

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Introduced**

## **House Bill 3239**

**FISCAL  
NOTE**

By Delegates Fehrenbacher, Crouse, G. Howell, and  
McCormick

[Introduced March 07, 2025; referred to the  
Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
2 designated §5B-12-1, §5B-12-2, §5B-12-3, §5B-12-4, §5B-12-5, §5B-12-6, §5B-12-7,  
3 §5B-12-8, §5B-12-9, and §5B-12-10, all relating to child-care assistance; providing a short  
4 title; providing legislative findings and declaration of public purpose; providing definitions;  
5 establishing the administration of the program; promulgating administrative regulations;  
6 establishing a fund; clarifying employer responsibilities; clarifying termination of a tri-share  
7 agreement; creating incentives; and creating penalties.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 12. WEST VIRGINIA TRI-SHARE CHILD-CARE ASSISTANCE PROGRAM.**

**§5B-12-1. Short title.**

1 This article shall be known and cited as the "West Virginia Tri-Share Child-Care Assistance  
2 Program" or the "Tri-Share Program".

**§5B-12-2. Legislative findings; declaration of public policy.**

1 The Legislature finds and declares that the purpose of this act is to support West Virginia  
2 families by incentivizing employers to contribute to the child-care costs of its employees. In  
3 enacting this legislation, it is the intention of the Legislature to enable the Department of Economic  
4 Development to facilitate this public and private partnership program, and to administer program  
5 funds to achieve this purpose. The Tri-Share Program is intended to pick up where the state's  
6 child-care subsidy program leaves off. Further, it is the specific intent of the Legislature that no  
7 private cause of action, either express or implied, is created by or otherwise arises from the  
8 enactment, provisions, or implementation of §5B-12-1 to §5B-12-10 of this code.

**§5B-12-3. Definitions.**

1 As used in this article, the term:

2 "Child-care facility" means an early childhood education (ECE) facility maintained by the  
3 state or any county or municipality thereof, or any agency or facility maintained by an individual,  
4 firm, corporation, association, or organization, public or private, for the care of six or more children

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

"Contribution" means a direct payment to a child-care facility either by an employer or through a third-party vendor to subsidize an employee's eligible child-care costs;

"Department" means the West Virginia Department of Economic Development.

"Eligible child-care costs" means costs to be incurred by an individual for services rendered by an eligible child-care provider;

"Employee" means an individual who works in West Virginia and is employed by an employer;

"Employer" means a nonprofit, for-profit, county, or local government entity with at least one employee who works in West Virginia in each of 20 or more calendar weeks in the current or preceding calendar year;

"Fund" means the fund administered by the department as described in §5B-12-6 of this code;

"Program" means the West Virginia Tri-Share Child-Care Assistance Program;

"State match" means the money paid directly to the child-care provider by the department from the fund described in §5B-12-6 of this code; and

"State median household income" means the most recent estimate available of real median household income for the state, as determined by the United States Census Bureau.

**§5B-12-4. Administration of the Program.**

(a) The Tri-Share Child-Care Assistance Program is hereby established under the Department of Economic Development. To administer the program, the department may:

(1) Delegate authority to a subsidiary department;

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

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

(b) The department shall be responsible for:

8           (1) Creating and making available a standardized contract for participation in the program;  
9           (2) Processing the contract between an employer, employee, and child-care facility that is  
10 submitted to the department;

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

12           (4) Managing and administering the program funds;

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

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

17           (A) It should be noted that the Tri-Share Program applies only to those who are ineligible  
18 for child-care subsidies. As noted in §5B-12-2 of this code, the Tri-Share Program is intended to  
19 pick up where the state's child-care subsidy program leaves off;

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

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

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

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

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

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

33           (e) The department shall not agree to become party to a proposed contract pursuant to this

34 program if the corresponding financial obligation would cause the fund to accrue a negative  
35 balance.

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

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

41 (h) The department shall not disclose an employee's personal information without the  
42 individual's express written consent.

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

45 (1) The department shall begin administering the program after the effective date of this  
46 article, including by not limited to:

47 (i) Promulgating the required administrative regulations as described in §5B-12-5 of this  
48 code; and

49 (ii) Soliciting third-party vendor contracts, if deemed necessary;

50 (2) The department shall not begin accepting proposed contracts from employers pursuant  
51 to this program prior to April 1, 2026; and

52 (3) The department shall not disperse state matches from the fund as a party to a contract  
53 with an employer, employee, and child-care facility pursuant to this program prior to July 1, 2026.

