

Legislative Audit Division
Performance Audit Prioritization Process
Fiscal Year 2023

LEGISLATIVE AUDIT DIVISION

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



Deputy Legislative Auditors:
Cindy Jorgenson
William Soller

MEMORANDUM

TO: Legislative Audit Committee Members

FROM: William Soller, Deputy Legislative Auditor, Performance and Information Systems Audits

DATE: June 2022

RE: Potential Performance Audit Areas for Fiscal Year 2023

Please find enclosed a list of potential performance audit topics for fiscal year 2023. 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 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, via legislative resolutions, a private organization, and a member of the public. These include:

- Review of Medical Assistance Programs
- Supporting Hearing and Visually Impaired Students
- Animal Euthanasia During the COVID-19 Pandemic
- Judicial Standards Commission
- Effectiveness and Funding of Fire Suppression
- State Pandemic Preparedness and Response

In addition, there were potential audit topics submitted by the executive branch. These include:

- Montana Indian Language Preservation Program
- Indian Country Economic Development Program
- Economic Impact of Regional Tourism Promotion
- Agency Program Fee-Setting
- Social Security Disability Eligibility Determinations
- Developmental Disabilities Program Structure
- Streamlining Administrative Hearings
- Child Support Services Division

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 28-29 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 by July 15, 2022. I will be available during the committee meeting for any questions or comments regarding the potential performance audit list.

Enclosures

S:\Admin\Correspondence\22\LAC\June 28-29\ws-LAC-potential-perf-audits.docx\cr

Fiscal Year 2023 Potential Performance Audits

Priority Ranking

Issue / Subject Area

Audit Title

Low

Medium

High

Agency Management & Public Policy

Agency Use of Paid Administrative Leave

Meaningful Public Access to Lobbying Spending Activity

Economy & Jobs

Administration of Emergency Housing Relief Payments

Review of Medical Assistance Programs*

Montana Indian Language Preservation Program*

Indian Country Economic Development Program*

Economic Impact of Regional Tourism Promotion*

Education

Supporting Hearing and Visually Impaired Students*

School Nurses: A Missing Piece of Student Success

Remote Learning During the COVID-19 Pandemic

Animal Euthanasia During the COVID-19 Pandemic*

Fisheries & Wildlife

Montana Board of Outfitters

General Government

The Board of Housing and Affordable Housing

Agency Program Fee-Setting*

Betting on Sports in Montana

Justice & Corrections

Judicial Sentencing Practices

Judicial Standards Commission*

Judicial Courts and the Child Welfare System

Natural Resources & Environment

Effectiveness and Funding of Fire Suppression*

Effectiveness of Groundwater Monitoring for Pesticides

Public Health & Human Services

Social Security Disability Eligibility Determinations*

Developmental Disabilities Program Structure*

Streamlining Administrative Hearings*

State Pandemic Preparedness and Response*

Child Support Services Division*

Taxation & Revenue

Addition of New Construction to Property Tax Rolls

Liquor Warehouse Distribution

Recreational Marijuana Sales and Tax Revenue

Transportation

Monitoring and Improving Highway Safety

Design and Cost Issues Related to Design-Build Bidding

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

Agency Management & Public Policy

Agency Use of Paid Administrative Leave

Paid administrative leave is a tool agency have for managing their employees. Federal law establishes that employees have a property interest in their state employment. For this reason, an employee cannot lose pay without due process. Because of this, a common use of paid administrative leave is to pay an employee to not be in their office during an investigation into their conduct or other due process proceedings. Another potential use of paid administrative leave is to circumvent traditional settlements with employees. Paid leave could be offered to an employee instead of entering a formal settlement with a more traditional cash payout to the employee. A past audit found 167 settlements from FY 2014 through 2018. In FY21, only eight state employee settlements were reported on the state transparency website. HB 358 in the 2021 legislative session created more transparency requirements for settling with a state employee including required reporting of administrative leave if it was a benefit offered to an employee in their settlement. The audit would review the use of paid administrative leave by executive branch agencies and determine if it is being use appropriately. This has the potential to be scoped as a focused evaluation.

Potential audit examination areas could include:

- Do state agencies consistently manage and use administrative leave based on established policies and procedures?
- What are other states or best practices related to the use of administrative leave?
- Is paid administrative leave being used to circumvent traditional settlements and avoid challenging personnel management decisions?

Auditee: The Department of Administration; Multi-Agency.

Activity Last Audited: While this topic has been raised as part of other audit work, it has not been the subject of a recent performance audit.

Recent Fiscal Activity: In FY21, there were 13,908 hours of at a cost of \$336,510.

Meaningful Public Access to Lobbying Spending Activity

The Montana State News Bureau reports nearly \$7 million was spent on lobbying during the 2021 legislative session. This figure is not readily available from the Commissioner of Political Practices (COPP), the entity tasked with tracking lobbyist spending and making the information available to the public. The systems used by COPP to register lobbyists and track their spending is unable to produce the total amount spent on lobbying during the session. It is also unable to produce other aggregate data such as the number of lobbyists working during a session or the amount of money spent, and by which groups, on a particular issue or bill. Section, 5-7-201, MCA, requires COPP to track this kind of information and make it available to the public. It is not, however, required to provide aggregate information. All the necessary information to produce aggregate data is in the records kept by COPP, but it is not easily searchable. The only way the public can view aggregate information is by creating their own summary document while assessing hundreds of separate reports and transferring the information in which they are interested from each individual document, to their summary document, a process potentially taking multiple hours. Best practices indicate lobbying information provided to the public should be collected and released in a way that lowers barriers to the public's use of the information. In addition, best practices state that data should not be in a format that locks up the information and requires reformatting for analysis. Recent legislative changes related to COPP have not increased the public access to lobbying reports; these changes were focused on the campaign finance function of the office.

Potential audit examination areas could include:

- Reviewing lobbying registration and spending reports to determine the length of time needed to access this information.
- Comparing Montana's processes to provide public access to lobbying information to best practices related to the public's access to this type of information.
- Reviewing steps taken in COPP's processes related to public access to lobbying information to determine any areas where efficiency or effectiveness could be improved.

Auditee: The Commissioner of Political Practices.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: Currently unknown.

Economy & Jobs

Administration of Emergency Housing Relief Payments

The Montana Emergency Rental Assistance program assists renters who demonstrated financial hardship during the pandemic. Households experiencing financial hardship and with a household income at or below 80% of the median area income are eligible for financial assistance. The program pays the assistance directly to the landlord, property owner, or utility provider. Montana has one of the highest amounts of unused rental-assistance of any state. Only \$46.7 million of the \$352 million in federal money allocated by the state for “emergency housing assistance” was distributed as of March 2022. So far, the federal government has taken back \$53 million from Montana to reallocate to other states in need. Montana has received 13,645 applications for rental assistance thus far, 8,426 of which have been approved. The program is currently processing a backlog of 1,200 cases, with reports of some applicants waiting several months before receiving aid. While awaiting aid, some applicants are unable to secure housing or landlords are not paid rent for months at a time. Of total applications, 8% were rejected as potentially fraudulent and 21% as either ineligible or duplicate applications.

Potential audit examination areas could include:

- Assessing the timeliness of payments from the program to landlords and utility providers.
- Evaluating the effectiveness of the program in reaching and assisting Montanans with rent and utility payments.
- Reviewing controls in place to ensure funds are being sent to eligible applicants, including plans to distribute remaining funds to meet emergency housing needs in Montana within federal guidelines.

