

SB273 INTRODUCED



1 E01X92-1
2 By Senator Gudger
3 RFD: Finance and Taxation Education
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5
6 2023 Regular Session



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SYNOPSIS:

This bill creates the employer tax credit and child care facility tax credit to incentivize employers to fund child care for their employees and provide for more readily available, affordable, high quality child care.

A BILL
TO BE ENTITLED
AN ACT

Relating to child care and workforce development; to establish the employer tax credit and child care provider tax credit; to make legislative findings.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Legislative findings and declaration of intent. 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 available, affordable, high-quality child care. It is the



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

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

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

50 (1) Taxes levied in Chapter 18 of Title 40.

51 (2) The state portion of the taxes levied in Chapter 16
52 of Title 40.

53 (3) Taxes levied in subsection (a) of Section 27-4A-3.

54 (4) Taxes levied in Article 2 of Chapter 21 of Title
55 40.

56 (b) CHILD or CHILDREN. Individuals who are five years



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57 of age or less.

58 (c) CHILD CARE FACILITY. A facility meeting the
59 definition found in Section 38-7-2(7), Code of Alabama 1975,
60 which is licensed by the Department of Human Resources and is
61 participating in the quality rating and improvement system.

62 (d) CHILD CARE PROVIDER. A taxpayer that owns a child
63 care facility.

64 (e) ELIGIBLE CHILD or ELIGIBLE CHILDREN. Children who
65 participate in the Child Care Subsidy Program administered by
66 the Department of Human Resources and who attend a child care
67 facility operated by a child care provider.

68 (f) ELIGIBLE EXPENSES. Expenses incurred by an employer
69 for:

70 (1) The construction, renovation, expansion, or repair
71 of a child care facility, or for the purchase of equipment for
72 such facility, or for the maintenance and operation thereof.

73 (2) Payments made to child care facilities or employees
74 for the provision of child care at child care facilities for
75 children of employees.

76 (3) Payments made to child care facilities to reserve
77 services for children of employees.

78 (g) EMPLOYEE. A resident of this state who works on a
79 full-time or part-time basis for an employer including, but
80 not limited to independent contractors engaged by an employer
81 and the member or members of a limited liability company that
82 work for an employer.

83 (h) EMPLOYER. A business with an employee or employees.

84 (i) EMPLOYER TAX CREDIT. A refundable tax credit to be



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85 applied against applicable taxes for the year in which such
86 eligible expenses are incurred by an employer, equal to the
87 total eligible expenses incurred by such employer, up to one
88 million dollars (\$1,000,000) per year for each employer.

89 (j) FACILITY TAX CREDIT. A refundable tax credit to be
90 applied against applicable taxes, calculated in accordance
91 with subsection (a) of Section 4 of this article, but not
92 exceeding twenty-five thousand dollars (\$25,000) per year for
93 each child care facility.

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

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

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

100 (n) QUALITY RATING AND IMPROVEMENT SYSTEM. A system of
101 the Department of Human Resources which is known as the
102 Alabama Quality STARS program and which measures the quality
103 of child care facilities on a scale of one to five stars, with
104 five stars denoting the highest level of quality.

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

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

111 (p) STATE. The State of Alabama.



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112 Section 3. (a) Effective for tax years beginning on or
113 after January 1, 2024, and ending December 31, 2028, unless
114 extended by an act of the Legislature, an employer may apply
115 to the Department of Revenue for an employer tax credit to be
116 applied against applicable taxes.

117 (b) The employer tax credit is limited to an aggregate
118 amount for all employers of fifteen million dollars
119 (\$15,000,000) annually.

120 (c) The Department of Revenue shall:

121 (1) Provide a standardized format for, and require
122 completion of, a certificate to be completed and signed by the
123 employer applying for the employer tax credit, certifying that
124 the expenses incurred by the employer were eligible expenses
125 incurred to support the provision of child care at child care
126 facilities for the children of employees.

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

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

137 (d) The Department of Revenue shall award the employer
138 tax credit to the employer after the employer provides the
139 documentation required in subsection (c) of this section.



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140 Failure to provide the documentation required by subsection
141 (c) shall result in the automatic denial of the employer tax
142 credit.

143 Section 4. (a) Effective for tax years beginning on or
144 after on January 1, 2024, and ending December 31, 2028, unless
145 extended by an act of the Legislature, a child care provider
146 may apply to the Department of Revenue for a facility tax
147 credit to be applied against applicable taxes, in an amount
148 equal to the average monthly number of eligible children,
149 multiplied by a dollar amount which shall be based upon the
150 quality rating of such child care facility as follows:

151 (1) Five star quality rating - \$2,000 per eligible
152 child.

