

FIRST REGULAR SESSION

HOUSE BILL NO. 1182

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SILVEY (Sponsor), TALBOY, HOLSMAN, STORCH,
PRATT AND FLOOK (Co-sponsors).

1998L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to the green building and smart growth tax credit.

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 135.033, to read as follows:

135.033. 1. This section shall be known and may be cited as the "Green Building and Smart Growth Tax Credit Act".

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

(1) "Applicant", a taxpayer who is either the owner or contract purchaser of a building, and is applying for a green building tax credit for such building; or the owner of a lot or of any land proposed to be included in a proposed mixed-use development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land;

(2) "ASHRAE", the American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) "Certified rating", the rating in compliance with, or exceeding, the lowest rating awarded by the USGBC LEED certification process;

(4) "Commissioning", the process of verifying and ensuring that the entire building and the systems within are designed, constructed, functionally tested, and calibrated to operate as intended;

(5) "Department", the department of economic development;

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.

17 (6) "Director", the director of the department of economic development;

18 (7) "Eligible costs", amounts properly chargeable to a capital account, other than
19 for purchase of land, which are paid or incurred on or after August 28, 2009, for
20 construction or rehabilitation; commissioning costs, interest paid during the construction
21 or rehabilitation period; legal, architectural, engineering, and other professional fees
22 allocable to construction or rehabilitation; closing costs for construction or mortgage loans;
23 recording taxes and filing fees incurred with respect to construction rehabilitation; site
24 costs, such as temporary electric wiring, scaffolding, demolition costs, and fencing and
25 security facilities; and costs of carpeting, partitions, walls and wall coverings, ceilings,
26 lighting, plumbing, electrical wiring, and ventilation, provided that such costs shall not
27 include the cost of telephone systems and computers other than electrical wiring costs. For
28 commercial space and mixed-use developments, eligible costs shall not exceed two hundred
29 fifty dollars per square foot of interior space, except that the department may raise the
30 maximum eligible costs by up to ten percent on each of up to two occasions in the seven-
31 year period next following the date of enactment of this section. For residential space,
32 eligible costs shall not exceed one hundred ten percent of the amount set by the United
33 States Department of Housing and Urban Development (HUD) as per unit limits, codified
34 in 12 U.S.C. Section 1715l(d)(3)(ii);

35 (8) "Eligible project", a green building or a mixed-use development that achieves
36 preliminary certification under subsection 6 of this section;

37 (9) "Energy Star", the voluntary labeling program administered by the United
38 States Environmental Protection Agency (EPA) designed to identify and promote energy-
39 efficiency products, equipment, and buildings;

40 (10) "Gold rating", the rating in compliance with, or exceeding, the second highest
41 rating awarded by the USGBC LEED certification process;

42 (11) "Green building", a building that meets the requirements of subsections 3 and
43 4 of this section and regulations promulgated thereunder and that promotes the following:

44 (a) Site conservation and sustainable planning;

45 (b) Water conservation and efficiency;

46 (c) Energy efficiency and renewable energy;

47 (d) Conservation of materials and resources; and

48 (e) Indoor environmental quality and human health;

49 (12) "Impervious surface", a surface that has been compacted or covered with a
50 layer of material so that it is highly resistant to infiltration by water;

