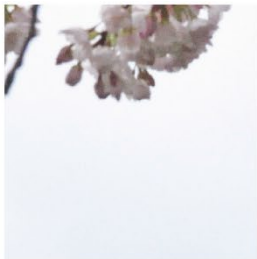




Secretary of State Oregon Audits Division **Advisory Report**



Oregon Department of Energy

Problems with the Terminated Business Energy Tax Credit Program Provide Valuable Lessons for Future Incentive Programs

October 2018

Secretary of State Dennis Richardson
Audits Division Director Kip Memmott

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Executive Summary



The Business Energy Tax Credit program, otherwise known as BETC, was created to incentivize the pursuit of energy efficiency and renewable energy among Oregon businesses. The Oregon Department of Energy, or ODOE, was charged with its management. After two decades of operation and at the encouragement of the Governor, the Legislature expanded the program rapidly during the 2008 economic recession. This rapid expansion, however, quickly exceeded ODOE's capacity to effectively administer the program. Ultimately, the Legislature terminated BETC in 2014, with the subsequent criminal prosecution of two individuals who were convicted of fraudulent activities.

In the years since, state officials have invested considerable time and effort in assessing the failures of the BETC program. The program has been the subject of forensic examinations, accusations of fraud and mismanagement, and scrutiny by the media and legislative committees. Some of this scrutiny has resulted in specific recommendations made to ODOE over the course of several years. However, there has been no comprehensive effort to follow up on ODOE's implementation of these recommendations.

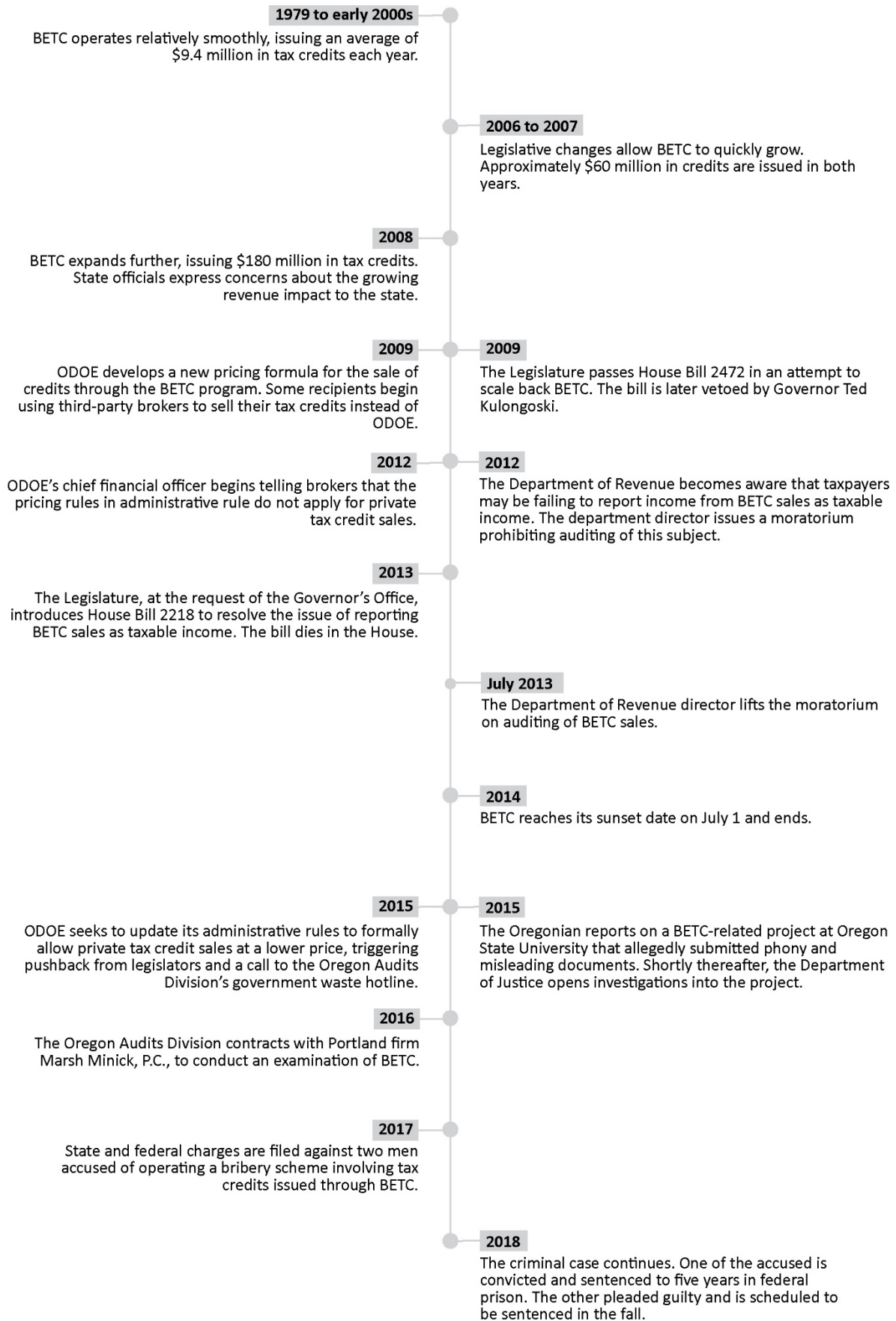
To this day, questions remain about what went wrong with the once-successful program and whether other tax credit programs may encounter similar issues. This report, created in collaboration with ODOE, examines the status of efforts made by the agency to implement some of the recommendations made by this division and the Legislature. This report also concludes on some of the lessons learned from the failures of BETC.

