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Viewpoints: California has a better proposal for state immigration oversight

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Although organized labor, immigrants' rights advocates and the Chamber of Commerce all agree that immigration laws should be exclusively federal, the Supreme Court's decision on Arizona's immigration law, SB 1070, confirms that states may regulate immigration if laws are enforced consistent with federal priorities. This is likely to open the floodgates to new state immigration laws across the country.

California's Assembly Bill 1544, a proposed law working its way through the Assembly, should become the model. AB 1544 has bipartisan support and has cleared two committees, which is good news, because it would benefit taxpayers, employers, and American and immigrant workers.

AB 1544 would establish a permit program that allows unauthorized immigrant workers in the agricultural and service sectors to work and remain legally in California if they have already worked 150 days in the state and continue to work or earn a minimum amount each year. Applicants would also have to pass rigorous background checks, have no felony convictions and be learning English. The program would be self-funded with user fees, meaning it would not burden California's budget. The Cato Institute, a well-known conservative-libertarian think tank, argues it will positively impact the budget by broadening the tax base.

California's employment agency, the Employment Development Department, would manage the permit program.

Unlike Arizona's and Alabama's harsh anti-immigrant laws that seek to make life miserable for immigrants, shrink the economy and fail to improve conditions for native workers, AB 1544 includes important labor market protections for American and immigrant workers and would help the economy grow by filling job vacancies.

How would this work, exactly?

Before issuing permits, EDD would need to identify the existence of a genuine labor shortage in the agricultural or service sector. This could be accomplished by analyzing unemployment rates, wage fluctuations and job vacancies, or by surveying employers and labor unions. Employers will thus benefit by getting the workers they need, but American workers won't be displaced or adversely impacted.

Employers would no longer be able to degrade wages and working conditions through hiring unauthorized workers, thanks to a provision that explicitly grants unauthorized workers the same wage, hour and workplace protections as legal residents. The "portability" provision in the law, which allows workers to freely switch employers, would give unauthorized immigrants bargaining power and prevent them from becoming indentured to employers who threaten deportation if they complain about unfair conditions.

Newly required collection and publication of labor market data – even more than what's required for most federal foreign worker programs – would allow the public to evaluate the success or failure of AB 1544. If enacted, AB 1544 would still require authorization from the U.S. Department of Homeland Security. The executive branch cannot authorize a new legal status or path to citizenship – only Congress has that authority.

However, the president recently demonstrated that his administration has the authority to refrain from deporting unauthorized immigrants who will benefit the country and the economy, by granting deferred action to certain undocumented youth.

Thus, California could request that unauthorized immigrants with AB 1544 permits be granted "deferred action" and/or be added to Homeland Security's list of the lowest priorities for deportation under its policy of "prosecutorial discretion." Workers with AB 1544 permits would not be immune from deportation, but Homeland Security could automatically put them at the end of the deportation line or simply defer current and future cases against them, freeing up Homeland Security to focus on removing criminal immigrants. If EDD carried out the detailed and rigorous background checks and investigations mandated under AB 1544, Homeland Security could be confident that permit holders are employed, paying taxes and not criminals.

This would conform with Homeland Security's stated priorities for deportation, and would even improve the "Secure Communities" program – a federal program seeking to "identify criminal aliens" – by keeping California's noncriminal immigrant workers out of its dragnet. Screening has been a challenge and has led to much public criticism, because half of those deported through Secure Communities had never been convicted of a crime or committed only minor offenses. Assisting Homeland Security to better enforce immigration laws and implement a controversial program in the state where more immigrants reside than any other could go a long way toward convincing the Obama administration to authorize AB 1544.

Now that the Supreme Court has given states some leeway to enact and enforce their own immigration laws, California should lead the way and set a positive example for others by passing an immigration law that benefits workers, employers and the state's coffers.