House Bill 2720

Sponsored by Representative ZIKA (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.

Provides that registered or certified child care facility is commercial use of property for zoning purposes.

Creates income tax credit for owners of real property rented to certified child care facilities.

Creates income tax credit for child care facilities with staff members who earn 18 or more clock hours of training related to child care. Creates income tax credit for child care facilities rated three stars or higher with quality rating and improvement system. Applies to tax years beginning on or after January 1, 2022, and before January 1, 2028.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to child care; creating new provisions; amending ORS 314.772, 318.031, 329A.030, 329A.250 and 329A.440; and prescribing an effective date.

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

SECTION 1, ORS 329A.440 is amended to read:

329A.440. (1)(a) A registered or certified family child care home shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings.

(b) A city or county local government, as defined in ORS 197.015, may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.

[(2) Notwithstanding subsection (1) of this section, a county may:

(a) Allow a registered or certified family child care home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;]

[(b) impose reasonable conditions on the establishment of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.]

[(3)(a) A registered or certified child care facility is a permitted use in all areas zoned to allow any commercial uses.]

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.

LC 1604
(b) A local government may not enact or enforce zoning ordinances prohibiting the use of a building located in an area zoned for commercial use as a registered or certified child care facility.

(c) A local government may not impose zoning conditions on the establishment and maintenance of a registered or certified child care facility in an area zoned for commercial use more restrictive than conditions imposed on other commercial uses in the same zone.

SECTION 2. Sections 3, 4 and 5 of this 2019 Act are added to and made a part of ORS chapter 315.

SECTION 3. (1) As used in this section:

(a) “Certified child care facility” means a child care facility that has been certified by the Office of Child Care under ORS 329A.280 or has been issued a temporary certification under ORS 329A.300.

(b) “Child care facility” has the meaning given that term in ORS 329A.250.

(2) A credit is allowed against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 if the taxpayer is the owner of real property that is the subject of a rental agreement and a person other than the taxpayer operates a certified child care facility on the property.

(3) The credit allowed under this section is equal to 10 percent of the amount of rent paid to the taxpayer over a tax year under the terms of a written rental agreement.

(4) The credit allowed under this section may be claimed for the first tax year in which a child care facility is actually operated on the property and for the next succeeding year, but no credit is allowed under this section unless a certified child care facility was actually operated on the property on the last day of the tax year in which the credit is claimed.

(5) The credit allowed under this section may not be claimed by more than one taxpayer with respect to the same property during a tax year and may not be claimed by a taxpayer that is a parent or subsidiary of the tenant or is otherwise closely related to the tenant.

(6) The credit must be claimed on a form prescribed by the Department of Revenue that contains the information required by the department.

(7) The credit allowed under this section may not exceed the tax liability of the taxpayer for the tax year.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer’s tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year but may not be carried forward for any tax year thereafter.

(9) A nonresident is allowed the credit under this section. The credit is computed in the same manner and is subject to the same limitations as the credit granted to a resident. However, the credit must be prorated using the proportion provided in ORS 316.117.

(10) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer’s taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(11) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section must be determined in a
manner consistent with ORS 316.117.

SECTION 4. (1) As used in this section:
(a) “Child care facility” has the meaning given that term in ORS 329A.250.
(b) “Staff member” means a person employed by a child care facility who may perform
some child care duties without being supervised by another employee.
(2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-
payer is a corporation, under ORS chapter 317 or 318, is allowed in the amount of $500 for
each child care facility owned by the taxpayer if on the last day of the tax year:
(a) The child care facility is certified by the Office of Child Care under ORS 329A.280, or
has been issued a temporary certification under ORS 329A.300; and
(b) All of the staff members have received 18 or more clock hours of training related to
child care during the tax year, or any child care staff member employed for less than one
year has received at least 1.5 clock hours of training related to child care for each month
of employment.
(3) The credit allowed under this section may not exceed the tax liability of the taxpayer
for the tax year.
(4) The credit must be claimed on a form prescribed by the Department of Revenue that
contains the information required by the department.
(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
in a particular tax year may be carried forward and offset against the taxpayer’s tax liability
for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
year may be carried forward and used in the second succeeding tax year, and likewise any
credit not used in that second succeeding tax year may be carried forward and used in the
third succeeding tax year but may not be carried forward for any tax year thereafter.
(6) A nonresident is allowed the credit under this section. The credit is computed in the
same manner and is subject to the same limitations as the credit granted to a resident.
However, the credit must be prorated using the proportion provided in ORS 316.117.
(7) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,
or if the Department of Revenue terminates the taxpayer’s taxable year under ORS 314.440,
the credit allowed by this section shall be prorated or computed in a manner consistent with
ORS 314.085.
(8) If a change in the status of a taxpayer from resident to nonresident or from nonres-
ident to resident occurs, the credit allowed by this section shall be determined in a manner
consistent with ORS 316.117.

SECTION 5. (1) As used in this section, “child care facility” has the meaning given that
term in ORS 329A.250.
(2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-
payer is a corporation, under ORS chapter 317 or 318, is allowed for each child care facility
owned by a taxpayer that is certified by the Office of Child Care under ORS 329A.280, or has
been issued a temporary certification under ORS 329A.300, and that maintains a three star
or higher rating with the quality rating and improvement system implemented under ORS
329A.261 on the last day of the tax year in which the credit is claimed. The credit allowed
shall be in the amount of $50 multiplied by the average number of children cared for at the
child care facility during the last month of the tax year.
(3) The credit allowed under this section may not exceed the tax liability of the taxpayer
for the tax year.

(4) The credit must be claimed on a form prescribed by the Department of Revenue that contains the information required by the department.

(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year but may not be carried forward for any tax year thereafter.

(6) A nonresident is allowed the credit under this section. The credit is computed in the same manner and is subject to the same limitations as the credit granted to a resident. However, the credit must be prorated using the proportion provided in ORS 316.117.

(7) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

SECTION 6. ORS 314.772 is amended to read:

314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, “business tax credit” means the following credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 3 of this 2021 Act (leases to certified child care facilities), section 4 of this 2021 Act (child care facility staff member training) and section 5 of this 2021 Act (quality rated child care facilities).

SECTION 7. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and 315.643 and sections 3, 4 and 5 of this 2021 Act (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 8. Sections 3, 4 and 5 of this 2021 Act and the amendments to ORS 314.772 and 318.031 by sections 6 and 7 of this 2021 Act apply to tax years beginning on or after January 1, 2022, and before January 1, 2028.

SECTION 9. ORS 329A.250 is amended to read:

329A.250. As used in ORS 329A.030 and 329A.250 to 329A.450, unless the context requires otherwise:

(1) “Babysitter” means a person who goes into the home of a child to give care during the temporary absence of the parent or legal guardian or custodian.

(2) “Certification” means the certification that is issued under ORS 329A.280 by the Office of Child Care to a family child care home, child care center or other child care facility.

(3) “Child” means a child under 13 years of age or a child under 18 years of age who has special needs or disabilities and requires a level of care that is above normal for the child’s age.

(4) (a) [Subject to ORS 329A.440.] “Child care” means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child during a part of the 24 hours of the day, in a place other than the child’s home, with or without compensation.

(b) “Child care” does not include care provided:

[(a)] (A) In the home of the child;

[(b)] (B) By the child’s parent, guardian, or person acting in loco parentis;

[(c)] (C) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

[(d)] (D) On an occasional basis by a person not ordinarily engaged in providing child care;

[(e)] (E) By providers of medical services;

[(f)] (F) By a babysitter;

[(g)] (G) By a person who cares for children from only one family other than the person’s own family;
[(h)] (H) By a person who cares for no more than three children other than the person’s own children; or

[(i)] (I) By a person who is a member of the child’s extended family, as determined by the office on a case-by-case basis.

(5) “Child care facility” means any facility that provides child care to children, including a day nursery, nursery school, child care center, certified or registered family child care home or similar unit operating under any name, but not including any:

(a) Preschool recorded program.

(b) Facility providing care for school-age children that is primarily a single enrichment activity, for eight hours or less a week.

(c) Facility providing care that is primarily group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.

(d) Facility operated by:

(A) A school district as defined in ORS 332.002;

(B) A political subdivision of this state; or

(C) A governmental agency.

(e) Residential facility licensed under ORS 443.400 to 443.455.

(f) Babysitters.

(g) Facility operated as a parent cooperative for no more than four hours a day.

(h) Facility providing care while the child’s parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity.

(i) Facility operated as a school-age recorded program.

(6) “Family” has the meaning given that term in ORS 329.145.

(7) “Occasional” means that care is provided for no more than 70 days in any calendar year.

(8) “Parent cooperative” means a child care program in which:

(a) Care is provided by parents on a rotating basis;

(b) Membership in the cooperative includes parents;

(c) There are written policies and procedures; and

(d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(9) “Preschool recorded program” means a facility providing care for preschool children that is primarily educational for four hours or less per day and where no child is present at the facility for more than four hours per day.

(10) “Record” means the record that is issued under ORS 329A.255 to a preschool recorded program or under ORS 329A.257 to a school-age recorded program.

(11) “Registration” means the registration that is issued under ORS 329A.330 by the Office of Child Care to a family child care home where care is provided in the family living quarters of the provider’s home.

(12) “School age” means of an age eligible to be enrolled in kindergarten or above on or before the first day of the current school year.

(13) “School-age recorded program” means a program for school-age children:

(a) That is not operated by a school district as defined in ORS 332.002;

(b) That is not required to be certified under ORS 329A.280 or registered under ORS 329A.330; and

(c) In which youth development activities are provided to children during hours that school is
not in session and does not take the place of a parent’s care.

(14) “Youth development activities” means care, supervision or guidance that is intended for enrichment, including but not limited to teaching skills or proficiency in physical, social or educational activities such as tutoring, music lessons, social activities, sports and recreational activities.

