

ASSEMBLY BILL

No. 1312

Introduced by Assembly Member Rodriguez
(Coauthors: Assembly Members Daly, Frazier, Gipson, O'Donnell,
and Quirk)
(Coauthor: Senator Dodd)

February 19, 2021

An act to amend Section 43869 of, and to add and repeal Section 43018.10 of, the Health and Safety Code, and to add and repeal Sections 17053, 17053.1, 23650, and 23650.1 of the Revenue and Taxation Code, relating to vehicular fuels.

LEGISLATIVE COUNSEL'S DIGEST

AB 1312, as introduced, Rodriguez. Vehicular fuels: renewable and clean hydrogen: income tax: credit.

(1) Existing law requires the State Energy Resources Conservation and Development Commission and the State Air Resources Board, on or before December 31 of each year, to jointly review and report on progress toward establishing a hydrogen-fueling network that provides the coverage and capacity to fuel vehicles requiring hydrogen fuel that are being placed into operation in the state.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

This bill would allow a green hydrogen, as defined, production facility and distribution credit against the personal income and corporate income

taxes for each taxable year beginning on or after January 1, 2023, and before January 1, 2033, to a qualified taxpayer for qualified building or qualified distribution costs, or both, as defined. The bill would also allow a hydrogen infrastructure credit against those taxes for each taxable year beginning on or after January 1, 2023, and before January 1, 2033, to a qualified taxpayer for qualified building costs, as defined. The bill would decrease the green hydrogen production facility and distribution credit as the amount of green hydrogen produced on average per day in the state increases and would decrease the hydrogen infrastructure credit as the number of public hydrogen fueling stations in operation in the state increases. The bill would limit the total amount of the green hydrogen production facility and distribution credit to \$1,000,000,000 over all available taxable years, as specified, and would limit the hydrogen infrastructure credit to \$500,000,000 per taxable year. The bill would require each credit to be allocated to qualified taxpayers by the Franchise Tax Board in the order the returns are received by the board.

This bill would, except as specified, require the State Air Resources Board, on or before January 1 of each year, to provide certification to the Franchise Tax Board on the average amount of green hydrogen produced in the state and the number of publicly available hydrogen fueling stations in operation in the state for the prior calendar year. The bill would repeal this requirement on December 1, 2033.

This bill would also include additional information required for any bill authorizing a new tax expenditure.

(2) Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution and requires the state board, in partnership with the State Energy Resources Conservation and Development Commission and in conjunction with other state agencies, to develop and adopt a state plan to increase the use of alternative fuels, as defined. Existing law requires the state board to adopt regulations that will ensure that, in any year immediately following a 12-month period in which the mass of hydrogen fuel dispensed for transportation purposes in California exceeds 3,500 metric tons, no less than 33.3% of the hydrogen produced or dispensed in California for motor vehicles be made from eligible renewable energy resources, as defined.

This bill would require those regulations to require that, on a statewide basis, no less than 33.3% of the hydrogen produced or dispensed in California for motor vehicles be green hydrogen. The bill would require

that the green percentage be increased to 44% by December 31, 2024, 52% by December 31, 2027, 60% by December 31, 2030, and would require that by December 31, 2045, 100% of the hydrogen produced or dispensed in California for motor vehicles be either green hydrogen or clean hydrogen, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) It is the goal of the state to reduce emissions of greenhouse
4 gases, including carbon dioxide, methane, nitrous oxide, sulfur
5 hexafluoride, hydrofluorocarbons, and perfluorocarbons to 40
6 percent below the 1990 levels by 2030.
7 (b) It is the goal of the state to be carbon neutral by 2045.
8 (c) It is the goal of the state to put at least 5,000,000 zero
9 emission vehicles on the road by 2030.
10 (d) It is the goal of the state that all state entities work with the
11 private sector and all appropriate levels of government to spur the
12 construction and installation of 200 hydrogen stations by 2025.
13 (e) It is the goal of the state that 100 percent of all in-state sales
14 of new passenger cars and trucks be zero emission by 2035.
15 (f) It is the goal of the state that 100 percent of medium and
16 heavy-duty vehicles in the state be zero emission by 2045.
17 (g) Assembly Bill 8 (Perea, Chapter 401, Statutes 2013, hereafter
18 “AB 8”) reauthorized the Alternative and Renewable Fuel and
19 Vehicle Technology Program, currently called the Clean
20 Transportation Program which has supported the introduction and
21 early development of hydrogen fueling infrastructure. The Clean
22 Transportation Program requires 20 percent of its funding to be
23 made available via grants for the development of at least 100
24 hydrogen fueling stations. Over the course of the program, private
25 sector investments have increased from 30 percent to approximately
26 70 percent of station costs. Over the same period, the fueling
27 capacity of stations has more than doubled despite total station
28 costs remaining the same.
29 (h) In the 2020 evaluation of AB 8, the State Air Resources
30 Board notes that the historical pace of fuel cell electric vehicle

