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OPINION MEMORANDUM

VIA PDF EMAIL ONLY

TO: Mary-Ellen Harper, County Manager

FROM: Nikki Day, B.C.S.
Board Certified Expert in City County & Local Government Law

DATE: August 7, 2026 Client-Matter Number: 14841.10

SUBJECT: Commercial Hauler Tipping Fees

QUESTION PRESENTED

You have asked for an opinion memorandum on whether Levy County (the County) may lawfully charge commercial haulers a per-ton tipping fee for residential (non-construction) household waste delivered to the County landfill while continuing to impose the residential non-ad valorem solid waste service assessment under Resolution 2025-49.

This opinion is furnished as a formal opinion is subject in its entirety to the assumptions, qualifications, conditions, and limitations set forth on Appendix A. The conclusions stated in this opinion are qualified by, and must be read together with, each of the items set forth in the Appendix.

BRIEF ANSWER

Yes, the County may lawfully charge commercial haulers a per-ton tipping fee for residential (non-construction) household waste delivered to the County landfill while continuing to impose the residential non-ad valorem solid waste service assessment under Resolution 2025-49, provided the tipping fee is set within the zone of reasonableness and collection of both revenue streams does not cause the assessment to exceed the County's apportioned benefit.

STATEMENT OF FACTS

Resolution 2025-49, the Amended and Restated Final Assessment Resolution adopted September 9, 2025, reimposes an annual non-ad valorem Solid Waste Service Assessment against residential property to fund "Solid Waste and Recovered Materials disposal services, facilities, and programs" for the fiscal year beginning October 1, 2025.The assessment is adopted under Ordinance 2004-03 (Chapter 78, Levy County Code), Article VIII, Section 1 of the Florida Constitution, and sections 125.01 and 125.66, Florida Statutes. The resolution contains legislative findings that each assessed parcel is "specially benefited" by the disposal services and that the assessments are "fairly and reasonably apportioned among the Residential Properties receiving the special benefit." Proceeds may be used only to fund residential solid waste disposal services, facilities, and programs.

Resolution 2025-65, adopted November 4, 2025 under section 125.01 and section 74-33 of the Levy County Code, sets the schedule of tipping fees. Currently, "Waste Generated from a Dwelling Unit" is billed at "No charge" (garbage with no daily limit; yard trash, bulk trash, and white goods within stated daily limits). Waste "Generated from Non-Residential" property is charged $70.00 per ton. Whether waste is "generated from a Dwelling Unit" is determined by the Director based on documentation supplied by the person disposing of the waste.

The County does not currently charge tipping fees to commercial haulers delivering residential (non-construction) waste.

ANALYSIS

The Florida Supreme Court has held that a solid waste disposal special assessment and tipping fees can coexist. *See e.g. Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997). The tipping fee is imposed on the hauler rather than the resident, and the County has statutory authority to charge reasonable disposal fees at its facility. §403.706, Fla. Stats. (2026). However, the collection of both must consider the full costs for residential solid waste management.

I. The County has statutory authority to impose tipping fees on haulers and to fund residential disposal through a special assessment

Florida law grants counties broad authority over solid waste disposal facilities and the fees charged for their use. Section 403.706(1) provides that a county "has the responsibility and power to provide for the operation of solid waste disposal facilities" and that "[c]ounties may charge reasonable fees for the handling and disposal of solid waste at their facilities." Section 403.7049(5) separately authorizes a county that owns or operates a solid waste management facility to "charge solid waste disposal fees which may vary based on a number of factors," and section 403.7049(4) encourages volume- or weight-based fees on residential and nonresidential users. This provides direct support for Levy County's per-ton schedule. These powers are reinforced by the county home-rule power in section 125.01(1)(k) to "[p]rovide and regulate waste and sewage collection and disposal," which is to be "liberally construed" to secure the broad exercise of home-rule authority.

The special assessment rests on separate and equally settled authority. A non-ad valorem special assessment for solid waste disposal is a recognized county funding mechanism, adopted here under Chapter 78 of the County Code, sections 125.01 and 125.66, and collected under section 197.3632, Florida Statutes. Both instruments are thus independently authorized.

II. A tipping fee and a special assessment are legally distinct mechanisms, and Florida law permits a county to use both to fund the same solid waste program

A tipping fee and a special assessment are different creatures. A special assessment is a charge against property that derives a special benefit from the service funded; it is "inherently different" from a tax and "governed by entirely different principles." *See e.g. City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992). A tipping fee is usually considered a user fee, by contrast. A user fee is "charged in exchange for a particular governmental service which benefits the party paying the fee," and is generally "paid by choice," in that the payer "has the option of not utilizing the governmental service and thereby avoiding the charge." *City of Gainesville v. State*, 863 So. 2d 138 (Fla. 2003). There is "no bright-line test" separating the two, and courts weigh multiple factors including: the name of the charge, the relationship between the amount and the value of the service, who is charged, whether the charge is voluntary, and whether it is statutorily authorized as a fee. *Id.* A per-ton tipping fee billed to a hauler for use of the landfill sits comfortably on the user-fee side of that line; the residential Solid Waste Service Assessment sits on the special-assessment side.

