
Coates' Canons Blog: Funding Solid Waste Services

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UPDATE 2013: This blog has been updated to reflect legislative changes made in S.L. 2013-413.

Many local governments across the state provide some form of solid waste services for their citizens. Under the public enterprise statutes, counties and municipalities have largely coextensive authority to provide both collection and disposal services, although counties typically support landfills or other disposal facilities, whereas municipalities usually provide the collection services. But, the all important question, particularly in these tough budget times, is how can, and how should, a local government fund these services? Determining how a unit “should” fund its solid waste services is a complicated issue involving a mix of legal, policy, and strategic considerations that vary across local governments. This blog post outlines the legal authority to finance solid waste services and details some of the factors a unit might consider in selecting an appropriate funding scheme.

Both counties and municipalities are authorized to provide solid waste collection and disposal services under their respective public enterprise authorities—**G.S. 153A, Art. 15** (counties) and **G.S. 160A, Art. 16** (municipalities). And, local governments are authorized to fund any public enterprise activity “by levying taxes, borrowing money, and appropriating any other revenues, and by accepting and administering gifts and grants from any source....” **G.S. 153A-276**; see also **G.S. 160A-313**. Furthermore, local governments are authorized to assess certain rents, rates, fees, charges, and penalties associated with the provision of solid waste services. See **G.S. 153A-277** and **292**; **G.S. 160A-314** and **314.1**.

Property Taxes

A significant number of local governments that provide solid waste services fund at least a portion of the costs with property tax revenue. There are some benefits to financing solid waste services in this manner. First, the revenue stream is largely predictable. At budget time, a local unit estimates its expenditures for the year and can set the property tax rate so as to generate sufficient revenue to cover the estimated costs. Second, if a unit is located in a county that distributes its local sales and use tax proceeds among the eligible local units in the county on an *ad valorem* basis (based on relative property tax levies) the higher a unit’s property tax levy (relative to other units in the county) the higher its local sales and use tax distribution.

There also are some (at least potential) drawbacks to financing solid waste services with property tax revenue. Taxes need not bear any relation to the benefit from public services received by the taxpaying persons or property. Property taxes are assessed on all real and personal property within the unit that is not constitutionally or statutorily exempt from paying the taxes, regardless of whether the property benefits from solid waste services provided by the unit. Some individuals or entities that pay property taxes may not use the unit’s solid waste services. For example, if a municipality only provides residential hauling service for trash and recyclables, its commercial property owners will pay property taxes but not directly benefit from the unit’s solid waste services. Or a county may operate a disposal facility that is not utilized by some of its property tax-paying citizens. On the flip side, some individuals or entities may benefit from a unit’s solid waste services without paying for the services. As stated above, certain properties are exempt from property taxes. For example, property used for religious, educational, scientific, literary, or charitable purposes is exempt from the property tax base, as is government-owned property. A unit may very well provide or make solid waste services available to the owners of these exempt properties.

Solid Waste User Fees

As local government officials struggle with tough budget decisions, they are increasingly looking for ways to lessen the burden on the local tax base. One way to do this is to assess user fees or charges on individuals who voluntarily avail themselves of certain government services. User fees and charges are feasible for any service that directly benefits individual users, is divisible into service units, and can be collected at a reasonable cost. Generally, user fees have the advantage, at least over property taxes, of aligning service provision directly with payment. For example, if a unit funds its solid waste services with fee revenue, entities that may otherwise pay property taxes but do not participate in (or benefit from) a unit's solid waste services do not have to pay for those services. And, entities that are exempt from paying property taxes but do participate in (or benefit from) a unit's solid waste services do pay for the services. User fee revenue may not be as steady or reliable as property tax revenue, though. And, the imposition of user fees to fund solid waste services may discourage use of those services by at least some of the unit's residents—which could have both positive and negative effects.

Both counties and municipalities have authority to impose three types of solid waste fees—collection fees, use fees, and availability fees. There are some differences between the authorities for counties and municipalities which warrant discussing each separately.

Counties

Collection Fee. If a county provides *solid waste* hauling or collection services it may assess a fee on all individuals or entities that contract with the county to provide the collection services. A county may not force its residents to use its (or any other) solid waste collection services, though. (Note that what constitutes “solid waste” is defined by reference to **G.S. 130A-290**, except that it excludes hazardous waste.) A county may vary its collection fee according to classes of service that it provides. **G.S. 153A-277**. That means, for example, that a county may charge a different rate for residential collection services than it charges for commercial or industrial hauling services.

An important limitation on a county's ability to impose collection fees is that the total revenue generated by the collection fees may not exceed the (direct and indirect) costs of providing the collection services. **G.S. 153A-292**. Thus, a county may not expend any of the collection fee revenue to support its landfills or other disposal facilities or to support other public enterprise or general fund services.

Use Fee. If a county operates or supports one or more disposal facilities in its unincorporated areas, it may impose a fee for the use of the disposal facilities. The fee only may be imposed on individuals or entities that actually use the county's disposal facilities.

There are a number of ways in which a county may assess the use fee. Some counties have set a rate for an annual pass (usually evidenced by a sticker or other detail placed on a customer's vehicle) for access to one or more disposal facilities. Other counties charge a “per use” fee that is either collected in advance or at the individual disposal facilities. **G.S. 153A-277**. As with the collection fee, a county's use fee may vary according to classes of service. Furthermore, the fee may vary “based on the amount, characteristics, and form of recyclable materials present in the solid waste brought to the facility. . . .” **G.S. 153A-292**.

There are two important limitations on a county's authority to assess a use fee. First, the total revenue generated by the county's use fee may not exceed the (direct and indirect) costs of providing the disposal facility. In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs “incidental to a county's handling and disposal of solid waste . . . including the costs of the methods of solid waste management specified in **G.S. 130A-309.04(a)**” **G.S. 153A-292**. There is an exception to this general limitation on the disposal fee amount. If a county enters into a contract with another local government in the state to accept the other local government's solid waste, the county may levy an additional surcharge on the fee. The proceeds of the surcharge may be expended for any purpose for which the county is authorized to expend monies.

The second limitation is that a county may not impose a fee for the use of a disposal facility on a city located in the county, or on a contractor or resident of the city, unless the fee applies uniformly throughout the county.

Availability Fee. In addition to the two fees discussed above, if the county operates or supports any disposal facilities within the county it may impose a fee “for the availability” of the disposal facilities. **G.S. 153A-292.** An availability fee may be imposed on all “improved” properties in the county that “benefit” from the availability of the facility. The statute does not define what constitutes an improved property, but it likely requires that there be one or more residential, commercial, or industrial structures on the real property.

Certain property is deemed by statute not to benefit from the availability of a county’s disposal facilities and, thus, is exempt from the availability fee. See **G.S. 153A-292.** A county may not impose the availability fee on improved property whose solid waste is collected by a county, a municipality, or a private contractor for a fee if the fee imposed by the hauler includes a charge for the availability and use of a disposal facility provided by the county. Additionally, a county may not impose the availability fee on property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by the private contractor that provides the same services as those provided by the county’s disposal facilities. If the services provided by the private disposal facilities and the county disposal facilities are not coextensive, the county may assess a reduced availability fee to cover the additional services that its disposal facilities provide. County officials have discretion to determine if any other categories of improved properties, such as those that are vacant, also do not “benefit” from the county’s disposal facilities and, therefore, also are exempt from the availability fee.

The total revenue generated by the county’s availability fee may not exceed the collective costs of providing the disposal facilities.

Municipalities

Collection Fee. If a municipality provides solid waste hauling or collection services it may assess a fee on all individuals or entities that contract with the municipality to provide the collection services. **G.S. 160A-314.1.** A municipality may vary its collection fee according to classes of service that it provides. **G.S. 160A-314.** That means, for example, that a municipality may charge a different rate for residential collection services than it charges for commercial or industrial hauling services.

An important limitation on a municipality’s ability to impose collection fees is that the total revenue generated by the collection fees may not exceed the (direct and indirect) costs of providing the collection services. **G.S. 160A-314.1.** Thus, like a county, a municipality may not expend any of the collection fee revenue to support its landfills or other disposal facilities or to support other public enterprise or general fund services.

Unlike a county, however, a municipality may require an owner of improved property located within the municipality to participate in its solid waste collection program unless the property owner has otherwise contracted for the collection of solid waste from the property. **G.S. 160A-317(b).** The statute does not define what constitutes improved property but it likely requires that there be one or more residential, commercial, or industrial structures on the real property. (Note that a municipality may not displace a private hauler, except under certain circumstances. See **G.S. 160A-327.**) A municipality also may require any owner of improved property to participate in a recycling program by mandating the separation of designated materials from the solid waste before it is set out for collection. (The municipality, however, may not force a property owner to transfer certain “recovered materials”—defined by **G.S. 130A-290(a)(24)**—to the municipality.)

Use Fee. If a municipality operates or supports one or more disposal facilities within the municipal limits, it may impose a fee for the use of the disposal facilities. **G.S. 160A-314.1.** The fee only may be imposed on individuals or entities that actually use the municipality’s disposal facilities.

A municipality’s use fee may vary according to classes of service. Furthermore, the fee may vary “based on the amount, characteristics, and form of recyclable materials present in the solid waste brought to the facility. . . .” **G.S. 160A-314.**

The total revenue generated by the municipality's use fee may not exceed the (direct and indirect) costs of supporting the disposal facility. There is an exception to this general limitation on the disposal fee amount. If a municipality enters into a contract with another local government in the state to accept the other local government's solid waste, the municipality may levy an additional surcharge on the fee. The proceeds of the surcharge may be expended for any purpose for which the municipality is authorized to expend monies.

Availability Fee. In addition to the two fees discussed above, if the municipality operates or supports any disposal facilities within its boundaries it may impose a fee "for the availability" of the disposal facilities. **G.S. 160A-314.1.** An availability fee may be imposed on all "improved" properties in the municipality that "benefit" from the availability of the facility. The statutes do not define what constitutes improved property, but it likely requires that there be one or more residential, commercial, or industrial structures on the real property.

Certain property is deemed by statute not to benefit from the availability of a municipality's disposal facilities and, thus, is exempt from the availability fee. See **G.S. 160A-314.1.** A municipality may not impose the availability fee on improved property whose solid waste is collected by a county, a municipality, or a private contractor for a fee if the fee imposed by the hauler includes a charge for the availability and use of a disposal facility provided by the municipality. Additionally, a municipality may not impose the availability fee on property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by the private contractor that provides the same services as those provided by the municipality's disposal facilities. If the services provided by the private disposal facilities and the municipal disposal facilities are not coextensive, the municipality may assess a reduced availability fee to cover the additional services that its disposal facilities provide. Municipal officials have discretion to determine if any other categories of improved properties, such as those that are vacant, also do not "benefit" from the municipality's disposal facilities and, therefore, also are exempt from the availability fee.

The total revenue generated by the availability fee may not exceed the collective costs of providing the municipality's disposal facilities.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_15.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_16.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-276.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-313.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-277.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-292.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-314.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-314.1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-290.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-309.04.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-317.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-327.html