STATE OF NEW YORK

8625

IN ASSEMBLY

January 10, 2022

Introduced by M. of A. CLARK -- read once and referred to the Committee on Children and Families

AN ACT to amend the tax law, in relation to establishing the early learning child care act; to amend the state finance law, in relation to establishing the early learning child care fund; and to amend the social services law, in relation to establishing the early learning child care program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "Early Learning Child Care Act".

§ 2. Legislative findings and intent. The legislature hereby finds and declares that New Yorkers are struggling to find quality affordable child care where the federal government and New York state have ignored their duty to provide children, particularly infants, with affordable, safe and proper care.

The legislature hereby finds and declares that recent studies suggest that working parents earning the median household wage must spend nearly 31% of their income to afford center-based child care. Child care in New York city has an average annual cost for infants and toddlers in center-based child care of nearly nineteen thousand dollars, while home-based child care can cost over ten thousand dollars annually.

The legislature hereby finds and declares that currently child care agencies cannot afford to pay their workforce because of low reimbursement rates that have left the industry understaffed, with high employee turnover and employees living in poverty.

Therefore, the legislature hereby finds and declares that the government has an obligation to curb child care costs for families and provide a proper education and environment to children under five years of age, while investing in the human infrastructure to make sure providers and educators are properly compensated and trained.

§ 3. The tax law is amended by adding a new article 24-B to read as follows:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD13513-04-1

ARTICLE 24-B
EARLY LEARNING CHILD CARE ACT

Section 870. Definitions.
871. Imposition of tax and rate.
872. Pass through of tax prohibited.
873. Exemption override.
874. Payment of tax.
875. Deposit and disposition of revenue.
876. Procedural provisions.
877. Enforcement with other taxes.

§ 870. Definitions. For the purposes of this article:

(a) Employer. Employer means an employer required by section six hundred seventy-one of this chapter to deduct and withhold tax from wages, that has a payroll expense in excess of two million five hundred thousand dollars in any calendar year; other than:

(1) any agency or instrumentality of the United States;

(2) the United Nations;

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada; or

(4) (i) any non-profit early childhood services provider which receives funding from the federal or state government, or any municipal, state or federal agency, or political subdivision.

(ii) As used in this section, the term "early childhood services" shall mean services which include, but are not limited to, registered, certified or licensed care in family day care homes; group family day care homes; school-age child care programs; head start programs; day care centers; child care which may be provided without a permit, certificate or registration in accordance with this statute; early childhood education programs approved by the state education department.

(b) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

(c) Covered employee. Covered employee means an employee who is employed in the state of New York.

§ 871. Imposition of tax and rate. For the purpose of providing an additional stable and reliable dedicated funding source to address child care affordability, accessibility, and quality for families with children under five years of age, a tax is hereby imposed on employers and individuals as follows: For employers, the tax is imposed at a rate of (a) fifty hundredths (.50) percent of the payroll expense for employers with payroll expense in excess of two million five hundred thousand dollars and not more than five million dollars per calendar year, (b) seventy-five hundredths (.75) percent of the payroll expense for employers with payroll expense in excess of five million dollars and not more than ten million dollars per calendar year, and (c) one (1) percent of the payroll expense for employers with payroll expense in excess of ten million dollars per calendar year. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

§ 872. Pass through of tax prohibited. An employer cannot deduct from the wages or compensation of an employee any amount that represents all or any portion of the tax imposed on the employer under this article.

§ 873. Exemption override. (a) Except as provided in subsection (b) of this section, any exemption from tax specified in any other New York state law will not apply to the tax imposed by this article.

(b) Any employer located in a tax-free NY area approved pursuant to the provisions of article twenty-one of the economic development law shall be exempt from the tax imposed under this article.

§ 874. Payment of tax. Employers with payroll expense. The tax imposed on the payroll expense of employers under section eight hundred seventy-one of this article must be paid at the same time the employer is required to remit payments under section six hundred seventy-four of this chapter; provided however, that employers subject to the provisions in section nine of this chapter must pay the tax on the payroll expense at the same time as the withholding tax remitted under the electronic payment reporting system and the electronic funds transfer system authorized by section nine of this chapter.

§ 875. Deposit and disposition of revenue. (a) The taxes, interest, and penalties imposed by this article and collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller of the city of New York shall retain such amount as the commissioner may determine to be necessary for refunds under this article. The comptroller is authorized and directed to deduct from the amounts it receives under this article, before deposit into the trust accounts designated by such comptroller, a reasonable amount necessary to effectuate refunds of the department to reimburse the department for the costs incurred to administer, collect and distribute the taxes imposed by this article.

(b) After reserving such amount for such refunds and deducting such amounts for such costs, as provided for in subsection (a) of this section, the commissioner shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed. The amount of revenues so certified shall be paid over by the fifteenth and the final business day of each succeeding month from such account without appropriation into the early learning child care fund.

§ 876. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due under this article.

(b) Combined filings. Notwithstanding any other provisions of this article:

(1) The commissioner may require the filing of a combined return which may also include any of the returns required to be filed by a taxpayer pursuant to the provisions of section six hundred fifty-one of this chapter and which may be required to be filed by such taxpayer pursuant

to any local law enacted pursuant to the authority of article thirty, thirty-A or thirty-B of this chapter.