The intent is to provide information that can be used to mitigate risks and maximize positive outcomes for current and future tax incentive programs. However, it will take effort beyond a single agency to ensure the success of these programs. It will require a collaborative effort among all responsible entities — from the Governor to the Legislature to individual agencies — to avoid repeating the mistakes of BETC now and in the future.

Our intention is for this report to provide closure on the BETC saga not only for ODOE, but for the Legislature and all Oregonians. ODOE has readily admitted that mistakes were made in managing BETC. However, the lessons the agency has learned from this incident may be useful to others charged with ongoing and future tax credit programs.

We sincerely appreciate the courtesies and cooperation extended by officials and employees of the Oregon Department of Energy throughout the course of writing this advisory report.

Overview of BETC



Introduction

BETC was created in 1979 to promote and encourage business investments in energy conservation and renewable projects

The program worked as follows: Renewable energy and conservation project developers could apply to the state for a tax credit to help offset their state tax liabilities. ODOE would review each application both before and after project construction and decide whether to certify the project for a credit. The amount of the credit would be equal to a percentage of the certified costs, as dictated by state law.

Recipients could use the credit themselves or sell it to another entity. For example, a municipality or a nonprofit organization was eligible to receive a credit through BETC. However, municipalities and nonprofits have no tax liability, rendering the credit useless — unless the entity sold it to a private company, which could use it to offset its own taxable income.

From its inception to the early 2000s, BETC operated relatively smoothly, issuing an average of \$9.4 million in tax credits each year. It was a significant driver of economic and clean energy development, with BETC projects found in every county in the state. According to one study, the credits — combined with spending by businesses and residences taking advantage of them — had the following net benefits to the state in 2006 alone:¹

- Output in Oregon's economy increased by over \$140 million;
- Over 1,200 jobs were created in Oregon;
- Oregon wages increased by \$18.6 million;
- Tax revenues for state and local government increased by \$10 million; and
- Oregon energy costs were reduced by \$48 million.

Rapid expansion of BETC by the Legislature and at the direction of the Governor reduced ODOE's ability to effectively administer and oversee the program

The Legislature made several changes to the program that encouraged its rapid growth, resulting in the issuance of approximately \$60 million in tax credits in both 2006 and 2007, shortly before the economy was hit by a recession. It was also around this time of rapid program growth that the focus of BETC grew to include not only promoting energy conservation and renewable projects, but to also promoting economic development. Then-Governor Ted Kulongoski in 2006 and 2007 shared a vision of renewable energy that would strengthen Oregon's economic recovery and create jobs. BETC was critical to this effort.

In an attempt to stabilize the renewable energy sector of the economy, the Legislature made further changes to BETC that resulted in its significant expansion. In 2008 alone, the program issued nearly \$180 million in tax credits. From that point until the sunset, ODOE issued an average of \$154 million in credits each year, totaling more than \$1 billion over the life of the program.

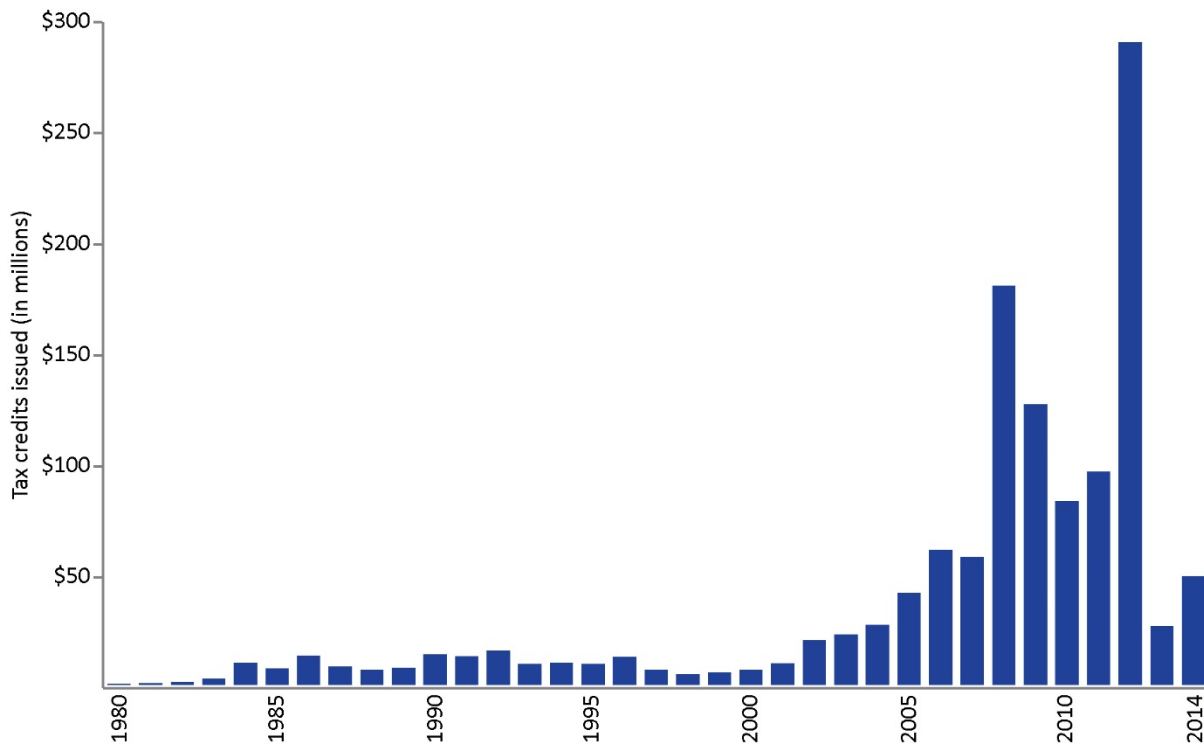
However, this rapid expansion proved challenging for ODOE. According to the agency, staff struggled with data management, inconsistent and frequently changing rules that were not accompanied by appropriate staff training, and an increase in volume and responsibilities that was challenging for a small agency to handle. An external examination found the program suffered from a lack of formal training, employee turnover that caused a loss of institutional knowledge, a volume and complexity of work that overwhelmed staff, and missing quality and compliance oversight.²

