



October 2022

State Administration and Veterans' Affairs Interim Committee

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DRAFT FINAL REPORT TO THE 68<sup>TH</sup> MONTANA LEGISLATURE

# DRAFT SJ 35 FINAL REPORT



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[HTTPS://LEG.MT.GOV/COMMITTEES/INTERIM/SAVA/](https://leg.mt.gov/committees/interim/sava/)

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This report is a summary of the work of the State Administration and Veterans' Affairs Interim Committee, specific to the SAVA Interim Committee’s 2021-2022 procurement study as outlined in the SAVA Interim Committee’s 2021-22 work plan and Senate Joint Resolution 35 (2021). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the SAVA Interim Committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the SAVA Interim Committee website: <https://leg.mt.gov/committees/interim/sava/>.

A full report, including links to the documents referenced in this print report, is available at the SAVA SJ 35 study page: <https://leg.mt.gov/committees/interim/sava/sj-35/>.

## SJ 35 (2021)

### Introduction

SJ 35, passed during the 2021 Legislative Session, calls for an interim study of procurement practices by the Department of Public Health and Human Services (DPHHS). Included in the study resolution are the following directions to the State Administration and Veterans' Affairs interim committee (SAVA):

- Identify the circumstances under which the Department of Public Health and Human Services (DPHHS) deviates from the Montana Procurement Act and how frequently those circumstances occur.
- Identify the policies and procedures that the agency uses when determining whether it must follow the standard procurement practices or how it otherwise determines whether to seek bids or proposals for services.
- Review the statutes and administrative rules related to state agency procurement, including the federal laws and regulations governing public assistance programs, the procurement procedures for federally funded programs administered by the Department of Public Health and Human Services, and the state statutes and administrative rules specific to the provision of human services.
- Determine whether practical obstacles, including the emergency needs of clients served by the agency, affect the department's procurement procedures.
- Obtain an accounting of the amount of money the department has paid to vendors who were selected outside of the standard procurement process.
- The study should include input from appropriate stakeholders.
- All aspects of the study, including presentation and review requirements, should be concluded prior to September 15, 2022.
- The final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, should be reported to the 68th Legislature.

### Presentations & Discussions by Meeting

#### June 24, 2021

The SAVA interim committee met for the first time of the 2021-2022 interim on June 24, 2021. During the meeting, committee staff introduced the study and the committee voted to set aside 20% (0.20 FTE) of their time during the interim to the study.

#### August 25, 2021

At the August 25<sup>th</sup>, meeting members heard from the Legislative Audit Division (LAD) about the November 2017 and April 2020 audit findings related to the Department's procurement practices, an overview of the state procurement process from the State Procurement Bureau, and the specifics of DPHHS procurement practices and procedures from DPHHS.

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In the [November 2017 Financial-Compliance Audit of DPHHS](#), LAD found, "The department did not follow federal regulations and state procurement policies when incurring approximately \$3 million in costs for nonmedical services for the Foster Care program" and recommended, "...the Department of Public Health and Human Services comply with state law and federal regulations by following state procurement policies to obtain services for the Temporary Assistance for Needy Families and Foster Care programs." (pg. 17-19)

In the [April 2020 Financial-Compliance Audit of DPHHS](#), LAD found, "Contrary to state procurement policies and federal regulations, the department continues to make payments to vendors for services without having a contract in place" and recommended, "...the Department of Public Health and Human Services comply with state law and federal regulations by following state procurement policies to obtain services for one-on-one supervision of youth, chemical dependency evaluations, urine analyses, and support services for a child placed in the Foster Care program using Temporary Assistance for Needy Families funds." (pg. 45-50)

At issue in both audits was the difference of opinion between LAD and DPHHS on the appropriate application of the human services exemption found at 18-4-123(18)(b), MCA, which states, "Services does not include employment agreements or collective bargaining agreements, *the provision of human services administered by the department of public health and human services*, or services related to construction contracts." (*emphasis added*)

In both audits, LAD found that DPHHS had not applied the exemption properly, resulting in services not being properly contracted. DPHHS argued that they were using the exemption properly. During the August 25<sup>th</sup> meeting, the DPHHS representative shared a detailed breakdown of the expenses in question in the audit findings, which showed that the total amount at issue was \$54,504,907 for FY21.

Committee members also heard public comment from the sponsor of the study resolution, Senator Chris Friedel, who expressed his appreciation for the committee's attention to the study and that the matter that had originally prompted him to sponsor SJ 35 had since been more or less resolved. Committee members also heard public comment from a representative from the Montana Association of Centers for Independent Living, who urged them to consider the impact to the delivery of other human services if changes were made to the definition and exemption in the MCA.

