

Legislative Audit Division
Performance Audit Prioritization Process
Fiscal Year 2021

LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Joe Murray

MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Joe Murray, Deputy Legislative Auditor, Performance and Information Systems Audits
DATE: June 2020
RE: Potential Performance Audit Areas for Fiscal Year 2021

Please find enclosed a list of potential performance audit topics for fiscal year 2021. This list has been compiled to provide an opportunity for the Legislative Audit Committee to highlight areas of interest for future audit work. These topics have been identified through requests or input from the Legislative Audit Division and other legislative branch staff, agency staff, previous audit work, and areas of legislative or general interest.

Several of the potential audit topics were submitted by individual legislators and state agency staff. These include:

- Retirement System Consolidation
- Physical Space Management on College Campuses
- Habitat Montana & Conservation Easements
- State Warrant Printing and Mailing
- Asbestos Control Program
- Health Insurance Pharmacy Benefit Management
- Medical Marijuana Act
- MDT Aeronautics Division Operations

We are requesting you assign a priority ranking (low, medium, or high) for the potential topics on the attached list. Where you have no interest in a particular issue, you may leave the prioritization section blank.

To assist in scheduling performance audit work for the next year, we would like to receive your priority rankings at the June 15-16 committee meeting, if possible. If you are unable to attend the meeting or unable to turn in your prioritization rankings at that time, you may also return them to the office by mail, fax, or email. Please return your scoring to me or Will Soller by July 10, 2020. I will be available during the committee meeting for any questions or comments regarding the potential performance audit list.

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Fiscal Year 2021 Potential Performance Audits

Priority Ranking

Issue / Subject Area

Audit Title

Low

Medium

High

<u>Issue / Subject Area</u>	<u>Audit Title</u>	Low	Medium	High
Agency Management & Public Policy	Retirement System Administrative Consolidation			
	Hiring Practices in State Government			
	Family and Medical Leave Act Administration			
Economy & Jobs	Board of Medical Examiners Complaint Processes			
	Economic Impact of Tourism Promotion			
Education	Emergency Authorization of Teachers without Licenses			
	Physical Space Management on College Campuses			
Fisheries & Wildlife	Habitat Montana & Conservation Easements			
	Fishing Access Sites			
	Aquatic Invasive Species			
General Government	State Warrant Printing and Mailing			
	State Agency Printing Facilities Duplication			
Justice & Corrections	Ensuring the Ethical Conduct of the Judiciary			
	Gambling Revenue Oversight and Collection			
	Efficient Use of Legal Services by State Agencies			
Natural Resources & Environment	Accuracy of Water Rights Ownership Data			
	Regulating the New Hemp Industry			
	Asbestos Control Program			
Public Health & Human Services	Ensuring Quality Care for Vulnerable Adults			
	Health Insurance Pharmacy Benefit Management			
	Medical Marijuana Act			
	COVID-19 Preparedness and Response			
Taxation & Revenue	Real Property Tax Exemptions			
Transportation	MDT Aeronautics Division Operations			
	Privatization of the State Motor Pool			

***Denotes a formal request from a citizen, state agency, or legislator via a letter, legislative resolution, or legislative request for a performance audit in that area.**

Agency Management & Public Policy

Retirement System Administrative Consolidation*

In Montana, two main state government administrative bodies are responsible for the oversight of retirement benefits for public employees. The Montana Public Employee Retirement Administration (MPERA) administers eight different retirement systems, including those for public employees, judges, game wardens, firefighters, and various law enforcement professionals. Presently, MPERA has more than 32,000 active members and almost 21,000 retirees. Assets for MPERA totaled more than \$6 billion in FY 2018. The Montana Teachers' Retirement System (TRS) serves active and retired teachers, administering their pension plan. TRS currently has membership of nearly 20,000 and manages approximately \$4 billion in assets. Collectively, these two administrative bodies are responsible for about 90 percent of state employee pensions. MPERA and TRS maintain separate administrative structures and offices, including separate staff and oversight boards. Currently, TRS employs 21 FTE to manage its activities, while MPERA has 47 FTE. In 2019, the Montana Legislature passed House Joint Resolution 39, requesting a performance audit to examine potential cost savings from combining these two administrative bodies that manage retirement assets for public employees in the state. Similar administrative duties performed by both MPERA and TRS include functions related to legal guidance, enrollment and collection of contributions, benefit disbursement, communication outreach, and information technology (IT). For example, both MPERA and TRS recently made significant upgrades to their individual IT systems used to manage employee pensions, totaling approximately \$16 million between the two organizations. A potential performance audit could examine whether there are opportunities for the consolidation of these two administrative bodies that manage pension assets, including identifying areas of potential overlap and duplication, such as IT systems and benefit calculation and distribution. A performance audit could also examine whether there are opportunities to merge any or all of the multiple retirement systems managed by the two administrative bodies. This topic has not been previously examined as a performance audit by LAD.

Hiring Practices in State Government

Montana administrative rules describe Montana state government as committed to attracting and retaining a highly qualified workforce based on competencies and job-related qualifications and using a competitive recruitment process to select individuals for employment. Despite this commitment, audit work within various state agencies has identified potentially questionable or inappropriate hiring practices across state government. Examples of issues identified include hiring processes that may not be designed to identify the most qualified candidates, limited documentation on how hiring decisions were made, and hiring of possibly unqualified individuals. The LAD hotline often receives calls related to potential hiring practice violations, in both the executive branch and the universities. From January 2018 to the present, there have been 20 calls related to hiring practices. Accusations in these calls range from destruction of hiring documents to favoritism in the hiring process. Hiring and recruitment practices across the state play an important role in trust in government, agency efficiency and effectiveness, ability to meet state goals, and employee retention and turnover. Potential audit work in this area could review hiring processes used by state agencies, examine whether these processes are designed to

hire the most qualified candidates, determine if hiring practices comply with state law and regulations and if state policy provides clear direction, and assess the level of oversight that exists over state agency hiring practices. While past financial audit work has identified concerns in state hiring practices, this topic has not been examined as a performance audit.

Family and Medical Leave Act Administration

The Family and Medical Leave Act of 1993 (FMLA) is a labor law passed by Congress requiring employers to provide employees with a minimum level of job-protected and unpaid leave for medical and family reasons. And with COVID-19, extended FMLA protections have been provided by Congress to assist employees with pandemic-related medical and family needs. Other state's audit work has identified inconsistencies in how state agencies administer FMLA protections, including not allowing FLMA leave associated with prenatal doctor visits. In addition, past audit work in Montana has identified inconsistencies in the administration of FLMA, leading to settlements with state employees. A performance audit could determine if there are inconsistencies within and across state agencies regarding FMLA policies and their implementation. Specifically, a performance audit could assess if all policies include required FMLA protections such as the requirement to restore an employee to an equivalent position when he or she returns from leave. This topic has not been previously examined as a performance audit by LAD.