¹ "Economic Impacts of Oregon Energy Tax Credit Programs in 2006 (BETC/RETC)," ECONorthwest: May 30, 2007, accessed at http://library.state.or.us/repository/2009/200903311354332/ENERGY_CONS_docs_BETC_RETC_Impacts-2006.pdf.

² This examination was conducted by Portland firm Marsh Minick, P.C. and is covered in greater detail later in this report.

The expansion of BETC was never intended to be indefinite. In 2007, the Legislature established a sunset date of January 1, 2016. Concerns with the program's growth prompted the Legislature to move up this sunset date, ultimately ending BETC in 2014.

Figure 1: The amount of credits issued by BETC spiked after the 2008 recession



Source: Oregon Department of Energy

Escalating problems with the program prompted the Legislature to end BETC in 2014

The first sign of trouble emerged in late 2008. While the BETC credits reduced costs for program participants, they also reduced the tax revenue flowing to the state. As the program ballooned, so too did the revenue impact to the state's General Fund — in some instances, exceeding what state officials anticipated.

The ODOE director at the time notified legislators and the Governor's Office about the increasing revenue impact and proposed several options to reduce this impact while maintaining the benefits of BETC. In 2009, the Legislature passed a bill that would have scaled back the BETC program. However, the bill was vetoed by the Governor, who cited the program's economic successes in the state's renewable energy sector.

The following year, legislators passed another bill that effectively began contraction of the program by adding caps to some credits and other risk-mitigating controls.

By 2013, Governor John Kitzhaber had been in office for two years and the Legislature had passed several additional bills to put further limitations on BETC with an eye toward ending it and replacing it with a separate energy incentive program. On July 1, 2014, BETC finally reached its sunset date and ended.

Problems and scandals within BETC resulted in criticism of ODOE

Leading up to the program's sunset in 2014, the agency stopped accepting new applications for credits. ODOE continued to grant tax credits for a period of several years for those applications that were pending at the time of the sunset.

It was during this time that a series of scandals appeared in quick succession, damaging the credibility of both BETC and ODOE. Despite its sunset four years ago, fallout from BETC continues to this day.

Miscommunication about agency rules triggered accusations of collusion and mismanagement by media and legislators

In 2012, ODOE staff was revealed to be giving advice pertaining to the sale of credits that was contrary to what was written in the agency's administrative rules.

For years, ODOE had served as a broker between buyers and sellers of credits through BETC at a prescribed price of 67 cents on the dollar for five-year credits. In 2009, at the direction of the Legislature, ODOE developed a new pricing formula that would change based on prevailing interest rates and inflation.

Believing this change would make it harder to attract buyers, tax credit recipients looking to sell their credits began turning to third-party brokers for help. Those brokers, in turn, sought to sell the credits at an even lower discount than what the state's rules dictated. Whether or not this was allowed, however, was unclear.

ODOE's chief financial officer told brokers in 2012 that the pricing rules did not apply if ODOE was not the one brokering the sale, basing this judgment off guidance received from the Oregon Department of Justice. This practice continued until 2015, at which point ODOE sought to update the administrative rules to formalize the practice of allowing private tax credit sales at a lower price than state-brokered sales. The rule change would also have applied retroactively as far back as July 2012.

This initiative received pushback from legislators who believed it violated the intention of BETC as established in statute. Some lawmakers accused ODOE of using the rulemaking process to cover up illegal deals and collude with a select group of tax credit buyers and sellers.

