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RESIDENTIAL PROPERTY | AUGUST 4, 2026

Florida's Impact Fee Credit Rule: What Developers Must Know

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Most local governments in Florida assess various impact fees for new developments, including but not limited to water impact fees, sewer impact fees, school impact fees, and transportation impact fees. In addition to these fees, many local governments require non-monetary contributions from developers, including land dedications for parks or infrastructure, upgrades to municipal water and sewer systems, and other public improvements.

The requirement to pay impact fees and the requirement for non-monetary contributions created situations where developers were paying twice for the same impact – e.g., paying impact fees related to the increased water demand for a new development while also physically upgrading municipal water infrastructure related to the increased water demand.

Since 2019, pursuant to House Bill 7103, the Florida Legislature adopted numerous changes to the Florida Impact Fee Act (the "Act"), codified as Section 163.31801 of the Florida Statutes, relating to a local government's collection of impact fees.

Notably, the Act states that if a local government requires any improvement or contribution, the local government **must** credit against the collection of the impact fee any contribution related to public facilities or infrastructure, including monetary contributions, land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.

As an example, if a local government requires a developer to upgrade a 6" water main to an 8" water main, at a cost of $200,000 to the developer, and the local government assesses $400,000 in water impact fees, the local government **must** reduce the water impact fee by $200,000.

In practice, many local governments in Florida have not adopted methods or standards for developers to obtain this credit, and many developers and local governments are not aware of these statutory requirements, resulting in overpayments.

Attorneys with Bilzin Sumberg have obtained millions of dollars in impact fee credits for clients pursuant to the Act, often requiring us to educate local governments on this requirement and assisting in formulating the local government's process for obtaining such credits.

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