Economy & Jobs

Board of Medical Examiners Complaint Processes

The Board of Medical Examiners licenses, regulates, and disciplines health professionals in order to protect the health and safety of Montana citizens. In Montana, there are approximately 13,000 active medical licenses. The Board took disciplinary action against doctors 53 times between 2014 and 2018. In FY2018, the Board received 136 new complaints and suspended nine licensees. Recently, there have been concerns about actions by the Board and the transparency of their processes. For example, controversial complaints related to several doctors suspected of over-prescribing pain medications have been reviewed by the Board. According to a recent news article, a lawsuit filed against the Board alleges the Board knew or should have known about a physician who was involved in 11 malpractice lawsuits before being licensed in Montana. The article also cites a 2016 Consumer Reports study that ranked Montana's Board as "amongst the lowest in the country" for not keeping patients informed about bad doctors. A performance audit could consider whether the Board effectively monitors all licensees and could examine the transparency of the Board's processes. An audit could determine whether adequate complaint and investigative processes are in place and whether it issues licenses in a timely manner. This topic has not been previously examined as a performance audit by LAD.

Economic Impact of Tourism Promotion

Each year the Department of Commerce, through its Office of Tourism and Business Development distributes millions of dollars for various tourism promotion activities, in the form of lodging tax dollars that support various tourism promotion organizations as well as funding grants for specific projects designed to increase visitation and stimulate the tourism economy in communities across the state. In FY2019, the department collected \$35 million in lodging facility use tax to support tourism promotion. According to the department, its grant program "awards funds to projects that strengthen Montana's economy through the development and enhancement

of the State's tourism and recreation industry. Funds are awarded annually to projects that develop and enhance tourism and recreation products that have the potential to increase non-resident visitation." These grants may support permanent infrastructure or specific visitor-oriented events. Currently, the department contracts with a private vendor to study the impact of its various tourism promotion activities, including calculating the number of visitors from marketing campaigns. In addition, the department works with the Institute for Tourism & Recreation at the University of Montana. ITRR makes an annual estimation of the economic contribution of nonresident visitors to travelers to Montana's economy. Some studies in other states have questioned the economic benefit of such publicly funded tourism promotion programs and have suggested that the return on invested public money is minimal. A performance audit could examine the processes by which the department measures the economic impact of tourism promotion, including if it is meaningful and how it compares to other state practices. An audit could also attempt to measure the economic value to Montana cities, counties, regions, and specific industries of tourism and visitation promotion activities paid for with public funding. While LAD audit work has examined tourism grant-making activities administered by the department, this topic has not been previously examined as a performance audit by LAD.

Education

Emergency Authorization of Teachers without Licenses

Montana is experiencing a K-12 teacher shortage crisis that is particularly acute for rural school districts. As schools struggle to attract qualified teachers, the Office of Public Instruction (OPI) encourages school districts to apply for emergency authorizations to hire individuals with subject expertise but no current teaching license to teach for up to one year. Eighty-four emergency authorizations were granted for the 2019-2020 school year across 24 teaching license endorsement/subject areas. Thirty-two of the 84 (38%) were for the Elementary K-8 endorsement area. While the 2019-2020 school year authorizations decreased by 10 from the previous year, they were still the second-highest amount of authorizations that have been reported. Emergency authorizations do not negatively impact schools' state accreditation. Emergency authorizations offer an option of last resort to school districts in desperate need of teachers in the classroom, but generate concerns related to increased utilization of unlicensed and potentially inexperienced teachers. A performance audit of emergency teacher authorizations might evaluate trends in authorization use across the state over time, the potential impacts of prolonged use of emergency authorizations on student performance (particularly if students are taught by emergency authorized-teachers across multiple consecutive school years), whether individuals are granted authorizations across multiple years, and what steps OPI is taking to monitor the effectiveness of these teachers and address underlying causes for the need for these authorizations. A performance audit of the teacher certification process was conducted in 1997.

Physical Space Management on College Campuses*

Colleges and universities are designed and managed as open and accessible institutions. Consequently, on each of the 13 Montana University System campuses governed by Montana Board of Regents as well as the state's three community college campuses, students, faculty, staff, and members of the public share access to a variety of multi-purpose physical spaces. Resource management includes the practice of planning, tracking, and optimizing the utilization of resources. On college campuses, this includes the scheduling and assignment of classrooms,

laboratories, conference rooms, office spaces, residence halls, and general use facilities. The facility scheduling process involves planning and managing tasks such as checking the resource's availability, scheduling start and end dates, managing resourcing conflicts or dependencies, and monitoring over time to adapt to changes and ensure space standards and target utilization rates are met. For campuses, these strategies typically occur within a decentralized environment in which multiple stakeholders across the institution may be responsible for different types of scheduling efforts, sometimes for the same physical spaces. Each of the 16 higher education institutions in the larger Montana University System are responsible for numerous buildings with considerable square footage. For example, Montana State University's Bozeman campus is comprised of more than 200 buildings, 51 of which are state-funded and maintained academic buildings encompassing nearly 2 million gross square feet. A performance audit in this area could look at facility and room scheduling policies and procedures used on various campuses in Montana, investigate how different campuses undertake facility inventory, and assess adherence to best practices related to the resource management of physical spaces. And as the COVID-19 pandemic has required the move to more online learning platforms, a potential performance audit could also examine how colleges and universities in the state have adapted to that change and considered the ongoing necessity of campus physical spaces. This topic has not been previously examined as a performance audit by LAD.

Fisheries & Wildlife

Habitat Montana & Conservation Easements*

Habitat Montana (HM) is a program established by the 1987 legislature to protect and enhance wildlife habitat by encouraging wildlife-friendly land-use practices. The legislature gave the Department of Fish, Wildlife & Parks (FWP) the authority to purchase interests in land, while directing the department to attempt conservation easements or leases before fee title (full interest in the land) acquisitions. Conservation easements are voluntary legal agreements with landowners in which FWP may compensate a landowner approximately 45 percent of the land's value, with the landowner agreeing to keep the land in agricultural use, implement practices that assist wildlife, and relinquish future land development rights. Most easements also provide public hunting access. HM annually receives \$5-6 million in funding, with 92 percent coming from nonresident hunting licenses. While the legislature primarily wants revenues spent on conservation easements, fee title acquisitions are commonplace, as landowners play a role in determining which method is in their best interest. From 2009 through 2018, HM attained 20 conservation easements and 25 land fee acquisitions, using \$40.5 million in HM funds, \$64.9 million in federal funds, and \$24.7 million in other funds (i.e. the Montana Fish & Wildlife Conservation Trust). These totaled nearly 150,000 acres. As of December 2018, FWP holds 56 HM easements covering 293,239 acres. While the majority of these easements are established without controversy, recent proposed easements have drawn a great deal of public interest. Performance audit work could include determining how FWP obtains recommendations for conservation easements as well as the process by which these proposed easements are identified, appraised, assessed, and finalized. Audit work could also evaluate how the department notifies the hunting public on how it can access conservation easements. This topic has not been previously examined as a performance audit by LAD.