Suspected collusion with at least one brokerage firm became the subject of a call to the Oregon Audits Division's fraud, waste, and abuse hotline. After investigation, auditors did not find any evidence that a statute had been violated or that favoritism had occurred. They did note, however, that ODOE failed to fully communicate its decision to allow tax credit sales outside of the rule-based pricing formula and, as a result, had given conflicting advice on the subject.

In September 2015, Governor Kate Brown called for a broad review of how ODOE was managing BETC, and the agency agreed not to permanently change its administrative rules without seeking guidance from the Legislature.

Media scrutiny and whistleblowers prompt a criminal fraud investigation of a specific project

While ODOE was under scrutiny for its attempt to rewrite administrative rules, one of the projects that benefited from BETC also became the subject of media coverage that alleged serious fraud.

The Oregonian reported in 2015 that developers of a solar project at Oregon State University and the Oregon Institute of Technology had missed deadlines to qualify for subsidies under BETC. The Oregonian's investigation revealed that the project backers had submitted phony and misleading documents, which ODOE staff failed to adequately review.

Shortly thereafter, the newspaper reported the Oregon Department of Justice had opened investigations into the solar project and the credits the developers received. According to ODOE, the agency had requested the Department of Justice investigate.

In June 2017, state and federal charges were filed against two men involved in the solar project, accused of operating a bribery scheme involving tax credits issued through BETC.³ One, a former ODOE program manager who oversaw the buying and selling of tax credits, pleaded guilty to charges of official misconduct and receiving bribes and was sentenced to five years in prison.

The other, an energy consultant accused of paying nearly \$300,000 in bribes to the former ODOE manager, pleaded guilty to charges of tax evasion and fraud. He is scheduled to be sentenced in the fall of 2018.

The Department of Revenue also had lapses associated with the BETC program

ODOE was not the only agency that faced challenges associated with the administration of BETC. The Department of Revenue struggled in 2012 with questions regarding how to tax the income earned from the sale of credits issued under BETC.

In April 2012, the Revenue director learned that some taxpayers were purchasing credits through BETC at less than face value and failing to report the difference as taxable income, in violation of the federal tax code. Rather than pursue the issue, Revenue management instructed their audit staff not to initiate any special projects to identify these taxpayers.

Instead, the Governor's Office planned to introduce legislation in 2013 to eliminate the issue for Oregon taxpayers. In response, the Revenue director issued a moratorium to his staff prohibiting auditing of these credits from April 2012 through the end of July 2013. Ultimately, the bill failed to become law, at which point the audit moratorium was lifted. As a result, sales of credits through BETC went unexamined by Revenue auditors for a little over a year.

As some tax incentive programs are ending, others are still operating

ODOE is still wrapping up the tax incentive program that replaced BETC

When BETC ended, it was replaced by another, similar program — actually, a collection of three programs — called the Energy Incentive Program, or EIP. The intent of the Legislature was to replace BETC with a more structured and limited tax credit program to encourage investment in energy conservation and development of alternative energy resources. EIP consisted of three programs, each with a cap on credits or grant monies that could be issued:

- The Energy Conservation tax credit program, capped at \$28 million per two-year period;
- The Transportation tax credit program, capped at \$20 million per two-year period; and
- The Renewable Energy Development grant program, capped at \$3 million per two-year period.

ODOE stopped accepting final applications for EIP at the end of 2017. However, some eligible projects are still in progress, allowing ODOE the opportunity to continue issuing some credits until all applications have been closed.

Tax incentive programs are still ongoing at other state agencies

Although ODOE's incentive programs have ended, other state agencies are continuing to manage and administer various tax credit programs, some of which are targeted more specifically at economic development.

Oregon has approximately 22 tax credit programs tied to economic or community development. Until recently, this included the Oregon New Markets Tax Credit, which helped finance investments and job creation in low-income communities and supplemented an existing federal program.

³ One of the men had been previously indicted on forgery charges in August 2016.

Much like BETC in 2015, the Oregon New Markets Tax Credit program recently came under media scrutiny with accusations of mismanaged projects. The Oregonian reported in March 2018 that officials at Business Oregon approved a credit for a timber mill in Cave Junction despite red flags the project was doomed to fail — which it did, after less than 20 months of operation and \$12 million of taxpayer funding.⁴

Without reflection on how Oregon's various tax credit programs may be failing to operate as intended, the state runs the risk of continuing to pour millions of dollars into flawed projects or falling prey to fraud and bribery schemes. The lessons learned from BETC can be applied to other incentive programs now and in the future, helping to minimize the risks facing these programs and ensure that the tax dollars of Oregonians are being used for their stated purpose, whether that purpose is stimulating economic growth or promoting energy efficiency.

The Oregon Audits Division previously considered a review of BETC

In 2015, state officials and ODOE management began to call for a review of BETC to be potentially conducted by the Secretary of State Audits Division. The hope was that auditors could provide an objective assessment of the program, determine whether there was evidence of alleged fraud, abuse, or impropriety within the program, and identify recommendations to help ODOE manage its other tax credit programs.

Oregon Audits Division management at the time concluded that a full audit of the BETC program would be an ineffective use of the division's resources. For one thing, BETC was no longer operating, so any recommendations specific to administration of the program would be irrelevant. For another, the program had already been subject to a massive amount of scrutiny — from the media, from legislators, and from state leadership. The potential of auditors identifying previously unknown problems within the program was low as was the residual risks.

