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Surprise provided edge in Dorchester 2's lone impact-fee win

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If you are a property owner in the Dorchester 2 School District, a new law allows your school board to give you some long-sought tax relief for new construction. Unfortunately, taxpayers in Beaufort and Jasper counties won't be given the chance for the same tax break despite the efforts of their legislators.

Not this year, anyway.

The Dorchester law that allows the District 2 board to impose development impact fees on new residential construction was authored by Sen. Mike Rose. His success was due to a novel legal approach of giving the power to impose impact fees to a school district rather than a county. That and the fact that he took powerful opponents by surprise.

"Mike is the only one who got through the gauntlet," said Beaufort Sen. Tom Davis, who, along with Sen. Clementa Pinckney of Jasper, unsuccessfully tried the Rose approach. While the Rose bill sailed through with lightning speed in the early days of this year's session, Davis delayed action on his bill while seeking input from his district. As for the Jasper bill, by the time it got to the House, the opponents, primarily the homebuilder lobby, were geared for a fight. Unlike the Dorchester bill, which went to that county's receptive House delegation, the Jasper bill was sent to the far more hostile House Ways and Means Committee where it remains bottled up. Jasper Rep. Curtis Brantley says he asked House Speaker Bobby Harrell why his county was treated differently and was advised it was a procedural issue stemming from his absence from the House floor when the bill arrived from the Senate. Since then, Brantley has tried unsuccessfully to recall the bill from the Ways and Means Committee whose chairman, he says, has made his opposition clear.

While some contend development impact fees for schools should be governed by state law, special interests have kept that from happening. After York County imposed impact fees for schools, special interest lobbies got their legislative allies to specifically ban other

counties from following suit. Since that ban a decade ago, there has been powerful opposition to any effort to allow the counties to regain the school impact fee power even though local governments do have the authority to set a variety of other such fees.

Beaufort's Davis has dropped his effort to pass a Rose-style bill after observing the fate of the Jasper County bill in the House. He has met with opposition forces and plans to craft a statewide bill over the summer that he hopes will have a chance.

While Dorchester now is the first school district with the power to impose such fees, the opponents didn't give in easily. Rose says there was an effort in the Senate even after the law went into effect to retroactively strip the Dorchester school district of that authority.

He also feels he has sufficient legal authority to ward off any future legal challenge. While so-called "local legislation" has been prohibited since the advent of the 1970s "home rule" constitutional amendment, school legislation has been an exception.

The S.C. Supreme Court has previously determined that when it comes to schools, legislators can pass laws for individual counties since education is a state, not a local government responsibility. Further, the state law that bans counties from imposing school impact fees has been trumped in the Rose bill by giving the power instead to school districts.

It is now the responsibility of the District 2 School Board to come up with a way to implement the new Dorchester impact fee law. There's no question that's what the citizens of one of the fastest growing school districts in the state want, as reflected by the support of school impact fees by all the county's governmental bodies. Frances Townsend, vice chairman of the District 2 board, said a variety of options are being explored, including granting some exceptions, with action expected this summer. The new law does put some limits on the board's power. The fees are capped at \$2,500 per residential dwelling and may be used for new construction only — an amendment to the Rose bill by Dorchester House members and modeled on York County.

Rose would have preferred that the district not be tied to a cap but recognized the need to compromise and pass the bill quickly. There's no question, he said, that there is going to be an additional school tax to pay for all the residential growth, pointing to a study that shows the need for 15 new schools based on the new homes that already have been approved. While Rose noted that impact fees aren't a silver bullet to pay all that tab, they will help shift some of the burden.

At least when the District 2 school board does take up the implementation of the new fees, at issue won't be whether to exercise its new authority but how to do that fairly and within constitutional confines.

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