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May 8, 2013

The Honorable John W. Hickenlooper
Governor of Colorado
136 State Capitol
Denver, CO 80203-1792

Dear Governor Hickenlooper:

In your own words on *Colorado Matters*: "My first day in office ... I signed three executive orders. The first one said that we would not impose...on local communities – give them unfunded mandates – tell them what they had to do, unless there was a clear and compelling purpose for that." We could not agree more and – on behalf the Colorado Municipal League's 266 member municipalities – respectfully request your veto of SB 13-025, which creates a state-mandated collective bargaining process when none is needed and no "clear and compelling reason" to overturn local control and home rule authority exists.

The bill fails to meet your criteria by establishing a right to collective bargaining for firefighters; creating a one-size-fits-all statewide collective bargaining process in statute; mandating the manner that local governments engage in collective bargaining with firefighters; creating convoluted election requirements; and unconstitutionally mandating personnel practices on home rule municipalities. Equally important, the same crystal clear pathway that brought collective bargaining to multiple municipalities and fire districts would instead be overrun by a top-down mandate on local governments that takes away the rights of voters and local elected officials to craft a locally-appropriate structure or reject it completely.

One of the so-called "compromises" made by proponents is actually one of the most problematic parts of the bill. While SB 13-025 as introduced was nothing but a direct mandate on local governments, the final version of the bill creates a convoluted election mandate in direct conflict with existing statutes and the Colorado Constitution.

Once 75 percent of the employees sign a notice to the public employer that they intend to circulate a petition to put an opt-in question on the ballot, they can circulate the petition unless the public employer simply opts-in voluntarily. If a circulated petition is signed by at least five percent of the number of people who voted in the last general municipal election, general district election, or the total votes of each municipal and district general election in the case of a fire authority, then a mandated form of the

question shall be placed on the local ballot. The municipal signature threshold may be higher if charter or ordinance requires it.

This part of the bill was concocted in a rushed and sloppy manner and contains numerous problems. One, there is no required format of the notice from employees indicating signatures of 75 percent of the potential bargaining unit. There is neither a signature verification requirement nor any guarantee against employee intimidation to sign the notice.

Two, the petition signature threshold of five percent of the number of voters in the last general election, while amended in conference committee to acknowledge a more strict municipal standard, completely ignores the body of law on municipal initiative and referenda in C.R.S. 31-11-101 *et seq.* This exposes critical problems such as no requirement for petition signers to be registered electors of the jurisdiction; no prescribed manner of signature verification; failure to require the clerk approve the form of the petition; restrictions on the manner of petition circulation; and other related issues.

Three, the power reserved to the people by Colo. Const., Art. V, Sect. 1 (9), as implemented by C.R.S. 31-11-101 *et seq.* specifies every aspect of the initiative process. These include the proper setting of ballot titles, disclosure requirements, protest provisions, and unlawful acts. These rights reserved to the people cannot be usurped by hastily drafted language in SB 13-025.

Last, C.R.S. 31-11-111 (3) specifically requires municipalities to "consider the public confusion that might be caused by misleading titles" and to "avoid titles for which the general understanding of the effect of a 'yes' or 'no' vote would be unclear." SB 13-025 mandates the form of the question to ask voters to approve the "Colorado Firefighter Safety Act." However, voters are actually voting on whether or not to approve a mandatory form of collective bargaining. This misleading ballot language would *clearly* never make the ballot at the local level because it is in obvious conflict with the requirement of municipalities that "(t)he ballot title shall correctly and fairly express the true intent and meaning of the measure."

We have repeatedly outlined the additional constitutional issues with SB 13-025. Again, the bill is an unconstitutional infringement into the home rule powers guaranteed to home rule municipalities by Colo. Const., Art. XX, Sect. 6. The home rule authority of Colorado municipalities is spelled out in Article XX of our State Constitution. It is well-established in the jurisprudence of the Colorado Supreme Court that "when a home rule ordinance or charter provision and a state statute conflict with respect to a local matter, the home rule provision supersedes the conflicting state provision." City and County of Denver v. State of Colorado, et al. and Colorado Professional Fire Fighters, et al., 788 P.2d 764, 767(Colo. 1990) (hereafter "Denver v. State").

Colo. Const., Art. XX, Sec. 6 provides expressly that these "local and municipal matters" include the "power to legislate upon, provide, regulate, conduct and control…the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees." The mandates created by SB 13-025 clearly violate this cornerstone home rule provision of the state constitution. This includes not only the mandated form of collective bargaining but also mandatory "meet and confer" in SB 13-025.

The seminal case construing Art. XX, Sec. 6 (a), is Denver v. State. Denver's Charter contained a provision (the result of a 1978 initiative by Denver voters) that required Denver employees, including firefighters, to reside within the City. The Colorado Professional Fire Fighters objected to this direction from local voters, and secured passage in the 1988 session of the General Assembly of HB 88-1152 (codified at C.R.S. 8-2-120), which prohibits residency as a condition of municipal employment. Denver, joined by several other home rule municipalities, sued the State and the CPFF, claiming that this bill interfered with its home rule authority under Art. XX, Sect. 6. The Supreme Court held, in a unanimous decision, that the statute exceeded the authority of the General Assembly with respect to home rule municipalities. Denver v. State is a significant pronouncement by the Court, and it remains the law of the State to this day.

The Court also distinguished other limited circumstances in which overwhelming state interests compel municipal employee participation in state programs such as unemployment compensation and the Fire and Police Pension Association. A collective bargaining mandate, such as that proposed in SB 13-025, does not reflect an overwhelming state interest similar to those behind these significant, long-standing statutes. If it did, then it would then apply to all public safety employees – both state and local – and not single out only local fire departments.

