

Enrolled
House Bill 2468

Sponsored by Representative BYNUM; Representatives ANDERSEN, FAHEY, GAMBA, KROPF, MARSH, MCLAIN, NOSSE, PHAM H, REYNOLDS (at the request of Oregon AFSCME) (Pre-session filed.)

CHAPTER

AN ACT

Relating to child care; creating new provisions; and amending ORS 329A.280, 329A.330, 329A.390, 329A.430, 329A.500 and 455.030.

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

NOTE: Sections 1 through 3 were deleted by amendment. Subsequent sections were not re-numbered.

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

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

(2) The Early Learning Council shall adopt rules for the certification of a family child care home caring for not more than 16 children. Rules may be adopted specifically for certified child care facilities operated in a single-family dwelling or other dwelling. Notwithstanding fire and other safety regulations, the rules that the council adopts for certified child care facilities shall set standards that can be met without significant architectural modification. **The rules may establish reasonable requirements for landlords of tenants who operate a family child care home.** In adopting the rules, the council may consider and set limits according to factors including the age of children in care, the ambulatory ability of children in care, the number of the provider’s children present, the length of time a particular child is continuously cared for and the total amount of time a particular child is cared for within a given unit of time. **Rules may not take into consideration the provider’s children when establishing capacity or adult to child ratio requirements if the children are between 10 and 12 years of age, unless a child has special needs or disabilities and requires a level of care that is above normal for the child’s age.** The rules must require compliance with the provisions of ORS 329A.600.

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

(4) Any person seeking to operate a child care facility may apply for a certification for the facility from the Office of Child Care and receive a certification upon meeting certification requirements.

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

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

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

(2) A child care facility holding a registration may care for a maximum of 10 children, *[including]* **excluding** the provider's own children **if the children are between 10 and 12 years of age, unless a child has special needs or disabilities and requires a level of care that is above normal for the child's age.** Of the 10 children:

- (a) No more than six may be younger than school age; and
- (b) No more than two may be 24 months of age or younger.

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

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

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

- (a) The provider has completed a child care overview class administered by the office;
- (b) The provider has completed two hours of training on child abuse and neglect issues;
- (c) The provider is currently certified in infant and child first aid and cardiopulmonary resuscitation;
- (d) The provider is certified as a food handler under ORS 624.570; and
- (e) The office determines that the application meets the requirements of ORS 181A.200, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215, 329A.030 and 329A.250 to 329A.450, and receives a satisfactory records check, including criminal records and protective services records.

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

- (a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;
- (b) Has completed a minimum of eight hours of training related to child care during the most recent registration period;
- (c) Is certified as a food handler under ORS 624.570; and
- (d) When applicable, has complied with the requirements of ORS 329A.600 prior to imposing an expulsion.

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

(7) The Early Learning Council shall adopt rules:

- (a) Creating the application work sheet required under subsection (3) of this section;
- (b) Defining full-time and part-time care;
- (c) **Establishing capacity and adult to child ratio requirements, which must be established without taking into consideration the provider's children if the children are between 10 and 12 years of age, unless a child has special needs or disabilities and requires a level of care that is above normal for the child's age;**

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

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

- (A) The number and type of toilets and sinks available to children;
- (B) Availability of steps or blocks for use by children;
- (C) Room temperature;

- (D) Lighting of rooms occupied by children;
- (E) Glass panels on doors;
- (F) Condition of floors;
- (G) Availability of emergency telephone numbers; and
- (H) Smoking.

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

- (a) The number and ages of the children to be cared for at the facility; and
- (b) The health and safety procedures in place and followed at the facility.

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

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

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

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

(10) The office, upon good cause shown, may waive one or more of the registration requirements. The office may waive a requirement only if appropriate conditions or safeguards are imposed to protect the welfare of the children and the consumer interests of the parents of the children. The office may not waive the on-site review requirement for applicants applying for an initial registration or renewal of a registration.

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

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

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

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

(2) At any reasonable time, an authorized representative of the Office of Child Care may conduct an investigation of any certified or registered child care facility or program recorded under ORS 329A.255 to determine whether the child care facility or program is in conformity with ORS

181A.200, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215, 329A.030 and 329A.250 to 329A.450.

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

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

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

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

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

(a) Take evidence;

(b) Take the depositions of witnesses, including the person under investigation, in the manner prescribed by law for depositions in civil actions;

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

(d) Require answers to interrogatories;

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

(f) Issue subpoenas; and

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

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

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

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

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

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

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

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

(10) As used in this section:

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

[(B)] **(b)** "Serious complaint" includes notifications or reports of alleged child abuse received by the Office of Child Care.

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

NOTE: Sections 7 and 8 were deleted by amendment. Subsequent sections were not renumbered.

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

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

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

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

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

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

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

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

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

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

(c) Payment to subsidized care facilities must be:

(A) Based on enrollment instead of attendance.

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

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

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

(f) A subsidized care facility may be eligible to receive a higher rate of reimbursement or other financial incentives for:

- (A) Participating in quality improvement measures;
- (B) Providing culturally or linguistically specific or appropriate care;
- (C) Providing evening, overnight or weekend care;
- (D) Providing care to children with a diagnosed disability;
- (E) Providing infant or toddler care;
- (F) Providing care to a population that has been identified as historically having an inadequate child care facility supply; or
- (G) Providing any other specialized care that justifies a higher rate of reimbursement.

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

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

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

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

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

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

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

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

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

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

SECTION 10. ORS 455.030 is amended to read:

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

(2)(a) In addition to the notice requirements of ORS 183.335, notice of a public hearing on adoption, amendment or repeal of a specialty code shall be given to the governing bodies of all municipalities and the **Department of Early Learning and Care for any specialty code that may affect a child care provider**. Notice shall state that copies of the proposed action may be obtained from the department.

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

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

(3) The director is not required to publish or distribute those parts of a specialty code of regulations adopted by reference. However, the director shall publish with a specialty code and annually thereafter a list of places where copies of those parts of the specialty code adopted by reference may be obtained together with the approximate cost thereof. The director shall file one copy of the rule with the Secretary of State. All standards referred to in any specialty code or any of the

modifications thereto need not be so filed. All standards and specialty codes referred to in the specialty code shall be kept on file and available for inspection in the offices of the department.

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

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

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

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

SECTION 12. 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.

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

SECTION 13. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (8), chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), collected or received by the Department of Human Services, for shared services, is increased by \$151,864, to carry out the provisions of this 2023 Act.

SECTION 14. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (2), chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, for state assessments and enterprise-wide costs, is increased by \$101,061, to carry out the provisions of this 2023 Act.

SECTION 15. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (2), chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$4,703, to carry out the provisions of this 2023 Act.

SECTION 16. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (2), chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$59,293, to carry out the provisions of this 2023 Act.

SECTION 17. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (3), chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, for self-sufficiency programs, is increased by \$203,550, to carry out the provisions of this 2023 Act.

SECTION 18. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (3), chapter _____, Oregon Laws 2023 (Enrolled House

Bill 5026), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), collected or received by the Department of Human Services, for self-sufficiency programs, is increased by \$233,280, to carry out the provisions of this 2023 Act.

Passed by House June 14, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State