Fishing Access Sites

The Department of Fish, Wildlife and Parks (FWP) manages 332 Fishing Access Sites (FAS) located on streams, rivers, and lakes that vary in size from less than one acre to several hundred acres. FAS provide public access to waterbodies for angling, boating, and rafting. In addition, FAS are used for other recreational activities including hunting, wildlife viewing, camping, hiking, and picnicking. Funding to purchase, develop, and maintain FAS comes from the sale of sportsman's licenses, state motorboat registration fees, and a portion of the light vehicle registration fee. FAS generate some revenue from camping fees, group use fees, and sales of other types of use permits. FWP spends over \$1 million each biennium to maintain FAS around the state. In 2011, FWP transferred maintenance of FAS from the Parks Division to the Fisheries Division. State law requires FWP facilities to meet certain public health and safety standards. However, audit staff received FAS-related complaints for what appeared to be a lack of maintenance, such as unusable restrooms, littered picnic and camping areas, crumbling boat launches, broken shelters, and noxious weed infestations. A review of the 2019 LFD budget analysis books found FWP requested \$917,967 for FAS maintenance with another \$315,035 in revenue coming from vehicle registrations. In addition, FWP requested funding for cleaning restrooms, weed control, road maintenance, signs, and boat ramp maintenance. State funding is matched with federal funds from the U.S. Fish & Wildlife Service, FAS Operation & Maintenance grant. Audit work could evaluate FWP's process for conducting maintenance activities, including how it uses current funding to prioritize and target maintenance needs. Audit work could also analyze the number of FAS around the state, their relative use, and whether maintenance was impacted after FAS oversight was transferred from the Parks Division to the Fisheries Division. This topic has not been previously examined as a performance audit by LAD.

Aquatic Invasive Species

Aquatic invasive species (AIS) are those that impact Montana's water bodies and include non-native species such as quagga and zebra mussels or Eurasian watermilfoil. AIS can be transferred into or between waterbodies in various ways such as on trailers or hulls of recreational boats or angler boots or bait buckets. The presence of AIS in waterways can potentially cause severe damage to local river and lake ecosystems, negatively impacting the Montana tourism industry. In FY 2018, AIS program was funded through the sales of resident and nonresident AIS Prevention Passes, fees on hydroelectric facilities, and federal funding. HB 411, introduced in the 2019 Legislative Session, changed AIS program funding mechanisms. It created a new AIS prevention pass for nonresident motorized and nonmotorized water vessels, decreased fees on hydroelectric facilities, decreased nonresident AIS prevention fees for nonresident anglers, and reallocated approximately four percent of the state lodging tax funds from the Department of Commerce to FWP's AIS program. These changes are estimated to generate about the same amount of funding as the previous funding formula (around \$6 million total). Since the AIS program was implemented in 2017, most discussions have continued to focus on program funding. There has been limited discussion of how effectively the AIS program uses the funding it receives. The program currently employs around 62 FTE, with the majority assigned to one of the 35 watercraft inspection stations around the state. The AIS program expends approximately \$4 million (2/3 of total funding) to operate these inspection stations. In 2018, about 109,000 watercraft were inspected around the state. Audit work could evaluate the effectiveness of the AIS program including the effectiveness of watercraft inspections, hours and seasonality of operations, consistency of inspections, and the effectiveness of public outreach to educate the

public regarding AIS prevention. This topic has not been previously examined as a performance audit by LAD.

General Government

State Warrant Printing and Mailing*

The Department of Administration provides numerous services to state agencies, local governments, and Montana citizens in several areas, including warrant printing and mailing services for state government. These activities are supported through proprietary funds that are approved as rates within HB2. Warrant writing includes management of the state payment processes for vendors, with the department providing payment processing services for most state agencies, including the university system. Operating revenue for warrant writing services is budgeted at \$692,240 for FY 2020. Revenues are derived from monthly billing based on the number of actual warrants issued. Budget authority to pay these costs is a fixed cost item in state agency budgets. A potential performance audit could examine the rate structure for warrant writing and print and mail services, including the types of services provided by the department and whether there are cost-effective opportunities to outsource these activities to the private sector. This topic has not been previously examined as a performance audit by LAD.

State Agency Printing Facilities Duplication

Montana state government spends millions of dollars annually to print documents used internally and for public distribution. State Print and Mail, located within the Department of Administration, provides printing services to state agencies. State Print and Mail's goal is to provide agencies with printed products that meet agency needs, within specific timeframes, and at reasonable costs. Section 18-7-101, MCA requires state agencies to use State Print and Mail for all printing needs. This includes procuring printing services through the private sector. Private sector printing services would generally be used for high volumes of printing or for more complicated printing jobs requiring the use of external vendors. In addition to State Print and Mail, some state agencies also have their own internal printing facilities. For example, Montana Fish, Wildlife, and Parks (FWP) and the Montana Department of Transportation (MDT) each have their own internal printing facilities. While these agencies may also use State Print and Mail, they also use their own printing facilities to meet their printing needs. FWP expended approximately \$356,000 in printing costs in FY 2020 and MDT expended just under \$100,000. In some cases, agency printing facilities are funded via an internal service fund (e.g. FWP) where they charge agency programs to print documents. Recent Financial-Compliance audits found FWP internal printing facilities were not collecting enough revenue to cover printing expenditures for its internal printing operations. Agencies using their own printing facilities does not appear to comply with statutory requirements. A performance audit could determine why some state agencies continue to have their own printing facilities and if printing costs could be reduced through elimination of these facilities and requiring use of State Print and Mail or private sector printing facilities. This topic has not been previously examined as a performance audit by LAD.

Justice & Corrections

Ensuring the Ethical Conduct of the Judiciary

An effective judicial oversight entity is vital to maintain a fair and impartial judiciary and limit the potential for judges to abuse or misuse their power. The Montana Judicial Standards

Commission was established in 1973 and is responsible for hearing and investigating complaints against state judges and other judicial officers. Expenditures for the five-member commission were \$9,536 in 2019. The commission makes recommendations to the Montana Supreme Court regarding disciplinary actions. A recent performance audit of a comparable California commission found that judicial investigators failed to pursue allegations thoroughly and ignored signs of ongoing misconduct; that the structure and proceedings of the commission were not aligned with judicial best practices; and that the commission had not taken action to improve its public transparency and accessibility. A performance audit of the Judicial Standards Commission could assess whether complaint investigations are conducted thoroughly, impartially, and in accordance with statutory requirements; whether the commission enforces standards for disclosure and confidentiality; and whether the Commission's structure and proceedings conform with best practices to ensure impartiality. This topic has not been previously examined as a performance audit by LAD.

Gambling Revenue Oversight and Collection

The Gambling Control Division (GCD) of the Department of Justice regulates all forms of gambling in Montana, except Montana Lottery and horse racing. Video gambling, the largest source of gambling tax revenue, results in the collection of around \$65 million annually. The division is responsible for regulating and licensing gambling operators, collecting gambling revenue, and investigating gambling crimes. Expenditures for the division were \$5.9 million in 2019, with approximately 46 FTE. Risks for the state in the gambling industry include potential unfair gambling environments for the public, incomplete tax collection, improper or unfair permitting, and unaddressed gambling crimes. A performance audit of GCD could address gaming licensing, regulation, inspection, integrity, and completeness of tax revenue. Points of interest could include GCD's licensing procedures, the role of GCD investigators in the application process compared to their role as enforcement officers, and efforts to mitigate video game machine voucher ticket forgeries. A performance audit of these activities was last conducted in 1994.

Efficient Use of Legal Services by State Agencies

When state agencies or employees are involved in civil litigation, they can be represented by in-house attorneys, the Attorney General's Agency Legal Services Division attorneys, or contracted private attorneys. In accordance with executive order 5-93, the Legal Services Review Committee must approve agency requests to hire or renew contracts with private counsel. Representation provided by the Legal Services Division is typically provided at hourly rates significantly lower than rates for external contracting with private attorneys. For example, the Legal Services Division recently quoted a \$106 rate for work a state agency contracted out privately at rates between \$150 and \$200 an hour. From 2012 to 2019, the total legal operating expenditures for the state has more than doubled. In 2019, legal fees and court costs totaled over \$6 million dollars. Presently, per the Statewide Accounting, Budgeting and Human Resources System, there are approximately 352 staff attorneys located in state agencies. A performance audit could investigate the use of legal services by state agencies to determine what factors are driving this increase in legal fees. An audit could examine the types and relative efficiency of legal representation used by agencies, as well as the Legal Services Review Committee approval and review process. This topic has not been previously examined as a performance audit by LAD.

