

Commentary: Why the immigration bills will die

By Simon Shifrin

There are plenty of reasons why Idaho is not going to follow states like Arizona and Oklahoma and turn state and county prosecutors into enforcers of immigration law.

I disagree with my co-blogger Mike Tomlin, who claims that lawmakers are simply hiding behind the argument that immigration is a federal issue. Yes, that is one of the arguments (and not one that should be easily dismissed, considering that immigration policy is governed by federal law and only Congress can pass measures like guest worker permit increases). But there's a lot more to the debate.

Idaho business lobbyists have almost uniformly lined up against the immigration bills this session, including what was probably the least punitive proposal, killed last week.

During a hearing Feb. 18, the House State Affairs Committee rejected a bill sponsored by Rep. Phil Hart, R-Athol, that would have punished employers who "knowingly" hire illegal immigrants with license suspensions. The measure did not include a controversial mandate on employers to use a federal computer database known as E-Verify to check workers' legal status. The proposal tried to encourage use of E-Verify by providing employers with only a limited legal defense if they used the federal I-9 system and a stronger defense if they used E-Verify.

Tomlin suggested that "there truly is no argument" for opposing laws like this.

But the testimony in recent weeks suggests otherwise. Setting aside the federal vs. state debate, here are some of the practical problems associated with Hart's bill, according to lobbyists like Alex LaBeau of the Idaho Association of Commerce and Industry and Brent Olmstead of the Idaho Business Coalition for Immigration Reform:

* Inconsistency of application. Why should two similar businesses - one that needs a license to operate and one that doesn't - be treated differently under the law? In a state that doesn't have a uniform statewide business licensing system, does it really make sense to create a penalty that targets licenses? (Arizona does have a statewide licensing system. Idaho does not.)

* Unintended consequences. Who's going to be responsible if a dairy loses its license for 10 days? Dairy industry representatives told lawmakers that an operation with 1,000 cows produces about 70,000 pounds of milk per day. "Does the county prosecutor come in and take over his farm?" asked Rep. Ken Andrus, R-Lava Hot Springs. "In the case of a dairy, what happens to his cows? Does the Humane Society come in and milk his cows? We're dealing with reality."

* E-Verify is not yet reliable enough for employers to trust. Currently, the system can only be used after an employee has been hired, rather than as a pre-employment screening tool. If a result comes back negative, the worker is allowed to appeal the decision. But the company has to keep the worker on payroll, continue training him and pay taxes. If the

appeal is denied, the employer is never reimbursed for those expenses. That's a huge problem for companies that rely on foreign-born workers, particularly because E-Verify generates a lot of false negatives for workers who are legally allowed to work in the United States under guest worker programs. Yet those companies would face greater legal liability if they didn't use E-Verify.

* It's already illegal not to use I-9s. Ken McClure, a lobbyist for the Milk Producers of Idaho, notes that federal law requires the use of I-9s, but it also prohibits companies from conducting further investigation to verify whether the documents are legitimate. "There may be a sense among some people that employers are consciously, willfully and knowingly hiring undocumented workers," he said. "That's not the case."

* Business climate. What message would this send about Idaho's business climate to legal foreign-born workers? Olmstead mentioned a Magic Valley farm labor organization that recently advertised 1,200 open positions and received 150 applications from domestic workers. And only 100 people turned out to be qualified, while 70 ultimately took the jobs. Idaho continues to face a labor shortage in some areas of agriculture in spite of high overall unemployment in the state (ag was the only sector in Idaho besides health care and education to experience job growth from 2008 to 2009, according to the state Department of Labor). Yet farm workers who are here under legal visas could just as easily go to eastern Washington, Oregon or other states, where they might be less likely to face the headaches associated with E-Verify. If Idaho wants to attract chicken farmers fleeing a new animal cruelty law in California, this could be a deal-killer.

* Legal costs. There's no question that any law like this will come under constitutional challenge, especially considering the potential for unequal enforcement on businesses. Business groups in both Arizona and Oklahoma have spearheaded legal challenges to the laws passed in those states. A federal appeals court has overturned most of Oklahoma's law, while legal challenges continue in Arizona and may eventually reach the U.S. Supreme Court. It's hard to justify hundreds of thousands of dollars in potential legal costs until these legal disputes have been resolved. Why not let Arizona pay for all that work in court?

Hearings on immigration policy will continue this session. Two more bills are likely to come back before committees, including one that requires the mandatory use of E-Verify and another that penalizes employers for using false documents.

Tomlin's right on one thing. The debate already seems to be over.