153 (2) Four star quality rating - \$1,750 per eligible
154 child.

155 (3) Three star quality rating - \$1,500 per eligible
156 child.

157 (4) Two star quality rating - \$1,250 per eligible
158 child.

159 (5) One star quality rating - \$1,000 per eligible
160 child.

161 (b) The facility tax credit is limited to an aggregate
162 amount for all child care providers of five million dollars
163 (\$5,000,000) annually.

164 (c) The Department of Revenue shall:

165 (1) Provide a standardized format for, and require
166 completion of, a certificate to be completed and signed by the
167 child care provider applying for the facility tax credit,



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168 certifying each child care provider's ownership of applicable
169 child care facilities, the quality rating of each such
170 facility, and the average number of eligible children
171 attending each such facility monthly.

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

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

181 (d) The Department of Revenue shall award the facility
182 tax credit to a child care provider after the child care
183 provider provides the documentation required in subsection
184 (c). Failure to provide the documentation required by
185 subsection (c) shall result in the automatic denial of the
186 child care facility tax credit.

187 Section 5. (a) The Department of Revenue shall adopt
188 rules on or before January 1, 2024, for the implementation and
189 administration of this bill. Such rules shall ensure that the
190 employer tax credit and facility tax credit would not, in any
191 case, reduce the distribution for the Alabama Special Mental
192 Health Trust Fund by using any unencumbered funds; that at
193 least 25 percent of the amounts specified in subsection (b) of
194 Section 3 are reserved for some period for awards to employers
195 headquartered in rural areas and at least 25 percent of the



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196 amounts specified in subsection (b) of Section 4 are reserved
197 for some period for awards to child care providers operating
198 child care facilities exclusively in rural areas; and that
199 employer tax credits and facility tax credits shall be awarded
200 based on the order in which they are requested by employers
201 and child care providers, respectively.

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

212 (c) Where the applicable taxes owed by the employer or
213 child care provider are less than the employer tax credit or
214 facility tax credit received by such entities, the employer or
215 child care provider shall be entitled to claim a refund for
216 the difference, but may not carry the employer tax credit or
217 facility tax credit forward for additional tax years. In the
218 case of owners of pass-through entities, where the taxes owed
219 by the persons are less than their pro rata share of the
220 employer tax credit or facility tax credit received by such
221 persons, such persons shall be entitled to claim a refund for
222 only the pro rata share of the employer tax credit or facility



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223 tax credit they receive in the tax year for which the employer
224 tax credits or facility tax credits are awarded.

225 (d) The Department of Revenue shall also prescribe the
226 various methods by which employer tax credits or facility tax
227 credits are to be issued to employers and child care
228 providers. Refunds under Section 5(c) of employer tax credits
229 and facility tax credits that are awarded against the taxes
230 referenced in Section 2(a)(1) of this article shall be paid
231 out of sales tax collections made to the Education Trust Fund
232 and set aside by the State Comptroller in the Child Care Tax
233 Credit Account created in subsection (e), in the same manner
234 as refunds of such taxes otherwise provided by law, and there
235 is hereby appropriated therefrom, for such purpose, so much as
236 may be necessary to annually pay for such tax credits as
237 provided by this article.

238 (e) There is created within the Education Trust Fund a
239 separate account named the Child Care Tax Credit Account for
240 the payment of any refunds under Section 5(c) of employer tax
241 credits or facility tax credits awarded against the taxes
242 referenced in Section 2(a)(1) of this article. The
243 Commissioner of Revenue shall certify to the State Comptroller
244 the amount of such tax credit refunds due to employers and
245 child care providers under this section and the State
246 Comptroller shall transfer into the Child Care Tax Credit
247 Account only the amount from sales tax revenues within the
248 Education Trust Fund that is sufficient for the Department of
249 Revenue to use to cover the refunds for the applicable tax
250 year. The Commissioner of Revenue shall distribute the funds



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251 in the Child Care Tax Credit Account to employers and child
252 care providers pursuant to this article.

253 Section 6. (a) All filings and applications made with
254 the Department of Revenue in relation to the employer tax
255 credit and the child care tax credit shall be made using forms
256 adopted by the Department of Revenue. Such applications and
257 filings shall be treated as tax returns, subject to penalties
258 imposed by the Department of Revenue.

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

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

266 Section 7. This act shall become effective on the first
267 day of the third month following its passage and approval by
268 the Governor, or its otherwise becoming law.