- 51 (13) "LEED-CI", the most current Leadership in Energy and Environmental
52 Design Green Building Rating System guidelines developed and the United States Green
53 Building Council for commercial interiors;
- 54 (14) "LEED-CS", the most current Leadership in Energy and Environmental
55 Design Green Building Rating System guidelines developed and adopted by the United
56 States Green Building Council for the core and shell of buildings;
- 57 (15) "LEED-EB", the most current Leadership in Energy and Environmental
58 Design Green Building Rating System guidelines developed and adopted by the United
59 States Green Building Council for existing buildings;
- 60 (16) "LEED for homes", the most current Leadership in Energy and
61 Environmental Design Green Building Rating System guidelines developed and adopted
62 by the United States Green Building Council for homes;
- 63 (17) "LEED-NC", the most current Leadership in Energy and Environmental
64 Design Green Building Rating System developed and adopted by the United States Green
65 Building Council for new buildings and major renovations;
- 66 (18) "LEED-ND", the completed version of the Leadership in Energy and
67 Environmental Design Green Building Rating System developed and adopted by the
68 United States Green Building Council for neighborhood development;
- 69 (19) "LEED for Retail-CI", the completed version of the Leadership in Energy and
70 Environmental Design Green Building Rating System developed and adopted by the
71 United States Green Building Council for retail commercial interiors;
- 72 (20) "LEED for Retail-NC", the completed version of the Leadership in Energy
73 and Environmental Design Green Building Rating System developed and adopted by the
74 United States Green Building Council for new retail construction;
- 75 (21) "Mixed-use development" or "mixed-use developments", development or
76 developments that meet the requirements of subsections 3 and 4 of this section and
77 regulations promulgated thereunder and that includes residential use and no more than
78 seventy-five percent by interior square footage of one or more of the following uses:
- 79 (a) Commercial space;
- 80 (b) Office space;
- 81 (c) Retail space; or
- 82 (d) Such other nonresidential uses that the department has determined do not pose
83 a public health threat or nuisance to nearby residential areas;
- 84 (22) "Platinum rating", the rating in compliance with, or exceeding, the highest
85 rating awarded by the USGBC LEED certification process;

86 (23) "Silver rating", the rating in compliance with, or exceeding, the third highest
87 rating awarded by the USGBC LEED certification process;

88 (24) "Taxpayer", an individual or entity subject to the tax imposed in chapter 143,
89 RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the
90 tax imposed in chapter 147, RSMo;

91 (25) "Tenant space", the portion of a building intended for occupancy by a tenant
92 or occupying owner;

93 (26) "United States Green Building Council" or "USGBC", the specific council
94 which measures and evaluates the energy and environmental performance of a building
95 according to its own Leadership in Energy and Environmental Design (LEED) Rating
96 system.

97 3. With respect to residential and tenant space, compliance with standards set forth
98 in paragraphs (a), (b), (c), (e), and (h) of subdivision (2) of subsection 4 of this section shall
99 not be required if the applicant does not incur or pay the cost of the equipment, appliances,
100 fixtures, materials, finishes, furnishings, or other items relevant to comply with the
101 standard; all green buildings and mixed-use developments with respect to which a tax
102 credit is applied under this section shall be eligible for a tax credit if they meet the
103 standards in subsection 4 of this section.

104 4. (1) Within six months after the effective date of this section, the department, in
105 consultation with the Missouri department of natural resources, shall adopt standards that
106 shall require at a minimum:

107 (a) That the average residential density shall be six or more dwelling units per
108 residential acre. Residential acreage shall be the calculated net of any land on the lot that
109 is used for public green space, public sidewalks, or public roads. For lots occupied by
110 residential buildings, residential acres used in the density calculation shall be the footprint
111 area of buildings, plus any associated driveways, yards, and parking areas except for on-
112 street parallel parking. For sites occupied by mixed-use buildings, residential acres used
113 in the density calculation shall be a percentage of the footprint area of buildings that equal
114 the percentage of interior space devoted to residential use, plus any associated driveways,
115 yards, and the percentage of associated parking areas used by residents;

116 (b) That, if new streets are constructed as part of a development with respect to
117 which a credit is applied under this section, the new streets shall meet the following
118 standards:

119 a. No more than one cul-de-sac shall be constructed for every four new intersections
120 within the development;

b. At least fifty percent of any new intersections and crossings within the development shall be equipped with traffic controls or such traffic-calming measures that the department shall approve, including, but not limited to, speed bumps, stop signs, and vegetative barriers;

c. The width of pavement of new streets shall not exceed forty-two feet, consisting of a maximum of ten feet per lane of motor vehicle traffic, four feet per bicycle lane, and seven feet per lane designated for on-street parallel parking. New streets shall not consist of more than two lanes devoted to motor vehicle traffic, two lanes devoted to bicycle traffic, and two lanes devoted to on-street parallel parking; and

d. Sidewalks of no less than four feet in width shall be provided along frontage of all buildings and along all streets that connect buildings within the development; and

(c) That the number of parking spaces associated with the development shall not exceed the number required by parking ratios specified in applicable local zoning codes.

