Immigration Laws
American Society for Public Administration – Utah Chapter
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At this month’s American Society for Public Administration (ASPA) luncheon, Carl Hernandez, Assistant Dean of BYU Law School, spoke about the possible implications of the Illegal Immigration Enforcement Act, a bill that will be introduced in the 2011 General Session of the Utah Legislature. The bill, modeled after Arizona’s SB 1070, would intensify the requirements of state and local law enforcement and public agencies in enforcing federal immigration law. Dean Hernandez emphasized threats to state sovereignty, enforcement costs, and the possibility of litigation as likely disadvantages of this legislation.

Dean Hernandez explained his concern about the federal government imposing upon state sovereignty, citing the U.S. Constitution and Supreme Court case law. The tenth amendment of the Constitution establishes that, “The powers not delegated to the federal government by the Constitution nor prohibited by the states, are reserved to the States respectively, or to the people.” Criminal law typically falls under the purview of the states, and Dean Hernandez suggested that requiring state and local law officers to enforce federal law confuses the powers delineated to the different levels of government. Additionally, in Supreme Court case Printz v. United States, the Court ruled that, “The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions to administer or enforce a federal regulatory program.” This bill may inadvertently disregard the powers delegated to the states, surrendering control of law that should be under the jurisdiction of Utah.

The proposed Illegal Immigration Enforcement Act requires law enforcement to, “...verify the immigration status of a detained or arrested person upon reasonable suspicion the person is an illegal alien.” Dean Hernandez asked the audience what they saw as possible impacts of this aspect of the law, and received input from several attendees who expressed concern about the additional time and effort this would require of public safety officers and the possibility that it will require increased staffing to maintain their work load. One attendee suggested this will require training to teach officers what constitutes “reasonable suspicion” and will likely necessitate a more complex verification mechanism to evaluate citizenship status. In addition to requirements on law enforcement, the bill, “...requires verification of immigration status regarding application for public services, benefits, or licenses provided by a state or local governmental agency.” This added requirement on application processing for contracts, business licenses, and other local and state agency functions is expected to come with increased costs.

The concern about lawsuits challenging the proposed legislation appears well-founded. Dean Hernandez noted that Arizona currently faces suits brought by the Department of Justice and the ACLU. In the instance that the bill is not sufficiently enforced, it is explicitly stated that “...a legal resident may bring action against an agency that limits enforcement of federal immigration laws and imposes financial penalties for violation.” Therefore, the proposed legislation demands that agencies walk a very fine line between underenforcement and overzealous application of the law, which is likely to result in lawsuits charging violation of civil rights. Dean Hernandez concluded, saying, “I recognize that there are problems with immigration in this country,” but he expressed his concerns that the bill as it is currently proposed may not be the optimal approach. Dean Hernandez highlighted provisions of the bill described above and encouraged the audience to consider how state and local governments and their constituencies might be impacted.

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- promoting the value of joining and elevating the public service profession;
- building bridges among all who pursue public purposes;
- providing networking and professional development opportunities;
- and achieving innovative solutions to the challenges of governance.

The Utah Chapter hosts monthly luncheons featuring a wide range of speakers and panels covering interesting and timely topics. Our next luncheon is on December 2, 2010 at noon on the topic of The American Recovery and Reinvestment Act and its effect on Utah. Please visit our website at www.cppa.utah.edu/aspa for more
The draft legislation of the ILLEGAL IMMIGRATION ENFORCEMENT ACT was introduced during the August 2010 meeting for the Judiciary, Law Enforcement, and Criminal Justice Interim Committee; http://le.utah.gov/asp/interim/Commit.asp?Year=2010&Com=INTJLE