

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Members of the Legislative Audit Committee
FROM: Ken Varns, Legal Counsel
DATE: September 2024
RE: Potential Legislative Action Relating to Audit Recommendations

Prior to each legislative session we compile audit recommendations issued since the last session where we recommend legislation or make recommendations to review, revise, or clarify statutory language. For recommendations addressed to agencies, we determine if the agency intends to seek legislation or take corrective action by other means. In this memo we have also included recommendations with which the agency did not concur and/or will not implement, where legislation could be a possible solution for the Legislative Audit Committee (LAC) or individual members to consider.

For recommendations addressed to the legislature, or where an agency has not implemented a recommendation or does not concur with a recommendation to seek legislation, we give the LAC an opportunity to discuss a committee bill. The following table summarizes information from reports where the committee could consider potential legislative actions relating to audit recommendations. For each of the reports/recommendations, the committee could consider the following options:

- A committee bill
- An individual bill
- Remain at status quo

The table also includes disclosure issues we addressed in audit reports where legislative awareness of the specific situations may be important. In addition to consideration of potential legislation by the LAC, at the beginning of the next regular session we will also be providing joint appropriations sub-committees with information on audit recommendations/reports with budgetary impacts.

Report Title	Function	Number	Finding Description
Recommendation to the Legislature or Agency for Statutory Revision – Current Cycle			
Department of Revenue	Performance	21P-06	Report lease of non-exempt property by exempt owners to DOR; Legislation to require reapplication/redetermination of exempt status; Legislation to require new real property tax exemptions include policy goals and evaluation matrix.
Public Service Commission/ Department of Public Service Regulation	Performance	22P-01	Legislation to fund necessary positions and career ladders
Board of Housing	Performance	23P-04	Legislation to require training for BOH Members
eGovernment Series 2: Accountability Through Agency Coordination and Effective Reporting	Information Technology	23DP-01	Identify and establish appropriate and achievable IT reporting metrics within statute
Recommendation to the Legislature or Agency for Statutory Revision – Previous Cycles			
Administration of the Petroleum Tank Release Cleanup Fund	Performance	20P-01	Clarify board doesn't approve/reimburse based on cleanup method; develop process for competitive bidding; prepare the fund for eventual closure of historic releases
Effectiveness of Community Corrections Programs in Reducing Recidivism	Performance	18P-05	Limit terms of community correction contracts
Other Consideration for Statutory Revision			
State of Montana	Financial	23-01	Timely financial reporting
Recommendation Not Implemented			
Fly the Big Sky; Division of Aeronautics and Yellowstone Airport Operations	Performance	21P-05	Documenting expenditures for the Airport Grants and Loan program
Montana's Milk Industry: An Analysis of the State-Regulated Market	Performance	20P-03	Decrease quota amounts to reflect current milk production
Kids in Care: Analysis of Population Trends and Management Practices in Montana's Foster Care System	Performance	19P-01	Using data-based measures to evaluate implementation of Family Support Teams
Short-Term Lodging and Rental Vehicle Taxes: Keeping Pace with an Evolving Marketplace	Performance	18P-06	Oversight process for aggregated regional quarterly tax payments to ensure revenue is allocated to correct jurisdictions

Recommendation to the Legislature or Agency for Statutory Revision – Current Cycle

Department of Revenue (21P-06)(Report dated May 2023)

Recommendation #4

We recommend the Department of Revenue revise practices and, as necessary, seek legislation to align statute and department practices related to determining and recording the taxable status or payment in lieu of tax amount of Fish, Wildlife & Parks property.

Properties owned by FWP are exempt from property taxes and should be recorded as exempt in the department's database. However, statute requires that county treasurer's draw a warrant for the amount that would be owed if certain FWP property were taxable, and FWP makes a payment in lieu of taxes (PILT) to offset losses in property taxes to local governments due to the existence of certain nontaxable FWP land within their boundaries. There is a need to align statute and administrative practices to address the taxable status of FWP property.

