

SECOND REGULAR SESSION

HOUSE BILL NO. 2138

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CARTER (Sponsor), HUMMEL, HOLSMAN, NASHEED,
WALTON GRAY, LeBLANC, SCHIEFFER, CALLOWAY, KOMO, TALBOY, BROWN (50),
HOSKINS (80) AND COLONA (Co-sponsors).

4773L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to green building tax credits.

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
2 known as section 135.039, to read as follows:

**135.039. 1. This section shall be known and may be cited as the "Green Building
2 Tax Credit".**

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

4 **(1) "Applicant", a taxpayer who is either the owner or contract purchaser of a
5 building, and is applying for a green building tax credit for such building;**

6 **(2) "Base building", all areas of a building not intended for occupancy by a tenant
7 or owner, including, but not limited to, the structural components of the building, exterior
8 walls, floors, windows, roofs, foundations, chimneys and stacks, parking areas, mechanical
9 rooms and mechanical systems, and owner-controlled and/or operated service spaces,
10 sidewalks, main lobby, shafts and vertical transportation mechanisms, stairways, and
11 corridors;**

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

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 (4) "Credit allowance year", the year as stated on the preliminary credit certificate
16 by the director;
- 17 (5) "Department", the department of natural resources;
- 18 (6) "Director", the director of the department of natural resources;
- 19 (7) "Economic development area", an economic development area as defined under
20 section 99.805;
- 21 (8) "Eligible building", a building located within the state, which is:
- 22 (a) A residential multi-family building with at least four habitable stories that
23 contain at least ten thousand square feet of interior space;
- 24 (b) One or more residential multi-family buildings with at least four habitable
25 stories that are part of a single or phased construction project that contains, in the
26 aggregate, at least twenty thousand square feet of interior space, provided that, in any
27 single phase of such project, at least ten thousand square feet of interior space is under
28 construction or rehabilitation;
- 29 (c) A residential, single-family, detached dwelling;
- 30 (d) A building used for commercial or industrial purposes; or
- 31 (e) Any combination of buildings described in paragraphs (a) to (d) of this
32 subdivision;
- 33 (9) "Energy and Atmosphere Credit Number One", the credit awarded by the
34 Leadership in Energy and Environmental Design (LEED) Green Building Rating System,
35 which requires increased energy performance above the standard as defined in the most
36 current version of the LEED-NC or LEED-EB rating system;
- 37 (10) "Energy and Atmosphere Credit Number Three", the credit awarded by the
38 LEED Green Building Rating System, which requires additional commissioning above the
39 fundamental commissioning prerequisite as defined in the most current version of the
40 LEED-NC or LEED-EB Rating system;
- 41 (11) "Gold rating", the rating in compliance with, or exceeding, the second highest
42 rating awarded by the USGBC LEED certification process;
- 43 (12) "Green base building", a base building that meets all requirements in the most
44 current version of the U.S. Green Building Council's Leadership in Energy and
45 Environmental Design Rating System for Core and Shell or that meets the most current
46 requirements for at least a three globes rating under Green Globes;
- 47 (13) "Green building" or "high-performance building", a building that is designed
48 to achieve integrated systems design and construction so as to significantly reduce or
49 eliminate the negative impact of the built environment on the following:
- 50 (a) Site conservation and sustainable planning;
- 51 (b) Water conservation and efficiency;

- 52 (c) Energy efficiency and renewable energy;
- 53 (d) Conservation of materials and resources; and
- 54 (e) Indoor environmental quality and human health;
- 55 (14) "Green Globes", an environmental assessment and rating tool for green
- 56 buildings developed by the Green Building Initiative;
- 57 (15) "Green tenant space", a tenant space as defined under subdivision (24) of this
- 58 section that meets all requirements in the most current version of the U.S. Green Building
- 59 Council's Leadership in Energy and Environmental Design Rating System for Commercial
- 60 Interiors or that meets the most current requirements for at least a three globes rating
- 61 under Green Globes;
- 62 (16) "Green whole building", a whole building that meets all requirements in the
- 63 most current version of the U.S. Green Building Council's Leadership in Energy and
- 64 Environmental Design Rating System for New Building Construction and Major
- 65 Renovations LEED-NC, as amended from time to time, or that meets all requirements in
- 66 the most current version of the U.S. Green Building Council's Leadership in Energy and
- 67 Environmental Design Rating System for Existing Buildings, or that meets the most
- 68 current requirements for at least a three globes rating under Green Globes:
- 69 (17) "LEED-CI" or "LEED Green Building Rating System Version LEED-CI" ,
- 70 the most current Leadership in Energy and Environmental Design Green Building Rating
- 71 System guidelines developed and the United States Green Building Council for commercial
- 72 interiors:
- 73 (18) "LEED-CS" or "LEED Green Building Rating System Version LEED-CS",
- 74 the most current Leadership in Energy and Environmental Design Green Building Rating
- 75 System guidelines developed and adopted by the United States Green Building Council for
- 76 the core and shell of buildings otherwise known as the base building;
- 77 (19) "LEED-EB" or "LEED Green Building Rating System Version LEED-EB",
- 78 the most current Leadership in Energy and Environmental Design Green Building Rating
- 79 System guidelines developed and adopted by the United States Green Building Council for
- 80 existing buildings;
- 81 (20) "LEED-NC" or "LEED Green Building Rating System Version LEED-NC",
- 82 the most current Leadership in Energy and Environmental Design Green Building Rating
- 83 System developed and adopted by the United States Green Building Council for new
- 84 buildings and major renovations;
- 85 (21) "Platinum rating", the rating in compliance with, or exceeding, the highest
- 86 rating awarded by the USGBC LEED certification process;
- 87 (22) "Silver rating", the rating in compliance with, or exceeding, the third highest
- 88 rating awarded by the USGBC LEED certification process;

