

HB358 INTRODUCED



1 HB358

2 ZL84WRW-1

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10 RFD: Ways and Means Education

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

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

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

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

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

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

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

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

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

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



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

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

121 (18) STATE. The State of Alabama.

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

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

137 (c) The Department of Revenue shall:

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



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

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

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

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

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

167 (1) Five star quality rating - two thousand dollars
168 (\$2,000) per eligible child.



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

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

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

175 (5) One star quality rating - one thousand dollars
176 (\$1,000) per eligible child.

177 (b) The facility tax credit is limited to an aggregate
178 amount for all child care providers of five million dollars
179 (\$5,000,000) in a calendar year.

180 (c) The Department of Revenue shall:

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

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

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



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

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

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

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

224 (d) The Department of Human Resources shall consider



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

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

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

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

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

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



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

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

273 (h) The aggregate amount of funding approved pursuant
274 to this section shall not exceed five million dollars
275 (\$5,000,000) in a calendar year.

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



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

286 Section 6. (a) The Department of Human Resources shall
287 adopt rules on or before January 1, 2025, for the
288 implementation and administration of Sections 3, 4, 5, and 6.
289 Such rules shall ensure: (i) that at least 25 percent of the
290 amounts specified in Section 3(b) are reserved for awards to
291 small businesses or employers that are headquartered in rural
292 areas and at least 25 percent of the amounts specified in
293 Section 4(b) are reserved for awards to child care providers
294 operating child care facilities exclusively in rural areas;
295 (ii) that in the event the Department of Human Resources does
296 not receive applications for and, thereby does not allocate,
297 the reserved tax credits by the close of the second quarter of
298 the calendar year, the funds may revert for allocations to
299 other applications; (iii) that employer tax credits and
300 facility tax credits shall be awarded based on the order in
301 which they are requested by employers and child care
302 providers, respectively; and (iv) that the employer tax
303 credits shall not be awarded to employers who cannot
304 demonstrate that they prioritize the payment of eligible
305 expenses for the benefit of employees that are eligible for
306 earned income tax credit under the Internal Revenue Code of
307 1986 as amended, if any.

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

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

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



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

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

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



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

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

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

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

382 Section 8. This act shall become effective on January
383 1, 2025.

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