1 deployment is similar to battery electric vehicle deployment in the
2 early adoption years of that technology.

3 (i) In the November 2020 Hydrogen Station Network
4 Self-Sufficiency Analysis, the State Air Resources Board found
5 that hydrogen station network self-sufficiency is achievable within
6 the decade with additional state support beyond AB 8.

7 (j) Self-sufficiency for light-duty hydrogen refueling stations
8 can be achieved by 2030 with state support up to \$300,000,000
9 with nearly 90 percent of network development and operations
10 funded through private capital.

11 (k) Hydrogen fuel cell electric vehicles are electrically driven
12 vehicles that produce zero emissions of greenhouse gases, criteria
13 air pollutants, and toxic air contaminants.

14 (l) Hydrogen fuel cell electric vehicles are a commercially
15 available, one-for-one replacement technology for conventional,
16 petroleum-fueled vehicles in heavy-, medium-, and light-duty
17 applications.

18 (m) Reaching scale will be the biggest driver of cost reductions,
19 notably in the production and distribution of hydrogen and the
20 manufacturing of system components.

21 (n) It is the goal of the state to install 1,000 publicly available
22 hydrogen refueling stations by 2030, which will provide fueling
23 access to 97 percent of disadvantaged communities and 94 percent
24 of the state overall. Per the State Air Resources Board's 2018
25 evaluation of AB 8, 1,000 hydrogen refueling stations that are
26 strategically located provide nearly the same coverage as the state's
27 existing 8,000 station gasoline fueling network.

28 (o) One thousand hydrogen fueling stations will serve
29 approximately 1,000,000 hydrogen fuel cell electric vehicles
30 effectively displacing 693,500,000 gallons per year of gasoline,
31 2,700,000 metric tons of greenhouse gases, and 39 metric tons of
32 nitrous oxides.

33 (p) Incentivizing a robust fueling production market and build
34 out of 1,000 stations is estimated to generate more than
35 \$11,000,000,000 in private sector investment.

36 (q) Hydrogen fuel cell electric vehicles will be critical
37 components in achieving the state's air quality and climate change
38 goals through successful implementation of laws and regulations,
39 including, but not limited to, the Innovative Clean Transit
40 regulations (Article 4.3 (commencing with Section 2023) of

Chapter 1 of Division 3 of Title 13 of the California Code of Regulations), the Zero-Emission Airport Shuttle Regulation (Subarticle 14 (commencing with Section 95690.1) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations), the Zero-Emission Vehicle program (Sections 1962.2 and 1962.3 of Title 13 of the California Code of Regulations), the In-Use Off-Road Diesel-Fueled Fleets regulations (Article 4.8 (commencing with Section 2449) of Chapter 9 of Division 3 of Title 13 of the California Code of Regulations), the commercial harbor craft regulations (Section 2299.5 of Title 13 of, and Section 93118.5 of Title 17 of, the California Code of Regulations), the State Air Resources Board's proposed revisions to Title 13 (commencing with Section 1900) of the California Code of Regulations known as the Proposed Advanced Clean Trucks Regulation, which was approved by the State Air Resources Board on June 25, 2020, the state implementation plan required by the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the scoping plan adopted by the State Air Resources Board pursuant to Section 38561 of the Health and Safety Code, the short-lived climate pollutant reduction strategy adopted by the State Air Resources Board pursuant to Chapter 4.2 (commencing with Section 39730) of Part 2 of Division 26 of the Health and Safety Code and Chapter 13.1 (commencing with Section 42652) of Part 3 of Division 30 of the Public Resources Code, and reducing emissions of greenhouse gases to 40 percent below 1990 levels by 2030 pursuant to Section 38566 of the Health and Safety Code.

