THE SENATE
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

S.B. NO. 2905 S.D. 2

A BILL FOR AN ACT

RELATING TO ON-SITE EARLY CHILDHOOD FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that Hawaii has one of the highest costs for child care in the nation. The annual tuition cost of many child care facilities in Hawaii exceeds the annual in-state tuition at the University of Hawaii at Manoa. In many cases, the costs for child care for two children are as much as one full-time working parent would make in a year after taxes. Not surprisingly, in many families, one parent will leave the workforce to care for their children on a full-time basis instead of enrolling the children in child care.

The legislature further finds that more of Hawaii's children are entering kindergarten without the physical, cognitive, linguistic, social, and emotional skills necessary to prepare them for success in school life. The link between school readiness and success in school is indisputable. According to kindergarten teachers within the department of education, many of the children who do not attend pre-kindergarten programs could be eighteen to twenty-four months behind developmentally than their peers who do attend preschool.

The legislature also finds that the creation of on-site early childhood facilities by employers addresses concerns of child care costs while also providing access to early childhood learning programs. Employers who create on-site early childhood facilities may see greater employee retention and performance, lower absenteeism, and a more productive and positive workplace environment.

The purpose of this Act is to establish an income tax credit for employers who create on-site early childhood facilities to increase access to high quality early childhood programs from child care to preschool and junior kindergarten.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- On-site early childhood facility tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of the credit shall be determined pursuant to section 704(b) of the Internal Revenue Code.

(b) Every taxpayer claiming a tax credit under this section, no later than ninety days following the end of each taxable year in which qualified costs were paid or incurred, shall submit a written, sworn statement to the department of human services, identifying:

(1) Qualified costs, if any, paid or incurred in the previous taxable year; and

(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.

(c) The department of human services shall:

(1) Maintain records of the names and addresses of the taxpayers claiming the credit under this section and

the total amount of the qualified costs upon which the tax credit is based;

(2) Verify the amount of the qualified costs;

(3) Total all qualified costs that the department of human services certifies; and

(4) Provide a letter to the director of taxation specifying the amount of the tax credit for each taxable year and cumulative amount of the tax credit for all years claimed.

Upon each determination made under this subsection, the department of human services shall issue a letter to the taxpayer verifying the information submitted to that department, including the amount of qualified costs and the credit amount qualified for in each taxable year a credit is claimed. The taxpayer shall file the letter from the department of human services with the taxpayer's tax return with the department of taxation. Notwithstanding the authority of the department of human services under this section, the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

(d) The department of human services shall provide a certificate of approval to qualified on-site early childhood facilities implemented by taxpayers. In determining whether to grant approval to an on-site early childhood facility, the department of human services shall consider the following criteria:

(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.

The director of human services shall adopt rules pursuant to chapter 91 to implement the certification requirements under this section.

(e) The director of human services, in consultation with the director of taxation, shall create a form that indicates a taxpayer is using an on-site early childhood facility.

(f) The tax credit shall be equal to twenty-five per cent of the taxpayer's qualified costs, subject to the following:

(1) The total credit allowed for a taxpayer 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; 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 such reasons as facility refurbishment or improvement; and

(3) The total amount of tax credits allowed under this section shall not exceed $ for all taxpayers in any fiscal year. If the total amount of credits claimed under this section by all taxpayers in any fiscal year exceeds $, the credit shall be

allowed to taxpayers based on the date of certification by the department of human services on a first come, first served basis. Any taxpayer who is certified by the department of human services in a fiscal year and who is not eligible to claim the credit due to the $ cap having been exceeded for that fiscal year shall be eligible to claim the credit in the subsequent year and shall receive priority for the credit over taxpayers who receive certification in the subsequent fiscal year.

(g) If the tax credit under this section exceeds the taxpayer's net income tax liability, the excess of credits over payments due shall be refunded to the taxpayer; provided that no refunds or payments on account of the tax credits allowed by this section shall be made for amounts less than $1.

(h) 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 comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(i) No taxpayer shall claim any other credit under this chapter for the same qualified costs used to properly claim a tax credit under this section for the taxable year.

(j) The director of taxation:

(1) Shall prepare any forms that may be necessary to claim a tax credit under this section;

(2) May require the taxpayer to furnish reasonable information to ascertain the validity of the claim for the tax credit made under this section; and

(3) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(k) This section shall not apply to any amount paid or incurred before January 1, 2019.

(l) For the purposes of this section:

"Qualified costs" means the expenses incurred in acquiring, constructing, and establishing a qualified on-site early childhood facility and the associated operating costs; provided that qualified costs shall not include costs paid or incurred for insurance.