(2) Within six months of the effective date of this section, the department, in consultation with the Missouri department of natural resources, shall adopt standards for the purpose of this section and shall review and update such standards at least every two years from the date on which they are adopted. Such standards shall:

(a) Require, at a minimum, that:

a. Single-family homes comply with the energy standards of the United States Environmental Protection Agency Energy Star Homes Program;

b. Energy use in all other buildings does not exceed sixty-five percent of the energy use permitted by the relevant state energy code;

c. Equipment and appliances for which Energy Star standards exist, including, but not limited to, refrigerators, dishwashers, and washing machines, meet such Energy Star standards;

d. No less than forty percent of high-use lighting fixtures shall meet Energy Star standards;

(b) At a minimum, specify requirements regarding minimum percentages of recycled content and renewable source material and maximum levels of toxicity and volatile organic compounds. Standards shall be developed for building materials, finishes, and furnishings, including, but not limited to, concrete and concrete masonry units; millwork substrates; insulation; ceramic, glass, and cementitious tiles; ceiling tiles and panels; flooring and carpet; paints, coatings, sealants, and adhesives; and furniture. The LEED Green Building Rating System shall inform the development of such standards;

(c) At a minimum, specify requirements to minimize wood use in wood-framed houses;

- 157 (d) Require, at a minimum, that:
- 158 a. At least fifty percent, by square footage, of nonroof impervious surfaces,
159 including driveways, parking areas, walkways, and plazas, be light-colored or covered with
160 specified coatings that improve reflectance; and
- 161 b. Roofs shall be composed of Energy Star labeled roof products, except where
162 solar panels or roof gardens are installed;
- 163 (e) Require, at a minimum, that:
- 164 a. Each showerhead shall not exceed two gallons per minute;
- 165 b. Each faucet shall not exceed one gallon per minute;
- 166 c. Toilet flush volume shall not exceed one point six gallons; and
- 167 d. For commercial buildings, the drift rate of any cooling tower shall not exceed one
168 percent;
- 169 (f) Require, at a minimum, that central air conditioning refrigerant charge and
170 airflow shall be documented to be within ten percent of manufacturer recommendations;
- 171 (g) Require, at a minimum, that:
- 172 a. Roofs shall have a warranty of no less than forty years;
- 173 b. Insulated windows shall have a warranty of no less than ten years;
- 174 c. Overhangs shall include at least eighty percent of full attic or roof-slope
175 insulation R-value; and
- 176 d. Head-casing flashing shall be installed for all windows and exterior doors;
- 177 (h) Require, at a minimum, that:
- 178 a. Interior paints shall contain no more than one hundred grams per liter of volatile
179 organic compounds;
- 180 b. Sealants and adhesives used for interior applications shall contain no more than
181 two hundred fifty grams per liter of volatile organic compounds;
- 182 c. Carpets shall not be installed in basements, bathrooms, kitchens, or within a
183 four-foot radius of the center of any doorway which leads outdoors;
- 184 d. Only direct-vent, closed-combustion, or power-vented space heating and water
185 heating equipment shall be used, and vent-free space heating or water heating equipment
186 shall not be used;
- 187 e. Any wood stoves shall have ducted combustion air;
- 188 f. Carbon monoxide detectors shall be installed in homes and residences consistent
189 with the Consumer Product Safety Commission recommendations, and with at least one
190 detector per five hundred square feet of interior space;
- 191 g. Enclosed parking shall be completely air-sealed from attached indoor spaces;

192 **h. Every building shall be furnished with a ventilation system, and for commercial**
193 **buildings, the sizing of the system shall conform with the ASHRAE standard known as**
194 **ASHRAE G2-2001; and**

195 **i. Foundations of residential units shall be constructed according to the following**
196 **requirements, unless the department approves alternative plans to ensure dry basements:**
197 **(i) The foundation shall have a continuous footing drain that is covered with stone,**
198 **which, in turn, shall be covered with filter fabric and which shall drain either to daylight**
199 **or to an interior, sealed sump pump system;**

200 **(ii) The foundation shall have porous backfill material;**

201 **(iii) The vapor retarder shall be directly under slab; and**

202 **(iv) The exterior of the below-grade foundation shall be waterproofed;**

203 **(i) Require, at a minimum, development of and adherence to a waste reduction plan**
204 **that provides for separation of materials which are reusable or recyclable, such that a**
205 **minimum of thirty percent of waste by volume shall be diverted from the waste stream;**

