

House Bill 2468

Sponsored by Representative BYNUM (at the request of Oregon AFSCME) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires landlord to allow dwelling to be used as family child care home. Sets conditions on use. Authorizes Early Learning Council to establish rules for landlords.

Provides that rules adopted by Early Learning Council related to certified or registered family child care homes may not take into consideration providers' school-age children.

Requires that any inspections or investigations of child care facility or program be conducted at time that does not impede well-being or safety of children currently under care.

Provides that in any decisions to deny, revoke, suspend, impose condition on or not renew certification or registration, Office of Child Care bears burden of proof and providers have right to representation.

Requires Department of Early Learning and Care to make payments to subsidized care facilities by date specified by rule or to pay additional amount.

Requires that prior to adoption, amendment or repeal of any specialty code that may affect child care provider, notice be given of proposed change to Department of Early Learning and Care.

Prohibits planned community's governing document from imposing certain prohibitions or restrictions on unit or lot used as certified or registered family child care home.

A BILL FOR AN ACT

1
2 Relating to child care; creating new provisions; and amending ORS 90.385, 94.779, 329A.280,
3 329A.330, 329A.360, 329A.390, 329A.430, 329A.500 and 455.030.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 90.**

6 **SECTION 2. (1) Except as provided in subsection (4) of this section, a landlord may not**
7 **prohibit the tenant's use of a dwelling as a family child care home if:**

8 (a) **The family child care home is certified under ORS 329A.280 or registered under ORS**
9 **329A.330; and**

10 (b) **The tenant has notified the landlord of the use.**

11 (2) **A landlord shall take reasonable steps to cooperate with a tenant who uses, or in-**
12 **tends, plans or attempts to use, the dwelling as a family child care home, including compli-**
13 **ance with rules of the Early Learning Council under ORS 329A.280 or 329A.330.**

14 (3) **A tenant may enforce the requirements of subsections (1) and (2) of this section under**
15 **ORS 90.360.**

16 (4) **This section and ORS 90.385 do not prohibit a landlord from:**

17 (a) **Requiring a tenant to pay in advance for costs of modifications that are necessary**
18 **or desirable for the tenant's use of the dwelling as a family child care home under ORS**
19 **329A.280 or 329A.330 and that are not required of the landlord under ORS 90.320 or the rental**
20 **agreement.**

21 (b) **Prohibiting a use not allowed under the zoning for the dwelling unit or an**
22 **association's governing documents as defined in ORS 94.550 or 100.005.**

23 (c) **Prohibiting a use not allowed under rules established by the Early Learning Council.**

24 (5) **A landlord may require that a tenant using the property as a family child care home,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **at the election of the landlord, either:**

2 **(a) Require parents of any children under the care of the family child care home to sign**
 3 **a document in which the parents:**

4 **(A) Agree for themselves and their children that the landlord, owner or association, as**
 5 **defined in ORS 94.550 or 100.005, is not liable for losses from injuries to their children con-**
 6 **ected with the operation of the family child care home; and**

7 **(B) Acknowledge that the family child care provider does not maintain liability coverage**
 8 **for losses from injuries to their children connected with the operation of the family child**
 9 **care home; or**

10 **(b) Notwithstanding ORS 90.222, carry and maintain a surety bond or liability policy**
 11 **covering injuries to children under the care of the family child care provider that:**

12 **(A) Provides coverage of claims for injuries sustained on account of the negligence of the**
 13 **tenant or its employees;**

14 **(B) Names the landlord, owner or association, as defined in ORS 94.550 or 100.005, as an**
 15 **additional insured; and**

16 **(C) Provides coverage in an amount no less than the amount established by rule by the**
 17 **Early Learning Council in consultation with the Department of Consumer and Business**
 18 **Services.**

19 **(6) This section does not require a family child care home to carry any insurance policy**
 20 **unless required by a landlord under subsection (5)(b) of this section.**

21 **(7) This section does not apply to housing for older persons as defined in ORS 659A.421.**

22 **SECTION 3.** ORS 90.385 is amended to read:

23 90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent
 24 or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening
 25 to bring an action for possession after:

26 (a) The tenant has complained to, or expressed to the landlord in writing an intention to com-
 27 plain to, a governmental agency charged with responsibility for enforcement of any of the following
 28 concerning a violation applicable to the tenancy:

29 (A) A building, health or housing code materially affecting health or safety;

30 (B) Laws or regulations concerning the delivery of mail; or

31 (C) Laws or regulations prohibiting discrimination in rental housing;

32 (b) The tenant has made any complaint to the landlord that is in good faith and related to the
 33 tenancy;

34 (c) The tenant has organized or become a member of a tenants' union or similar organization;

35 (d) The tenant has testified against the landlord in any judicial, administrative or legislative
 36 proceeding;

37 (e) The tenant successfully defended an action for possession brought by the landlord within the
 38 previous six months except if the tenant was successful in defending the action only because:

39 (A) The termination notice by the landlord was not served or delivered in the manner required
 40 by ORS 90.155; or

41 (B) The period provided by the termination notice was less than that required by the statute
 42 upon which the notice relied to terminate the tenancy; [*or*]

43 **(f) The tenant uses, or intends, plans or attempts to use, the dwelling as a family child**
 44 **care home in compliance with section 2 of this 2023 Act; or**

45 [*f*] **(g) The tenant has performed or expressed intent to perform any other act for the purpose**

1 of asserting, protecting or invoking the protection of any right secured to tenants under any federal,
 2 state or local law.

3 (2) As used in subsection (1) of this section, “decreasing services” includes:

4 (a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of
 5 common areas or facilities by tenant associations or tenants meeting to establish a tenant organ-
 6 ization; and

7 (b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment
 8 or use of the premises by the tenant.

9 (3) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the
 10 remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for
 11 possession.

12 (4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for
 13 possession if:

14 (a) The complaint by the tenant was made to the landlord or an agent of the landlord in an
 15 unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of
 16 unreasonably harassing the landlord[. *A determination whether the manner, time or effect of a com-
 17 plaint was unreasonable shall include*] **in** consideration of all related circumstances preceding or
 18 contemporaneous to the complaint;

19 (b) The violation of the applicable building or housing code was caused primarily by lack of
 20 reasonable care by the tenant or other person in the household of the tenant or upon the premises
 21 with the consent of the tenant;

22 (c) The tenant was in default in rent at the time of the service of the notice upon which the
 23 action is based; or

24 (d) Compliance with the applicable building or housing code requires alteration, remodeling or
 25 demolition which would effectively deprive the tenant of use of the dwelling unit.

26 (5) For purposes of this section, a complaint made by another on behalf of a tenant is considered
 27 a complaint by the tenant.

28 (6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court
 29 pursuant to ORS 90.370 shall not be considered to be in default in rent.

30 (7) The maintenance of an action under subsection (4) of this section does not release the land-
 31 lord from liability under ORS 90.360 (2).

32 **SECTION 4.** ORS 329A.280 is amended to read:

33 329A.280. (1) A person may not operate a child care facility, except a facility subject to the
 34 registration requirements of ORS 329A.330, without a certification for the facility from the Office
 35 of Child Care.

36 (2) The Early Learning Council shall adopt rules for the certification of a family child care home
 37 caring for not more than 16 children. Rules may be adopted specifically for certified child care fa-
 38 cilities operated in a single-family dwelling or other dwelling. Notwithstanding fire and other safety
 39 regulations, the rules that the council adopts for certified child care facilities shall set standards
 40 that can be met without significant architectural modification. **The rules may establish reasonable
 41 requirements for landlords of tenants who operate a family child care home under section 2
 42 of this 2023 Act.** In adopting the rules, the council may consider and set limits according to factors
 43 including the age of children in care, the ambulatory ability of children in care, the number of the
 44 provider’s children present **who are not school age**, the length of time a particular child is con-
 45 tinuously cared for and the total amount of time a particular child is cared for within a given unit

1 of time. **Rules may not take into consideration the provider’s school age children when es-**
 2 **tablishing capacity or adult to child ratio requirements.** The rules must require compliance with
 3 the provisions of ORS 329A.600.

4 (3) In addition to rules adopted for and applied to a certified family child care home providing
 5 child care for not more than 16 children, the council shall adopt and apply separate rules appro-
 6 priate for any child care facility that is a child care center.

7 (4) Any person seeking to operate a child care facility may apply for a certification for the fa-
 8 cility from the Office of Child Care and receive a certification upon meeting certification require-
 9 ments.