(r) The production of green hydrogen has many pathways, each with distinct potential benefits and cobenefits that promote California's existing public health and environmental quality goals, including, but not limited to, reducing the carbon intensity of transportation fuels, reducing emissions of greenhouse gases, including emissions of short-lived climate pollutants, and improving air quality by reducing emissions of criteria air pollutants from both vehicles and fuel production facilities.

(s) Although transportation is expected to be the primary source of demand for green hydrogen, power generation and storage, heat, and industrial processes are all additional sources of potential demand.

SEC. 2. Section 43018.10 is added to the Health and Safety Code, to read:

43018.10. (a) For purposes of this section, “green hydrogen” means hydrogen that is not produced from fossil fuel feedstock sources.

(b) On or before January 1, 2022, and on or before January 1 of each year thereafter, the state board shall provide to the Franchise Tax Board certifications for both of the following:

(1) The average amount of green hydrogen produced in the state, in kilograms, each day in the prior calendar year. The requirement to provide certification imposed by this paragraph shall become inoperative when the state board certifies that an average of 700,000 or more kilograms of green hydrogen are produced each day in the prior calendar year.

(2) The number of publicly available hydrogen fueling stations in operation in the state in the prior calendar year. The requirement to provide certification imposed by this paragraph shall become inoperative when the state board certifies that 1,000 or more publicly available hydrogen fueling stations are in operation in the state in the prior calendar year.

(c) This section shall remain in effect only until December 1, 2033, and as of that date is repealed.

SEC. 3. Section 43869 of the Health and Safety Code is amended to read:

43869. (a) The state board shall, no later than July 1, 2008, develop and, after at least two public workshops, adopt hydrogen fuel regulations to ensure the following:

(1) That state funding for the production and use of hydrogen fuel, as described in the California Hydrogen Highway Blueprint Plan, contributes to the reduction of greenhouse gas emissions, criteria air pollutant emissions, and toxic air contaminant emissions. The regulations, at a minimum, shall do all of the following:

(A) Require that, on a statewide basis, well-to-wheel emissions of greenhouse gases for the average hydrogen-powered vehicle fueled by hydrogen from fueling stations that receive state funds are at least 30 percent lower than emissions for the average new gasoline vehicle in California when measured on a per-mile basis.

(B) (i) Require that, on a statewide basis, no less than 33.3 percent of the hydrogen produced for, or dispensed by, fueling stations that receive state funds be made from eligible renewable

1 energy resources as defined in Section 399.12 of the Public Utilities
2 Code.

3 (ii) If the state board determines that there is insufficient
4 availability of hydrogen fuel from eligible renewable resources to
5 meet the 33.3-percent requirement of this subparagraph, the state
6 board may, after at least one public workshop and on a one-time
7 basis, reduce the requirement by an amount, not to exceed 10
8 percentage points, that the state board determines is necessary to
9 result in a renewable percentage requirement for hydrogen fuel
10 that is achievable.

11 (iii) If the executive officer of the state board determines that
12 it is not feasible for a public transit operator to use hydrogen fuel
13 made from eligible renewable resources, the executive officer may
14 exempt the operator from the requirements of this subparagraph
15 for a period of not more than five years and may extend the
16 exemption for up to five additional years.

17 (C) Prohibit hydrogen fuel producers from counting as a
18 renewable energy resource, pursuant to clause (i) of subparagraph
19 (B), any electricity produced from sources previously procured by
20 a retail seller and verifiably counted by the retail seller towards
21 meeting the renewables portfolio standard obligation, as required
22 by Article 16 (commencing with Section 399.11) of Chapter 2.3
23 of Part 1 of Division 1 of the Public Utilities Code.

24 (D) Require that all hydrogen fuel dispensed from fueling
25 stations that receive state funds be generated in a manner so that
26 local well-to-tank emissions of nitrogen oxides plus reactive
27 organic gases are at least 50 percent lower than well-to-tank
28 emissions of the average motor gasoline sold in California when
29 measured on an energy equivalent basis.

30 (E) Require that well-to-tank emissions of relevant toxic air
31 contaminants for hydrogen fuel dispensed from fueling stations
32 that receive state funds be reduced to the maximum extent feasible
33 at each site when compared to well-to-tank emissions of toxic air
34 contaminants of the average motor gasoline fuel on an energy
35 equivalent basis. In no case shall the toxic emissions be greater
36 than the emissions from gasoline on an energy equivalent basis.