206 **(j) Require, at a minimum, that developments on parcels of undeveloped land of**
207 **four acres or more shall employ storm water management measures in order to meet at**
208 **least one of the following requirements:**

209 **a. Postdevelopment runoff volume of the land area of the development shall not**
210 **exceed predevelopment runoff volume. Runoff volume is defined as the one and one-half**
211 **year, twenty-four hour peak discharge rate; or**

212 **b. The first inch of runoff or eighty percent of one hundred year runoff produced**
213 **by the impervious surfaces of the development shall be treated for total suspended solids,**
214 **total phosphorus, and total nitrogen.**

215 **5. (1) A successful applicant shall be granted a credit each tax year up to ten years,**
216 **to be computed as provided in this subsection, against the tax imposed under chapter 148,**
217 **RSMo; chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to**
218 **143.265, RSMo; and the tax imposed under chapter 147, RSMo. The credit shall be an**
219 **amount equal to the sum of the following:**

220 **(a) Fifteen percent of eligible costs for eligible projects meeting the requirements**
221 **of subsections 3 and 4 of this section;**

222 **(b) Five percent, seven percent, eight percent, or ten percent of eligible costs**
223 **attributable to eligible projects qualifying as a certified rating, silver rating, gold rating,**
224 **or platinum rating, respectively, under LEED-CI, LEED-CS, LEED-EB, LEED for Homes,**
225 **LEED-NC, LEED-ND, LEED for Retail-NC, or LEED for Retail-NI, or for qualifying**
226 **under a comparable recognized criteria as determined by the department of natural**
227 **resources;**

228 (c) Two and one-half percent of eligible costs for mixed-use developments;

229 (d) One-half percent of eligible costs for eligible projects in which less than ten
230 percent of the land of the eligible project, not including shared open spaces, is devoted to
231 parking areas, garages, and driveways;

232 (e) One-half percent of eligible costs for eligible projects with respect to which
233 variances are secured from the relevant municipalities to permit fifty percent or less
234 parking than is required by applicable local zoning codes and are built in accordance with
235 such variances;

236 (f) Up to five percent of eligible costs for developments with a density level set as
237 follows:

238 a. For seven to ten dwelling units per residential acre, one percent;

239 b. For eleven to seventeen dwelling units per residential acre, one and one-half
240 percent;

241 c. For eighteen to twenty-nine dwelling units per residential acre, three percent;

242 d. For thirty to thirty-nine dwelling units per residential acres, four percent;

243 e. For forty or more dwelling units per residential acre, five percent.

244 (2) An applicant may only apply for a credit under this subsection with respect to
245 eligible costs paid or incurred by the applicant in connection with the construction or
246 rehabilitation of a green building or a mixed-use development.

247 (3) For any taxable year, an applicant may receive no more than twenty percent of
248 the total amount allowable under subdivision (1) of this subsection.

249 (4) The amount of tax credit otherwise allowable under this subsection which
250 cannot be applied during a tax year may be carried over, if necessary, to the fifteen tax
251 years following a credit's first eligible tax year.

252 (5) If a credit is owed to a building owner under this section with respect to
253 property, and such property, or an interest therein, is sold, the credit for the period after
254 the sale, which would have been allowed under this section to the prior owner had the
255 property not been sold, shall be allowed to the successor owner.

256 (6) Certificates of tax credit authorized by this subsection may be transferred, sold,
257 or assigned by filing a notarized endorsement thereof with the department that names the
258 transferee, the amount of tax credit transferred, and the value received for the credit, as
259 well as any other information reasonably requested by the department. The sale price
260 cannot be less than seventy-five percent of the par value of such credits.

261 (7) The director of revenue shall issue a refund to the taxpayer to the extent that
262 the amount of credits allowed in this subsection exceeds the amount of the taxpayer's
263 income tax.

(8) For each taxpayer who is eligible for a credit under this subsection, the department shall grant a credit, provided that the credits in the aggregate shall not exceed forty-five million dollars for the first fiscal year of tax credit availability, and in each of the subsequent six fiscal years, shall not exceed ninety million dollars; provided further that any unused allocable amounts shall roll over to subsequent fiscal years.

6. (1) Prior to construction of a proposed eligible project, an applicant may apply to the department for preliminary certification if the applicant will be the owner or contract purchaser of the facility at the time of construction.

