

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members  
**FROM:** Joe Murray, Performance Audit Manager  
**CC:** Richard Opper, Director, Department of Environmental Quality  
Tom Livers, Deputy Director, Department of Environmental Quality  
George Mathieus, Administrator, Planning, Prevention, and Assistance Division  
**DATE:** November 2011  
**RE:** Performance Audit Follow up (12SP-14): State Building Energy Conservation Program (orig. 09P-06)  
**Attachments:** Original Performance Audit Summary

### Introduction

In November 2009, we presented our performance audit of the State Building Energy Conservation Program (SBCEP). The audit directed three recommendations to the Department of Environmental Quality (DEQ). In June 2011, we began gathering preliminary information from DEQ on their progress in implementing the recommendations. This memo summarizes the results of our follow-up work in addition to presenting background information on SBCEP.

### **Overview**

Audit recommendations addressed the need for DEQ to seek legislation to clarify the retirement or continuation of the collection of estimated energy cost savings beyond the retirement of bond payments; comply with state law regarding the transfer of funds to the Long Range Building Program (LRBP); and develop management controls for SBCEP, including formalizing its interaction with LRBP. DEQ has implemented one recommendation and work towards implementing two recommendations is ongoing.

### Background

Established in 1989, SBCEP was developed to improve state facilities and equipment under the State Buildings Energy Conservation Act. The SBCEP was designed to reduce energy costs in existing state facilities by identifying and funding cost-effective energy efficiency improvement projects. State agencies pay the program back with the estimated energy cost savings generated from installing an energy efficiency improvement. In addition, SBCEP works closely with LRBP located within the Department of Administration (DOA). The LRBP allocates state resources for the purpose of capital construction and maintenance of state-owned buildings. From 1993 to 2006, SBCEP issued \$14.75 million in General Obligation bonds to finance energy improvement projects, using estimated energy cost savings to service bond debt. However, in 2009, the legislature appropriated approximately \$22 million in funds leveraged

from the American Recovery and Reinvestment Act (ARRA). These funds were utilized to establish a revolving loan fund to finance future SBCEP projects. Since DEQ recently established this revolving fund for future energy projects, audit work only examined SBCEP bonding activities.

### **Follow-up Auditing Findings**

The performance audit report contained three recommendations to DEQ. As part of follow-up work, we examined program materials and interviewed agency staff from DEQ and DOA. The following summarizes information relating to follow-up audit work and the implementation status of recommendations.

#### **Recommendation #1**

**We recommend the Department of Environmental Quality seek legislation to clarify the retirement or continuation of the collection of estimated energy cost savings beyond the retirement of bond payments.**

#### **Implementation Status – Implemented**

In the 2011 Legislative Session, HB51 became law and amended the State Buildings Energy Conservation Act. The bill placed limits on the collection of energy savings payments from participating agencies to the length of the term of the bond plus one year.

#### **Recommendation #2**

**We recommend the Department of Environmental Quality comply with statute regarding the transfer of funds to the Long Range Building Program.**

#### **Implementation Status – Being Implemented**

According to DEQ staff, the passage of HB51 established a process for how funds are collected and transferred to LRBP. While the bill does place limitations on the collection of energy cost savings payments from participating agencies and subsequently requires DEQ to transfer funds in excess of bond debt to LRBP, the bill does not establish a formal process for the transfer of these funds to LRBP. In addition to the passage of HB51, DEQ also formalized a Memorandum of Understanding (MOU) with DOA that establishes that these transfers will take place each year by December 31. However, the MOU does not specifically outline the mechanics of the transfer. In response to our requests for clarification, DEQ drafted a formal policy in October 2011 which outlines the specifics of how and when DEQ performs the transfer of these excess funds to LRBP. However, LRBP had yet to review the policy and indicated they did not understand how the transfer of funds would occur. At the close of follow-up work, there still appears to be some confusion on the part of SBCEP and LRBP staff as to the particulars of the transfer process. Nonetheless, DEQ has begun the process of transferring funds to DOA. In December of 2010, DEQ transferred \$200k to LRBP for FY2011. DEQ staff have also developed projections of energy cost savings collected from participating agencies, including funds in excess of bond debt, through FY2027. However, this information has not yet been shared with LRBP, but should be in the future as a means to improve communication between the two agencies.

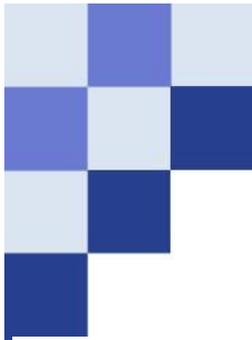
#### **Recommendation #3**

**We recommend the Department of Environmental Quality develop management controls for the State Building Energy Conservation Program, including formalizing the interaction with the Long Range Building Program.**

**Implementation Status – Being Implemented**

At the time of our follow-up work, DEQ was still in the process of finalizing management controls to ensure SBECF functions in compliance with applicable laws and in accordance with management directives. In response to audit recommendations, the department developed various formal policies and procedures that either have been finalized or are still in the process of being finalized, which establish standardized operating practices for SBECF. These policies and procedures cover topics such as project filing, agency billing, project tracking, energy analyses, monitoring and verification, agreement standards between DEQ and agencies participating in SBECF, and an MOU outlining roles and responsibilities between SBECF and LRBP. According to department staff, a few of these formal policies and procedures, including those for project implementation, retro-commissioning, and the aforementioned transfer of excess funds to LRBP, are still in draft form and have yet to be finalized by DEQ.

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# MONTANA LEGISLATIVE AUDIT DIVISION

## PERFORMANCE AUDIT

# State Building Energy Conservation Program

Department of Environmental Quality

NOVEMBER 2009

09P-06

REPORT SUMMARY

The Department of Environmental Quality’s authority to collect approximately \$1.2 million in additional energy cost savings should be clarified and management controls should be developed.

### Context

In Montana, the State Building Energy Conservation Program (SBECP) was designed to reduce energy costs in state facilities. And while state law directs participating agencies to transfer energy cost savings to the Long Range Building Program (LRBP), the SBECP has and only transferred portions to the LRBP. For example, the SBECP collected \$56,500, however, the SBECP only transferred approximately \$36,000 to the LRBP that year.

Audit work indicated the program has historically operated on an informal basis, with limited program oversight, no policies or procedures, and a lack of a structured filing system, which has resulted in limited information supporting how program decisions are made. These impacted our ability to determine if the program is working as the legislature intended. The program has relied on the activities of the LRBP to implement activities, including the identification, selection, and implementation of projects. Audit work identified coordination issues between the SBECP and LRBP, including the process for transferring funds to the LRBP. The focus of the program has been on the day-to-day activities, rather than on a coordinated set of policies and procedures to ensure the SBECP functions in compliance with applicable laws and in accordance with management directives.

In 2009, the legislature appropriated approximately \$22 million in funds leveraged from the American Recovery and Investment Act. These funds will be

utilized to establish a revolving loan fund to finance future SBECP projects. This move is a significant departure from the bonds that have historically financed projects, mainly in terms of the amount of funding administered by the SBECP. These additional funds further illustrate the value in developing formal management to guide ongoing activities.

### Results

Audit recommendations address the need for the department to:

- Seek legislation to clarify the retirement or continuation of the collection of estimated energy cost savings beyond the retirement of bond payments
- Comply with state law regarding the transfer of funds to LRBP
- Develop management controls for the SBECP, including formalizing its interaction with LRBP

Recommendation Concurrence	
Concur	3
Partially Concur	0
Do Not Concur	1
Source: Agency audit response included in final report.	