April 20, 2015

To: Members of the House Appropriations Committee

Regarding HB 4102 (Budget for the Department of Corrections for FY 2015-16) – "Special Equipment Fund" (SEF) from a Surcharge on Inmate Telephone Calls

Covering departmental budgets for several years as a policy advisor for the House Republican Caucus (both when we were in the majority and in the minority), I developed a particular distaste for the use – or perhaps more accurately, misuse – of certain restricted revenue for purposes quite at variance with the reason that source of revenue was created.

One of those involved the crime victim's rights fund which is so buried under "other restricted revenue" that no one can even trace its existence or what it is being used for.

Another of those instances is a small part of the MDOC budget since 2010 – the "special equipment fund" consisting of revenue generated by a surcharge collected from inmate telephone calls, around $9-11 million/year.

An earlier surcharge on inmate phone calls was eliminated in the last decade, only to resurface in the FY 2010-11 MDOC budget with a provision – Sec. 219(1) – that remains in the current FY 2014-15 budget (EHB 5313, 2014 PA 252, Art V):

> Sec. 219. (1) Any contract for prisoner telephone services entered into after the effective date of this section shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges <u>other than those necessary to meet special equipment costs</u>, be the same as fee schedules for calls placed from outside of correctional facilities.

Any reasonable person reading that would assume that (a) the charge for phone calls would be reasonable and comparable to calls placed from outside a prison and (b) the add-on for special equipment costs would be related to telephone services within the prison.

The first contract was bid on the first premise. The contract was signed on the latter – resulting in a much higher cost/call to inmates and families (see below). The surcharge then generated about $10 million in restricted revenue; but there was no authorization to spend it in FY 2011-12. That initially came in FY 2012-13, appropriating only $4.3 million and requiring MDOC to come back to the Legislature the next winter to seek a supplemental with a specific plan. Since then this "special equipment fund" has been used for such things as replacement of personal protection systems [Tasers and ballistic vests], acquisition of contraband detection systems, integrated camera and perimeter lighting systems, and cellphone detection, radios, and stun cuffs – only one of which (cellphone detection) seems in any way related to "telephones".

What began as a mechanism to cover the cost of inmate phone calls has morphed into a classic **slush fund** with an endless extension of expenditures <u>unrelated to telephone calls or service</u>.

At one point in 2012 it was proposed to use the SEF for critical facility repairs and for the security, upkeep, or demolition of closed facilities. Now for **FY 2015-16** it is proposed in **HB 4102 (H-1) Draft 1** to drop any pretense of "special equipment". It would rename the fund "Program and Special Equipment Funds" and **appropriate $11.8 million for "prisoner programming"**, that is neither "equipment" nor phone-related.

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The objection raised here is not whether MDOC should purchase personal protection devices, contraband detection systems, or perimeter monitoring – or even to provide programing for parole-eligible inmates – all being legitimate GF/GP expenditures. The objection is to misuse of restricted revenue (SEF) generated for a specific purpose in ways quite at odds with the rationale of its origin (here, related to telephone calls and service).

There is another set of questions that ought to be asked. The current telephone vendor contract runs until February 8, 2106, subject to renewal. By terms of the FY 2010-11 boilerplate, the state's (MDOC's) contract with the vendor is based on the collection of money for "special equipment", as defined in the contract. If the contract runs until February 2016, can surcharges collected before that date be used for (education) "programming" as the proposed HB 4102 (H-1) supposes or, even if the contract is renewed with a term that includes "program", is use of the money for programming limited prospectively to 65% of the total? Will GF/GP make up the rest?

MDOC has indicated in the past that it is desirable for inmates to keep in touch with families, yet unreasonable telephone charges are contrary to that effort – and what the telephone surcharge has done is to produce unreasonable, unfair, and unjustified telephone charges.

The bid cost of the call (except international) is close to 4-1/2 cents per minute, yet the **add-on for SEF is 14-18 cents** (an increase of 300% to 400%), so a typical call (excl. intern'l) is **18-23** cents/minute. Thus **75-80%** of the cost of an inmate call is for the SEF portion of the contract.

The surcharge is not a "user fee". Use of the revenue is unrelated to telephone calls or service. It looks, sounds, and smells like a **tax** – but not a tax imposed by the Constitution or by statute of the Legislature. This tax is singularly determined and imposed by a contract – unilaterally negotiated with a vendor – of, by, and for a state department. It is also a tax without limitation. MDOC can ask for whatever it wants. The vendor will do what is asked; why object?

Whatever your inclination – conservative, tea party, libertarian, or liberal – one thing on which you ought to agree is that a state agency ought not be creating a tax by contract!

Yes, use of restricted revenue frees up GF/GP elsewhere, but like a few other restricted revenue funds, the expenditures are not consistent with the purpose for which the fund was created. (You voted for "X" and here's "Y".) If it is good policy for inmates to maintain contact with family members, the SEF surcharge is counterproductive. Worse, MDOC is being rewarded for a questionable tactic in generating this revenue stream in the first place – by contract.

I would encourage the Committee and the Legislature to cease using the "special equipment fund" (however named) for expenditures and purposes unrelated to inmate telephone usage and to press MDOC to renegotiate its telephone vendor contract to reduce or drop the surcharge to the extent the amount is unrelated to inmate telephone calls and service.

Respectfully,

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