

BRUCE A. TIMMONS

The Honorable Thomas Albert, Chair, House Appropriations Committee
Members of the House Appropriations Committee

May 4, 2021

Statement in Opposition* to **HB 4396** – Proposed FY 2021-22 Budget for the Department of Corrections - Inmate Telephone Surcharge & Boilerplate Sec. 219

Many of you may recognize the following: “Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me.”

But all should understand the converse: If you have done harm to the least of these, you should not profit at their misery.

That is an apt characterization of how the Michigan Department of Corrections (**MDOC**) has profited from the inmate telephone surcharge – for nearly a decade – and the pending Corrections budget is about to reward MDOC once again for this practice by extending this rip-off for another year.

Contracts for prison inmate telephone services have a history going back decades. The Legislature was not directly involved in that process until 2007 and Sec. 219 in some form has continued to the present, including HB 4396(H-1) – making the Legislature a party to the effort.

* I am neutral on the MDOC budget as a whole, but arbitrary Senate and House software allow one only to state “for”, “against” or “neutral” rather than the more nuanced positions as mine is. I oppose one facet of that \$2 billion budget – the Program & Special Equipment Fund

My interest was whetted by a Detroit Free Press article February 7, 2021, where the blame for high inmate telephone charges (usually a surcharge above actual cost of the call) was blamed on the inmate phone vendors – when I was aware from my coverage of the MDOC budget for HRPO in 2011-12 that the Michigan cause of the surcharge was MDOC – and that, after a bid for the inmate phone service was accepted on the basis of the cost of the call, MDOC required the successful bidder to triple the cost for its (MDOC's) benefit, not the vendor's.

The blame for the unreasonably high per minute call rate for the past 9 budget cycles has been due entirely to the Michigan Department of Corrections with acquiescence by the Michigan Legislature in annual budgets beginning with the fiscal year 2007-08 budget. MDOC defends its use of the money, but that is an “end justifies the means” argument. It is not the use that is the issue – rather it is the “collection” of the money (“the means”) that is objectionable.

This infamous prisoner telephone surcharge, initiated by the Michigan Department of Corrections (MDOC) to add to a bid contract a **surcharge** to initially fund “special equipment” (*supposedly phone-related*), morphed into funding ‘other equipment’ (like panic buttons for correctional officers) and now has no direct connection to “equipment” at all (much less phone-related) but is used almost exclusively to fund “prisoner programming” – a **slush fund created and funded BY CONTRACT**. Again, in each instance this excessive phone charge was used to raise money in lieu of GF/GP. The statutory references below are all public records.

To be blunt, the surcharge is effectively a **tax** on inmate calls, imposed not by the Legislature, but created **BY CONTRACT** by a state department, under the guise of being “necessary” to meet “special equipment needs”, “security projects”, inmate “programming” – so, what next?

A. For the first time the inmate phone issue appears in the annual MDOC budget bill – in 2007 PA 124 (HB 4348/Alma Smith), FY 2007-08:

HB 4348 **(H-1)** as Passed by the House with this provision:

“Sec. 219. It is the intent of the legislature that any

16 contract for prisoner telephone services include a condition that

17 fee schedules for prisoner telephone calls be the same as fee

18 schedules for calls placed from outside of correctional facilities.”

HB 4348 **(S-1)** as Passed by Senate had nothing on this issue

As Enacted:

“Sec. 219. It is the intent of the legislature that any contract for prisoner telephone services entered into after the effective date of this act include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet special equipment costs, be the same as fee schedules for calls placed from outside of correctional facilities.”

While the clear intent and emphasis was that the rates should be comparable to rates charged for calls outside prisons, the “surcharge” to meet “special equipment costs” is an **exception** that has, from the beginning, **swallowed up the rule** – and while ostensibly intended to cover equipment expenses related to inmate telephone service, the surcharge revenue has since evolved into a fund that no longer covers equipment, to which HB 4396 (H-1) attests.

B. 2008 PA 245 (SB 1095/**Cropsey**), FY 2008-09, as enacted (and mimicking SB 1095 (H-1) as passed by the House), is quite similar to 2007 PA 124:

“Sec. 219. Any contract for prisoner telephone services entered

8 into after the effective date of this act shall include a condition

9 that fee schedules for prisoner telephone calls, including rates

10 and any surcharges other than those necessary to meet special

11 equipment costs, be the same as fee schedules for calls placed from

12 outside of correctional facilities.”