Recommendation #5

We recommend the Department of Revenue:

- A. Develop and implement a process to identify and track government and private exempt property leased out to nonexempt entities for their beneficial or exclusive use.**
- B. Seek legislation to require public entities that own exempt property leased to nonexempt entities for their beneficial or exclusive use to report to the Department of Revenue a statement of the leasing of such tax-exempt property.**

There is under-reporting of government and other exempt property that is being leased out to private entities for their exclusive or beneficial use. Leasing and beneficial use information is not recorded in a consistent manner in the department's database. The policy reason for taxation of a portion of exempt property leased out to a private entity for their exclusive or beneficial use is to avoid giving an unfair trade advantage to private users of exempt property over competitors who must pay property tax for similar use of nonexempt properties. Statute requires *private* landowners as well as beneficial users to report beneficial use of exempt real property. However, statute does not require *publicly* owned entities to report beneficial use of exempt real property to the department.

Recommendation #6

We recommend the Montana Legislature require a periodic reapplication and review of exempt real property, taking into account the costs and benefits of either a broad or targeted reapplication process.

The benefits associated with HB 389 ultimately exceeded costs of implementing the law. It would be beneficial to other taxpayers and the state to conduct another reapplication and review process. Evidence suggests that another broad reapplication and review process would be net beneficial to taxpayers and the state starting in 2029. A more targeted reapplication would be more efficient and could be considered sooner if the legislature believes it to be fair.

Recommendation #8

We recommend the Montana Legislature:

- A. Require new real property tax exemptions include policy goals and evaluation metrics that can be used to determine if exemptions are meeting their purposes.**
- B. Assign responsibility for evaluation and review of real property tax exemptions.**

The Montana's legislature has not consistently established purposes or policy goals for its real property tax exemptions, and like many other states, has not consistently conducted evaluations to determine if exemptions are meeting their purposes. Best practices suggest establishing explicit legislative purposes or policy goals to aid in evaluation so that the department, lawmakers, or program evaluators can identify relevant metrics, collect data, and evaluate benefits of such exemptions.

Public Service Commission and Department of Public Service Regulation (22P-01) Reinforcing Organizational Improvements in Public Service Regulation (Report January 2024).

Recommendation #3:

We recommend the Public Service Commission and Department of Public Service Regulation address turnover and retention by proposing methods to the Legislature for funding the pay plan and increasing salaries for competitive positions.

The department has experienced high turnover and difficulties recruiting in recent years. There are concerns regarding the level of turnover and the potential to diminish the efficiency and effectiveness of department operations. The department has tried to address issues in recruitment and retention but has not been able to fully implement strategies to improve turnover. Budget limitations were the key reason staff identified why they were being held back from competitive pay and advancement opportunities. Commissioners say the department has not been historically successful requesting appropriations from the Legislature that would help fund the necessary positions and career ladders.

Montana Board of Housing (23P-04). Supporting Low-Income Housing: The Montana Board of Housing and Its Role in Awarding Housing Tax Credits (Report dated June 2024)

Recommendation #5

We recommend the Montana Board of Housing

- A. Adopt a policy implementing a training requirement and schedule, or**
- B. Seek legislation to implement a training requirement for MBOH board members.**

Clear policies and sufficient training are key to good board governance. Some board members have limited knowledge about MBOH policies and programs and show little engagement during board meetings. Training for MBOH members is not a requirement in statute or formalized in policy but is encouraged by staff. Without consistent, structured training for board members to understand how to make complex funding decisions for affordable housing projects, the MBOH cannot effectively manage its programs. Note: In its response, the board did agree to adopt training policies.

Department of Administration (23DP-01)

eGovernment Series 2: Accountability Through Agency Coordination and Effective Reporting (Report dated March 2023).

Recommendation #1

We recommend the Montana Legislature identify and establish appropriate and achievable IT reporting metrics within statute.

Montana's IT reporting structure contains important information legislators need to track performance of IT, as well as goals, initiatives, projects, and other activities. However, required information is not clearly defined for IT project reporting, which is arguably the most important area of reporting due to the amount of money it requires for significant IT initiatives. HB10 contains all major IT projects to be funded and, in some instances, specific stipulations that address risks surrounding the project before funds are released. This is the moment where legislators have the most influence on major IT projects. By including and

requiring specific metrics in the governor’s original budget request, agencies will have a better opportunity to communicate more business-like information with legislators. Industry standards provide various examples of such metrics, but the Legislature and Executive branch should coordinate to identify those most important to the needs of Montana.

Recommendation to the Legislature or Agency for Statutory Revision – Previous Cycle

Administration of the Petroleum Tank Release Cleanup Fund (20P-01)

(Report dated October 2021)

Recommendation #2

We recommend the Montana Legislature clarify statute by making amendments as needed to clarify the Petroleum Tank Release Compensation Board does not have a role in approving or basing reimbursement on the specific methods prescribed within approved corrective action plans that bring an eligible petroleum release to closure.

