

# HB 16-1078



**BUILDING A STRONG PARTNERSHIP WITH COLORADO'S CITIES AND TOWNS**

## EMPLOYMENT

### LOCAL GOVERNMENT WHISTLEBLOWER PROTECTION

#### HB 16-1078 - YOUR "NO" VOTE RESPECTFULLY REQUESTED

This legislation would give express authority to a disgruntled employee to initiate a claim against an employer for any action the employee may claim was due to alleging "violation of a state or federal law or local ordinance; a waste or misuse of public funds; fraud; an abuse of authority; mismanagement; or a danger to the health or safety employees or the public." (All undefined)

#### VAGUE TERMINOLOGY, SWEEPING LEGISLATION

It may not be uncommon for any employer to have employees that think "the bosses waste money" or that a department head "mismanages situations," or that the boss is committing "wrongdoing." Yet, if any type of unrelated personnel action (immensely broad in scope in the bill) is taken against the employee for any reason, the employee has already met the low bar set to invoke the procedures set forth in HB 16-1078 at no risk or no cost to the employee.

#### COSTS

The Department of Personnel, likely to know little about municipal employer issues, policies, or actual facts, will be deluged with complaints at state taxpayers' expense. There is no cost or penalty to an employee, whether a complaint is ultimately dismissed or not, even if the employee does know the claim is false or divulges confidential information. Meanwhile, the municipality – at local taxpayer expense – must cover the costs of attorney's time, production of documents, depositions, hearings, and other related activity to attempt to create clear picture out of muddled terms provided in the bill without any definition.

#### NO SIDEBOARDS

At no risk or expense to itself, the state is allowed to make awards to employees without restriction or caps – including damages, injunctive relief, administrative or court costs, attorney fees, and such other relief as he or she deems appropriate. The state is free to interpret definitions to all of the terms, which may vary from case to case and from administrative judge to administrative judge.

#### INAPPROPRIATE INVOLVEMENT OF A STATE AGENCY IN LOCAL MATTERS

Public employees enjoy substantial protection of their free speech rights under the First Amendment to the United States Constitution. Current First Amendment jurisprudence involves application of a carefully crafted balancing test, that balances the interests of the employer against the employee's right to free speech. The bottom line is that employees already enjoy substantial protection to complain about governmental wrongdoing. HB 16-1078 woefully lacks such balance, and does so in an administrative proceeding instead of where it belongs: a state or federal court of law.

February 3, 2016