Auditee: The Montana Department of Commerce.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: To date, \$46.7 million in total aid has been distributed.

Review of Medical Assistance Programs*

The Department of Labor and Industry (DLI), Business Standards Division, is charged with licensing and regulating persons and businesses in specific professions and occupations. The Boards of Medical Examiners, Nursing, Pharmacies, and Dentistry are administratively attached to this Division. Each of these boards is required to establish a medical assistance program to assist and rehabilitate licensees who are found to be physically or mentally impaired by the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. These Medical Assistance Programs (MAP) operate under separate contracts with each board and with providers, ensuring statewide professional assistance in identification, intervention, referral, and monitoring by tracking and reporting licensed medical participants' compliance with the program. Licensed healthcare professionals may voluntarily enroll in MAP as a self-referral; Licensed workers may also be referred to MAP for disciplinary purposes; these participants have the same requirements and processes as those in the volunteer track. However, non-compliance may result in an appearance before the relevant board. Prior to January 2022, DLI contracted with the Montana Professional Assistance Program (MPAP), a Billings-based private nonprofit that provided these services. In March 2021, a lawsuit was filed against the MPAP nonprofit clinical director by three former employees for alleged harassment, discrimination, and retaliation. The contract with MPAP was not renewed by DLI in December 2021; DLI then began in-house administration of the Medical Assistance Program. Recently, legislators and health workers' stakeholders have questioned the transition and are concerned that the program was transferred without notice by DLI and that the department is unable to maintain the privacy and confidentiality of self-reporting clients. Stakeholders have additional concerns about the capacity and expertise of DLI staff to provide equitable services while maintaining a high success rate of physicians' returning to work.

Potential audit examination areas could include:

- Reviewing DLI's Request for Information and Proposal processes for selecting a service provider and decision to currently administer inhouse.
- Examining the selection, contracting, and referral process of evaluators and treatment facilities.
- Evaluating services and outcomes to determine program effectiveness and efficiency.

Auditee: The Department of Labor and Industry.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: Currently unknown.

Montana Indian Language Preservation Program*

Since 2013, the Montana Legislature has appropriated more than \$6 million to the Montana Indian Language Preservation Program to allow tribal communities to create language classes, camps, workshops, and tangible goods including books and audio recordings for preservation and archival purposes of the many native languages spoken with the tribes of Montana. Tribal languages preserve the culture, sovereignty, and identity of Native Americans. As the population of elderly native speakers declines, programs that preserve these languages will prevent the extinction of native communication. The Montana Department of Commerce has oversight of several commissions and boards including the State-Tribal Economic Development Commission (STEDC). The Commission was the administrative arm for the department with project management oversight of the MILP. Section 20-9-537, MCA defines the MILP program and provides guidelines for distribution and use of funds, accounting, and performance and output standards. One of the duties of the STEDC included working with local communities on producing language preservation deliverables and getting budget and activity updates. During the 2021 session, legislators had concerns about the STEDC's oversight of the program. HB 671 moved the program to OPI with the intent to place all language preservation activities within a single agency for more effective program execution and better oversight. The legislature attempted to cut \$500,000 from the budget due to a lack of "specific outcomes"; however, the funding was restored during a budget subcommittee hearing.

Potential audit examination areas could include:

- Examining the tribal application process for accessing program funds.
- Assessing the current method and basis of funding distribution.
- Determining what outcomes drive program success, including what other how other state measure the impact of similar programs.

Auditee: The Montana Department of Commerce (State Tribal Economic Development Commission); the Office of Public Instruction.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: In FY21, the program expended \$195,312 in grant funding.

Indian Country Economic Development Program*

The Indian Country Economic Development (ICED) program, created by the 59th Montana State Legislature, is a State-funded program administered by the Montana Department of Commerce. Since October 2005, the State Legislature has made a restricted biennial appropriation of One-Time-Only grant funds to be made available to Montana's tribal nations and tribal businesses for business development activities. In the past three legislative sessions more than \$2.5 million in funding for ICED has been approved as part of House Bill 2. The program oversees several grants. Almost \$732,000 is awarded annually through the Tribal Business Planning Grant, the Indian Equity Fund Small Business Grant and the Native American Business Advisors Grant. These grants support Native American community-based organizations, tribal colleges, and tribal government organizations through private sector business development on reservations and in tribal communities. Legislative concerns were brought up during the 2021 session about the efficiency of the program and if the grants are meeting their objectives.

Potential audit examination areas could include:

- Examining the grant application processes, including how grants are reviewed and awarded.
- Assessing the current basis for the distribution of funding to tribal entities.
- Reviewing the grant reporting processes to determine how program outcomes are established and measured.

Auditee: The Montana Department of Commerce.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: In FY21, the program expended \$724,137 in grant funds.

Economic Impact of Regional Tourism Promotion*

Tourism and film promotion is funded through the 4% Lodging Facility Use Tax, commonly known as the bed tax. Enacted by the 1987 legislature, the bed tax is collected from guests of hotels, motels, bed and breakfasts, guest ranches, resorts, and campgrounds. In FY21, nearly \$40 million in bed taxes were collected from these various businesses. Each year the Department of Commerce Office of Tourism and Business Development distributes millions of bed tax dollars for various tourism promotion activities. Per state law, a significant portion of the bed tax collected is distributed to qualifying nonprofit organizations, including state Tourism Regions and local Convention and Visitors Bureaus (CVBs). Montana has six Tourism Regions with sixteen CVBs distributed among them. In a 2019 performance audit of tourism promotion, we found Tourism Regions and CVB evaluation reports were not always submitted to or properly reviewed. Additionally, staff at many of these nonprofits found evaluation requirements were unclear and did not meaningfully evaluate the effectiveness of their marketing campaigns on tourism promotion. Some studies in other states have also questioned the economic benefit of such publicly funded tourism promotion programs and have suggested that the return on invested public money is minimal. There continues to be legislative interest in Montana the overall structure of bed tax distributions for the use of tourism promotion, including assessing the benefits and economic impact of these funds on local communities and the state.

Potential audit examination areas could include:

- Are the Tourism Region areas effectively laid out for promoting tourism?
- How do Tourism Regions and CVBs measure the outcomes of their marketing methods?
- What are the direct economic impacts of regional and local spending of lodging tax dollars on tourism promotion?
- What are other added benefits to Montana cities, counties, regions, or specific industries of the state's regional tourism promotion activities?

Auditee: The Department of Commerce.

Activity Last Audited: In 2019, a performance audit examined the administrative processes relating to distributing lodging tax dollars to these nonprofits and monitoring their financial activities.

Recent Financial Activity: In FY 2021, \$5.1 million was distributed to Tourism Regions and \$2.2 million to CVBs.

Education

Supporting Hearing and Visually Impaired Students*

The Montana School for the Deaf and Blind (MSDB) is a state-supported multipurpose school governed by the Montana Board of Public Education. Per statute, MSDB serves two functions. First, it provides education for hearing and visually impaired children that is commensurate with the education provided to students without disabilities. Second, the school serves as a statewide resource center for parents and school districts serving children who are hearing or visually impaired. Upon request, MSDB's outreach consultants provide consultation and technical assistance to families, teachers, and administrators serving sensory impaired children in Montana. The outreach coordinators travel across the state to serve students where they live and learn. A 2008 LAD performance audit of MSDB found that the 11 outreach consultants employed during the 2007-2008 school year served 362 students; individual coordinator caseloads ranged from 21 to 71 students that year. Since the audit, the number of outreach students more than doubled to 792 in the 2018-2019 school year and 828 in the 2019-2020 school year. The coordinators now serve approximately 1,100 students. However, while the school's outreach student caseload has grown exponentially in recent years, coordinator staffing has not matched pace as there are currently 13 coordinators to serve those 1,100 students, one of whom works on a part-time basis.