But please note a unique difference in Sec. 219 of SB 1095 **(S-1)** as Passed by the Senate (Republican majority) that suggests concern about unfair rates for inmate calls:

“Sec. 219. (1) The contract for prisoner telephone services

22 shall not include fees or commissions that are more than the fees

23 for calls placed from outside of correctional facilities, excluding

24 any fees necessary to meet special equipment costs. If a contract

25 for prisoner telephone services includes fees greater than this

26 amount, then the department **shall refund** these fees and commissions

27 to the persons who paid them.

1 (2) The funds appropriated in part 1 for telephone fee and

2 commission refunds shall be used to refund persons who paid

3 telephone rates or surcharges that were higher than fees permitted

4 under subsection (1). Any telephone fee and commission revenue

5 collected in excess of the amount allowed in subsection (1) shall

6 be used for the sole purpose of providing telephone fee and

7 commission **refunds.**” [Emphasis added.]

C. 2009 PA 114 (HB 4437/Alma Smith), FY 2009-10 – **As enacted** and as HB 4437 **(H-1)** was Passed by House, Sec. 219 continued the same provision as 2008 PA 245, but in between HB 4437 (S-1) as Passed by the Senate was silent on the issue.

D. 2010 PA 188 (1153/**Cropsey**), **FY 2010-11** – **As enacted**, 219 remained unchanged. The provision which preceded the 2011 vendor contract.

But:

This provision was not in the Senate-passed SB 1153 (S-1), passed by the Senate on March 23, 2010. The provision first appeared in the House-passed SB 1153 (H-1), page 26, passed by the House on June 9, 2010. It was included in the Conference Report for SB 1153; see First Conference Report, page 27. It seemed so innocuous at the time that neither fiscal agency analysis referred to it. [Note that the Governor was a Democrat (Granolm), as was the lead House conferee, Rep. Alma Wheeler Smith. The lead Senate conferee was Republican Sen. Alan Cropsey, (All 3 left office when their terms expired January 1, 2011.)]

E. The next part of the story is a scandal in its own right that led to the **2011 vendor contract**. There was a bid on the telephone contract that focused strictly on the cost of an inmate call – without a surcharge. The awarded bid was the subject of litigation. **AFTER** the bid was awarded, **MDOC added the surcharge** that upped the cost from a bid cost of something like 5 cents per minute to 15 or 20 cents per minute. **Today** the per minute rate is **\$0.16**. Note that MDOC engineered the surcharge, not the company that won the bid. MDOC made that surcharge part of the terms of the contract after the bid was won. I do not know to what extent the inmate phone service company received any surcharge revenue. However, the most recent contract in 2018 (for 5 years) is different; **MDOC gets \$11 million per year off the top** of a \$24 million contract, so the company does make a profit after the actual cost (to the company) is deducted and bears the risk if the actual call minutes are less than the presumed level.

Ask whether the provider(s) received surcharge money before 2018 and how much profit the current provider has made since 2018.

Ask how the contract complies with the provisions of Sec. 219; it seems not to.

F. For FY 2012-13, **2012 PA 200** (HB 5365), Article V, Sec. 219, expanded the scope of use to security projects as evidenced by Sec. 219, subsection (2), below – and also made the special equipment fund a work project account so that a year-end balance would not revert to the General Fund.

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

(2) Revenues appropriated and collected for special equipment funds shall be considered state restricted revenue and shall be used for special equipment and security projects to facilitate the replacement of personal protection systems, and the acquisition of contraband detection systems. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.

(3) The department shall submit a report to the house and senate appropriations subcommittees on corrections, the house and senate fiscal agencies, and the state budget director by February 1 outlining revenues and expenditures from special equipment funds. The report shall include all of the following:

(a) A list of all individual projects and purchases financed with special equipment funds in the immediately preceding fiscal year and the amounts expended on each project or purchase.

(b) A list of planned projects and purchases to be financed with special equipment funds during the current fiscal year and the amounts to be expended on each project or purchase.

(c) A review of projects and purchases planned for future fiscal years from special equipment funds.”. [Emphasis added.]

Note the following:

- While Sec. 219(1) still limited the exception to “those necessary to meet special equipment costs”, subsection (2) expanded the actual use to include “**and security projects to facilitate the replacement of personal protection systems, and the acquisition of contraband detection systems**”. [Emphasis added.]