10 (5) A facility described in ORS 329A.250 (5)(d) may, but is not required to, apply for a certi-
 11 fication under this section and receive a certification upon meeting certification requirements.

12 **SECTION 5.** ORS 329A.330 is amended to read:

13 329A.330. (1) A provider operating a family child care home where care is provided in the family
 14 living quarters of the provider’s home that is not subject to the certification requirements of ORS
 15 329A.280 may not operate a child care facility without registering with the Office of Child Care.

16 (2) A child care facility holding a registration may care for a maximum of 10 children, including
 17 the provider’s own children **who are not school age**. Of the 10 children:

18 (a) No more than six may be younger than school age; and

19 (b) No more than two may be 24 months of age or younger.

20 (3)(a) To obtain a registration, a provider must apply to the Office of Child Care by submitting
 21 a completed application work sheet and a nonrefundable fee. The fee shall vary according to the
 22 number of children for which the facility is requesting to be registered, and shall be determined and
 23 applied through rules adopted by the Early Learning Council under ORS 329A.275. The fee shall be
 24 deposited as provided in ORS 329A.310 (2). The office may waive any or all of the fee if the office
 25 determines that imposition of the fee would impose a hardship on the provider.

26 (b) Upon receipt of an initial or renewal application satisfactory to the office, the office shall
 27 conduct an on-site review of the child care facility under this section. The on-site review shall be
 28 conducted within 30 days of the receipt of a satisfactory application.

29 (4) The office shall issue a registration to a provider operating a family child care home if:

30 (a) The provider has completed a child care overview class administered by the office;

31 (b) The provider has completed two hours of training on child abuse and neglect issues;

32 (c) The provider is currently certified in infant and child first aid and cardiopulmonary resus-
 33 citation;

34 (d) The provider is certified as a food handler under ORS 624.570; and

35 (e) The office determines that the application meets the requirements of ORS 181A.200, 329A.030
 36 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215,
 37 329A.030 and 329A.250 to 329A.450, and receives a satisfactory records check, including criminal
 38 records and protective services records.

39 (5) Unless the registration is revoked as provided in ORS 329A.350, the registration is valid for
 40 a period of two years from the date of issuance. The office may not renew a registration of a pro-
 41 vider operating a family child care home unless the provider:

42 (a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;

43 (b) Has completed a minimum of eight hours of training related to child care during the most
 44 recent registration period;

45 (c) Is certified as a food handler under ORS 624.570; and

1 (d) When applicable, has complied with the requirements of ORS 329A.600 prior to imposing an
 2 expulsion.

3 (6) A registration authorizes operation of the facility only on the premises described in the
 4 registration and only by the person named in the registration.

5 (7) The Early Learning Council shall adopt rules:

6 (a) Creating the application work sheet required under subsection (3) of this section;

7 (b) Defining full-time and part-time care;

8 **(c) Establishing capacity and adult to child ratio requirements, which must be established**
 9 **without taking into consideration the provider's school age children;**

10 [(c)] (d) Establishing under what circumstances the adult to child ratio requirements may be
 11 temporarily waived; [and]

12 **(e) Establishing reasonable requirements for landlords of tenants who operate a family**
 13 **child care home under section 2 of this 2023 Act; and**

14 [(d)] (f) Establishing health and safety procedures and standards on:

15 (A) The number and type of toilets and sinks available to children;

16 (B) Availability of steps or blocks for use by children;

17 (C) Room temperature;

18 (D) Lighting of rooms occupied by children;

19 (E) Glass panels on doors;

20 (F) Condition of floors;

21 (G) Availability of emergency telephone numbers; and

22 (H) Smoking.

23 (8) The office shall adopt the application work sheet required by subsection (3) of this section.
 24 The work sheet must include, but need not be limited to, the following:

25 (a) The number and ages of the children to be cared for at the facility; and

26 (b) The health and safety procedures in place and followed at the facility.

27 (9)(a) If the Office of Child Care determines that it is necessary to protect the health and safety
 28 of the children for whom a child care facility is to provide care, the office may impose a condition
 29 on the facility's registration that is reasonably designed to protect the health and safety of children.
 30 The office may impose a condition during the application process for an initial registration, during
 31 the application process for a renewal of a registration or at any time after the issuance of a regis-
 32 tration.

