

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1215 Session of
2023

INTRODUCED BY VITALI, MAY 23, 2023

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 23, 2023

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in regional clean hydrogen hubs, further
11 providing for definitions, for eligibility and for
12 application and approval of tax credit, providing for
13 qualifying clean hydrogen uses and further providing for
14 guidelines and regulations.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 1751-L of the act of March 4, 1971
18 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
19 by adding definitions to read:

20 Section 1751-L. Definitions.

21 The following words and phrases when used in this subarticle
22 shall have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 "Carbon intensity ratio." The number of kilograms of carbon

dioxide equivalent emitted per kilogram of hydrogen produced.

The following shall apply:

(1) Carbon dioxide equivalent emissions shall include all well to gate emission for the production of clean hydrogen, including any leakage and all inputs used to produce hydrogen, including electricity and natural gas.

(2) Chemicals included in the calculation of carbon dioxide equivalent emissions shall include methane, carbon dioxide and any other greenhouse gas emitted during the hydrogen production process.

* * *

"Qualifying clean hydrogen production method." A method of clean hydrogen production that meets at least one of the following conditions:

(1) The clean hydrogen is produced within the carbon intensity ratios, including any carbon dioxide equivalent emissions offset using carbon capture and storage as described in section 1753-L(a)(1) if using natural gas as feedstock.

(2) The clean hydrogen is produced using electricity from a zero-emission facility and meets the following requirements:

(i) The electricity generated by the zero-emission facility is generated in the same one-hour period as the clean hydrogen is produced, as verified by hourly renewable energy credits from the regional transmission organization.

(ii) The zero-emission facility became operational no earlier than 12 months prior to the start of operation of the hydrogen production facility.

1 (iii) The zero-emission facility and the
2 electrolyzer are located within the same load balancing
3 area.

4 "Qualifying clean hydrogen use." A use of hydrogen at a
5 project facility in accordance with section 1753.1-L, as
6 determined by the Department of Environmental Protection.

7 "Zero-emission facility." A Tier I alternative energy source
8 as defined in section 2 of the act of November 30, 2004
9 (P.L.1672, No.213), known as the Alternative Energy Portfolio
10 Standards Act, except for biologically derived methane gas,
11 biomass energy and coal mine methane.

12 Section 2. Section 1752-L(a) of the act is amended by adding
13 paragraphs to read:

14 Section 1752-L. Eligibility.

15 (a) Demonstration.--In order to be eligible to receive a tax
16 credit, a company shall demonstrate the following:

17 * * *

18 (3) The end use of the clean hydrogen is a qualifying
19 clean hydrogen use.

20 (4) The clean hydrogen has been produced using a
21 qualifying clean hydrogen production method.

22 * * *

23 Section 3. Section 1753-L(a), (b) and (c) of the act, added
24 November 3, 2022 (P.L.1695, No.108), are amended to read:

25 Section 1753-L. Application and approval of tax credit.

26 (a) Rate.--The tax credit shall be equal to [any] one [or
27 more] of the following:

28 (1) \$0.81 per kilogram of clean hydrogen produced with a
29 carbon intensity ratio of 2.5 or less purchased from a
30 Regional Clean Hydrogen Hub within this Commonwealth and used

1 in manufacturing at the project facility by a qualified
2 taxpayer[.]; or

3 [(2) \$0.47 per unit of natural gas that is purchased and
4 used in manufacturing at the project facility by a qualified
5 taxpayer.]

6 (3) \$1.00 per kilogram of clean hydrogen produced with a
7 carbon intensity ratio of .45 or less purchased from a
8 Regional Clean Hydrogen Hub within this Commonwealth and used
9 in manufacturing at the project facility by a qualified
10 taxpayer.

11 (b) Application.--

12 (1) A qualified taxpayer may apply to the department for
13 a tax credit under this section.

14 (2) The application must be submitted to the department
15 by March 1 for the tax credit claimed for clean hydrogen or
16 natural gas purchased and used in manufacturing by the
17 qualified taxpayer at the project facility during the prior
18 calendar year.