Potential audit examination areas could include:

- Determining whether MSDB outreach consultants are staffed at an optimal level to effectively meet outreach student needs across all state regions.
- Understanding how students are assigned to coordinator caseloads and the extent to which MSDB assigns workloads effectively and efficiently.
- Analyzing trends related to total students served and ascertain how MSDB forecasts for future needs of the state
- Studying how other states have developed models to support children who are hearing or visually impaired in an educational setting.

Auditee: The Montana School for the Deaf and Blind.

Activity Last Audited: A performance audit of MSDB was completed in 2008. It recommended the school work with OPI to secure additional federal funding, as well as determine workload factors for consultants and collect data on staff activities to better do so.

Recent Related Financial Activity: The Outreach Program had \$1.6 million in expenditures during FY21, 92% of which was for personal services. As of February 28, 2022, MSDB expended \$4.9 million, or 58.3%, of the \$8.5 million appropriated by the legislature for FY22.

School Nurses: A Missing Piece of Student Success

Given one in four students has a chronic illness like diabetes or asthma, school nurses are an integral part of the educational environment. However, half of all Montana counties do not have a single school nurse and only four of 56 Montana counties meet the recommended nurse-to-student ratio; the national standard is one nurse for every 750 students in the general population. For some children in the state, the school nurse is the only source of health care available to them on a regular basis. Research shows that school districts with adequate school nurse staffing have fewer student absences, decreased drop-out rates, and higher test scores. The Department of Public Health and Human Services (DPHHS) operates a Montana School Health Program through its Chronic Disease Prevention and Health Promotion Bureau within the Public Health and Safety Division. While the program provides information on school nurse statistics and some guidance on its website, the state does not address school nurse requirements as part of its administrative rules, nor in statute, beyond student medication administration and mandatory reporting requirements. Presently, OPI doesn't appear to have a role in the oversight and management of school nurses.

Potential audit examination areas could include:

- Examining the role of DPHHS plays in supporting school districts in recruiting, retaining, and providing guidance to school nurses.
- Estimating the number of school nurses needed and associated costs for all school districts in the state to meet recommended nurse-to-student ratios.
- Identifying the impacts of low nurse-to-student ratios, or the absence of any school nurses, on students across the state.

Auditee: The Department of Public Health and Human Services; the Office of Public Instruction.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: The Chronic Disease Prevention and Health Promotion Bureau had \$16,027,960 in expenditures for FY 2021.

Remote Learning During the COVID-19 Pandemic

In March 2020, schools in Montana and around the country shut down due to the COVID-19 pandemic, and school districts had to adapt and implement remote learning tools to keep students engaged in their schoolwork. Presently, Office of Public Instruction has provided districts resources and guidelines for remote teaching and learning, such technical guidance related to financial assistance for Covid funding and online education resources for educators and families. School districts were tasked with implementing online platforms, like Zoom and Google Hangouts, and providing their students with access to devices and networks to complete their work. As more data is released around student outcomes from remote learning, school districts are finding that students are falling behind after a year or more of remote and hybrid learning. A recent national study found that graduation rates dropped in at least 20 states during the 2020-2021 school year. Graduation rates are only one concerning trend for student outcomes, though. Another study found that the pandemic has adversely impacted many students' mental health, though the effects can vary based on subsets of students. Research has found that students struggling in school are at greater risk of dropping out, engaging in risky behavior, and failing to develop meaningful relationships with their peers and family.

Potential audit examination areas could include:

- Determining the effectiveness of online educational platforms used by school districts in the state.
- Identifying and assessing efforts of districts and OPI to evaluate the impact of online learning on academic success and other factors in student educational achievement.
- Evaluating the oversight of school districts by OPI for ensuring that schools effectively delivered remote resources for their students.

Auditee: The Office of Public Instruction.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: The Office of Public Instruction's total expenditures for FY 2021 were \$1,159,271,341.

Animal Euthanasia During the COVID-19 Pandemic*

Based on concerns regarding state resources allocated to support animal research activities, a national animal rights organization, People for the Ethical Treatment of Animals (PETA), requested an examination of state funding used to support animal experimentation. According to PETA, there was widespread euthanasia of research animals at the start of the COVID-pandemic. The University of Montana (UM) and Montana State University (MSU) research labs routinely conduct research with animals. Both labs have disaster plans indicating euthanasia may be necessary in a disaster such as a pandemic. The UM and MSU animal research labs self-identify as following the Association for Assessment and Accreditation of Laboratory Animal Care best practices. Also, the Public Health Service/National Institutes of Health/Office of Lab Animal Welfare regulates and inspects animal care in research labs. In some instances, the United States Department of Agriculture regulates and inspects animal research labs as well.

Potential audit examination areas could include:

- What are best practices regarding how to euthanize research animals in times of disaster?
- Did UM and MSU comply with federal regulations regarding the decision to euthanize research animals during the recent pandemic?
- Did UM and MSU follow their institution's disaster plan regarding research animals?
- What processes did other state universities and similar institutions use when euthanizing research animals in the pandemic?

Auditee: The University of Montana; Montana State University.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: Currently unknown.

Fisheries & Wildlife

Montana Board of Outfitters

The Montana Board of Outfitters (board) is located within the Department of Labor and Industry. The board adopts rules related to outfitting activities, licenses professional outfitters and guides, and approves outfitter's operating plans. Montana Fish, Wildlife and Parks (FWP) enforces rules promulgated by the board to regulate the industry. A previous LAD performance audit found the board was not fulfilling its statutory requirement to properly regulate the outfitting industry in Montana. Recent news articles have outlined controversial changes to elk season and license changes. These could increase outfitting activity in the state making regulation increasingly important. In the past FWP has dealt with inaccurate maps of outfitted land across the state for which neither FWP nor the board would take responsibility. This highlights the confusion about the amount of land being outfitted in Montana. During the 2021 session, SB 275 passed; it included revision of the board's membership, the information that the board collects from outfitters, the enforcement of violations of outfitter regulations, and penalties, amongst other changes in outfitter laws. HB 637 was also passed that guarantees licenses to any nonresident hunting with an outfitter who applied in 2021 only. In future years, it increases the odds for out-of-state hunters with an outfitter by allowing them to purchase twice the preference points in the lottery system. This also will increase outfitted hunters in the state.

Potential audit examination areas could include:

- Examining FWP and the board's coordination and oversight of outfitter activities to ensure that outfitters are operating under board and statutory regulations.
- Determining what management information, the board and FWP collect and maintain, how the data is used, and what information could enhance oversight.
- Examining the effect outfitting operations have on public hunting in the state.

Auditee: The Montana Board of Outfitters, the Department of Labor and Industry.

Activity Last Audited: A performance audit on the Montana Board of Outfitters oversight of the outfitter industry, with particular focus on net client hunter use was issued in 2000.

Recent Financial Activity: In FY21, the Board of Outfitters had expenditures of \$352, 000.