33 (b) Except as provided in paragraph (c) of this subsection, when the office imposes a condition
 34 on a child care facility's registration, the facility shall be afforded an opportunity for a hearing
 35 consistent with the provisions of ORS chapter 183.

36 (c)(A) If the office finds a serious danger to the health and safety of the children receiving care
 37 at a child care facility, the office shall notify the facility of the specific reasons for the finding and
 38 may impose an emergency condition on the facility's registration without a hearing.

39 (B) If the facility demands a hearing within 90 days after the office notifies the facility of the
 40 emergency condition, a hearing consistent with the provisions of ORS chapter 183 must be granted
 41 to the facility as soon as practicable after the demand and the agency shall issue an order consistent
 42 with the provisions of ORS chapter 183 confirming, altering or revoking the order imposing the
 43 emergency condition.

44 (10) The office, upon good cause shown, may waive one or more of the registration requirements.
 45 The office may waive a requirement only if appropriate conditions or safeguards are imposed to

1 protect the welfare of the children and the consumer interests of the parents of the children. The
 2 office may not waive the on-site review requirement for applicants applying for an initial registra-
 3 tion or renewal of a registration.

4 (11) The Early Learning Council, by rule, shall develop a list of recommended standards con-
 5 sistent with standards established by professional organizations regarding child care programs for
 6 child care facilities. Compliance with the standards is not required for a registration, but the office
 7 shall encourage voluntary compliance and shall provide technical assistance to a child care facility
 8 attempting to comply with the standards. The child care facility shall distribute the list of recom-
 9 mended minimum standards to the parents of all children cared for at the facility.

10 (12) In adopting rules relating to registration, the Early Learning Council shall consult with the
 11 appropriate legislative committee in developing the rules to be adopted. If the rules are being
 12 adopted during a period when the Legislative Assembly is not in session, the Early Learning Council
 13 shall consult with the appropriate interim legislative committee.

14 **SECTION 6.** ORS 329A.390, as amended by section 4, chapter 90, Oregon Laws 2022, is amended
 15 to read:

16 329A.390. (1) Whenever an authorized representative of the Office of Child Care is advised or
 17 has reason to believe that child care that is subject to regulation by the office is being provided
 18 without a certification, registration or record, the authorized representative may visit and conduct
 19 an investigation of the facility at any reasonable time to determine whether the facility is subject
 20 to the requirements of ORS 181A.200, 329A.030 and 329A.250 to 329A.450.

21 (2) At any reasonable time, an authorized representative of the Office of Child Care may conduct
 22 an investigation of any certified or registered child care facility or program recorded under ORS
 23 329A.255 to determine whether the child care facility or program is in conformity with ORS
 24 181A.200, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195,
 25 181A.200, 181A.215, 329A.030 and 329A.250 to 329A.450.

26 (3) An authorized representative of the Office of Child Care shall conduct an investigation of
 27 any certified or registered child care facility, of any program recorded under ORS 329A.255 or of
 28 any other child care facility that is subject to regulation by the office if the office receives a serious
 29 complaint about the child care facility or program.

30 (4) Complaints, including but not limited to serious complaints, made by individuals or entities
 31 regarding certified or registered child care facilities, [*regulated subsidy facilities,*] **subsidized care**
 32 **facilities**, preschool recorded programs or school-age recorded programs may be received and in-
 33 vestigated by the Office of Child Care. The name, address and other identifying information about
 34 the individual or entity that made the complaint may not be disclosed.

35 (5) Any state agency that receives a complaint about a certified or registered child care facility,
 36 [*a regulated subsidy facility,*] **a subsidized care facility**, a preschool recorded program or a school-
 37 age recorded program shall notify the Office of Child Care about the complaint and any subsequent
 38 action taken by the state agency based on that complaint.

39 (6) A director or operator of a child care facility, [*a regulated subsidy facility,*] **a subsidized**
 40 **care facility**, a preschool recorded program or a school-age recorded program shall permit an au-
 41 thorized representative of the Office of Child Care to inspect records of the facility or program and
 42 shall furnish promptly reports and information required by the office.

43 (7) In conducting an investigation under this section, the office may:

44 (a) Take evidence;

45 (b) Take the depositions of witnesses, including the person under investigation, in the manner

1 prescribed by law for depositions in civil actions;

2 (c) Compel the appearance of witnesses, including the person under investigation, in the manner
3 prescribed by law for appearances in civil actions;

4 (d) Require answers to interrogatories;

5 (e) Compel the production of books, papers, accounts, documents or testimony that pertains to
6 the matter under investigation;

7 (f) Issue subpoenas; and

8 (g) Inspect the premises of the facility under investigation.

9 (8) The Office of Child Care may share information regarding investigations or inspections con-
10 ducted under this section with other public entities when the office determines that sharing the in-
11 formation would support the health or safety of children in child care.

12 (9) The Office of Child Care shall make a reasonable attempt to identify any child care facility
13 or person or place providing child care about which the office receives a complaint, including but
14 not limited to a serious complaint, if the complaint includes, but is not limited to, any of the fol-
15 lowing information:

16 (a) The name of a child in the care of the child care facility or person or place providing child
17 care, or the child's parent;

18 (b) The name of a child care provider, a child care facility owner, operator or employee, or a
19 person or place providing child care;

20 (c) The name of the child care facility or person or place providing child care;

21 (d) The phone number of the child care facility or person or place providing child care; or

22 (e) The physical address of the child care facility or person or place providing child care.

23 (10) As used in this section:

24 (a) **"Reasonable time" means at a time when the ability to provide for the well-being or**
25 **safety of the children currently under care is not impeded.**

26 [(a)(A)] (b)(A) "Serious complaint" has the meaning given that term by the Early Learning
27 Council by rule.

28 (B) "Serious complaint" includes notifications or reports of alleged child abuse received by the
29 Office of Child Care.

30 [(b) "Regulated subsidy facility" has the meaning given that term by the Early Learning Council
31 by rule.]

32 **SECTION 7.** ORS 329A.360 is amended to read:

33 329A.360. (1) Upon deciding to deny, revoke, suspend, impose a condition on or not renew a
34 certification or registration, the Office of Child Care shall give notice and opportunity for hearing
35 as provided in ORS chapter 183.

36 (2) **In any matter involving a decision by the Office of Child Care to deny, revoke, sus-**
37 **pend, impose a condition on or not renew a certification or registration, a provider operating**
38 **a family child care home may be represented before the office by counsel or any other ad-**
39 **vocate identified by the provider.**

40 (3) **Notwithstanding ORS 183.450, the Office of Child Care has the burden of presenting**
41 **evidence to support a fact or position taken by the office in a contested case hearing held**
42 **as provided in ORS chapter 183 related to a matter described in subsection (1) of this section.**

43 [(2)] (4) The Office of Child Care shall make the final decision and notice thereof shall be sent
44 by certified mail to the address of the child care facility as shown on the records of the office. The
45 decision of the office is reviewable by the Court of Appeals in the manner provided in ORS 183.480

1 for the review of orders in contested cases.

2 **SECTION 8. The amendments to ORS 329A.360 by section 7 of this 2023 Act apply to de-**
 3 **cisions and contested case hearings held on or after the effective date of this 2023 Act.**

4 **SECTION 9.** ORS 329A.500, as amended by section 73, chapter 631, Oregon Laws 2021, and
 5 section 25, chapter 27, Oregon Laws 2022, is amended to read:

6 329A.500. (1) As used in this section, “family” means any individual who is responsible for the
 7 care, control and supervision of a child.

8 (2) The Early Learning Council shall adopt rules for the operation of the Employment Related
 9 Day Care subsidy program and for other subsidy programs administered by the Department of Early
 10 Learning and Care.

11 (3) The rules adopted under this section must support equitable access to a supply of diverse
 12 subsidized care facilities that meet the needs of families, as those needs are defined by the council
 13 by rule, including:

- 14 (a) Cultural diversity;
- 15 (b) Linguistic diversity;
- 16 (c) Racial and ethnic diversity; and
- 17 (d) Diversity of subsidized care facility types.

18 (4) The rules adopted under this section must provide that:

19 (a) A child’s eligibility to participate in the Employment Related Day Care subsidy program
 20 must be based on:

- 21 (A) The household income of a child’s family; and
- 22 (B) Any other criteria established by the council.

23 (b) A child must be able to receive care that:

- 24 (A) Meets the child’s developmental, disability and neurodiversity needs; and
- 25 (B) Enables the child’s family to complete activities that relate to family well-being, which may
 26 include the family’s work hours, education hours, commute time, study time and other activities that
 27 support family well-being.

28 (c) Payment to subsidized care facilities must be:

- 29 (A) Based on enrollment instead of attendance.

30 **(B) Made by the department each month by a date specified by the Early Learning**
 31 **Council by rule or, if paid on a date later than the date specified by rule, paid in an amount**
 32 **that includes an additional 10 percent of the amount due unless the additional amount is not**
 33 **required to be paid under exceptional circumstances, as identified by rule.**

34 (d) A child’s family may qualify for an incentive if the family voluntarily chooses a subsidized
 35 care facility that participates in the quality recognition and improvement system established under
 36 ORS 329A.261. A fair representation of the recipients who qualify for incentives must be families
 37 with children who are from underserved racial, ethnic or minority populations. In addition, subsi-
 38 dized care facilities that participate in the quality recognition and improvement system may receive
 39 financial incentives under the subsidy programs in accordance with criteria established by rule.

40 (e) A child care facility is not eligible to be a subsidized care facility and to receive a re-
 41 mbursement under the subsidy program unless each subject individual described in ORS 329A.030
 42 (10)(d) who operates, resides in or may have unsupervised contact with children at the subsidized
 43 care facility that provides or will provide subsidized care to the person’s child is enrolled in the
 44 Central Background Registry under ORS 329A.030.

45 (f) A subsidized care facility may be eligible to receive a higher rate of reimbursement or other

1 financial incentives for:

2 (A) Participating in quality improvement measures;

3 (B) Providing culturally or linguistically specific or appropriate care;

4 (C) Providing evening, overnight or weekend care;

5 (D) Providing care to children with a diagnosed disability;

6 (E) Providing infant or toddler care;

7 (F) Providing care to a population that has been identified as historically having an inadequate
8 child care facility supply; or

9 (G) Providing any other specialized care that justifies a higher rate of reimbursement.

10 (5) Taking into account the availability of funds, the rules adopted under this section:

11 (a) Must establish a sliding scale for copayment, with the requirement that a copayment may
12 not exceed seven percent of the household income of the child's family.

13 (b) Must provide that eligibility to participate in the Employment Related Day Care subsidy
14 program:

15 (A) May not be based on the citizenship or legal status of a child or a child's family; and

16 (B) Shall, for a child who met the initial eligibility requirements prescribed under subsection (4)
17 of this section, continue for a minimum of 12 months from the date of initial eligibility unless the
18 child's family leaves this state or requests a termination of benefits or for any other reason identi-
19 fied by the council. Rules adopted under this subparagraph shall give priority to families receiving
20 temporary assistance under the temporary assistance for needy families program described in ORS
21 412.006.

22 (c) May provide that a determination of eligibility to participate in the Employment Related Day
23 Care subsidy program consider the availability of family to attend to the child, regardless of the
24 family's physical presence.

25 (6) In developing rules under this section, the council shall consider policies for increasing the
26 stability and continuity of a child's access to a family's preferred child care facility.

27 (7) Rules adopted by the council under this section establish minimum requirements pertaining
28 to the Employment Related Day Care subsidy program and may not be construed to preempt, limit
29 or otherwise diminish the applicability of any policy, standard or collective bargaining agreement
30 that provides for an increased subsidy or a subsidized care facility reimbursement amount under
31 state or federal law.

32 (8)(a) The council shall work to meet federal recommendations for income eligibility and market
33 access in regard to the Employment Related Day Care subsidy program administered by the council.

34 (b) Notwithstanding any provision of this section or any rule adopted by the council pursuant
35 to this section, the laws and regulations applicable to any federal funds shall govern when any as-
36 pect of child care is funded by federal funds.

37 **SECTION 10.** ORS 455.030 is amended to read:

38 455.030. (1) Subject to any requirement for approval by the appropriate advisory boards, the
39 Director of the Department of Consumer and Business Services may adopt, amend or repeal rules
40 for carrying out the responsibilities of the Department of Consumer and Business Services to de-
41 velop, implement, administer and enforce a program that relates to the state building code or a
42 specialty code. Except as otherwise provided by this section, the director shall be subject to ORS
43 chapter 183 in the adoption, amendment or repeal of regulations authorized by, and in the issuance
44 of orders in contested cases arising under, this chapter.

