Legislative Audit Committee

Minutes Summary

November 3 and 4, 2011

Please note: These are summary minutes. The minutes are also accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Audit Division homepage at http://www.leg.mt.gov/audit/meeting_info.asp.

To view the minutes, locate the meeting date and click on ***Minutes****. To hear the audio recording, click on the date link at* ***Listen****. Note: You must have Real Player installed to listen to the audio recording.*

Members Present	Present Nov. 3	Present Nov. 4
Sen. Debby Barrett	P	P
Sen. Gary Branae	P	P
Sen. Taylor Brown	P	P
Sen. Cliff Larsen	P	Excused
Sen. Fredrick (Eric) Moore		Absent
Sen. Mitch Tropila	P	P
Rep. Randy Brodehl	P	P
Rep Tom Burnett	P	P
Rep. Virginia Court	P	P
Rep. Mary McNally	P	P
Rep. Trudi Schmidt	P	P
Rep. Wayne Stahl	P	P

Members Absent

Sen. Fredrick (Eric) Moore A

Staff Present
Tori Hunthausen, Legislative Auditor
Deborah Butler, Legal Counsel
Cindy Jorgenson, Deputy Legislative Auditor
Angie Grove, Deputy Legislative Auditor
Ann Hernandez, Word Processing Supervisor

The Legislative Audit Committee met, November 3and 4, 2011, in Room 178 of the State Capitol. Chairman, Senator Mitch Tropila called the meeting to order at **9:03** a.m., noting the presence of a quorum.

Minutes Approval –November 3, 2011 Minutes were approved. Motion by: Sen. Brown **motion carried**.

Department of Military Affairs Update

00:04:50 **Present from the agency**: Brigadier General John Walsh, Adjutant General
Brigadier General Bradley A. Livingston, Assistant Adjutant General Air Guard

Karen Revious, Administrator, Centralized Services
Bob Oliver, Contracting Officer
Ed Tinsley, Administrator, Disaster and Emergency Services Division
Dan Hubber, Project Manager

Handouts: Corrective Action Plan

Concerns/Discussion topics: The committee questioned whether the money that had been paid into the wrong areas had been paid back. The department explained that the moneys weren't paid to the wrong area; they were accounted for in the wrong account. When the unliquidated obligation went forward, $17,000 was left out and not sent to the U.S. Property and Fiscal Manager. They also stated that it has been cleared up with the U.S. Property and Fiscal Manager.

The department recently received a GAO audit of the homeland security funds and it was determined that they were not required to pay the funds back because there were receipts to show the funds were appropriately expended. The department also believes they were conducting subrecipient monitoring through modified positions within the department of Disaster and Emergency Services. With the significant amount of turnover in the grant section of the department of Disaster and Emergency Services they are in the process of moving full-time positions into the grant section to ensure the grant program is effective.

The department selected the higher bidder for development of the state's Disaster and Emergency plan because they felt it would save the state money in the long run because of the amount of expertise of the higher bidder. In the future the department will be more specific in the statement of work when requesting bids and will follow the state requirement of selecting the lowest bidder.

Committee requests: A copy of the inspector general office report

AUDIT REPORTS

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, (11-14)

01:00:41 **Report presented by**: John Fine, Financial-Compliance Audit Manager

Present from the agency: Anna Whiting Sorrell, Director
Hank Hudson, Branch Manager, Economic Services
Laurie Lamson, Branch Manager, Operations Services
Marie Matthews', Administrator, Business and Financial Services Division

Agency response presented by: Anna Whiting Sorrell, Director

Handouts: Corrective Action Plan

Concerns/Discussion topics: The committee questioned if the $258,000 in subrecipient expenditures that had not been substantiated were either substantiated or recovered. The department explained they are in the process of determining what actions need to be taken and will be pursuing the recovery of funds of those deemed appropriate.

The committee asked how many and why positions were being held open for vacancy savings and if those positions were actually needed. The department stated that they were required to have a 7 percent vacancy savings in the last biennium and the position is absolutely needed, but they have to do what is necessary to be in compliance with the budget and appropriation.

The department stated that they are working to stop using special journals to transfer funds without the appropriate authority. It has been a standard practice for the last decade and the department has been trying to remedy the problem for the last two years.

The department is working closely with the Governor's Office and the Office of Budget and Program Planning on a contingency plan for if they lose the Blanton vs. DPHHS case.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Senator Brown; **motion carried**.

Reimbursement Office Corrective Action Plan Update

Actions taken: None

INSPECTION AND COMPLAINT ACTIVITIES FOR THE CHILD CARE LICENSING PROGRAM, (11P-11#)

01:38:25 **Report presented by**: Will Soller, Performance Senior Auditor

Present from the agency: Anna Whiting Sorrell, Director
Hank Hudson, Branch Manager, Economic Services
Laurie Lamson, Branch Manager, Operations Services

Agency response presented by: Anna Whiting Sorrell, Director
Becky Flemming-Siebenaler, Child Care Licensing Bureau Chief

Handouts: Corrective Action Plan

Concerns/Discussion topics: The committee questioned why there were fewer inspections per employee in the Miles City and Havre areas than in the rest of the regions. The department explained it was due to the large districts they had to serve and the low number of providers in those areas.