General Government

The Board of Housing and Affordable Housing

The purpose of the Montana Board of Housing is to support the development of safe, accessible, and affordable homes for Montanans. The board does this by issuing tax exempt bonds, partnering with organizations that provide affordable homes in the state, allocating federal Low-Income Housing Tax Credits, and administering federal housing programs. Since its inception in 1987 the board has issued tax credits to developers that have led to the construction of close to 10,000 rental units in the state. Most of the self-supporting board's operations and programs are funded by the selling of tax-exempt bonds in the private sector. In FY21, the board issued \$73.4 million in bonds, and purchased \$68.5 million in mortgages through its Single-Family Program. The seven-member board is appointed by the governor and is administratively attached to the Department of Commerce.

Potential audit examination areas could include:

- The board's administration of the Single-Family Program and several other home loan programs available to borrowers who meet certain criteria, to determine if eligibility is properly vetted and loans are reaching the intended populations.
- Effectiveness of the Low-Income Housing Tax Credit Program, and whether developers of multifamily housing who sell tax credits through the program are providing sufficient affordable housing in accordance with program rules
- The effectiveness of the board's in-house mortgage servicing program, which provides servicing for government loans and education and assistance for first-time home buyers.
- The continued need for the board's role in providing resources for affordable homes, in the face of decreasing activity and need.

Auditee: The Montana Board of Housing.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: In FY21, the board issued \$73.4 million in bonds and purchased \$68.5 million in mortgages. In FY20, those figures were \$109.6 million in bonds issued and \$83.8 million in mortgages purchased.

Agency Program Fee-Setting*

In some programs across state government, agencies charge fees for services to help fund the service. Examples of these fees include, but are not limited to, fees for licensing, registration, and permitting activities. Well-designed charges and fees not only reduce the need for additional revenue sources but promote service efficiency. Setting fees can be difficult and requires consideration of various factors, such as how the fee will be reviewed and updated based on changes like inflation, use of services, and competitiveness of rates. While our office examines whether fees in some fund types are commensurate with costs as part of our biennial financial audits, we have not examined agency program fees from a non-financial perspective. For example, a potential performance audit could look at agencies' fee-setting processes, whether there are formal policies regarding the fees, and how the public is involved. A performance audit could also determine if there are efficiencies to be gained across the enterprise regarding the imposition of fees in areas where multiple state programs are involved.

Potential audit examination areas could include:

- Are the fees collected by state agencies authorized, including are there multiple fees associated with the same services?
- Do agency fee-setting and fee review processes align with best practices?
- Do fee payors receive direct benefits from the services for which they pay the fee?
- Is a fee appropriate, or could other government revenues be used to fund the provision of services?

Auditee: Multi-Agency.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: Currently unknown.

Betting on Sports in Montana

Montana joined the national proliferation of professional and college sports wagering in March 2020, when Sports Bet Montana went live, administered by the Montana Lottery. Sports wagering was legalized in Montana by the 2019 Legislature. Unlike citizens of other states who may place wagers on their home computers or phones, Montanans who wish to wager on professional or college sports may only place wagers through an authorized Sports Bet Montana location. Soon after the contract for the administration of sports gambling was awarded, a legislative information request sought information on the contract, which was awarded to the Lottery's existing contractor for electronic lottery games. The same vendor that holds the sports wagering contract in Montana also has a similar contract in the District of Columbia, and a recent performance audit there found that revenue was falling short of expectations, due in part to poor odds being offered to gamblers by the contractor as well as other structural and regulatory problems.

Potential audit examination areas could include:

- Assessing whether Montana's revenue from sports gambling is similar per capita to other states that have recently begun offering it.
- Determining potential benefits and drawbacks to other state models that allow for competition among gambling operators and allow citizens to wager from their homes.
- Examining the process for awarding the sports gambling contract, and whether there are opportunities for other vendors to offer more favorable terms to bettors and to the state in future contracts.

Auditee: The Montana Lottery.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: Through March of 2022, bettors had wagered a total of \$78.7 million through Sports Bet Montana, with \$67.9 million paid out. Close to half of the remaining gross revenue was paid out to retailers who offer the games.

Justice & Corrections

Judicial Sentencing Practices

Montana has not yet seen the anticipated cost savings and population declines in the criminal justice system, despite legislation requiring the Department of Corrections to use evidence-based practices to reduce recidivism. One potential cause of high corrections populations is current sentencing practices and laws. Sentencing structure can be used to ensure fairness, proportionality, public safety, recidivism reduction, and cost effectiveness in the criminal justice system. Montana's current sentencing structure is largely discretionary. Ideally, this means judges can tailor punishment and rehabilitation on a case-by-case basis for each offender, but this may contribute to inconsistencies between jurisdictions and sometimes excessive or ineffective sentences. Some stakeholders are concerned about potential "sentence creep," or increased sentence lengths, due to judges and prosecutors attempting to evade legislatively required eligibility for early release and conditional discharge for certain offenders. Additionally, Montana's system has a unique feature allowing offenders to be committed to the Department of Corrections as "DOC commits." This population group was intended to increase the ability of DOC to match offenders with the most effective programs for their rehabilitation and community safety. Recently there has been discussion about placement effectiveness and expectations of DOC commits based on sentencing requirements from judges.

Potential audit examination areas could include:

- Comparing sentences for similar crimes between judicial jurisdictions and for different racial groups.
- Comparing sentencing policy to evidence-based practices from other states and policy experts.
- Reviewing whether current sentencing in Montana overall reflects offender risk to recidivate.

Auditee: The Judicial Branch.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: The average daily cost for housing a male offender at Montana State Prison is \$114.53; the daily cost for supervising an offender on community supervision is approximately \$6.41 a day.

Judicial Standards Commission*

An effective judicial oversight entity is vital to maintain a fair and impartial judiciary and to 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. 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. During the 2021 Montana Legislative Session, the legislature passed HJ 40, which requested an interim study and for the Legislative Audit Committee to prioritize a performance audit. While the interim study on the Judicial Standards Commission is ongoing, a performance audit was not prioritized for the fiscal year 2022 cycle.

Potential audit examination areas could include:

- Assessing whether complaint investigations are conducted thoroughly, impartially, and in accordance with statutory requirements.
- Reviewing whether the commission enforces standards for disclosure and confidentiality.
- Exploring whether the commission's structure and proceedings conform with best practices to ensure impartiality.

Auditee: The Montana Judicial Standards Commission.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: In FY 2021, commission expenditures were about \$22,000.

Judicial Courts and the Child Welfare System

Montana's child welfare system has the second highest rate of kids in care in the nation. In Montana, almost 46 percent of investigations into child abuse and neglect involve court action. When Child and Family Service Division (CFSD) staff file for emergency protective services (EPS) for children, they must go through the courts in the state to have EPS granted and have a child determined a youth in need of care. A previous audit of CFSD identified the court process as a potential factor leading to children spending more time in the state's custody. Courts in Montana are often overburdened by limited resources for abuse and neglect cases and a limited number of public defenders to represent the families. Other states have courts that exclusively hear child welfare cases allowing them to closely monitor parental progress towards eliminating safety threats to the children in the home. This includes ensuring families receive appropriate treatment services through court ordered treatment plans. Delays in the court process due to limited schedule availability or changes in representation can increase the time it takes to find a permanent placement for a child.