45 (2)(a) In addition to the notice requirements of ORS 183.335, notice of a public hearing on

1 adoption, amendment or repeal of a specialty code shall be given to the governing bodies of all
 2 municipalities and the **Department of Early Learning and Care for any specialty code that may**
 3 **affect a child care provider.** Notice shall state that copies of the proposed action may be obtained
 4 from the department.

5 (b) The notice of proposed rule change shall include a finding by the advisory board that the
 6 added cost, if any, is necessary to the health and safety of the occupants or the public or necessary
 7 to conserve scarce resources.

8 (c) The director shall maintain a roster of individuals who wish to be notified of any changes
 9 to or interpretations of the Low-Rise Residential Dwelling Code. Subscribers to the list may be
 10 charged a reasonable amount necessary to defray the cost of maintaining the list and advising the
 11 subscribers of changes in the code.

12 (3) The director is not required to publish or distribute those parts of a specialty code of regu-
 13 lations adopted by reference. However, the director shall publish with a specialty code and annually
 14 thereafter a list of places where copies of those parts of the specialty code adopted by reference
 15 may be obtained together with the approximate cost thereof. The director shall file one copy of the
 16 rule with the Secretary of State. All standards referred to in any specialty code or any of the mod-
 17 ifications thereto need not be so filed. All standards and specialty codes referred to in the specialty
 18 code shall be kept on file and available for inspection in the offices of the department.

19 (4) Any interested person may propose amendments to the state building code, which proposed
 20 amendments may be either applicable to all municipalities or, where it is alleged and established
 21 that conditions exist within a municipality or some municipalities that are not generally found
 22 within other municipalities, amendments may be restricted in application to such municipalities.
 23 Amendments proposed to the state building code under this subsection shall be in conformity with
 24 the policy and purpose prescribed by ORS 455.020. The justification and the particular circumstances
 25 requiring the proposed amendments shall be fully stated in the proposal. The director shall submit
 26 all proposed amendments to the appropriate advisory board. The board shall review and report its
 27 recommendations to the director on the amendments within 180 days after the date of submission
 28 by the director.

29 (5) The director, with the approval of the advisory board, may adopt or modify and adopt any
 30 amendments proposed to the director under subsection (4) of this section. The director shall, within
 31 30 days after the date of receipt of the recommendations of the advisory board, notify the person
 32 proposing the amendments of the adoption, modification and adoption or denial of the proposed
 33 amendments. Upon adoption, a copy of each amendment shall be distributed to the governing bodies
 34 of all municipalities affected thereby.

35 (6) The director shall from time to time make or cause to be made investigations, or may accept
 36 authenticated reports from authoritative sources, concerning new materials or modes of construction
 37 intended for use in the construction of buildings or structures, or intended for use in other activity
 38 regulated by the state building code, and shall, where necessary, propose amendments to the code
 39 setting forth the conditions under which the materials or modes may be used, in accordance with
 40 the standards and procedures of this chapter.

41 **SECTION 11. The amendments to ORS 455.030 by section 10 of this 2023 Act apply to any**
 42 **actions that are first proposed on or after the effective date of this 2023 Act.**

43 **SECTION 12.** ORS 94.779, as amended by section 3, chapter 86, Oregon Laws 2022, is amended
 44 to read:

45 94.779. (1) A provision of a planned community’s governing document or landscaping or archi-

1 tectural guidelines that imposes irrigation requirements on an owner or the association is void and
 2 unenforceable while any of the following is in effect:

3 (a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur
 4 in a political subdivision within which the planned community is located;

5 (b) A finding by the Water Resources Commission that a severe, continuing drought exists or is
 6 likely to occur in a political subdivision within which the planned community is located;

7 (c) An ordinance adopted by the governing body of a political subdivision within which the
 8 planned community is located that requires conservation or curtailment of water use; or

9 (d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate
 10 irrigation water use.

11 (2) Notwithstanding any provision of a planned community's governing documents or landscaping
 12 or architectural guidelines imposing irrigation requirements on an owner or the association, an as-
 13 sociation may adopt rules that:

14 (a) Require the reduction or elimination of irrigation on any portion of the planned community.

15 (b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on
 16 any portion of the planned community.