(23) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapters 143, 147, 148, and 153, excluding sections 143.191 to 143.265 and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer under the provisions of chapter 143 excluding sections 143.191 to 143.265 and related provisions;

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

(25) "United States Green Building Council" or "USGBC", the specific council which measures and evaluates the energy and environmental performance of a building according to its own Leadership in Energy and Environmental Design Rating system;

(26) "Whole building", the entire building, as comprised of the base building and tenant space.

3. (1) The green building tax credit shall be available to an applicant for:

(a) Either the construction of a green building or the rehabilitation of a building, which is not a green building, into a green building;

(b) The construction or rehabilitation of a base building which is not a green base building, into a green base building; or

(c) The construction or rehabilitation of a tenant space which is not green tenant space, into green tenant space.

(2) An applicant may apply for a green building tax credit provided that the facility subject to the green building tax credit is located within the state and the applicant will be the owner or contract purchaser of the facility at the time of erection, construction, installation, or acquisition of the proposed facility.

(3) If a credit is allowed to a building owner pursuant to this section with respect to property, and such property or an interest therein is sold, the credit for the period after the sale, which would have been allowable under this section to the prior owner, shall be allowable to the new owner. Credit for the year of sale shall be allocated between the parties on the basis of the number of days during such year that the property or interest was held by each.

(4) In the case of allowance of credit under this section to a successor owner as provided in subdivision (3) of this subsection, the director shall have the authority to reveal to the successor owner any information, with respect to the credit of the prior owner, which is the basis for the denial in whole or in part of the credit claimed by such successor owner.

4. An applicant shall be eligible for a green building tax credit against a state tax liability provided such applicant complies with the requirements of subsection 5 of this section and provided that the building meets the requirements of an eligible building as set forth in subdivision (8) of subsection 2 of this section. The amount of credit shall be

126 determined pursuant to subsection 7 of this section, but the total amount of tax credits
127 issued to a single applicant under this section shall not exceed fifty thousand dollars per
128 tax year.

129 (1) The credit amount shall be the sum of the following credit components,
130 whichever are applicable:

131 (a) The green whole-building credit component shall be available to an applicant
132 for either the construction of a green building or the rehabilitation of a building which is
133 not a green whole building into a green whole building. The green whole-building credit
134 component may not be allowed for any taxable year unless all the requirements under
135 subsection 5 of this section are met; and

136 a. The whole building achieves a Silver, Gold, or Platinum Rating as approved by
137 the LEED-NC Green Building Rating System, as amended from time to time, or the most
138 recent version, for a new building and for major renovations; or, LEED Green Building
139 Rating System Version LEED-EB, or the most recent version, for an existing building; or

140 b. The whole building achieves at least a three globes rating under the most current
141 requirements of Green Globes;

142 (b) The green base building credit component shall be available to an applicant
143 who is the contract owner for either the construction of a green building or the
144 rehabilitation of a building, which is not a green base building, into a green base building.
145 The green base building credit component may not be allowed for any taxable year unless
146 all the requirements under subsection 5 of this section are met; and

147 a. The base building achieves a Silver, Gold, or Platinum Rating as approved by
148 the LEED-CS Green Building Rating System, or the most recent version thereof; or

149 b. The base building achieves at least a three globes rating under the most current
150 requirements of Green Globes;

151 (c) The green tenant space credit component shall be available to an applicant for
152 constructing tenant space or rehabilitating tenant space, which is not green tenant space,
153 into green tenant space. The green tenant space credit component may not be allowed for
154 a taxable year unless all the requirements under subsection 5 of this section are met; and

155 a. The tenant space achieves a Silver, Gold, or Platinum Rating as approved by the
156 LEED-CI Green Building Rating System, or the most recent version thereof; or

157 b. The tenant space achieves at least a three globes rating under the most current
158 requirements of Green Globes.

159 (2) For each component eligible to receive credit such credit component amount
160 shall not exceed the maximum amount specified in the preliminary certificate issued
161 pursuant to subsection 8 of this section.