Florida courts have expressly approved the coexistence of these two mechanisms for the same solid waste program. In *Speer v. Olson*, the Florida Supreme Court, held that it was appropriate for a county to levy a property-based charge for solid waste disposal while simultaneously imposing user charges to meet the program's operating costs. 367 So. 2d 207 (Fla. 1978)(discussing *Tucker v. Underdown)*. And in *Sarasota Cnty. v. Sarasota Church of Christ, Inc.*, the Court approved moving from a prior tax-funded model to a special assessment, holding that the existence of a prior funding method did not invalidate an assessment. 667 So. 2d 180 (Fla. 1995).

Further, in *Harris v. Wilson*, Clay County funded residential solid waste disposal in its unincorporated area through a non-ad valorem special assessment, while recovering the disposal costs of municipal, commercial, and other nonresidential waste through tipping fees at the disposal site. 693 So. 2d 945 (Fla. 1997). In affirming the assessment, the Court held that "a previous method of funding for the services (such as the tax in *Sarasota County* or the tipping fees previously collected in this case) does not preclude the imposition of an assessment."

Therefore, a tipping fee on commercial haulers and a residential assessment are not categorically mutually exclusive.

III. The County should still document its cost basis

A valid special assessment has two requirements: (1) the assessed property must derive a special benefit from the service provided, and (2) the assessment must be "fairly and reasonably apportioned among the properties that receive the special benefit." *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992). Apportionment carries a cost ceiling: the amount assessed against each parcel may not be "in excess of the proportional benefits." *Id.*

Resolution 2025-49 sets the assessment as a floor on the benefit rather than as the full measure of it. Section 5(B) declares that each parcel "will be benefited by the County's provision of Solid Waste and Recovered Materials disposal services, facilities, and programs in an amount <u>not less than</u> the Solid Waste Service Assessment for such parcel." The companion finding in Section 5(A) likewise fixes the special benefit "in the amount of the Solid Waste Service Assessment" 2, and Section 5(C) recites only that the assessments are "fairly and reasonably apportioned among the Residential Properties receiving the special benefit." None of these findings asserts that the assessment captures the entire value of the benefit conferred.

Two further features of the Resolution reinforce that the assessment was not set to recover the County's full cost. Section 5(G) provides that any shortfall in assessment proceeds "shall be supplemented by any legally available funds" 4 — a mechanism that presupposes the assessment alone may not fund the full cost of the service. And Section 5(E) recovers an "estimated" solid waste cost framed as the portion allocated to the assessment rather than as the County's total solid-waste program cost. Further, the actual assessments imposed ($116 per dwelling unit) is less than the advertised maximum ($162 per dwelling unit).

The practical significance is favorable to the proposed structure. If, consistent with the Resolution's findings, the value of the disposal benefit each residential parcel receives is at least (and potentially greater than) the $116.00 assessed, then a gap exists between what residents pay through the assessment and the actual cost of the disposal service. A hauler tipping fee that recovers all or part of that gap is correspondingly less likely to push the County's special assessment apportionment for residential waste above cost.

Similarly, a user fee must be set at a reasonable amount based on the services provided and considering the full costs for solid waste management. The tipping fee need not be limited to bare cost recovery. Where a local government operates a service as a proprietary utility rather than merely imposing a regulatory charge, Florida courts have permitted the utility to earn a reasonable return so long as rates remain within the "zone of reasonableness." *See e.g. Rosalind Holding Co. v. Orlando Utilities Comm'n, 4*02 So. 2d 1209 (Fla. 5th Dist. Ct. App. 1981). Because section 403.7049, Florida Statutes, contemplates operating a county's solid waste system through an enterprise-fund process in determining full cost, the County may treat its disposal facility as such a proprietary enterprise and build a reasonable margin into the tipping fee, provided the rates remain within the zone-of-reasonableness.

This latitude, however, is meaningfully constrained in two respects. First, it applies to the tipping fee, not to the special assessment, which remains bound by the special benefit/apportionment ceiling and must recover cost with no profit. Second, because Florida courts have generally analyzed solid waste charges under the user-fee framework (where a charge set above the value of the service to raise general revenue risks recharacterization as an unauthorized tax) a return-bearing tipping fee should be carefully scrutinized.

Accordingly, the County should document its annual full cost of solid waste management and confirm that the assessment recovers no more than cost, and any tipping fee is reasonably set based on full costs of solid waste management.

IV. Clarifying that the tipping fee charge is imposed on the hauler, not the resident helps characterize it as a proper fee, but does not by itself obviate the need for cost justification

The distinction between who pays the fee (the hauler) and the assessment (the resident) is meaningful because the identity of the payer and the voluntary, use-based nature of the charge are among the factors that characterize a tipping fee as a lawful user fee. *See e.g. City of Gainesville v. State*, 863 So. 2d 138 (Fla. 2003). A fee billed to a hauler for each ton it delivers to the landfill is a classic user fee, and confirms haulers "may be subjected to a tipping fee at the dump based on the volume produced." *Harris v. Wilson*, 656 So. 2d 512 (Fla. 1st Dist. Ct. App. 1995).

It is insufficient, however, to answer the special assessment apportionment question, because that question looks to what the assessment recovers, not who nominally pays the fee. If the same residential waste cost is funded once through the assessment and again through a tipping fee, the total the County recovers could potentially exceed its total apportioned cost regardless of which party pays.

CONCLUSION

The County may lawfully charge commercial haulers a tipping fee for residential household waste delivered to the landfill while continuing to impose the residential non-ad valorem service assessment. The two charges are distinct revenue mechanisms, each independently authorized by statute, and Florida law. However, the County should ensure a documented cost basis is performed that considers the County's full costs for waste management.

APPENDIX A

1. Scope of Opinion. This opinion addresses only the question expressly presented. We express no opinion on any other matter, including without limitation the validity of any bond, the tax consequences of any charge, rate-making methodology, environmental or permitting compliance, federal constitutional questions not expressly addressed, the enforceability of any hauler franchise or contract, or the treatment of construction, commercial, or special waste. No opinion is implied or may be inferred beyond the questions expressly addressed.

2. Governing Law and Date. This opinion is limited to the laws of the State of Florida and the ordinances and resolutions of Levy County as in effect on the date of this opinion. We express no opinion as to the laws of any other jurisdiction. Our conclusions are based on statutes, regulations, and judicial decisions as they exist on the date hereof. Legal authorities and facts may change, and a change may alter the conclusions expressed. We assume no obligation, and undertake no duty, to update, supplement, or revise this opinion to reflect any change in law, fact, or circumstance occurring after the date of this opinion, or any authority or information that may later come to our attention.

3. Reliance on County-Provided Facts and Documents. In rendering this opinion we have relied, without independent investigation or verification, upon the facts, representations, records, resolutions, ordinances, and other information furnished to us by the County and its officers, employees, and agents, and we have assumed that all such facts, representations, and information are true, accurate, and complete, and that they remain so as of the date of this opinion. We have further assumed the genuineness of all signatures, the legal capacity and authority of all persons executing documents, the authenticity of all documents submitted to us as originals, and the conformity to the originals of all documents submitted to us as copies. We have not undertaken any independent audit, survey, engineering study, cost accounting, or factual investigation of the County's solid waste operations, tonnages, revenues, or costs, and this opinion should not be understood as any assurance regarding the accuracy of such underlying facts. Any inaccuracy or incompleteness in the facts, documents, or representations provided to us, or any deviation of the County's actual practice from the facts assumed, may render this opinion inapplicable or incorrect.

4. Specific Factual Assumptions. Without limiting the generality of paragraph 3, we have specifically assumed that: (a) Resolution 2025-49 and Resolution 2025-65 were each duly adopted following the notice, hearing, and procedural requirements recited therein and applicable law, and remain in full force and effect; (b) the County landfill, Transfer Station, and Satellite Stations are owned and operated by the County; (c) the Solid Waste Service Assessment currently recovers no more than the County's actual cost of providing solid waste disposal services, facilities, and programs to the assessed residential property, and yields no profit to the County.

5. Conditions to the Opinion. This opinion is expressly conditioned upon the County's implementation of the following measures, and our conclusions assume that the County will do so. To the extent the County does not implement these measures, the risk increases materially and this opinion should not be relied upon:

   (a) The County will determine and document, on an annual basis, its full cost of solid waste management, and will set both the assessment and the tipping fee based on documented costs.

   (b) The tipping fee will be reasonable, relative to the service provided, and applied on a non-discriminatory basis.

(c) In adopting the tipping fee, the County will adopt supporting legislative findings documenting the cost allocation between the assessment and the tipping fee, and the basis for any distinction between hauler-delivered and self-hauled residential waste.

6. Contested Legal Question; No Guarantee of Outcome. The lawfulness of imposing a hauler tipping fee on residential waste whose disposal is also funded by a residential non-ad valorem assessment is a contested and evolving question of Florida law. Although our conclusion rests on directly on-point authority of the Florida Supreme Court, the precise structure the County contemplates has not been squarely validated, and similar dual-charge solid-waste structures have been the subject of challenge in other jurisdictions.

7. Nature of Opinion; Not a Warranty. This opinion represents our reasoned professional judgment regarding the legal matters addressed; it is not a guarantee, warranty, or assurance of any particular result, and it does not insure the County against the cost, burden, or outcome of litigation.

8. Limitation on Reliance and Distribution. This opinion is rendered solely for the benefit of Levy County and its Board of County Commissioners in connection with the specific matter addressed, and may not be relied upon by any other person or entity, or for any other purpose, without our prior written consent. No attorney-client relationship with, or duty to, any third party is created by the delivery of this opinion or by any permitted disclosure of it.

9. Severability of Conclusions. Each assumption, qualification, condition, and limitation set forth above applies to the entirety of this opinion. If any assumption proves incorrect or any condition is not satisfied, the affected conclusions should be regarded as withdrawn to that extent, without affecting the balance of the opinion insofar as it is not dependent on the assumption or condition in question.