At the end of the discussion, committee members decided to adjust the time allotted to the study in their work plan, reducing it from 20% to 19% (0.20 to 0.19 FTE).

### November 4, 2021

The SAVA interim committee held a Q&A session with representatives from DPHHS and the State Procurement Bureau during their November 4<sup>th</sup> meeting as a follow-up to the presentations and discussion at the August meeting. After some discussion, committee members decided not to take any further action on the study except to request an additional update from DPHHS and LAD after the next audit, due spring 2022.

August 10-11, 2022

At the August 10<sup>th</sup> meeting, SAVA members heard an update from LAD and DPHHS about the latest DPHHS [Financial-Compliance Audit, completed in May 2022](#). LAD did not include the human services exemption in any of their findings. Rather, the report states, "The department has made efforts to contract for certain services frequently utilized as part of the Foster Care program. However, the definition of human services in state law continues to require clarification." (pg. 7)

Committee members asked follow-up questions of the LAD and DPHHS representatives, in particular about the definition and ways to resolve the difference of opinion. Representatives indicated that given the number of areas impacted by the human services exemption, it would require having stakeholders at the table to think through all of the consequences of adjusting the definition and exemption.

SAVA interim committee members decided not to request any committee bills or take further action related to SJ 35 but did suggest that LAD and DPHHS continue to work together to further clarify the different interpretations and applications of the exemption.

## Committee Findings & Recommendations

The SAVA interim committee finds that difference of opinion over the correct application of the human services exemption in 18-4-123(18)(b), MCA, still exists. The committee recommends further collaboration between LAD, DPHHS, and other stakeholders to resolve the issue and requests an update to the 2023-2034 SAVA interim committee about their progress.

All SJ 35 materials, including the audits referenced above, can be found here:  
<https://leg.mt.gov/committees/interim/sava/sj-35/>.

## APPENDIX A – SAVA INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the SAVA Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

### Senate Members

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## APPENDIX B – SJ 35 STUDY RESOLUTION

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF PROCUREMENT PRACTICES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND REQUIRING THAT THE RESULTS OF THE STUDY BE REPORTED TO THE 68TH LEGISLATURE.

WHEREAS, the Montana Procurement Act has several beneficial purposes, including ensuring fair and equitable treatment of all persons who deal with the procurement system in the State of Montana, providing increased economy in state procurement activities, maximizing the purchasing value of public funds, and providing for increased public confidence in the procedures followed by the state in procuring services; and

WHEREAS, the Montana Department of Public Health and Human Services frequently deviates from and does not follow the Montana Procurement Act in procuring services from vendors; and

WHEREAS, the last two financial compliance audits conducted on the Department of Public Health and Human Services by the Legislative Auditor's Office found that the agency failed to follow the Montana Procurement Act during the 2017 and 2019 bienniums; and

WHEREAS, the audits found that the Department of Public Health and Human Services regularly failed to enter into contracts for chemical dependency evaluations, support services, one-on-one youth supervision, and urinary analyses for youth in the foster care program; and

WHEREAS, the Department of Public Health and Human Services has attempted to justify its procurement practices with several different explanations, including that the act interferes with federal procurement policies and constrains the Department of Public Health and Human Services from finding vendors in emergency situations; and

WHEREAS, the audits found that some vendors who were not required to follow the Montana Procurement Act received more than \$500,000 from the Department of Public Health and Human Services, including one vendor who received nearly \$900,000.

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

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That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to study the procurement practices of the Department of Public Health and Human Services.

BE IT FURTHER RESOLVED, that the study:

- (1) identify the circumstances under which the Department of Public Health and Human Services deviates from the Montana Procurement Act and how frequently those circumstances occur;
- (2) identify the policies and procedures that the agency uses when determining whether it must follow the standard procurement practices or how it otherwise determines whether to seek bids or proposals for services;
- (3) review the statutes and administrative rules related to state agency procurement, including the federal laws and regulations governing public assistance programs, the procurement procedures for federally funded programs administered by the Department of Public Health and Human Services, and the state statutes and administrative rules specific to the provision of human services;
- (4) determine whether practical obstacles, including the emergency needs of clients served by the agency, affect the department's procurement procedures; and
- (5) obtain an accounting of the amount of money the department has paid to vendors who were selected outside of the standard procurement process.

BE IT FURTHER RESOLVED, that the study include input from appropriate stakeholders.

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

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