(2) Where a combined return is required, and with respect to the payment of estimated tax, the commissioner may also require the payment to it of a single amount which shall equal the total of the amounts (total taxes less any credits or refunds) which would have been required to be paid with the returns or in payment of estimated tax pursuant to the provisions of this article, the provisions of article twenty-two of this chapter, and the provisions of local laws enacted under the authority of article thirty, thirty-A or thirty-B of this chapter.

(3) Notwithstanding any other law to the contrary, the commissioner may require that all filings of forms or returns under this article shall be filed electronically and all payments of tax shall be paid electronically.

§ 877. Enforcement with other taxes. (a) Joint assessment. If there is assessed a tax under this article and there is also assessed a tax against the same taxpayer pursuant to article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter, and payment of a single amount is required under the provisions of this article, such payment shall be deemed to have been made with respect to the taxes so assessed in proportion to the amounts of such taxes due, including tax, penalties, interest and additions to tax.

(b) Joint action. If the commissioner takes action under such article twenty-two or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter with respect to the enforcement and collection of the tax or taxes assessed under such articles, the commissioner shall, whenever possible and necessary, accompany such action with a similar action under similar enforcement and collection provisions of the tax imposed by this article.

(c) Apportionment of moneys collected by joint action. Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter and the tax imposed by this article.

(d) Joint deficiency action. Whenever the commissioner takes any action with respect to a deficiency of income tax under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter, other than the action set forth in subsection (a) of this section, the commissioner may in his or her discretion accompany such action with a similar action under this article.

§ 4. The state finance law is amended by adding a new section 99-oo to read as follows:

§ 99-oo. Early learning child care fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a fund to be known as the "early learning child care fund".

2. Such fund shall consist of all revenues received by the state, pursuant to the provisions of article twenty-four-B of the tax law and all other moneys appropriated thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the

fund as defined in this section and depositing them into the fund according to law.

3. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of social services.

§ 5. Article 6 of the social services law is amended by adding a new title 5-D to read as follows:

TITLE 5-D

EARLY LEARNING CHILD CARE PROGRAM

Section 410-aa. Definitions.

410-bb. Early learning child care program.

410-cc. Financial assistance to qualified agencies for early learning child care program and enrollment.

410-dd. Drop-in care.

410-ee. Application and eligibility for families.

410-ff. Child care stabilization grant.

410-gg. Expansion grants; tax incentives.

410-hh. Training, technical assistance and professional development funding.

410-ii. Coordination and integration funds.

410-jj. Reporting requirements.

410-kk. Enforcement.

410-ll. Taskforce to study after school programming for five to twelve year old children and crisis care.

§ 410-aa. Definitions. As used in this title, the term:

1. "Qualified agency" means any in family day care homes, group family day care homes, head start programs or center-based child care that is certified and licensed by the state.

2. "Early learning child care program" means a child care program for a child not less than six weeks of age and not more than five years of age that is provided in family day care homes, group family day care homes, head start programs or center-based child care that is certified and licensed by the state.

3. "Covered child" means a child:

(a) who is less than five years of age; or

(b) who is not yet in kindergarten.

4. "Financial assistance" means assistance provided by grant for which payments may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

5. "Low-income", with respect to a child or other individual, means an individual in a family with a family income that is not more than four hundred percent of the poverty line.

6. "Poverty line" means the official poverty line, as defined by the federal office of management and budget, based on the most recent data available from the bureau of the census: (a) adjusted to reflect the percentage change in the consumer price index for all urban consumers, issued by the bureau of labor statistics, during the annual or other interval immediately preceding the date on which such adjustment is made; and (b) adjusted for family size.

7. "Professional development" means the career pathway aligned mechanisms that contribute to ensuring that a member of the early care and education workforce, in any setting, has or is working towards obtaining the degrees, credentials, and other trainings needed to demonstrate the necessary knowledge and competencies for quality provision of child care and early learning services.

8. "Expansion grant" means a monetary grant provided on a yearly basis to provide eligible agencies with funds for capital improvements, supplies, and other miscellaneous capital funds associated with building and maintaining an early learning child care program.

9. "Child care stabilization grant" means a monetary grant provided in fiscal year two thousand twenty-two to help child care providers pay their workforce a competitive wage and to hire more workers at a higher wage.

10. "Income eligibility fee scale" means a formula used to determine how much a family will spend on child care based on their income and how much will be subsidized through the universal child care program pursuant to section four hundred ten-ee of this title.

11. "Early learning program proposal" means a plan put together by qualified agencies designed to effectively serve covered children.

12. "Session" means one early learning child care program class operating pursuant to time, staff ratio and other regulatory requirements set forth.

13. "Full working day" means not less than ten hours per day.

14. "Non-school hours" means: (a) the difference between a covered child's available hours in the early learning child care program minus the hours in a prekindergarten program; and (b) summer vacation and prekindergarten school holidays.

15. "Contracted care facility" means managed eligible agencies, such as in-home or center-based care facilities, or schools operating as early care and learning programs that enter into contract with the office of children and family services, local department of education or other qualified agency to meet detailed and specific requirements and goals.

16. "Drop-in care" means care provided to a covered child on short notice on a temporary basis as to help families with emergency situations.

