

Senate Bill 23-111 (SB23-111) is being touted as a simple bill that protects public sector employees from retaliation for exercising their basic First Amendment rights. While Colorado local government organizations agree that employees should work free from fear of unlawful retaliation, this bill goes drastically farther than simply protecting public employees.

Colorado's local governments depend on their staff to deliver a broad array of services to the community from public safety to sanitation to public education. Local governments have great respect for the dignity and well-being of their employees and can and do protect the First Amendment rights of their employees, while meeting the needs of the public at large.

CCI, CML and SDA request a NO vote on SB23-111 for the following reasons:

1. **No specific evidence of pervasive, improper public employer retaliation that cannot be handled under existing employee protections has been demonstrated to justify the need for the elements of SB23-111.**
2. **SB23-111 seeks to politicize personnel and management issues that are best handled by existing laws and administrative regulations.** For example, SB23-111 could permit an employee facing discipline to ask an elected official to intervene in the discipline or to disband an oversight board. Similarly, SB23-111 could allow an employee organization to end-run negotiators during collective bargaining by going directly to a governing body. Political influence and coercion in government employment matters undermines principles of good government and the very structures that ensure freedom from interference by governing bodies.
3. **Local governments as employers have legitimate and compelling interests rooted in the need to provide effective and efficient public services and to be responsible stewards of public funds. SB23-111 completely rejects those interests.** SB23-111 contains zero guardrails to constrain rogue individuals or organizations from disclosing protected or confidential government information, from making discriminatory or otherwise inappropriate statements that undermine the government's effectiveness, from disrupting disciplinary and oversight processes, or from violating the rights of other employees or private persons.
4. **The bill is unjustifiably broad and creates tremendous ambiguity.** Language throughout this bill makes passing references to concepts from federal law. However, that high-level, conceptual incorporation fundamentally changes longstanding legal frameworks that will only cause disruption to governmental services, create litigation, and burden the courts. SB23-111 is rife with unintended consequences that could have severe consequences for local governments, their employees and officials, and the public at large. If federal funds are involved, SB23-111 conflicts with federal requirements relating to public employees engaging in political activity.
5. **Government employees are already entitled to substantial protections under the federal and state constitutions and laws. SB23-111 does nothing to meaningfully enhance those protections and confuses the rights of both employees and employers as to these laws.**
  - o The First Amendment protects the free speech rights of public employees (far beyond the protections afforded to private employees). This protection, however, does not extend to speech

relating to their official duties or speech not involving matters of public concern. The law also recognizes the employer's interest in an efficient, disruption-free workplace. *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Churchill v. University of Colorado*, 293 P.3d 16 (Colo. App. 2010). The First Amendment also guarantees certain rights to freedom of association and to petition for a redress of grievances, and for organizations to advocate for their members.

- o Public employees may have due process rights in their employment protected by the Fifth and Fourteenth Amendments. Many local governments have established career services protections that guarantee those rights.

**6. Federal and state laws already protect public employees both substantively and in asserting specific concerns relating to many aspects of employment.** Some of these include:

- o Protection for reporting concerns about workplace violations of health or safety rules or other workplace threats to health and safety (CRS §§ 8-14.4-102)
- o Engaging in lawful, off-duty activities (CRS § 24-34-402.5)
- o Wage equality (CRS §§ 8-5-101 et seq.)
- o Transparency in pay and advancement opportunities (CRS §§ 8-5-201 et seq.)
- o Family and medical leave (29 USC 2601 et seq.; CRS § 8-13.3-203)
- o Paid sick leave (CRS §§ 8-13.3-401 et seq.)
- o Leave for domestic abuse, stalking, or sexual assault victims (CRS § 24-34-402.7)
- o Accommodations for nursing mothers (CRS § 8-13.5-103)
- o Protections against unlawful discrimination and retaliation for opposing unlawful practices in various federal laws and the Colorado Anti-Discrimination Act
- o Workers' compensation
- o Unemployment insurance

**7. The bill would allow public employees to strike, which would have a detrimental impact on public services and conflict with existing laws.** The concept of "protected, concerted activity" as used in SB23-111 may reasonably be construed to protect right to strike and other similar actions, which generally have been given special consideration or excluded from protected rights for all or certain sets of public employees based on the impacts these actions are likely to have on public safety and essential services. In contrast, please see the exclusion of these activities from other protected rights in CRS §§ 29-5-201, et seq. (Colorado Firefighter Safety Act) and 24-50-1101, et seq. (Colorado Partnership for Quality Jobs and Services Act).

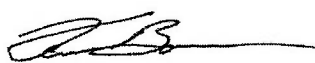
**8. SB23-111 is a blatant attempt to mandate collective bargaining on government employers even more broadly than prior years' legislation.** SB23-111's concept of "protected, concerted activity" may be construed to protect the right to bargain collectively.

**9. The unfettered and ambiguous discretion to CLDE both in rulemaking and enforcement unlawfully delegates legislative authority to an administrative agency and unlawfully involves the state in local government personnel matters. SB23-111 even prevents meaningful judicial review.**

Please join us in opposing this overreaching, broad effort to usurp the authority of local governments to provide employee protections and maintain critical employment structures within their jurisdictions.



Executive Director  
Colorado Counties, Inc.



Executive Director  
Colorado Municipal League



Executive Director  
Special District Association of Colorado