



RALPH BECKER  
MAYOR

# SALT LAKE CITY CORPORATION

OFFICE OF THE MAYOR

## CITY COUNCIL MEMORANDUM

David Everitt, Chief of Staff

Date sent to Council: 12/2/2008

**TO:** Salt Lake City Council  
Jill Remington-Love, Chair

**DATE:** December 2, 2008

**FROM:** David Everitt, Chief of Staff

**SUBJECT:** Legislative Session Briefing

**STAFF CONTACT:** Ben McAdams, Senior Advisor to the Mayor  
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**BACKGROUND/DISCUSSION:** The administration would like to brief the City Council on upcoming legislative session tracking. The following is a list of issues of interest:

### **Riparian Potential Legislation**

During the last session, legislation was proposed which would have prohibited municipalities from regulating the use of property based upon its proximity to a riparian corridor. We were successful in persuading the sponsor of that legislation to withdraw that bill because at the time the City Council was still considering revisions to that ordinance. Now that those revisions have been completed, and the ordinance has been finalized, there is still the possibility that those who are unhappy with the City's ordinance may still push for a State Legislative prohibition. The City would vigorously oppose any such legislation.

### **Immigration**

During the 2008 legislative session, the Legislature passed Senate Bill 81 imposing a number of regulations relating to illegal immigration, with an effective date of July 2009. As written, that immigration bill imposes several requirements upon local governments, including an obligation to verify the legality of employees of any party that may contract with the City, and a prohibition from providing any government service to any individual who is not a legal citizen. The bill also requires the State Attorney General to negotiate a memorandum of understanding with the Department of Homeland Security addressing

the extent to which local law enforcement officers will be required to enforce federal immigration laws. We are particularly concerned that this last requirement could have a significant detrimental impact on public safety if citizens are afraid to call the police. For these reasons, it will be important to seek clarification of the intent, scope and application of this bill during the upcoming legislative session.

### **Transportation Funding**

Although gas prices have been high, the State gas tax is a fixed amount per gallon, rather than a percentage of the total cost. High fuel prices have reduced consumption, so transportation funds are low. In addition, asphalt prices have gone up, making it more difficult than ever to manage the costs of roadway construction and maintenance. Both the State and local governments will be looking for ways to enhance transportation funding. Salt Lake City, like other cities, needs to have an improved revenue stream for maintenance of City streets. That could be accomplished through a restructuring of the State gas tax, through a mileage driven surcharge, or through an additional tax on the cost of auto repairs and auto parts.

### **Special District Property Tax Authority**

Most special districts, which are usually governed by unelected boards, have authority to impose or increase property tax levies for the services they provide. However, there is increasing concern about the fact that as a practical matter, there is very little public awareness of their proceedings and little if any political accountability for their decisions. In addition, some local governments have intentionally created or used special districts to insulate themselves from the tax consequences of the services they provide. For that reason, some legislators have proposed changes to the rules for special districts to provide more transparency and accountability for their decisions. As this discussion proceeds, we will need to make sure that the City's ability to participate in and to provide services through these special districts is not adversely affected by any legislative changes.

### **Property Tax**

A number of legislators have talked about a variety of property tax reforms. Salt Lake City receives a significant portion of its annual operating revenue from property taxes. In addition, the City's sales tax revenues will likely decrease due to the current economic climate. We need to make sure that the Legislature does not pass any property tax measure that would hamper the City's existing property tax revenues.

### **Fee-in-lieu (time permitting)**

During the last few legislative sessions, there has been discussion about a proposal that would create the possibility for the payment of a fee in lieu of property tax for certain communities that have a disproportionate amount of tax exempt properties within their jurisdiction. During a tight budget year, such as this one, there is little likelihood that such a proposal would pass. However, the issue provides an opportunity for us to highlight the challenges facing Salt Lake City in providing municipal services for a high percentage of tax exempt properties within our jurisdiction.