In 2016, ODOE management met with the Secretary of State to share concerns there may be undetected instances of fraud in BETC project files. Shortly thereafter, the division contracted with a private firm to conduct an examination of the program and its project files. That examination, conducted by Portland firm Marsh Minick, P.C., was released in September 2016. The recommendations outlined in that examination, as well as ODOE's efforts to implement them, are covered in greater detail later in this report.

⁴ "Destined to fail: Oregon officials missed taxpayer-backed mill project's red flags." The Oregonian: March 10, 2018, accessed at https://www.oregonlive.com/politics/index.ssf/2018/03/destined_to_fail_oregon_offici.html.

Many entities have offered recommendations to improve BETC and mitigate risk

After problems with BETC became public in 2015, a number of entities were tasked with various levels of review of the program, including legislative committees and auditing organizations. Each review offered a number of recommendations to ODOE on how to resolve the program's issues. Within just a few years, ODOE was inundated with dozens of recommendations from multiple sources.

Just as rapidly, however, this scrutiny appeared to fall by the wayside. None of the entities offering recommendations took formal action to follow up with ODOE to determine the agency's progress. There did not exist any comprehensive, public accountability to ensure the recommendations resulted in change.

This report includes a comprehensive update on actions ODOE has indicated that it has taken to respond to and implement the collective recommendations. For each of these recommendations, we asked ODOE's current director and staff the following:

- Is this recommendation still applicable or appropriate?
- Has this recommendation already been implemented?
- If the recommendation has not been fully implemented, what has been the progress thus far?

Although not all of the recommendations were applicable, ODOE agreed with the intention behind many of them and took action in response.

Oregon Audits Division hotline investigation issued recommendations pertaining to ODOE's rulemaking process and communication

In 2015, the Oregon Audits Division received a call through the division's fraud, waste, and abuse hotline.⁵ The call alleged that, since 2013, ODOE had been giving favorable treatment to a firm called Blue Tree Strategies in its pass-through transactions of tax credits through BETC. This alleged favoritism allowed the firm to negotiate pass-through rates other than those authorized in statute, allowing the firm to profit extensively off its sales of these credits.

A team of auditors investigated the allegations and issued a letter in September 2015 to the ODOE director detailing its findings. Ultimately, auditors found no evidence to suggest Blue Tree Strategies was not complying with statute or receiving any kind of preferential treatment.

However, auditors did find other areas of concern regarding the administration of the BETC program. For instance, auditors found that ODOE management was giving advice to some firms that conflicted with the agency's administrative rules. The letter included four recommendations made to ODOE to help the agency better manage the BETC program.

According to ODOE staff, the agency has taken action on all four recommendations.

"We learned a lot from our experience related to rulemaking on tax credit sales, and have made sure staff are comprehensively trained on program rules and implementation."
- ODOE staff

⁵ The caller later revealed himself to be the same former project manager with ODOE who would go on to plead guilty to receiving bribes from a tax credit recipient.

Recommendation	Auditee Action
Work with the Legislature to clarify the intentions for the program.	This recommendation was specific to BETC, which ended in 2014, and is therefore no longer applicable. However, the agency reported that it has worked closely with the Legislature on potential changes to other incentive programs, such as EIP. According to ODOE, early lessons from BETC were used by both ODOE and the Legislature in the creation of EIP.
Ensure ODOE's administrative rules and practices align with the intentions.	The agency reported that it works closely with the Legislature, Legislative Revenue Office, and Legislative Counsel to understand the intentions of programs created by the Legislature, and that ODOE staff follow legislative processes to inform rulemaking. During the rulemaking process, the agency provides notice to legislators and the public with opportunities for input. Finally, after a rule has been adopted, Legislative Counsel reviews all rules to ensure that they are within the agency's statutory authority, as it does with all agencies.
Consistently and clearly communicate administrative rules.	After the Oregon Audits Division issued its hotline letter in September 2015, ODOE reached out to participants in its other tax incentive program, EIP, to communicate key information about selling tax credits. Staff also corrected rates for participants who had been previously given incorrect information. The agency has continued to improve program communications. For example, in the lead-up to the recent sunset of the agency's incentive programs, staff communicated with stakeholders through a variety of media to ensure they were well prepared for the end of the programs. When changes were made to program rules, they were announced well in advance of becoming final, with numerous opportunities for public engagement and feedback.
Improve ODOE tracking to better ensure transactions achieve program objectives.	Although this recommendation cannot be applied to BETC, the agency has applied this recommendation to EIP, where improved tracking has been a key focus. The agency developed a Policy Option Package for the 2017-19 budget that led to current initiatives that are helping agency staff improve incentive program software and tracking functions.

Examination by Marsh Minick offered recommendations on better managing risk with many recommendations applying only to future programs

In 2016, the Oregon Audits Division contracted with Portland-based professional services firm Marsh Minick to examine the BETC program. Marsh Minick investigators reviewed nearly 4,000 BETC project files, performed extensive research and analysis, conducted approximately 40 interviews, analyzed database queries, and reviewed paper documentation to examine the program's controls and risks.

