DAVID Y. IGE
GOVERNOR

LAUREN MORIGUCHI
DIRECTOR

STATE OF HAWAI'I
Executive Office on Early Learning
1390 Miller Street, Room 303
HONOLULU, HAWAI'I 96813

February 21, 2018

TO: Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice-Chair
Senate Committee on Ways and Means

FROM: Lauren Moriguchi, Director
Executive Office on Early Learning

SUBJECT: **Measure:** S.B. No. 2905, S.D. 1 – Relating to On-site Early Childhood Facilities
Hearing Date: February 21, 2018
Time: 10:08 a.m.
Location: Room 211

Purpose of Bill: Establishes an income tax credit for employers who create on-site early childhood facilities. Establishes and appropriates funds for one on-site early childhood facility coordinator position. Applies to taxable years after 12/31/2018. Effective 7/1/2019.

EXECUTIVE OFFICE ON EARLY LEARNING'S POSITION: The Executive Office on Early Learning (EOEL) supports the intent of S.B. No. 2905, S.D. 1.

EOEL is statutorily responsible for the development of the State's early childhood system, which shall a spectrum of high-quality development and learning opportunities for children throughout the state, from prenatal care until the time they enter kindergarten, with priority given to underserved or at-risk children.

We support the intent of the bill to increase capacity for, and access to, high-quality early learning programs by incentivizing employers to develop on-site facilities. We believe that partnering with the private sector is the most cost-effective, time-efficient means for the State to increase access to early learning opportunities.

Thank you for the opportunity to provide testimony on this bill.

DAVID Y. IGE
GOVERNOR

PANKAJ BHANOT
DIRECTOR

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DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
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February 19, 2018

TO: The Honorable Senator Donovan Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2905 SD1 – RELATING TO ON-SITE EARLY CHILDHOOD FACILITIES**

Hearing: Wednesday, February 21, 2018, 10:08 a.m.
Conference Room 211, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill to expand capacity and access for Hawaii's families to early childhood facilities. DHS requests that DHS not be named the entity to determine whether the employer, which may not be the operator of the early childhood facility, qualifies for an income tax credit. DHS is the regulatory authority for all licensed and registered child care facilities and homes statewide, and currently does not have staffing resources to devote to this proposed program.

PURPOSE: The purposes of this bill are to establish an income tax credit for employers who create on-site early childhood facilities and to establish and appropriate funds for one on-site early childhood facility coordinator.

The Senate committees on Education, Labor, and Human Services amended the measure, per Standing Committee Report Number 2502, by:

(1) Clarifying the use of the term 'qualified costs' throughout the measure;

(2) Exempting employers who close an early childhood facility before the minimum of ten years from credit recapture if the Department of Human Services certifies that the employer closed the facility for reasonable cause;

(3) Inserting a blank annual aggregate cap for the on-site early childhood facility tax credit;

(4) Inserting an effective date of July 1, 2019; and

(5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The primary focus of DHS child care licensing program is on the health and safety of all children in care. DHS has regulatory authority under Part VIII of chapter 346, Hawaii Revised Statutes (HRS), for the minimum health and safety standards for approximately 1,000 licensed and registered child care facilities and homes statewide.

The department's child care licensing staff also collect the fingerprint samples and conduct comprehensive background checks, including state and federal fingerprint checks, state and national sex offender registry checks, child abuse and neglect registry check, and adult abuse perpetrator checks, for individual working at or living in child care facilities and homes, including providers who are legally exempt from regulation and are caring for a child whose family receives a child care subsidy from DHS.

As required by the federal Child Care and Development Fund (CCDF) block grant, by the end of calendar year 2018, DHS expects to start monitoring possibly 1,000 non-relative providers, who are legally exempt from regulation and are caring for a child whose family receives a child care subsidy from DHS, for minimum health and safety standards that are being established by DHS. The child care licensing staff also investigate complaints regarding possible illegal child care operations or regulated providers who are in violation of the statute or administrative requirements.

DHS respectfully requests that the Committee considers designating another entity to establish the criteria and administrative rules to determine whether the employer, which may not be the operator of the early childhood facility, qualifies for the proposed income tax credit. DHS would certainly be able to provide another entity with the information as to the status of the child care facility's license upon request from another entity in order for the entity to determine if the licensure requirement is met to be eligible for the tax credit. However, please consider this would add an administrative process.

If the proposed bill were to pass as drafted, DHS agrees that the effective date for this measure be July 1, 2019 or later, as the department's current program demands and efforts are focused on compliance for continued receipt of approximately $22 million in federal CCDF grants.

The proposed bill would require DHS to develop new administrative rules, operational processes, require additional staffing for DHS, and additional funds for operations to implement the bill.

DHS respectfully requests that any appropriations and positions provided under this bill does not adversely impact the priorities identified under the Governor's supplemental budget request.

As referenced above, DHS is the regulatory agency of the state's child care system codified in statute in Part VIII, Chapter 346, HRS. The department points out that the term "early childhood facility" proposed in this measure does not fall under the child care definitions established under section 346-151, HRS. If the intent of the bill is for the tax credit only to be applicable when an employer establishes on an on-site group child care center, which includes both infant and toddler child care centers and group child care centers (i.e. preschools), then the bill should be amended to reference "group child care centers," as defined under section 346-151, HRS, rather than using the term "early childhood facilities" which is currently not defined.

