

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

PROPOSED STATUTE: THE NATIONWIDE HYDROGEN REFUELING NETWORK FUNDING ACT.

1. Purpose and Intent:

The purpose and intent of this statute are to establish a competitive, capital expense grant program to strategically deploy hydrogen refueling stations along designated alternative fuel corridors nationwide that will be accessible to all drivers of hydrogen fuel cell electric light duty vehicles.

2. Capital Expense Program:

A. ESTABLISHMENT—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall establish a capital expense grant program, entitled “America’s Hydrogen Highway Network Fund,” to award grants for the development of public hydrogen refueling stations designed for use by hydrogen electric fuel cell light duty vehicles.

B. FUNDING— The Secretary of Transportation shall fund the capital expense program created by this Act with the following amounts from the Highway Trust Fund: \$100 million in year 1 after enactment, \$ 200 million in year 2, \$300 million in year 3, \$ 400 million in year 4, \$500 million in year 5, and \$1 billion in year 6, for a total of \$2.5 billion in the first six years of the program.

C. FUNDING DISBURSEMENT— The Secretary shall dispense 80% of the amount of each annual allocation within twenty-four months of the allocation, 90% within thirty-six months of each annual allocation, and 95% within forty-eight months of each annual allocation.

D. USE OF FUNDS DISBURSED—The funds awarded by the Secretary may be used only for the acquisition of hydrogen fueling infrastructure equipment for the storage and delivery of hydrogen fuel for light duty vehicles at a publicly accessible station, including any shipping, installation, commissioning, or any other standard service costs included by the equipment supplier in the purchase of the equipment.

E. LIMITATION ON FEDERAL FUNDING—The Federal share of the cost of hydrogen fueling infrastructure equipment purchased with a capital expense grant under this Act shall not exceed 50 percent.

F. APPLICATIONS FOR FUNDING—To be eligible to receive a capital expense grant under this Act, an entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall require, including information to address the selection criteria identified subsection G below, and to assess the viability of the proposed project and the eligibility of the applicant.

G. SELECTION CRITERIA— In determining whether to award a capital expense grant under this Act, the Secretary shall independently consider the extent to which the applicant's proposal would—

(1) meet current and anticipated market demands for hydrogen fueling stations along an alternative fuel corridor designated under 23 U.S.C.A. section 21, regardless of whether the corridor is designated for electric charging or hydrogen, natural gas or propane refueling;

(2) enable or accelerate the construction of hydrogen fueling infrastructure that would be unlikely to be completed without Federal assistance;

(3) support a long-term competitive market for hydrogen fueling infrastructure that does not significantly impair the economic viability of pre-existing hydrogen fueling stations;

(4) use hydrogen produced by nuclear, wind or solar energy; and,

(5) promote the geographic diversity of hydrogen fueling infrastructure throughout the United States;

H. MULTIPLE APPLICATIONS—An entity may submit applications for a grant for hydrogen fueling infrastructure equipment at more than one location provided the locations are distant by at least three linear miles, but may not receive more than \$ 2,000,000 for any one station location's equipment or more than 25% of the annual available funding.

I. GRANT AGREEMENT—As a condition to receiving funds, the applicant shall enter into an agreement with the Secretary, wherein it agrees to the following terms and conditions, among others as the Secretary deems necessary and appropriate:

(1) The Secretary reserves the right to cancel the grant and secure from the applicant the return of the funding if the applicant fails to:

(a) demonstrate to the Secretary, within 18 months of the Secretary's approval of the grant, that it has complied with the requirements of any applicable state environmental quality review act and received all required state and local permits;

(b) open the station for retail fueling within 30 months of the Secretary's approval of the grant;

(c) operate and maintain the station for no less than five years as a publicly-accessible station for light duty vehicles; and,

(2) The applicant shall annually assess for no less than five years the estimated emissions that were reduced through the use of the hydrogen fueling infrastructure, which assessment shall be conducted using the Alternative Fuel Life-Cycle Environmental and Economic Transportation tool developed by Argonne National Laboratory (or a successor tool).

(3) The applicant may seek additional funding for a project from state or public authorities so long as the applicant pays at least 10% of the total capital costs of the project for which funding has been sought.

J. REPORTING RESPONSIBILITY OF STATION OPERATORS—Each eligible entity receiving funds under this Act shall collect and submit data to the National Renewable Energy Laboratory Alternative Fuels Data Center database and Data Collection Tool for each station for which funding is received once the station becomes open for retail operation, and shall continue to do so every quarter for five years. Each grant will be subject to a 5 percent retention amount per station until the data collection and reporting requirements are met for four quarters.

K. REPORTING RESPONSIBILITY OF SECRETARY—Beginning not later than 2 years after the date of enactment of this Act, the Secretary shall annually submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the progress and implementation of this subsection, based on data provided by station operators to National Renewable Energy Laboratory.