The examination was released in September 2016 and made 24 recommendations. These recommendations incorporated a number of methods for strengthening risk management practices, encouraged the Legislature to grant ODOE the necessary statutory authority to act on improper claims, and encouraged ODOE to enforce performance agreements on outstanding credits.

According to ODOE staff, 14 of the 24 recommendations applied to future energy tax incentive programs, so the agency has not yet taken specific action to address them.

“This recommendation was for future Energy Tax Incentive Programs. With BETC already over, and with the other tax credit programs nearing their end, ODOE has not continued to pursue this recommendation.”
- ODOE staff

Additionally, ODOE identified some recommendations that they believe are beyond the agency’s statutory authority. For example, several recommendations pertain to the services of Certified Public Accountants, or CPAs, such as implementing controls on their services by randomly conducting examinations and audits. According to ODOE staff, these recommendations would be better shared with the State Board of Accountancy, which establishes codes of conduct for CPAs.

The agency reported that it has taken action on the 10 remaining recommendations.

Recommendation	Auditee Action
Consider a qualified risk and compliance officer, whose sole function is to oversee risk and compliance at the agency.	ODOE worked with the Legislature to add two Full Time Equivalent compliance inspectors in 2010. As of June of 2018, the agency had also hired a full-time internal auditor to manage the agency’s internal audit function and independently organize, lead, and perform internal audits, including risk assessments. This position would also be involved in assessing risk and compliance, should the agency create new incentive programs.
Evaluate workflow compared to staffing levels on a regular basis to ensure adequate staffing.	For the past few years, as the end of the tax year has approached, ODOE has brought in temporary help to process tax credit applications and more expediently respond to Oregonians’ questions about eligible devices and other residential program details.
Hire/appoint staff with the unique and adequate skills necessary to perform position requirements, such as managerial, financial risk, engineering, and energy experience.	Since 2015, the agency’s Human Resources team has completely revamped ODOE’s recruitment, hiring, and onboarding processes, leading to increased recruitment and improved employee retention. The agency’s Human Resources department works to recruit qualified candidates who meet or exceed the minimum qualifications for each position. The agency also invests in professional development and training. Employee performance is reviewed by management to ensure that employees are fulfilling their responsibilities.
Eliminate rubber-stamping of documents and approvals.	Before the recent tax incentive programs ended, ODOE improved the way staff documented incentive decisions. This included more extensive review and vetting processes, procedures, and both technical and competitive reviews. These reviews were completed before project owners were offered an incentive.

Prohibit the use of whiteout and other forms of document manipulation.	ODOE staff refrain from using whiteout. They do not, however, penalize applicants who may have used it on an application.
Create a CPA verification process.	For EIP, ODOE included a step in the process to look up and confirm CPA license numbers with the State Board of Accountancy for any project requiring a CPA certification.
Continue to perform site inspections using random and risk-based approaches.	ODOE continues to perform site inspections on all large commercial projects as part of the agency's final review prior to issuing an incentive.
Perform an annual internal audit and risk assessment of energy incentive programs.	In June 2018, ODOE hired a full-time internal auditor. Part of this individual's job duties will include annual internal audits and risk assessments. Additionally, the agency will incorporate all agency divisions in the risk and audit assessments.
Encourage legislative bodies to provide the agency with statutory recourse authority when there are improper incentive tax claims, such as criteria for when civil recourse options should be considered.	In 2016, ODOE worked with the Legislature to pass House Bill 1507, which added claw back provisions for an existing program called the Biomass Tax Credit Program. This program has since ended. Agency management agrees that discussions on any future incentive programs should revisit ODOE's experiences and include clear options for revocation and enforcement.
Consider enforcing any existing performance agreements for BETC credits outstanding.	When BETC ended in 2014, only a few projects remained with performance agreements. ODOE has required that participants meet the provisions of these agreements before tax credits are distributed.

Joint interim legislative committee drafted recommendations but never finalized them

Following the turmoil surrounding both BETC and management by ODOE, the Legislature convened in 2016 a Joint Interim Committee on Department of Energy Oversight. The goal of the committee was to conduct a thorough review of ODOE and make recommendations for the 2017 legislative

"ODOE is willing to participate in any discussion about incentives and share our lessons learned. We believe that a statewide conversation about the need for new incentive programs is important, and **we would be eager to support that conversation with policy expertise as well as lessons learned from our incentive programs.**"

- ODOE staff

session pertaining to the agency's statutory responsibilities, organizational structure and funding streams, gaps and deficiencies in the operational structure and personnel capacity, and the agency's capacity to facilitate stakeholder relationships to fulfill its mission.

The committee met 10 times during 2016, hearing more than 25 hours of testimony and soliciting feedback from a variety of stakeholders, ODOE staff, and legislative staff. In December 2016, the committee released two draft reports summarizing

their findings and recommendations — one draft from the committee’s co-chairs and another with alternative recommendations.⁶

Not all of the recommendations were directed at ODOE, nor did all of the recommendations apply exclusively to BETC. For example, one recommendation was to update the Legislature’s statutory energy policy to address modern energy issues and to clarify and update ODOE’s role and responsibilities.