Natural Resources & Environment

Accuracy of Water Rights Ownership Data

Montana's Department of Natural Resources and Conservation (DNRC) is responsible for maintaining a centralized record system of all existing water rights ownership data in Montana. The department has seven FTE responsible for maintaining water rights records. Nearly 350,000 records are maintained in the Water Rights Information System (WRIS) database using a variety of data, including geocodes (unique spatial identifiers) generated by the Department of Revenue (DOR) to identify and describe parcels for tax purposes. Changes in ownership are identified in two ways: either water rights owners file the required forms and fees to update the record, or unreported changes are identified by DNRC from tax data provided by DOR. The geocode data included on paper forms and in DOR data is reviewed and validated by DNRC prior to entry in the database. This ownership update process has caused concern from water users and property owners, as the updating procedures sometimes result in incorrect ownership changes. Additionally, concerns have been raised that Water Court decisions on water rights are not updated in the database. These issues can lead to unnecessary or delayed court proceedings, and inability to enforce water rights, and interruption to land transactions and improvements. A recent upgrade to the WRIS was nearly \$4 million. A performance audit could assess the implementation of the recent WRIS Platform Upgrade, compliance with these requirements, and the efficiency and effectiveness of data updates and maintenance. A performance audit of water rights adjudication was conducted in 2010.

Regulating the New Hemp Industry

In 2018, the US Hemp Farming Act removed hemp from the list of Schedule I controlled substances to treat it as an agricultural commodity for use of seeds, fibers, and bio-active chemicals. In 2019 Montana's Department of Agriculture submitted their first Hemp Plan to the U.S. Department of Agriculture to develop and regulate the crop and industry under a state regulated pilot program. There are currently around 300 hemp growers with 50,000 acres of hemp cultivation. According to both state and federal law, the Montana Department of Agriculture must license hemp growers and create a functional hemp regulatory plan. The department has set up a hemp licensing program, testing of THC concentration levels of hemp, disposal procedure for plants that violate the approved THC levels, enforcement of related laws and rules, and inspections of hemp producers. Program expenditures were \$27,869 in FY19. Potential risks to the state relating to hemp regulation include rigor of licensing and regulation, accuracy of THC testing, and appropriate disposal of rejected plants. A potential performance audit could investigate both the impacts of the program on Montana's farmers and industry, as well as the effectiveness regulations and processes to meet federal requirements. This topic has not been previously examined as a performance audit by LAD.

Asbestos Control Program*

Asbestos is the name of a group of naturally occurring fibrous minerals used in a variety of commercial products and applications, such as heat and cold insulation, fire protection, and sound dampening. However, asbestos is also an identified health hazard and causes asbestos-related illnesses. Consequently, the Montana Legislature identified the need for state asbestos regulation and created the Asbestos Control Program (ACP) in 1989, to prevent unnecessary public exposure to asbestos. As delegated by the federal Environmental Protection Agency

(EPA), the program administers portions of federal regulations related to air pollutants related to building renovations and demolitions, asbestos disposal, and other asbestos-related activities. The program is located within the Department of Environmental Quality and is generally responsible for overseeing asbestos abatement and removal practices in the state, including issuing permits, and training and accrediting asbestos abatement and removal professionals. The regulated community of the program includes personnel involved in an asbestos-related occupation, such as building contractors, designers, or planners. Asbestos abatement and removal projects require permits and the use of accredited personnel. Currently, there are two full time employees in the program, with activities funded by fees collected from the issuance of asbestos project permits, accreditations, and inspections. In fiscal year 2019, the budget for the program was approximately \$200,000, with the program issuing 321 permits, conducting 5 inspections, and providing 747 abatement accreditations. In recent years, there have been legislative concerns raised regarding the use of unaccredited abatement professionals and the illegal dumping of asbestos materials in local landfills by building contractors. A potential performance audit of the program could assess whether permit application and accreditation processes are managed to ensure timely processing and effective program management, including ensuring the removal, abatement, and disposal of asbestos is conducted in a safe manner to protect the public. This topic has not been previously examined as a performance audit by LAD.

Public Health & Human Services

Ensuring Quality Care for Vulnerable Adults

The Adult Protective Services (APS) Bureau of the Senior and Long-Term Care Division of DPHHS is responsible for protecting vulnerable adults from abuse, neglect, and exploitation. APS staff include the Bureau Chief, the Program Manager, four regional supervisors that oversee a team of investigators in their region, and intake workers, who receive reports of adult abuse. In addition to conducting investigations, APS investigators match the needs of the person with community partners in their region. APS expends approximately \$3 million annually, with 42.4 FTE. Ensuring the proper monitoring of long-term care facilities is important, particularly because they house vulnerable adults who may not always have the capacity to self-report. In addition, those adults may be dependent on those caring for them and therefore may be less likely to report. And the COVID-19 pandemic has highlighted how the residents of nursing homes are particularly vulnerable in the times of a public health crisis. During the 2019 legislative session, there was legislative interest and action pertaining to the protection of vulnerable senior citizens residing in nursing homes. For instance, SB 324 revised the definition of elder abuse. HB 95 would have required additional professionals to report abuse and would have provided a penalty for false reporting, but died in the process. In 2015, the Pennsylvania Department of the Auditor General performed an audit of their Department of Health's regulation of nursing homes. The report's major recommendations included considering the imposition of more stringent monetary penalties to encourage compliance and revising policies related to the prioritization of complaints. Potential audit work could assess DPHHS' monitoring of long-term care facilities by determining if sufficient data are collected to ensure accountability, if there is a pathway for reports of abuse to be transmitted for vulnerable adults, and if the APS Bureau responds to and properly resolves complaints of abuse in a timely manner. A performance audit was published in January 2003 that looked at the DPHHS Quality

Assurance Division Certification Bureau's surveying of nursing homes. However, this topic has not been previously examined as a performance audit by LAD.

Health Insurance Pharmacy Benefit Management*

A pharmacy benefit manager (PBM) is a third-party administrator of the prescription drug programs for health insurance plans, including plans for state government employees, self-insured employer plans, and Medicaid. The purpose of a PBM is to negotiate discounts and rebates between drug manufacturers, insurance companies, and government health plans regarding the supply of medication for patients, with the intent of lower drug costs for consumers. It is estimated that PBMs participate in the administration of drug benefits for more than 266 million Americans with health insurance. Traditional models include the PBM retaining a fee or keeping a portion of the rebate and charging the client more than the pharmacy was paid. Critics of PBMs indicate that these companies essentially work as middlemen and make a profit at the expense of the consumer as a drug passes from a pharmacy to a consumer. For example, a PBM may pay a retail pharmacy \$50 for a medication but then charge an insurance company \$100 for the medication, ultimately increasing costs for the consumer. In Montana, several government entities have oversight responsibilities for various health insurance products, such as the State Auditor's Office, the Department of Public Health and Human Services, or the Department of Administration. In some circumstances, these entities have indicated that they do not have authority over PBMs or their contractual relationships with insurance companies. PBMs have recently drawn the attention of lawmakers both in Montana and nationwide. There were several bills put forth in the 2019 Session attempting to provide more regulation and transparency regarding the practices for PBMs, with Senate Bill 83, establishing allowable and prohibited practices for PBMs, becoming law. A potential performance audit could examine the oversight of PBMs by insurance regulatory agencies in the state, including how these regulatory entities ensure that the involvement of PBMs does not lead to an increase in prescription drug costs for consumers. This topic has not been previously examined as a performance audit by LAD.