37 (F) Require that providers of hydrogen fuel for transportation
38 in the state report to the state board the annual mass of hydrogen
39 fuel dispensed and the method by which the dispensed hydrogen
40 was produced and delivered.

(G) Authorize the state board, after at least one public workshop, to grant authority to the executive officer of the state board to exempt from this paragraph, for a period of no more than five years, hydrogen dispensing facilities constructed for small demonstration or temporary purposes. The exemption may be extended on a case-by-case basis upon a finding that the extension will not harm public health. The executive officer may limit the total number of exemptions by geographic region, including by air district, but the average annual mass of hydrogen dispensed from exempted facilities shall not exceed 10 percent of the total mass of hydrogen fuel dispensed for transportation purposes in the state.

(2) That, in any year immediately following a 12-month period in which the mass of hydrogen fuel dispensed for transportation purposes in California exceeds 3,500 metric tons, the production and direct use of hydrogen fuels for motor vehicles in the state, including, but not limited to, any hydrogen highway network that is developed pursuant to the California Hydrogen Highway Blueprint Plan, contributes to a reduced dependence on petroleum, as well as reductions in greenhouse gas emissions, criteria air pollutant emissions, and toxic air contaminant emissions. For the purpose of this paragraph, the regulations, at a minimum, shall do all of the following:

(A) Require that, on a statewide basis, well-to-wheel emissions of greenhouse gases for the average hydrogen-powered vehicle in California are at least 30 percent lower than emissions for the average new gasoline vehicle in California when measured on a per-mile basis.

(B) (i) Require that, on a statewide basis, no less than 33.3 percent of the hydrogen produced or dispensed in California for motor vehicles be made from eligible renewable energy resources as defined in Section 399.12 of the Public Utilities Code: *green hydrogen, as defined in Section 43018.10.*

(ii) *Require that, by December 31, 2024, on a statewide basis, no less than 44 percent of the hydrogen produced or dispensed in California for motor vehicles be green hydrogen.*

(iii) *Require that, by December 31, 2027, on a statewide basis, no less than 52 percent of the hydrogen produced or dispensed in California for motor vehicles be green hydrogen.*

1 (iv) *Require that, by December 31, 2030, on a statewide basis,*
2 *no less than 60 percent of the hydrogen produced or dispensed in*
3 *California for motor vehicles be green hydrogen.*

4 (v) *Require that, by December 31, 2045, on a statewide basis,*
5 *100 percent of the hydrogen produced or dispensed in California*
6 *for motor vehicles be either green hydrogen or clean hydrogen,*
7 *which is hydrogen produced from zero-carbon resources in*
8 *accordance with Section 454.53 of the Public Utilities Code.*

9 (C) Prohibit hydrogen fuel producers from counting as a
10 renewable energy resource, for purposes of subparagraph (B), any
11 electricity produced from sources previously procured by a retail
12 seller and verifiably counted by the retail seller towards meeting
13 the requirements established by the California Renewables
14 Portfolio Standard Program, as set forth in Article 16 (commencing
15 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
16 Public Utilities Code.

17 (D) Require that all hydrogen fuel dispensed in California for
18 motor vehicles be generated in a manner so that local well-to-tank
19 emissions of nitrogen oxides plus reactive organic gases are at
20 least 50 percent lower than well-to-tank emissions of the average
21 motor gasoline sold in California when measured on an energy
22 equivalent basis.

23 (E) Require that well-to-tank emissions of relevant toxic air
24 contaminants from hydrogen fuel produced or dispensed in
25 California be reduced to the maximum extent feasible at each site
26 when compared to well-to-tank emissions of toxic air contaminants
27 of the average motor gasoline fuel on an energy equivalent basis.
28 In no case shall the toxic emissions from hydrogen fuel be greater
29 than the toxic emissions from gasoline on an energy equivalent
30 basis.

31 (F) Authorize the state board, after at least one public workshop,
32 to grant authority to the executive officer of the state board to
33 exempt from this paragraph, for a period of no more than five
34 years, hydrogen dispensing facilities that dispense an average of
35 no more than 100 kilograms of hydrogen fuel per month. The
36 exemption may be extended on a case-by-case basis by the
37 executive officer upon a finding that the extension will not harm
38 public health. The executive officer may limit the total number of
39 exemptions by geographic region, including by air district, but the
40 average annual mass of hydrogen dispensed statewide from

1 exempted facilities shall not exceed 10 percent of the total mass
2 of hydrogen fuel dispensed for transportation purposes in the state.