Despite these efforts, neither the committee nor the Legislature finalized the recommendations issued in either report. ODOE was not instructed to take specific courses of action on the two sets of recommendations, but did take action where applicable on eight of the committee’s recommendations.

Recommendation	Auditee Action
ODOE and the Department of Justice should enforce any existing performance agreements on outstanding BETC credits and claw back or discontinue nonperforming credits.	According to ODOE, for the few BETC projects that had performance agreements, the agency required the agreement provisions to be met before tax credits were distributed.
Allow EIP and the Biomass Producer and Collector Tax Credit programs to sunset January 1, 2018.	Both programs did sunset on the prescribed date. ODOE advocated for the programs to end following the direction of the Governor in June 2015. The agency provided testimony to the Legislature arguing that existing programs should either sunset or be moved to another agency based on ODOE’s history. The agency determined that, for ODOE to prepare for and meet the state’s future energy needs, it needed to end legacy programs.
Transfer Animal Manure tax credit program to the Oregon Department of Agriculture until it sunsets December 31, 2021.	The new program started at the Oregon Department of Agriculture on January 1, 2018.
Recommendations listed in the BETC audit should be carefully reviewed and incorporated into any proposed new incentive program.	The BETC examination was completed by Marsh Minick in 2016. As described previously, ODOE carefully reviewed and incorporated applicable recommendations from that examination.
Full financial and forensic audit by independent third party of all BETC tax credits paid for from ODOE budget.	ODOE has previously taken the position that a full BETC audit has merit, while at the same time recognizing the financial implications of a full audit and limits on what such an effort would be able to tell the state. The examination from Marsh Minick helped to fulfill this recommendation. ODOE further noted that this advisory report would also help inform conversations about any future incentive programs.
Reduce all staff that worked on BETC projects.	Several positions have already been cut due to the sunset of BETC. Additional changes to staff are anticipated as program management responsibilities wind down. The agency is currently in the process of building its 2019-21 budget, which proposes to decrease incentive program staff to a single Full Time Equivalent staff to complete the work necessary to fully sunset the legacy programs.

⁶ Both draft reports are available through OLIS at: <https://olis.leg.state.or.us/liz/201511/Committees/JCDEO/2016-12-13-12-00/Agenda>.

If incentive programs are to be considered and implemented, they must have established baselines and metrics to determine the success.

ODOE is currently developing a list of lessons learned about incentive programs that could be considered as part of any future discussions.

ODOE shall provide all necessary data and technological expertise to the Legislature for these incentive programs.

This recommendation was targeted at future incentive programs, so the agency has not yet been called upon by the Legislature for this purpose. However, ODOE has expressed its willingness to provide energy data and technological expertise and be involved in any future discussions on incentive programs.

Lessons learned can be applied to ongoing and future incentive programs

The investigation of a hotline call prompted ODOE to make changes to ensure that all staff are adequately trained and understand administrative rules

In 2015, ODOE's application of its own administrative rules was the subject of a call made to the Oregon Audits Division's government waste hotline. While the caller remained anonymous throughout the subsequent investigation, his identity was revealed years later as the former BETC manager who would go on to plead guilty to accepting almost \$300,000 in bribes.

This revelation cast some doubt upon the individual's reasons for calling the hotline in the first place. According to agency management, his understanding of statute and rule was questionable.

However, the experience did emphasize to ODOE the importance of:

- All staff members being familiar with rules that relate to their job responsibilities;
- Training that helps ensure staff perform their jobs in a way that is consistent with administrative rules; and
- Managerial oversight to prevent important steps from occurring in a silo.

As a result, the agency has made some internal improvements to strengthen staff's understanding of administrative rules. ODOE added a step to the rulemaking process to ensure that relevant staff are trained and understand any rule changes. The agency has also implemented quality control checks so that more than one staff member reviews key steps in tax credit sales.

Program goals and metrics should be established up front to effectively measure progress

Another recommendation that stemmed from the Oregon Audits Division's hotline investigation called for improved tracking of tax credit transactions to ensure that they achieved the program's objectives.

ODOE agreed that improved tracking should be a key focus of the agency's remaining incentive programs and is currently working on several initiatives to improve software and tracking functions, such as improving data management and adding steps to ensure that more than one staff member knows how to query databases.

However, for the agency, this reactive approach is less preferable to a proactive one that should be taken into consideration with future incentive programs.

According to ODOE, much of BETC and other tax credit programs involved archaic software programs that were not designed for complex database tracking tasks. For future programs, the agency recommends working with the Legislature to establish program parameters and metrics

first. These metrics can then be used to better inform the information technology tools that are best equipped to track the program and ensure that objectives are met.

Recommendations targeted at future incentive programs could provide valuable insight for other agencies

While the 2016 Marsh Minick examination focused on BETC exclusively, the recommendations were more broadly crafted to apply to future energy tax incentive programs.

