



# COLLECTIVE BARGAINING COST ANALYSIS REPORT

## EXECUTIVE SUMMARY

### Statement from the El Paso Board of County Commissioners

Citizens rightfully expect someone to answer 911 calls, plow roads during a snowstorm, and protect the young and the elderly from abuse. That's why our whole board agrees: injecting collective bargaining as another bureaucratic layer is as unnecessary as it is expensive. This proposal will force El Paso County to spend money it doesn't have to administer a program it doesn't need. And it will be at the expense of the citizens who rely on our services to keep them safe.

We call on the legislature and Governor Polis to oppose this bill.

### Cost = Loss of Service

The following numbers indicate the baseline administrative and additional costs associated with collective bargaining, along with the sorts of services that can be provided for the same amount.

Administrative Cost \$6.1M	12.5% Estimate \$22.5M	30% ESTIMATE \$54M
3.8% COLA	14.1% COLA	33.8% COLA
1.6 MILLION POTHoles	5.6 MILLION POTHoles	13.5 MILLION POTHoles
22 LANE MILES - OVERLAY	82 LANE MILES - OVERLAY	196 LANE MILES - OVERLAY
62 MILES - CHIP SEAL	225 MILES - CHIP SEAL	540 MILES - CHIP SEAL
62 DEPUTY SHERIFFS	251 DEPUTY SHERIFFS	549 DEPUTY SHERIFFS
90 DHS EMPLOYEES	332 DHS EMPLOYEES	797 DHS EMPLOYEES

### Main Issues

The following pages outline El Paso County's main concerns in the following areas:

1. Cost=Loss of Service
2. Omission of a "No-Strike" Provision
3. Citizen Obligation without Representation
4. TABOR Constitutional Questions
5. Department of Labor: All Power, No Accountability
6. Policy ≠ Moment

# COST = LOSS OF SERVICE

## ADMINISTRATIVE COSTS | \$6,143,000

At \$6.1 million dollars, the administrative costs of collective bargaining are substantial, and these costs alone would severely disrupt the County's ability to provide services to residents and citizens. These costs include additional county attorneys, labor relations managerial staff, support staff, arbitration costs, mediation costs, contract negotiations, training costs, and lost productivity and wage costs as staff engage in collective bargaining related activities or pay union dues. This administrative cost does not include any additional systems the County may need in the future to track multiple agreements among various collective bargaining units and non-unionized employees.

DEPARTMENT	COST
County Attorney	\$1,020,000
Finance/Benefits	\$1,653,000
Human Resources	\$1,020,000
Loss of Productivity	\$2,450,000
<b>TOTAL COST</b>	<b>\$6,143,000</b>

Unlike a university, El Paso County Commissioners cannot "raise tuition fees" to offset the administrative costs. The only relief the County has against collective bargaining is to cut services.

The administrative costs would cover:

- A 3.8% cost of living increase of all employees
- 1.6 million potholes
- 22 lane miles of road overlay
- 62 lane miles of chip seal
- 62 deputy sheriffs
- 90 Department of Human Services employees

## BEYOND ADMINISTRATIVE COSTS | \$22,500,000 - \$54,000,000

Unfortunately, the large administrative costs are just the initial impact to the County and the services it provides. Some credible reports indicate that collective bargaining can increase personnel costs by 12.5%. Though unlikely, other less analogous reports estimate the costs can be as high as 30%. While the County's fiscal analysis is more in line with the 12.5% figure, the uncertainty in the number of bargaining units permitted by the law, the scope of agreements, the frequency of negotiations, and other factors require us to show the full range of potential impact.

Again, the County cannot simply raise some rate and pass along costs as a private business or a university might. Any additional burdens directly impact the County's ability to provide services to citizens, and service cuts must be instituted to offset the costs.

The estimated impacts above are re-adjusted here to capture the costs beyond administration:

<b>Administrative Cost \$6.1M</b>	<b>12.5% Estimate \$22.5M</b>	<b>30% ESTIMATE \$54M</b>
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The figures above provide an irrefutable illustration of the services El Paso County could provide citizens at the expense of collective bargaining. Collective bargaining impedes the organization’s ability to pave roads, fill potholes, hire additional staff to serve our most vulnerable citizens, or—ironically—provide cost of living adjustments. While some employees may be happier with a larger paycheck, citizens will suffer as potholes remain unfilled, roads crumble, and vulnerable citizens go unprotected.

