


LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Kenneth E. Varns, Legal Counsel



Deputy Legislative Auditors:
Alexa O'Dell
William Soller
Miki Cestnik

MEMORANDUM

TO: Members of the Legislative Audit Committee
FROM: Angus Maciver, Legislative Auditor 
DATE: January 9, 2026
RE: Legislative Audit Division review of statutes relating to the Data and Impact Commission established by House Bill (HB) 834

House Bill 834 passed during the 2025 legislative session and created a Data and Impact Commission (commission) to make recommendations regarding collection and integration of targeted data and performance measures to ensure the effective use of state resources and efficient administration of state government. The bill outlined the commission's members from both legislative and executive branches, which include the chair and vice-chair of the Legislative Audit Committee (LAC). As an ex-officio member of the commission, the Legislative Auditor directed the Legislative Audit Division (LAD) staff to begin review of existing statutory authority for the legislature's audit function relative to the work of the commission. This memo addresses initial research by division staff on the following:

- Purpose and duties of the Data and Impact Commission relative to audit
- History of sunset laws and the legislative review process in Montana statute
- Process for periodic agency evaluation
- Privatization plan review process
- Potential direction of further research

Purpose and duties of the Data and Impact Commission

The purpose of the Commission was identified in HB834 as follows:

- (1) **The commission is charged with developing and recommending a system for the collection and integration of targeted data for use by the legislature and the executive branch in analyzing outcomes of the agency programs, effective use of state resources, and efficient administration of state government.**
- (2) **The system developed must allow policymakers to identify inefficient, redundant, and antiquated programs in state government.**

The second part of the purpose statement is of particular interest relative to the audit function. Identifying inefficient, redundant and antiquated state government programs is an existing statutory responsibility of the LAC under Title 2, Chapter 8, MCA, although the means of doing so are different. Therefore, it should be important to the work of the commission to consider how LAD will interact with the data collection/integration system being proposed.

History of Montana's Sunset Laws

During the late 1970s and early 1980s, Montana experimented with implementation of a 'Sunset' process for state government agencies/programs. The basic premise of the Sunset process here and in other states was to establish an expiry date for government agencies and programs and then conduct a review (typically through a legislative audit function) to determine whether the agency or program should continue to exist or be terminated. Montana conducted one six-year sunset review process between 1977 and 1983, before the process was discontinued, but the authorizing statutes were not completely repealed and remain partly in effect as codified in Title 2, Chapter 8, MCA, titled Legislative Review. The original purpose of the Sunset laws also remains in statute and reads as follows:

Section 2-8-101. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies or programs preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function by a periodic review and termination, modification, or reestablishment of such programs and functions.

Even though this purpose statement was adopted in 1977, there are clear parallels 50 years later with the current efforts of the Data and Impact Commission. While the commission does not contemplate automatic termination or statutory sunset, the underlying policy objective of systematic review of program relevance and effectiveness closely parallels the original legislative intent. The Sunset laws have undergone significant changes over the years, including major changes in 1983, 1987, and 1991, but even after the original sunset process ended, the underlying principle of having agencies and programs subject to an independent efficiency/effectiveness review remains part of Montana law. The next two sections of this memo address the remaining aspects of the legislative review process that involve the audit function and the LAC.

Process for Periodic Agency Evaluation

Changes to the Sunset laws in 1983 resulted in the process being significantly scaled back and reoriented; the mechanism for reviewing agencies/programs for termination is now initiated by the Governor and is more permissive in nature. As described in sections 2-8-105 through 2-8-122, MCA, the Governor *may* identify agencies or programs that are to be terminated and subject to a performance audit and provide a prioritized list to the LAC. The committee is then responsible for submitting a bill to the next legislature to terminate the agency/program. The statutes further establish responsibilities for the terminating agency/program, a review and reporting process for the LAC and standing committees, and termination timelines.

Current practice is for LAD staff to ask the Governor's Office biennially for recommendations for agencies or programs to be terminated and subject to a performance audit (this is done in conjunction with our solicitation of input for audit prioritization under the Legislative Audit Act). In recent years we have

received no recommendations from successive governors, but the statutory requirement is permissive and there is no requirement that the governor provide any recommendations. Although more research is needed, we have not been able to identify any actions to implement the process for periodic agency evaluation within at least the past decade.

Privatization Plan Review Process

Privatization Plan Review was a process added to the Title 2 Legislative Review statutes in 1991. Basically, privatization plan review is a structured process where the LAC is involved in reviewing executive branch proposals to privatize state government services (privatize is defined as "...an agency contracting with the private sector to provide services that are currently or normally conducted directly by the employees of the state.") Agencies are supposed to develop and present privatization plans to the LAC prior to any decision by the governor to privatize a state government program. LAC approval or disapproval of the plan is advisory in nature, but the statutes do outline specific elements that must be included in the plan. There is also a process for programs to be identified by members of the public, elected officials, and others that are currently being performed by the private sector, but that could be administered more cost-effectively by a state agency. These statutes also require the Governor's Office of Budget and Program Planning (OBPP) to identify at least two enterprise or internal service funded programs each biennium to be subject to a privatization review through the LAC.

In response to a LAD request in 2025, OBPP declined to comply with the requirement in §2-8-304, MCA, to identify programs for privatization review, reasoning that the value of the statutory provision had been exhausted. Additionally, there have been no examples of privatization plan reviews being conducted by the LAC in recent years (within the past decade), despite the apparent likelihood that some state services or programs have been privatized during this timeframe.

Potential Direction of Further Research

Some of the existing statutory framework for Legislative Review outlined in Title 2, Chapter 8, MCA, are undoubtedly archaic and in need of revision. However, the direction provided in HB834 for the work of the Data and Impact Commission also suggests there is continued interest in developing a structured process to collect and analyze data on an ongoing basis that can be used to assess program efficiency and effectiveness. Assuming these efforts are successful, at least in part, LAD staff are focused on researching appropriate statutory or other means to ensure the independent evaluation resources of the audit function can be successfully incorporated. Up to this point, our preliminary research has identified the following potential contributions, which are exploratory in nature and are intended to inform future discussion:

- Long range policy evaluation – statutory triggers or other mechanisms that would require outcomes-oriented audits of significant new policies, programs or expenditures at a fixed point in the future (essentially a sunset process, but with 5- to 10-year forward time horizon i.e. the legislature establishes a new program in 2027 and then requires an audit by 2037 to assess outcomes and impacts.)
- Periodic agency evaluation – revisions to existing statute to incentivize or require more input from executive branch officials or to re-orient the review process away from punitive 'termination' focus towards investment and cost-benefit analysis.
- Administrative rule and regulatory assessments – periodic and cyclical audits of legal compliance, continuing applicability, and regulatory costs and benefits for administrative rules adopted and enforced by state agencies.

- Performance data and metrics – audit assurance over program performance measures/metrics, and benchmarks reported as part of agency strategic plans and used for ongoing monitoring purposes by appropriations sub-committees and Interim Budget Committees.
- Data integrity and reliability – testing the underlying integrity and reliability of agency system data being used to monitor agency/program outcomes or support decision-making.
- Federal program authorities and expenditures – periodic structured analysis and reporting on changes in federal program authority/scale and associated expenditures from both federal and state sources, including time series trends in federal expenses, changes between agencies/programs, and other data from the Schedule of Expenditure of Federal awards (SEFA) or other sources.

Further research and discussions of these issues will feature in the April 2026 and June 2026 LAC meetings. This information will also be shared through the Chair and Vice-Chair with the Data and Impact Commission on an ongoing basis.