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The ImagiNE Nebraska tax incentive program, which is proposed by LB 720 as amended by AM 2207, is likely to remain a key point of discussion when the Legislature reconvenes in July. Major concerns about job quality, wages and fiscal sustainability that come with the program remain and will be compounded by a fiscal landscape that has been dramatically altered by the pandemic. Furthermore, the pandemic itself has potentially created a new way for companies to receive incentives for hires they would have made even without incentives. Opportunity exists, however, to change the program to ensure it meets the needs of our state.

Low wages and lack of required benefits still a problem

Presently, LB 720 as amended by AM 2207 does not adequately target high-wage jobs. The minimum wages proposed in AM 2207 start subsidizing businesses to hire employees at $15.58 per hour in 90 counties. This is about 46% *below* the average wage paid across all business sectors in the state, according to the most recent Quarterly Census of Employment and Wages.[1] Furthermore, neither the bill nor the amendment require employers to pay for benefits for their new employees.

Fiscal restraints to reign in the subsidies in the proposal are inadequate

ImagiNE Nebraska lacks fiscal predictability. As noted in a previous brief, the cap proposed in the measure is not really a cap at all, as it would not prevent refunds or credits taken in any year. Also, the Nebraska Attorney General has issued an opinion stating that the cap, which gives the Legislature's Executive Board discretion to authorize more tax incentives should the cap be reached, is unconstitutional as it would violate the separation of powers and that delegating legislative function to a subset of the full Legislature would be an unlawful delegation of the Legislature's authority.[2]

Furthermore, if ImagiNE Nebraska passes, the state would be forgoing revenue to fund three major tax incentive programs. LB 775, which passed in 1985 and sunset in 2005, is still reducing state revenues today and will continue to do so through 2025.[3] Nebraska Advantage, if it were to sunset this year as its statute stipulates, would continue to reduce revenue potentially through 2050, as contracts can last up to 30 years.[4] These two programs alone have combined to reduce revenue by over $200 million in three of

[1] Third quarter 2019 Quarterly Census of Employment and Wages in Nebraska, accessed from https://neworks.nebraska.gov/vosnet/Default.aspx on May 22, 2020.
[2] Nebraska Legislature, "Opinion 20-004," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/Journal/r2journal.pdf#page=765 on May 27, 2020.
[3] Nebraska Department of Revenue, "Nebraska Tax Incentives: 2018 Annual Report to the Nebraska Legislature," accessed at https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/incentives/annual_report/2018_Nebraska_Tax_Incentives.pdf on May 27, 2020.
[4] Nebraska Legislature, "Nebraska Advantage Act Performance on Selected Measures (Page 7)," accessed at https://nebraskalegislature.gov/pdf/reports/audit/advantageact_2019.pdf on May 27, 2020.

the past six years.[5] Adding LB 720 as amended by AM 2270, which is projected to reduce revenue by about $1 billion through FY 31,[6] would exacerbate these revenue losses in the face of a pandemic that is likely to have an immense impact on state finances and on funding for vital state services for years to come. Improving the cap proposed in the measure could help reduce the revenue impact and protect funding for vital services that Nebraskans need now more than ever.

The pros and cons of extending Nebraska Advantage another year

A bill introduced this session -- LB 1034 -- would extend the sunset of Nebraska Advantage Act an additional year. Extending the Nebraska Advantage Act another year would give the Legislature time to address the deficiencies found in LB 720 and to contemplate whether LB 720 is well-suited for the new world in which we live. The measure also strikes the low-wage provisions of the current program. This means new employees hired by companies that receive Nebraska Advantage incentives would have to make at least 100% of the statewide average wage.[7]

A drawback of extending Nebraska Advantage is that the state will continue to build up revenue liability under the program, which is already estimated to reduce state revenues by more than $1.5 billion through 2028.[8] The proposal also doesn't require businesses to pay for benefits for their new employees.

The pandemic presents a new challenge for tax incentives: artificially low base years

When companies apply to Nebraska's tax incentive programs, they promise to increase employment and/or investment from what is called their "base year". The base year is defined in both Nebraska Advantage and the proposed ImagiNE Nebraska Act as the year immediately preceding the application.[9] A company that experiences a reduction in force because of the pandemic might have an advantage in applying for either program, as this reduced workforce will be the basis from which their "new" employment is

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[5] Yearly estimated forgone revenue, including tax credits used, direct refunds, and estimated personal property tax exemptions. Nebraska Department of Revenue, "Nebraska Tax Incentives: 2018 Annual Report to the Nebraska Legislature," accessed at https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/incentives/annual_report/2018_Nebraska_Tax_Incentives.pdf on May 27, 2020.

[6] Nebraska Legislature, "LB 720 Fiscal Note," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/FN/LB720_20200115-143627.pdf on May 27, 2020.

[7] Nebraska Legislature, "LB 1034," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/Intro/LB1034.pdf on May 27, 2020.

[8] Estimated Nebraska Advantage liability for years 2020 through 2028 is based on estimated tax credits used and direct refunds issued. This data is estimated as of the 2018 annual report, the most recent report we have access to. Nebraska Department of Revenue, "Nebraska Tax Incentives: 2018 Annual Report to the Nebraska Legislature," accessed at https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/incentives/annual_report/2018_Nebraska_Tax_Incentives.pdf on May 27, 2020.

[9] Nebraska Legislature, "LB 720," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/Intro/LB720.pdf, on May 27, 2020, and Neb. Rev. Stat. 77-5705, accessed at https://www.nebraskalegislature.gov/laws/statutes.php?statute=77-5705, on May 27, 2020.

counted. Companies that intend to hire back all or most of those laid off during the pandemic could then be subsidized for simply rehiring people they let go amid the pandemic. Furthermore, this could give companies a financial incentive to lay people off to attain a lower base year. Policymakers could prevent such layoffs and ensure taxpayers are not subsidizing pandemic-related rehires by requiring incentive applications over the next few years to consider pre-pandemic employment figures for companies seeking incentives.

Conclusion

Policymakers face a monumental challenge when they return in July. Several large policy issues loom, including taking steps to help Nebraskans weather the pandemic. If tax incentives make the list of issues to be discussed, it will be imperative that legislators ensure any new incentive program is structured in a manner that truly benefits the state and its residents. This is especially important considering a new incentive program would have Nebraska forgo revenue that could be used to fund services that residents are relying on now more than ever.