## **FACT SHEET**

### **SB 81- ILLEGAL IMMIGRATION**

SB 81- Illegal Immigration- was passed in the 2008 General Legislative Session. It becomes effective beginning July 1, 2009. An eleven member Legislative Interim Committee on Immigration is holding hearings around the state to determine if changes should be made to the law before it takes effect. Kirk Torgensen, the Attorney General's Chief Deputy said "That's why lawmakers gave it a 2009 start date. The delay allows them to review it during the 2009 Legislature and make any changes which I think clearly will happen" (Salt Lake Tribune, November 11, 2008). The law as currently written will place several requirements on state and local governments. In relevant part:

- State and local agencies must confirm the legal residency of anyone seeking public benefits.
- Public employers must confirm the legal residency of any new employees, and private contractors doing business with a public employer must also use a Status Verification System with all their workers.
- The Attorney General must negotiate with the U.S. Department of Justice or Department of Homeland Security for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel.

#### **State and local agencies must confirm the legal residency of anyone seeking public benefits.**

**U.C.A. 63-99a-104 requires that state and local subdivisions of the state must verify the lawful presence in the United States of an individual at least 18 years of age who has applied for a state or local public benefit as defined in 8 U.S.C., Sec.1621 or a federal public benefit as defined in 8 U.S.C., Sec. 1611, that is administered by an agency or political subdivision of the state.**

8 U.S.C., Sec. 1621 defines "state or local public benefit" as (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government or by appropriated funds of a state or local government; and (B) any retirement, welfare, health, disability public

or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a state or local government or by appropriated funds of a state or local government.

This Section also states that aliens who are not qualified aliens are not eligible for any state or local benefits as defined above (there are exceptions for emergency medical care, short-term, non-cash, in-kind emergency disaster relief, and programs, services or assistance such as soup kitchens, crisis counseling and short-term shelter).

8 U.S. C. Sec. 1641 defines a “qualified alien as an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],
- (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],
- (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year,
- (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980; or
- (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

SB 81 mirrors the ineligibility categories in 8 U.S.C. 1621, and is, in essence, a state codification of the federal statute. What it adds in that regard, is the requirement for an applicant for state or local public benefits to certify to their lawful presence in the United States and provides penalties

for making false representations. It also requires an agency or political subdivision of the state to verify the lawful presence in the United States of an individual who has applied for a state or local public benefit.

**8 U.S.C. 1621 contains a significant caveat:**

**8 U.S.C. 1621 (d) provides that “a state may provide that an alien who is not lawfully present in the United States is eligible for any state or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a state law after August 22, 1996, which affirmatively provides for such eligibility.**

Therefore, the legislature could have passed laws affirmatively allowing certain benefits to be provided without the need to verify the lawful presence in the United States of the person seeking the benefit (such as the exception for a driving privilege card found in U.C.A 53-3-207), but with the passage of SB 81, the Legislature took the opposite approach.

It will not be a simple exercise to determine what services provided by state and local governments fit within the broad category of “public benefit” and do not fit into any category of exception.

**Public employers must confirm the legal residency of any new employees, and private contractors doing business with a public employer must also use a Status Verification System with all their workers.**

Under provisions of SB 81, each public employer must register with and use a Status Verification System to verify the federal employment authorization status of a new employee. In addition, beginning July 1, 2009, a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor’s new employees that are employed in the state. Employment eligibility must be verified using a Social Security number run through a new federal program called E-Verify.

This program could be made mandatory as a hiring formality for all businesses in Utah. Gloria Aitken, an official with the U.S. Citizenship and Immigration Services, said that once an employer registers with the system, all that is required is typing in an employee's Social Security number and it's

checked with databases with the Social Security Administration and National Homeland Security. If the information checks out, the employer gets an immediate response verifying the information is valid. If not, the system can return a tentative nonconfirmation. A tentative nonconfirmation gives the employee eight days to correct errors with the information or they are classified as a nonconfirmation, allowing the employer to fire the worker (Salt Lake Tribune, November 13, 2008).

