

To: Senate Federal and State Affairs Committee
From: Eric B. Smith, Deputy General Counsel
Date: February 15, 2017
RE: SB 158
Neutral Testimony-- With Concerns

I want to thank Chairman LaTurner and the Committee members for allowing the League of Kansas Municipalities to provide neutral testimony and discuss our concerns with SB 158.

The League appreciates that SB 158 has addressed the financial concerns we have had in the past with similar legislation; however, we still have concerns with this bill that warrant comment. Day-to-day operations and decisions of local agencies are dependent upon several factors including available personnel and budget constraints. SB 158 requires local officials to potentially violate the fourth amendment by incarcerating individuals without due process as required by the U.S. constitution.

SB 158 would require the attorney general to defend any litigation resulting from a municipality complying with a federal immigration hold; the League questions if the attorney general has sufficient staff to properly defend such litigation. SB 158 also indicates the costs associated with the litigation would be paid by the state general fund. With the current condition of the state general fund, the League is concerned the fiscal effect of SB 158 could be more than the state general fund could realistically absorb resulting in local municipalities being held responsible for the costs of litigation and resulting judgments.

SB 158 provides for the state to defend a municipality if there is litigation related to following this state mandate. The fact remains that SB 158 is a mandate to all municipalities in this state to potentially violate the fourth amendment of the Constitution of the United States. We have heard concerns from local municipalities that despite contacting ICE about an individual on a detainer hold, ICE never picks up the individual resulting in the individual being held on no charges for an indefinite period of time. The immigration issue is a federal concern that should be resolved by the federal government stepping up and enforcing the law, not by asking municipalities to circumvent the constitution.

SB 158 at subsection (g) indicates a municipality will have the ability to file a claim against the state for expenses incurred related to enforcing federal immigration laws but this is no guarantee the expenses will be paid by the state. The League is concerned the budget issues of the state could result in denial of claims leaving municipalities to suffer the financial burden of a state mandate.

The League, on behalf of our member cities, asks the committee to consider the concerns we have raised with SB 158 before any action taken.