When the legislature decided to allow extended licenses, 2 and 3 year licenses for family and group daycare providers, the department chose to exclude the providers who had the extended licenses from the inspection selection because they had to have a visit from the department to obtain the extended license. The department then chose the 20 percent to be inspected from the remaining childcare centers. Because the auditors felt the department needed to include the providers with extended licenses in the total and then choose the 20 percent, they have rewritten their policy to include and are making it very clear in their policies how selection will be done.

The department will be having a meeting with the Child and Family Services Division (CFS) soon to clarify roles when an investigation involving child abuse and neglect occurs in a childcare facility. The department feels they have been working with CFS, they just need to clarify roles better and make sure people reading their policies know exactly what is being done and by whom.

The low number of inspections in the Great Falls area was partially due to a position vacancy in that area and because of the number of extended licenses issued there.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Trudi Schmidt; **motion carried**.

DEPARTMENT OF LABOR AND INDUSTRY, (11-15)

02:04:14 **Report presented by**: Pearl Allen, Financial-Compliance Audit Manager

Present from the agency: Keith Kelly, Commissioner
George Parisot, Chief Information Officer
Gary Wright, Oversight Bureau Chief, Workforce Services Division
Roy Mulvaney, Unemployment Insurance Division
Nancy Jones, Program Support Bureau Chief, Unemployment Insurance Division
Kim Moog, Centralized Services Division Administrator
Natalie Smitham, Fiscal Support Bureau Chief, Centralized Services Division

Agency response presented by: Keith Kelly, Commissioner
Roy Mulvaney, Administrator for Unemployment

Handouts: None

Concerns/Discussion topics: The auditors said the state benefit expenses are declining due to the amount of workers returning to the workforce. The committee asked if they had also looked at how many workers left the state. The auditor explained they had not, but the reasons for the decrease were due to the number of workers returning to the workforce and the number of benefits expiring.

The peak number of claims the department has paid was 132,227 in state fiscal year 2010.

In 2011, there was a $1.8 million excess in the benefit account. The department analyzed and transferred funds back to the trust fund. Concern was with the high payouts and number of benefits; they needed to determine the drawing pattern to ensure they wouldn't end up with a negative balance.

The committee questioned why the department had used the personal identification number (PIN) of an administrator who did not review or certify the reports when submitting them to the federal government. The department explained their administrator had been temporarily reassigned to another department, so rather than change the reporting procedures for the short-term temporary time they just used the same number the administrator had used. They ensured that they would have the PIN officially changed if that situation came up again.

The department established internal controls related to the Schedule of Expenditures of Federal Awards during the last audit cycle, but found out this audit cycle that they were inadequate to cover one of the areas, the double reporting of the $1.3 million in unemployment insurance funds. The controls the department has put into place should be adequate, including increased communication between divisions to ensure they are seeing everything that should go into the reports, a checklist, and an internal form that staff will go through to ensure they are reporting federal dollars correctly.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Trudi Schmidt; **motion carried**.

02:36:53 *Lunch*

DEPARTMENT OF FISH, WILDLIFE, AND PARKS (11-18)

03:35:34 **Report presented by**: Paul O'Loughlin, Financial-Compliance Senior Auditor

Present from the agency: Joe Maurier, Director
Sue Daly, Administrator, Finance Division
David Clark-Snustad, Bureau Chief, Accounting and Property Section

Agency response presented by: Joe Maurier, Director

Handouts: None

Concerns/Discussion topics: The committee asked if the sale of the septic ponds referenced on page 6 of the report has been completed. The director was unsure, but knew they were very close to a resolution. He believes they have an agreement in place but are waiting on the technical process and paperwork to be finished.

The committee questioned if there was currently any way to monitor existing controls over land acquisitions to ensure they are being followed. The director thinks the particular incident in the report was due to staff getting sloppy because it took so long for that acquisition to be completed. Normally the controls are in place and all acquisitions go through the field staff, real estate staff, and legal staff before it is presented to the director for a final signature.

The committee wanted to ensure that land in Montana is not being acquired by employees just going through a mental checklist to determine if all the necessary steps have been completed. The director explained that is not how land acquisitions are being conducted. He stated that in some cases the employees have been there for 25 years or more so they are not going through a physical checklist because they just know what needs to be done. The department believes this was an isolated incident because they typically do use physical checklists. The department will ensure that people are conducting the land acquisitions correctly by requiring the director or one of his designees to physically see the checklist for the case before allowing things to move forward.

Now that they are aware of some incidents, the department stated that they will be extra careful in ensuring controls are followed concerning untimely deposits.

