The ImagiNE Nebraska tax incentive program -- LB 720 as amended by proposed AM 3049 -- will be debated by the Legislature this week. Though the new amendment addresses one issue we have previously raised, concerns about job quality, wages and fiscal sustainability remain and will be compounded by a fiscal landscape that has been dramatically altered by the pandemic. Opportunity exists, however, to change the program to ensure it meets the needs of our state.

Measure addresses pandemic hireback concerns, but low wages and lack of required benefits still a problem

One concern that has been addressed in AM 3049 is that it would prevent companies from being able to receive incentives for rehiring employees laid off because of the pandemic (read more in our May 27 Policy Brief). The bill as amended by AM 3049, however, still fails to adequately target high-wage jobs. The minimum wages proposed in AM 3049 start subsidizing businesses in select industries to hire employees at $15.58 per hour in 90 counties. This is about 55% below the average wage paid across all business sectors in the state, according to the most recent Quarterly Census of Employment and Wages.[1] The minimum wages in the bill are so low that they would qualify a family of four for public benefits such as SNAP, SCHIP and Medicaid Expansion. Furthermore, neither the bill nor the new amendment require employers to pay for benefits for their new employees.

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

Even with AM 3049, ImagiNE Nebraska lacks fiscal predictability. The amendment includes a “cap” (referred to in AM 3049 as the “base authority”) that purports to limit the program’s cost, starting at $100 million for 2021 and 2022 and increasing from there,[2] by requiring the Director of Economic Development to pause the approval of applications in a year in which the base authority is projected to be exceeded. However, the base authority is not really a cap at all, as it can be raised by the Governor at the request of the Director of Economic Development, making it more of a floor than a ceiling. Furthermore, applications would be accepted up until the year when the base authority is projected to be exceeded. This means the program would continue to accrue liability even when it is known that the base authority will be surpassed in a future year. This effectively ensures that the base authority will be exceeded. And even though the base authority in AM 3049 is lower in early program years compared to the previous amendment, it is unlikely the program will ramp up quickly enough to exceed those amounts.

[1] Fourth quarter 2019 Quarterly Census of Employment and Wages in Nebraska, accessed from https://neworks.nebraska.gov/vosnet/Default.aspx on July 17, 2020.

[2] The base authority in AM 3049 is $100 million for years 2021-22, $125 million for 2023-24, $150 million for 2025-26, and 3% of net General Fund receipts in 2027 and beyond. Nebraska Legislature, AM 3049 to LB 720 (2020), accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/AM/AM3049.pdf.

Shifting incentive "cap" oversight also creates accountability concerns

In a prior amendment, AM 2207, the Legislature's Executive Board, rather than the governor, held the ability to raise the base authority. However, the Nebraska Attorney General issued an opinion stating that the previous base authority structure was likely unconstitutional.[3]

In addressing these constitutional concerns, AM 3049 has made the incentive process less transparent. In addition to the Executive Board previously having the responsibility for increasing the base authority, the Department of Economic Development (DED) was required to report the estimated cost of the refunds and tax credits to the Legislature for the upcoming three years, including an analysis of why the base authority was projected to be exceeded and when it was expected to occur. Now, in AM 3049, those estimates and analyses will only be reported to the Governor, eliminating legislative oversight of the process. Furthermore, AM 2207 required the Executive Board to hold a public meeting to discuss overriding the base authority, but the Governor will not be required to do so in AM 3049.

Measure would add to Nebraska's significant incentive liability

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.[4] 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.[5] The two programs alone have combined to create annual revenue losses of about $200 million in four out of the past seven years.[6] Further, the Department of Revenue projects that revenues reduced from Nebraska Advantage will increase significantly for 2020, 2021 and 2022 (read more about our takeaways from the 2019 tax incentive report).[7] Adding

[3] Nebraska Legislature, "Opinion 20-004," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/Journal/r2journal.pdf#page=765 on May 27, 2020.
[4] 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.
[5] 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.
[6] Yearly estimated forgone revenue, including tax credits used and direct sales and use tax refunds. Nebraska Department of Revenue, "Nebraska Tax Incentives: 2019 Annual Report to the Nebraska Legislature," accessed at https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/incentives/annual_report/2019_Incentives_Annual_Report.pdf on July 17, 2020.
[7] The Nebraska Department of Revenue projects Nebraska Advantage will reduce state revenue by $229 million in 2020, $233 million in 2021 and $235 million in 2022. For context, Nebraska Advantage reduced state revenue by an average of about $130 million from 2016-2019. Nebraska Department of Revenue, "Nebraska Tax Incentives: 2019 Annual Report to the Nebraska Legislature," accessed at https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/incentives/annual_report/2019_Incentives_Annual_Report.pdf on July 17, 2020.

LB 720, which is projected to reduce revenue by about $1 billion through FY 31,[8] 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 base authority proposed in the measure could help reduce the revenue impact and protect funding for vital services that Nebraskans need now more than ever.

Further, the proposed AM 3049 incorporates LB 1084 -- the Nebraska Transformational Projects Act -- which funds the University of Nebraska Medical Center NExT project. The addition of this proposal onto LB 720 would further increase its cost, as LB 1084 would provide $300 million in state funding to the project.[9] While another amendment, AM 3097, would reduce the base authority limitation by the amount of funding appropriated for the NExT project, as explained earlier, this authority is easily exceeded.

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.[10]

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 about $1.45 billion through 2029.[11] The proposal also doesn't require businesses to pay for benefits for their new employees.

Conclusion

Policymakers face a monumental challenge and several large policy issues loom, including taking steps to help Nebraskans weather the pandemic. Given this, it is imperative that legislators ensure any new incentive program is structured in a manner that truly benefits the state and its residents.

[8] Nebraska Legislature, "LB 720 Fiscal Note," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/FN/LB720_20200115-143627.pdf on May 27, 2020.
[9] Nebraska Legislature, Fiscal Note for LB 1084, accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/FN/LB1084_20200205-120740.pdf on July 21, 2020.
[10] Nebraska Legislature, "LB 1034," accessed at https://nebraskalegislature.gov/FloorDocs/106/PDF/Intro/LB1034.pdf on May 27, 2020.
[11] Estimated Nebraska Advantage liability for years 2020 through 2029 is based on estimated tax credits used and direct refunds issued. Nebraska Department of Revenue, "Nebraska Tax Incentives: 2019 Annual Report to the Nebraska Legislature," accessed at https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/incentives/annual_report/2019_Incentives_Annual_Report.pdf on July 17, 2020.