section 20, the Department shall  
3 prioritize allocation as follows:

4 (1) First, tax credits shall be allocated to eligible  
5 taxpayers who (i) participate in a United States  
6 Department of Energy Hydrogen Hub for their associated  
7 eligible zero-carbon hydrogen use, (ii) purchase hydrogen  
8 from a participant in a United States Department of Energy  
9 Hydrogen Hub for their associated eligible zero-carbon  
10 hydrogen use, or (iii) purchase electricity to produce and  
11 use zero-carbon hydrogen from a participant in a United  
12 States Department of Energy Hydrogen Hub for their  
13 associated eligible zero-carbon hydrogen use.

14 (2) Next, any remaining credits shall be allocated to  
15 eligible taxpayers who previously received a credit  
16 allocation and who engaged in eligible zero-carbon  
17 hydrogen use in the prior calendar year, in an amount  
18 equal to the most recent allocation; however, if there are  
19 insufficient remaining credits available, then priority  
20 shall be given to such eligible taxpayers based on the  
21 amount of eligible zero-carbon hydrogen they used in the  
22 prior calendar year, in order from greatest to least.

23 (3) Finally, any remaining credits shall be allocated  
24 to taxpayers in proportion to their requested allocation,  
25 excluding any amount already allocated to a taxpayer  
26 pursuant to subsections (1) and (2) of this Section.

1 Section 35. Transfer of credits.

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

15 (b) The Department shall certify the eligibility of the  
16 credit to be transferred by the assignor upon assignor's  
17 application to the Department. The application shall set forth  
18 the hydrogen producer's name and attestation, the amount of  
19 all credits earned and previously used by the assignor, the  
20 amount of all credits earned and unused by the assignor, the  
21 amount of credits proposed to be transferred, and the  
22 assignee's name and tax identification number. The Department  
23 shall thereafter certify whether the amount of credits  
24 proposed to be transferred to the assignee is available to the  
25 assignor.

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

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

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

10 (35 ILCS 5/240 new)

11 Sec. 240. Hydrogen fuel replacement tax credits.

12 (a) For tax years ending on or after December 31, 2023 and  
13 before January 1, 2043, an eligible taxpayer who qualifies for  
14 a credit under the Hydrogen Fuel Replacement Tax Credit Act is  
15 entitled to a credit against the taxes imposed under  
16 subsections (a) and (b) of Section 201 of this Act as provided  
17 in that Act. If the eligible taxpayer is a partnership or  
18 Subchapter S corporation, the credit shall be allowed to the  
19 partners or shareholders in accordance with the determination  
20 of income and distributive share of income under Sections 702  
21 and 704 and Subchapter S of the Internal Revenue Code.

22 (b) If the amount of any tax credit awarded under this

1 Section exceeds the qualified taxpayer's income tax liability  
2 for the year, the excess amount may be carried forward as  
3 provided in the Hydrogen Fuel Replacement Tax Credit Act.

4 (c) The Department shall allocate available credits to  
5 taxpayers in accordance with the Hydrogen Fuel Replacement Tax  
6 Credit Act.

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

10 (e) The Department shall certify the available credit for  
11 transfer by an assignor in accordance with the Hydrogen Fuel  
12 Replacement Tax Credit Act.

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