Medical Marijuana Act*

Medical marijuana has been legal since 2004, and the program is administered by the Department of Health and Human Services (DPHHS) Quality Assurance Division. In November 2016, voters passed Ballot Initiative 182, which expanded the Medical Marijuana Program. As a result, the 2017 legislature created the Montana Medical Marijuana Act, which contained many changes, including: repealing the limit of three patients for each provider; requiring a seed-to-sale tracking system; establishing requirements for testing labs; and creating licenses for providers. It also required the annual inspection of each registered dispensary, the premises for cultivation or manufacture of marijuana, and testing laboratories. New rules were put into effect in March 2018. Since the Act was revised, the program has experienced rapid growth. As of October 2018, there were 29,080 licensed cardholders, up from 7,785 before the 2016 initiative. While providers have decreased from 522 to 388, many now oversee more than three patients. A performance audit of the program could evaluate whether the department is timely in its application processing and issuance of identification cards and if the department is conducting inspections of registered premises and testing laboratories as required. A potential performance audit could also examine if physicians have a bona fide doctor-patient relationship with their patients as directed under law and how the department verifies application information for

cardholders, providers, and labs. This topic has not been previously examined as a performance audit by LAD.

COVID-19 Preparedness and Response

The Corona Virus Disease 2019 (COVID-19) is the first major worldwide pandemic in 100 years, causing significant loss of life and economic contraction around the globe. Because such large-scale public health emergencies happen infrequently, they provide a rare opportunity to assess the state's preparedness and ability to respond during and after the outbreak, with an eye toward improving responses to future such events. The Communicable Disease Control & Prevention Bureau of the Department of Public Health and Human Services' Public Health and Safety Division manages a public health emergency preparedness program. This program exists to help local and tribal health jurisdictions prepare for and respond to health emergencies, to coordinate local surveillance and response systems, and to keep Montana citizens informed of public health-related emergencies. It distributes federal grant funds for public health and hospital preparedness at the state, regional, and local levels, with most funds distributed to local and tribal health partners. The communicable disease bureau is composed of 11 employees, and it expends over \$13.5 million annually. Around half of these expenditures are grants, most of which are federal. A performance audit of the division could assess the department's preparation for and coordination of statewide response to COVID-19. It could determine how resources have been directed to jurisdictions and whether these allocations addressed the areas of greatest need. It could also assess how the department tracks and shares pandemic-related data with tribes and local governments, other state and federal government entities, and the broader public, in order to promote best practices for public safety and to enable government pandemic management decisions. This topic has not been previously examined as a performance audit by LAD.

Taxation & Revenue

Real Property Tax Exemptions

The Property Assessment Division within the Montana Department of Revenue (DOR) is responsible for administering Montana's property tax laws, including the valuation and assessment of real property throughout the state for property tax purposes. In addition to ensuring that all classes of property in the state are valued uniformly and equally throughout the state, the division is also responsible for reviewing applications for real property tax exemptions, including real property owned by governmental entities and property used for religious purposes, education purposes, nonprofit health care facilities, cemeteries, and parks. Based on information obtained from the department for a recent audit of state-owned real property management, there were 108,555 active exempt properties in 2014. This audit work identified several circumstances of state-owned real properties that were assessed property taxes in error, generating concerns about the accuracy of records of real property that currently receives tax exemptions. As a result of legislative interest in exempt real property, the 2015 Legislature enacted HB 389, requiring the department establish a cyclical application process and develop a public listing of tax-exempt real property. While statute requires DOR to develop an online listing of tax-exempt property, it is unclear as of April 2020 whether this is complete. For example, while previous audit work identified more than 100,000 exempt properties identified in 2014, the database currently lists fewer than 600 properties in Yellowstone County, the state's most populous, and fewer than 140 in both Lewis and Clark and Silver Bow counties. A potential performance audit could examine the process by which the department currently reviews applications for real property exemptions,

assesses the impact of real property exemptions on the operations of local government, and makes that information available to the public. This topic has not been previously examined as a performance audit by LAD.

Transportation

MDT Aeronautics Division Operations*

The Aeronautics Division of the Montana Department of Transportation (MDT) is responsible for facilitating the maintenance of airports, registering aircraft and pilots, coordinating aviation safety programs, and administering a municipal government loan and grant program to fund airport development and improvement projects. It also owns, operates, and maintains 15 public-use, rural airports. The largest and most prominent of these airports is the Yellowstone Airport in West Yellowstone. One mile from Yellowstone National Park, this airport receives seasonal scheduled commercial service, in addition to private flights. The airport has several commercial tenants, including a restaurant and car rental companies. When the airport's land was transferred to the state from the federal government in 1968, deeds restricting development of hotels and advertising signs and guaranteeing free use by the federal government (it is currently used as a fire control center by the U.S. Forest Service) were included in the transfer. MDT has in recent years sought to ease the development restrictions, as it loses money operating the airport in most years. The Yellowstone Airport operates via an enterprise proprietary fund, which means that the legislature does not appropriate its funding. Meanwhile, infrastructure maintenance of rural airports depends on aviation fuel taxes, the burden of which is largely borne by airline carriers at larger airports. A performance audit of state-owned airports could generally examine the activities of the aeronautics division, including the financial impacts of ownership and management of airports on MDT, and determine whether privatization of airports would be feasible and/or cost-beneficial. An audit could establish whether there are entities likely to desire operating such enterprises, and assess whether there are other opportunities for streamlining airport operations or generating revenues. This topic has not been previously examined as a performance audit by LAD.

Privatization of the State Motor Pool

The Montana Department of Transportation's Equipment Bureau is responsible for the state's Motor Pool, the collection of vehicles that state agencies pay to use. This includes both vehicles that are leased and operated full-time by a single agency, and vehicles that are shared by users of multiple agencies via daily reservations from a central location, known itself as "the Motor Pool." The motor pool maintains, and eventually replaces, all these vehicles. Costs of depreciation, maintenance, and motor pool operation are used to determine the daily cost of renting a vehicle. The current budget for the motor pool for the biennium is \$13 million, with six FTE. A performance audit of the Motor Pool could assess how the Equipment Bureau determines appropriate fleet size and composition, including analysis of how the office balances the desire for low-cost, easily maintained, and fuel-efficient vehicles with the need for larger and more rugged vehicles that are capable of Montana winter driving. A performance audit could also evaluate if it is the state's interest to privatize the state motor pool, including whether private sector entities could provide equally convenient and reliable vehicle rental services at equal or lesser cost than the current state solution. While a performance audit examining the motor pool's fuel card practices was conducted in 2010, this topic has not been previously examined as a performance audit by LAD.