The committee asked if the theft of the $5,000 had been reported in accordance with statute, and the department stated that they believe it was. They also stated the reason the $5,000 worth of sheet metal that had been stolen in 2009 was not reported because it was recovered a week later. When a theft is discovered the employee is required to notify their supervisor, the supervisor then notifies the management and finance unit, who informs the director and compiles a letter to the Attorney General (AG) and Legislative Auditor (LA) per statute. In the instances where thefts have not been reported the chain of communication had been broken and the department stated they will fix that by imposing consequences, from corrective action to discipline, possibly termination for the employees who are aware of the policy but refuse to follow it. All of the thefts have been reported to local law enforcement, but not the AG and LA as required by statute.

Committee requests: A list of the two additional land purchase files that did not contain a completed checklist discussed on page 5 of the report.

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Trudi Schmidt; **motion carried**.

DEPARTMENT OF TRANSPORTATION (11-17)

03:56:21 **Report presented by**: Brenda Kedish, Financial-Compliance Senior Auditor

Present from the agency: Tim Reardon, Director
Larry Flynn, Administrator, Administrative Division
Renee McDaniel, Acting Administrator, Human Resources Division
Jody Brandt, Accounting Controls Bureau Chief
Vickie Murphy, Manager, Internal Audit
Lynn Zanto, Administrator, Rail Transit and Planning Division

Agency response presented by: Tim Reardon, Director

Handouts: None

Concerns/Discussion topics: The committee asked clarification if the recruiting files looked at were supervisory position only. The Director responded we only looked over 101 files that were supervisory hires, mainly because there were seasonal turnover with winter maintenance and had over 430 positions in that audit period. Furthermore, most of all hiring positions were supervisory for human resource positions. Would the rest of those positions be looked at for a qualification match? The director stated they were going to do their best, it is a huge task, and are committed to go through and look at all of the positions, he also confirmed this is a little tougher because there is a lot of union positions in the 493 positions. As to whether the positions would be reviewed the director commented no. Because the union will make sure the department follows the qualifications. On page 9 on vehicle purchasing the ARRA spent 21 million in federal fund for transit assistance the committed asked if the maintenance was included, and where will the money come from. Also is this new money or one time. The Rail and Transit and Planning Division Administrator explained the operation for the vehicle purchasing will come through a federal funded program with 54 percent funding and the local agency match those funds.

The committee addressed the conflict of interest subject provided in Recommendation 2, which was partially concurred. The committee questioned whether the department was separating out any conflict involving financial transactions from nonfinancial for example discussion about hiring committees. The director affirmed that was correct and added it was the request of the accounting controls bureau who did not have the time or staff to review hundreds of contracts. The auditor was asked if the outcome was an appropriate outcome. The only concern would be the individuals separating the financial issues from the other issues and maybe they do not necessary know all the financial accounting issues and would be best to segregate the duties as per the recommendation to be made aware of all conflicts of duties.

The committee asked if the department did not have any controls or if it was an issue of modifying or strengthening controls. The department stated they have controls in place they just need to be strengthened. They plan to make sure they are meeting all of the requirements and have good controls to continue receiving the federal funding so they can continue to support the various communities programs.

The committee asked how often the department reviews its hiring policy. The department said they have not reviewed it on a regular basis and it has probably been in place for a long time. They adopt most of the policies provided by the Department of Administration with some modifications. The specific hiring problems discussed in the report were more likely due to a lack of following policy rather than not having one. They believe the process broke down at the selection committee and plan to implement training on record keeping, documentation, and record retention. They plan to give people the responsibility to do their job and hold them accountable for any issues that arise.

The department is on track to implement all of the remaining recommendations by their projected implementation date, and will update the committee once that process is completed.

The committee asked the department what they will do if their review of the positions filled within the last two years is not satisfactory. They are currently scrutinizing the employees' performance who did not have the required minimum qualifications when they were hired. If they are performing poorly they are subject to discipline and/or corrective action and may be removed from management positions. At this point they are not able to do much else because they have already been hired in to the positions.

The committee questioned why the department would not want to run all possible conflicts of interest through the accounting controls bureau. The department stated the accounting controls bureau did not believe they were trained to determine a conflict of interest if it was not financial in nature. The director said he is open to trying to find a way to help the accounting controls bureau be more prepared to deal with conflicts of interest, and will revisit the possibility of running all conflicts of interest through the accounting controls bureau.

Committee requests: a corrective action plan for recommendations 1 and 2.

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Senator Larsen; **motion carried**.

CONTROLS OVER DYED DIESEL USE IN MONTANA (11P-01)

05:11:27 **Report presented by**: Joe Murray, Performance Audit Manager

Present from the agency: Tim Reardon, Director
Larry Flynn, Administrator, Administrative Division
Duane Williams, Administrator, Motor Carrier Services Division

Agency response presented by: Tim Reardon, Director

Handouts: None

Concerns/Discussion topics: The committee asked why we sell dyed fuel at retail outlets rather than just bulk plants. The department explained that one reason was because of environmental issues. Many people wanted to get away from bulk tanks, so there was a big push to put the dyed fuel at retail stations so there were less bulk tanks around dripping and causing environmental issues. The other reason is because the Department of Transportation wanted to get out of the dyed fuel business, so they worked with several retail stations around their section houses so they could fill up their snow plows with dyed fuel but also didn't have to deal with the environmental issues.