§ 410-bb. Early learning child care program. 1. The department is hereby authorized and empowered to establish and operate the early learning child care program as authorized pursuant to section four hundred ten-ee of this title and as funded pursuant to article twenty-four-B of the tax law. The department shall have two dedicated revenue streams supporting the program for children under five years old. One part of the funding shall be dedicated to building out the needed infrastructure for establishing new child care facilities, training the workforce, and increasing capacity in existing facilities across the state through grants and scholarships. Grants shall include funding for capital purchases and improvements, expansion of provider networks, training activities and professional development programs, hiring more staff, the regulation and monitoring of the program, the development of computerized data systems, and consumer education. The second part of the funding shall be dedicated to providing covered children subsidies to attend qualified agencies' early learning child care programs. Up to ten percent of such funding may be used by the department to provide funds to social services districts, the child care resource and referral program, and to designated partners of the social service districts to administer the program, including for outreach, processing applications, helping families and eligible agencies navigate the application process, setting up local data collection, and all other administrative activities associated with administering the program.

2. Allocation of funds. (a) The department shall annually allocate all funds dedicated to the program pursuant to article twenty-four-B of the

tax law to social services districts according to an allocation plan developed by the department and approved by the director of the budget. The allocation plan shall be based, at least in part, on historical costs and on the availability, cost of, and need for child care assistance in each social services district. The commissioner shall take into account the incomes of residents in the area and shall also take into account the fee scale pursuant to section four hundred ten-ee of this title. Annual allocations shall be made on a state fiscal year basis. Social services districts shall demonstrate an ability to administer the program. If a social services district is unable to demonstrate such an ability, the state shall be the administrator of the county early learning program.

(b) Social services districts shall expend the allocated money for all early learning child care programs which are qualified agencies based on covered children's eligibility and the cost estimation model used to reimburse agencies, pursuant to this title and the rules and regulations adopted by the department.

3. Early learning child care programs shall fall into two categories broadly: (a) voucher eligible agencies; and (b) contracted care eligible agencies. Social services districts shall have authority over how much funding will be dedicated to these two categories, as long as the social services districts program meets all requirements pursuant to the program.

4. (a) A social services district shall make awards for contracted care to consolidated applications submitted by qualified agencies which include early learning child care programs offered by non-profit organizations, community-based organizations, schools, libraries, museums, and/or charter schools which shall demonstrate geographic diversity within the area to be served as well as diversity of providers.

(b) Social services districts shall certify voucher eligible programs to applications submitted by qualified agencies which include early learning child care programs offered by in-home care, center-based care, informal care providers who are for profit or non-profit organizations, community-based organizations, charter schools, libraries and museums, which may apply individually to the extent allowed under paragraph (c) of this subdivision. Any consolidated application shall include, but shall not be limited to, the names of individual locations and providers, applicable licenses, facility lease information, and intended staffing plans.

(c) Prior to submission of a consolidated application, the local commissioner of social services shall widely solicit prospective eligible agencies. The local commissioner of social services shall notify any applicant who has been denied inclusion in the consolidated application and/or has not been certified no later than two weeks prior to the submission of such application. Such eligible providers denied inclusion may apply individually as provided in paragraph (a) of this subdivision.

5. The child care resource and referral program shall receive funds to: (a) help qualified agencies and prospective qualified agencies navigate the early child care program application process, including meeting operating standards, hiring staff, offering competitive wages to retain or hire new staff, and applying for proper funding based on prospective covered children's eligibility for the program; and (b) provide families assistance in connecting with early learning child care programs across the state. As a condition of receiving funds pursuant to this section, the child care resource and referral program

shall demonstrate that it is receiving or has an agreement to receive funds from sources other than the department pursuant to this title.

6. Qualified agencies shall apply to the local commissioner of social services for funds for prospective covered children. All applications approved by the commissioner shall include a commitment to use appropriate accounting and fiscal control procedures which shall include the filing of an annual financial statement which has been audited as required by the department so as to ensure:

(a) the proper disbursement accounting for funds received; and

(b) appropriate written records regarding the population served, including the level of financial assistance needed and the type and extent of services rendered.

7. Qualified agencies approved to receive funding shall be required to follow section four hundred ten-q of this article to provide information to parents who contact the certified child care center about the best child care options for parents and their covered child.

8. In order for an early learning program application by qualified agencies to be accepted and approved for funding, a proposal shall:

(a) include a needs assessment of the area within the applicant's community;

(b) demonstrate an ability to operate after typical work hours for parents working a full working day on atypical hours;

(c) provide for age and developmentally appropriate curriculum and activities;

(d) provide for periodic assessments of a child's development;

(e) provide a proper learning environment, materials and supplies for children to develop properly;

(f) have a robust plan and infrastructure to engage and communicate with families;

(g) meet staffing requirement criteria created by the department;

(h) provide adequate training and professional development opportunities for teachers and staff;

(i) demonstrate the quality of the facility;

(j) demonstrate the manner in which the physical well-being, health and nutrition are addressed;

(k) ensure equal opportunity by abiding by all standards set by Title III of the federal Americans with Disabilities Act in accordance with state law;

(l) incorporate an implicit bias and cultural competency training for child care providers, specifically focusing on served population;

(m) demonstrate compliance with local health licensing and permit requirements;

(n) outline the care options provided in relation to full working day hour sessions and non-school hour sessions; and

(o) other standards determined by the department.

9. Pursuant to section four hundred ten-cc of this title, an early learning program shall pay workers a salary that is equivalent to no less than forty-five thousand dollars annually for a full time teacher or staff members.

10. The department shall create a quality standard that eligible agencies shall meet to accept covered children who qualify for the prekindergarten program, but whose family choose to participate in the early learning child care program instead. This standard shall be met for an eligible agency to accept a covered child for a full working day session into the early learning child care program.

11. An early learning program proposal submitted under this section may be disapproved or a prior designation of qualified agency may be withdrawn only if the commissioner, in accordance with regulations established by the commissioner, has provided:(a) written notice of intention to disapprove such proposal or withdraw such designation, including a statement of the reasons for such disapproval or withdrawal; (b) a reasonable time in which to submit corrective amendments to such plan or undertake other necessary corrective action; and (c) an opportunity for a public hearing upon which basis an appeal to the commissioner may be taken as of right.

12. The New York state child care board established pursuant to title five-E of this article shall adopt all other rules and regulations necessary to administer the program.

§ 410-cc. Financial assistance to qualified agencies for early learning child care program and enrollment. 1. Social services districts shall provide financial assistance for carrying out the early learning child care program to qualified agencies. The amount of financial assistance provided shall be based on a cost estimation model created by the department which determines the actual cost of care in relation to the income eligibility fee scale for each covered child of the program. The cost estimation model shall be determined by a report from the office of children and family services. The formula shall also take into account needed wage increases to hire and retain enough child care professionals to meet the needs of the program in relation to the position of a covered child's family on the income eligibility fee scale. Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.

2. Qualified agencies participating in the early learning child care program shall be reimbursed by the state based on the enrollment of covered children. Financial assistance shall be provided to the qualified agency regardless of whether a covered child attends their assigned session or not.

3. When determining the market rate cost for early child care learning programs, the department shall take into account:

(a) wages for workers that shall not be less than forty-five thousand dollars a year;

(b) an established differential payment rate for child care services for eligible agencies. Such differential payment rate shall be fifteen percent higher than the actual cost of care or the applicable market-related payment rate established by the office in regulations, whichever is less. Differential payment rates shall be provided to eligible agencies who provide care to: (i) a child experiencing homelessness; (ii) a child during non-traditional hours; and/or (iii) any other at-risk children that the New York state child care board deems appropriate;

(c) the education level of the staff member when determining pay, with staff with bachelors and masters degrees being paid more than those without such degrees; and

(d) wages for workers that take into account cost of living differences across different regions of the state.

§ 410-dd. Drop-in care. 1. Eligible agencies that are contracted care facilities or voucher eligible facilities that offer drop-in care shall be eligible to receive a tax credit pursuant to subdivision two of this section, based on the following criteria:

(a) the eligible agency meets all requirements outlined in the early learning child care program; and

(b) the eligible agency holds open spots for enrollment to covered children, based on the following sizes of the eligible agency's enrollment capacity:

(i) if fifteen children or less are enrolled within a child care facility, the eligible agency shall have a minimum of one spot available for drop-in care in order to receive the tax credit;

(ii) if thirty children or less are enrolled within a child care facility, the eligible agency shall have a minimum of two spots available for drop-in care in order to receive the tax credit;

(iii) if forty-five children or less are enrolled within a child care facility, the eligible agency shall have a minimum of three spots available for drop-in care in order to receive the tax credit; and

(iv) if more than forty-five children are enrolled within a child care facility, the eligible agency shall have a minimum of four spots available for drop-in care in order to receive the tax credit.

2. Child care facilities that choose to provide drop-in care in accordance with the standards listed above within the first year of the program shall receive a tax credit in accordance with the formula approved by the New York state child care board. The tax credit shall be reassessed within the first year by the child care research and data collection taskforce and new stipulations shall be released in the final report of such taskforce and regulated by the New York state child care board.

3. The New York child care board shall allocate time toward the expansion and cost of a drop-in program.

§ 410-ee. Application and eligibility for families. 1. The department shall mandate that all social services districts provide qualified agencies approved for the early learning child care program with the proper forms for families to complete an application to the program for their covered child. Such application forms shall be processed by the social services district and shall be made available: (a) online in a printable, and fillable format on the website of the relevant social services district; and (b) in a translated version of the three to six most commonly spoken languages in the relevant social services district, either in-print or online. Qualified agencies shall provide families who seek enrollment at their local child care and early learning program information on how to contact their local social services district and child care resource and referral agencies for help in applying to the program.

2. Families may apply to a local child care and early learning program in such form and at such time as the executive director of the New York state child care board may prescribe, provided, however that such application shall require: proof of earnings, proof of identity, proof of residency, and proof of whether a child is registered in a universal prekindergarten program pursuant to section thirty-six hundred two-e of the education law and, if registered, for how many hours per day.

3. Applicants may prove earnings by providing: (a) proof of earnings through the presentation of a filed tax return from the previous year, or if proof of income through tax return is not possible the commissioner may allow a letter from an employer documenting the dates of work of the applicant and the yearly pay from the employer; (b) a form W-2 or 1099 from at least one of the two most recent completed tax years; or (c) a wage notice provided pursuant to section one hundred ninety-five of the labor law that documents employment for a period of time within

six months prior to the date the applicant certifies he or she became eligible for benefits pursuant to this title.

4. Applicants may prove identity by providing:

(a) A driver's license, motor vehicle ID card number, valid foreign driver's license that includes a photo image of the applicant and which is unexpired or expired for less than twenty-four months of its date of expiration, New York state ID, IDNYC or other New York municipal or county identification card, valid unexpired foreign passport issued by the applicant's country of citizenship, or valid unexpired consular identification document issued by a consulate from the applicant's country of citizenship. Nothing contained in this subdivision shall be deemed to preclude the commissioner from approving additional proofs of identity; or

(b) A social security number or, in lieu thereof, an individual taxpayer identification number or a United States citizenship and immigration services number; or

(c) The names and addresses of all employers and/or hiring parties, in and out of the state, for the last eighteen months to the extent that such information is available to the applicant; or

(d) A mailing address and zip code.

5. Applicants may prove residency by providing: (a) a New York state driver's license or state identification card, an IDNYC; (b) a utility bill with a proper address and listed under the applicant's confirmed identity, or a credit card statement with a proper address and listed under the applicant's confirmed identity; or (c) a lease agreement or mortgage statement with a proper address and listed under the applicant's confirmed identity, a letter from the New York city housing authority, a letter from a homeless shelter, or any additional form of government identification or identification approved by the department and the New York state child care board.

6. Prekindergarten eligible children who apply to attend the early learning child care program shall provide documentation proving the number of hours a child attends a prekindergarten program, whether no hours or a full school day.

7. Families shall be found eligible for financial assistance using an income eligibility fee scale based on the current federal poverty line and adjusted for the size of the family. No co-payments shall be assigned to families of covered children.

8. A fee under this section shall be charged to families of a covered child based on income levels as follows:

(a) A covered child who is in a family with an income that is less than four hundred percent of the poverty line shall be assessed no fee for service and receive free child care.

(b) A covered child who is in a family with a family income that is more than four hundred percent of the poverty line but not more than five hundred percent of the poverty line, the fee under this section shall not exceed one percent of the family income.

(c) A covered child who is in a family with a family income that is more than five hundred percent of the poverty line but not more than six hundred percent of the poverty line, the fee under this section shall not exceed two percent of the family income.

(d) A covered child who is in a family with a family income that is more than six hundred percent of the poverty line but not more than seven hundred percent of the poverty line, the fee under this section shall not exceed three and one-half percent of the family income.

(e) A covered child who is in a family with a family income that is more than seven hundred percent of the poverty line but not more than eight hundred percent of the poverty line, the fee under this section shall not exceed four and one-half percent of the family income.

(f) A covered child who is in a family with a family income that is more than eight hundred percent of the poverty line but not more than nine hundred percent of the poverty line, the fee under this section shall not exceed six percent of the family income.

(g) A covered child who is in a family with a family income that is more than nine hundred percent of the poverty line but not more than one thousand percent of the poverty line, the fee under this section shall not exceed seven percent of the family income.

9. The total fee for a family that is subject to the fee under this section and has more than one child served through the program: (a) may increase as the family enters a second or further child in the program; but (b) may not be greater than the fee allowed under paragraph (g) of subdivision eight of this section.

10. Within fourteen days of completing an application, the local social services district shall provide families of a covered child with a response on whether the child is eligible for financial assistance, unless the local jurisdiction is facing extenuating circumstances.

11. Early learning child care programs shall provide families information on whether there is capacity in the facility of the qualified agency or whether the family needs to coordinate with the child care resource and referral program to find an open spot in another closely located qualified agency.

12. Qualified agencies shall comply with existing state antidiscrimination laws with regard to admittance of eligible children.

§ 410-ff. Child care stabilization grant. 1. The office of children and family services shall establish a stabilization grant program to help deal with a worker shortage within the child care industry within sixty days of the effective date of this title.

2. Technical assistance and support shall be made available by child care resource and referral agencies, in addition to other designated partners, to all child care providers to assist with the completion of the online application.

§ 410-gg. Expansion grants; tax incentives. 1. In collaboration with the child care resource and referral program, the early childhood advisory council established pursuant to section four hundred eighty-three-g of this chapter shall create an expansion grant program proposal within one hundred eighty days of the effective date of this title. The proposal shall be submitted for review and adoption, rejection or modification by the New York state child care board. Such expansion grant program shall dedicate funding to eligible agencies for: (a) construction of suitable facilities; (b) plans to incorporate eligible child care providers into the START-UP NY program; and (c) the creation of a capital debt services plan based on the amount of funding.

2. (a) In fiscal year two thousand twenty-two, the office of children and family services shall dedicate a portion of annual dedicated funds for the early learning child care program to expansion grants and tax incentives. Spending of funds shall be based on a plan created after surveying social services districts and learning of their needs.

(b) In all subsequent fiscal years, the department shall dedicate no more than thirty percent and no less than five percent of dedicated funding for the program on expansion grants.

(c) The office of children and family services shall decide exact funding amounts based on the needs of eligible child care agencies and the overall health of the child care system in New York state.

§ 410-hh. Training, technical assistance and professional development funding. 1. In collaboration with the child care resource and referral program, the early childhood advisory council shall create a training and professional development grant program proposal within one hundred days of the effective date of this title. The proposal shall be submitted for review and adoption, rejection or modification by the New York state child care board.

2. (a) In fiscal year two thousand twenty-two, the office of children and family services shall dedicate a portion of all dedicated funds for the early learning child care program to the professional development and training of staff and eligible agencies. Spending of funds shall be based on a plan created after surveying social services districts and learning of their needs.

(b) In all subsequent fiscal years, the department shall dedicate no more than thirty percent and no less than five percent of dedicated funding for the program on training and professional development. The office of children and family services shall decide exact funding amounts based on the needs of eligible child care agencies, needs of the workforce, and the overall health of the child care system in New York state.

3. The plan shall use a portion of the funds decided upon by the office of children and family services to improve the quality of child care services, which shall include:

(a) supporting the training and professional development of the early childhood workforce, including supporting degree attainment through student loan repayment assistance and credentialing for early childhood educators pursuant to this section;

(b) supporting mandates to require the aspire registry for all early childhood care and education employees to enhance professional growth and program compliance.

