

FIRST REGULAR SESSION

# HOUSE BILL NO. 1186

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES CARTER (Sponsor), CHAPPELLE-NADAL, CALLOWAY, HOLSMAN, TALBOY, LeBLANC, KOMO, BROWN (50), EL-AMIN, HOSKINS (80), HUMMEL, COLONA, PACE, WALTON GRAY, NASHEED, JONES (63), RUCKER AND STILL (Co-sponsors).

2413L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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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 135.032, to read as follows:

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

**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;**

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

**(3) "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;**

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

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

88 (22) "Silver rating", the rating in compliance with, or exceeding, the third highest  
89 rating awarded by the USGBC LEED certification process;

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

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

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

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

102 3. (1) The green building tax credit shall be available to an applicant for:

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

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

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

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

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

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

123 4. An applicant shall be eligible for a green building tax credit against a state tax  
124 liability provided such applicant complies with the requirements of subsection 5 of this

125 section and provided that the building meets the requirements of an eligible building as set  
126 forth in subdivision (8) of subsection 2 of this section. The amount of credit shall be  
127 determined pursuant to subsection 7 of this section, but the total amount of tax credits  
128 issued to a single applicant under this section shall not exceed fifty thousand dollars per  
129 tax year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

185           (3) When filing with the department of revenue, the applicant shall file the  
186 eligibility certificate and the preliminary credit component certificate with the claim for  
187 credit. Allowable costs in this subsection and for all five years that the credit may be  
188 available shall not exceed, in the aggregate, the amount determined under subsections 4,  
189 6, and 7 of this section.

190           6. For tax years beginning on or after January 1, 2011, the tax credits authorized  
191 under this section may be used to satisfy taxes owed under chapters 143, 147, and 148,  
192 RSMo, excluding sections 143.191 to 143.265, RSMo, in the tax year the credit is issued.  
193 Tax credits issued under this section shall be refundable and may be transferred, sold, or  
194 assigned by notarized endorsement, which names the transferee. In no case shall the  
195 aggregate amount of all tax credits issued under this section exceed one million dollars per  
196 tax year.

197           7. As soon as practicable, but not later than December 1, 2010, the department shall  
198 promulgate rules, in accordance with the provisions of this section, to:

199 (1) Determine the amount of green building tax credit available to a taxpayer based  
200 on the following:

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

202 (b) The square footage of the building;

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

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

207 (2) Determine allowable credit for each of:

208 (a) The whole green building credit component;

209 (b) The base green building credit component; and

210 (c) The green tenant space credit component.

211

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

220 8. (1) Prior to construction of a proposed facility an applicant may apply to the  
221 department for preliminary certification if the applicant will be the owner or contract  
222 purchaser of the facility at the time of construction.

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

225 (a) A statement that the applicant plans to construct a facility that meets the  
226 requirements under subsection 5 of this section;

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

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

230 (d) Evidence of official registration in the LEED system or green globes rating  
231 system; and

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

234 (3) The director may allow an applicant to file the preliminary application after the  
235 start of the construction of the facility if the director finds that filing the application before

236 the start of construction is inappropriate because special circumstances render filing  
237 earlier unreasonable.

238 (4) If the director determines that the proposed construction is technically feasible  
239 and should operate in accordance with the representations made by the applicant, and is  
240 in accordance with the provisions under subsection 5 of this section and any applicable  
241 rules or standards adopted by the director, the director shall issue a preliminary credit  
242 certificate approving the construction of the facility. The preliminary credit certificate  
243 shall state the following:

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

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

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

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

252 9. (1) To change a project that has already received preliminary certification, the  
253 applicant shall file a written request to the director which states:

254 (a) A detailed description of the changes;

255 (b) The reasons for the changes; and

256 (c) The effects that the changes will have on the amount of tax credit stated by the  
257 preliminary certification.

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

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

262 (b) If the changed project fails to comply with the requirements under subsection  
263 5 of this section, then the director shall issue an order that revokes the preliminary  
264 certification.

265 10. (1) No final certification shall be issued by the director under this subsection  
266 unless the facility was constructed under a preliminary certificate of approval issued under  
267 subsection 8 of this section.

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

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

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

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

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

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

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

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

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

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

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

291 11. (1) The director may order the revocation of the final certificate issued under  
292 subsection 10 of this section if the director finds that:

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

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

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

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

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

306 12. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

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

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

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

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