3 (G) Authorize the state board, if it determines that reporting is
4 necessary to facilitate enforcement of the requirements of this
5 paragraph, to require that providers of hydrogen fuel for
6 transportation in the state report to the state board the annual mass
7 of hydrogen fuel dispensed and the method by which the dispensed
8 hydrogen was produced and delivered.

9 (b) Notwithstanding paragraph (2) of subdivision (a), the state
10 board may increase the 3,500-metric-ton threshold in paragraph
11 (2) of subdivision (a) by no more than 1,500 metric tons if at least
12 one of the following requirements is met:

13 (1) The 3,500-metric-ton threshold is first met prior to January
14 1, 2011.

15 (2) The state board determines that the 3,500-metric-ton
16 threshold has been met primarily due to hydrogen fuel consumed
17 in heavy duty vehicles.

18 (3) The state board determines at a public hearing that increasing
19 the threshold would accelerate the deployment of hydrogen fuel
20 cell vehicles in the state.

21 (c) The state board, in consultation with other relevant agencies
22 as appropriate, shall review the renewable resource requirements
23 adopted pursuant to this section every four years and shall increase
24 the renewable resource percentage requirements if it determines
25 that it is technologically feasible to do so and will not substantially
26 hinder the development of hydrogen as a transportation fuel in a
27 manner that is consistent with this section.

28 (d) The state board shall review the emission requirements
29 adopted pursuant to this section every four years and shall
30 strengthen the requirements if it determines it is technologically
31 feasible to do so and will not substantially hinder the development
32 of hydrogen as a transportation fuel in a manner that otherwise is
33 consistent with this section.

34 (e) The state board shall produce and periodically update a
35 handbook to inform and educate motor vehicle manufacturers,
36 hydrogen fuel producers, hydrogen service station operators, and
37 other interested parties on how to comply with the requirements
38 set forth in this section. This handbook shall be made available on
39 the agency's ~~Internet Web site~~ *internet website* on or before July
40 1, 2009.

1 (f) The Secretary for Environmental Protection shall convene
2 the California Environmental Protection Agency's Environmental
3 Justice Advisory Committee at least once annually to solicit the
4 committee's comments on the production and distribution of
5 hydrogen fuel in the state.

6 (g) The Secretary for Environmental Protection, in consultation
7 with the state board, shall recommend to the Legislature and the
8 Governor, on or before January 1, 2010, incentives that could be
9 offered to businesses within the hydrogen fuel industry and
10 consumers to spur the development of clean sources of hydrogen
11 fuel.

12 (h) Unless the context requires otherwise, the definitions set
13 forth in this subdivision govern the construction of this section:

14 (1) "Well-to-tank emissions" means emissions resulting from
15 production of a fuel, including resource extraction, initial
16 processing, transport, fuel production, distribution and marketing,
17 and delivery into the fuel tank of a consumer vehicle.

18 (2) "Well-to-wheel emissions" means emissions resulting from
19 production of a fuel, including resource extraction, initial
20 processing, transport, fuel production, distribution and marketing,
21 and delivery and use in a consumer vehicle.

22 SEC. 4. Section 17053 is added to the Revenue and Taxation
23 Code, to read:

24 17053. (a) For each taxable year beginning on or after January
25 1, 2023, and before January 1, 2033, there shall be allowed a green
26 hydrogen production facility and distribution credit against the
27 "net tax," as defined in Section 17039, to a qualified taxpayer for
28 qualified building or qualified distribution, or both, costs in an
29 amount based on green hydrogen production in the state, as
30 specified in subdivision (c).

31 (b) For purposes of this section:

32 (1) "Green hydrogen" has the same meaning as in Section
33 43018.10 of the Health and Safety Code.

34 (2) "Qualified building costs" means moneys paid or incurred
35 by a taxpayer in the taxable year in which the credit is claimed for
36 costs associated with construction of a green hydrogen production
37 facility in the state before the facility is in operation and
38 distribution.

