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## Ruling could cost Lee County \$1.7 million

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March 21, 2005

Lee County has lost a lawsuit over school impact fees, one that could end up costing the county more than \$1.7 million.

The decision handed down last week by Lee Circuit Judge Jay Rosman applies only to the estimated 750 people who had new home construction contracts pending when county commissioners adopted the school impact fee ordinance in December 2001. Rosman heard oral arguments in February, and on Thursday ruled the ordinance was unconstitutional because it interfered with contract agreements made before it was passed.

That could mean refunding the \$2,232 school impact fee to each of those builders or buyers who paid the fee. That would total as much as \$1.6 million. If the county has to refund the 3 percent administrative fee it also collects, the damage would rise to around \$1.7 million.

"This court finds (the ordinance) retroactively places an impermissible burden on those contracts ... and clearly constitutes an impairment which is facially unconstitutional," Rosman wrote in his ruling.

The suit is the smaller part of a two-part class action suit local builders launched over the fees. The other part of the suit challenged the methodology used to support the fees, a challenge that could have ramifications statewide. Other Florida jurisdictions use similar methodologies, and other builder groups across the state are looking to the local case.

So far they've had little encouragement. A judge ruled for the county after a weeklong trial a year ago, a decision that's under appeal.

This decision could face appeal as well.

"We are discussing options, the ins and outs, with the school counsel and with our special counsel," said county land use attorney Tim Jones. "One of those options might be an appeal."

Jeff Garvin, attorney for the builders, said there could be more than 750 contracts affected.

"It's probably \$2 or \$3 million worth of fees," he said. "What the court is saying is any contract signed before December got burdened by the law."

Michael Reitmann is director of the Lee Building Industry Association, which launched the suit that later was granted class-action status. He said the decision is of statewide significance because other jurisdictions have been following Lee County's lead, making new and increased fees retroactive to existing contracts.

"This is a significant victory in a lot of jurisdictions," he said. "They've been applying this and ignoring signed contracts."

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