



TO: House Federal and State Affairs Committee
 FROM: Sandy Jacquot, Director of Law/General Counsel
 DATE: February 13, 2012
 RE: Opposition to HB 2492, HB 2577, HB 2576, HB 2578

Thank you for allowing the League of Kansas Municipalities to testify in opposition to the above-referenced bills, all addressing various aspects of immigration. The League's opposition to all of the immigration bills being discussed today is not to the underlying policy issue, but to the unfunded mandates, confusing and ambiguous language and exposure to potential litigation and liability inherent in putting local governments on the front lines of enforcing immigration law. We believe these bills have mandates that will be very difficult, and ultimately costly, for city officials to apply, and the question must be whether this is the way the State wants cities to allocate their limited resources. As funding sources for city services continue to decrease, unfunded mandates seem to increase. Cities cannot continue to absorb the cost of carrying out state mandates. At some point it needs to stop. Therefore, if the Legislature deems these bills to be good public policy, then funding to perform the mandates needs to be appropriated.

First, **HB 2578** requires that during lawful stops, detentions and arrests, law enforcement officers who have reasonable suspicion that an individual is unlawfully present in the United States must make a "reasonable attempt" to determine both the citizenship and immigration status of the individual. Any alien who is arrested or taken into custody cannot be released until such person's immigration status is confirmed. In performing this task, the officer may not racially profile the individual, except to the extent constitutionally permitted. Without going into extensive detail, in addition to the increased costs and time spent by law enforcement in complying with these requirements, these provisions can lead to unconstitutionally long detentions and the potential to violate the civil rights of lawfully present individuals, including citizens of the United States. Thus, cities will be exposed to potential discrimination and 42 U.S.C. § 1983 lawsuits. The cost of litigation is expensive. Because there is no way for the State to immunize cities from lawsuits under federal law and the United States Constitution, the State should be prepared to indemnify cities and their taxpayers against such litigation and potential damage awards for complying with the bill's requirements.

In addition, this bill would erode the credibility and effectiveness of any community policing program by creating suspicion and fear, where law enforcement agencies have tried to build an atmosphere of trust. If that is not enough, this bill states that no municipality can institute any policy that restricts enforcement of its provisions. If, in the opinion of the Attorney General without any due process, the municipality is not enforcing the l

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restrict the municipality's eligibility to receive any funds from the state, including grant money and appropriated funds.

In **HB 2492** and **HB 2577**, cities would have to ensure that any contractor or subcontractor they do business with, for contracts over \$5,000, uses the E-Verify system to determine legal status of their employees. Besides the expense and potential administrative issues this adds to the bid process, those businesses could sue cities for any perceived irregularity in not awarding them the bid. Cities must also use E-Verify in hiring their own employees. This adds costs to cities to administer that additional step in the hiring process and also opens the taxpayers to further potential litigation and liability for cities' hiring decisions. Businesses would also be required to use E-Verify for their employees, but the bill immunizes them from all state liability if they terminate an employee they believe is not lawfully present in the United States. Cities should have that same immunity. It is not at all clear whether cities will be able to procure insurance to cover these risks or whether they will have to self-insure against the risk of loss. Thus, the State needs to provide litigation protection for cities to enable them to enforce this law.

HB 2576 restricts any "state, county, or local agency" from providing public benefits to those not lawfully in the country and is extremely confusing and will be difficult for cities to apply. It further requires any applicant over the age of 18 applying for such public benefit to affirmatively prove their legal status. In addition, only documents recognized as proof to obtain a drivers' license may be used. Thus, a drivers' license, presumably is not considered sufficient proof. This will involve city officials knowing what documents are sufficient to prove an individual is a citizen or a permanent resident or is lawfully in the country, and will require all individuals applying for such benefits to have those documents. Any individual who is an alien must have their legal status verified through the Homeland Security SAVE system, which is a fee service. Thus, there will be a cost to local governments in implementing the bill that will likely require much training for city officials. Again there is the potential to inadvertently violate the civil rights of individuals who apply for public benefits.

The definition of public benefit in **HB 2576** is incredibly broad. It is not the legal federal definition. It would scoop up anyone applying for utilities, which is a contractual relationship, contractor licenses, business licenses, liquor licenses and many other routine municipal functions. This is frankly unbelievable and almost impossible to deal with from an administrative standpoint.

While these bills reach into many aspects of city government, the unfunded mandates and the increased exposure to litigation and liability is undeniable. In a time when local budgets are tight and our taxpayers cannot bear the increased costs of implementing yet one more program, we urge this committee to NOT pass **HB 2492**, **HB 2577**, **HB 2576**, and **HB 2578**.