

# The Post and Courier

## Builders sue over school impact fee

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SUMMERVILLE -- The school district's new impact fee isn't legal, alleges a lawsuit by local and state home builders. S.C. Supreme Court decisions allow it, said the legislator who sponsored the bill.

The lawsuit filed Tuesday argues that special legislation passed to create the fee wasn't constitutional because it bypassed general legislation that already existed governing impact fees. That legislation says that counties and municipalities can't assess impact fees for schools but doesn't address whether individual districts can. The associations argue that taxes such as the fee should be approved statewide, rather than case by case.

### The suit

[Official copy of the complaint](#) brought by Home Builders Association of S.C. and the Charleston-Trident Home Builders Association against Dorchester 2 (21 page PDF)

"The core of our case is that the way it was passed violates the (state) constitution. The fee is ultimately a tax. This is not the way to handle things. We don't want this to become a trend," said Phillip Ford, Charleston-Trident Home Builders Association executive vice president.

The state Supreme Court has ruled more than once that the legislative prohibition on impact fees doesn't pertain to school districts and that special legislation for individual school districts is allowed, said state Sen. Mike Rose, R-Summerville. Without special legislation, individual districts couldn't be allowed to waive lost class days for occurrences such as snowstorms or hurricanes.

The suit comes on the heels of legislation that gives home builders a break on paying property tax for homes that are built but not sold, Rose said. That means existing homeowners must pay for services to those structures, such as police and fire.

"I think everybody needs to understand what these home-builder associations are doing," Rose said. "They're shifting the burden to existing homeowners of 15 new schools that Dorchester District 2 says it needs to build. The battle going on is, how much are existing homeowners going to subsidize these new schools for new residents?"

That's not fair, said Mark Nix, executive director of the Home Builders Association of South Carolina. Most homes sold in an area are sold to people already living in that area and already paying taxes. "There's not a simple answer to that," he said. The lawsuit is to prevent special legislation taxation, he said. "What's the next fee down the road that's going to be imposed on the citizens of Summerville?"

The schools were served the lawsuit Tuesday afternoon and could not immediately comment on it, said Allyson Duke, chief financial officer. But based on comments at public hearings on the impact fees, it was not unexpected.

The fee is a \$2,500 per home charge on all new homes built in the school district except low-income and retiree housing with specific deed restrictions, as well as homes built to replace those damaged by fire or other natural disasters. The money helps pay for new school construction. The fee must be paid before the home is occupied, but because builders often pass on those fees to buyers, it could make home buying more expensive.

"Any time you propose a new fee on homes, you do knock people out of the market," Ford said. But with the current slowdown in construction, Ford couldn't immediately say how big an effect the fee has had since being passed in June.

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