17 (c) Require prior review and approval by the association or its designee of any plans by an
 18 owner or the association to replace turf or other landscape vegetation with xeriscape.

19 (d) Require the use of best practices and industry standards to reduce the landscaped areas and
 20 minimize irrigation of existing landscaped areas of common property where turf is necessary for the
 21 function of the landscaped area.

22 (3) Except as provided in subsections (4) and (5) of this section, if adopted on or after January
 23 1, 2018, *[the following provisions]* **a provision** of a planned community's governing document *[are]*
 24 **is void and unenforceable[:]**

25 *[(a) A provision that]* **if the provision** prohibits or restricts the use of the owner's unit or lot
 26 as the premises of an exempt family child care provider participating in the subsidy program under
 27 ORS 329A.500 **or as the premises of a certified or registered family child care home pursuant**
 28 **to ORS 329A.250 to 329A.450.[: or]**

29 *[(b) If the unit does not share a wall, floor or ceiling surface in common with another unit, a*
 30 *provision that prohibits or restricts the use of the owner's unit or lot as a certified or registered family*
 31 *child care home pursuant to ORS 329A.250 to 329A.450.]*

32 (4) Subsection (3) of this section does not prohibit a homeowners association from adopting or
 33 enforcing a provision of the planned community's governing document that regulates parking, noise,
 34 odors, nuisance, use of common property or activities that impact the cost of insurance policies held
 35 by the planned community, provided the provision:

36 (a) Is reasonable; and

37 (b) Does not have the effect of prohibiting or restricting the use of a unit or lot as the premises
 38 of an exempt family child care provider participating in the subsidy program under ORS 329A.500
 39 or as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

40 (5)(a) Subsection (3) of this section does not apply to planned communities that provide housing
 41 for older persons.

42 (b) As used in this subsection, "housing for older persons" has the meaning given that term in
 43 ORS 659A.421.

44 (6) A provision in a planned community's governing document that restricts or prohibits the in-
 45 stallation or use of a portable cooling device, as defined in section 2 (1), chapter 86, Oregon Laws

2022, is void and unenforceable, unless:

(a) The installation or use of the device would:

(A) Violate building codes or state or federal law; or

(B) Violate the device manufacture’s written safety guidelines for the device; or

(b) The restrictions are only to require that the device be removed from October 1 through April 30.

SECTION 13. ORS 329A.430 is amended to read:

329A.430. (1) As used in this section:

(a) “Certified family child care provider” means an individual who operates a family child care home that is certified under ORS 329A.280.

(b) “Child care subsidy” means a payment made by the state on behalf of eligible children for child care services provided for periods of less than 24 hours in a day.

(c) “Exempt family child care provider” means an individual who provides child care services in the home of the individual or in the home of the child, whose services are not required to be certified or registered under ORS 329A.250 to 329A.450 and who receives a child care subsidy.

(d) “Family child care provider” means an individual who is a certified, registered or exempt family child care provider.

(e) “Registered family child care provider” means an individual who operates a family child care home that is registered under ORS 329A.330.

(2) For purposes of collective bargaining under ORS 243.650 to 243.809, the State of Oregon is the public employer of record of family child care providers.

(3) Notwithstanding ORS 243.650 (19), family child care providers are considered to be public employees governed by ORS 243.650 to 243.809. Family child care providers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on matters concerning labor relations. These rights shall be exercised in accordance with the rights granted to public employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Family child care providers may not strike.

(4) Notwithstanding subsections (2) and (3) of this section, family child care providers are not for any other purpose employees of the State of Oregon or any other public body.

(5)(a) The Oregon Department of Administrative Services shall represent the State of Oregon in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of family child care providers. The Oregon Department of Administrative Services is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the State of Oregon, **including any agreement related to establishing a union benefit trust for the purpose of providing health care or retirement benefits to family child care providers.**

(b) The department shall report to the legislative review agency, as defined in ORS 291.371, on any new or changed provisions relating to compensation in a collective bargaining agreement negotiated under this section.

(6) Notwithstanding ORS 243.650 (1):

(a) The appropriate bargaining unit for certified and registered family child care providers is a bargaining unit of all certified and registered family child care providers in the state.

(b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit of all exempt family child care providers in the state.

1 (7) This section does not modify any right of a parent or legal guardian to choose and terminate
2 the services of a family child care provider.

3