39 (3) "Qualified distribution costs" means moneys paid or incurred
40 by a taxpayer in the taxable year in which the credit is claimed for

1 costs associated with assets that enable the movement of hydrogen
2 fuel from the point of production to the point of dispensing that
3 fuel into a vehicle.

4 (4) “Qualified taxpayer” means a person or entity that pays or
5 incurs qualified building or qualified distribution costs, or both,
6 in the taxable year.

7 (c) (1) The credit amount shall be determined as follows:

8 (A) Thirty percent of qualified building or qualified distribution,
9 or both, costs if less than 300,000 kilograms of green hydrogen
10 are produced on average per day in the state in the prior calendar
11 year.

12 (B) Twenty-five percent of qualified building or qualified
13 distribution, or both, costs if 300,000 to 500,000 kilograms of
14 green hydrogen are produced on average per day in the state in the
15 prior calendar year.

16 (C) Twenty percent of qualified building or qualified
17 distribution, or both, costs if 500,001 to 700,000 kilograms of
18 green hydrogen are produced on average per day in the state in the
19 prior calendar year.

20 (2) To make the determinations in paragraph (1), the Franchise
21 Tax Board shall use the certifications provided by the State Air
22 Resources Board pursuant to Section 43018.10 of the Health and
23 Safety Code.

24 (d) (1) Subject to paragraph (2), the aggregate amount of credit
25 that may be allocated by the Franchise Tax Board pursuant to this
26 section and Section 23650 shall not exceed one billion dollars
27 (\$1,000,000,000) across all taxable years and shall be allocated to
28 qualified taxpayers in the order original returns are received by
29 the Franchise Tax Board.

30 (2) Nine hundred million (\$900,000,000) of the credits available
31 pursuant to paragraph (1) shall be exclusively available for
32 qualified building costs and one hundred million (\$100,000,000)
33 of the credits shall be exclusively available for qualified
34 distribution costs.

35 (3) The determination of the Franchise Tax Board with respect
36 to the date the return is received and the allocation of the credit
37 may not be reviewed in any administrative or judicial proceeding.

38 (e) In the case where the credit allowed by this section exceeds
39 the “net tax,” the excess may be carried over to reduce the “net

1 tax” in the following year, and succeeding seven years if necessary,
2 until the credit is exhausted.

3 (f) Notwithstanding subdivision (c), the credit allowed by this
4 section shall be reduced by the amount of any deduction otherwise
5 allowed under this part for qualified building and distribution costs.

6 (g) This section shall remain in effect only until December 1,
7 2033, and as of that date is repealed.

8 SEC. 5. Section 17053.1 is added to the Revenue and Taxation
9 Code, to read:

10 17053.1. (a) For each taxable year beginning on or after
11 January 1, 2023, and before January 1, 2033, there shall be allowed
12 a hydrogen infrastructure credit against the “net tax,” as defined
13 in Section 17039, to a qualified taxpayer for qualified building
14 costs in an amount dependent upon the number of hydrogen fueling
15 stations in operation in the state, as specified in subdivision (c).

16 (b) For purposes of this section:

17 (1) “Heavy-duty hydrogen fueling station” means a station with
18 a minimum of two fueling positions capable of dispensing at least
19 2,500 kilograms of hydrogen per day.

20 (2) “Qualified building costs” means moneys paid or incurred
21 by the taxpayer in the taxable year in which the credit is claimed
22 for costs associated with construction of a hydrogen fueling station
23 before the station is in operation.

24 (3) “Qualified taxpayer” means a person or entity that pays or
25 incurs qualified building costs.

26 (4) “Retail hydrogen fueling station” means a station with a
27 minimum of two fueling positions capable of dispensing at least
28 800 kilograms of hydrogen per day.

29 (5) “Transit district fueling station” means a station with a
30 minimum of two fueling positions capable of dispensing at least
31 1,250 kilograms of hydrogen per day.

32 (c) (1) The credit amount shall be determined as follows:

33 (A) Thirty percent of building costs if less than 400 public
34 hydrogen fueling stations are in operation in the state in the prior
35 calendar year.

36 (B) Twenty-five percent of building costs if 400 to 599 public
37 hydrogen fueling stations are in operation in the state in the prior
38 calendar year.

1 (C) Twenty percent of building costs if 600 to 799 public
2 hydrogen fueling stations are in operation in the state in the prior
3 calendar year.