Based on our review, we believe the Legislature needs to clarify the roles of the department and the board regarding which party determines what remediation actions are necessary to close a site. The legislature is uniquely positioned to clarify the appropriate roles of the department and the board in developing, approving, implementing, and reimbursing corrective action plans. Defining as “necessary” any corrective action measures included in a department-approved corrective action plan would lend clarity and certainty to the process for all interested parties.

Recommendation #3

We recommend the Petroleum Tank Release Compensation Board work with the Department of Environmental Quality to develop a process, seeking legislation if necessary, whereby remediation projects are competitively bid to bring releases to closure, in accordance with existing state procurement laws.

During the audit we discussed the concept of competitive bidding with board and department staff. They identified a number of areas to address as this change in process is contemplated, including the potential need for statutory change in order to accommodate a new bidding process for fund-eligible projects.

Recommendation #4

We recommend the Petroleum Tank Release Compensation Board work with the Department of Environmental Quality to seek legislation that prepares the fund for the eventual closure of all historic underground storage tank release in Montana.

The future of the Petroleum Tank Release Cleanup Fund is ultimately in the legislature’s hands. When the fund was created, a half-century of decrepit and leaking underground storage tanks mandated a strong public response. As that backlog of releases diminishes, the legislature must decide whether it is the role of the taxpayer to continue to fund an ongoing insurance pool for a private industry. The board can provide the legislature with the expertise needed to consider multiple options when weighing the future of the fund. A legislative proposal may present any of several different outcomes, including:

- A sunset review of the fund by the legislature to determine if the fund is still necessary.
- A transition away from mandatory contribution to the fund by all fuel distributors (and tank owners).
- A date after which the fund will no longer provide financial assurance for new underground leaks.

- A transition to mandatory private insurance for underground storage tank owners.

Effectiveness of Contracted Community Corrections Programs in Reducing Recidivism (18P-05)
(Report dated June 2020)

Recommendation #3(B)

We recommend the Department of Corrections seek legislation to limit the terms of community corrections contracts.

Our audit found lengthy (20 years) community corrections contracts limits the ability of the department to make changes to the community corrections services. The reasoning for the 20-year contracts was to allow contractors to secure financing to build their facilities, but these contracts are either fully paid or will be complete by 2026. In 2016, the Commission on Sentencing considered legislation to review the limit on contract terms to seven years, in line with most other state contracts, unless the contract funded construction bonds. That legislation was never introduced during the 2017 Legislative Session. In its response to the audit, the department did not concur with this part of the recommendation. They indicated they do not intend to enter into 20-year contracts in the future but does not intent to seek legislation to revise the statutes.

Other Consideration for Statutory Revision

State of Montana (23-01) (Report dated May 2024)

Recommendation # 1

We recommend the Department of Administration:

- A. Continue to look for ways to streamline the Basic Financial Statements preparation process.**
- B. Evaluate resource needs and, if necessary, work with the legislature to secure the additional resources needed to provide a complete financial reporting package for audit in a timely manner.**

The Department of Administration (department) did not provide audit ready drafts of the fiscal year 2023 Basic Financial Statements and notes (BFS) within a time frame that would have allowed the Independent Auditor to complete the Single Audit on time. While other factors contribute to the State of Montana not meeting the Single Audit deadline, timely reporting is necessary for the State of Montana to meet the Single Audit deadline in future years. The department is looking for ways to streamline the Basic Financial Statement preparation process, including a master contract for auditing and accounting that will allow the department and other agencies to procure outside help when needed. For example, a contractor could help with future standard implementation.

Recommendation not Implemented

Fly the Big Sky: Division of Aeronautics and Yellowstone Airport Operations (21P-05)
(Report dated September 2022)

Recommendation #2

We recommend the Department of Transportation:

- A. Require Airport Grants and Loans Program award recipients submit documentation supporting funding expenditures and actual project costs as part of the award closeout process.**
- B. Review the documentation to ensure the funding was spent appropriately and that the recipient does not need to reimburse any part of the award.**

Airport grant and loan program fund recipients are required to reimburse the program when final project costs are significantly less than the original grant award. Our audit found that insufficient closeout documentation requirements led to at least two instances where the division was unaware that excess funds had been awarded without reimbursement. We recommended that the department require grant and loan recipients to provide more rigorous documentation of actual projects costs and that the department review the documentation to ensure grant and loan funds are being spent appropriately. In its response to our audit, the division claimed it would require additional full-time employees to implement this recommendation. Our follow-up work did not identify any new steps taken by the department toward implementation of this recommendation. The division did not request additional FTE during the 2023 legislative session, and division administration maintains they do not believe that any changes to their current closeout process are necessary.

