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1 HB358

2 ZL84WRW-1

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10 RFD: Ways and Means Education

11 First Read: 21-Mar-24



SYNOPSIS:

This bill creates the employer tax credit, childcare facility tax credit, and nonprofit childcare provider tax credit to incentivize employers to fund childcare for their employees and to enable childcare providers to offer more readily available, affordable, high-quality childcare.

A BILL
TO BE ENTITLED
AN ACT

Relating to childcare and workforce development; to establish the employer tax credit, childcare provider tax credit, and nonprofit childcare provider tax credit; and to make legislative findings.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature hereby makes the following findings of fact and declares its intent to be as follows: Alabama is currently attracting and creating jobs and business investments at a record-setting pace. Despite historically low unemployment rates, Alabama's workforce participation rate ranked among the lowest in the country. One possible barrier to entering the workforce for some Alabamians is a lack of



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29 available, affordable, high-quality childcare. It is the
30 intent of the Legislature, by the passage of this legislation,
31 to encourage more Alabamians to enter the workforce and gain
32 employment by improving the quality and availability of
33 childcare options for working parents. Accordingly, future
34 efforts to extend or reauthorize this act should be preceded
35 by consideration of the effectiveness of this legislation in
36 achieving these policy goals. To this end, once this
37 legislation has had a sufficient opportunity to be implemented
38 and its effects measured, but before extending or
39 reauthorizing this act, the Legislature should request and
40 examine reports from: (1) the Alabama Department of Revenue,
41 to determine the usage of the tax credits; and (2) from the
42 Alabama Department of Labor and the Alabama Department of
43 Commerce, to determine the impact of the tax credits on
44 workforce participation.

45 Section 2. For the purposes of this article, the
46 following terms have the following meanings:

47 (1) APPLICABLE TAXES. An employer's, taxpayer's, or
48 childcare provider's, or in the case of a pass-through entity
49 that is an employer, taxpayer, or childcare provider, such
50 employer's, taxpayer's, or childcare provider's owners', taxes
51 as follows:

52 a. Taxes levied in Chapter 18 of Title 40, Code of
53 Alabama 1975.

54 b. The state portion of taxes levied in Chapter 16 of
55 Title 40, Code of Alabama 1975.

56 c. Taxes levied in Section 27-4A-3(a), Code of Alabama



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57 1975.

58 d. Taxes levied in Article 2 of Chapter 21 of Title 40,
59 Code of Alabama 1975.

60 (2) CHILD or CHILDREN. Individuals who are five years
61 of age or less.

62 (3) CHILDCARE FACILITY. A facility meeting the
63 definition found in Section 38-7-2(7), Code of Alabama 1975,
64 that is licensed by the Department of Human Resources and is
65 participating in the quality rating and improvement system.

66 (4) CHILDCARE PROVIDER. A taxpayer that owns a
67 childcare facility.

68 (5) ELIGIBLE CHILD or ELIGIBLE CHILDREN. Children who
69 participate in the Child Care Subsidy Program administered by
70 the Department of Human Resources and who attend a childcare
71 facility operated by a childcare provider.

72 (6) ELIGIBLE EXPENSES. Expenses incurred by an employer
73 for:

74 a. The construction, renovation, expansion, or repair
75 of a childcare facility, or for the purchase of equipment for
76 such facility, or for the maintenance and operation thereof.

77 b. Payments made to childcare facilities or employees
78 for the provision of childcare at childcare facilities for
79 children of employees.

80 c. Payments made to childcare facilities to reserve
81 services for children of employees.

82 (7) EMPLOYEE. A resident of this state who works on a
83 full-time or part-time basis for an employer. An employee
84 shall include independent contractors engaged by an employer



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and the owners of an employer that also work for such employer on a full-time or part-time basis.

(8) EMPLOYER. A business lawfully operating in this state.

(9) EMPLOYER TAX CREDIT. A refundable tax credit to be applied against applicable taxes for the year in which the eligible expenses are incurred by an employer, equal to the total eligible expenses incurred by the employer, up to one million dollars (\$1,000,000) per year for each employer.