4 (D) Fifteen percent of building costs if 800 to 999 public
5 hydrogen fueling stations are in operation in the state in the prior
6 calendar year.

7 (2) To make the determinations in paragraph (1), the board shall
8 use the certifications provided by the State Air Resources Board
9 pursuant to Section 43018.10 of the Health and Safety Code.

10 (d) (1) A credit shall be allowed under this section and Section
11 23650.1 for qualified building costs for up to 700 retail hydrogen
12 fueling stations.

13 (2) A credit shall be allowed under this section and Section
14 23650.1 for qualified building costs for up to 200 heavy-duty
15 hydrogen fueling stations.

16 (3) A credit shall be allowed under this section and Section
17 23650.1 for qualified building costs for up to 100 transit district
18 hydrogen fueling stations.

19 (e) (1) The aggregate amount of credit that may be allocated
20 by the Franchise Tax Board pursuant to this section and Section
21 23650.1 shall not exceed five hundred million dollars
22 (\$500,000,000) per taxable year and shall be allocated to qualified
23 taxpayers in the order original returns are received by the Franchise
24 Tax Board.

25 (2) The determination of the Franchise Tax Board with respect
26 to the date the return is received and the allocation of the credit
27 may not be reviewed in any administrative or judicial proceeding.

28 (f) In the case where the credit allowed by this section exceeds
29 the “net tax,” the excess may be carried over to reduce the “net
30 tax” in the following year, and succeeding seven years if necessary,
31 until the credit is exhausted.

32 (g) Notwithstanding subdivision (c), the amount of credit
33 allowed under this section shall be reduced by the amount of any
34 deduction otherwise allowed under this part for qualified building
35 costs.

36 (h) This section shall remain in effect only until December 1,
37 2033, and as of that date is repealed.

38 SEC. 6. Section 23650 is added to the Revenue and Taxation
39 Code, to read:

23650. (a) For each taxable year beginning on or after January 1, 2023, and before January 1, 2033, there shall be allowed a green hydrogen production facility and distribution credit against the “tax,” as defined in Section 23036, to a qualified taxpayer for qualified building or qualified distribution, or both, in an amount based on green hydrogen production in the state, as specified in subdivision (c).

(b) For purposes of this section:

(1) “Green hydrogen” has the same meaning as in Section 43018.10 of the Health and Safety Code.

(2) “Qualified building costs” means moneys paid or incurred by a taxpayer in the taxable year in which the credit is claimed for costs associated with construction of a green hydrogen production facility in the state before the facility is in operation and distribution.

(3) “Qualified distribution costs” means moneys paid or incurred by a taxpayer in the taxable year in which the credit is claimed for costs associated with assets that enable the movement of hydrogen fuel from the point of production to the point of dispensing that fuel into a vehicle.

(4) “Qualified taxpayer” means a person or entity that pays or incurs qualified building or qualified distribution costs, or both, in the taxable year.

(c) (1) The credit amount shall be determined as follows:

(A) Thirty percent of qualified building or qualified distribution costs, or both, if less than 300,000 kilograms of green hydrogen are produced on average per day in the state in the prior calendar year.

(B) Twenty-five percent of qualified building or qualified distribution costs, or both, if 300,000 to 500,000 kilograms of green hydrogen are produced on average per day in the state in the prior calendar year.

(C) Twenty percent of qualified building or qualified distribution costs, or both, if 500,001 to 700,000 kilograms of green hydrogen are produced on average per day in the state in the prior calendar year.

(2) To make the determinations in paragraph (1), the Franchise Tax Board shall use the certifications provided by the State Air Resources Board pursuant to Section 43018.10 of the Health and Safety Code.

(d) (1) Subject to paragraph (2), the aggregate amount of credit that may be allocated by the Franchise Tax Board pursuant to this section and Section 23650 shall not exceed one billion dollars (\$1,000,000,000) across all taxable years and shall be allocated to qualified taxpayers in the order original returns are received by the Franchise Tax Board.

(2) Nine hundred million dollars (\$900,000,000) of the credits available pursuant to paragraph (1) shall be exclusively available for qualified building costs and one hundred million dollars (\$100,000,000) of the credits shall be exclusively available for qualified distribution costs.

(3) The determination of the Franchise Tax Board with respect to the date the return is received and the allocation of the credit may not be reviewed in any administrative or judicial proceeding.

