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**SUBSTITUTE HOUSE BILL 1331**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Local Government (originally sponsored by Representatives Harris-Talley, Senn, Berry, Callan, Fitzgibbon, Wicks, Ortiz-Self, Chopp, Davis, Valdez, Bateman, Eslick, Ormsby, Lovick, Fey, Berg, Rule, Lekanoff, Frame, Duerr, Pollet, Macri, Slatter, and Peterson)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to early learning facility impact fees; and  
2 amending RCW 82.02.060.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 82.02.060 and 2012 c 200 s 1 are each amended to  
5 read as follows:

6 The local ordinance by which impact fees are imposed:

7 (1) Shall include a schedule of impact fees which shall be  
8 adopted for each type of development activity that is subject to  
9 impact fees, specifying the amount of the impact fee to be imposed  
10 for each type of system improvement. The schedule shall be based upon  
11 a formula or other method of calculating such impact fees. In  
12 determining proportionate share, the formula or other method of  
13 calculating impact fees shall incorporate, among other things, the  
14 following:

15 (a) The cost of public facilities necessitated by new  
16 development;

17 (b) An adjustment to the cost of the public facilities for past  
18 or future payments made or reasonably anticipated to be made by new  
19 development to pay for particular system improvements in the form of  
20 user fees, debt service payments, taxes, or other payments earmarked  
21 for or proratable to the particular system improvement;

1 (c) The availability of other means of funding public facility  
2 improvements;

3 (d) The cost of existing public facilities improvements; and

4 (e) The methods by which public facilities improvements were  
5 financed;

6 (2) May provide an exemption for low-income housing, and other  
7 development activities with broad public purposes, including  
8 development of an early learning facility, from these impact fees,  
9 provided that the impact fees for such development activity shall be  
10 paid from public funds other than impact fee accounts;

11 (3) (a) May not impose an impact fee on development activities of  
12 an early learning facility greater than that imposed on commercial  
13 retail or commercial office development activities that generate a  
14 similar number, volume, type, and duration of vehicle trips;

15 (b) When a facility or development has more than one use, the  
16 limitations in this subsection (3) or the exemption applicable to an  
17 early learning facility in subsections (2) and (4) of this section  
18 only apply to that portion that is developed as an early learning  
19 facility. The impact fee assessed on an early learning facility in  
20 such a development or facility may not exceed the least of the impact  
21 fees assessed on comparable businesses in the facility or  
22 development;

23 (4) May provide an exemption from impact fees for low-income  
24 housing or for early learning facilities. Local governments that  
25 grant exemptions for low-income housing or for early learning  
26 facilities under this subsection (~~((3))~~) (4) may either: Grant a  
27 partial exemption of not more than eighty percent of impact fees, in  
28 which case there is no explicit requirement to pay the exempted  
29 portion of the fee from public funds other than impact fee accounts;  
30 or provide a full waiver, in which case the remaining percentage of  
31 the exempted fee must be paid from public funds other than impact fee  
32 accounts(~~(-)~~), except as provided in (b) of this subsection. These  
33 exemptions are subject to the following requirements:

34 (a) An exemption for low-income housing granted under subsection  
35 (2) of this section or this subsection (~~((3))~~) (4) must be  
36 conditioned upon requiring the developer to record a covenant that,  
37 except as provided otherwise by this subsection, prohibits using the  
38 property for any purpose other than for low-income housing. At a  
39 minimum, the covenant must address price restrictions and household  
40 income limits for the low-income housing, and that if the property is

1 converted to a use other than for low-income housing, the property  
2 owner must pay the applicable impact fees in effect at the time of  
3 conversion(~~(. Covenants required by this subsection must be recorded~~  
4 ~~with the applicable county auditor or recording officer. A local~~  
5 ~~government granting an exemption under subsection (2) of this section~~  
6 ~~or this subsection (3) for low-income housing may not collect revenue~~  
7 ~~lost through granting an exemption by increasing impact fees~~  
8 ~~unrelated to the exemption. A school district who receives school~~  
9 ~~impact fees must approve any exemption under subsection (2) of this~~  
10 ~~section or this subsection (3))~~);

11 ~~((4))~~ (b) An exemption for early learning facilities granted  
12 under subsection (2) of this section or this subsection (4) may be a  
13 full waiver without an explicit requirement to pay the exempted  
14 portion of the fee from public funds other than impact fee accounts  
15 if the local government requires the developer to record a covenant  
16 that requires that at least 25 percent of the children and families  
17 using the early learning facility qualify for state subsidized child  
18 care, including early childhood education and assistance under  
19 chapter 43.216 RCW, and that provides that if the property is  
20 converted to a use other than for an early learning facility, the  
21 property owner must pay the applicable impact fees in effect at the  
22 time of conversion, and that also provides that if at no point during  
23 a calendar year does the early learning facility achieve the required  
24 percentage of children and families qualified for state subsidized  
25 child care using the early learning facility, the property owner must  
26 pay 20 percent of the impact fee that would have been imposed on the  
27 development had there not been an exemption within 90 days of the  
28 local government notifying the property owner of the breach, and any  
29 balance remaining thereafter shall be a lien on the property; and

30 (c) Covenants required by (a) and (b) of this subsection must be  
31 recorded with the applicable county auditor or recording officer. A  
32 local government granting an exemption under subsection (2) of this  
33 section or this subsection (4) for low-income housing or an early  
34 learning facility may not collect revenue lost through granting an  
35 exemption by increasing impact fees unrelated to the exemption. A  
36 school district who receives school impact fees must approve any  
37 exemption under subsection (2) of this section or this subsection  
38 (4);

39 (5) Shall provide a credit for the value of any dedication of  
40 land for, improvement to, or new construction of any system

1 improvements provided by the developer, to facilities that are  
2 identified in the capital facilities plan and that are required by  
3 the county, city, or town as a condition of approving the development  
4 activity;

5 ~~((5))~~ (6) Shall allow the county, city, or town imposing the  
6 impact fees to adjust the standard impact fee at the time the fee is  
7 imposed to consider unusual circumstances in specific cases to ensure  
8 that impact fees are imposed fairly;

9 ~~((6))~~ (7) Shall include a provision for calculating the amount  
10 of the fee to be imposed on a particular development that permits  
11 consideration of studies and data submitted by the developer to  
12 adjust the amount of the fee;

13 ~~((7))~~ (8) Shall establish one or more reasonable service areas  
14 within which it shall calculate and impose impact fees for various  
15 land use categories per unit of development; and

16 ~~((8))~~ (9) May provide for the imposition of an impact fee for  
17 system improvement costs previously incurred by a county, city, or  
18 town to the extent that new growth and development will be served by  
19 the previously constructed improvements provided such fee shall not  
20 be imposed to make up for any system improvement deficiencies.

21 For purposes of this section, "low-income housing" means housing  
22 with a monthly housing expense, that is no greater than thirty  
23 percent of eighty percent of the median family income adjusted for  
24 family size, for the county where the project is located, as reported  
25 by the United States department of housing and urban development.

26 For the purposes of this section, "early learning facility" has  
27 the same meaning as in RCW 43.31.565.

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