(10) FACILITY TAX CREDIT. A refundable tax credit to be applied against applicable taxes, calculated in accordance with Section 4(a), but not exceeding twenty-five thousand dollars (\$25,000) per year for each child care facility.

(11) NONPROFIT CHILDCARE PROVIDER. An entity that operates a childcare facility or childcare facilities that are not operated for profit, including, but not limited to, church ministry and other religious operators of childcare facilities.

(12) NONPROFIT CHILDCARE PROVIDER TAX CREDIT. A nonrefundable tax credit to be applied against applicable taxes.

(13) OWNER. A shareholder, partner, or member of a pass-through entity.

(14) PASS-THROUGH ENTITY. An Alabama S corporation or a subchapter K entity.

(15) QUALITY RATING. The rating applicable to a child care facility under the quality rating and improvement system.

(16) QUALITY RATING AND IMPROVEMENT SYSTEM. A system of



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the Department of Human Resources known as the Alabama Quality STARS program that measures the quality of child care facilities on a scale of one to five stars, with five stars denoting the highest level of quality.

(17) RURAL AREA. Any area within this state not included within the boundaries of any incorporated city or town having a population in excess of 25,000 inhabitants, according to the last federal decennial census.

(18) STATE. The State of Alabama.

Section 3. (a) Effective for tax years beginning on or after January 1, 2025, and ending December 31, 2029, unless extended by an act of the Legislature, an employer may apply to the Department of Revenue for an employer tax credit to be applied against applicable taxes.

(b) For the calendar year ending December 31, 2025, the employer tax credit is limited to an aggregate amount for all employers of fifteen million dollars (\$15,000,000), which amount shall increase to twenty million dollars (\$20,000,000) for the calendar year ending December 31, 2026, twenty-five million dollars (\$25,000,000) for the calendar year ending December 31, 2027, thirty million dollars (\$30,000,000) for the calendar year ending December 31, 2028, and thirty-five million dollars (\$35,000,000) for the calendar year ending December 31, 2029.

(c) The Department of Revenue shall:

(1) Provide a standardized format for, and require completion of, a certificate to be signed by the employer applying for the employer tax credit, certifying that the



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expenses incurred by the employer were eligible expenses incurred to support the provision of child care at child care facilities for the children of employees.

(2) Require the employer to provide documentation to substantiate to the satisfaction of the Department of Revenue the amount of the employer tax credit applied for pursuant to this section and that the expenses incurred by the employer were eligible expenses incurred to support the provision of child care at child care facilities for the children of employees.

(3) If the employer is a pass-through entity, require that the employer identify the identity and pro rata percentage ownership of its owners.

(d) The Department of Revenue shall award the tax credit to the employer after the employer provides the documentation required in subdivision (c). Failure to provide the documentation required in subdivision (c) shall result in the automatic denial of the employer tax credit.

Section 4. (a) Effective for tax years beginning on or after on January 1, 2025, and ending December 31, 2029, unless extended by an act of the Legislature, a child care provider may apply to the Department of Revenue for a facility tax credit to be applied against applicable taxes, in an amount equal to the average monthly number of eligible children, multiplied by a dollar amount which shall be based upon the quality rating of the child care facility as follows:

(1) Five star quality rating - two thousand dollars (\$2,000) per eligible child.



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(2) Four star quality rating - one thousand seven hundred fifty dollars (\$1,750) per eligible child.

(3) Three star quality rating - one thousand five hundred dollars (\$1,500) per eligible child.

(4) Two star quality rating - one thousand two hundred fifty dollars (\$1,250) per eligible child.

(5) One star quality rating - one thousand dollars (\$1,000) per eligible child.

(b) The facility tax credit is limited to an aggregate amount for all child care providers of five million dollars (\$5,000,000) in a calendar year.

(c) The Department of Revenue shall:

(1) Provide a standardized format for, and require completion of, a certificate to be completed and signed by the child care provider applying for the facility tax credit, certifying each child care provider's ownership of applicable child care facilities, the quality rating of each facility, and the average number of eligible children attending each facility monthly.