(e) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(f) Notwithstanding subdivision (c), the credit allowed by this section shall be reduced by the amount of any deduction otherwise allowed under this part for qualified building and distribution costs.

(g) This section shall remain in effect only until December 1, 2033, and as of that date is repealed.

SEC. 7. Section 23650.1 is added to the Revenue and Taxation Code, to read:

23650.1. (a) For each taxable year beginning on or after January 1, 2023, and before January 1, 2033, there shall be allowed a hydrogen infrastructure credit against the “tax,” as defined in Section 23036, to a qualified taxpayer for qualified building costs in an amount dependent upon the number of hydrogen fueling stations in operation in the state, as specified in subdivision (c).

(b) For purposes of this section:

(1) “Heavy-duty hydrogen fueling station” means a station with a minimum of two fueling positions capable of dispensing at least 2,500 kilograms of hydrogen per day.

(2) “Qualified building costs” means moneys paid or incurred by the taxpayer in the taxable year in which the credit is claimed for costs associated with construction of a hydrogen fueling station before the station is in operation.

1 (3) “Qualified taxpayer” means a person or entity that pays or
2 incurs qualified building costs.

3 (4) “Retail hydrogen fueling station” means a station with a
4 minimum of two fueling positions capable of dispensing at least
5 800 kilograms of hydrogen per day.

6 (5) “Transit district fueling station” means a station with a
7 minimum of two fueling positions capable of dispensing at least
8 1,250 kilograms of hydrogen per day.

9 (c) (1) The credit amount shall be determined as follows:

10 (A) Thirty percent of building costs if less than 400 public
11 hydrogen fueling stations are in operation in the state in the prior
12 calendar year.

13 (B) Twenty-five percent of building costs if 400 to 599 public
14 hydrogen fueling stations are in operation in the state in the prior
15 calendar year.

16 (C) Twenty percent of building costs if 600 to 799 public
17 hydrogen fueling stations are in operation in the state in the prior
18 calendar year.

19 (D) Fifteen percent of building costs if 800 to 999 public
20 hydrogen fueling stations are in operation in the state in the prior
21 calendar year.

22 (2) To make the determinations in paragraph (1), the board shall
23 use the certifications provided by the State Air Resources Board
24 pursuant to Section 43018.10 of the Health and Safety Code.

25 (d) (1) A credit shall be allowed under this section and Section
26 23650.1 for qualified building costs for up to 700 retail hydrogen
27 fueling stations.

28 (2) A credit shall be allowed under this section and Section
29 23650.1 for qualified building costs for up to 200 heavy-duty
30 hydrogen fueling stations.

31 (3) A credit shall be allowed under this section and Section
32 23650.1 for qualified building costs for up to 100 transit district
33 hydrogen fueling stations.

34 (e) (1) The aggregate amount of credit that may be allocated
35 by the Franchise Tax Board pursuant to this section and Section
36 17053.1 shall not exceed five hundred million dollars
37 (\$500,000,000) per taxable year and shall be allocated to qualified
38 taxpayers in the order original returns are received by the Franchise
39 Tax Board.

(2) The determination of the Franchise Tax Board with respect to the date the return is received and the allocation of the credit may not be reviewed in any administrative or judicial proceeding.

(f) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(g) Notwithstanding subdivision (c), the amount of credit allowed under this section shall be reduced by the amount of any deduction otherwise allowed under this part for qualified building costs.

(h) This section shall remain in effect only until December 1, 2033, and as of that date is repealed.

SEC. 8. (a) In accordance with Section 41 of the Revenue and Taxation Code, the credits allowed by Sections 17053, 17053.1, 23650, and 23650.1 of the Revenue and Taxation Code, as added by this act, hereafter “credits,” is to reduce emissions of greenhouse gases, including carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, and perfluorocarbons to 40 percent below the 1990 levels by 2030, and for California to be carbon neutral by 2045.

(b) To measure whether the credits achieve their intended purpose, the following performance indicators shall be used:

(1) The number of credits claimed.

(2) The average credit amount claimed.

(c) (1) Notwithstanding Section 19542 of the Revenue and Taxation Code, by April 1, 2024, and annually thereafter, the Franchise Tax Board shall report to the Legislature the information under subdivision (b) for the credits.

(2) A report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section shall remain in effect only until December 1, 2033, and as of that date is repealed.