

# HB368 INTRODUCED



1 K2PYAU-1

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6 RFD: Ways and Means Education

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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.