

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5506

FISCAL
NOTE

By Delegates Crouse, Young, Moore, Dittman, W.
Hall, DeVault, Winzenreid, Lucas, Ward, Mazzocchi,
and Petitto

[Introduced February 07, 2024; Referred to the
Committee on Senior, Children, and Family Issues
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §49-12-101, §49-12-102, §49-12-103, §49-12-104, §49-12-105, §49-12-106,
 3 §49-12-107, and §49-12-108, relating to the Employee Child Care Assistance Partnership
 4 Program; establishing findings; defining terms; establishing program and the duties and
 5 powers of the Department of Human Services; providing authorization for rulemaking;
 6 establishing the Employee Child Care Assistance Partnership Program Fund; establishing
 7 requirements for distributions from fund; establishing parameters for contracts between
 8 employers, employees, and the department; providing circumstances under which
 9 contracts created for program be terminated; and allowing program be incorporated into
 10 contracts for economic development incentives provided by the Department of Economic
 11 Development.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. EMPLOYEE CHILD CARE ASSISTANCE PARTNERSHIP PROGRAM.

§49-12-101. Legislative findings and declarations.

1 The Legislature finds and declares that the purpose of this article is to support West
 2 Virginia families by incentivizing employers to contribute to the child-care costs of its employees.
 3 In enacting this legislation, it is the intention of the Legislature to enable the Department of Human
 4 Services to facilitate this public and private partnership pilot program, herein known as the
 5 Employee Child Care Assistance Partnership, and administer program funds to achieve this
 6 purpose.

§49-12-102. Definitions.

1 As used in this article:
 2 (1) "Department" means the Department of Human Services;
 3 (2) "Child-care center" or "center" is a facility maintained by the state or any county or
 4 municipality thereof, or any agency or facility operated by an individual, firm, corporation,
 5 association or organization, public or private, for the care of 13 or more children for child care

6 services in any setting, if the facility is open for more than 30 days per year per child;

7 (3) "Contribution" means a direct payment to a child-care center either directly by an
8 employer or through a third-party vendor to subsidize an employee's eligible child-care costs;

9 (4) "Eligible child-care costs" means costs to be incurred by an individual for services
10 rendered by an eligible child-care center;

11 (5) "Employee" means an individual who works in West Virginia and is employed by an
12 employer;

13 (6) "Employer" means a nonprofit or for-profit entity with at least one employee who works
14 in West Virginia in each of 20 or more calendar weeks in the current or preceding calendar year;

15 (7) "Fund" means the fund administered by the department as described in §49-12-105 of
16 this code;

17 (8) "Program" means the Employee Child Care Assistance Partnership Program;

18 (9) "Small business" means a business with fewer than 50 employees who are individually
19 contracted to work more than 35 hours per week;

20 (10) "State match" means the money paid directly to the child-care center by the
21 department from the fund described in §49-12-105 of this code; and

22 (11) "State median household income" means the most recent estimate available of real
23 median household income for the state, as determined by the United States Census Bureau, and
24 adjusted for family size.

§49-12-103. Employee Child Care Assistance Partnership Program; powers and duties of department.

1 (a) The Employee Child Care Assistance Partnership Program is hereby established under
2 the department. To administer the program, the department may:

3 (1) Delegate authority to a subsidiary department, division, or bureau;

4 (2) Coordinate and share information with other executive branch agencies; and

5 (3) Enter into contracts with third parties to administer the program or specific parts of the

6 program.

7 (b) The department shall be responsible for:

8 (1) Creating and making available a standardized contract for participation in the program;

9 (2) Processing the contract between an employer, employee, and child-care center that is
10 submitted to the department;

11 (3) Notifying the parties of their enrollment status in the program;

12 (4) Managing and administering the program funds;

13 (5) Securing third-party vendors in accordance with all applicable federal and state
14 procurement regulations, if deemed necessary;

15 (6) Verifying the eligibility of the respective employee, employer, and child-care center as
16 parties to a contract for participation in the program prior to disbursement of a state match;

17 (7) Collecting and verifying household income information from eligible employees and
18 determining the amount of the state match for which the employee is eligible; and

19 (8) Distributing educational materials about the program's objectives, benefits, and
20 eligibility requirements to employers, employees, and child-care centers.

21 (c) The department shall review the completed contract after it is submitted by the
22 employer and, if the employee, employer, and the proposed child-care center meet program
23 eligibility requirements, agree to match the contribution made by the employer up to 100 percent of
24 the cost of service from the fund.

25 (d) The department shall only become party to a proposed contract under this program if
26 the fund reflects a positive balance based on both:

27 (1) The department's existing contractual obligations already accrued under this program;

28 and

29 (2) The department's additional financial obligation imposed by the proposed contract.

30 (e) The department shall not agree to become party to a proposed contract pursuant to this
31 program if the corresponding financial obligation would cause the fund to accrue a negative

32 balance.

33 (f) The department shall maintain a waitlist of contracts submitted after available funds
34 were committed. The department shall become party to a proposed contract from the waitlist as
35 new funds become available and according to the order in which it was received.

36 (g) The department shall issue a state match directly to the child-care center or through a
37 third-party vendor for the duration of the contract.