Salt Lake City already verifies legal status through use of a form (I-9) submitted to the federal government for verification of the legal status of new employees. The City should not be impacted by the use of a new Social Security Number Verification Service or similar federal online verification system.

This law will require the City to enter into contracts with private contractors who have registered and participate in the verification system to verify the work eligibility status of new employees. Again, this requirement will probably require only a notation of the requirement in our contract forms, although some or of the opinion that more might be required.

**The Attorney General must negotiate with the U.S. Department of Justice or Department of Homeland Security for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel.**

This section of SB 81 (see below) **requires** the Utah State Attorney General to **negotiate and sign** a Memorandum of Understanding between the State of Utah and the United States Department of Justice or the United States Department of Homeland Security for the enforcement of federal immigration and customs laws by both state and local law enforcement personnel. The terms would include investigations, apprehensions, detentions, and removals of persons who are illegally in the United States.

**The impact of this provision is that state, county and city employees could be required to do the work of immigration agents and that determination would be made by the Utah State Attorney General. The agreement could require a local government, for example, to arrest and transport to jail someone whose only legal issue is their immigration status. The Attorney General is given full authority to negotiate with the**

**federal government and to determine the role of local law enforcement with regard to immigration enforcement.**

Salt Lake City Police Chief Chris Burbank explains that “local police departments depend on community partnerships in order to effectively accomplish their law enforcement mission. By forging a relationship of trust and cooperation with community residents, police officers create an environment where victims and witnesses of crime are willing and comfortable in coming forward to assist police in resolving criminal cases”.

If victims of crime or witnesses of crimes are afraid to go to the police or to cooperate with the police because of their immigration status, there will be a chilling effect on law enforcement and the potential for victimization and exploitation of undocumented immigrants, thereby increasing crime in the community.

In addition, this provision of SB 81 could create, in effect, an unfunded federal mandate and place an undue burden on police departments, diverting local police from their core mission of investigating and preventing dangerous criminal activity. With jails already full to capacity and staffing and financial resources stretched, residents would be poorly served if police became occupied with federal enforcement tasks.

The law further states (see below) that a unit of local government either through its governing body or by initiative or referendum may not enact an ordinance or policy that would limit or prohibit a law enforcement officer, local official or local government employee from communicating or cooperating with federal officials regarding the immigration status of a person within the state.

This provision would prevent the state or a local government from enacting a “sanctuary” law or policy stating that immigration status alone, without an accompanying crime, would not be considered in pursuing law enforcement duties.

The Congressional Research Service, a nonpartisan agency that provides support to members of Congress, issued a report in 2005 that described localities with sanctuary policies as those that have adopted “don’t ask, don’t tell” policies in which city employees, including the police, are not required to report illegal immigrants to the federal authorities.

It listed 32 cities or counties with sanctuary policies. Salt Lake City and Provo are often listed among these cities although no formal ordinance or policy has been passed in either municipality.

**SB 81, Section 67-5-26**

**Memorandum of Understanding regarding enforcement of federal immigration laws -- Communications regarding immigration status -- Private cause of action.**

**(1) The attorney general shall negotiate the terms of a Memorandum of Understanding between the state and the United States Department of Justice or the United States Department of Homeland Security as provided in 8 U.S.C., Sec. 1357(g) for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel, to include investigations, apprehensions, detentions, and removals of persons who are illegally present in the United States.**

**(2) The attorney general, the governor, or an individual otherwise required by the appropriate federal agency referred to in Subsection (1) shall sign the Memorandum of Understanding on behalf of the state.**

**(3) (a) A unit of local government, whether acting through its governing body or by an initiative or referendum, may not enact an ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from communicating or cooperating with federal officials regarding the immigration status of a person within the state.**