

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 2/10/11
SEN. NO. SB 17 18

BOARD OF COMMISSIONERS
325 2nd Avenue North
Great Falls, MT 59401
Tel. (406) 454-6810
Fax: (406) 454-6945
commission@co.cascade.mt.us
www.co.cascade.mt.us

CASCADE COUNTY

Senator Terry Murphy
Chairman, Senate Judiciary Committee

Dear Senator Murphy,

The Cascade County Commissioners wish to take this opportunity to thank you and the members of your committee for their service to the citizens of Montana. Like you, we take our responsibilities as public servants very seriously and wish to convey to you our deep concerns regarding SB17 & SB18. As full time commissioners our perspective may be somewhat different than yours as a legislator. Your task is to set broad public policies which govern the actions of not only the State government but local governments as well. Our job on the other hand is to implement these policies in a manner that is consistent, effective and fair to the citizens of our county.

Senate Bills 17 and 18 appear to be an outgrowth of an unfortunate and isolated incident that occurred within the Cascade County Detention center during the term of our former Sheriff. That particular Sheriff's tenure was marked by a pattern of refusal to follow the policies and budgets set by the Commission as well as a failure to comply with state and federal employment laws. The unwillingness of the Sheriff to manage the department's affairs in compliance with these policies and laws has literally cost the citizens of Cascade County and Montana millions of dollars. The financial impact was not limited to the citizens of Cascade County, but was instead shared by the vast majority of citizens of Montana due to the costs incurred by the MACO insurance pool. For example, MACO paid out in excess of \$900,000 to settle political discrimination lawsuits filed by supporters of the Sheriff's opponent after he was first elected to the position. Ultimately, the citizens of Cascade County applied the appropriate corrective action by overwhelmingly defeating the Sheriff in the 2010 primary election.

Now you have before you two bills submitted to ostensibly to address this problem which the voters have already corrected. We believe that neither of these bills is necessary and in fact they would not fix the type of issue recently experienced by Cascade County. Instead, they would actually make the situation worse.

The problem in Cascade County was driven by the former Sheriff's belief that Law Enforcement should not be constrained by the policies lawfully set by the Commission and that the needs of law enforcement superseded the state and federal employment laws.

While there is no argument that law enforcement personnel hold unique positions of trust in county government, fundamental employment rights and policies governing county employees apply to them equally and cannot be ignored without consequence. Current state law coupled with Attorney General opinions make it clear that all elected county officials are required to follow the county's Human Resources policies as they manage the daily operations of their office. Senate Bill 18 exempts the Sheriff from this requirement. If this law had been in place in Cascade County during the former Sheriff's tenure, the commission and county attorney would have had very little ability to constrain the inappropriate employment actions of the Sheriff. As I mentioned earlier, under current law the direct cost of the inappropriate personnel actions of the Sheriff exceeded 1 million dollars. Had he the additional authority granted by SB 18, it would have likely been an even higher amount.

Turning our attention to the specific incident that prompted this bill, let us look at what if any difference in the outcome would have resulted if SB 18 had been in force at the time. Cascade County's HR policies require all of department heads and elected officials to conform with state and federal law regarding "due process". They deal with the appropriate manner to conduct investigations, required documentation, employee rights and implementation of appropriate grievance process. None of these policies constrain our managers or elected officials from immediately suspending with pay any employee should they feel that is the appropriate response to an incident. The policies define the steps after initially removing the employee from the workplace.

In the case in question, the Sheriff and his management team had the authority to remove the employee immediately and that occurred, so SB 18 would not have changed that element of the outcome. The next step would be a formal investigation as to what occurred. Our policies call for an independent investigation by either the Human Resources Department or in the case of a law enforcement issue like this, an independent investigative agency, such as the Department of Justice Division of Criminal Investigations. This did not occur, instead the Sheriff insisted on performing the investigation internally. Passage of SB 18 would codify that the choice of investigative process would be up to the sheriff. We would respectfully disagree that this is good public policy; we believe that an outside investigation by the County Attorney's office or by another law enforcement agency such as DCI is the correct method.