HOUSE JOINT RESOLUTION NO. 39

INTRODUCED BY T. BURNETT

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE AUDIT COMMITTEE PRIORITIZE A PERFORMANCE AUDIT OF ADMINISTRATIVE OPERATIONS AND COSTS OF THE TEACHERS' RETIREMENT SYSTEM AND THE MONTANA PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION FOR POTENTIAL SAVINGS IF ADMINISTRATION WAS COMBINED AND THAT THE LEGISLATIVE AUDITOR PRESENT THE FINDINGS TO THE 67TH LEGISLATURE.

WHEREAS, administration of the Teachers' Retirement System and the systems administered by the Montana Public Employees' Retirement Administration involves similar activities, such as contracting for actuarial services, maintaining information technology systems and infrastructure, receiving contributions, tracking membership and service credits, and paying benefits; and

WHEREAS, both administrative entities have similar operational and personal services needs for accounting and payroll for staff; and

WHEREAS, administrative expenses as reported in the January 2019 financial compliance audit report of the Legislative Audit Division were about \$6.5 million for the Montana Public Employees' Retirement Administration and about \$2.8 million for the Teachers' Retirement System; and

WHEREAS, a deeper examination of these administrative activities and expenses would provide insight into whether there is unnecessary duplication and whether consolidating the administration of the Teachers' Retirement System and the Montana Public Employees' Retirement Administration would produce efficiencies and cost savings and, if so, how much.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee be requested to prioritize a performance audit addressing the methods and costs of administering Montana's public employee retirement systems and that the audit include but is not limited to:

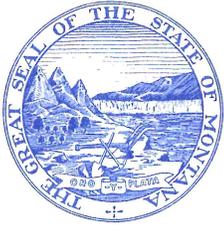
- (1) examination of the administrative structures and expenses of the Montana Public Employees'



- 1 Retirement Administration and the Teachers' Retirement System;
- 2 (2) evaluation of whether combining the two administrative entities into one would save money or result
- 3 in other operational efficiencies; and
- 4 (3) development of recommendations based on the findings.

5 BE IT FURTHER RESOLVED, that the final results of the performance audit, including any findings,
6 conclusions, comments, or recommendations be reported to the Legislative Audit Committee and the 67th
7 Legislature.

8 - END -



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE TOM BURNETT
HOUSE DISTRICT 67

HELENA ADDRESS:
CAPITOL BUILDING
PO BOX 200400
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800

HOME ADDRESS:
4143 RAIN ROPER DR
BOZEMAN, MT 59715
PHONE: (406) 582-0870
EMAIL: burnett.tom@gmail.com

RECEIVED
MAY 09 2019
LEGISLATIVE AUDIT DIV.

COMMITTEES:
APPROPRIATIONS
HEALTH & HUMAN SERVICES
JOINT SUB-COMMITTEE

Dear Mr. MacIver:

I request an audit of utilization of classrooms, laboratories, and computer labs in the University System's sixteen units during Spring and Summer semesters; MSU-Bozeman, Gallatin College, MSU-Billings, City College, UM-Missoula, Missoula College, Bitterroot, UM-Western, UM-Montana Tech, Highlands, UM-Helena, MSU-Northern, MSU-Great Falls, FVCC and its Libby extension campus, Dawson Community College, and Miles Community College.

The audit could look at scheduled uses as well as actual occupancy of scheduled rooms. How many students are registered for the class in scheduled rooms? How many attend? A room may be scheduled and used, but only have a small number of students using the space. For example, the calendar posted beside the door showed a lecture hall at MSU-Northern with about 200 seats to be in use during only three class periods a week, at noon M-W-F. An observer stopped by on April 17 at 12:30 to see how many students were present for the 12:00-12:50 class but found the room empty.

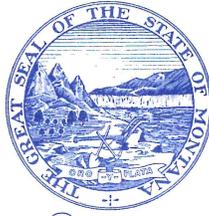
Thank you,

A handwritten signature in blue ink that reads "Tom Burnett".

Rep. Tom Burnett, HD 67

April 29, 2019

Montana State Senate



The Treasure State

RECEIVED

APR 16 2019

LEGISLATIVE AUDIT DIV.

**SENATOR FRED THOMAS
MAJORITY LEADER**

HELENA ADDRESS:
PO BOX 200500
HELENA MT 59620-0500
PHONE: (406) 444-4800

HOME ADDRESS:
1004 S BURNT FORK RD
STEVENSVILLE MT 59870-6658
PHONE: (406) 370-4001
EMAIL: fthomas@paynewest.com

April 16, 2019

Director Angus Maciver
Legislative Audit Division
1301 East Sixth Avenue
Helena, MT 59601

Director,

Elected officials on both sides of the aisle understand that conservation easements are a critical land management tool in Montana. While the majority of the easements sought by the State are without controversy or confusion, a handful of recently proposed easements have drawn our attention. I would like Legislative Audit to provide the legislature with a better understanding of the processes and decisions that preceded these proposals. Specifically we would like to know how Fish Wildlife and Parks obtains recommendations for conservations easements and makes decisions to prioritize and move easements forward.

As the Montana Legislature we have a responsibility to every Montanan to insure that our public lands and public monies are responsibly managed. The process by which these proposed easements were identified, appraised, assessed, and finalized impacts all Montanans. Without the land board to provide oversight for specific projects, it is up to the Legislature to ensure that the entire process is done in a responsible, transparent, and accountable manner.

I am confident these easements were reached in good faith; but the Legislature has a responsibility to examine the entire process so future easements can proceed without controversy. I would appreciate a response by the 15th of May, so this information will be available to the Interim Committees.

With Regards,

A handwritten signature in blue ink that reads "Fred Thomas".

Senate Majority Leader Fred Thomas



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE KEN HOLMLUND
HOUSE DISTRICT 38

HELENA ADDRESS:
CAPITOL BUILDING
PO BOX 200400
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800

COMMITTEES:
APPROPRIATIONS
SUB COMMITTEE:
JUDICIAL & CORRECTIONS

HOME ADDRESS:
1612 TOMPY STREET
MILES CITY, MT 59301
PHONE: (406) 234-2956

Angus Maciver
Division Director
Legislative Audit Division
P.O. Box 201706
Helena, Mt 59620-1706

Mr. Maciver;

My name is Representative Ken Holmlund and I am requesting a performance audit of the DEQ in regards to their enforcement of the law and rules about asbestos compliance, in particular their lack of oversight and enforcement of local contractors when they are dumping asbestos materials in the landfills of Montana.

In addition, I believe they violated the law when they allowed inspectors from out of state to perform in Montana without the required testing. The information regarding my concerns are included in the letters and correspondence I have delivered to your office.

Please consider this as my formal request for a performance audit.

Thank you for your time and consideration of this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Holmlund".

Ken Holmlund
HD 38

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FEB 13 2020
LEGISLATIVE AUDIT DIV.

COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

May 31, 2019

Angus Maciver
Montana State Capitol
Room 160
P.O. Box 201705
Helena, MT 59620

RECEIVED
May 31, 2019
LEGISLATIVE AUDIT DIV.

Dear Auditor Maciver,

In response to your letter asking for agency audit recommendations. It is my understanding that the Montana Medicaid Program is already being audited but I would like to request that an audit be done specifically into the Medicaid prescription drugs program. Please let me or Kris Hansen, Deputy State Auditor know if we can provide any information that you might need.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew M. Rosendale Sr.", is written over a faint, larger version of the same signature.

Matthew M. Rosendale Sr.
Montana State Auditor

LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Joe Murray

MEMORANDUM

TO: Angus Maciver, Legislative Auditor
FROM: Margaret Wallace, Performance Auditor
DATE: February 14, 2019
RE: Montana Medical Marijuana provider and inspection processes related to pesticides;
Legislative Request 19L-4264

The following memo is a response to a legislative request for information on the process used to inspect medical marijuana for pesticides. There are three components to pesticide management: medical marijuana provider responsibilities; laboratory testing requirements; and inspections by the Department of Public Health and Human Services (department). The following sections provide information on the history of medical marijuana in Montana, statutory and regulatory requirements, and department processes and procedures, as they pertain to pesticides.

Background

Medical Marijuana has been legal in Montana since 2004. In response to a high number of individuals authorized to use medical marijuana, the Legislature repealed the Medical Marijuana Act in 2011 and replaced it with the Montana Marijuana Act. The Montana Cannabis Industry Association (MCIA) sued after the 2011 Legislature repealed the 2004 voter initiative to legalize medical marijuana. The Legislature enacted numerous additional restrictions that MCIA claimed were unreasonable and overly burdensome. After several years of court proceedings questioning the constitutionality of the law, in 2016 the Supreme Court upheld all but one provision of the 2011 Montanan Marijuana Act, rejecting most of the arguments by the MCIA that the Act was unconstitutional.

In November 2016, Montana voters passed Ballot Initiative 182, which expanded the state's Medical Marijuana Program. Existing laws were edited, and new laws were implemented as part of SB 333 during the 2017 Legislative Session. As a result, new department rules were also created and put into effect in April 2018. The revised and renamed Montana Medical Marijuana Act contained many changes, including: repealing the limit of three patients for each licensed provider; requiring a seed-to-sale tracking system; establishing requirements for testing labs; and creating new licenses for providers. The revised law also requires the department to inspect annually each registered premises and testing laboratory to ensure compliance with statute and rules. The inspection requirements include how pesticide use is documented by providers and testing by laboratories, and are outlined in department rules that were adopted in April 2018, as required by law. According to the law, the department shall report biennially to the children, families, health, and human services interim committee concerning the results of unannounced inspections. We expect the department's report to be provided to the committee around April 2020.

Provider Responsibilities

Per administrative rules, marijuana and marijuana-infused products provider license requirements include establishing a written standard operating procedure (SOP) to produce marijuana. The SOP must include

when and how all pesticides or other chemicals are to be applied during the production process. Licensees must also maintain on the registered premises the original label or a copy of all pesticides, fertilizers, or other agricultural chemicals used in production, and a log of all pesticides, fertilizers or other chemicals used in production. Additionally, a licensee must separate each harvest lot of usable marijuana into no larger than 5-pound test batches, and sample increments from each of these batches must be analyzed for quality control by a testing laboratory. A licensee must submit for testing every test batch from marijuana and marijuana-infused product, extracts, and concentrates intended for use by a registered cardholder prior to selling or transferring the marijuana item to a registered cardholder. Marijuana samples consisting of dried leaves and flowers must undergo a pesticide screening among other tests. Marijuana concentrate, and extract samples must also be tested for pesticides prior to sale at a dispensary. All marijuana products must be tested before sale at a dispensary. Existing inventory (harvested or created before the effective date of the rules) does not need to be tested. Product harvested after April 10, 2018, needs to be tested. Additionally, per state law, if the licensee has ten or fewer registered cardholders, the licensee is not required to submit marijuana items for testing until 2020. Because of the new regulatory regime that requires testing of new marijuana inventory, there may be providers whose inventory predates the regulatory requirements. Since only licensed providers with more than 10 cardholders are required to submit marijuana items for testing, this may contribute to perceptions of inequitable treatment of providers by the department.

Testing Lab

A testing laboratory is a qualified person, licensed by the department, who provides testing of small samples of marijuana and marijuana-infused products; and provides information regarding the chemical composition, the potency of a sample, and the presence of molds or pesticides in a sample. Labs are responsible for testing usable marijuana, including trim and manicure, and extract/concentrates, and must be accredited by the International Organization for Standardization (ISO) within a year of licensure. The ISO general requirements are standards for which most labs must hold accreditation to be deemed technically competent. There are currently four laboratory licenses in Montana responsible for testing marijuana and marijuana-infused products. According to the department, inspectors have just recently visited all testing laboratories, and there are no licensed laboratories that send samples out of state.

Pesticides are included as part of the product testing requirements. Product test results are entered into the department's statewide monitoring system for marijuana tracking, inventory, and verification through the Marijuana Enforcement Tracking Reporting & Compliance (METRC) system. The state sets up the criteria of what test types are required for testing in METRC. Then all testing is entered into METRC. Pesticides are given a "pass" or "fail" status. If a pesticide exceeds the limit in parts per million set by the department for a particular substance, the sample fails the quality assurance test. If "fail" is selected the lab must select the substance that failed, then select fail and enter the specific value detected as parts per million in the quantity field. If more than one substance failed, then each is entered as its own result. Because of public input provided during the rulemaking process including concerns about the cost and complexity of pesticide testing the number of substances tested went from 60 to 19. The modified panel reflects the accepted cannabis practice as described in the American Herbal Pharmacopoeias Standards of Identity, Analysis and Quality Control available at the time the rule was issued. As set forth in administrative rules regarding quality assurance testing requirements the following substances are tested: Abamectin, Acequinocyl, Bifenazate, Bifenthrin, Chlormequat Chloride, Cyfluthrin, Daminozide, Etoxazole, Fenoxycarb, Imazalil, Imidacloprid, Myclobutanil, Paclotrazol, Pyrethrins, Spinosad, Spiromesifen, Spirotetramat, and Trifloxystrobin. The department indicated it is not opposed to increasing the testing panel, and that laboratories the pricing for testing would not increase as a result.

To validate test results, licensees and certified labs may elect to do multiple quality assurance tests on the same lot or testing for mycotoxin, pesticides, or heavy metals. If a sample fails any initial test, provider

must request re-test within 7 days and the lab must reanalyze sample within 30 days. METRC sends a notification of failed tests to the department. Per the department's quality assurance testing protocols, upon the request of the department, a licensee or a certified lab must provide samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of heavy metals, and used for other quality assurance tests deemed necessary by the department. The Legislative Audit Division has an information systems audit planned for METRC in the fall of 2019.

Department Inspections

The law states during the annual inspection the department shall collect samples and submit them to a testing laboratory for testing as provided by the department rule. Administrative rules further state that the department may conduct inspections at initial application, annual renewal, unannounced inspections and complaint inspections, to determine compliance with rules and statutes. The department conducts inspections for providers at cultivation facilities and chemical manufacturing facilities. These are providers who are growing marijuana products or "cultivation facilities," and providers producing marijuana-infused products, concentrates or extracts, or "chemical manufacturing facilities." At harvest providers separate crops into 5-pound samples which are then sent for testing by a laboratory, unless the product will be chemically manufactured, then it will be tested at that level. Inspectors review provider business practices for the following.