The proposed section (c), on page 4, lines 3-4, indicates that "[s]uch certification shall be acceptable as proof of the qualified costs." It is unclear if the intent is for the employer to submit proof of the qualified costs to construct and operate group child care center to DHS to review the employer's qualification for the tax credit. DHS respectfully requests that any review of qualified costs to construct and operate a group child care center be submitted to an entity that has expertise to review these kinds of fiscal documentation, as DHS does not have that kind of expertise.

The proposed subsection (f)(2), on page 5, lines 5-15, indicates that "provided that the credit shall not be subject to recapture if the department of human services certifies that the employer ceased operating the facility for reasonable cause, including but not limited to going out of business, being forced to close the facility due to a natural disaster or other unforeseeable circumstances, and closing the facility temporarily with the intention of reopening it for a reason such as facility refurbishment or improvement." The measure is unclear as to what other kinds of unforeseeable circumstances would be acceptable to force the facility to close and still allow the tax credit to be claimed. There are also circumstances that are foreseeable, such as the revocation of the license by DHS due to serious violations of health and safety standards could be an acceptable reason to close the facility. DHS respectfully requests the Legislature to clarify if revocation is a reasonable cause to cease operating the group child care center and still allow the tax credit to be claimed.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax Credit for On-Site Early Childhood Facilities

BILL NUMBER: SB 2905, SD-1

INTRODUCED BY: Senate Committees on Education, Labor, and Human Services

EXECUTIVE SUMMARY: Establishes an income tax credit for employers who create on-site early childhood facilities.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish an on-site early childhood facility tax credit. The amount of the credit is 25% of the qualified costs for acquiring, constructing, and establishing the facility, up to $____ per emploter. The credit is refundable.

Defines "qualified on-site early childhood facility" as an on-site early child hood facility offered by an employer to all employees that is licensed and approved by the department of human services and receives an accreditation from a recognized national early childhood accredited agency within two years of initial operation.

The Department of Human Services is tasked with providing a certificate of approval to the facility. The criteria for approving such a facility is to consider: (1) whether the on-site early childhood facility provides early childhood programs from child care to preschool and junior kindergarten; (2) participation rate by employees; (3) quality of the early childhood programs being provided; and (4) whether the presence of an on-site early childhood facility promotes a healthy workplace environment.

Limitations of the credit include: (1) the total credit allowed for an employer in any taxable year shall not exceed $_____; (2) the on-site early childhood facility shall operate for a minimum of ten years or the credit may be recaptured, except if the department of human services certifies that the employer ceased operating the facility for reasonable cause, including but not limited to going out of business, being forced to close the facility due to a natural disaster or other unforeseeable circumstances, and closing the facility temporarily with the intention of reopening it for a reason such as facility refurbishment or improvement; (3) costs paid or incurred by an employer for insurance shall not be taken into account when calculating the costs included in the on-site early childhood facility credit computation; (4) the total amount of credit claimed on returns filed by all employers in the State's fiscal year shall not exceed the annual on-site early childhood facility credit cap, which the Department of Taxation determines on an annual basis.

Every claim, including amended claims, for the tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed. Failure to do so shall constitute a waiver of the right to claim the tax credit.

No other income tax credit may be claimed for the same qualified costs.

EFFECTIVE DATE: July 1, 2019; the tax credit applies to taxable years beginning after December 31, 2018.

STAFF COMMENTS: This measure is problematic and may be unworkable for several reasons.

- The credit is for facility construction costs, but the criteria for approving the facility (before it is constructed?) must consider the employee participation rate and the programs offered, neither of which will be known before the facility is constructed.
- Similar to the above point, the statute requires that the facility receive an accreditation from a recognized national early childhood accredited agency within two years of initial operation in order to be qualified. The accreditation necessarily will not be in place before the facility is constructed.
- The statute requires the credit to be claimed within twelve months following the close of the taxable year for which the tax credit may be claimed, or the tax credit is waived. What is the event that triggers eligibility for the credit? Incurring the construction costs? Obtaining the accreditation from a national accrediting body within two years of first operation? Getting Department of Human Services certification, which must consider the employee participation rate and the programs offered? These events can be expected to occur at widely different times.
- The Department of Taxation is supposed to impose an aggregate cap on the credit, but the bill provides no criteria for the Department to determine the cap. Aggregate credit caps are budgetary issues that are determined by the legislature, not by an agency.
- There is a recapture provision stating that the facility must be in place for ten years upon pain of full credit recapture. The Committee may consider allowing the taxpayer to earn the credit ratably over the recapture period. See, for example, section 235-110.7(d), HRS, which by reference to section 47 of an earlier Internal Revenue Code provides for a three-year recapture period for the Capital Goods Excise Tax Credit and provides for a taxpayer earning one-third of the credit each year, meaning that the credit is paid to the taxpayer when the creditable item is placed in service but is then subject to full recapture; after the item has been in service a full year, one-third of the credit is not subject to recapture; after the item has been in service two full years, two-thirds of the credit is not subject to recapture; and after the item has been in service three full years, none of it is subject to recapture.

Digested 2/19/2018

SB-2905-SD-1
Submitted on: 2/19/2018 12:57:48 AM
Testimony for WAM on 2/21/2018 10:08:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments: