

# HOUSE BILL REPORT

## HB 1331

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**As Reported by House Committee On:**  
Local Government

**Title:** An act relating to early learning facility impact fees.

**Brief Description:** Concerning early learning facility impact fees.

**Sponsors:** 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.

**Brief History:**

**Committee Activity:**

Local Government: 2/2/21, 2/9/21 [DPS].

**Brief Summary of Substitute Bill**

- Provides that development of an early learning facility qualifies as a development activity with a broad public purpose for potential impact fee exemptions.
- Allows an early learning facility to be exempted from up to 80 percent of impact fees without the local government being required to pay the impact fees from public funds other than the impact fee account.
- Allows an early learning facility to be exempted from 100 percent of impact fees without the local government being required to pay the impact fees from public funds other than the impact fee account, if the developer records a covenant requiring that at least 25 percent of the children and families using the early learning facility will qualify for state subsidized child care, and that provides for payment of at least a portion of an applicable impact fee if the covenant is violated or if the facility is converted to another use.
- Prohibits a local government from imposing an impact fee on an early learning facility development greater than that imposed on a commercial

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retail or commercial office development that generates a similar number, volume, type, and duration of vehicle trips.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Berg, Robertson and Senn.

**Staff:** Kellen Wright (786-7134).

### **Background:**

Impact fees are assessed by a local government on a new development to help pay for the increased services that will be required because of that development. For example, if a new residential development would require increased school facilities for the residents, then an impact fee could be assessed to pay for the new facilities.

Local governments planning under the Growth Management Act are authorized to impose impact fees for public streets, publicly owned parks and recreation facilities, school facilities, and fire protection facilities. This authority is contingent on the local government revising its comprehensive plan to identify current deficiencies in public facilities serving existing development and how those deficiencies will be eliminated within a reasonable period of time; the additional demands placed on existing public facilities by new development; and the additional public facility improvements required to serve new development. Impact fees may only be used on public facilities that are included in the capital facilities element of the comprehensive plan, that are reasonably related to the new development, that are designed to provide service to the community at large, and that will also reasonably benefit the new development.

These new facilities cannot be solely financed through impact fees. In addition, impact fees cannot be used to correct deficiencies in current public facilities, and the impact fees assessed cannot exceed a proportionate share of the costs of a facility that are reasonably related to the new development. The local government can provide exemptions from impact fees for low-income housing or other development activities with a broad public purpose. If the local government does provide an exemption, then the impact fee that would have been paid for the development must be paid from public funds. An exemption of up to 80 percent of impact fees may be provided for affordable housing without a requirement that the exempted fee be paid from public funds. Any such exemption must be conditioned on the developer recording a covenant that prohibits the property from being used for anything other than low-income housing. If the property is converted to another use, the property owner must pay the applicable impact fees in effect at the time of conversion.

The ordinance establishing impact fees must include a schedule of impact fees for each type of development activity. Impact fees must generally be collected prior to construction, and must be kept in a separate account depending on the type of public facility it was collected for. Local governments collecting impact fees must produce an annual report detailing the fees that have been collected and what they have been used for. If impact fees are not used within 10 years of collection, they generally must be returned. A developer who has paid an impact fee may receive a refund if the development does not proceed and no impact materializes.

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### **Summary of Substitute Bill:**

An early learning facility is a facility providing regularly scheduled care for a group of children one month of age through 12 years of age for periods of less than 24 hours.

Development activities with a broad public purpose that a local government may exempt from impact fees include the development of an early learning facility. A local government may exempt an early learning facility from up to 80 percent of impact fees without being required to pay the exempted portion of the fee from public funds other than the impact fee account. A local government may exempt an early learning facility from all impact fees with a requirement for the local government to pay the fee from public funds other than the impact fee account if the local government requires the developer to record a covenant with the county auditor or recording officer requiring that:

- at least 25 percent of the children and families using the early learning facility qualify for state subsidized child care. The covenant must also provide that if the early learning facility does not have at least 25 percent of the children and families using the facility qualified for state subsidized childcare at any point during a calendar year, then the property owner must pay, within 90 days of the local government informing the property owner of the breach, 20 percent of the impact fee that would have been originally imposed had there been no exemption, with any balance remaining thereafter operating as a lien on the property; and
- if the property is converted to a different use, the property owner must pay the applicable impact fees in effect at the time of conversion.

A local government that grants an exemption to an early learning facility may not collect the revenue lost through the exemption by increasing unrelated impact fees. If a school district would receive a school impact fee because of the development, then the district must approve any exemption.

A local government may not impose an impact fee on development activities of an early learning facility greater than those imposed on commercial retail or commercial office development activities that generate a similar number, volume, type, and duration of vehicle trips. In a facility or development that has more than one use, the impact fee limitations and

potential exemptions applicable to an early learning facility only apply to that portion of the development or facility that is developed as an early learning facility. In such a development, the impact fee imposed on the early learning facility cannot exceed the lowest impact fee imposed on comparable businesses in the same facility or development.

**Substitute Bill Compared to Original Bill:**

The substitute bill:

- limits the impact fees that can be imposed on an early learning facility to those imposed on a commercial retail or commercial office development that generates a similar number, volume, type, and duration of vehicle trips, rather than limiting the impact fees to those imposed on a commercial retail or office development of comparable size;
- provides that, when a facility or development has more than one use, only that portion used as an early learning facility can qualify for an exemption or limitation, and that the impact fee imposed on an early learning facility cannot exceed the lowest fee imposed on a comparable business in the development;
- allows an early learning facility to be exempted from up to 80 percent of impact fees without a requirement that the local government pay the impact fees from public funds other than the impact fee account;
- allows an early learning facility to be exempted from 100 percent of impact fees without a requirement that the local government pay the impact fees from public funds other than the impact fee account, if the local government requires the developer to record a covenant that at least 25 percent of the children and families using the early learning facility qualify for state subsidized child care, and the covenant provides that if the early learning facility does not have at least 25 percent of the children and families using the facility so qualified at any point during a calendar year, the local government may notify the property owner of the breach, and the property owner must pay 20 percent of the impact fee that would have been originally imposed had there not been an exemption, with any balance after 90 days operating as a lien on the property, and requires that, if the property is converted to a different use, the property owner must pay the applicable impact fees in effect at the time of conversion; and
- defines an early learning facility as a facility providing regularly scheduled care for a group of children one month of age through 12 years of age for periods of less than 24 hours.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

## **Staff Summary of Public Testimony:**

(In support) Childcare and early learning is in a crisis in both urban and rural areas. Eighteen percent of providers and 25 percent of capacity have been lost recently. Fewer providers are building and opening new classrooms, particularly those that would serve low-income families, as it is not economically viable. There are two primary frustrations when developing childcare facilities: the impact fees charged for childcare facilities are much higher than those for general retail or office development, and they don't qualify as commercial space. These things can add hundreds of thousands of dollars to a project, which creates a huge disincentive to construct the facilities. More fees especially deter small providers, who may have to take extra loans just to pay the fees. These businesses are already fragile, and they need more support. The community and the economy need more childcare facilities. Childcare should not be looked at the same way as something like an office since trips to a childcare facility are pass-through trips. There should be more parity in fee costs. Another potential complication is that transportation impact fees are required to be calculated based on the number of trips in current law, so this may have to be changed.

(Opposed) One can sympathize with the concern about the cost and difficulty in finding early learning facilities, as impact fees can be an impediment to development, including affordable housing. The state should review how fees are assessed for housing. Exempting some uses from fees will only move the burden on to others, and will make housing even more unaffordable. Similar projects should pay the same fees, including housing projects. The state should be reconsidering fees overall.

(Other) The goals of the bill are good as it is a challenge to find good, consistent childcare, but there are some technical issues. Impact fees are critical for growth, and the costs must be made up elsewhere if impact fees are not assessed. Jurisdictions should be able to waive costs for childcare without being required to fully replace those costs, like what can currently be done for low-income housing. The impacts are generated by trips, rather than the size of the building, so it may be more equitable to focus on similar treatments for uses with the same number of trips rather than on similarly-sized buildings. The bill should address mixed-use facilities. Impact fees must be related to new developments, and this includes conversions of use.

**Persons Testifying:** (In support) Representative Harris-Talley, prime sponsor; George Petrie, Goodman Real Estate; Kevin Wallace, Wallace Properties; Juanita Salinas-Aguila, Enterprise Community Partners; Katie Buchli-Morales, City of Renton; and Jane Lanford, Makesure Realty Services, Inc.

(Opposed) Brent Ludeman, Building Industry Association of Washington.

(Other) Carl Schroeder, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.