38 (h) The department shall not disclose an employee's personal information without that
39 individual's express written consent.

40 (i) In the first fiscal year of the program, the department shall administer the program
41 according to the following:

42 (1) The department shall begin administering the program after July 1, 2024, including but
43 not limited to:

44 (A) Promulgating the required administrative rules as described in §49-12-104 of this code;
45 and

46 (B) Soliciting third-party vendor contracts, if deemed necessary;

47 (2) The department shall not begin accepting proposed contracts from employers pursuant
48 to this program before April 1, 2025; and

49 (3) The department shall not disburse state matches from the fund as a party to a contract
50 with an employer, employee, and child-care center pursuant to this program prior to July 1, 2025.

51 (j) Beginning in 2026 and every year thereafter, the department shall begin accepting
52 proposed contracts from employers, employees, and child-care centers for the next fiscal year
53 according to the following:

54 (1) Beginning April 1 for employers with existing approved contracts pursuant to the
55 program; and

56 (2) Beginning May 15 for all other employers.

57 (k) Beginning July 15, 2026, and every year thereafter, the department shall publish

58 reports detailing the efficacy of the program by July 15 and December 15 of each year and shall
59 submit the report to the Joint Committee on Government and Finance. The report shall include at
60 least the following information about the program:

61 (1) Any appropriation made in the past fiscal year to the fund;

62 (2) The total number of standardized contracts submitted by employers;

63 (3) The total amount of state matches paid out of the fund by the department;

64 (4) The breakdown of the state matches paid by county;

65 (5) Information on the size, geographical location, and industry type of employers who
66 participated in the program;

67 (6) The number, license type, quality rating, and geographical distribution of participating
68 child-care centers;

69 (7) The average cost for services charged by child-care centers participating in the
70 program and information on how these costs have increased or decreased during the most recent
71 reporting period and previous reporting periods;

72 (8) The number and total dollar value of contracts not approved by the department; and

73 (9) The demographic information of employees participating in the program.

74 (l) On or before December 31, 2024, the department shall publish a report detailing
75 implementation plans for the program and submit the report to the Joint Committee on
76 Government and Finance and the Governor.

§49-12-104. Administrative rules.

1 The department, or its designated department, division, or bureau, shall propose rules for
2 legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to effectuate
3 the provisions of this article, including:

4 (1) Creating a standardized agreement for employers, employees, and centers wishing to
5 participate in the program, to be completed and agreed to by each respective party that includes:

6 (A) Name, physical location, size, and industry of the employer;

- 7 (B) Name and phone number of the employer's point of contact;
- 8 (C) Name and physical location of the child-care center;
- 9 (D) Name and phone number of the child-care center's point of contact;
- 10 (E) Name and home address of the employee;
- 11 (F) Total contribution to be paid by the employer to the center, either directly or through a
12 third-party vendor;
- 13 (G) Total amount of the state match to be paid to the center, either directly or through a
14 third-party vendor;
- 15 (H) Duration of the contract, which shall not last beyond the end of the state's fiscal year in
16 any given year;
- 17 (I) Frequency of the contribution to be made directly to the child-care center in accordance
18 with the center's established billing cycle; and
- 19 (J) Demographic information of the employee.
- 20 (2) Establishing eligibility verification procedures for the following parties as a prerequisite
21 for the department entering the agreement as a party and issuing a state match:
 - 22 (A) Employer's enrollment in the program;
 - 23 (B) Employee's eligibility; and
 - 24 (C) Child-care center's eligibility;
- 25 (3) Collecting and verifying household income information from eligible employees and
26 determining the amount of the state match for which the employee is eligible in accordance with
27 §49-12-105 of this code;
- 28 (4) Creating procedures for issuing a notice to all parties to the agreement of their
29 enrollment in the program upon receiving and processing the contract and determining eligibility;
- 30 (5) Compiling confidentiality protocols for the department and its designated department,
31 division, or bureau to safeguard the personal information of participating employees, employers,
32 and child-care centers;

33 (6) Introducing reporting requirements for an employer or a child-care center reporting a
34 lapse or nonpayment of contribution towards eligible child-care services;

35 (7) Creating procedures for issuing and logging a state match to child-care centers
36 pursuant to the respective contract;

37 (8) Maintaining records of the fund in the fiscal year and all payments;

38 (9) Creating criteria for participant disqualification from the program;

39 (10) Establishing procedures for appeals hearings; and

40 (11) Establishing procedures for recouping state matches or portions of state matches that
41 result in overpayments to participating child-care centers.

§49-12-105. Employee Child Care Assistance Partnership Program Fund.

1 (a) There is hereby established in the State Treasury a revolving account to be known as
2 the Employee Child Care Assistance Partnership Program Fund. The fund shall consist of moneys
3 appropriated by the Legislature, contributions, gifts, or grants made available for the purposes of
4 the program.

5 (b) The fund shall be administered by the department or its designated department,
6 division, or bureau.

7 (c) Any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall
8 be carried forward to the next fiscal year.

9 (d) Any interest earnings of the fund shall become a part of the fund and shall not lapse.