In this case, the Sheriff selectively investigated the facts and only forwarded to the County Attorney's Office evidence supporting prosecution. Later, when defense counsel provided witness statements taken at the time of the incident which indicated that the individual's supervisors had authorized his actions, the County Attorney was put in the embarrassing position of having to dismiss the criminal charges against the individual. This would not have happened had an independent investigation been conducted in the first instance, and it demonstrates an example of a problem which SB 17 would sanction.

The next step after the investigation is the determination of what personnel action to be taken, if any. In this case the Sheriff decided that the employee was not suitable to be a detention officer and he was terminated. Once again, this is the same probable outcome as SB 18 would create. Lastly, since the employee was covered by a collective bargaining agreement there was a grievance and arbitration process that was required. During that process the employee asserted that the taser use was in keeping with directives he had received from a superior officer and as such he demanded lost wages and reinstatement. The internal investigation failed to refute these claims and as such the Sheriff was advised by legal counsel that should the case go to the arbitrator that there was a good chance the employee would win reinstatement. The Sheriff was given the choice of a negotiated settlement or proceeding to arbitration and he chose a settlement that removed the employee's POST certification, ended the county's liability and provided the employee with a cash settlement. Once again, since SB 18 would not exempt the Sheriff from State and Federal laws or the Collective Bargaining agreement, the outcome is the same as the one reached under existing law.

Should SB 18 be passed into law, the differences would be removing an important part of the limited checks and balances that other elected officials have on the office of Sheriff, codifying that Sheriffs do not have to follow county Human Resources policies and emboldening Sheriffs who share the notion that Law Enforcement is exempt from local oversight. This would also likely generate an issue regarding insurability, as MACO will typically not cover terminations without local coordination with the human resources office and the County Attorney.

Senate Bill 17 is a related bill that would remove the ability of a County Commission to hire a professional warden to run jail facilities. The issues and concerns that we previously expressed regarding SB 18 apply equally to this bill but there are a few other concerns that we would also like to point out.

In Montana there are four distinct types of Detention Facilities that would be affected by this bill and each has some different attributes and management requirements that need to be taken into consideration. The classic model is the local jail designed to hold pre sentencing prisoners for the local jurisdictions. These tend to be small elements of the overall operation of a Sheriff Department many of these are run directly by the Sheriff who may or may not have a dedicated detention staff.

The second type is a regional jail facility such as the one in Yellowstone County which acts as the jail for a number of surrounding counties. This facility although under the direction of the Sheriff's office is managed by a specifically trained administrator and operated by a permanent detention staff.

The third type is a regional prison facility such as Missoula County, Dawson County and Cascade County. These facilities are both a local jail and a State Prison facility. In Cascade and Missoula County, the facilities fall under the Sheriff's office but have a

professionally trained warden and full time detention staff. The fourth type is the Regional Juvenile Detention facilities like the one in Cascade County. These currently are not under the jurisdiction of the Sheriff's and are instead run by administrators and staffs trained specifically trained to deal with youth offenders. The mission and function of these facilities is very different from an Adult Detention facility yet this bill sweeps these under the jurisdiction of the Sherriff as well.

The problem that we see with this bill beyond its impact on juvenile detention centers is it removes the ability of the Commission to place the Detention Center in the hands of professionals who are specifically trained to manage a Detention Center should the Sheriffs not wish to do it themselves or lack the training to do so themselves. To our knowledge, this option is not often exercised, but it is an important safeguard should a county need to make use of it.

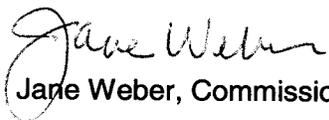
The Cascade County Commissioners wish to go on record in opposition to both SB 17 and SB 18. Thank you for allowing us the opportunity to explain our rationale for our position on this important public safety issue.



Bill Salina, Chairman



Joe Briggs, Commissioner



Jane Weber, Commissioner