- For the first time **\$5,800,000** special equipment fund money is appropriated in a budget bill, toward the \$6,725,500 line-item for “equipment and special maintenance” – HFA analysis confirming that it would be “used for special security equipment such as tasers, ballistic vests, and contraband detection equipment” and confirming that **MDOC figured out how to leverage SEF money for other needs** – other kinds of “equipment” unrelated to inmate telephone calls.

- A legislator outraged by concerns of the initial bid process and expansion of use of the SEF beyond phone-related equipment did a U-turn with a “deal” to not fight the revised use if that money were then to be used for inmate programming, which indeed soon happened.

G. For the FY 2013-14, **2013 PA 59**, HB 4328), Article V, Sec. 219, reimagined the use of the special equipment fund with a revised subsection (2), with subsection (1) unchanged:

“(2) Revenues appropriated and collected for special equipment funds shall be considered state restricted revenue. Of this revenue, **\$2,000,000.00 shall be used for programming that is a condition of parole, such as violence prevention programming, sexual offender programming, and thinking for a change, with particular emphasis on individuals who are past their earliest release dates.** Any remaining balance shall be used for special equipment and security projects. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.” [Emphasis added.]

The actual money for FY 2013-14 was appropriated as follows:

\$5,800,000 to partially fund “Equipment and special maintenance”.

\$6,000,000 for “Capital outlay - security improvements”.

(The **\$2,000,000** for inmate programming does not show up as funded by SEF.)

Note: So, by now the telephone surcharge was no longer used strictly for “equipment” of some kind but had evolved into funding inmate “**programming**” and “**security improvements**” – the slush fund was morphing way beyond inmate telephone call costs.

The same provision was retained for FY 2014-15 in **2014 PA 252** (HB 5313).

H. By FY 2015-16, **2015 PA 84** (SB 133). Article V, the use had further evolved (with similar reporting requirements I have omitted as less relevant) – but the changes highlighted below are significant revisions with the focus shifting, even name of the fund, to prisoner programming:

“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 other than those necessary to meet program and special equipment costs, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for **program and special equipment funds** shall be considered state restricted revenue. **Funding shall be used for prisoner programming, special equipment, and security projects.** Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.” [Emphasis added.]

By FY 2015-16, the predominant use of surcharge revenue was for **programming**:

- Sec. 103, **\$8,982,900** was appropriated for prisoner reentry services.

- Sec. 104, **\$2,800,000** was appropriated in part for “Equipment and special maintenance” (**\$2,349,100**) and buried for some unidentified purpose (**\$450,900**).

For FY 2016-17, **2016 PA 268** (5294), Art. V, Sec. 219, retained similar wording, but the **PSEF** total of **\$6,134,699** was disbursed to 4 different line items under the source description “**Program and special equipment fund**”: \$5,213,200 for Program Reentry, \$481,300 for ballistic vests, \$440,000 for Information Technology, and \$100 placeholder – reflecting a **reduction of \$6,674,000** in PSEP revenue due to an **FCC-forced limit** on inmate phone charges.

I. For FY 2017-18, this from **2017 PA 107** (EHB 4323), Art V, Sec. 219:

“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 other than those necessary to meet **program and special equipment** costs, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for program and special equipment funds shall be considered state restricted revenue. Funding shall be used for **prisoner programming, special equipment, and security projects**. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.

(3) The department shall submit a report to the senate and house appropriations subcommittees on corrections, . . .”. [Emphasis added.]

Per **2017 PA 107**, the vast majority of inmate surcharge money was for programming:

- Under Sec. 103 Prisoner Reentry and Community Support:
Program and special equipment fund \$ 10,213,200
- Under Sec. 104 Information Technology
Program and special equipment fund 441,200

J. The current inmate prisoner telephone contract was entered into August 9, 2018 and is different from its predecessors. I *assume* it was a bid contract, entered into while 2017 PA 107 was in effect. **Query whether that contract is consistent with the dictates of Sec. 219.** MDOC receives a flat **\$11 million annually** (p 69 of the contract) while the vendor retains the balance of the proceeds, estimated initially to be around \$24 million on premise of 150,000,000 call minutes. The contract rate is **\$0.16/minute** (also 69 of the contract) – but does not identify the surcharge above the cost of calls as Sec. 219 requires as the premise of the contract. Whatever is above the costs of the service goes to the vendor, so the surcharge is now split between vendor and MDOC. The current contract does increase the profit of the provider, but with a declining prison population, vendor profit may shrink as inmate call volumes lessen. The vendor contract: https://www.michigan.gov/documents/dtmb/180000001124_630008_7.pdf

Qs: We know what MDOC receives. What is the cost per minute to the vendor? What has been the annual net profit to the vendor in each year under the 2018 contract?