19 (2.1) The application shall include documentation that
20 the following requirements have been met:

21 (i) The clean hydrogen was produced using a
22 qualifying clean hydrogen production method.

23 (ii) The end use of the clean hydrogen is a
24 qualifying clean hydrogen use.

25 (3) The application must be on a form required by the
26 department which shall include the following:

27 [(i) information required by the department to
28 document the amount of natural gas purchased and used in
29 manufacturing at the project facility;]

30 (ii) information required by the department to

1 document the amount of clean hydrogen to be purchased
2 from sources within the Regional Clean Hydrogen Hub in
3 this Commonwealth and used in manufacturing at the
4 project facility;

5 (iii) information required by the department to
6 verify that the applicant is a qualified taxpayer; [and]

7 (iii.1) certification from the Department of
8 Environmental Protection that the application meets the
9 requirements of this paragraph; and

10 (iv) any other information as the department deems
11 appropriate.

12 (c) Review and approval.--

13 (1) The department shall review the applications and
14 shall issue an approval or disapproval by May 1.

15 [(2) Upon approval, the department shall issue a
16 certificate stating the amount of the tax credit granted for
17 natural gas purchased and used in manufacturing at the
18 project facility in the prior calendar year.]

19 (3) Upon approval, the department shall issue a
20 certificate stating the amount of the tax credit granted for
21 clean hydrogen purchased from sources located in a Regional
22 Clean Hydrogen Hub located in this Commonwealth and used in
23 manufacturing at the project facility in the prior calendar
24 year.

25 * * *

26 Section 4. The act is amended by adding a section to read:
27 Section 1753.1-L. Qualifying clean hydrogen uses.

28 (a) Initial qualifying uses.--As of the effective date of
29 this section, the following shall constitute a qualifying clean
30 hydrogen use:

1 (1) clean hydrogen that is replacing the use of hydrogen
2 produced by a method other than a qualifying clean hydrogen
3 production method;

4 (2) as a feedstock for:

5 (i) fertilizer; or

6 (ii) low-carbon fuels to be used in aviation or
7 shipping;

8 (3) for use in a sector for which electrification is not
9 feasible, as determined by the Department of Environmental
10 Protection; or

11 (4) long-duration energy storage, if the clean hydrogen
12 achieves the carbon intensity ratio in section 1753-L(a)(3).

13 (b) Qualifying use determination.--No more than six months
14 following the effective date of this section and no less than
15 every two years thereafter, the Department of Environmental
16 Protection shall determine whether any additional uses meet the
17 definition of qualifying clean hydrogen use and promulgate
18 regulations accordingly.

19 (c) Prohibited uses.--The following shall not be considered
20 a qualifying clean hydrogen use:

21 (1) Any use of hydrogen, if the hydrogen is blended into
22 or distributed through natural gas distribution networks.

23 (2) Fuel for use in class 1 through class 7 vehicles as
24 class is defined under 40 CFR 1037.801 (relating to
25 definitions).

26 Section 5. Section 1760-L of the act, added November 3, 2022
27 (P.L.1695, No.108), is amended to read:

28 Section 1760-L. Guidelines and regulations.

29 [The department] (a) General rule.--The department shall
30 develop written guidelines for the implementation of this

1 subarticle. [The guidelines shall be in effect until the
2 department promulgates regulations for the implementation of the
3 provisions of this subarticle.]

4 (b) Contents.--The Environmental Quality Board shall
5 promulgate regulations that include:

6 (1) The determination and certification of qualifying
7 clean hydrogen production methods, including calculating the
8 carbon intensity ratio for clean hydrogen produced under this
9 subarticle.

10 (2) Criteria for the determination of what constitutes a
11 qualifying clean hydrogen use and a list of qualifying uses.

12 (3) Other regulations as necessary to implement this
13 subarticle.

14 Section 6. This act shall take effect in 60 days.