Audit finds 'suspicious behavior' in dozens of energy projects that got Oregon tax credits

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More than a quarter of the large business energy tax credits issued by the Oregon Department of Energy over eight years "seemed improper, violated statutes or rules, or exhibited suspicious activity," a first-ever **independent audit of the controversial program** found.

In total, the audit identified "concerns" with some $347 million in tax credits issued by the agency, or one-third of program's projected $1 billion price tag to Oregon taxpayers.

The investigation was conducted by Marsh Minick, a Portland-based financial crimes consultant, under contract from the Oregon Secretary of State. Though the firm found no direct evidence of fraud, its partial examination of project files uncovered sufficient "circumstantial evidence of suspicious behavior" in 79 business energy tax credits, or BETCs, to warrant referral to the Oregon Department of Justice.

Marsh Minick did not specify those projects, and the Justice Department did not immediately respond to a public records request for the recommendations. But a spokeswoman for the Justice Department said it was acting on them as quickly as possible.

In **a response to the investigation, dated Thursday**, Energy Department Director Michael Kaplan suggested Marsh Minick had probably underestimated the number of problematic tax credits. But he said it confirmed many issues he'd highlighted for legislators, including flawed internal processes, unreliable data management, inconsistent staff training and a lack of understanding of the program's rules.

The audit found project files were an inconsistent mess. There was no internal auditing. And staff failed to do basic due diligence and rubber stamped decisions to keep up with a high volume of work.

"We take full responsibility for BETC's problems in light of glaring and years-long evidence that shows unequivocally that [the Energy Department] simply did not manage BETC well," Kaplan wrote.

A legislative oversight committee is meeting to determine how best to restructure the department — or whether it's needed at all. In light of the report, Kaplan said one appropriate course of action would be to let the agency's existing tax credit programs end with their current sunset dates.

It took **six years of rolling scandals** for any state official to seek a thorough investigation of the business energy tax credit program. In the end, the task fell to interim Secretary of State Jeanne Atkins, appointed after her predecessor, Kate Brown, became governor with last year's resignation of Gov. John Kitzhaber.

Atkins launched a third-party investigation last fall, as the agency faced mounting criticism over its decision to let tax credit recipients resell the credits at steeper discounts than state rules allow.

Other state officials, including Kaplan, were also calling for a full-blown audit of the program to uncover possible fraud after **an investigation by The Oregonian/OregonLive** found backers of one renewable project submitted phony documents to qualify for nearly $12 million in tax credits.

A Marion County grand jury indicted a Seattle energy consultant on two counts of forgery last month for his role in the large solar project on two Oregon college campuses.

Martin Shain allegedly fabricated documents to ensure the solar installation qualified for the credits. Shain pleaded not guilty at his arraignment Tuesday.

The Oregon Department of Justice, which conducted the criminal probe, filed a civil suit last week seeking the return of the money. The legal action came more a year and a half after The Oregonian/OregonLive published its investigation.

In a statement Thursday, Gov. Kate Brown's office said the audit confirmed concerns she had repeatedly expressed.

"Governor Brown looks to the Secretary of State's Office in its capacity as the state's auditor as well as [the Justice Department] to complete a comprehensive analysis of all remaining BETC project files and work to resolve outstanding questions that remain."

Marsh Minick started its work in May, and ultimately examined about a quarter of the 14,500 projects that received tax credits from 2006 to 2014. It also conducted more than 40 interviews and reviewed databases and paper documents from several sources.

It found a quarter of the large projects, with costs exceeding $1 million, showed at least one sign of concern. While large projects were only a small percentage of the individual tax credits granted by the Energy Department, they accounted for three quarters of the program's overall dollar volume. Only 2.7 percent of smaller projects showed similar red flags.

Areas of concerns included direct conflicts of interest; projects that were never operational or quickly went out of business; missing or suspicious eligible cost documents; projects with unaccounted for equipment, as well as problems with tax credit brokers or other intermediaries.

The examination found systemic problems how the Energy Department managed the program, including a breakdown in basic controls, risk management, and compliance activities.

The audit also identified a list of basic risks that the department had no functional method of mitigating. And it identified a lack of financial competency among staff and leaders.

But it made plenty of excuses for the department, including understaffing, undertraining, political pressure to approve projects, and a failure by lawmakers to pass legislation that would have reined in the program and addressed specific risks.

The audit singled out the legacy-building ambitions of former Gov. Ted Kulongoski, who pushed to supersize the long-running tax credit program in 2006 to boost Oregon's green energy credibility and attract jobs.

State officials deliberately lowballed the cost of the program when selling it to lawmakers, and Kulongoski later vetoed proposed controls on the program and fired the Energy Department director who promoted them.

Investigators were told that pressure to meet high-flying energy and job goals from both Kulongoski and his successor, Kitzhaber, influenced agency decisions. The review also cited pressure from unidentified lawmakers who wanted projects in their districts.

"It was pretty much what we thought," said Sen. Lee Beyer, D-Springfield, and chair of the legislative committee looking at reforming the agency. "There was a lack of support for the department. The real problem was one of confusing economic development and job creation with energy policy."

Senate President Peter Courtney, D-Salem, had a different take.

"Don't tell me they didn't know what the rules were," he said. "They promulgated the rules. Every time they asked for more money for staff, we gave it to them and then they went and fell apart again."

Atkins **sent a letter to lawmakers** Thursday outlining the investigation's key findings and recommending measures to beef up the agency's controls in the future. Those included enforcing performance agreements on outstanding tax credits, hiring a risk and compliance officer, and establishing a financial crimes compliance.

Beyer said it was too early to say what recommendations — if any — his committee might adopt.

"I'm not sure there's going to be a department," he said. "We haven't made that decision yet."

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