"Qualified on-site early childhood facility" means an on-site early childhood facility offered by an employer to all employees that:

(1) Is licensed and approved by the department of human services; and

(2) Receives an accreditation from a recognized national early childhood accredited agency within two years of initial operation."

SECTION 3. There is established one full-time equivalent (1.0 FTE) on-site early childhood facility coordinator position in the executive office on early learning to assist with licensure and accreditation requirements, work with providers, and ensure appropriate facility design of on-site early childhood facilities established by employers in the State.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2018-2019 for one full-time equivalent (1.0 FTE) on-site early childhood facility coordinator position in the executive office on early learning to assist with licensure and accreditation requirements, work with providers, and ensure appropriate facility design of on-site early childhood facilities established by employers in the State.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2050; provided that section 2 shall apply to taxable years beginning after December 31, 2018.

S.B. NO. 2905 S.D. 2

Report Title:
On-site Early Childhood Facilities; Income Tax Credit; Appropriation

Description:
Establishes an income tax credit for employers who create on-site early childhood facilities. Establishes and appropriates funds for 1 on-site early childhood facility coordinator position. Applies to taxable years beginning after 12/31/2018. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

DAVID Y. IGE
GOVERNOR

PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
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March 18, 2018

TO: The Honorable Representative Justin H. Woodson, Chair
House Committee on Education

The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Labor and Public Employment

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2905 SD2 – RELATING TO ON-SITE EARLY CHILDHOOD FACILITIES**

Hearing: Monday, March 19, 2018, 3:00 p.m.
Conference Room 309, 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, and provides comments. DHS is the regulatory authority for all licensed and registered child care facilities and homes statewide, and currently does not have staffing or current IT infrastructure to implement this proposal as drafted and without an appropriation. Currently, DHS Child Care Program Office is tasked with assuring that the state is in compliance with the Child Care and Development Block Grant of 2014 (CCDBG) by the end of 2018. CCDBG is the source of federal funding for child care subsidies for low-income working families and funds to improve child care quality.

DHS respectfully requests: 1) that since it does not have tax related expertise DHS not be named the regulating entity of these tax related provisions to determine whether the employer, which may not be the operator of the early childhood facility, qualifies for an income tax credit, and 2) the effective date be set after December 31, 2019 or later to give

DHS appropriate time to make any necessary program changes and develop administrative processes.

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 Senate Committee on Ways and Means further amended the measure, per Standing Committee Report Number 2777, by:

(1) Clarifying that "qualified costs" refer to expenses incurred in acquiring, constructing, and establishing qualified on-site early childhood facilities;

(2) Clarifying the Department of Human Services' duties with regard to certifying qualified on-site early childhood facilities and verifying taxpayers' qualified costs;

(3) Requiring that taxpayers seeking to claim the tax credit submit information regarding their costs to the Department of Human Services;

(4) Clarifying the provisions regarding the aggregate cap amount of the tax credit;

(5) Clarifying the provisions regarding the refundable nature of the tax credit;

(6) Changing the effective date to July 1, 2050, to facilitate further discussion on the measure; and

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

The primary focus of DHS child care licensing (CCL) 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.

As part of the child care safety measures, DHS CCL licensing staff collect 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. CCL staff also investigate complaints regarding possible illegal child care operations or regulated providers who are in violation of the child care statutes or other 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. The department's expertise and jurisdiction lies in determining the current status of the child care facility's license; it does not have regulatory experience, subject matter expertise, or IT infrastructure to address most of the provisions of Section 2 of the proposed measure.

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 even this additional responsibility would add an administrative process as well as operational costs.

If the proposed bill were to pass as drafted, DHS requests that the effective date for Section 2 of this measure shall apply to taxable years beginning after **December 31, 2019** or later, instead of the proposed December 31, 2018, as the department's current program demands and efforts are focused on compliance for continued receipt of approximately $22 million in federal CCDF grants. Section (k) on page 8, lines 12-13, would also need to be revised to be "this section shall not apply to any amount paid or incurred before January 1, <u>2020</u>."

The proposed bill would require DHS to develop new administrative rules, operational processes, require additional staffing for DHS, including consultation with subject matter expertise, 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 subsection (c) (2), on page 4, line 3, indicates that DHS shall "[v]erify the amount of qualified costs." DHS respectfully requests that any review of qualified costs to acquire, construct, establish, and operate a group child care center be submitted to an entity that has expertise to review these kinds of capital improvement and fiscal documentation. DHS does not have the kind of expertise to determine whether expenses incurred are legitimate costs involved in acquisition, construction, and establishment of a child care facility and any associated operating costs.