The department uses a Cultivation Facility inspection process to document compliance with the following by licensees:

- Standard Operating Procedures (SOP) that includes when and how pesticides, other chemicals are applied, water usage and wastewater disposal, and a waste disposal plan.
- Records on premises for:
 - Material Safety Data Sheet (MSDS) for all pesticides, fertilizers, or other Ag chemicals used in the production of marijuana
 - the original label or copy thereof for all pesticides, fertilizers, or other chemicals
 - a log of pesticides, fertilizers, or other chemicals used
- Record that usable marijuana samples consisting of dried leaves and flowers must be tested for:
 - Cannabinoid profile
 - Moisture analysis
 - Foreign matter screening
 - Microbiological screening
 - Pesticides screening
- Marijuana concentrate, and extract samples must be tested for the following:
 - Cannabinoid profile
 - Microbiological screening
 - Residual solvents screening
 - Pesticide screening

The department Processing/Manufacturing Facility inspection document includes a place to document compliance with:

- ARM 37.107.407(2):
 - Cannabinoid profile
 - Moisture analysis
 - Foreign matter screening

- Microbiological screening
- Pesticides screening
- Marijuana concentrate, and extract samples must be tested for the following:
 - Cannabinoid profile
 - Microbiological screening
 - Residual solvents screening
 - Pesticide screening

If during an inspection the department determines the applicant is not in compliance with applicable licensing requirements or Montana statute, the department will notify the applicant of the specific deficiencies or errors. The provider responds to the notice of deficiencies with a corrective action plan, and the department inspector then verifies the corrective action plan for the provider, and follows up with the provider after a set amount of time to ensure the deficiencies have been corrected. Additionally, inspectors work with city officials regarding ordinances, local zoning laws, and other local jurisdiction requirements. The Montana medical marijuana program is divided into five program regions. There are currently seven inspectors throughout five program regions, and according to the department, they are currently recruiting more inspectors for a total of ten inspectors. Department personnel noted that one provider could have several licenses, and each licensure must be inspected. For example, a provider could have 10 dispensary licenses and each registered premise would require inspection.

According to the department the following inspections have been completed as of January 18, 2019. One should keep in mind that since there are follow-up inspections for the same licensee, there will always be more inspections than licensees. The department indicated that most of the licenses that remained to be inspected were smaller, and some can be difficult to contact.

- 730 inspections in five regions – (including initial inspections, complaint inspections and follow-up compliance inspections)
- 238 of 384 provider licenses (62%)
- 234 of 313 dispensary licenses (75%)
- 145 of 168 MIPP licenses (86%)
- 4 of 4 laboratories

According to the department all 238 providers who have been inspected thus far are actively testing for pesticides, and every inspection has had at least one compliance issue that needed to be corrected. The most common compliance issues are advertising, labeling and packaging. A failed pesticide test does not mean that a provider is not in compliance with law or rules. Per administrative rules, the provider may remediate the product and submit it for reanalysis by the laboratory. However, a provider is not permitted to sell or transfer marijuana items that have failed testing. The seed to sale tracking system does not allow for product to be moved to another location or to be sold until it has passed the minimum testing requirements or has been remediated and tested again. The department reports out of 3,116 samples 196 have failed pesticide testing. The lab can enter a test result in two ways indicating the sample has failed the panel of testing or indicate the specific pesticide test that failed. Sixteen tests have been remediated and passed the second test. The following table illustrates the specific pesticides tests that failed, and the number remediated.

Table

Pesticide	Number of Fails	Number Passed Retest
Abamectin	n/a	1
Acequinocyl	n/a	1
Bifenazate	8	2
Chloromequat	n/a	1
Cyflurthrin	9	1
Daminozide	n/a	1
Etoxazole	n/a	1
Fenoxycarb	n/a	1
Imazalil	n/a	1
Myclobutanil	22	1
Paclobutrazol	7	2
Pyrethrins	22	0
Spinosad	21	0
Spiromesifen	14	1
Spirotetramat	n/a	1
Trifloxystrobin	2	1

Source: Compiled by the Legislative Audit Division from department records.

The department also indicated that some providers have been slow to utilize METRC as required by rule. This does not mean that the provider is not testing products as required by law, but that the provider is not following department rules that require use of a department inventory tracking system (METRC). The department indicated it is in the process of notifying providers who are not complying with the rules. If providers do not begin corrective action to comply with rules within a timely manner, the department will begin the process to revoke licensure.

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



CAPITOL BUILDING - P.O. Box 200802
HELENA, MONTANA 59620-0802

May 29, 2019

Mr. Angus Maciver
Legislative Auditor
Legislative Audit Division
State Capitol, Room 160
Helena, MT 59620

RECEIVED
MAY 29 2019
LEGISLATIVE AUDIT DIV.

Re: Privatization Review and Proprietary Fund Listing
Section 2-8-304(3), MCA

Dear Mr. Maciver:

In accordance with section 2-8-304(3)(a), MCA, we are attaching a listing of all programs accounted for in either an enterprise fund or an internal service fund during the 2019 biennium.

In addition to the proprietary fund listing provided, the following two programs are forwarded for potential privatization consideration, in accordance with section 2-8-304(3)(b), MCA:

- 1) West Yellowstone Airport
- 2) State Warrant Printing and Mailing

Information regarding these two programs was provided to your office previously, as part of our proprietary fund listing and privatization proposals for the 2013, 2015, and 2017 biennia.

Please contact me if you have questions regarding the above two programs proposed for privatization or any of the other proprietary programs identified on the attached report.

Sincerely,

Tom Livers
Budget Director



Fiscal Year 2019

Performance Audit Priority Ranking

Audit Title	Score
Public Defender Contracted Attorneys	4.17
Montana Developmental Center Closure	4.17
Fire Protection Assessment Program	3.83
Collegiate Athletics	3.5
Treasure State Endowment Program (TSEP)	3.5
Real Property Tax Exemptions	3.5
Agency Internal Audit Functions	3.5
Fishing Access Site Maintenance	3.33
Disaster and Emergency Services Division	3.33
Hiring Practices in State Government	3.17
State Crime Laboratory	3.17
Montana Board of Outfitters	3.17
Part-Time Instructional Staff in Higher Education	3.17
Innovative Contracting Practices	2.83
Deferred Retirement Option Plan (DROP)	2.83
Special Education Dispute Resolution	2.83
Motor Carrier Services Division	2.83
Board of Medical Examiners	2.67
State Cabin Lease Sales	2.67
HELP-Link Workforce Training Program	2.67
Special License/Permit Bonus Point System	2.67
Aeronautics Division	2.33



Fiscal Year 2020

Performance Audit Priority Ranking

Audit Title	Score
Petroleum Release Compensation Program	5
Probation and Parole Division	4.83
Montana Sage Grouse Habitat Conservation Program	4.83
Child Care and Development Fund	4.83
Adult Mental Health Services	4.33
Board of Milk Control's Regulatory Structure	4.17
Professional Development Center	4
Verification of Residency for Medicaid	4
Retirement System Administrative Consolidation	3.83
Board of Medical Examiners	3.83
Physical Space Management on College Campuses	3.83
State Warrant Printing and Mailing	3.33
Hiring Practices in State Government	3.17
Architecture & Engineering Division	3.17
Winter Highway Maintenance	3
Habitat Montana & Conservation Easements	3
Contingent Faculty in Higher Education	3
MDT Aeronautics Division Operations	2.83
Motor Carrier Services	2.83
Judicial Standards Commission	2.67
Health Insurance Pharmacy Benefit Management	2.67
Tax Return Preparer Fraud	2.33

Medical Marijuana Act	2.17
Special Education Dispute Resolution	2.17
Wildlife Population Counts	2