K. For FY 2018-19, from **2018 PA 207** (ESB 848), Art V, Sec. 219, retains the same language and allowed use as in 2017 PA 107. Under 2018 PA 207:

The appropriations tied to programming and special equipment funds are:

- Under Sec. 103 Offender Success Administration:
Program and special equipment fund 10,213,200
- Under Sec, 108 Information Technology
Program and special equipment fund 444,000

L. For FY 2019-20, see **2019 PA 64** (HB 4231) [not an omnibus bill], **Sec. 219**:

For that fiscal year, under Sec. 103 (Offender success administration), a staggering sum of **\$34,213,200** was initially appropriated from the “Program and special equipment fund” for unidentified programs under that unit. This was the budget passed when the Executive Office and Legislature were not talking. That sum overstated an accumulated a surplus. A later Supplemental reduced that amount by **\$20 million. 2019 PA 154** (SB 152).

- Under Sec. 108 Information Technology: \$447,300 from the PSEF (out of a gross appropriation of \$30.8 million for Sec. 108). .

[Note that a new LSB or Legislature Website change makes it impossible to copy text from 2019 PA 64, but the wording is the same as prior MDOC budget Sec. 219 provisions. Here is a link: [2019-PA-0064.pdf \(mi.gov\)](https://www.michigan.gov/documents/dtmb/180000001124_630008_7.pdf). See bottom of page 7, top of page 8, of enrolled bill/PA version.]

M. For the **current** FY 2020-21, **2020 PA 166** (HB 5396), Art V, Sec. 219 (1) and (2) read:

“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 other than those **necessary to meet program and special equipment costs**, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for program and special equipment funds shall be considered state restricted revenue. Funding shall be used for **prisoner programming, special equipment, and security projects**. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.” [Emphasis added.]

The “Program and special equipment fund” is appropriated in FY 2020-21 as follows:

\$14,326,000 is appropriated under Sec. 103 (Offender success administration) for unidentified programs listed in Sec. 103.

\$452,800 is appropriated under Sec. 108 (Information technology) as a small portion of \$31 million to be spent for Information technology services and projects.

\$100 as a placeholder under Sec. 102 (Departmental Administration and Support)

N. That is the long, detailed, and tortured history of why inmate telephone surcharges were created, who initiated them (MDOC), what the original purpose supposedly was, and how the resulting slush fund has been appropriated for nearly a decade – at the (literal) expense of state inmates and their families! AND it was not due to greed by the phone service company – it was due to some manipulation by MDOC and with ‘thanks’ to a “cooperative” Legislature.

The Legislature for years has been unwilling to replace inmate phone revenue with GF/GP money and MDOC fears a loss of PSEF money would reduce inmate programming. But if inmate contact with family increases the prospects the inmate will be successful upon return to the community, it is contradictory for MDOC to frustrate those connections with unreasonable telephone surcharges that make those calls less affordable or restricts or precludes them – and negates the intent of Sec. 219, which was certainly not to triple the cost of calls made by inmates.

Does the Governor support the inmate phone surcharge? Will the Legislature end it? Or, once an agency and Legislature get a taste of restricted revenue, they cannot give it up – they just find other uses and invent convenient rationales to keep it and spend it.

Given that it is past time for this practice of excess inmate phone charges to end, one ought to conclude that it is incumbent on the Appropriations Committee and Legislature to:

1. Amend Sec.219 to prohibit a future prisoner telephone vendor contract from granting MDOC any cut of a surcharge however it may be disguised. [See **B** above.]

2. Amend Sec. 219 to direct MDOC to put the money it receives in FY 2021-22 under the current contract toward reimbursement of the surcharge to inmate prison accounts. (It will not restore what released inmates have had to pay unfairly but would undo the damage to current inmates for excessive phone charges orchestrated by MDOC.) [See **B** above.]

3. Appropriate GF/GP money for inmate programming to backfill the loss of the Program and Special Equipment restricted revenue that is now a source of revenue for that portion of the budget. (I have no wish or intent to shortchange inmate programming.)

Respectfully,

Bruce A. Timmons

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