The proposed subsection (f)(2), on page 6, 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 that 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.

DAVID Y. IGE
GOVERNOR

LAUREN MORIGUCHI
DIRECTOR

STATE OF HAWAI'I
Executive Office on Early Learning
1390 Miller Street, Room 303
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March 19, 2018

TO: Representative Justin H. Woodson, Chair
Representative Sam Satoru Kong, Vice-Chair
House Committee on Education

Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice-Chair
House Committee on Labor & Public Employment

FROM: Lauren Moriguchi, Director
Executive Office on Early Learning

SUBJECT: **Measure:** S.B. No. 2905, S.D. 2 – Relating to On-site Early Childhood Facilities
Hearing Date: March 19, 2018
Time: 3:00 p.m.
Location: Room 309

Purpose of Bill: Establishes an income tax credit for employers who create on-site early childhood facilities. Establishes and appropriates funds for 1 on-site early childhood facility coordinator position. Applies to taxable years after 12/31/2018. Effective 7/1/2050.

EXECUTIVE OFFICE ON EARLY LEARNING'S POSITION: The Executive Office on Early Learning (EOEL) supports the intent of S.B. No. 2905, S.D. 2.

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.

LEGISLATIVE TAX BILL SERVICE

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-2

INTRODUCED BY: Senate Committees on Ways & Means

EXECUTIVE SUMMARY: Establishes an income tax credit for employers who create on-site early childhood facilities. We are concerned that the credit may be unworkable from the perspective of the certifying agency (DHS) because several of the criteria necessary to establish creditable costs necessarily cannot be satisfied until the facility is built and is operating. Also, from the perspective of the credit recipient, the long recapture period may require the credit to be recognized as a liability on the taxpayer's books, impacting the taxpayer's ability to incur more debt if needed.

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 employer. The credit is refundable.

Defines "qualified costs" as the expenses incurred in acquiring, constructing, and establishing a qualified on-site early childhood facility and the associated operating costs; except for insurance.

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) The total amount of tax credits allowed under this section shall not exceed $_____ all taxpayers in any fiscal year; if the total amount of credits claimed is greater, the credit shall be allowed to taxpayers based on the date of certification by DHS on a first come, first served basis, where any taxpayer who is certified by the department of human services in a fiscal year and who is not eligible to claim the credit due to the $_____ having been exceeded for that fiscal year shall be eligible to claim the credit in the subsequent year and shall receive priority for the credit over taxpayers who receive certification in the subsequent fiscal year.

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, 2050; the 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 awarded for "qualified costs," defined as expenses incurred in acquiring, constructing, and establishing a qualified facility. A qualified facility is licensed and approved by DHS, and receives accreditation within two years of initial operation. The criteria for approving the facility include the employee participation rate and the programs offered, neither of which will be known before the facility is constructed. Thus a Catch-22 situation is created. If the intent is to provisionally award the credit for construction and acquisition costs, necessarily incurred before the facility is built, subject to later recapture if the facility is not ultimately approved, the bill needs to say that.

- 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. Again, if the intent is to provisionally award the credit for construction and acquisition costs, necessarily incurred before the facility is built, subject to later recapture if the facility is not ultimately accredited, the bill needs to say that.

- 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.

- 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 in order to allow the taxpayer to use the money (otherwise it may be recognized as a liability on the taxpayer's books and could hurt its credit rating). 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 after the item has been in service a full year, one-third of the credit is not subject to recapture; one full year later, another one-third of the credit is not subject to recapture; and so on.

Digested 3/16/2018

To: Rep. Justin H. Woodson, Chair & Rep. Sam Satoru Kong, Vice Chair, House Committee on Education

Rep. Aaron Ling Johanson, Chair & Rep. Daniel Hot, Vice Chair, House Committee on Labor & Public Employment

Re: S.B. No. 2905 SD2– Relating to On-site Early Childhood Facilities, March 19, 2018, 3:00 pm., Conference Room 309

Purpose: 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.

Dear Representatives Woodson, Kong and Members of the House Committee on Education and Representatives Johanson and Holt and members of the House Committee on Labor & Public Policy.

My name is Robert G. Peters and I thank you for the opportunity to testify about SB 2950 SD2. Over the past 10 years, I have served as a member of the Early Learning Task Force, the Early Learning Council and the Early Learning Advisory Board, which is now the Early Learning Board. Although not serving as a spokesperson for the ELB, which has yet to have an opportunity to discuss it, I am personally testifying in support of SB 2950 SD2.

