

---

## Coates' Canons Blog: Expanded Solid Waste Fee Authority for Counties? Probably Not

By Kara Millonzi

Article: <https://canons.sog.unc.edu/expanded-solid-waste-fee-authority-for-counties-probably-not/>

This entry was posted on September 08, 2014 and is filed under Finance & Tax, Public Enterprise / Utility Finance, Solid Waste Finance

---

The General Assembly expanded the categories of allowable expenditures for a county's solid waste fee proceeds in the 2014 technical corrections act, **S.L. 2014-115 (HB 1133)**. Specifically, section 60 added a new provision to **G.S. 153A-292** (section b1) that states that "the collection, disposal, and availability fees authorized by this section may be used to cover the cost of waste management programs in the jurisdiction, including the collection of waste and the collection of litter along public roadways." The act did not lift the restrictions on charging solid waste fees, though, including the requirement in **G.S. 153A-292(b)** that the aggregate revenue generated by the collection, disposal, and availability fees not exceed the costs of providing the particular solid waste service for which the fees are assessed. This post discusses these two seemingly conflicting provisions and details what affect, if any, the new act has on a county's solid waste fee authority.

### County Fee Authority Before S.L. 2014-115 (effective until August 11, 2014)

As detailed in a previous **post**, counties are authorized to levy three fees—a collection fee, a disposal facility use fee, and an availability fee. Each fee serves a different purpose and each is limited in scope.

For example, a county may charge a *collection fee* only to those customers who voluntarily participate in a county's solid waste or recycling collection program. The collection fee "may not exceed the costs of collection." **G.S. 153A-292(b)**.

A county may assess a *disposal facility use fee* only on those customers who actually used a county's disposal facilities. Examples of a disposal facility include a landfill, convenience center, and transfer station. With limited exception\*, the revenue generated by the disposal facility use fee "may not exceed the [aggregate] cost[s] of operating the [county's] facilit[ies]." **G.S. 153A-292(b)**.

Finally, a county may assess an *availability fee* on (almost\*) all improved properties in the county. Again, with limited exception\*, the revenue generated from the availability fee "may not exceed" the costs of providing the county's disposal facilities. **G.S. 153A-292(b)**.

Given the statutory restrictions in **G.S. 153A-292(b)**, a county must be careful not to set its fee amounts such that the proceeds generated exceed the costs of providing the particular solid waste service for which each fee is assessed. For example, a county may not set its collection fee so that it generates revenue to offset the costs of its disposal facilities. Likewise, the county may not set its availability fee so that it generates revenue to cover its collection costs.

(\*For additional details on each of these fees, including the exceptions, click **here**.)

### Changes Enacted by S.L. 2014-115 (HB 1133)

As of August 11, 2014, section 60 of S.L. 2014-115 added **G.S. 153A-292(b1)**, which seemingly authorizes a county to use revenue generated from each of its solid waste fees to cover any expenses associated with its solid waste management program, as well as costs incurred from picking up litter along public roadways. However, as stated above, the act did not amend the authority to assess the fees. The provision in **G.S. 153A-292(b)** authorizing the collection fee still specifies that the fee may not exceed the costs of providing collection services. And the provisions authorizing the disposal facility use fee and availability fee still specify that the fees may not exceed the costs of providing the county's disposal facilities.

And the North Carolina Court Appeals has adopted a strict interpretation of these statutory fee restrictions. In *Manning v. County of Halifax*, 166 N.C.App. 279 (2004), the court invalidated the county's solid waste availability fee where the aggregate revenue generated by the fee exceeded the costs of operating the county's disposal facilities by \$48,358. (The

---

revenue generated by the availability fee was \$1,933,133. The costs of supporting the county's disposal facilities totaled \$1,884,775.) In so holding the court rejected the county's argument that it was unreasonable to expect a county to exactly calculate its actual costs and revenue when setting the availability fee at budget time. According to the court, "[t]he phrase 'may not exceed' [in G.S. 153A-292(b)] does not mean that fees and costs need only be 'reasonably related' to one another . . . ."

So what purpose does the new provision serve? It is not entirely clear. It is possible that the legislature intended for **G.S. 153A-202(b1)** to allow a county to generate revenue from any of its fees to cover the full costs of its solid waste management program. This would, for example, allow a county to charge (almost) all improved properties an availability fee and use the revenue to cover both disposal facility and collection costs, regardless of whether a property owner takes advantage of these services.

But the new provision only deals with the use of the fee proceeds. The fact is that the fee-setting restrictions in **G.S. 153A-292(b)** remain. And given that the court of appeals has held that these restrictions are unambiguous and absolute, a county is well advised to proceed with caution in setting fees such that they generate excess revenue. The safest approach is for a county to continue to factor in only collection costs when setting the collection fee and only disposal facility costs when setting the disposal facility use fee or availability fee.

## Links

- [www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=H1133](http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=H1133)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-292.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-292.html)
- [canons.sog.unc.edu/?p=3309](http://canons.sog.unc.edu/?p=3309)