Every dyed fuel pump in the state is required to have signage stating that it is for nonroad use and use on public roads carries a fine of up to $1,000 dollars. The department has people who inspect the pumps around the state to ensure they have the required signage on a consistent basis. They also have done a few dyed fuel projects where they observe all of the pumps in the state looking for people filling up. If someone is observed filling up an officer located about 2 blocks away will stop and cite them.
The areas where the department sees most of the dyed fuel being used are in the rural areas, even though there are dyed diesel pumps at almost every gas station in the state.

The committee questioned if the 72,335 combination fuel tank inspections for 2009 and 2010 was a realistic estimate because that would be approximately 100 inspections per day, 7 days per week. The department explained that it is realistic because they have many officers around the state that work various shifts and they dip the tank on every truck that comes through a weigh station.

The committee asked if there was anything in state law barring the Department of Transportation from using a road stop set up by another agency, such as the checkpoints set up by Fish, Wildlife and Parks to inspect boats entering the state. The department stated that they had never thought of that possibility, but if they could take advantage of other agencies doing stops they should try and do that. They may explore that option.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep Brodehl; **motion carried**.

05:59:20 *Break*

IMPROVING MONTANA'S OFFICE SUPPLY ACQUISITION PROCESSES (11P-09)

05:59:53 **Report presented by**: Ross Johnson, Performance Auditor

Present from the agency: Janet R. Kelly, Director
Marvin Eicholtz, Administrator, General Services Division

Agency response presented by: Janet R. Kelly, Director

Handouts: None

Concerns/Discussion topics: According to calculations from the audit Montana can save about a half a million dollars per biennium with the direct delivery method. The committee asked if the department plans to evaluate the custodial and food service product lines to determine the possible savings there. The department stated that they wish the auditors would have looked at those areas also, but if the department implements the recommendation it won't matter because they will privatize the whole operation.

In 2004, the department did their own study and the data came out similar to the audit. Based on the parameters they used at the time they were a little bit cheaper than the private industry. They took it to the 2005 legislature to privatize the operation, but that legislature decided to keep Central Stores at that time. The current audit confirmed what the department has known since 2004 so the department concurred with the recommendation and will move forward trying to privatize it.

The committee asked who would bear the cost of returns and shipping if the wrong product was sent to a customer. The agency said Central Stores would.

The committee thought the 20 percent markup on Central Stores products was high, but the department explained that it includes freight, billing for the vendor, all problem solving, and customer service. For the paper that is sold directly out of Central Stores warehouse the markup is only 15 percent. The department also explained that the 20 percent covers all of Central Stores expenses (employees, the warehouse, etc.) so the state would not be saving the salaries of the employees in addition to the other determined savings, but they would save some over what is being spent now.

The committee questioned how the legislative process has anything to do with the department contracting for direct delivery. The department explained that if they were to privatize the operation they would have to go through §2-8-301, MCA, which is the privatization plan. The department would have to submit a plan 180 days prior to the privatization, it would have to go through the Legislative Audit Committee, and then it would be presented to the governor as an advisory recommendation. So, by the time the department got through that process it would be close to the legislative session. Also, there might be a funding change that will need to be approved by the legislature. It is currently a proprietary fund and by going to the new model it will likely become a special revenue fund. The legislature would also need to approve the 2 percent oversight rate. So the department decided to run it through the legislative process as they did in 2005 and let them make the decision of whether to privatize.

The committee asked if they can do anything to help encourage that and speed up the process and whether the department would be renewing the contract with their vendor in February. The department stated they do not believe there is a way to speed up the process and they will probably be renewing their contract for another year and they have a warehouse they are also currently leasing that will be up around the time they will go to direct buy if it goes through the legislature.

The committee wanted to know if the Montana University System uses Central Stores since they have optional use of the contract. According to the department Montana State University participates substantially, but the University of Montana does not participate as much.

The department buys in bulk because they can get products at a discount.

The committee asked if people are spending more by using their procurement cards and going through other vendors than Central Stores. The department said that is happening because there is a law that states that if you can find the exact product at a cheaper price you can buy it from another vendor. Employees are not doing the analysis to see if it is cheaper or not, they are just buying it from other vendors. It is self monitored within state agencies.

The committee questioned if Central Stores is also saving state employees time rather than going through other vendors. The department explained that they are saving employee time because they can order from the E-Way website from their desks rather than taking the time to go to the store and go shopping with their procurement cards.