4. There shall be established a need-based student loan repayment assistance program for the purpose of providing student loan repayment assistance to any individual employed by a regulated, privately operated center-based child care program or family child care home. Such program shall require that:

(a) An eligible individual shall:

(i) work in a privately operated center-based child care program or in a family child care home that is regulated by the department for at least an average of thirty hours per week for forty-eight weeks of the year;

(ii) have earned an associate's, bachelor's, or advanced degree with a major concentration in early childhood, child and human development, elementary education, special education with a birth to age eight focus, child and family services, or other relevant field within the preceding five years; and

(iii) submit to the office of children and family services documentation expressing the individual's intent to work in a regulated, privately operated center-based child care program or family child care home for at least the twelve months following the annual loan repayment award notification. A participant may receive up to four thousand dollars annually in student loan repayment assistance, which shall be distributed by the department in four allotments. The department shall distribute at least one-quarter of the individual's total annual benefit after

the individual has completed three months of employment in accordance with the program. The remainder of an individual's total annual benefit shall be distributed by the department every three months after the initial payment.

(b) The department shall adopt policies, procedures, and guidelines necessary to implement the provisions of this section.

(c) Student loan repayments shall be available pursuant to this section on a first-come, first-served basis until appropriated funds are depleted.

(d) The department may contract for the administration of the program. Administration costs shall not be more than ten percent of the total appropriation received to implement this section.

5. The department shall provide supports to aid eligible providers in providing trauma-informed care. Trauma-informed care supports may be used by eligible agencies for the following purposes:

(a) additional compensation for individual staff who have an infant and early childhood mental health or other child development specialty credential;

(b) trauma-informed professional development and training;

(c) the purchase of screening tools and assessment materials;

(d) supportive services for children with complex needs that are offered as fee-for-service within local communities; or

(e) other related expenses.

§ 410-ii. Coordination and integration of funds. 1. The commissioner and the executive director of the early learning child care program shall coordinate to integrate all federal and state dollars used for the block grant child care program pursuant to title five-C of this article to ensure an efficient child care system and adequate care for all children.

2. Any other child care programming by the state and localities shall integrate and coordinate with the early learning child care program.

3. The state education department and the office of children and family services shall coordinate and share data with each other to make sure that children between the ages of three to four are properly cared for and can participate in the programs of their choosing.

§ 410-jj. Reporting requirements. Each social services district shall collect and submit to the office of children and family services, in such form and at such times as specified by the department, such data and information regarding child care assistance provided under the early learning child care program in accordance with criteria established by the department and the New York state child care board. The office of children and family services shall create, oversee, and update a database of all child care facilities in the state. Such database shall be updated on a minimum of a bi-weekly basis by each social services district and shall include: (a) contact information for each child care facility; (b) current full or part-time care availability; and (c) whether drop-in care is available.

§ 410-kk. Enforcement. 1. The New York state child care board shall have the authority to adopt rules and regulations written by the office of children and family services pertaining to oversight and enforcement actions of the early learning child care program.

2. Enforcement actions undertaken by the office of children and family services shall be proportional to the severity of violations observed in a licensed child care facility. The New York state child care board shall develop a framework to establish levels of violations and appro-

priate enforcement actions for violations pursuant to section four hundred seventeen of this article.

(a) Violations that are non-critical code violations, and are not a safety risk to children or providers, shall be documented by written warning or reprimand to the provider. Such written warning or reprimand shall contain options to remediate the violation, a clear timeline to reach compliance, and the penalty for non-compliance.

(b) The office shall post violations in a publicly accessible manner that provides clarity and context of the type of violation that occurred and the severity of the violation, without stigmatizing providers.

(c) Inspection results shall clearly denote if violations have been remedied.

(d) Enforcement history shall only be listed in cases of denial, revocation, or suspension of a child care program's license or registration. Non-public enforcement actions, such as corrective plans of action or fines, shall not be listed or referenced.

3. Local social services districts have the right to perform inspections of any provider that provides care for subsidized children. A social services district shall notify the office immediately of any violations of regulations and shall provide the office with an inspection report documenting the results of such inspection.

(a) The office shall work to mediate and assist providers in remediating violations found from an inspection performed therein. Regional managers under the office of children and family services shall deploy staff and/or resources to aid this effort.

(b) Office of children and family services staff who are involved with enforcement of remediation efforts shall undergo cultural-competency training to effectively work with providers of all backgrounds, including but not limited to race, ethnicity, gender, sexual orientation, religion, and other protected classes.

§ 410-ll. Taskforce to study after school programming for five to twelve year old children and crisis care. 1. Within the office of children and family services, there shall be established a taskforce for the purpose of studying the need for after school programming for children up to twelve years of age who are not covered by the early learning child care program and the need for crisis care.