Montana's Milk Industry: An Analysis of the State-Regulated Market (20P-03) (Report dated October 2021)

Recommendation #1

We recommend the Department of Livestock and the Board of Milk Control:

- A. Pursue changes to administrative rule to allow for decreases in the amount of quota owned by dairy producers, and**
- B. Decrease the amount of quota to reflect current milk production and Montana dairy industry needs.**

Dairy producers and the board were attentive in responding to the audit and drafted rule changes to address the recommendation. The new rule language, adopted September 2022, includes a mechanism to decrease the amount of quota owned by producers by not reallocating forfeited quota when a producer leaves the market. Quota is now either reduced by 10 percent when transferred to a producer or automatically removed rather than reassigned when forfeited quota is not claimed by another producer. As of March 2024, the department estimated the total quota owned by producers to be about 297,700,000 pounds per year. Since the audit, the implementation of the new administrative rules reduced the statewide quota by 577,500 pounds per year, which is roughly 0.16 percent of total quota. While the board and department have taken necessary steps to include the ability to decrease quota in administrative rule and have seen a slight reduction in quota with the implementation of the new administrative rules, the rule language and subsequent reduction in quota does not yet reflect current production in the state. The action taken by the board and department are impactful first steps, but in order to more closely align quota with production on an ongoing basis, additional efforts to reduce quota would be needed.

Kids in Care: Analysis of Population Trends and Management Processes in Montana's Foster Care System (19P-05)

(Report dated December 2021)

Recommendation #3

We recommend the Department of Public Health and Human Services:

- A. Determine through data-based measures that Family Support Teams and Safety Resource Specialists lead to an increased use of prevention plans.**
- B. Adjust the program if it does not lead to results.**

The original audit found the department piloted and later implemented Family Support Teams (FSTs) led by a Safety Resource Specialist in four of the six CFSD regions in Montana. Additionally, the department focused on developing a framework for the use of prevention plans. A prevention plan is a voluntary agreement between the CFSD and the family. We found the department had not established goals or data measures to determine if the FST program increased the use of prevention plans. While the department contracted with Montana State University (MSU) for an annual analysis of CFSD's use of prevention plans, the possible contribution of FSTs towards an increased use of prevention plans is not part of MSU's analysis. CFSD management also indicated their IT system limits the data they can gather on prevention plan use. At this time, CFSD does not have the prevention plan data to determine if an increase in FSTs has contributed to more families engaging in prevention plans. We therefore consider this recommendation not implemented. However, data shows an increasing percentage of families engaging in an FST have their children remain in the home.

Short-Term Lodging and Rental Vehicle Taxes: Keeping Pace With an Evolving Marketplace (18P- 06)

(Report dated April 2020)

Recommendation #3

We recommend the Department of Revenue develop and implement an oversight process for aggregated regional quarterly tax payments to ensure revenue is appropriately credited to the correct jurisdiction.

The 4 percent lodging use tax is collected to support tourism promotion efforts and is distributed according to a formula in statute that provides fixed percentages of the revenue to certain statewide entities (Department of Commerce Office of Tourism Development, among others). Other portions of the revenue are distributed regionally to tourism regions and local convention and visitors bureaus (CVBs), based in part on where in the state the transaction takes place and the tax is paid. During audit work, we reviewed the distribution of lodging facility use taxes to tourism regions and CVBs around the state. Our review of quarterly remittances indicated funds were not being accurately allocated regionally, so we recommended the department develop an oversight process or screening mechanism within its information management system that could flag questionable amounts for individual regions or CVBs, to help ensure proper distribution of the revenue.

During follow-up work, the department acknowledged it has not put in place any type of data screen or measurement tool that would flag certain distribution amounts for further review. Management told us they could not identify a way within their collection and information management system to flag certain remittance amounts for additional review, and that semi-formal visual review of regional distribution remains all that takes place currently. Thus, this recommendation has not been implemented.