The committee asked if the department can talk with the vendor about doing direct delivery when they renew the contract. The department stated that they would lose their 20 percent markup so they would not be able to pay their staff. By doing direct delivery they will have basically privatized it without going through any study. By law they have to go through the privatization plan or the legislature.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep Trudi Schmidt; **motion carried**.

BOARD OF OIL AND GAS CONSERVATION REGULATORY PROGRAM (11P-04)

06:39:25 **Report presented by**: Jason Mohr, Performance Auditor
Dale Stout, Information System Senior Auditor

Present from the agency: Linda Nelson, Chairwoman, Board of Oil and Gas Conservation
Tom Richmond, Administrator, Oil and Gas Conservation Division

Agency response presented by: Tom Richmond, Administrator,

Handouts: None

Concerns/Discussion topics: The committee questioned if the auditors may not have found any unauthorized activity in the data system because only one person was in control of the data. The auditors explained that they tested several other methods of controls and securing data in the system and with that felt confident there was no bad data in the system. They also stated that one person being in complete control of the system has the potential for data to be changed in a fashion that could not be detected.

The committee wanted to know why the division is not staffed at the authorized level of 21.5 FTE, stating that six inspectors for 17,000 wells does not seem to be adequate and a 35 percent noncompliance/unresolved rate seems high. The division explained that because the inspectors live in the areas where the oil and gas activities occur and it allows them to perform a lot of inspections. The division believes the large number of unresolved compliance issues is due to a lack of documentation of how those violations were resolved. The inspectors do not have a formal guidance policy determining what is high priority and low priority, so the division believes they are using their own discretion in which wells to inspect. Likely a lot of the wells not being inspected are shallow natural gas wells that were drilled in 2008 or earlier in north central Montana. The inspectors try to inspect every well during the drilling process, but the division thinks that is not adequately documented so the auditors could not find it. Every well is inspected before its bond is released to see if the well is adequately plugged and abandoned, including surface restoration, so eventually every well in the state is inspected. The division only adds additional staff if they think they can use their services. The division doesn’t believe they are under inspecting now, but they were in 2005 and 2006, so at that time they added another field inspector. If there is an increase in activity that requires additional inspections, they have the authority and will add inspectors as needed.

The division’s data system is not connected to the state’s system; it is on its own and is completely run by the division. The not being attached to the state network is not the reason for the information technology recommendations in the report, but depending on the management choices selected if they moved to the state system it could solve some of the problems described in the report. The Board of Oil and Gas is administratively attached to the Department of Natural Resources and Conservation (DNRC). With the DNRC’s extensive information technology department, they have data management services and are a part of the state's domain, so they are offering those services to the division. The DNRC suggests this as a solution to some of the recommendations made in the audit because they would then be a part of the state's system, be able to use the state's password protection measures, and have use of the state's security. The division stated they plan to explore several different avenues to determine how much it will cost them in the long run, but they plan to implement the state's password policy and develop a system security plan regardless of the avenue they choose.

Under the UIC program, which will be the division's new model for the regulatory program, all of the documentation will be done and maintained on the data system. The entirely paper based system they were using previously had problems with information retrieval, so the UIC program should help fix many problems.

The committee asked if there may be more violations that the division is unaware of since they don't have documentation one way or the other. They also wanted to know if the new system will fix the problem of violations that had not been followed up on. The division stated that they intend to fix those problems with the new program. They stated that part of the problem with the violations currently is they range from very minor violations to major violations and are currently all being tracked with the paper based system. They believe the paper system has become obsolete and it is hard to track. All of the serious violations are brought to the board, so they don't believe there are any major violations that have not been dealt with; it is the minor violations that slip through because of lack of procedure.

The committee asked the auditors how Montana compared with other states in terms of the number of wells, number of FTEs, and cost of the program. The auditor explained that they looked in general at the staff size and number of wells. They were more focused on how inspections are performed and the types of systems used to regulate the industry.

Committee requests: Written corrective action plan

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep Mary McNally; **motion carried**.

November 4, 2011

OFFICE OF PUBLIC INSTRUCTION (11-19)

00:00:01 **Report presented by**: Chris Darragh, Financial-Compliance Senior Auditor

Present from the agency: Julia Dilly, Administrator, Centralized Services Division
Dennis Parman, Deputy Superintendent

Agency response presented by: Julia Dilly, Administrator, Centralized Services Division

Handouts: None

Concerns/Discussion topics: The committee asked if the office was being funded for establishing and maintaining the media library since they are not currently doing that. The auditor explained that they are not being funded for it at this time because it is not being used as much as it had been in the past. There is media being stored at the University of Montana – Western in Dillon, but most of the school districts use the resources through the internet, so there isn't any new media being added to the inventory.

The committee questioned why the office had not proposed legislation to address the library provision that is obviously outdated. The office explained that they had put together legislation during the last session but withdrew it in the middle of the session because there were other priorities that came up in regard to education, so the superintendent decided to withdraw it at that time. The office stated that they will pursue that in a future session because they want to clean up the law.

