

To: Senate Judiciary Committee

From: Amanda L. Stanley, Legal Counsel

Date: March 7, 2017

RE: Neutral testimony on SB 180

I want to thank Chairman Wilborn and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide testimony on SB 180.

SB 180 would modify the Kansas Open Records Act by creating a special exception allowing hiring law enforcement agencies to look at the personnel records of former city and state employees applying for law enforcement positions. SB 180 would require any state or local law enforcement agency or governmental agency that receives a written waiver as described in the bill to disclose the entirety of the applicant's files with the exception of any binding nondisclosure agreements entered into prior to July 1, 2017, and nonperformance documents or data.

While viewing this bill from both the perspective of the potential employer and the former employer, the League sees advantages and disadvantages to this bill.

For our member cities attempting to hire law enforcement officers, it is essential to "weed out the bad apples" prior to hiring if at all possible. Being able to evaluate why an officer left his or her last position is extremely important. Because of this, the League has been supportive of K.S.A. 74-5611a, which requires reporting of the reasons for termination to the central registry maintained by the Kansas Commission on Peace Officers' Standards and Training. K.S.A. 74-5611a requires that:

"Upon termination, the agency head shall include a report explaining the circumstances under which the officer resigned or was terminated. Such termination report shall be available to the terminated officer and any law enforcement agency to which the terminated officer later applies for a position as a police officer or law enforcement officer. The terminated officer may submit a

written statement in response to the termination and any such statement shall be included in the registry file concerning such officer. The director shall adopt a format for the termination report."

SB 180 goes further than K.S.A. 74-5611a and would require a city to open the former employee's personnel file to the prospective hiring agency. When looking at this bill from the perspective of the agency required to turn over the personnel records, the League has concerns. One of our first concerns is that as defined in (g)(1), "files" is very broad and includes undefined terms of art such as "early warnings." While these may be well known terms of art in the law enforcement community, records custodians often are not law enforcement officials and for clarity these terms should be defined.

The League's second major concern is that this bill would prohibit cities from entering into any nondisclosure agreement with a law enforcement employee post July 1, 2017, because the city has no way to guarantee the information would not be disclosed in the future. Cities are employers, and as such, there are legitimate reasons for entering into a nondisclosure to protect important privacy interests. These privacy interests often involve more than one employee. While the bill attempts to provide the former employer some degree of assurance the files will be kept confidential in (f), the reality is once the file leaves the hands of the former employer, who is still considered the "official custodian of the records" under the bill, the former employer has no control over what happens to the record or who it is disclosed to.

While some of our concerns could be alleviated by striking the words on line 30 and 31, "and such agreement was executed before July 1, 2017," the League still has reservations about the wisdom of a policy decision to carve out special exceptions to the Kansas Open Records Act for select groups. We are willing to work with the proponents on finding a compromise that would fulfill the goals of this bill while still protecting important privacy interests without creating a special exception under the Kansas Open Records Act.