162 **5. (1) The green building tax credit shall not be allowed for any taxable year unless**
163 **the following are met:**

164 **(a) The applicant has obtained and filed a preliminary credit certificate issued**
165 **under subsection 8 or 9 of this section;**

166 **(b) The building is in service as shown by a certificate of occupancy or other**
167 **acceptable form of documentation as determined by the department; and**

168 **(c) The whole building, base building or tenant space has achieved either:**

169 **a. At least a three globes rating under the most current requirements for Green**
170 **Globes; or**

171 **b. A Silver, Gold, or Platinum rating as approved by the applicable and most recent**
172 **LEED Green Building Rating System as determined under subsection 4 of this section and**
173 **in achieving its LEED rating, the whole building, base building, or tenant space must earn:**

174 **i. At least four LEED points for Energy and Atmosphere Credit Number One, or**
175 **the equivalent points under any subsequent version of LEED; and**

176 **ii. The point for Energy and Atmosphere Credit Number Three, or the equivalent**
177 **points under any subsequent version of LEED.**

178 **(2) For each component eligible to receive credit under subsection 4 of this section,**
179 **once construction is complete and an occupancy certificate is received, such credit**
180 **component amount shall be allowed for each of the next four succeeding taxable years**
181 **provided that the applicant obtains an eligibility certificate that meets all requirements for**
182 **an eligibility certificate as described in paragraph (b) of subdivision (3) of subsection 10**
183 **of this section.**

184 **(3) When filing with the department of revenue, the applicant shall file the**
185 **eligibility certificate and the preliminary credit component certificate with the claim for**
186 **credit. Allowable costs in this subsection and for all five years that the credit may be**
187 **available shall not exceed, in the aggregate, the amount determined under subsections 4,**
188 **6, and 7 of this section.**

189 **6. For tax years beginning on or after January 1, 2012, the tax credits authorized**
190 **under this section may be used to satisfy taxes owed under chapters 143, 147, and 148,**
191 **excluding sections 143.191 to 143.265 in the tax year the credit is issued. Tax credits issued**
192 **under this section shall be refundable and may be transferred, sold, or assigned by**
193 **notarized endorsement, which names the transferee. In no case shall the aggregate amount**
194 **of all tax credits issued under this section exceed one million dollars per tax year.**

195 **7. As soon as practicable, but not later than December 1, 2011, the department shall**
196 **promulgate rules, in accordance with the provisions of this section, to:**

197 **(1) Determine the amount of green building tax credit available to a taxpayer based**
198 **on the following:**

199 **(a) The amount of floor space in the building;**

200 **(b) The square footage of the building;**

(c) The green globes rating or the level of LEED rating achieved by the building, with higher ratings corresponding to greater tax credits; and

(d) Whether the building is located in an economic development area with a higher tax credit corresponding to those buildings located in an economic development area;

(2) Determine allowable credit for each of:

(a) The whole green building credit component;

(b) The base green building credit component; and

(c) The green tenant space credit component.

Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2010, shall be invalid and void.

8. (1) Prior to construction of a proposed facility 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 subsection 5 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 or green globes rating system; 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 is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions under subsection 5 of this section and any applicable

rules or standards adopted by the director, the director shall issue a preliminary credit certificate approving the construction of the facility. The preliminary credit 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 subsection 5 of this section and applicable rules and standards, the director shall issue an order denying certification.

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

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

(2) The director shall make the determination as to whether the changed project complies with the requirements under subsection 5 of this section.

(a) If the changed project complies with the requirements under subsection 5 of this section, then the director shall issue an amended preliminary certification.

(b) If the changed project fails to comply with the requirements under subsection 5 of this section, then the director shall issue an order that revokes the preliminary certification.

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

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

(a) If the department issued preliminary certification for the facility under subsection 8 of this section; and

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

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

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

(b) An eligibility certificate from the project architect or professional engineer licensed to practice in the state of Missouri or from a LEED accredited professional that consists of a certification by either:

277 a. The Green Building Initiative that the building with respect to which the credit
278 is claimed meets the requirements for a green globes rating; or

279 b. The United States Green Building Council that the building with respect to
280 which the credit is claimed is LEED certified and that in achieving its LEED rating, the
281 building has earned at least four LEED points for Energy and Atmosphere Credit Number
282 One and the Energy and Atmosphere Credit Number Three;

283 (c) A statement of the level of Green Globes or LEED performance achieved by the
284 building to permit determination of the proper credit amount under subsection 6 of this
285 section;

286 (d) A statement that the facility is in operation; and

287 (e) Any other information determined by the director to be necessary prior to
288 issuance of a final certificate, including inspection of the facility by the department.

289 11. (1) The director may order the revocation of the final certificate issued under
290 subsection 10 of this section if the director finds that:

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

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

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

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

301 (4) If the certificate is ordered revoked under this subsection, the applicant shall
302 be denied any tax credit under this section in connection with such facility after the date
303 that the order of revocation becomes final.

304 12. Under section 23.253 of the Missouri sunset act:

305 (1) The tax credit authorized under this section shall automatically sunset on
306 December thirty-first three years after the effective date of this section unless reauthorized
307 by an act of the general assembly; and

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

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

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