The committee asked if there was really a serious need for the media library or if it could be eliminated. The office stated that there is still a need for it because they do have a number of publications they provide for school districts. Most of it is online research that office staff does for various school districts and that is the largest number of requests they get. They do house a lot of materials that people check out and refer to from time to time, but the majority of the media library is online research for a lot of school districts. The office employs one and a half employees to provide that service.

The committee asked what happens when a parent can't afford to pay for their child to attend driver's education. The office stated that it varies across each program and it is a district decision. There are about 120-130 driver's education programs across the state and each district sets the fee for their programs, then a portion of the cost to run the program is reimbursed by the Office of Public Instruction from moneys they receive for the driver's education programs. The office was not sure if districts waive the fees for low income families or not.

The committee wanted to know what the office planned to do to replace the $178 million in onetime only American Recovery and Reinvestment Act funds they received. The office explained that over $80 million was federal funds and the largest programs funded with that money were IDEA Part B, special education, and Title I for reading and math. Those funds ended on September 30, 2011, and the districts are now closing out their reports on those funds. All of that money went to the school districts and they were asked to be very careful about not creating any kind of recurring expenses when planning their expenditures with those dollars. They will continue their regular Title programs and IDEA Part B programs. There was about $80 million for the school funding stimulus and those moneys were used to fund K-12 base aid, which was normally funded out of the General Fund. That has already been dealt with during the last legislative session in terms of budgeting. The office will not be asking for an additional $80 million during the next session to replace those funds.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Schmidt; **motion carried**.

COMMISSION OF HIGHER EDUCATION (11-20)

00:12:56 **Report presented by**: Natalie Gibson, Financial-Compliance Senior Auditor

Present from the agency: Mick Robinson, Deputy Commissioner for Fiscal Affairs
Frieda Houser, Director of Accounting & Budgeting

Agency response presented by: Mick Robinson, Deputy Commissioner for Fiscal Affairs

Handouts: None

Concerns/Discussion topics: The committee asked why the six mill levy was a million dollars less this fiscal year than it was the previous fiscal year when it appears that collections went up by a million dollars. The department explained that the difference in the amount received from the amount collected was due to the appropriation by the legislature for that biennium. When revenue collections exceed payments they end up with a fund balance in the six mill levy revenue account at the end of the biennium. The budget office looks at the fund balance in connection with expected revenues that will flow into account to determine how much should be appropriated in a particular biennium.

During the last biennium the Montana Guaranteed Student Loan Program was authorized 55.2 FTE, but the program has been reducing the number of FTEs actually in place since they have stopped processing new student loans. The program currently has less than 40 employees and none are focused on new loans.

The committee asked how small the department anticipates the program to get, and how many people they think it will require to service the ongoing loans. The department stated that there are a lot of activities that take place within the program, such as financial literacy and default prevention programs. If there are defaulted student loans the program gets involved in collecting those and tries to do the work for the federal government. The program has a portfolio of about $1.4 billion in current loans and that amount is decreasing yearly. The department is trying to determine at what point it becomes uneconomical or inefficient to provide that service, and at that point those loans will probably be transferred to the federal government. In the transition to the direct loan program there is still ongoing discussions with the department of education regarding a role for the guarantee agencies in relation to direct loans. The role being discussed concerns default prevention, financial literacy, and other programs, and the department suspects that discussion will come to a conclusion during calendar year 2012.

The committee wanted to know how much of each dollar of education costs of the university system is paid by the student, by state taxes, and by federal taxes. The department explained that the main fund used by the university system is made up of two revenue sources, the state appropriation and tuition, and possibly a small amount of interest earnings. There are no federal dollars flowing directly into that fund or funding the general operation of the campus. The students do receive federal funds through PELL grants and other types of grants, but that money flows from the student to the university system. For the eight campuses within the Montana University System the percentage relationship regarding state funding and tuition for the current year is 36% by state appropriations and 64% by tuition. That amount varies slightly by campus.

Committee requests: A breakdown of how much PELL grant and other types of federal moneys flow through students to the university system.

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Schmidt; **motion carried**.

UNIVERSITY OF MONTANA (ALL CAMPUSES) FINANCIAL RELATED (11-12)

00:30:27 **Report presented by**: Jennifer Erdahl, Financial-Compliance Audit Manger

Present from the agency: Bob Duringer, Vice President of Administration & Finance
Mark Pullium, Director of Business Services

Agency response presented by: Bob Duringer, Vice President of Administration and Finance

Handouts: None

Concerns/Discussion topics: The committee asked if the auditors would have been able to find any instances of falsified financial aid awards in the system made by the 11 student employees with the steps they took in checking the records. The auditors stated that they did not identify any instances where the student employees had actually modified a financial aid award. The banner system keeps a record of who creates and modifies the accounts. The auditors felt confident there was not an impact due to the student employees' access.
The committee questioned why the university continues to accept grants even though they don't get reimbursed for direct costs. The university explained that in some cases they will turn down the grants if the indirect cost rate is too low, but most often they accept them because it benefits the state as a whole and helps the various agencies who are also currently suffering from budget cuts. Within the office of sponsored programs there is a group of professionals who work closely with the grants, so the principal investigator brings the grant forward to discuss the merits and failings of each particular grant and whether the benefits to the state outweigh the costs the university will not be able to recover.