This leads to another significant issue in the bill that impacts all local governments – the declaration of statewide concern. Local governments, even home rule municipalities with collective bargaining in their respective charters, would be forever subject to the whims of the state government by declaring local employment practices a matter of statewide concern. The exemption for home rule cities could be taken away as quickly as it was granted, and local citizens and their elected officials would be forever cut off by the legislature from locally-appropriate labor arrangements.

Furthermore, SB 13-025 also represents a significant unfunded mandate on local governments. The unfunded mandate would include costs of labor relations staff and legal counsel; costs of impasse resolution and arbitration; the potential costs of special elections; and increased costs for wages, benefits and all other matters of employment.

As mentioned previously, your first day in office you clearly outlined your policy against imposing unfunded mandates on local governments. You backed up your words with Executive Order No. 5, and local governments have enjoyed a strong partnership with your administration on preventing unfunded mandates. In addition, Colorado law and the Taxpayers Bill of Rights (TABOR) also prohibit unfunded mandates.

C.R.S. 29-1-304.5 (1) states clearly that "(n)o new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service." Colo. Const. Art. X, Section 20 (9) is also designed to prohibit state mandates on local governments and allows local governments to reduce or eliminate its expenditures for anything mandated by the state.

Local governments and their voters should have the right to choose the collective bargaining framework that best suits their communities – or be able to reject them at the ballot. Locally-appropriate bargaining principles have been less expansive than the broader provisions of the state-mandated framework in SB 13-025.

Examples of structural issues that should be left to local officials and voters include:

1. Compensation – Includes forms of monetary payment, including pensions that already have statutorily defined contributions, base wage or salary, and almost all significant fringe benefits. The definition includes the term "any form of direct monetary payments," which is a catch-all to cover any incentives, pay for performance, or bonuses.
2. Terms & Conditions – This term is broadly defined so that collective bargaining units have the right to negotiate on everything including: wages and benefits, hiring, firing, discipline, assignment, scheduling, promotion, transfer, equipment, uniform, levels of service, minimum staffing, internal affairs and investigations. The list is potentially limitless.
3. Inclusion of supervisors in the bargaining unit – Sets up an inherent conflict between those higher ranks and the individuals whom they supervise, command, evaluate and discipline. Those supervisory ranks will have their pay, benefits, hours and terms and conditions of employment negotiated by the very people that they have to supervise, evaluate and discipline. (This practice, by comparison, is specifically prohibited in the Colorado Labor Peace Act)
4. No actual strike prohibition – Without any punitive action for engaging in a strike – like all other locally-approved collective bargaining agreements contain – the "prohibition" in SB 180 is hollow.
5. Right to sue – While SB 180 guarantees the union the right to sue over any provision of the legislation, employers are intentionally precluded in the bill from having the same ability to enforce their rights.
6. Arbitration – Establishes a wide-open arbitration process, in which an advisory fact finder that is not even required to be a Colorado resident, that may go far afield in determining facts. In the end, the arbitrator is limited to picking the final offer of one party or the other on each issue; the fact finder cannot choose an intermediate position or some other position.
7. Election requirement – Purported to preserve local control, this most ill-conceived part of the bill tilts the playing field toward one side and the endless amounts of special interest money that would be used to push that position on a ballot. Local governments, on the other hand, could not advocate their positions because of the restrictions of the Fair Campaign Practices Act. The requirement that the resolution be conducted by a costly "special election" seems to preclude utilizing the ballot at a general election. Ironically, the so-called compromise created to place a question for collective bargaining before the voters requires a general election vote, and we wonder why that standard was not applied here.

Aside from the numerous legal and constitutional issues, as well as the issues related to difficulty of implementation, there are issues of common sense obviating the need to veto this legislation. Nothing is currently broken. Local voters and their duly elected representatives have a clear history in Colorado of

approving collective bargaining deemed locally-appropriate for public safety employees. In each case, the voters and their duly elected representatives have crafted the best agreement for their local needs. In other cases, such as in Colorado Springs and the Grand Junction, voters did not approve collective bargaining, and cities like Longmont that approved collective bargaining placed limitations that were deemed appropriate by the voters. Finally, voters in cities specifically targeted by this legislation – such as Colorado Springs, Grand Junction, and Westminster – have overwhelmingly supported public safety by taxing themselves for equipment and personnel expenses. The State of Colorado should not negate the existing pathway for citizens in municipalities or their duly elected representatives to determine what is best for their communities.

Equally egregious is the manner in which the bill ignores municipalities that have already chosen collective bargaining but have done so in some other manner than in their charters. Cities like Boulder and Littleton have granted collective bargaining in ordinance or by powers vested in management. Special districts, of course, do not have charters and are equally penalized even though they have granted collective bargaining rights. SB 13-025 creates a mechanism to replace these local efforts with the broader, more complicated state-mandated provisions of the bill.

We honor and appreciate the work of the men and women in our local fire service. Our opposition is premised solely on the entirety of the bill's preemption of local control; the bill's specious constitutionality; the practical workability of the legislation; and finally, the complete lack of any demonstrated, concrete need for a broad state preemption.

The Colorado Municipal League is grateful for your consideration of this request and strongly encourages you to veto SB 13-025 and defend the principle of home rule and local control, as well as local taxpayers throughout the state.

Sincerely,

Sam Mamet
Executive Director

Kevin Bommer
Deputy Director

cc: Roxane White, Office of the Governor
Alan Salazar, Office of the Governor
Jack Finlaw, Office of the Governor