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What Florida Homebuilders Should Know About Impact Fees

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New procedures and existing protections involving impact fee credits can affect a homebuilder's project pricing, permit timing and the value of the credits themselves.

Suppose a homebuilder signs a contract to acquire 150 finished lots and prices the project using the impact fee schedule in effect on the contract date. The lots will close in phases, and building permits will be obtained over the next two years. Before the first closing, the city or county approves a substantial increase in its transportation, parks and public safety impact fees.

That increase can change the economics of every home in the project. It also creates the potential for disputes over whether pending permit applications are protected, whether the seller's infrastructure work generated credits, and whether those credits were actually transferred to the homebuilder. Florida law provides homebuilders with several useful protections, and legislation enacted in 2026 will add new ones. But builders must preserve those protections in their contracts, permit strategy and dealings with local government.

Pending Permit Applications Can Protect Current Pricing

Florida Statutes Section 163.31801 (the Impact Fee Act) requires at least 90 days' notice before a new or increased impact fee takes effect. More importantly, unless the change reduces the total mitigation costs or impact fees imposed on an applicant, a new or increased fee may not be applied to a current or pending permit application submitted before the effective date of the increase.

For a homebuilder with a phased project, the practical question is what qualifies as a pending application. A builder should not assume that a preliminary meeting, reservation request or incomplete filing will be enough. Before an announced increase becomes effective, the builder should identify the permits covered by the statute, confirm the local government's completeness requirements and obtain written

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confirmation of the date and status of each application. The purchase contract should also allocate the risk of an increase if the seller or developer controls the platting or infrastructure work needed before the builder can file permit applications.

Impact Fees Generally Cannot Be Collected Before the Building Permit

The Impact Fee Act generally prohibits collection of fees before the building permit is issued. Payment dates can be important to a builder's cash flow, particularly in a large subdivision where permits and home starts will be staggered.

A development agreement or purchase contract should be reviewed carefully before the builder agrees to reimburse a seller for fees paid earlier than required by law. The parties should distinguish true impact fees from other charges that may be due at a different time. In particular, the Impact Fee Act expressly does not apply to water and sewer connection fees.

Do Not Leave Infrastructure Credits With the Seller

Developers frequently dedicate rights-of-way or other land, construct roads and public facilities, contribute money, or provide design and planning work required by a development order or agreement. Florida law requires the local government or special district to give a dollar-for-dollar credit, at fair market value, against an impact fee in the same general category or class as the contribution.

Those credits may represent a significant part of a project's value, but they do not always pass automatically with the land. Before signing a lot purchase contract, a homebuilder should obtain the development orders, agreements, credit ledgers and correspondence establishing and documenting the credits. The contract should identify the amount and category of each credit, prohibit the seller from using or transferring the credits before closing, require an express assignment to the homebuilder, and make governmental recognition of the assignment a condition to closing when feasible, with an agreement by the seller to cooperate after closing to facilitate the transfer if necessary.

The Impact Fee Act also permits established credits to be assigned or transferred to another development or parcel within the same impact fee zone or district, or an adjoining zone or district in the same local government jurisdiction, if the receiving property benefits from the improvement or contribution that generated the credits. A homebuilder acquiring multiple nearby projects should therefore determine whether unused credits can be redeployed rather than abandoned.

Existing Credits Can Retain Their Purchasing Power

If an impact fee increases, the holder of credits that existed before the increase is entitled to the full benefit of the intensity or density prepaid by the credit balance when it was first established. In practical terms, an old credit should not necessarily be treated as a fixed number of dollars that buys less after rates increase.

To preserve that benefit, the builder should verify when the credit was established, what development intensity or density it represents, the fee category to which it applies and the local government's current ledger balance. The assignment document(s) should transfer not merely a stated dollar amount, but all rights associated with the credit, including the statutory protection against loss of its prepaid development value.

New Legislation Takes Effect January 1, 2027

House Bill 1329, approved by Governor DeSantis in June 2026 and taking effect on January 1, 2027, will change the process for adopting and increasing impact fees when it becomes effective. Among other things, the law requires a plan-based methodology using recent, localized data for covered fee studies and adds restrictions when a local government seeks to exceed the ordinary statutory phase-in limits based on extraordinary circumstances.

The new law also creates a defined procedure for alleged overpayments. After receiving a written request for a refund or credit, the government that imposed the fee must approve or deny the request in writing within 30 days. If approved, the payor generally has 30 days to elect a refund or credit, and the government must provide it within 30 days after receiving that election. This procedure should make prompt, well-documented written demands more useful than informal discussions with permitting staff.

The ordinary phase-in rules will remain important. Under the Impact Fee Act, an increase of no more than 25% is generally implemented in two equal annual installments; an increase above 25% but not more than 50% is generally implemented in four equal installments; and increases ordinarily may not exceed 50% or occur more than once every four years. To bypass the statutory 50% cap or speed up the 4-year phase-in timeline, a local government must navigate a rigorous, multi-step extraordinary-circumstances process governed strictly by the Impact Fee Act. Because the Florida Legislature designed these restrictions to protect developers and homeowners from unpredictable cost spikes, local jurisdictions face heavy legal and procedural hurdles to prove a "true" extraordinary emergency exists. The extraordinary-circumstances process is an exception, not the rule. In addition to the generally applicable 90-day notice requirement, an increase exceeding the ordinary phase-in limitations requires a demonstrated need study, mandatory public workshops, and approval by a unanimous vote of the governing body. The state keeps a tight leash on what qualifies. For example, in Attorney General Opinion 2026-01, Florida Attorney General James Uthmeier stated that steady population growth in Nassau County of 17% over five years, did not, by itself, constitute extraordinary circumstances.

Contract Provisions Matter

A homebuilder's purchase contract should address impact fees before they become a closing problem. Depending on the transaction, the contract should:

- identify every county, municipality, school district and special district fee that may apply, together with the fee schedule used in the builder's underwriting;
- require delivery of all development agreements, fee studies, credit agreements, ledgers and governmental correspondence during due diligence;
- state who receives, controls and may use credits generated by the seller's land dedications, payments or infrastructure work;
- require an assignment of credits and continuing cooperation after closing, including execution of local government forms;
- allocate the risk of fee increases and delays that prevent permit applications from being filed before an increase takes effect; and
- separately address water and sewer connection charges, which fall outside the Impact Fee Act.

The Bottom Line

Impact fees are not simply a permitting expense to be calculated after a builder closes on lots. Fee increases, permit timing and unassigned credits can materially affect land value and project profitability. A homebuilder that verifies available credits, protects pending applications and negotiates a clear allocation of impact fee risk is in a much better position to preserve the economics of its project when local fee schedules change.

Because local ordinances, development agreements and credit procedures vary, Florida homebuilders should evaluate these issues during contract due diligence and before filing or relying on permit applications.

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