(2) Require the child care provider to provide documentation to substantiate to the satisfaction of the Department of Revenue the amount of the facility tax credit applied for pursuant to this section, the quality rating of each applicable child care facility, and the average number of eligible children attending each facility monthly.

(3) If the child care provider is a pass-through entity, require that the child care provider identify the identity and pro rata percentage ownership of its owners.



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(d) The Department of Revenue shall award the facility tax credit to a child care provider after the child care provider provides the documentation required in subdivision (b). Failure to provide the documentation required in subdivision (b) shall result in the automatic denial of the child care facility tax credit.

Section 5. (a) Effective for tax years beginning on or after on January 1, 2025, and ending December 31, 2029, unless extended by an act of the Legislature, a nonprofit child care provider may apply to the Department of Human Resources for nonprofit child care provider tax credits to fund the construction, expansion, improvement, repair, or operation of its child care facility or childcare facilities, so long as such expenses are made in furtherance of the child care services offered at such child care facility and result in increased quality of care and increased capacity for children at such child care facility.

(b) The application provided in subdivision (a) shall include proof that the nonprofit child care provider has in full force and effect a conflict of interest policy consistent with that found in the instructions to Form 1023 issued by the Internal Revenue Service.

(c) The application provided in subdivision (a) shall include a notarized affirmation by an officer of the nonprofit child care provider that the submission of the application did not violate the conflict of interest policy referred to in subdivision (b).

(d) The Department of Human Resources shall consider



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the application provided in subdivision (a) and may approve the application if the applicant and proposed expenses are deemed eligible. The approval of the application by the Department of Human Resources shall specify the amount of money which the nonprofit child care provider is allowed to receive under this section and the Department of Human Resources shall certify such amount to the Department of Revenue.

(e) Following approval by the Department of Human Resources, the Department of Human Resources shall enter into an agreement with the nonprofit child care provider which shall do all of the following:

(1) Require the nonprofit child care provider to use the funding received as a result of this section only for the purposes approved by the Department of Human Resources.

(2) Require the nonprofit child care provider to make periodic reports, not more often than annually, to the Department of Human Resources, on the disposition of the funds. The report shall also include an impact report that will include such metrics as are established by the Department of Human Resources from time to time to measure the impact of the nonprofit child care provider tax credits.

(3) Require the nonprofit child care provider to provide a review of its financial accounts as may be directed by the Department of Human Resources.

(f) A taxpayer is allowed a nonprofit child care provider tax credit to offset applicable taxes equal to the cash contribution made by such taxpayer to a nonprofit child



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care provider which has received an award from the Department of Human Resources, subject to the requirements of this section. In no event shall the nonprofit child care provider tax credit cause a taxpayer's tax liability to be reduced by more than 50 percent. Unused credits may not be transferred but may be carried forward for no more than five years. No nonprofit child care provider shall be eligible to receive more than fifty thousand dollars (\$50,000) under this section during a single calendar year.

(g) Nonprofit child care provider tax credits shall be granted to taxpayers using an online system administered by the Department of Revenue. The online system shall allow taxpayers to agree to make a cash contribution, up to an amount certified by the Department of Human Resources to the Department of Revenue, to a nonprofit child care provider which has received an award from the Department of Human Resources. The online system shall ensure that credits are not granted for cash contributions to a nonprofit child care provider in excess of the amounts certified by the Department of Human Resources.

(h) The aggregate amount of funding approved pursuant to this section shall not exceed five million dollars (\$5,000,000) in a calendar year.

(i) To the extent that a nonprofit child care provider tax credit is used by a taxpayer, the taxpayer shall not be allowed any deduction that would have otherwise been allowed for the taxpayer's contribution. Nonprofit child care provider tax credits may only be claimed by the donating taxpayer and



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may not be assigned or transferred to any other taxpayer. For purposes of this section, a donating taxpayer includes a taxpayer who is a pass-through entity that made a cash contribution to a nonprofit child care provider which was approved by the Department of Human Resources.