54 (j) Beginning on January 1, 2027, and every year thereafter, the department shall begin  
55 accepting proposed contracts from employers, employees, and child-care facilities for the next  
56 fiscal year according to the following:

57 (1) 90 calendar days before April 1 for employers with existing approved contracts  
58 pursuant to the program; and

59 (2) 45 calendar days before April 1 for all other employers.

(k) Beginning on January 1, 2027, and every year thereafter, the department shall publish reports detailing the efficacy of the program by June 15th and December 15th of each year and shall submit the report to a yet to be established research commission. The report shall include at least the following information about the program:

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

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

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

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

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

(6) The number, license type, and geographical distribution of participating child-care facilities;

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

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

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

(l) Prior to October 31, 2025, the department shall publish a report detailing implementation plans for the program and submit the report to a yet to be established research commission.

(m) Unless acted upon by the Legislature, this article will sunset on June 30, 2030, at which time the Tri-Share Child-Care Assistance Program shall terminate.

**§5B-12-5. Promulgation of administrative regulations.**

The department, or its designated subsidiary department, shall promulgate administrative regulations to effectuate the provisions of §5B-12-1 et seq. of this code including:

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

5 (A) The name, physical location, size, and industry of the employer;

6 (B) The name and phone number of the employer's point of contact;

7 (C) The name and physical location of the child-care facility;

8 (D) The name and phone number of the child-care facility's point of contact;

9 (E) The name and home address of the employee;

10 (F) For each employee participating in the program, the age of each child and whether that  
11 child may require special accommodations;

12 (G) The total contribution to be paid by the employer to the provider, either directly or  
13 through a third-party vendor;

14 (H) The total amount of the state match to be paid to the facility, either directly or through a  
15 third-party vendor;

16 (I) The duration of the contract, which shall not last beyond the end of the state's fiscal year  
17 in any given year;

18 (J) The frequency of the contribution to be made directly to the child-care facility in  
19 accordance with the facility's established billing cycle; and

20 (K) The demographic information of the employee.

21 (2) Establishing eligibility verification procedures for the following parties as a prerequisite  
22 for the department entering the agreement as a party and issuing a state match:

23 (A) The employer's enrollment in the program;

24 (B) The employee's eligibility; and

25 (C) The child-care facility's eligibility;

26 (3) Collecting and verifying household income information from eligible employees and  
27 determining the amount of the state match for which the employee is eligible in accordance with  
28 §5B-12-7 of this code;

29 (4) Creating procedures for issuing a notice to all parties to the agreement of their  
30 enrollment in the program upon receiving and processing the contract and determining eligibility;

31 (5) Compiling confidentiality protocols for the department and its designated department or  
32 departments to safeguard the personal information of participating employees, employers, and  
33 child-care facilities;

34 (6) Introducing reporting requirements for an employer or a child-care facility reporting a  
35 lapse or nonpayment of contribution towards eligible child-care services.

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

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

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

40 (10) Establishing procedures for appeals hearings; and

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

**§5B-12-6. Fund.**

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

4 (b) The fund will initially be funded with \$5 million.

5 (c) The fund shall be administered by the department or its designated subsidiary  
6 department.

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

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

10 (f) Moneys deposited in the fund are hereby appropriated for the purposes set forth in §5B-  
11 12-1 et seq. and shall not be appropriated or transferred by the Legislature for any other purpose.

12 (g) The department shall issue state matches out of the fund to child-care facilities in  
13 accordance with the provisions of the respective contracts and in the order that the department



14 processed the contracts.

15 (h) Through the Tri-Share Program, the cost of an eligible employee's child-care is shared  
16 equally among the employer, the employee, and the state. However, the state's match will taper off  
17 as family household income increases. The state's match obligations will be allotted as follows:

18 (1) When an employee's household income is equal to or less than 200% of the state's  
19 median household income, the state match will be 1/3 or 33.3% of the costs.

20 (2) When an employee's household income is greater than 200% of the state's median  
21 household income and equal to or less than 250%, the state match will be 30% of the costs.

22 (3) When an employee's household income is greater than 250% of the state's median  
23 household income and equal to or less than 300%, the state match will be 20% of the costs.

24 (4) When an employee's household income is greater than 300% of the state's median  
25 household income and equal to or less than 350%, the state match will be 10% of the costs.

26 (5) When employee's household income is greater than 350% of the state's median  
27 household income, the state match will be nothing.

28 (i) An employer may decide what amount greater than 1/3 or 33.3% it will contribute as the  
29 state match decreases.

30 (j) The department may adjust median household income rates for families of greater than  
31 four people: *Provided*, That the adjusted rates not be lower than what is determined by the United  
32 States Census Bureau.

**§5B-12-7. Employer responsibilities.**

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

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

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

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

8           (3) Submit any additional information as deemed necessary by the department pursuant to  
9   §5B-12-4 of this code;

10          (4) Make contributions to the employee's eligible child-care costs directly to the child-care  
11 facility or through a third-party vendor in accordance with the amount and frequency agreed to in  
12 the final contract:

13          (i) Federal law and the employer's terms will determine whether the employee  
14 contributions may be made with pre-tax dollars. Terms that qualify the arrangement as a  
15 dependent care assistance program (DCAP) will allow for pre-tax contributions; and

16          (ii) Withhold the employee's portion of the child-care costs and remit the funds directly to  
17 the child care facility or through a third-party vendor in accordance with the amount and frequency  
18 agreed to in the final contract.

19          (c) For purposes of this article, an employer's contribution may qualify for the federal  
20 "Employer-provided child care credit" as detailed in 26 U.S.C. 45F.

21          (d) To participate in the program, an employee shall complete the standardized contract  
22 with the employer and the child-care facility and provide any additional information as deemed  
23 necessary by the department pursuant to Section 4 of this act.

24          (e) In the event that the agreement includes costs of service not covered by the employer's  
25 contribution and the state match, the employer shall make payments to the child-care facility on  
26 the employee's behalf according to the amount and frequency determined by the final contract. If  
27 another member of the employee's household or family becomes a party to an agreement in  
28 accordance with §5B-12-1 to §5B-12-10 of this code, the employer contribution and state match of  
29 that agreement may be utilized to pay for costs of service not covered by the employer contribution  
30 and state match of the preceding agreement: *Provided*, That it does not result in overpayment to  
31 the facility.

**§5B-12-8. Termination of a tri-share agreement.**

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

3       (1) If the relationship between the employee and employer is severed, the employer shall  
4 notify the child-care facility and the department within 10 business days of the separation, and the  
5 contract is terminated on the calendar date provided by the employer in the notification. If the  
6 employer fails to make this notification and the department issues a state match to the facility on  
7 behalf of that employer's employee, then the employer shall reimburse the department for the  
8 unnecessary state match; or

9       (2) If the employer fails to make a contribution or contributions for the eligible child-care  
10 costs in accordance with the terms of the contract, the child-care facility shall notify the department  
11 within five business days. After receiving notification from the facility, the department shall  
12 temporarily cease providing a state match and shall notify the employer that the contract will be  
13 terminated unless the employer remedies the nonpayment within five business days of receiving  
14 notification from the department. If the provider fails to make this notification and receives a state  
15 match from the department on behalf of that employer's employee, the provider shall reimburse  
16 the department for the unnecessary state match;

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

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

27           (2) If the child-care provider ceases participation or otherwise loses its licensing, it shall  
28 notify all parties to the agreement immediately; or

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

**§5B-12-9. Department of economic development incentives.**

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

**§5B-12-10. Penalties.**

1           Any person who intentionally registers false information under §5B-12-1 to §5B-12-9 of this  
2 code with the department in pursuit of the benefits of this program shall be subject to a civil penalty  
3 of no more than \$500 per violation. All money collected as a result of penalties assessed under  
4 §5B-12-1 et seq. of this code shall be paid into the State Treasury and credited to the Tri-Share  
5 Child-Care Assistance Program fund.

NOTE: The purpose of this bill is to provide support to West Virginia families by incentivizing employers to contribute to the child-care costs of its employees. In enacting this legislation, it is the intention of the Legislature to enable the Department of Economic Development to facilitate this public and private partnership program and administer program funds to achieve this purpose.

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