(2) An application for preliminary certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the applicant plans to construct a facility that meets the requirements under subsections 3 and 4 of this section;

(b) A detailed description of the proposed facility and its operation and information showing that the facility shall operate as represented in the application;

(c) The estimated start and finish date of the construction of the facility;

(d) Evidence of official registration in the LEED system, if so desired; and

(e) Any other information determined by the director to be necessary prior to issuance of a preliminary certificate.

(3) The director may allow an applicant to file the preliminary application after the start of the construction of the facility if the director finds that filing the application before the start of construction is inappropriate because special circumstances render filing earlier unreasonable.

(4) If the director determines that the proposed construction or rehabilitation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions under subsections 3 and 4 of this section and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the construction of the facility. The preliminary certificate shall state the following:

(a) The first taxable year for which the credit may be applied;

(b) The expiration date of the tax credit. Such expiration date may be extended at the discretion of the director in order to avoid unwarranted hardship; and

(c) The maximum amount of the total credit allowed and the maximum amount of credit allowed in any single tax year.

(5) If the director determines that the construction does not comply with the provisions under subsections 3 and 4 of this section and applicable rules and standards, the director shall issue an order denying certification.

300 **7. (1) To change a project that has already received preliminary certification, the**
301 **applicant shall file a written request to the director which states:**

- 302 **(a) A detailed description of the changes;**
303 **(b) The reasons for the changes; and**
304 **(c) The effects that the changes will have on the amount of tax credit stated by the**
305 **preliminary certification.**

306 **(2) The director shall decide if the changed project complies with the requirements**
307 **under subsections 3 and 4 of this section. If the changed project complies with the**
308 **requirements under subsections 3 and 4 of this section, then the director shall issue an**
309 **amended preliminary certification. If the changed project fails to comply with the**
310 **requirements under subsections 3 and 4 of this section, then the director shall issue an**
311 **order that revokes the preliminary certification.**

312 **8. (1) No final certification shall be issued by the director under this subsection**
313 **unless the facility was constructed under a preliminary certificate of approval issued under**
314 **subsection 6 of this section.**

315 **(2) An applicant may apply to the department for final certification of a facility:**

316 **(a) If the department issued preliminary certification for the facility under**
317 **subsection 6 of this section; and**

318 **(b) After completion of construction of the proposed facility.**

319 **(3) An application for final certification shall be made in writing on a form**
320 **prepared by the department and shall contain:**

321 **(a) A statement that the conditions of the preliminary certification have been**
322 **complied with;**

323 **(b) An eligibility certificate from the project architect or professional engineer**
324 **licensed to practice in the state of Missouri that consists of:**

325 **a. A certification by the United States Green Building Council that the building**
326 **with respect to which the credit is claimed is LEED certified, if applicable;**

327 **b. A statement of the level of LEED performance achieved by the building (certified**
328 **rating, silver rating, gold rating, or platinum rating), if applicable, to permit determination**
329 **of the proper credit amount under subsection 5 of this section;**

330 **(c) A statement that the facility is in operation; and**

331 **(d) Any other information determined by the director to be necessary prior to**
332 **issuance of a final certificate, including inspection of the facility by the department.**

333 **9. (1) The director may order the revocation of the final certificate issued under**
334 **subsection 8 of this section if the director finds that:**

335 **(a) The certification was obtained by fraud or misrepresentation; or**

(b) The holder of the certificate has failed substantially to construct the facility in compliance with the plans, specification, and procedures in such certificate.

(2) As soon as the order of revocation under this subsection becomes final, the director shall notify the department of revenue of such order.

(3) If the certificate is ordered revoked under paragraph (a) of subdivision (1) of this subsection, all prior tax credits provided to the holder of the certificate by virtue of such certificate shall be forfeited, and upon notification under subdivision (2) of this subsection, the department of revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under this section.

(4) If the certificate is ordered revoked under paragraph (b) of subdivision (1) of this subsection, the certificate holder shall be denied any tax credit under this section in connection with such facility after the date that the order of revocation becomes final.

10. The department shall promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

11. Under section 23.253, RSMo, of the Missouri sunset act:

(1) The tax credit authorized under this section shall automatically sunset five years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

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

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