Section 6. (a) The Department of Human Resources shall adopt rules on or before January 1, 2025, for the implementation and administration of Sections 3, 4, 5, and 6. Such rules shall ensure: (i) that at least 25 percent of the amounts specified in Section 3(b) are reserved for awards to small businesses or employers that are headquartered in rural areas and at least 25 percent of the amounts specified in Section 4(b) are reserved for awards to child care providers operating child care facilities exclusively in rural areas; (ii) that in the event the Department of Human Resources does not receive applications for and, thereby does not allocate, the reserved tax credits by the close of the second quarter of the calendar year, the funds may revert for allocations to other applications; (iii) that employer tax credits and facility tax credits shall be awarded based on the order in which they are requested by employers and child care providers, respectively; and (iv) that the employer tax credits shall not be awarded to employers who cannot demonstrate that they prioritize the payment of eligible expenses for the benefit of employees that are eligible for earned income tax credit under the Internal Revenue Code of 1986 as amended, if any.



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(b) Employer tax credits and facility tax credits may only be claimed by an employer or child care provider, or a taxpayer who is an owner of a pass-through entity that is an employer or child care provider, but may not be otherwise assigned or transferred to any other taxpayer. A taxpayer who is an owner of a pass-through entity that is an employer or child care provider may only claim the pro rata share of the employer tax credit or facility tax credit, respectively, equal to their percentage ownership of the employer or child care provider.

(c) Where the applicable taxes owed by the employer or child care provider are less than the employer tax credit or facility tax credit received by such entities, the employer or child care provider shall be entitled to claim a refund for the difference but may not carry the employer tax credit or facility tax credit forward for additional tax years. In the case of owners of pass-through entities where the taxes owed by such persons are less than their pro rata share of the employer tax credit or facility tax credit received, such persons shall be entitled to claim a refund for only the pro rata share of the employer tax credit or facility tax credit such persons receive in the tax year for which the employer tax credits or facility tax credits are awarded.

(d) The Department of Revenue shall also prescribe the various methods by which employer tax credits or facility tax credits are to be issued to employers and child care providers. Refunds under Section 6(c) of employer tax credits and facility tax credits that are awarded against the taxes



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referenced in Section 2(a)(1) of this article shall be paid out of sales tax collections made to the Education Trust Fund and set aside by the Comptroller in the Child Care Tax Credit Account created in subsection (e), in the same manner as refunds of such taxes otherwise provided by law, and there is hereby appropriated therefrom, for such purpose, so much as may be necessary to annually pay for such tax credits as provided by this article.

(e) There is created within the Education Trust Fund a separate account named the Child Care Tax Credit Account for the payment of any refunds under Section 6(c) of employer tax credits or facility tax credits awarded against the taxes referenced in Section 2(a)(1) of this article. The Commissioner of Revenue shall certify to the Comptroller the amount of such tax credit refunds due to employers and child care providers under this section and the Comptroller shall transfer into the Child Care Tax Credit Account only the amount from sales tax revenues within the Education Trust Fund that is sufficient for the Department of Revenue to use to cover the refunds for the applicable tax year. The Commissioner of Revenue shall distribute the funds in the Child Care Tax Credit Account to employers and child care providers pursuant to this article.

(f) The Alabama Department of Finance shall adopt rules to ensure that the employer tax credit, facility tax credit, and nonprofit child care provider tax credit would not, in any case, reduce the distribution for the Alabama Special Mental Health Trust Fund by using any unencumbered funds to ensure



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that the employer tax credit, facility tax credit, and nonprofit child care provider tax credit shall not be limited, prevented, or reduced.

Section 7. (a) All filings and applications made with the Department of Human Resources in relation to the employer tax credit, the facility tax credit, or the nonprofit child care provider tax credit shall be made using forms adopted by the Department of Human Resources. Such applications and filings shall be treated as tax returns, subject to penalties imposed by the Department of Human Resources.

(b) Nothing in this article shall be construed to constitute a guarantee or assumption by the state of any debt of any company nor to authorize the credit of the state to be given, pledged, or loaned to any company.

(c) Nothing in this article shall be construed to make available to any taxpayer any right to the benefits conferred by this article absent strict compliance with this article.

Section 8. This act shall become effective on January 1, 2025.