



# STORMWATER FEES

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# STORMWATER FEES – SOVEREIGN IMMUNITY

**Immunity:** Exception from a duty or liability

**Sovereign Immunity:** A government entity's immunity from being sued without its own consent.

An agency of the State of Florida enjoys absolute immunity from suit unless there has been a waiver (*clear and unequivocal*) of immunity by contract, the legislature or by a constitutional amendment.



# STORMWATER FEES - BACKGROUND

In 1988, Florida Legislature enacted two statutes involving stormwater:

1. §403.0891 (1), F.S., provides that local governments have the responsibility for development of mutually compatible stormwater management programs; and
2. §403.0893, F.S., local government is given the discretion of creating a utility “in addition to any other funding mechanism legally available.”



# STORMWATER FEES - BACKGROUND

Local governments have handled payment for management of stormwater in basically two ways:

1. Created a local utility; or
2. Pay for stormwater through ad valorem taxes.



## WHO THE DISTRICT PAYS

Currently, the School District pays stormwater fees to Broward County, and to the cities who have established utilities to manage stormwater:

Coconut Creek

Cooper City

Fort Lauderdale

Hallandale Beach

Hollywood

Lauderhill

Margate

Miramar

North Lauderdale

Oakland Park

Pompano Beach

Sunrise

Wilton Manors



# HOW CITIES CALCULATE STORMWATER FEES

Generally, cities establish an *Equivalent Residential Unit (ERU)*, which is a statistical average impervious area of residential property per dwelling within the city.

Example: one city has determined that 2,070 sq. ft. is the average impervious area of a residential property, which equals one (1) ERU. The monthly rate for 1 ERU is \$2.65.

For non-residential property, the city would divide the impervious square feet of the property by 2,070 sq. ft. to determine the applicable ERUs, and multiply by the rate of \$2.65.



# LITIGATION HISTORY

## 2001: City of Gainesville v. State Dep't of Transportation (I)

1<sup>st</sup> District Court of Appeal: Stormwater utility fee is a user fee, opposed to an assessment, and can be collected from a public entity.

## 2003: City of Gainesville v. State Dep't of Transportation (II)

Florida Supreme Court: Stormwater utility fee was a valid user fee to secure bond financing. Did not establish whether DOT had sovereign Immunity



# LITIGATION HISTORY

2005 (July): City of Clearwater v. School Board of Pinellas County

2<sup>nd</sup> District Court of Appeal: Stormwater utility fee is a user fee, not a special assessment and school board must pay.

2005 (December): City of Gainesville v. State Dep't of Transportation (III)

1<sup>st</sup> District Court of Appeal: Stormwater fee is valid utility, however *due to sovereign immunity City must have a written contract before it can collect.*





# LITIGATION HISTORY

## 2006: City of Clearwater v. School Board of Pinellas County

Based on the ruling in Gainesville III; trial court reversed its earlier ruling and held that the School Board did not have to pay, and awarded the School Board its fees it previously “paid in error”

## 2012: City of Key West v. Florida Keys Community College

3<sup>rd</sup> District Court of Appeal: Held College did not have to pay, and the College received its fees it previously “paid in error”



# LITIGATION HISTORY

2014: Town of Davie v. Broward College Board of Trustees, University of Florida Board of Trustees, and The School Board of Broward County, Florida.

17<sup>th</sup> Judicial Circuit: The Town of Davie attempted to assess a fire levy of over \$150,000 on The School Board for the McFatter School property. The Town argued that Fla. Stat. §170.201 allowed the assessment. The District filed a motion for summary judgment based on the doctrine of sovereign immunity and lack of subject matter jurisdiction.



# LITIGATION HISTORY

2014: Town of Davie v. Broward College Board of Trustees, University of Florida Board of Trustees, and The School Board of Broward County, Florida (con't)

The University of Florida and Broward College were co-defendants in the case. This was a *case of first impression* which means that it is an original issue in the jurisdiction and there was no binding legal precedent regarding the issue presented in the case, i.e. whether fire fees could be assessed against the School Board and the other defendants based on the language of Fla. Stat §170.201.



# LITIGATION HISTORY

2014: Town of Davie v. Broward College Board of Trustees, University of Florida Board of Trustees, and The School Board of Broward County, Florida (con't)

Holding: Based on the Gainesville (III) and City of Key West cases (both cited above) The School Board was not required to pay the Town of Davie's Fire Assessment based on Sovereign Immunity.



