

FIRST REGULAR SESSION

# HOUSE BILL NO. 1077

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), SCHOELLER, YAEGER,  
ROORDA AND ZIMMERMAN (Co-sponsors).

Read 1st time March 7, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for energy conservation.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.663, to read as follows:

**135.663. 1. This section shall be known and may be cited as the "Energy Conservation Tax Credit Act".**

**2. As used in this section, the following terms mean:**

**(1) "Builder", any individual, partnership, corporation, or other entity engaged in the construction of a residential home;**

**(2) "Department", the Missouri department of natural resources;**

**(3) "Eligible costs", expenditures by utilities to builders made under a green building contract;**

**(4) "Green build", constructing a residential home in accordance with the Gold, Silver, or Bronze levels of the green home building guidelines of the National Association of Home Builders (NAHB);**

**(5) "Green building contract", a written contract between a utility and a builder in which the utility makes expenditures to the builder for valuable consideration that shall consist of a promise by the builder to green build a specified residential home;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 15           (6) "Residential home", a detached single-family dwelling;  
16           (7) "Tax credit", a credit against the state tax on the income of the utility;  
17           (8) "Utility", a utility providing electrical power to residential homes that is  
18 regulated by the Missouri public service commission under chapter 386, RSMo, and that  
19 has income from business activity as a public utility.

20           2. For all taxable years beginning on or after January 1, 2007, a utility shall be  
21 allowed a tax credit for eligible costs incurred under a green building contract with a  
22 builder. The tax credit shall be claimed in equal increments over the ten-year period  
23 beginning with the first taxable year in which eligible costs were incurred, and such tax  
24 credit amount claimed in each taxable year shall be equal to the sum of:

- 25           (1) The eligible costs incurred in a taxable year divided by a ten-year period of  
26 depreciation; plus  
27           (2) The eligible costs incurred in a taxable year divided by a ten-year period of  
28 depreciation, multiplied by five percent.

29  
30 No tax credit issued under this section shall exceed five thousand dollars per residential  
31 home built under the green building contract. The amount of the tax credit issued shall  
32 not exceed the amount of the taxpayer's state tax liability for the tax year for which the  
33 credit is claimed. No amount of credit that the taxpayer is prohibited by this section from  
34 claiming in a tax year shall be refundable, nor shall any tax credit granted under this  
35 section be transferred, sold, or assigned.

36           3. The cumulative amount of tax credits which may be issued under this section in  
37 any one fiscal year shall not exceed five million dollars. If the amount of tax credits  
38 claimed under this section exceeds five million dollars, the director of the department of  
39 revenue shall establish a procedure by which, from the beginning of the fiscal year until  
40 some point in time later in the fiscal year to be determined by the director, the cumulative  
41 amount of tax credits are equally apportioned among all taxpayers allowed a tax credit  
42 under this section. The director may establish more than one period of time and  
43 reapportion more than once during each fiscal year. To the maximum extent possible, the  
44 director shall establish the procedure described in this subsection in such a manner as to  
45 ensure that taxpayers can claim all the tax credits possible up to the cumulative amount  
46 of tax credits available for the fiscal year.

47           4. No tax credit shall be issued under this section for eligible costs incurred under  
48 a green building contract unless such contract has been filed with the department with an  
49 addendum containing an itemized listing of the actual costs for green building the  
50 residential home. Each such contract shall contain the following:

51           (1) A requirement that the actual costs of labor and materials for green building  
52 be itemized by the builder and attached as an addendum to the contract upon completion  
53 of the residential home;

54           (2) A requirement that the builder and owner of any residential home allow the  
55 department a reasonable period of time to inspect such residential home for compliance  
56 with the NAHB green home building guidelines;

57           (3) A requirement that the contract is a fully and completely integrated agreement  
58 not subject to written or oral modification except upon written approval of the  
59 department; and

60           (4) At the discretion of a utility, terms to indemnify the utility for any lost tax  
61 credits caused by the failure of the builder to conform to the NAHB green home building  
62 guidelines specified in the contract.

63           5. No tax credit shall be issued under this section for eligible costs incurred under  
64 a green building contract unless the department approved such contracts in writing before  
65 adoption by utilities and builders. In its determination of whether to grant approval to a  
66 contract the department may consider:

67           (1) The cost of the contract;

68           (2) The level used under the green home building guidelines;

69           (3) The reliability of the builder as determined by past performance and green  
70 building audits conducted by the department;

71           (4) The reliability of the utility in enforcing its green building contracts;

72           (5) Considerations of equity in the distribution of approved green building  
73 contracts;

74           (6) Economic efficiency as it relates to the provision of a maximal reduction in  
75 energy use for minimal cost;

76           (7) Any other factor the department deems reasonable.

77           6. The written approval of the department for a green building contract in  
78 conjunction with the receipt of the itemized costs addendum to the contract shall be  
79 sufficient for the approval of the tax credit. Once approved by the department, the  
80 approval shall not be rescinded and shall be conclusive in its effect unless such approval  
81 was procured through fraud on the part of a utility.

82           7. The department shall take reasonable measures to ensure that builders comply  
83 with the green build requirements of their green building contracts by auditing the  
84 construction of residential homes as the department deems reasonable. If the department  
85 discovers noncompliance with the green build requirements, then the department shall  
86 notify the builder, utility, and the department of revenue. The department may refuse to

87 approve future green building contracts for either the utility or builder as a result of  
88 noncompliance with the terms of the green building contract.

89       8. The department and the department of revenue may promulgate rules to  
90 implement the provisions of this section. Any rule or portion of a rule, as that term is  
91 defined in section 536.010, RSMo, that is created under the authority delegated in this  
92 section shall become effective only if it complies with and is subject to all of the provisions  
93 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter  
94 536, RSMo, are nonseverable and if any of the powers vested with the general assembly  
95 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and  
96 annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
97 authority and any rule proposed or adopted after August 28, 2007, shall be invalid and  
98 void.

99       9. Under section 23.253, RSMo, of the Missouri Sunset Act:

100       (1) The provisions of the new program authorized under this section shall  
101 automatically sunset on December thirty-first six years after the effective date of this  
102 section unless reauthorized by an act of the general assembly; and

103       (2) If such program is reauthorized, the program authorized under this section  
104 shall automatically sunset on December thirty-first twelve years after the effective date of  
105 the reauthorization of this section; and

106       (3) This section shall terminate on September first of the calendar year immediately  
107 following the calendar year in which the program authorized under this section is sunset.

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