The committee also wanted to know if the university had ideas to try and increase some of the indirect cost rates so they will be in compliance with state law. The university stated they generally have one-on-one negotiations with the individual agencies regarding the grants and are trying to educate them about how important the indirect costs are. Sometimes the university is effective in those discussions and sometimes they are not, but they will continue working with the agencies regarding this issue.

Committee requests: A list of some of the research that has been deemed a benefit to the state and how much funding the university did not receive because of this.

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Schmidt; **motion carried**.

MONTANA STATE UNIVERSITY (ALL CAMPUSES) FINANCIAL RELATED (11-13)

00:51:08 **Report presented by**: Alexa O'Dell, Financial-Compliance Audit Manager

Present from the agency: Daniel Adams, Director of Institutional Audit and Advisory Services
Terry Leist, Interim Vice President for Administration and Finance
Laura Humberger, Assistant Vice President for Financial Services
Leslie Schmidt, Assistant Vice President for Research, Creativity and Technology Transfer
Mary Ellen Baukol, Associate Dean of Administration and Finance, MSU – Great Falls
Sue Ost, Director of Business Services, MSU - Northern
Terrie Iverson, Vice Chancellor for Administrative Services, MSU - Billings

Agency response presented by: Terry Leist, Interim Vice President for Administration and Finance

Handouts: None

Concerns/Discussion topics: The committee wanted to know why the two recommendations from the previous audit report were not implemented and why one was only partially implemented. The university stated they now have action plans in place to correct the overtime recommendation. It was an issue with reporting and communication, so they are now developing reports to be able to track time reporting within the HR department. They also have recently implemented business procedures workshops that run twice a year to ensure employees are aware of how time reporting should be done. The tuition waiver recommendation has taken longer to implement because they are trying to change policy and address the statute, but they are working with the Office of the Commissioner of Higher Education and the Board of Regents on this issue. When the statute was created the nonresident student tuition was less than the university's cost of providing the education, but the nonresident tuition has since increased and now represents about 130 percent of the cost. Currently each nonresident student contributes about $2,000 per year for each resident student, so they are working to change the tuition waiver policy. The recommendation concerning the withholding of FICA taxes was due to a clerical error. When a student is working and attending classes they are not subject to the FICA tax, but when they stop taking classes they then become an employee and it has to be manually changed in the system to start taking the FICA taxes out. The university has set up the system to generate the report automatically and it will be distributed to at least two individuals to ensure this won't happen again.

The committee asked the university if the students would be making up the $2.4 million in tuition waivers and $1.7 million in indirect costs that were not funded or if they would be coming to the state for more appropriations. The universities explained that the $2.4 million was not necessarily a pure cash issue, and if they had not offered those tuition waivers they would likely have many less nonresident students contributing to the resident student population. At the last Board of Regents meeting there was discussion about indirect cost rates and they did approve a revised policy. They are in the process of informing state agencies of this new policy.

The six to eight additional FTEs that will be hired due to the $20 million National Science Foundation Epscore award will be fully paid for by the grant and the university will seek no additional money from the state. The gift to the MSU College of Business in Bozeman will be used to construct a new building.

The committee asked if the university was expecting state taxpayers to fund 36 percent of the nonresident students' education when they offer tuition waivers since that is the amount state taxpayers contribute to resident students. The university said they do not expect anyone in the state to pay for nonresident students because many of them are only partial tuition waivers and with the additional revenue they receive from other nonresident students exceeds the cost to provide services to them.

The committee wanted assurance that the recommendations will be addressed and they will not just be put off until the next audit. The university stated that they entire management team takes it very seriously and they are working to fix them.

Committee requests: A copy of the revised Board of Regents policy regarding indirect cost rates.

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Sen. Brown; **motion carried**.

STATE LIBRARY (11-23)

01:22:59 **Report presented by**: Frank Cornwell, Financial-Compliance Auditor

Present from the agency: Kris Schmitz Library Central Services Manager

Agency response presented by: Kris Scmitz, Library State Services Manager

Handouts: None

Concerns/Discussion topics: The BTOP project is targeted at 42 public libraries in the state and it is setting up public computing centers for all citizens to be able to use. They have installed 644 new computers in these libraries and are also working on increasing the internet speeds for users. They have a total of $2.4 million for the project, $1.8 million is the federal BTOP funds received and the other $600,000 is the state's match funds that were provided by the Bill and Melinda Gates Foundation.