The only remaining energy incentive programs under ODOE's purview are coming to an end. However, other agencies managing or considering incentive programs may find it useful to consider the recommendations applicable to managing risk within these programs, such as:

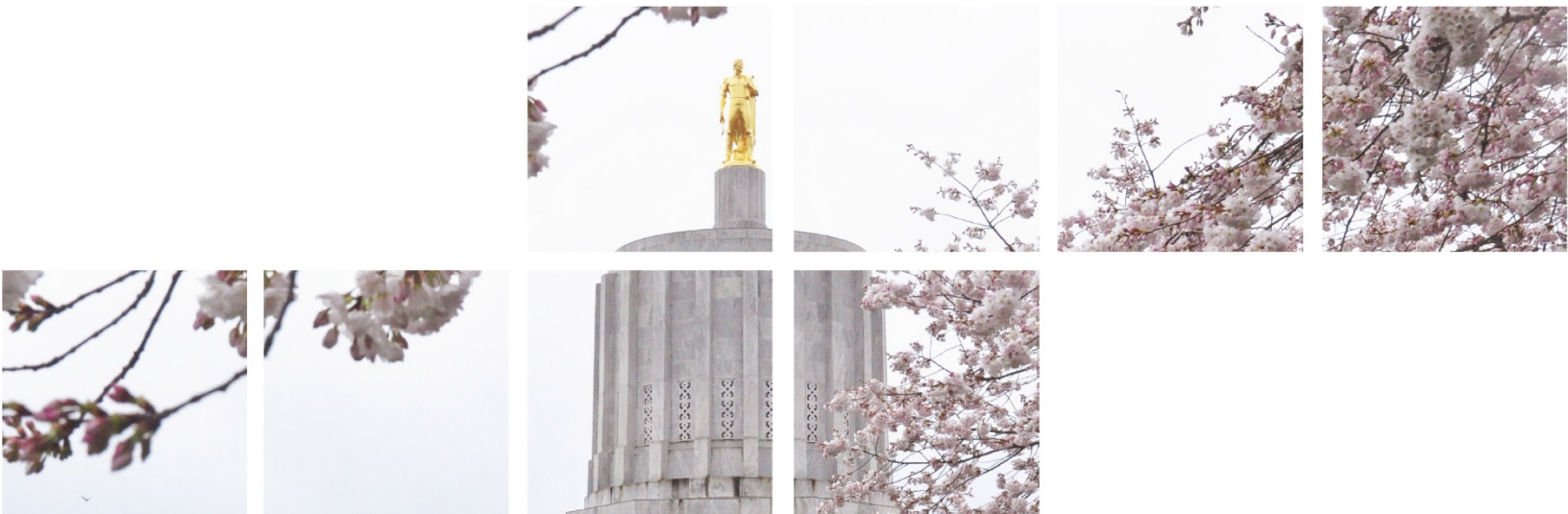
- Consider hiring a qualified risk and compliance officer whose sole function is to oversee risk and compliance at the agency;
- Evaluate workflow compared to staffing levels on a regular basis to ensure adequate staffing. Hire or appoint staff with the unique and adequate skills necessary to perform position requirements;
- Seek to participate in or form a committee, meeting regularly in a roundtable fashion to discuss trends, topics, concerns and best practices regarding risk as it relates to tax credits, frauds, and schemes;
- Establish a financial crime compliance program and, at minimum, perform quarterly prevention and detection measures. Any red flag should immediately be reviewed for site inspections and other preventive measures;
- Reconsider accepting complex financial arrangements as proof of payment for a project. At minimum, require these to be put through an additional due diligence process conducted by a qualified risk or legal professional, or both;
- Implement controls on the services of CPAs. Randomly conduct examinations and audits on CPAs attesting to projects. Require the CPAs to furnish all material used to attest to the eligible project costs to determine accuracy in their reporting. Implement rules around CPAs, including a rule to prevent the same CPA firm from attesting to project costs and brokering tax credits. Create a CPA verification process; and
- Perform an annual internal audit and risk assessment.

Successful incentive programs will require a collaborative approach

In the aftermath of BETC, many stakeholders were tempted to assign blame for the program's failures. However, it is critical to note that for incentive programs to succeed, the work must be collaborative.

ODOE leadership has expressed a willingness and enthusiasm to be involved with future discussions on incentive programs. Agency management and personnel are keen to share the lessons they learned from the fallout of BETC to avoid similar problems in future programs.

The Legislature has the authority to create and expand incentive programs; the Governor's Office sets policy priorities and goals for the state; and individual agencies have the knowledge and expertise in their respective areas. Successful incentive programs will be able to leverage all of these strengths to best serve Oregonians.



A note on advisory reports

An advisory report provides information on limited reviews or time-critical assessments, investigations, or evaluations. This report is not an audit and therefore does not adhere to the full set of government auditing standards. This informational report has undergone the same rigorous quality assurance process as each audit from the Oregon Audits Division.

This report was written by Laura Fosmire, communications specialist for the Oregon Audits Division.

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of his office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards and commissions as well as administer municipal audit law.

This report is intended to promote the best possible management of public resources.
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Oregon Audits Division
255 Capitol St NE, Suite 500 | Salem | OR | 97310
(503) 986-2255
sos.oregon.gov/audits