Potential audit examination areas could include:

- Identifying the barriers to efficient court processes related to child welfare.
- Determining the effect of current court and judicial system resources and processes on the time a child spends in state custody.
- Determining whether judicial and court staff, including judges, attorneys, and public defenders, engage with CFSD to find timely and appropriate solutions to child abuse and neglect cases.

Auditee: The Judicial Branch.

Activity Last Audited: The Legislative Audit Division recently completed a performance audit of CFSD and its investigative process. This audit identified the court system as a factor in the length of time a child is in care.

Recent Financial Activity: District Court FY2022 expenditures were \$19.5 million.

Natural Resources & Environment

Effectiveness and Funding of Fire Suppression*

Forest fires have become increasingly dangerous and prevalent throughout Montana. The Montana Department of Natural Resources and Conservation (DNRC) directly protects over 5 million acres of state and private lands through the Fire Suppression Program. Additionally, DNRC oversees state-county cooperative fire protection, where each county provides wildland fire protection through a system of volunteers, county personnel, and rural fire districts. The growing need for more complex fire responses persistently stresses DNRC's fire suppression capabilities. Consequently, there are concerns that a lack of preparation or a disorganized response could lead to significant property damage due to wildland fires, public safety issues, and risk the safety of fire personnel. Fire suppression is costly to the state. Fire suppression in 2017, the most expensive fire year in Montana's history, resulted in a state liability of \$74.4 million. With such high costs, it is important that resources are allocated effectively for fire suppression and that funding is used properly.

Potential audit examination areas could include:

- Assessing the allocation of fire suppression spending statewide, including a review of fire suppression costs and sources of revenue.
- Reviewing the coordination of fire suppression activities across the response system between local, state and federal resources.
- Examining the allocation of fire suppression equipment during the fire season.
- Evaluating Montana's overall fire suppression policy, including reviewing best practices regarding balancing costs with property damage.

Auditee: The Department of Natural Resources and Conservation.

Activity Last Audited: A performance audit of wildland fire administration was issued in 2004.

Recent Financial Activity: The department expended \$20.2 million in fire suppression in FY 2020.

Effectiveness of Montana Groundwater Monitoring for Pesticides

About 61% of Montana's population get their drinking water from groundwater and recent drought has increased scrutiny of water quality in Montana. Various agencies monitor water quality across the state using nearly 1,000 sites to test for various pollutants. As a part of this network, the Montana Department of Agriculture (MDA) is responsible for monitoring pollution from agricultural chemicals and pesticides in groundwater. MDA's Groundwater Protection Program monitors groundwater using established monitoring wells across the state. Agriculture is Montana's leading industry and one of the largest nonpoint sources of pollution in water. However, in 2021, MDA collected samples from only 28 groundwater monitoring wells around the state. A performance audit could examine whether MDA's network of monitoring wells and the processes for monitoring pesticides are sufficient for ensuring water quality.

Potential audit examination areas could include:

- Determining sufficiency of well monitoring system at finding pesticides in water sources.
- Examining testing process for pesticides and whether these align with best practices.
- Investigating compliance with policy and statute surrounding groundwater testing for pesticides.

Auditee: The Department of Agriculture.

Activity Last Audited: This topic has not been the subject of a performance audit.

Recent Financial Activity: The Department of Agriculture spent approximately \$1M towards monitoring pesticides in groundwater in FY21.

Public Health & Human Services

Social Security Disability Eligibility Determinations*

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) are two federal programs that provide financial assistance to individuals with disabilities. An individual with a disability residing in the state may apply for benefits from these programs online or through one of several social security field offices in Montana. Following an initial review and approval by a field office, the Disability Determination Services (DDS) Bureau within the Montana Department of Health and Human Services then makes a determination on the social security disability claim based on an applicant's medical information. According to DPHHS, in federal FY 2020, DDS received 4,789 initial disability case filings, primarily from field offices in Montana. They made a medical determination on 4,710 initial claims, 45% of which they determined were medically eligible for disability benefits. And based on information from the Social Security Administration, in December of 2019, there were 16,111 recipients in Montana who received benefits through SSI, with payments to those individuals totaling \$9,303,000. A recent study examined social security disability benefits in Kentucky. The report found evidence of overuse and misuse of social security disabilities benefits programs; it further suggested that how the programs are designed can cause some recipients to be financially dependent on the benefits they receive without helping them return to work. The study recommended several areas of improvement including the use of objective medical evidence and best practice in forensic evaluation to determine program eligibility. A similar study could be conducted specific to the processing of disability claims in Montana.

Potential examination areas could include:

- Are claim approvals in Montana consistent over time and across reviewers?
- Do reviewers use objective criteria when determining eligibility?
- How long does it take to process claims and for applicants to receive benefits?
- Are there trends in the number of applicants, approvals, and benefits received among counties and subpopulations in Montana, including receipt of benefits from other federal or state programs?
- Are there other social and economic issues commonly faced by applicants and disability beneficiaries?

Auditee: The Department of Health and Human Services.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: The Montana Disability Determination Services Bureau's FY 2021 appropriation is \$6.7 million. The overall administration of the social security disabilities benefit programs, including the operations of Disability Determination Services, is federally funded.

Developmental Disabilities Program Structure*

There are over 2,500 individuals with developmental disabilities served by the Department of Health and Human Services' Developmental Disabilities Program (DDP) of the Developmental Services Division via the Medicaid Home and Community-Based Services (HCBS) Waiver. These individuals, both children and adults, receive a range of support from various community service providers. Each individual has a case manager, who works with the individual, the provider, and other relevant parties to ensure the individual is receiving appropriate support. Case managers can be either contracted providers or DDP employees, and are overseen by Quality Improvement Specialists (QIS's), of which there are 23 in the state. The duties of a QIS are to oversee and provide support to case managers, to monitor service providers for contractual compliance, to conduct critical incident investigations, and to ensure compliance with the Medicaid HCBS Waiver. During the 2021 legislative session, Appropriations Subcommittee B raised questions about the size and effectiveness of QIS' role in DDP's waiver administration responsibilities, and the Governor's Office subsequently requested a performance audit of the issue.

Potential audit examination areas could include:

- Assessing the span of control of Quality Improvement Specialists, and optimization of QIS workforce.
- Examining the caseloads of case managers, including how contracted case managers compare to state-employed case managers.
- Reviewing the cost-effectiveness of the program relative to program performance.

Auditee: The Department of Public Health and Human Services

Activity Last Audited: In 2021, LAD released a performance audit report on the closure of the Montana Developmental Center. LAD conducted a performance audit of the Home and Community-Based Services Waiver Program in 2012 and of Medicaid In-Home Services in 1998. However, these audits did not address DDP structure, size, or cost-effectiveness.

Recent Financial Activity: DPHHS reports that in FY 2020, its total annual HCBS waiver expenditures amounted to over \$125 million.

