

SENATE BILL REPORT

SHB 1331

As of March 11, 2021

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

Brief Description: Concerning early learning facility impact fees.

Sponsors: House Committee on 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).

Brief History: Passed House: 2/24/21, 73-25.

Committee Activity: Housing & Local Government: 3/11/21.

Brief Summary of Bill

- Prohibits a local government from imposing an impact fee on early learning facility development activities greater than that imposed on a commercial retail or office development activities that generate a similar number, volume, type, and duration of vehicle trips.
- Authorizes a local government to exempt an early learning facility 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.
- Authorizes a local government to exempt an early learning facility 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 certain conditions are met.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Brandon Popovac (786-7465)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA—planning jurisdictions—and a reduced number of directives for all other counties and cities. Twenty-eight of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

Impact Fees. Planning jurisdictions may impose impact fees on development activity as part of financing public facilities needed to serve new growth and development. This financing must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees. Impact fees may only be imposed for system improvements reasonably related to the new development, may not exceed a proportionate share of the costs of system improvements, and must be used for system improvements that will reasonably benefit the new development.

Impact fees may be collected and spent only for qualifying public facilities included within a capital facilities plan element of a comprehensive plan. Public facilities, within the context of impact fee statutes, are the following capital facilities owned or operated by government entities:

- public streets and roads;
- publicly owned parks, open space, and recreation facilities;
- school facilities; and
- fire protection facilities.

County and city ordinances by which impact fees are imposed must conform with specific requirements. Among other obligations, these ordinances must include a schedule of impact fees for each type of development activity for which a fee is imposed. These ordinances may also provide an exemption for low-income housing and other development activities with broad public purposes. A local government may provide one of the following exemptions from impact fees for low-income housing:

- a partial exemption up to 80 percent with no explicit requirement to pay the exempted fees from public funds, other than impact fee accounts; or
- a full waiver with the requirement to pay the remaining percentage of the exempted fees from public funds, other than impact fee accounts.

For a local government to grant an impact fee exemption for low-income housing, a developer must record a covenant with the county auditor prohibiting use of the property for any purpose other than for low-income housing, and addressing price restrictions and household income limits for the low-income housing. If the property is later converted to another use, the property owner must pay the applicable impact fees at the time of conversion. School districts receiving impact fees must approve any exemption provided for low-income housing.

Local governments may not collect the revenue lost due to granting impact fee exemptions for low-income housing by increasing fees unrelated to the exemption.

Summary of Bill: The development of an early learning facility is included as a type of development activity with a broad public purpose that a local government may exempt from impact fees. An early learning facility is defined 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.

A local government may not impose an impact fee on development activities of an early learning facility greater than the impact fees imposed on commercial retail or commercial office development activities that generate a similar number, volume, type, and duration of vehicle trips. If a facility or development 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 developed as an early learning facility. In such a development, the impact fee imposed on the early learning facility may not exceed the lowest impact fee imposed on comparable businesses in the same facility or development.

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 without being required 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;
- 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, 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 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Child care provider impact fees are uneven and up to five times higher than other retail businesses. Actual impacts of early learning facilities are not consistently high since parents are only dropping off and picking up their children. The costs of impact fees can be prohibitive to communities of color and prevent the expansion or opening of such facilities. Local access to culturally relevant facilities is beneficial. The bill tries to right-size such fees and prioritizes families in need and who use early childhood education and assistance programs. Equalizing impact fees between early learning facilities and retail/office establishments based on vehicle mile trips, volume, and more was a needed technical fix. The bill offers a positive incentive for cities to expedite much needed facilities in the community. Affordable and accessible child care is vital to preserving equity. Cities are already authorized to offer similar exemptions for low-income housing and this new exemption relates to the overall affordability concept. Local general fund revenues have plummeted due to COVID-19 and providing these exemptions will not impact such funds.

CON: The provision about fair implementation of impact fees is appreciated. When certain development is exempted from impact fees, the capacity and cost burden is going to shift and be paid by others, including housing developers. There should be a broader conversation regarding child care opportunities and housing affordability. Negative pressure is placed on other industries by providing these exemptions.

Persons Testifying: PRO: Representative Kirsten Harris-Talley, Prime Sponsor; Katie Buchli-Morales, associate planner, City of Renton; Vanessa Kritzer, councilmember, City of Redmond.

CON: Jan Himebaugh, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: No one.