2. The taskforce shall be chaired by a representative of the executive chamber and the commissioner of the office of children and family services or their designee. Members of the taskforce shall serve without compensation for a one year term, but may be reimbursed for actual costs incurred for participation on such taskforce. Ensuring adequate geographic representation, members of the taskforce shall be appointed by the governor and comprised as follows:

(a) three individuals shall be appointed upon the recommendation of the speaker of the assembly from different regions of the state;

(b) three individuals shall be appointed upon the recommendation of the temporary president of the senate from different regions of the state;

(c) one individual shall be appointed upon the recommendation of the minority leader of the assembly;

(d) one individual shall be appointed upon the recommendation of the minority leader of the senate; and

(e) at least one representative from each of the following entities:

(i) the office of temporary and disability assistance;

(ii) the council on children and families;

(iii) the department of taxation and finance;

(iv) a regional economic development council;
(v) the state university of New York or the city university of New York;
(vi) the state education department;
(vii) the early childhood advisory council;
(viii) a social services district or county government or an entity that advocates on behalf of social services or county governments;
(ix) a non-profit child care advocacy organization;
(x) a department of education operated after school program;
(xi) a privately operated after school program;
(xii) a commercial real estate specialist; and
(xiii) a crisis care specialist or provider.
3. The taskforce shall examine the following:
(a) the current availability and usage of subsidized after school programming and care options;
(b) the needs for and costs associated with subsidizing after school programming and care for all children under the age of twelve;
(c) the demographic breakdown of children and their families who use and need after school programming and care;
(d) whether parents are voluntarily leaving the workforce due to lack of affordable or accessible after school programming and care;
(e) varying levels of quality of after school programming and care throughout the state with reporting;
(f) the need and cost to subsidize the need of crisis care options for children who need overnight, emergency, and shelter based care; and
(g) workforce demographics, needs and working conditions in the crisis care and after school programming industry.
4. The taskforce shall release a report within one year of the establishment of such taskforce. Such report shall contain the recommendations of the taskforce and shall be submitted to the New York state child care board.

§ 6. Article 6 of the social services law is amended by adding a new title 5-E to read as follows:

TITLE 5-E
NEW YORK STATE CHILD CARE BOARD

Section 410-aaa. Establishment of the New York state child care board.
410-bbb. Executive director.
410-ccc. Powers and duties of the board.
410-ddd. Powers and duties of the executive director.
410-eee. Ethics, transparency and accountability.
410-fff. Formal hearings; notice and procedure.

§ 410-aaa. Establishment of the New York state child care board. 1. The New York state child care board is hereby established within the office of children and family services and directed to work in collaboration with the executive director of the early learning child care program to advise and issue recommendations on the health of child care and the early learning child care program in the state of New York.
2. The New York state child care board shall consist of thirteen voting, appointed members, along with a representative from the office of children and family services, the department of education, the department of labor, the department of health and the department of mental hygiene. The governor shall appoint seven members to the board and the temporary president of the senate and the speaker of the assembly shall each appoint three members to the board. The members shall be appointed to serve five-year terms and, in the event of a vacancy, the vacancy shall be filled in the manner of the original appointment for

the remainder of the term. The appointed members and representatives shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties as board members.

3. Board members shall have statewide geographic representation that is balanced and diverse in its composition. Appointed members shall have an expertise in early education and intervention, trauma-informed care, infant and early childhood mental health, child and human development special education with a birth to age eight focus, public and behavioral health, or job training and professional development. The board shall include residents from communities most impacted by child care deserts, child care costs above the median, and low wages with little professional development opportunities.

4. The governor shall nominate an executive director pursuant to section four hundred ten-bbb of this title that shall share responsibility with the board in administering the program.

5. The members of the board shall elect a chairperson and a vice chairperson from among the members of the board. The vice chairperson shall represent the board in the absence of the chairperson at all official board functions. The board shall be authorized to adopt regulations to implement the provisions of this title. In developing such regulations, the board and the executive director shall consider and seek to coordinate any regulations which may currently be applicable to any existing programs or eligible agencies. When developing regulations, the board shall consider and recognize the diversity of settings and models available for the delivery of child care programs.

§ 410-bbb. Executive director. The office shall exercise its authority, other than powers and duties specifically granted to the board, by and through an executive director nominated by the governor and with the advice and consent of the senate. The executive director shall serve for a term of three years and once confirmed, may only be removed for good cause with appropriate notice. The executive director shall receive an annual salary not to exceed an amount appropriated therefor by the legislature and his or her expenses actually and necessarily incurred in the performance of his or her official duties, unless otherwise provided by the legislature.

§ 410-ccc. Powers and duties of the board. 1. The New York state child care board shall have the authority to approve or reject all rules, regulations and orders made by the office of children and family services that it may deem necessary or proper to fully effectuate the provisions of the early learning child care program; provided, however, that the board shall approve regulations relating to, but not be limited to, the following:

(a) in relation to section four hundred ten-gg of this article, recommendations from the early childhood advisory council on the proper amount of funding needed for expansion grants, and startup funds and tax incentives in fiscal years two thousand twenty-three, two thousand twenty-four, and beyond to expand eligible agency facilities to hold the increased capacity needed to house and properly supply eligible agencies for the early learning child care program;

(b) in relation to section four hundred ten-hh of this article, recommendations from the early childhood advisory council on the proper amount of funding needed for technical assistance, training, and professional development to sufficiently staff eligible agencies across the state in fiscal years two thousand twenty-three, two thousand twenty-four, and beyond;

(c) approving rules and regulations to properly regulate all parts of the early learning child care program, including rules regarding enforcement, pursuant to section four hundred ten-kk of this article, data collection, and reporting, pursuant to section four hundred ten-ii of this article;

(d) a definition of the approved expenditures for which grant funds may be used, which shall include, but not be limited to, transportation services and lease expenses or other appropriate facilities expenses;

(e) approving all other transitional guidelines and rules which allow a program to meet the required staff qualifications by the start of the two thousand twenty-three school year;

(f) approving transitional guidelines and rules which allow an early learning child care program to meet any other requirements set forth pursuant to this section and regulations adopted by the board and the executive director relating to health and safety standards;

(g) time requirements which reflect the needs of the social services districts for flexibility, but which also meet a minimum weekly time requirement;

(h) the staff/child ratio;

(i) reasonable grounds and basis for the non-acceptance of a proposal submitted to the early learning child care agency when the proposal otherwise meets, to the extent applicable, all the regulations of the requirements set forth in this subdivision, as well as subdivisions six, seven, and eight of section four hundred ten-bb of this article;

(j) any other program components, such as health, nutrition or support services, which the child care board deem appropriate and necessary for the appropriate and effective implementation of an early learning child care program;

(k) commencing July first, two thousand twenty-three, and continuing until June thirtieth, two thousand twenty-four, approving a plan that requires that the social services district give preference to serving eligible children who are living in economically distressed areas, as defined by section four hundred ten-aa of this article;

(l) approving a process by which an agency shall submit an application to a social services district; and

(m) approving a formula for a tax credit for drop-in care pursuant to section four hundred ten-dd of this article.

2. The board shall meet as frequently as its business may require. The board shall enact, and from time to time may amend, bylaws in relation to its meetings and the transactions of its business. A majority of the total number of voting members which the board would have, were there no vacancies, shall constitute a quorum and shall be required for the board to conduct business. All meetings of the advisory board shall be conducted in accordance with the provisions of article seven of the public officers law.

§ 410-ddd. Powers and duties of the executive director. The executive director shall have the following powers and duties:

1. (a) To exercise the powers and perform the duties in relation to the administration of the early learning child care program as are not specifically vested or delegated by this chapter in the early learning child care board; and (b) to oversee social services districts administration of the law.

2. To keep records in such form as they may prescribe of all certifications and licenses.

3. To inspect or provide for the inspection of any premises where an early learning child care program is located.

4. To prescribe forms of applications for certifications, licenses and contracts under this chapter and of all reports deemed necessary by the board.

5. To inspect or provide for the inspection of any certified premises where an early learning child care program is being administered.

6. To prescribe forms for applications for certifications and licenses under this chapter and of all reports deemed necessary by the board.

7. To delegate the powers authorized in this section to such other officers or employees as may be deemed appropriate by the executive director.

8. To exercise the powers and perform the duties as delegated by the board in relation to the administration of the board as are necessary, including but not limited to budgetary and fiscal matters.

9. To enter into contracts, memoranda of understanding, and agreements to effectuate the policy and purpose of this chapter.

10. To advise and assist the board in carrying out any of its functions, powers and duties.

11. To coordinate across state agencies and departments in order to research and study any changes in child care use, costs, administration, and all related fields.

12. To issue guidance and industry advisories.

§ 410-eee. Ethics, transparency and accountability. No member of the board or office of children and family services or any officer, deputy, assistant, inspector or employee, or spouse or minor child of such member, officer, deputy, assistant, inspector or employee thereof shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien, or in any other manner, in or on any premises where child care is provided; nor shall he or she have any interest, direct or indirect, in any business wholly or partially devoted to child care, or own any stock in any corporation which has any interest, proprietary or otherwise, direct or indirect, in any premises where child care is provided, or receive any commission or profit whatsoever, direct or indirect, from any person applying for or receiving any subsidy or grant in this program, or hold any other elected public office in the state or in any political subdivision. After notice and opportunity to be heard, anyone found to have knowingly violated any of the provisions of this section shall, after notice, be removed and shall divest themselves of such direct or indirect interests, in addition to any other penalty provided by law.

§ 410-fff. Formal hearings; notice and procedure. 1. The board, or any person designated by the board for this purpose, may issue subpoenas and administer oaths in connection with any hearing or investigation under or pursuant to this chapter, and it shall be the duty of the board and any persons designated by the board for such purpose to issue subpoenas at the request of and upon behalf of the respondent.

2. The board and those designated by the board shall not be bound by the laws of evidence in the conduct of hearing proceedings, but the determination shall be founded upon a preponderance of evidence to sustain it.

3. Notice and right of hearing as provided in the state administrative procedure act shall be served at least fifteen days prior to the date of the hearing, provided that, whenever because of danger to the public health, safety or welfare it appears prejudicial to the interests of the people of the state to delay action for fifteen days, the board may serve the respondent with an order requiring certain action or the

cessation of certain activities immediately or within a specified period of less than fifteen days.

4. Service of notice of hearing or order shall be made by personal service or by registered or certified mail. Where service, whether by personal service or by registered or certified mail, is made upon an incompetent, partnership, or corporation, it shall be made upon the person or persons designated to receive personal service by article three of the civil practice law and rules.

5. At a hearing, that to the greatest extent practicable shall be reasonably near the respondent, the respondent may appear personally, shall have the right of counsel, and may cross-examine witnesses against him or her and produce evidence and witnesses on his or her behalf.

6. Following a hearing, the board may make appropriate determinations and issue a final order in accordance therewith.

7. The board may adopt, amend and repeal administrative rules and regulations governing the procedures to be followed with respect to hearings, such rules to be consistent with the policy and purpose of this article and the effective and fair enforcement of its provisions.

8. The provisions of this section shall be applicable to all hearings held pursuant to this article, except where other provisions of this article applicable thereto are inconsistent therewith, in which event such other provisions shall apply.

§ 7. This act shall take effect immediately; provided, however that subdivision 3 of section 410-aa of the social services law as added by section five of this act shall take effect September 1, 2023.