Streamlining Administrative Hearings*

There are two Offices of Administrative Hearings (OAH) in Montana State Government: one in the Department of Public Health and Human Services (DPHHS) and one in the Department of Labor and Industry (DLI). Both conduct impartial administrative hearings on topics that fall under their respective agencies' purviews. Formerly called the Office of Fair Hearings, the DPHHS OAH holds hearings contesting adverse actions made by programs administered by the department. Such programs and topics include child support, Medicaid benefit eligibility, aging services, Supplemental Nutrition Assistance Program, childcare licensing, and nursing home discharges/transfers. Similarly, the DLI OAH provides dispute resolution services and impartial hearings in areas such as unemployment insurance, wage and hour claims, professional and occupational licensing appeals, and human rights complaints. DLI receives approximately 1,350 cases per year. Between March 2021 and March 2022, DPHHS OAH received 3,537 hearing requests, 952 of which were for child support. Some states, such as Texas and South Carolina, have one administrative hearing office independent from state agencies that serve all of state government, while other states have decentralized appeals processes that are not heard outside of the agency of origin. There also exist different combinations of centralized and decentralized hearings offices and appeals processes. For example, some appeals processes in Washington State remain at the originating agency and others involve the state's OAH equivalent.

Potential audit examination areas could include:

- Determining the best configuration for the two offices' functions, including whether combining the two would lead to increased efficiency, effectiveness, and cost savings to the state.
- Understanding how other state governments structure their hearings processes to determine whether the OAH offices, or potential combined office, has the most appropriate level of jurisdiction and final authority in hearings.
- Analyzing case and resolution trends to understand overall scope of operations for each office.
- Examining the operational, technological, and personnel-related processes for the two offices.

Auditee: The Department of Health and Human Services; the Department of Labor and Industry.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: The DLI OAH had \$1,044,875 in expenditures for FY21. The DPHHS OAH had \$1,025,965 in expenditures for FY21.

State Pandemic Preparedness and Response*

The 2019 Coronavirus (COVID-19) outbreak resulted in almost 12,000 hospitalizations and over 3,200 deaths in Montana. It was the first major worldwide pandemic in 100 years, causing significant loss of life and economic disruption. Because such large-scale public health emergencies have occurred infrequently, they provide a rare opportunity to assess the state's preparedness and response to the outbreak, with the intention of improving responses to future such events. The Communicable Disease Control & Prevention Bureau of the Department of Public Health and Human Services' (DPHHS) 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 emergencies. The government response to the pandemic required coordination of multiple other government entities, including the Director's Office and other divisions at DPHHS, as well as Montana Disaster and Emergency Services (DES). Shortages of Personal Protective Equipment (PPE) and other medical equipment have occurred in Montana and nationwide, with immense effort and resources expended by government entities to procure and distribute it quickly and efficiently.

Potential audit examination areas could include:

- State agencies' preparation for and coordination of statewide response to COVID-19, including how federal and state resources were managed and directed to various jurisdictions.
- How the state tracked and shared pandemic-related data with tribes and local governments, intra-state and federal government entities, and the public in order to promote best practices for public safety and to enable government pandemic management decisions.
- The needs, stockpiles, procurement, and statewide logistical allocation of PPE and other medical resources.

Auditee: The Department of Public Health and Human Services, the Department of Military Affairs.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: The Communicable Disease Control & Prevention Bureau expended about \$13.5 million annually prior to the pandemic. Over the course of the pandemic, DPHHS received an increase of nearly 2.5 billion dollars in federal COVID funding for state government and industry assistance activities.

Child Support Services Division*

The purpose of the Child Support Services Division is to pursue and obtain financial and medical support for children by establishing, enforcing, and collecting financial obligations from non-custodial parents. The division has almost 130 FTE and is made up of three bureaus, Field Services, Fiscal Services, and Systems, Policy & Training Services. In addition to offices in Helena, there are four regional offices located in Great Falls, Billings, Butte, and Missoula. The division collected and distributed almost \$80 million in child support in FY2020. All states operate a child support enforcement program. However, some states privatize some or most of their child support services, such as locating noncustodial parents, establishing paternity, collecting and dispersing child support payments, and operating a call center. Contracting for child support services by states and localities has increased significantly since the 90s. Proponents for contracting these services believe private contractors could provide high-quality services more cost-effectively. However, the results of privatization of child support services in other states have been mixed, according to a recent report from the Government Accountability Office.

Potential audit examination areas could include:

- How effective and efficient is CSSD at establishing and collecting child support payments?
- Would it be cost-effective to privatize some CSSD functions?
- What experiences have similar states had with privatizing their child support programs?

Auditee: The Department of Public Health and Human Services.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: CSSD's total annual budget is \$11.8 million, \$3.4 million of which comes from the General Fund.

Taxation & Revenue

Addition of New Construction to Property Tax Rolls

The Property Assessment Division (PAD) within the Montana Department of Revenue is responsible for valuing all taxable property for tax purposes and providing counties with the tax rolls for all properties within their jurisdiction. The department is required by statute to reappraise all agricultural, commercial, industrial, and residential land and improvements every two years. The department is also responsible for valuing new construction and ensuring it is included on the tax rolls. According to PAD management, the department reviews new construction and updates their property records in their database every year to ensure these properties are appropriately being taxed, provided the department is made aware of the new construction. Any new construction that begins during the present year (e.g., January 2, 2022), should be included on the tax rolls the following year (e.g., Tax Year 2023 – starting January 1, 2023). For multi-year construction projects, the market value of the improvement should be updated annually based on progress towards completion. However, if new construction is not being timely added to the tax rolls and appropriately taxed, there could be resulting shifts of taxes to other taxpayers within the jurisdiction or lost revenue. This concern could be particularly pertinent to local jurisdictions undergoing rapid development, where the pace of new construction surpasses the department's ability to identify and assess all property.

Potential audit examination areas could include:

- Examining PAD local field offices' processes for identifying, appraising, and updating their database with new property construction information.
- Assessing if new construction is consistently and timely added to the tax rolls of local jurisdictions.
- Evaluating if statutory criteria, rules, policies, and procedures exist to guide PAD in identifying and reappraising new construction as well as ensuring property improvements are timely added to the tax rolls.

Auditee: The Department of Revenue.

Activity Last Audited: A 2010 performance audit examined PAD's controls over the reappraisal process. However, no previous performance audit has focused exclusively on how PAD identifies new construction and updates their records to ensure such properties are appropriately being taxed.

Recent Financial Activity: PAD had FY20 expenditures of approximately \$22,250,000.

Liquor Warehouse Distribution

The Liquor Distribution Bureau houses the Alcoholic Beverage Control Division within Dept. of Revenue. The Bureau manages state wholesale liquor operations, including warehouse shipping and receiving, accounts receivable and payable, inventory management, liquor order processing, agency contract management, and customer service. Due to the state's current regulatory structure for alcohol, every bottle of liquor sold in Montana passes through the Helena warehouse. The state maintains agency franchise contracts and supplies liquor to 95 privately owned liquor stores, scattered across the state based upon population. These agency liquor stores are retailers of liquor and fortified wine; they sell to the public for off-premise consumption and to Montana's 1550-plus all-beverage licensees. The State Liquor Warehouse held inventory for approximately 5,400 products in FY20 and in FY 2021 shipped more than 1 million cases around the state. Fiscal year 2020 generated a combined total income from taxes collected and profits earned of \$47.1 million; \$38.9 million from liquor operations was distributed to the state general fund and \$8.2 million to the special revenue fund. The enterprise fund showed net profit of liquor was \$14.7 million, liquor excise taxes were \$19.9 million, and liquor license taxes were \$12.5 million. The total revenue is approximately \$9 million more than five years ago. DPHHS used special revenue funds to treat, rehabilitate, and prevent alcohol and chemical dependency. Liquor profit was distributed to the state general fund.