SECTION 10. ORS 329A.030 is amended to read:

329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may maintain information in the registry through electronic records systems.

(2)(a) A subject individual shall apply to and must be enrolled in the Central Background Registry as part of the individual’s application to operate a program or serve in a position described in subsection (10) of this section.

(b) An individual who has been the subject of a founded or substantiated report of child abuse shall apply to and be enrolled in the Central Background Registry prior to providing any of the types of care identified in ORS 329A.250 [(4)(a), (g) or (h)] (4)(a)(A), (G) or (H) if:

(A) The child abuse occurred on or after January 1, 2017, and involved a child who died or suffered serious physical injury, as defined in ORS 161.015; or

(B) The child abuse occurred on or after September 1, 2019, and involved any child for whom the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS 329A.250 [(4)(a), (c), (f), (g), (h) or (i)] (4)(a)(A), (C), (F), (G), (H) or (I).

(c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B) of this subsection is not required to enroll in the Central Background Registry if more than seven years has elapsed since the date of the child abuse determination.

(3)(a) Upon receiving an application for enrollment in the Central Background Registry, the office shall complete:

(A) A criminal records check under ORS 181A.195;

(B) A criminal records check of other registries or databases in accordance with rules adopted by the Early Learning Council;

(C) A child abuse and neglect records check in accordance with rules adopted by the council;

and

(D) A foster care certification check and an adult protective services check in accordance with rules adopted by the council.

(b) In addition to the information that the office is required to check under paragraph (a) of this subsection, the office may consider any other information obtained by the office that the office, by rule, determines is relevant to enrollment in the Central Background Registry.

(4)(a) The office shall enroll the individual in the Central Background Registry if the individual:

(A) Is determined to have no criminal, child abuse and neglect, negative adult protective services or negative foster home certification history, or to have dealt with the issues and provided adequate evidence of suitability for the registry;

(B) Has paid the applicable fee established pursuant to ORS 329A.275; and

(C) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

(b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office may enroll an individual in the registry if the Department of Human Services has completed a background check on the individual and the individual has received approval from the department for purposes of providing child care.

(5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an individual in the Central Background Registry if:
(A) The individual has a disqualifying condition as defined in rules adopted by the council; or
(B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

(b) If an individual prohibited from enrolling in the registry as provided by this subsection is enrolled in the registry, the office shall remove the individual from the registry.

(6)(a) The office may conditionally enroll an individual in the Central Background Registry pending the results of a nationwide criminal records check through the Federal Bureau of Investigation if the individual has met other requirements of the office for enrollment in the registry.

(b) The office may enroll an individual in the registry subject to limitations identified in rules adopted by the council.

(7) An enrollment in the Central Background Registry may be renewed upon application to the office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted by the Early Learning Council pursuant to this section. However, an individual who is determined to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed or suspended from the registry by the office.

(8)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled in the Central Background Registry.

(b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a probationary basis an individual who is conditionally enrolled in the Central Background Registry.

(9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this section, including but not limited to rules regarding expiration and renewal periods and limitations related to the subject individual's enrollment in the Central Background Registry.

(10) For purposes of this section, “subject individual” means a subject individual as defined by the Early Learning Council by rule, an individual subject to subsection (2)(b) of this section or a person who applies to be:

(a) The operator or an employee of a child care or treatment program;

(b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start program regulated by the United States Department of Health and Human Services;

(d) An individual in a child care facility who may have unsupervised contact with children as identified by the office;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534;

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency;

(g) A contractor, employee or volunteer of a metropolitan service district organized under ORS chapter 268 who may have unsupervised contact with children and who is required to be enrolled in the Central Background Registry by the metropolitan service district;

(h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services; or

(i) The operator or an employee of an early learning program as defined in rules adopted by the council.

(11)(a) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection (10)(g) of this section shall be
subject to a reciprocal agreement with the metropolitan service district. The agreement must pro-
vide for the recovery of administrative, including direct and indirect, costs incurred by the office
from participation in the agreement. Any moneys collected under this paragraph shall be deposited
in the Child Care Fund established under ORS 329A.010.

(b) Information provided to a private agency or organization facilitating the provision of respite
services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney
under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this
section shall be subject to an agreement with the private agency or organization. The agreement
must provide for the recovery of administrative, including direct and indirect, costs incurred by the
office from participation in the agreement. Any moneys collected under this paragraph shall be de-
posited in the Child Care Fund established under ORS 329A.010.

(c) Information provided to a private agency or organization about the enrollment status of the
persons described in subsection (10)(i) of this section shall be subject to an agreement with the pri-
vate agency or organization. The agreement must provide for the recovery of administrative, in-
cluding direct and indirect, costs incurred by the office from participation in the agreement. Any
moneys collected under this paragraph shall be deposited in the Child Care Fund established under
ORS 329A.010.

SECTION 11. This 2021 Act takes effect on the 91st day after the date on which the 2021
regular session of the Eighty-first Legislative Assembly adjourns sine die.