The committee asked if the state library was doing as much for the agency ten years ago as they are now. The library said they definitely think they were and it is actually much less hands on now because they are digitizing everything so agencies can access the resources online rather than coming to the library for all of the information they needed.

The committee wanted to know when they would like to have the new state librarian hired and in place. The library said that their commission, who is conducting the interviews, is in Helena. They did phone interviews approximately four weeks before the committee meeting and have brought three candidates in for second round interviews. They were hoping to have an offer made within the next week and have the new state librarian in place no later than January 1, 2012.

Committee requests: A copy of the original budget plan and revised budget plan for the BTOP project.

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Schmidt; **motion carried**.

DEPARTMENT OF AGRICULTURE (11-21)

01:33:41 **Report presented by**: David Brammer, Financial-Compliance Auditor

Present from the agency: Ron de Yong, Director
Libbi Lovshin, Central Services Division Administrator
Mary Hunt, Fiscal Manager

Agency response presented by: Ron de Yong, Director

Handouts: None

Concerns/Discussion topics: The committee asked what the advantage for the taxpayers is for the state competing with private industry in the grain lab business. The department stated that the main advantage is they keep everyone in the private industry honest. The state grain lab has federal inspections on a regular basis to ensure they are doing things correctly. If a farmer has a dispute with someone in the private industry they will come to the state grain lab for the final say. Without the state grain lab there could be a lot more discrepancies in the private industry.

The committee wanted to know how the state grain lab was able to double their revenues. The department stated that it was a variety of factors. When the director came on board they were struggling to make the state grain lab work. Once they hired a new bureau chief it became more successful. The bureau chief visits various grain elevators in the state and has built personal relationships with the operators leading to more trust and respect with the state grain lab. The migration to the Ag Tracks software they are currently using had a big impact on the success of the state grain lab. Many operators did not want to deal with the paperwork and preferred to deal with it online, and Ag Tracks made it possible for them to do that.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Schmidt; **motion carried**.

BIG SKY ON THE BIG SCREEN ACT: MONTANA'S FILM INCENTIVE PROGRAM (11P-08)

01:49:11 **Report presented by**: Diedra Murray, Performance Auditor

Present from the agency: Dore Schwinden, Director, Department of Commerce
Jeri Duran, Division Administrator, Tourism Division
Sten Iversen, Film Office Manager

Agency response presented by: Dore Schwinden, Director, Department of Commerce
Gene Walborn,

Handouts: 2010 Productions in Montana

Concerns/Discussion topics: The committee wanted to know if there was an explanation as to why there has been a significant decrease in the use of incentives since the Big Sky on the Big Screen Act started. The agency explained that since Montana passed the Act 30 other states have also passed laws for film tax credits and many of them offer much higher tax credits than Montana does. They also stated that it is partially due to film productions that do not want to go through the process to receive the tax credit even though they filmed in Montana, as few as 40 percent of the productions in Montana actually apply for the tax credit.

The tax credit was originally designed to attract Hollywood productions, but when the law was written they left it open to local production companies also to help grow the local production industry. When the program has repeat applicants it is generally from the local production agencies. The out of state Hollywood type productions are more driven by the type of project and if they have a script that fits in Montana then they are the tax credits.

Looking at the decline in tax credits approved and tax credits claimed, the committee asked if there is a point where the taxpayers would be justified in considering the program not viable. The agency explained that the state does not spend any money until the production company applies for and receives the tax credit. There are no administrative costs until the production is finished and the $500 fee charged to the production company covers the administration of the program at that point. The office that handles the applications has existed since 1974, and are a promotional agency within the Department of Tourism. They were doing this promotional business long before the tax credits came up, they did not add any FTE to administer this program.

The committee asked if the agency still allows the production companies to receive the tax credit even when they receive the statement of costs after the 60 day time period since the law is not specific with that regard. The department stated they do sill allow the company to receive the tax credit, and suggested the legislature may want to add a provision in the law stating there will be a penalty for any late filing of the statement of costs by a production company.

Committee requests: None

Public Comment: None

Actions taken: None

Motion: Report received, reviewed, filed, and copies distributed in accordance with law. Motion by Rep. Schmidt; **motion carried**.

Follow-up Audits

Achievement in Montana (11SP-19)

Report presented by: Deon Olsen, Information Systems Auditor

Concerns/Discussion topics: Additional follow-up in 6-months

Disaster Recovery Program (11SP-20)

Report presented by: Nate Tobin,

Concerns/Discussion topics: Additional follow-up in 6-months

OTHER BUSINESS:

Law and Justice Interim Committee members Request memo – Shelby Prison
Senator Essmann Request memo – Medical Marijuana
Privatization Request memo
Motion: Senator Brown moved the committee to ask the chairman to write a letter to reference the past letters and send the letter informing the two privatization request do not qualify and send two others.
Performance Audit Priority List

There being no further business, the meeting was adjourned at 12:10 p.m.

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Signed: ______________________________

Sen. Cliff Larsen, Secretary