



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill # HB0361

Title: Revise telephone account requirements for prisons and detention centers

Primary Sponsor: Webb, Peggy

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>
Expenditures:				
General Fund	\$29,225 *	\$29,225 *	\$30,979 *	\$30,979 *
State Special Revenue	\$7,769	\$7,769	\$8,235	\$8,235
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$18,497	\$18,497	\$19,607	\$19,607
Net Impact-General Fund Balance:	\$18,497	\$18,497	\$19,607	\$19,607

* There are additional expenses that cannot be at this time determined. (See assumptions 12 through 15)

Description of fiscal impact: HB 361 requires the Legislative Auditor to audit the prison inmate welfare account each fiscal year. This will permanently increase audit effort related to the Department of Corrections and require an increase in the department's audit appropriation amount. The bill also revises 53-30-153,MCA, Telephone Account Requirements for State Prisons. The law places greater restrictions on contracts with telecommunication service providers and expands applicability to all state prisons and county jails holding state inmates.

FISCAL ANALYSIS

Assumptions:

Legislative Branch

1. Pursuant to 5-13-402, MCA, the Legislative Auditor is required to bill state agencies for audit services that the Legislative Auditor considers necessary, but may not bill an agency for audit services in excess of amounts appropriated for audit services.
2. The biennial financial-compliance audit of the Department of Corrections tests compliance with existing prison inmate welfare account statutory requirements on a rotating basis; no direct testing of financial transactions occurs due to the size of the fund's revenues and expenditures relative to the size of the Department of Corrections' operations.

3. The Legislative Audit Division assumes the prison inmate welfare account will continue to experience revenues and expenditures of approximately \$750,000 annually, consistent with FY 2018 activity.
4. It is estimated that the requirements of this bill will result in additional revenue for FY 2020 and FY 2021, at a rate of 245 hours of audit effort multiplied by the projected hourly billing rate of \$75.50 for the 2021 biennium.
5. The additional 245 hours of audit effort assumes work will occur at six locations: Montana State Prison, Montana Women's Prison, Cascade County Regional Detention Center, Crossroads Correctional Center, Dawson County Correctional Facility, and Pine Hills. Each facility, with the exception of Pine Hills, maintains their own subaccount, including their annual budget, revenues, expenditures, and documentation specific to that facility. Legislation has been passed and approved by the 2019 Legislature (SB 62) to authorize prison inmate welfare account access to adults housed at Pine Hills, beginning in FY 2020.
6. Legislative Audit Division's revenue amounts for FY 2022 and FY 2023 assume an hourly billable rate of \$80, which represents a 6% increase above the projected billing rate for the 2021 biennium. This assumed increased in the audit billing rate for the 2023 biennium is equal to the increase for the 2021 biennium.
7. The Legislative Audit Division is not seeking to request an additional appropriation authority for the 2021 biennium to accomplish the requirements of this bill. The projected workload will be adjusted within existing full-time equivalent positions.
8. The Legislative Audit Division will establish its statutory appropriation authority, as provided in 17-7-502, MCA, in its state special revenue fund necessary to fulfill the division's statutory obligation to spend non-general fund money first. Anticipated additional revenue, as a result of HB 361, may result in reduced general fund expenditures equal to the amount of revenue.

Department of Corrections

9. The bill's proposed language duplicates current policies and procedures in use by the Montana Department of Corrections (MDOC). The changes that would not impact MDOC will not be addressed. Each regional facility and the private prison must follow MDOC policies and procedures.
10. Section 1 (3)(a) requires the Legislative Auditor to conduct annual audits of the Inmate Welfare Fund (IWF). The Legislative Audit Division (LAD) currently audits the IWF as part of the MDOC two-year financial compliance performance audit. If the LAD were required to audit the IWF independently each year, the MDOC anticipates an additional annual cost of \$18,497 for fiscal years FY 2020 and FY2021. This annual cost would increase to \$19,607 in fiscal years FY 2022 and FY 2023.
11. Section 1 (3)(b) addresses an area that is covered in State Accounting policy. All IWF financial transactions are processed through the state accounting system and must follow all policies. Signed purchase orders and invoices are required prior to the approval of all payments.
12. Section 2 (1) removes the language "to the extent feasible". The current language is required in the event no provider bids on the inmate communications request for proposal at or below the statutorily approved rate. MDOC would be required to subsidize all costs for services above this rate. This would impact the current contract, future contracts, and the MDOC's ability to provide inmate communication services. The cost cannot be determined at this time.
13. Section 2 (1)(c) includes language that prohibits additional charges, including tax. Telephone service providers do not control interstate and intrastate taxes on telephone services. The cost cannot be determined at this time.
14. Section 2 (1)(d) proposes a total per minute rate of \$0.06, which cannot sustain the level of services provided in the current contract. The current contract rate of \$.143 cents per minute for inmate communication services covers building and maintaining the infrastructure, investigative services to monitor inmate calls, electronic commissary ordering, online grievances, and an education-based inmate tablet system. Passage of this bill would result in additional operating costs to build and maintain the telecommunication infrastructure to provide the same level of services unless the MDOC received a general fund appropriation to cover the additional expense. The MDOC is unable to determine those costs at this time.