Potential audit examination areas could include:

- Examining the processes for warehouse activities including management of inventory (how much to sell, what to discount, how to dispose of excess/old stock).
- Reviewing methods of organizing, receiving, and shipping stock.
- Examining systems for tracking inventory and placing orders, including potential fraud, waste, or abuse of inventory

Auditee: The Department of Revenue

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: Gross sales of liquor totaled more than \$163,873,000 in FY 2020.

Recreational Marijuana Sales and Tax Revenue

Recreational marijuana sales topped \$12.8 million in January 2022, the first month sales were open to all adults in the state. As of April 2022, the state is on track to reach \$174 million in sales by the end of the year, far exceeding original projections. House Bill 701 established the legalized adult-use market for marijuana and tasked the Department of Revenue to take over the state's medical marijuana program along with the recreational market. Recreational marijuana will be taxed at 20 percent of retail sales and local jurisdictions can add an additional 3 percent sales tax. The Cannabis Control Division within the department issues five different types of licenses for cultivation, manufacture, sale, laboratory testing, and transportation of marijuana. Currently, only established medical marijuana dispensaries can apply to an adult-use license before the applications open to new applicants in July 2023. Revenue from recreational marijuana sales will fund a variety of programs and state agencies and services. The first \$6 million in tax revenue will go toward the Healing and Ending Addiction through Recovery and Treatment (HEART) Fund, with other revenue going to Indian Health Services, Montana Department of Fish, Wildlife, & Parks, state parks, veterans, and the Montana Board of Crime Control.

Potential audit examination areas could include:

- Evaluating the application and licensing process.
- Determining the total economic benefit to communities and programs from the revenue funds.
- Reviewing the transition process of the medical marijuana program between the Department of Health and Human Services and the Department of Revenue

Auditee: The Department of Revenue.

Activity Last Audited: This topic has not been the subject of a recent performance audit.

Recent Financial Activity: In Montana, sales reached \$12.8 million in January 2022 with estimated total sales of \$174 million in 2022.

Transportation

Monitoring and Improving Highway Safety

In 2019, Montana ranked 6th in the nation in highway deaths both per capita and per vehicle miles traveled. In 2021, there were 240 road fatalities across the state. There has been recent legislative interest in improving highway safety, including two bills proposed during the 2021 legislative session. HB 712 would have allowed a tribal entity to reduce speed limits on a highway, and HJ 54 would have created a study to further examine highways with high fatality rates, though both died in process. The highway transportation system is the responsibility of the Montana Department of Transportation (MDT). MDT's Comprehensive Highway Safety Plan (CHSP) is a data-driven, multi-year plan that establishes statewide safety targets and objectives, with a mission of reducing fatalities and serious injuries on Montana's roads. Its goals, developed with local, federal, and tribal stakeholders, include establishing and monitoring quantifiable safety-related performance measures relevant to travel on Montana's highways. MDT's Traffic & Safety Bureau and the Highway Traffic Safety section of the Planning Division implement many of the CHSP goals and strategies. This includes recommending design changes to particularly accident-prone transportation infrastructure. Previous audit work reported the selection and execution of safety engineering projects to improve safety without data supporting such decisions.

Potential audit examination areas could include:

- How transportation safety and crash data are used to inform safety engineering projects and whether specific engineering projects address the locations of greatest concern and underlying causes of accidents?
- How the department tracks the success of highway projects implemented for safety reasons?
- How the department develops and ensures the attainability of safety performance targets?

Auditee: The Department of Transportation.

Activity Last Audited: In 2012, a performance audit of the federally funded Highway Safety Improvement Program was issued.

Recent Financial Activity: The department expends \$12 million annually on the Traffic Safety Bureau and State Highway Traffic Safety sections. Significantly more dollars are expended on safety-related construction projects.

Design and Cost Issues Related to Design-Build Bidding

The Design-Build bidding process through the Montana Department of Transportation (MDT) is an alternative bidding process used for smaller road and bridge projects that take less than a year. In a traditional project delivery model, there are two separate contracts for designer and construction contractor. In the design-build process engineering firms and contractors collaborate to submit a design proposal, after which MDT chooses a proposal based on varying criteria that weigh the cost, technical abilities of the team, innovation, and other areas. Contractors have raised concerns that MDT does not use a consistent selection criteria or weighting for this process. These concerns include that the bidding and selection processes for design-build projects could result in poor-quality projects or projects going over budget, due to the varying criteria for design-build projects incentivizing designs that require change orders, which are formal changes to the project requirements, materials, timelines, costs, or other factors. Change orders increase the risk of cost overruns, with the potential of the consultant team going bankrupt in extreme scenarios. Situations like these can reduce the quality of projects, the timeliness of projects, and dissuade high-quality consultant teams from participating in design-build bidding.

Potential audit examination areas could include:

- Comparing the outcomes of design-build projects against project outcomes in other bidding processes.
- Examining if MDT's design-build process is aligned with best practices.
- Determining if change orders align with industry best practices and if they result in project costs going above losing team bids.
- Investigating whether innovative contracting has led to an increase in costs associated with change orders.

Auditee: The Department of Transportation

Activity Last Audited: A 2018 performance audit examined: Funding for Montana's Highway Infrastructure. This audit did not explore the design-build bidding process.

Recent Financial Activity: MDT spent about \$42M on consultant design in FY2021.



February 22, 2022

Angus Maciver
Legislative Auditor & Division Director
Room 160, State Capitol
PO Box 201705
Helena, Montana 59620-1705

Via e-mail: lad@mt.gov; amaciver@mt.gov

Dear Auditor Maciver:

Thank you in advance for your time. I am writing on behalf of People for the Ethical Treatment of Animals—PETA entities have more than 9 million members and supporters around the world—regarding the Legislative Audit Division's Performance Audit for FY 2022.

In a memorandum from deputy legislative auditor for performance and information systems audits, William Soller, to the Legislative Audit Committee members in June 2021,¹ PETA's concerns of "Animal Euthanasia During the COVID-19 Pandemic"—which we detailed in a September 9, 2020, letter² to you—was listed as a possible audit topic.

Can you please let us know whether this issue has been, or will be, investigated during FY 2022?

You can contact me by e-mail at ShalinG@peta.org. We look forward to your reply regarding this important matter.

Sincerely yours,

Shalin G. Gala
Vice President, International Laboratory Methods
Laboratory Investigations Department

¹Legislative Audit Division. Potential Performance Audit Areas for Fiscal Year 2022. Accessed February 16, 2022.

<https://leg.mt.gov/content/Committees/Administration/audit/2021-22/Meetings/June-2021/Perf%20Audit%20Prior%20Process.pdf>

²People for the Ethical Treatment of Animals. Letter to Montana Auditor. September 9, 2020. Accessed on February 16, 2022.

https://www.peta.org/wp-content/uploads/2022/02/2020-09-09_Letter_to_MT_Auditor_re_Apparent_Wasteful_Practices_at_University_of_Montana.pdf

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

Washington
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Info@peta.org
PETA.org

Entities:

- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Switzerland
- PETA Netherlands
- PETA Foundation (U.K.)

1 HOUSE JOINT RESOLUTION NO. 40

2 INTRODUCED BY B. MERCER, K. SEEKINS-CROWE, B. TSCHIDA

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA REQUESTING AN INTERIM STUDY AND A PERFORMANCE AUDIT OF THE JUDICIAL
6 STANDARDS COMMISSION.

