



Rose appears to have found key to school-impact fees

By Barbara S. Williams
Editor Emeritus
Monday, February 9, 2009

Even some legislators are telling Dorchester Sen. Mike Rose that it's nothing short of a miracle.

After years of various attempts to convince lawmakers to allow development impact fees for school construction, the Rose bill that would do just that for the state's fastest growing school district has passed the Senate, and the House — with amendments — within the first few weeks of the session.

What's more, two other counties — Beaufort and Jasper — are following his lead.

Not only is this an issue whose time clearly has come, the newly-elected senator — who previously served for 10 years — apparently has found a way to avoid past legislative hurdles. His Dorchester District 2 bill is what's known as "local legislation" — a signal that lawmakers from other counties should keep hands off.

Few such "local bills" have been constitutional since the passage of the 1970s "Home Rule" legislation. But there is an exception — local laws involving education. Indeed, the S.C. Supreme Court has ruled in a number of cases that local legislation involving education doesn't violate the "home rule" ban since education is a state responsibility. The most recent attorney general's opinion on that subject involves a "local law" that prohibits the Charleston County School District from denying charter schools facilities and services available to other public schools. That law is being challenged by the district, which has raised the pre-emption issue since there already is a state law on charter schools.

While the attorney general says such local education laws still are allowed if they don't conflict with state legislation, Rose contends his impact fee bill is even more legally secure. While there is a state law on county and city impact fees, he points out there is no state law on the imposition of those fees by school districts. Thus, he contends, there is no pre-emption issue.

Dorchester's past school impact fee efforts have been stymied by a 1999 state law. That law was spurred by lobbyists for home builders and aimed at restricting a growing tendency by local governments to impose various development impact fees. That law's list of allowable impact fees includes such services as water, sewer, parks and fire protection, but specifically excluded school construction. Only a York County school district was allowed to continue receiving those fees under a grandfather clause.

Sen. Rose contends it is only right that school districts be given the power to impose the development fees since they are the most heavily impacted by new residential construction. He also notes that his bill contains restraints that would prevent school districts from imposing unreasonable fees.

The Rose bill not only sailed through the Senate but quickly became the model for Beaufort and Jasper County "local legislation." The latter two bills are awaiting final reading in that body pending the outcome of back-home public hearings. The Dorchester bill was given final reading in the House Friday with amendments Rep. Annette Young said she understood Rose could accept — a \$2,500 per dwelling cap on impact fees and a proviso that the fees can only go to new construction. Amendments also doubtless are in the offing on the Beaufort and Jasper bills. Beaufort Sen. Tom Davis said he is now inclined to give Beaufort County Council a say on the size of the impact fee since it has final approval of the school district's budget. That's also true in Dorchester County. Davis also is willing to consider a suggestion from the governor's office that the issue be put to a referendum.

But Rose believes the latter is a waste of time and money. Referendums, he notes, generally are designed to allow taxpayers to decide whether they want to impose a tax on themselves. In this case, the decision would be whether to impose a tax on somebody else. He believes the result would be a foregone conclusion, not to mention the delay in imposing the needed fees.

As for the House amendments, he recognizes the proposed \$2,500 cap is derived from the current charge in York County, but contends each school district should have the power to decide what's reasonable in that county rather than have it dictated from Columbia. At the same time, he doesn't see the amendments as a deal breaker. One potential compromise, he says, is to give County Council the power to sanction impact fees over \$2,500 per dwelling. The key, he says, is flexibility.

The senator also makes it clear he doesn't consider new housing impact fees the "silver bullet" for paying for new school costs. But, he contends, they should be part of a school district's arsenal. While long-time opponents of school impact fees are now trying to figure out how to stop the Rose approach, this time they may well have been out-maneuvered.

Barbara S. Williams, editor emeritus of The Post and Courier, may be reached at bwilliams@postandcourier.com.

Copyright © 1997 - 2008 the Evening Post Publishing Co.