10 (e) Moneys deposited in the fund are hereby appropriated for the purposes set forth in §49-
11 12-101 et seq. of this code and shall not be appropriated or transferred by the Legislature for any
12 other purpose.

13 (f) The department shall issue state matches out of the fund to child-care centers in
14 accordance with the provisions of the respective contracts and in the order that the department
15 processed the contracts.

16 (g) (1) The state match shall not exceed 100% of the contribution made by the employer for

17 contracts in which the employee's household income is equal to or less than 100% of the state
18 median household income.

19 (2) The state match shall decrease by 10 percent for each 20 percent increase in
20 household income over 100 percent of the state median household income up to 180 percent of
21 the state median household income.

22 (3) The state match shall equal 50 percent for contracts in which the employee's household
23 income exceeds 180 percent of the state median household income.

24 (h) In each fiscal year, 25 percent of the total fund shall be distributed to agreements in
25 which an employer is a small business.

26 (i) In fiscal year 2024-2025, five percent of the total fund shall be distributed to the
27 department to administer the program. In every fiscal year thereafter, three percent of the total
28 fund shall be distributed to the department to administer the program.

29 (j) A state match issued pursuant to this program and administered by the department is for
30 the promotion of the general welfare and shall not be considered compensation for an employee.

§49-12-106. Participation by employer and employee; contract; payment for costs of service.

1 (a) If an employer wishes to provide child-care assistance to an employee as a benefit of
2 employment and participate in this program, the employer may enter into an agreement with its
3 employee and a child-care center using the standardized contract provided by the department.

4 (b) To participate in the program, an employer shall do the following:

5 (1) Obtain the standardized contract created by the department and enter into it with the
6 employee and child-care center;

7 (2) Submit the proposed contract to the department;

8 (3) Submit any additional information as deemed necessary by the department pursuant to
9 §49-12-104 of this code; and

10 (4) Make contributions to the employee's eligible child-care costs directly to the child-care

11 center or through a third-party vendor in accordance with the amount and frequency agreed to in
12 the final contract.

13 (c) To participate in the program, an employee shall complete the standardized contract
14 with the employer and the child-care center and provide any additional information as deemed
15 necessary by the department pursuant to §49-12-104 of this code.

16 (d) In the event that the agreement includes costs of service not covered by the employer's
17 contribution and the state match, the employee shall make payments to the child-care center
18 according to the amount and frequency determined by the final contract. If another member of the
19 employee's household or family becomes a party to an agreement in accordance with this article,
20 the employer contribution and state match of that agreement may be utilized to pay for costs of
21 service not covered by the employer contribution and state match of the preceding agreement,
22 provided that it does not result in overpayment to the center.

§49-12-107. Termination of active contract.

1 (a) Termination of an active contract between an employer, employee, child-care center,
2 and the department pursuant to this program shall occur in the following circumstances:

3 (1) If the relationship between the employee and employer is severed, the employer shall
4 notify the child-care center and the department within three business days of the separation, and
5 the contract is terminated on the calendar date provided by the employer in the notification. If the
6 employer fails to make this notification and the department issues a state match to the center on
7 behalf of that employer's employee, then the employer shall reimburse the department for the
8 unnecessary state match; or

9 (2) If the employer fails to make a contribution or contributions for the eligible child-care
10 costs in accordance to the terms of the contract, the child-care center shall notify the department
11 within five business days. After receiving notification from the center, the department shall
12 temporarily cease providing a state match and shall notify the employer that the contract will be
13 terminated unless the employer remedies the nonpayment within five business days of receiving

14 notification from the department. If the center fails to make this notification and receives a state
15 match from the department on behalf of that employer's employee, the center shall reimburse the
16 department for the unnecessary state match.

17 (b) Termination of an active contract between an employer, employee, child-care center,
18 and the department pursuant to this program may occur in the following circumstances:

19 (1) If the employee fails to pay the child-care center for costs not covered by the employer
20 contribution and the state match in accordance to the terms of the contract, the child-care center
21 may give the employee reasonable time to remedy the nonpayment. The child-care center may
22 notify the department and terminate the contract on the date that the notification was issued. If the
23 child-care center voluntarily excuses the employee's nonpayment or the child-care center does
24 not notify the department within two calendar months from the date of the employee's nonpayment
25 and continues to provide services, then the contract made between all the parties will
26 automatically reflect the reduction in value;

27 (2) If the child-care center ceases participation, it shall notify all parties to the agreement
28 immediately; and

29 (3) The employer, employee, or child-care center may terminate the contract at any time
30 and for any reason. The terminating party shall notify all the parties to the contract and specify the
31 desired termination date, which shall occur no sooner than two weeks from the date of notification
32 unless the child-care center gives its consent to an earlier termination date. All parties to the
33 contract shall be financially obligated, according to the provisions of the contract, up to the
34 termination date.

§49-12-108. Incorporation into economic development agreements.

1 The Department of Economic Development may coordinate with the Department of
2 Human Services to incorporate this program into agreements with employers seeking economic
3 development incentives, if the employer agrees to participate in the program.

NOTE: The purpose of this bill is to establish the Employee Child Care Assistance Partnership Program.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.