7
8 WHEREAS, Article VII, section 11, of the Montana Constitution provides for removal and discipline of
9 judges and requires that the Legislature create a Judicial Standards Commission; and

10 WHEREAS, the Legislature has enacted Title 3, chapter 1, part 11, MCA, to create the commission and
11 provide for its operation; and

12 WHEREAS, the 2021 Legislature considered several bills related to the removal and discipline of
13 judges; and

14 WHEREAS, the Legislature provides authority in section 3-1-1125, MCA, to the Legislative Auditor to
15 audit the Judicial Standards Commission "to determine whether it is efficiently and effectively processing
16 complaints against judicial officers in the state" and includes the right of the Legislative Auditor to access
17 otherwise confidential materials; and

18 WHEREAS, the Legislature has not conducted a legislative interim study of the Judicial Standards
19 Commission using the interim committee study process; and

20 WHEREAS, gathering public comment related to matters contained in reports published as required by
21 section 3-1-1126, MCA, disclosed as required by section 3-1-1121, MCA, or otherwise available to the public
22 according to Title 3, chapter 1, part 11, MCA, will aid both in any scoping work done for a performance audit
23 and in the interim committee study process; and

24 WHEREAS, by prioritizing a performance audit and an interim study during the 2021-2022 interim, the
25 Legislature would benefit from a two-pronged review of the Judicial Standards Commission that could provide
26 additional information about the commission, its work, and any elements of its structure or operation that could
27 be improved through legislation.

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

3 (1) That the Legislative Council be requested to designate an appropriate interim committee or
4 statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the structure,
5 duties, and operation of the Judicial Standards Commission.

6 (2) That the Legislative Audit Committee be requested to prioritize a performance audit of the Judicial
7 Standards Commission to determine whether the commission is effectively and efficiently processing
8 complaints against judicial officers.

9 BE IT FURTHER RESOLVED, that the interim committee study:

10 (1) review the history, structure, and operation of the Judicial Standards Commission and other topics
11 selected by the interim committee;

12 (2) examine methods used by other states to resolve complaints against judicial officers; and

13 (3) involve the public and other stakeholders identified by the committee.

14 BE IT FURTHER RESOLVED, that if the Legislative Audit Committee conducts an audit of the Judicial
15 Standards Commission, the interim committee assigned to conduct the interim study also reviews the resulting
16 audit report and requests legislation, if needed, to enact any recommendations from the audit.

17 BE IT FURTHER RESOLVED, that if the interim committee study is assigned to staff, any findings or
18 conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

19 BE IT FURTHER RESOLVED, that all aspects of the interim committee study and the performance
20 audit, including presentation and review requirements, be concluded prior to September 15, 2022.

21 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
22 comments, or recommendations of the appropriate committee, be reported to the 68th Legislature.

23 - END -

Angus Maciver
Legislative Auditor

RECEIVED
MAR 22 2021
LEGISLATIVE AUDIT DIV.

Thank you for the letter you sent out on March 17th 2021 regarding performance audit requests. I feel that we need to take an in depth look at the cost of fire suppression here in Montana. As I have been in and around this industry for over 20 years, I have witnessed a huge amount of wasteful spending. With the budget being very tight and with new leadership now in place, I believe the time is right to make some much-needed changes in our approach to wildland fire. The last comprehensive study was last done 16 years ago. The cost of fire suppression just continues to rise and will continue to go up. Wildland fire has become an industry, with many using it as a funding source rather than an emergency response to a naturally occurring event. With the millions of dollars put out there for the taking, the more people become dependent on this revenue stream. I believe that if we can get an in-depth accurate look at costs, we can start making needed changes that will save money, natural resources, and stakeholder's property.

Sincerely,

Representative Steve Gist

Steve.gist@mtleg.gog

406-231-4050

RECEIVED
APR 19 2021
LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver:

I write to request the Legislative Audit Committee prioritize a potential performance audit of certain aspects of Montana's response to the Covid-19 pandemic. I'm particularly concerned about the acquisition and management of Personal Protection Equipment (PPE) both leading up to and during the Covid-19 pandemic. PPE shortages have been a systemwide concern during this public health emergency both nationwide and in Montana. My interests in a potential audit would be to examine what PPE we needed, what we had on hand, how we acquired (or didn't acquire) more, including logistical details of how we moved PPE around the State in response to the pandemic. I understand the Montana Department of Public Health and Human Services and Montana Disaster and Emergency Services played roles in state government's larger pandemic responses with relationship to PPE and other aspects of our public health response, in partnership with other community agencies and their programming such as the Montana's Hospital Association's Hospital Preparedness Program. The ultimate goal of my interest in an examination would be for the state to be better prepared for a similar public health emergency in the future.

Thank you so much for your consideration.

Best,

Rep. Ed Stafman

HD62



Fiscal Year 2022

Performance Audit Priority Ranking

Audit Title	Score
Public Service Regulation Management*	5
Trends in Enforcement at Fish, Wildlife & Parks	4.5
Education and Training of Incarcerated Citizens*	4.5
Fire Protection Assessment Fee*	4.5
Effectiveness and Funding of Fire Suppression*	4.5
Supporting Students with Mental Health Issues	4.33
Effects of Workers' Compensation Reform	4.17
Accuracy and Fairness of Bonus Point System*	4
Economic Impact of Tourism Promotion*	4
Safety of the Asbestos Control Program*	3.83
Unemployment Insurance Benefits During a Pandemic	3.83
Judicial Standards Commission*	3.67
Ensuring Quality Care for Vulnerable Adults	3.67
Nurse Licensure Compact Effect on Healthcare	3.5
Agency Internal Audit Functions	3.33
Oversight of the Search and Rescue Program	3.17
Impacts Pandemic-Related Remote Work Expansion	3.17
Agency Use of Paid Administrative Leave	3
Developmental Disabilities Program Structure*	3
Design and Costs Related to Innovative Contracting	3
Role of the Land Board in Managing State Real Property	3
Efficacy of the Office of Civil Rights Programs	2.83

Social Security Disability Eligibility Determinations*	2.67
Monitoring and Improving Highway Safety	2.5
Evaluation of Admissions Requirements	2.5
Tax Return Preparer Fraud	2.33
State Pandemic Preparedness and Response*	2.33
Evaluating the Impact of Student Fees	2.33
Animal Euthanasia During the COVID-19 Pandemic*	2



Fiscal Year 2021

Performance Audit Priority Ranking

Audit Title	Score
Gambling Revenue Oversight and Collection	4.5
Real Property Tax Exemptions	4.33
State Agency Printing Facilities Duplication	4.17
Privatization of the State Motor Pool	4.17
MDT Aeronautics Division Operations	4
Efficient Use of Legal Services by State Agencies	4
Physical Space Management on College Campuses	3.83
Retirement System Administrative Consolidation	3.83
State Warrant Printing and Mailing	3.83
Health Insurance Pharmacy Benefit Management	3.83
Board of Medical Examiners Complaint Processes	3.67
Hiring Practices in State Government	3.67
Economic Impact of Tourism Promotion	3.5
Medical Marijuana Act	3.17
Emergency Authorization of Teachers without Licenses	3.17
Ensuring Quality Care for Vulnerable Adults	3
Habitat Montana & Conservation Easements	2.83
COVID-19 Preparedness and Response	2.83
Ensuring the Ethical Conduct of the Judiciary	2.83
Family and Medical Leave Act Administration	2.67
Regulating the New Hemp Industry	2.5
Fishing Access Sites	2.5