15. Section 2 (5) requires MDOC to reduce the per diem rate paid to the contracted facilities by ½ of the daily rate for noncompliance. There will be personal services involved to continually audit compliance. MDOC is unable to quantify the fiscal impact at this time.

Legislative Branch

	<u>FY 2020 Difference</u>	<u>FY 2021 Difference</u>	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Personal Services	\$18,497	\$18,497	\$19,607	\$19,607
TOTAL Expenditures	<u>\$18,497</u>	<u>\$18,497</u>	<u>\$19,607</u>	<u>\$19,607</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$10,728	\$10,728	\$11,372	\$11,372
State Special Revenue (02)	\$7,769	\$7,769	\$8,235	\$8,235
TOTAL Funding of Exp.	<u>\$18,497</u>	<u>\$18,497</u>	<u>\$19,607</u>	<u>\$19,607</u>
<u>Revenues:</u>				
State Special Revenue (02)	\$18,497	\$18,497	\$19,607	\$19,607
TOTAL Revenues	<u>\$18,497</u>	<u>\$18,497</u>	<u>\$19,607</u>	<u>\$19,607</u>

Department of Corrections

	<u>FY 2020 Difference</u>	<u>FY 2021 Difference</u>	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	\$18,497	\$18,497	\$19,607	\$19,607
TOTAL Expenditures	<u>\$18,497</u>	<u>\$18,497</u>	<u>\$19,607</u>	<u>\$19,607</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$18,497	\$18,497	\$19,607	\$19,607
TOTAL Funding of Exp.	<u>\$18,497</u>	<u>\$18,497</u>	<u>\$19,607</u>	<u>\$19,607</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$29,225)	(\$29,225)	(\$30,979)	(\$30,979)
State Special Revenue (02)	\$10,728	\$10,728	\$11,372	\$11,372

Long-Term Impacts:

1. Section 1, subsection 3(a), of this bill would permanently increase audit effort related to the Department of Corrections. Because the activity in the prison inmate welfare account is small in comparison to the

department’s overall operations, the work will be in addition to existing audit effort. The Legislative Audit Division will incorporate this additional audit effort into the department’s audit appropriation prepared in accordance with 5-13-402, MCA, beginning with the 2023 biennium.

Technical Notes:

Legislative Branch

1. Section 1, subsection 3(a), of this bill requires an annual audit of the prison inmate welfare account. This conflicts with the biennial audit requirement established in 5-13-304, MCA. If the audit of the prison inmate welfare account can be completed on a biennial basis, within the biennial financial-compliance audit of the Department of Corrections, fiscal impact may be less.
2. It is unclear if the audit of the prison inmate welfare account includes an evaluation of the Department of Corrections’ determination of facility non-compliance with the provisions of section 2 of HB 361 and associated reductions in per diem rates. Auditing this process is estimated to require an additional 100 hours of audit effort, which will increase the Department of Corrections’ audit costs by an additional \$7,550 per year for FY 2020 and FY 2021, and an additional \$8,000 per year for FY 2022 and FY 2023. If this additional work is required and can be completed on a biennial basis within the biennial financial-compliance audit of the Department of Corrections, fiscal impact may be less.
3. The audit requirements of section 1, subsection 3(a), of this bill will require an increase in the Department of Corrections’ audit appropriation for the 2021 biennium.

Department of Corrections

4. Section 2 (6)(b) defines state prisons. There is no fiscal impact to this change, however, state prisons are currently defined in 53-30-101, MCA.

<i>Sponsor’s Initials</i>	<i>Date</i>	<i>TZ</i> <i>Budget Director’s Initials</i>	<i>2/7/19</i> <i>Date</i>
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