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**SECOND SUBSTITUTE HOUSE BILL 2396**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Finance (originally sponsored by Representatives Reeves, Robinson, Kagi, Valdez, Doglio, Riccelli, and Stonier)

AN ACT Relating to establishing the working families' child care access and affordability through regional employers act; amending RCW 43.330.060; adding new sections to chapter 43.216 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.16 RCW; creating new sections; providing a contingent effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that high quality child care helps build foundational skills to prepare our children for the future. These skills strengthen the next generation of workers and contribute to the success of businesses and the economic well-being of our state.

(2) The legislature further finds that working families are experiencing an affordability crisis when it comes to caring for their young children. Child care is one of the largest household expenses for most families, with the cost all too often being too much for a family to manage. At the same time, child care providers and private businesses across all sectors are facing a workforce shortage and are reporting worker losses due to extended vacancies, absenteeism, and a shortage of skilled workers. To remain in the workforce, parents with young children need reliable child care to be able to improve their skills through education, resulting in retained employment and increased productivity. A recent report by the United States chamber of commerce foundation found that high quality child care is an under-recognized and promising strategy for addressing America's growing workforce crisis.

(3) The legislature also finds that the bureau of labor statistics reports less than forty percent of the workforce is offered dependent care flexible spending accounts by their employers. Further, the legislature finds that employees with higher wages and those working for larger employers are more likely to have access to this benefit.

(4) Therefore, the legislature intends to partner with private employers to implement and support strategies to increase access to quality child care and early learning opportunities, preparing children for school and supporting parents as productive members of the workforce.

(5) The legislature further intends to create a pilot program with small businesses that increases the affordability of child care for working families by providing meaningful incentives for employers to contribute to the child care costs of their employees. If the pilot program is successful, the legislature intends to expand the incentive to additional employers.

**Part I**

**Employer Supported Child Care**

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1) The department must consult with the department of commerce to develop a web site containing current resources for businesses regarding employer-supported child care. The web site must be available to the public within one year of the effective date of this section and must be updated regularly. Web site resources must include, at a minimum:

(a) Information about the benefits to employers and employees associated with employer-supported child care;

(b) Guidance for the provision of on-site care at the workplace, including permitting and licensing resources to facilitate the development and construction of child care facilities;

(c) Tools and guidance for the provision of financial assistance to employees for child care expenses;

(d) A model policy for the establishment of a "bring your infant to work" program for employees who are the parent or legal guardian of an infant up to six months of age; and

(e) A link to a licensed child care registry developed and maintained by a professional organization of child care providers jointly with participating employers.

(2) The department must consult with the office of financial management to modify the "bring your infant to work" policy established in this section for use in state agencies.

(3) In accordance with RCW 43.01.036 the department must submit a report to the governor and the appropriate committees of the legislature by November 1, 2020. The report must include a summary of the resources provided on the site created under subsection (1) of this section and information about activities undertaken by other states related to incentivizing businesses to provide employer-supported child care.

(4) For the purposes of this section, "employer-supported child care" means:

(a) A licensed child care center operated at or near the workplace by an employer for the benefit of employees; or

(b) Financial assistance provided by an employer for licensed child care expenses incurred by an employee.

**Sec.**  RCW 43.330.060 and 2010 c 165 s 2 are each amended to read as follows:

(1) The department shall (a) assist in expanding the state's role as an international center of trade, culture, and finance; (b) promote and market the state's products and services both nationally and internationally; (c) work in close cooperation with other private and public international trade efforts; (d) act as a centralized location for the assimilation and distribution of trade information; and (e) establish and operate foreign offices promoting overseas trade and commerce.

(2) The department shall identify and work with Washington businesses that can use local, state, and federal assistance to increase domestic and foreign exports of goods and services.

(3) The department shall work generally with small businesses and other employers to facilitate resolution of siting, regulatory, expansion, and retention problems. This assistance shall include but not be limited to assisting in workforce training and infrastructure needs, identifying and locating suitable business sites, and resolving problems with government licensing and regulatory requirements. The department shall identify gaps in needed services and develop steps to address them including private sector support and purchase of these services.

(4) The department shall work to increase the availability of capital to small businesses by developing new and flexible investment tools; by assisting in targeting and improving the efficiency of existing investment mechanisms; and by assisting in the procurement of managerial and technical assistance necessary to attract potential investors.

(5) The department shall assist women and minority-owned businesses in overcoming barriers to entrepreneurial success. The department shall contract with public and private agencies, institutions, and organizations to conduct entrepreneurial training courses for minority and women-owned businesses. The instruction shall be intensive, practical training courses in financing, marketing, managing, accounting, and recordkeeping for a small business, with an emphasis on federal, state, local, or private programs available to assist small businesses. Instruction shall be offered in major population centers throughout the state at times and locations that are convenient for minority and women small business owners.

(6)((~~(a) Subject to the availability of amounts appropriated for this specific purpose, by December 1, 2010, the department, in conjunction with the small business development center, must prepare and present to the governor and appropriate legislative committees a specific, actionable plan to increase access to capital and technical assistance to small businesses and entrepreneurs beginning with the 2011~~‑~~2013 biennium. In developing the plan, the department and the center may consult with the Washington state microenterprise association, and with other government, nonprofit, and private organizations as necessary. The plan must identify:~~

~~(i) Existing sources of capital and technical assistance for small businesses and entrepreneurs;~~

~~(ii) Critical gaps and barriers to availability of capital and delivery of technical assistance to small businesses and entrepreneurs;~~

~~(iii) Workable solutions to filling the gaps and removing barriers identified in (a)(ii) of this subsection; and~~

~~(iv) The financial resources and statutory changes necessary to put the plan into effect beginning with the 2011~~‑~~2013 biennium.~~

~~(b) With respect to increasing access to capital, the plan must identify specific, feasible sources of capital and practical mechanisms for expanding access to it.~~

~~(c) The department and the center must include, within the analysis and recommendations in (a) of this subsection, any specific gaps, barriers, and solutions related to rural and low~~‑~~income communities and small manufacturers interested in exporting.~~)) The department must assist businesses with identifying resources for the provision of employer-supported child care as defined in section 101 of this act and conduct outreach to businesses located in rural and underserved areas about the incentives in sections 302 and 303 of this act.

NEW SECTION. **Sec.**  The office of financial management must:

(1) Consult with the department of children, youth, and families to modify the model policy developed under section 101 of this act as appropriate for implementation at state agencies; and

(2) Provide the model policy and implementation guidelines to state agency directors by December 1, 2018. The implementation guidelines must require agencies to adopt the policy by June 1, 2019, and allow agencies to modify the policy or limit its application as appropriate based on the working conditions and job duties of agency personnel.

(3) This section expires July 1, 2019.

**Part II**

**Child Care Workforce Conditional Scholarship and Loan Repayment Program**

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

The definitions in this section apply throughout this part unless the context clearly requires otherwise.

(1) "Conditional scholarship" means a loan that is given to an eligible student under an agreement in which the eligible student will be relieved of his or her obligation to repay all or part of the loan in exchange for his or her providing early learning services in the state of Washington and meeting all other requirements of the agreement.

(2) "Early learning services" has the same meaning as "early learning" as defined in RCW 43.216.010.

(3) "Eligible student" means a student who is registered for at least three credit hours or the equivalent, is a resident student as defined by RCW 28B.15.012(2) and 28B.15.013, and has a declared intention to complete an approved program of study and provide early learning services in the state of Washington and meet all other requirements under a conditional scholarship agreement entered into between the student and the department.

(4) "Equalization fee" means the additional amount added to the principal of a loan under this chapter to equate the debt to that which the student would have incurred if the loan had been received through the federal direct Stafford student loan program.

(5) "Institution of higher education" or "institution" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the student achievement council.

(6) "Loan repayment" means a student loan that is repaid in whole or in part if the recipient renders early learning services in the state under requirements of an agreement entered into under this chapter.

(7) "Participant" means an individual who has received a conditional scholarship or loan repayment under this chapter.

(8) "Rural and underserved area" means an area where credentialed early learning providers are in short supply, as determined by the department of children, youth, and families.

(9) "Satisfied" means paid in full.

(10) "Service obligation" means an obligation by the participant to provide early learning services for a period to be established as provided for in this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1) The child care workforce conditional scholarship and loan repayment program is established. The program is comprised of the following two components:

(a) Conditional scholarships awarded to eligible students attending an institution of higher education who meet the requirements established under this chapter; and

(b) Loan repayments for participants providing early learning services in the state and who meet the requirements for loan repayment established under this chapter.

(2) The program must be administered by the department of children, youth, and families. In administering the program, the department must:

(a) Select eligible students to be awarded conditional scholarships;

(b) Select participants to receive loan repayments;

(c) Adopt rules and develop guidelines to administer the program;

(d) Publicize the program, particularly to maximize participation among individuals in shortage areas and among populations expected to experience the greatest growth in the workforce;

(e) Collect and manage repayments from conditional scholarship participants who do not meet their required service obligations or otherwise fail to meet the requirements under their agreements; and

(f) Solicit and accept grants and donations from public and private sources for the program.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1) The department must establish a planning committee to assist in developing criteria for the selection of participants. Planning committee members must include representatives of the department of social and health services; the department of children, youth, and families; private business; child day care center providers; family day care providers; and a union representing child care providers.

(2) When selecting participants, the department must give priority to individuals providing early learning services in:

(a) Rural and underserved areas; and

(b) Low-income neighborhoods or in a low-income child care provider settings as defined in RCW 43.216.010.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

To receive disbursements from a conditional scholarship under this chapter, an eligible student must be considered by his or her institution of higher education to be in a satisfactory progress condition, in addition to any other requirements established in an agreement between the eligible student and the department.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1)The department may award conditional scholarships or provide loan repayments to eligible participants from private donations, or any other funds given to the department for this program.

(2) The amount of the conditional scholarship or loan repayment awarded a participant must not exceed five thousand dollars per year for priority participants and must not exceed two thousand, five hundred dollars per year for all other participants. Participants are eligible to receive conditional scholarships or loan repayments for a maximum of six years.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1) Upon documentation of student loan indebtedness, the department may enter into agreements with participants to repay all or part of a student loan in exchange for the participant providing early learning services in the state of Washington and meeting all other requirements under the agreement.

(2) The agreement must specify in detail the obligations of the department and the participant, including the amount of loan repayment the participant will receive in exchange for his or her satisfying all requirements of the agreement and any geographic location or area of service requirements that are part of the agreement.

(3)(a) At the end of each year, a participant under this section must provide evidence to the department that the participant has met his or her service obligation and any other requirements under the agreement. Upon receipt of the evidence, the department must pay the participant the agreed-upon amount for one year of full-time service or a prorated amount for less than full-time service.

(b) To qualify for additional loan repayments, the participant must be engaged in continuous service as defined by the department and meet any other requirements established in the agreement.

(4) The department may, at its discretion, arrange to make the loan repayment directly to the holder of the participant's student loan.

(5) The department's obligations to a participant under this section ceases when:

(a) The terms of the agreement have been fulfilled;

(b) The participant fails to maintain continuous service as determined by the department or otherwise fails to fulfill any other term of the agreement; or

(c) The participant's student loans that are subject to the agreement have been repaid.

(6) The department must adopt rules governing loan repayments, including approved leaves of absence from continuous service and other deferments as may be necessary.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1) A participant in the conditional scholarship program is obligated to repay the conditional scholarship, with interest and an equalization fee, unless he or she renders early learning services for each year of scholarship received and meets all other requirements as provided under the agreement between the participant and the department.

(2) A participant who fails to complete the required service obligation or otherwise fails to fulfill the terms of the agreement will incur an equalization fee based on the remaining unforgiven balance of the loan. The equalization fee must be added to the remaining balance owed by the participant.

(3) The department must set the minimum payment. The maximum period for repayment is ten years, with payments of principal and interest commencing six months from the date the participant completes or discontinues the course of study. The interest rate must be determined by the department and be established in rule. Provisions for deferral of payment must be determined by the department. The department must establish an appeal process in rule.

(4) The entire principal and interest of each payment must be forgiven for each payment period in which the participant provides early learning services in the state and meets all other requirements of the agreement, until the entire repayment obligation is satisfied. Should the participant cease to provide early learning services in this state before the participant's service obligation is completed or otherwise fails to fulfill the terms of the agreement, payments on the unsatisfied portion of the principal and interest must begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The department is responsible for collection of repayments made under this section and must exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section must be pursued using the full extent of the law, including wage garnishment if necessary. The department must maintain all necessary records of payments made by participants.

(6) Receipts from the payment of principal or interest or any other subsidies to which the office as administrator is entitled, which are paid by or on behalf of participants under this section, must be deposited in the child care workforce conditional scholarship and loan repayment account and must be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The department must maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs must be used to grant conditional scholarships to eligible students.

(7) The department must adopt rules to define the terms of repayment, including applicable interest rates, fees, and deferments.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

The child care workforce conditional scholarship and loan repayment account is created in the custody of the state treasurer. All moneys received for the child care workforce conditional scholarship and loan repayment program must be deposited into the account. Expenditures from the account may be used only for conditional loans and loan repayments to participants in the child care workforce conditional scholarship and loan repayment program established by this chapter and costs associated with program administration by the department. Only the director or the director's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, except for moneys used for program administration and an appropriation is not required for expenditures.

**Part III**

**Employer Contributions to Dependent Care Accounts**

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 302 and 303, chapter . . ., Laws of 2018 (sections 302 and 303 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preferences in this act as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to encourage employers to assist their employees with child care expenses by contributing to employee dependent care flexible spending accounts.

(4) To measure the effectiveness of the tax preferences provided in sections 302 and 303, chapter . . ., Laws of 2018 (sections 302 and 303 of this act) in achieving the public policy objective in subsection (3) of this section, the joint legislative audit and review committee must provide the following in a published evaluation of the tax preference by July 31, 2022:

(a) The number of employers applying for credits;

(b) The average amount of credit claimed by employers; and

(c) The types of businesses claiming credits.

(5) If a review finds that employers request more credits than are available each year, it is the legislature's intent to increase the annual amount of statewide credits and expand the program to additional employers.

(6) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue's data.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limitations in this chapter, an employer with fewer than one hundred employees is allowed a credit against the tax imposed under this chapter for qualifying contributions made to dependent care flexible spending accounts for employees.

(2) The credit is equal to the full amount of qualifying contributions to dependent care flexible spending accounts for employees during the calendar year, up to five thousand dollars per employee, minus any qualifying contributions returned to the employer from the third-party administrator. The credit may not exceed fifty thousand dollars for an employer in any calendar year.

(3) The department must keep a running total of all credits approved under this chapter for each calendar year. The department may not approve any credits under this section that would cause the total amount of approved credits statewide to exceed five hundred thousand dollars in any calendar year.

(4) Application for tax credits under this chapter must be submitted to the department before making qualifying contributions to employee dependent care assistance accounts. The application must be made to the department in a form and manner prescribed by the department. The application must include the proposed amount of qualifying contributions to employee dependent care assistance accounts, the proposed number of employees receiving contributions, and other information required by the department to determine eligibility under this chapter. The application may not contain personal employee information such as names or social security numbers. The department must rule on the application within forty-five days. Applications must be approved on a first-come basis.

(5) The credit may be claimed only in the calendar year immediately following the calendar year in which the credit was approved by the department and the qualifying contributions were made. The amount of credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. Credits may not be carried over to subsequent years. No refunds may be granted for any unused credits.

(6) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(7) The department may not accept any applications before January 1, 2019, or after December 31, 2028. The department may not allow any credit to be claimed before January 1, 2020, or after December 31, 2029.

(8) A person that was approved for credit as provided in this chapter must make the total approved contribution by the end of the calendar year in which the contribution was approved.

(9) A person that does not make a contribution as required in subsection (8) of this section forfeits all credits for the approved contribution.

(10) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Dependent care flexible spending account" means dependent care assistance as defined in 26 U.S.C. Sec. 129 of the federal internal revenue as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule.

(b) "Qualifying contribution" means a contribution by an employer to an employee dependent care flexible spending account used to pay for the care of a child under age thirteen.

(c) "Third-party administrator" means a person contracted by an employer to administer dependent care flexible spending accounts for employees.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) Subject to the limitations in this chapter, an employer with fewer than one hundred employees is allowed a credit against the tax imposed under this chapter for qualifying contributions made to dependent care flexible spending accounts for employees.

(2) The credit is equal to the full amount of qualifying contributions to dependent care flexible spending accounts for employees during the calendar year, up to five thousand dollars per employee, minus any qualifying contributions returned to the employer from the third-party administrator. The credit may not exceed fifty thousand dollars for an employer in any calendar year.

(3) The department must keep a running total of all credits approved under this chapter for each calendar year. The department may not approve any credits under this section that would cause the total amount of approved credits statewide to exceed five hundred thousand dollars in any calendar year.

(4) Application for tax credits under this chapter must be submitted to the department before making qualifying contributions to employee dependent care assistance accounts. The application must be made to the department in a form and manner prescribed by the department. The application must include the proposed amount of qualifying contributions to employee dependent care assistance accounts, the proposed number of employees receiving contributions, and other information required by the department to determine eligibility under this chapter. The application may not contain personal employee information such as names or social security numbers. The department must rule on the application within forty-five days. Applications must be approved on a first-come basis.

(5) The credit may be claimed only in the calendar year immediately following the calendar year in which the credit was approved by the department and the qualifying contributions were made. The amount of credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. Credits may not be carried over to subsequent years. No refunds may be granted for any unused credits.

(6) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(7) The department may not accept any applications before January 1, 2019, or after December 31, 2028. The department may not allow any credit to be claimed before January 1, 2020, or after December 31, 2029.

(8) A person that was approved for credit as provided in this chapter must make the total approved contribution by the end of the calendar year in which the contribution was approved.

(9) A person that does not make a contribution as required in subsection (8) of this section forfeits all credits for the approved contribution.

(10) No person may claim a credit against taxes due under both this chapter and chapter 82.04 RCW for the same contribution.

(11) The definitions in section 302 of this act apply to this section.

NEW SECTION. **Sec.**  (1) Sections 201 through 207 of this act take effect on the date that the contributions to the child care workforce conditional scholarship and loan repayment account, created in section 208 of this act, exceed one hundred thousand dollars.

(2) The department of revenue must provide written notice of the effective date of sections 201 through 207 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

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