## OMISSION OF A "NO-STRIKE" PROVISION

Citizens rightfully expect someone to answer 911 calls, plow roads during a snowstorm, and protect the young and the elderly from abuse. That is why the omission of a “no-strike” provision is a glaring oversight on the part of the bill sponsors. Unlike other larger governments, local governments provide services to people on a daily basis. A strike is contrary to our statutory and legal obligations on a state and federal level. Allowing first-responders, DHS employees, or other essential workers to strike literally puts lives in jeopardy. Imagine the ramifications of one child staying in an abusive situation while employees are on strike. It’s wrong for taxpayers and residents who rely on these services during their greatest time of need.

## CITIZEN OBLIGATION WITHOUT REPRESENTATION

Every dollar spent in additional benefits to public employees will be encumbered at the citizen’s expense without their say. The legislation makes no provision for voter approval at a jurisdictional level, meaning a small number of employees can circumvent and supplant the desires of voters and elected leadership. As potholes remain unfilled, roads crumble, and vulnerable citizens go unprotected, voters and taxpayers have no avenue for relief. At a minimum, voters must—through a Colorado Revised Statutes governed election—have the opportunity to weigh in on collective bargaining. Circumventing the voters—and their local elected officials—on such a weighty fiscal question is antithetical to the traditions of our constitutional democratic republican values, and contrary to the tenants of TABOR.

## TABOR CONSTITUTIONAL QUESTIONS

Article X, § 20, of the Colorado Constitution requires that counties obtain voter approval on any contract which extends beyond one year. The life of a collective bargaining contract is usually two to five years, which leaves organizations like the County with three options:

1. **Seek voter approval:** This option raises a myriad of legal questions. What happens to the agreement if voters reject it? Could workers strike due to the election results? Would voters need to vote on each unit agreement? How do counties cover the cost of a ballot question if they weren't otherwise going to engage their voters?
2. **Renegotiate contracts every year:** This would increase costs on multiple fronts. Negotiation costs are high and take seasoned employees away from their crucial work serving citizens on both sides of the discussion. It also means the cost of benefits or wages could grow exponentially because the issue is revisited frequently. This option will create a cycle of regular cuts to service at the expense of citizens and residents.
3. **Annual Appropriation:** A board may authorize multi-fiscal year contracts only when such contracts are subject to annual appropriation. However, this process creates uncertainty for all parties involved. It may frontload costs at the beginning of a term and make agreements more expensive in the short term. As Colorado's experience in the Certificates of Participation market shows, such entities that rely on annual appropriation don't get as favorable terms as traditional agreements. The County would likewise be vulnerable to such unfavorable terms during a collective bargaining negotiation as a union would likely seek more benefits upfront to protect themselves from future uncertainty.

## DEPARTMENT OF LABOR: ALL POWER, NO ACCOUNTABILITY

The proposal grants the Director of the Division of Labor ("the Director") with broad powers with no accountability. The Director can designate bargaining units, certify (or de-certify) exclusive representatives, make determinations about "unfair labor practices", issue subpoenas, reinstate county employees with back pay and benefits, mandate provisional remedies, and even issue temporary restraining orders.

The traditional route for accountability in such circumstances—the court system—is severely curtailed in favor of the Director and collective bargaining units. Any decision made by the Director must be upheld unless the Director's determination is outright illegal. There is no practical avenue to seek review, and the judicial standard is shifted from "arbitrary and capricious", which makes appeal much more difficult for entities like the County. The proposal also stipulates enforcement through Denver District Courts, which bypasses more local court structures.

Finally, the Director is given the power to administer an election which will have a financial impact on a county but without any of the safeguards, standard practices, transparency, or oversight afforded in regular elections. The legislature has added more guardrails to a homeowner's association election and expenditure obligations than to a policy which will force the County to cut critical, life-saving services.