# LITIGATION HISTORY

## 2017: The School Board of Palm Beach County, Florida v. City of West Palm Beach Florida

In 2012 School Board suspended stormwater utility payments to the City. In response the City threatened to sever certain School Board properties from the City's stormwater system.

Court Held: There is no statutory waiver of sovereign immunity from payment of stormwater fees in §403, F.S., and there is no contract between the School Board and the City for the provision of stormwater fees.



# LITIGATION HISTORY

## 2017: The School Board of Palm Beach County, Florida v. City of West Palm Beach Florida (con't)

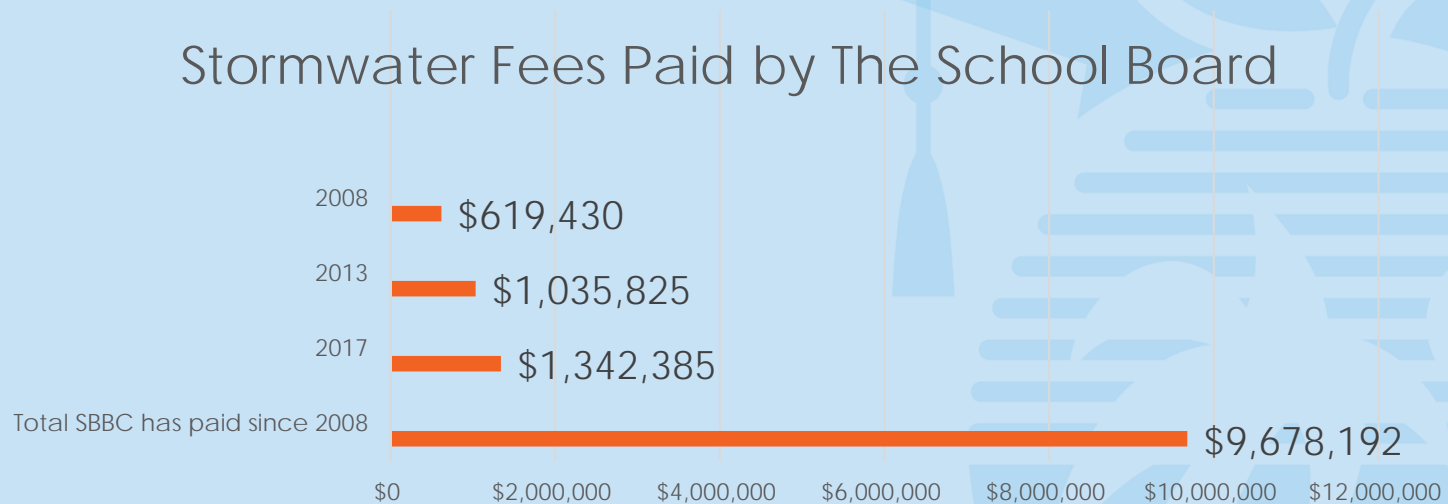
The decision Gainesville III, City of Clearwater, and City of Key West are both controlling and persuasive; therefore, the School Board enjoys sovereign immunity from suit for non-payment of any of the City's stormwater fees.



# WHAT DOES THIS MEAN FOR SBBC?

This issue has been under discussion between the General Counsel's Office, Utility Management/Facilities and certain cities on and off since 2007.

Stormwater Fees Paid by The School Board



# WHY NOW?

## Cities fees are increasing and Palm Beach Ruling

City of Ft. Lauderdale:

Harbordale: \$22.00 to \$347.89, monthly

Walker: \$41.44 to \$331.86, monthly

City of Hallandale:

Gulfstream (2017): \$2,658 to \$5,848, monthly

Hallandale HS (2017): \$4,359 to \$9,590, monthly





# WHY NOW?

## City of Oakland Park:

Twin Lakes Complex: \$ 3,576.00 to \$5,730.90

Oakland Park ES: \$264.37 to \$865.90

Increase above reflects from 2008 to 2017

## City of Hollywood:

McArthur: \$2.87 to \$868.43, monthly

Hollywood Hills: \$22.83 to \$395.74, monthly

The City of Hollywood started this discussion in 2008 with the increase reflected above.  
Currently the District pays Stormwater fees at only two schools



# QUESTIONS AND DIRECTIONS



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