The Early Learning Board is statutorily responsible for directing the Executive Office on Early Learning as it develops the State's early childhood system, which will include a range 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.

Recognizing the critical need for the expansion of access to quality early learning opportunities, I 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. I 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 again for the opportunity to testify in support of SB 2905 SD2.

Sincerely,

Robert G. Peters, EdD

SB-2905-SD-2
Submitted on: 3/18/2018 2:52:10 PM
Testimony for EDN on 3/19/2018 3:00:00 PM

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

Comments:

DAVID Y. IGE
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To: The Honorable Justin H. Woodson, Chair
And Members of the House Committee on Education

The Honorable Aaron Ling Johanson, Chair
And Members of the House Committee on Labor & Public Employment

Date: Monday, March 19, 2018
Time: 3:00 P.M.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2905, S.D. 2, Relating to On-Site Early Childhood Facilities

The Department of Taxation (Department) offers the following comments on S.B. 2905, S.D. 2, for your consideration.

S.B. 2905, S.D. 2, creates a refundable income tax credit for employers that operate an on-site early childhood facility. The credit is equal to 25% of qualified costs incurred operating the facility, including acquiring, constructing, and establishing the facility. The bill requires certification of facilities by the Department of Human Services (DHS). The credit is to be claimed against the taxpayer's net income tax liability, and any excess over payments due shall be refunded to the taxpayer. The credit has an aggregate cap of an unspecified amount. S.D. 2 has a defective effective date of July 1, 2050, but the credit is otherwise effective for taxable years beginning, and for qualified costs incurred, after December 31, 2018.

First, the Department notes that it generally prefers nonrefundable credits rather than refundable credits. Refundable credits are more prone to improper claims and abuse.

Second, the Department notes that Standing Committee Report No. 2777 states that the measure was amended by clarifying the provisions regarding the aggregate cap amount of the tax credit. However, as currently written, subsection (f)(3) may not be sufficient to impose an aggregate cap on the credit. In other credits that have an aggregate cap, such as the Important Agricultural Land Tax Credit under Hawaii Revised Statutes section 235-110.93(h), the aggregate cap is enforced through a certification process that requires immediately discontinuing certifying credits when the cap is reached and further restricts the Department of Taxation from allowing the aggregate cap to be exceeded even if credits in excess of the cap are inadvertently certified. If the Committee wishes to ensure the aggregate cap in this measure is sufficient, the Department recommends amending subsection (f)(3) to read as follows:

(3) The total amount of tax credits allowed under this section shall not exceed $_________ for all taxpayers in any taxable year. If the total amount of credits claimed under this section by all taxpayers in any fiscal year exceeds $________, the department of human services shall immediately discontinue issuing letters under subsection (c) and notify the department of taxation. In no instance shall the department of human services issue letters under subsection (c) for a total amount of credits exceeding $_________ per taxable year. To comply with this restriction, the department of human services shall issue letters under subsection (c) for credits on a first come, first served basis. Any taxpayer whose qualified costs are not eligible to be issued a letter under subsection (c) by the department of human services in a fiscal year due to the $_______ cap having been exceeded for that fiscal year, shall be eligible to have those qualified costs be issued a letter under subsection (c) in the subsequent year and those qualified costs shall receive priority for a letter under subsection (c) over qualified costs incurred in that subsequent year. The department of taxation shall not allow the aggregate amount of credits claimed to exceed $__________ per taxable year.

Third, the Department notes that, as currently written, it is possible to claim credits for the construction of a facility before the facility's construction is complete and before DHS certifies that facility as qualified under subsection (d). If the Committee wishes to ensure taxpayers are not able to claim the credit for construction costs which are not ultimately for a qualified facility, the Department recommends deleting paragraph (f)(2) and adding a separate recapture subsection to read as follows:

Any credit under this section shall be recaptured following the close of the taxable year for which the credit is claimed if:

(1) The on-site early childhood facility fails to operate for a minimum of ten years; provided that the credit shall 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 reasons such as facility refurbishment or improvement; or

(2) The credit was claimed for acquiring, constructing, or establishing a facility that is not certified under subsection (d) within one hundred eighty days of the completion of its acquisition, construction, or establishment.

The recapture shall be equal to one hundred per cent of the amount of the total tax credit claimed under this section in the preceding ten taxable years, and shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs pursuant to this subsection.

Thank you for the opportunity to provide comments.