## POLICY ≠ MOMENT

Some policies meet a special moment in time or a great unmet need. Collective bargaining, however, is not one of those policies and is completely unnecessary for El Paso County. Elected leadership, appointed officials, and senior leaders have worked hard for years to compensate employees better. The County offers a competitive and well-liked benefits package, including unemployment insurance, healthcare, dental, life insurance, worker's compensation, and a generous retirement package. On average, the County spends an additional \$25,000 per employee on a benefits package more generous than many in the private sector. The County provides a safe work environment, thoroughly investigates all disciplinary accusations, and proactively protects employees' rights. And they've done all of that without a collective bargaining law.

Injecting collective bargaining as an additional bureaucratic layer is as unnecessary as it is expensive. Collective bargaining will force the County to spend money it doesn't have to administer a program which largely duplicates protections and the organization's goals. And it will be at the expense of services citizens rely upon to keep them safe and provide for a high quality of life.

## CONCLUDING MESSAGE

### Statement from the El Paso County Board of County Commissioners

Citizens rightfully expect someone to answer 911 calls, plow roads during a snowstorm, and protect the young and the elderly from abuse. That's why our whole board agrees: injecting collective bargaining as another bureaucratic layer is as unnecessary as it is expensive. This proposal will force El Paso County to spend money it doesn't have to administer a program it doesn't need. And it will be at the expense of the citizens who rely on our services to keep them safe.

We call on the legislature and Governor Polis to oppose this bill.

## CONTACT INFORMATION



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ATTORNEY-CLIENT PRIVILEGED / WORK PRODUCT

SB 22-230 does not clearly prohibit essential county employees—such as deputy sheriffs and human services caseworkers—from striking as part of a labor dispute.

The relevant portion of SB 22-230 provides that:

An exclusive representative...shall not threaten, facilitate, support, or cause a county employee to participate in a:

- I. strike;
- II. work stoppage;
- III. work slowdown;
- IV. a group sickout; or
- V. an action that disrupts, on a widespread basis, the day-to-day functioning of a county.

Proposed C.R.S. § 8-3.3-115(6)(a)(I)-(V).<sup>1</sup>

SB 22-230 only precludes “an exclusive representative” from threatening, facilitating, or supporting a strike. SB 22-230 defines “exclusive representative” to mean the “employee organization certified or recognized as the representative of employees in a bargaining unit pursuant to the terms of this Article 3.3.” Proposed C.R.S. § 8-3.3-102(13). Thus, because SB 22-230 only addresses the conduct of an “exclusive representative,” it could be interpreted to permit county employees, themselves, to decide to strike as part of a labor dispute.

In a recent article, Senate President Steve Fenberg was quoted as saying that the relevant portion of SB 20-230 is intended to be a “no-strike” provision because the “‘exclusive representative’ is not a person, but the entire union.” <https://gazette.com/premium/collective-bargaining-bill-introduced-in-colorado->

<sup>1</sup> This language is nearly identical to the Colorado Partnership For Quality Jobs and Services Act, which is the collective bargaining bill applicable to state employees. See C.R.S. § 24-50-1109(3)(a)(I)-(V).

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[senate/article\\_3110946c-3e59-5442-a16a-71782f6c3fa8.html](senate/article_3110946c-3e59-5442-a16a-71782f6c3fa8.html). Sen. Fenberg further stated that he “would consider clarification.” *Id.*

If the relevant portion of SB 22-230 is truly intended to be a no-strike provision, SB 22-230’s language should be amended to clearly communicate this intent. Such language could be:

No County Employee or anyone acting on his or her behalf, including, but not limited to an exclusive representative, shall cause, authorize, support, or take part in any strike, work stoppage, work slowdown, group sickout, or any action that disrupts, on a widespread basis, the day-to-day functioning of a county.

If such clear language is not included within SB 22-230, County Employees may argue that they, individually, can decide to strike so long as their decision and action are not carried out through an “exclusive representative.” If this interpretation is found to be valid, essential county employees could strike thereby interrupting the County’s provision of essential services, such as the operation of county jails, prompt investigation of reports of serious child abuse through human service departments, or the recording or issuance of critical documents such as marriage licenses, vehicle registrations, and real estate deeds through clerk and recorders’ offices.

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