

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 392
Committee Substitute Favorable 4/16/15

Short Title: Fayetteville Charter/PWC Changes.

(Local)

Sponsors:

Referred to:

March 31, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE CITY OF FAYETTEVILLE TO MAKE
CHANGES RELATED TO THE MEMBERSHIP AND OPERATION OF THE PUBLIC
WORKS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter VI of the Charter of the City of Fayetteville, being Chapter 557 of the 1979 Session Laws, as amended by Chapter 756 of the 1981 Session Laws, S.L. 1998-61, and S.L. 2008-103 is repealed.

SECTION 2. The Charter of the City of Fayetteville, being Chapter 557 of the 1979 Session Laws, as amended, is amended by adding a new Chapter to read as follows:

"Chapter VIA. Public Works Commission.

"§ 6A.1. Commission continued; election and term of members; vacancy. (a) A Commission of the City of Fayetteville to be known as the "Fayetteville Public Works Commission" (hereinafter "Commission") as heretofore created, established, and now existing, is hereby continued and the number of members shall increase, effective October 1, 2015, to five. The terms of office of each member shall be four years, and the terms shall expire four years from the date on which the appointment was originally made, provided that a member shall continue to serve until a successor is appointed. A new appointment shall be made in September of 2015, and it shall be for a term of four years. As each appointment expires, the City Council shall, at its regular meeting in September of each year, elect a member of the Commission for a term of four years to replace the expiring member. In addition, the Mayor shall annually designate a member of the City Council to serve on the Commission as an ex-officio, nonvoting member.

(b) No member of the Commission may serve more than two consecutive terms unless the City Council, by a two-thirds vote, increases the number of consecutive terms allowed. Except for the ex-officio designee appointed by the Mayor, no person shall be eligible for appointment to the Commission who is an elected official of the City of Fayetteville or an employee of the City or the Commission. If a member resigns, dies, or otherwise becomes incapable of performing his or her duties, the City Council shall appoint a person to fill the remainder of the term. The five members appointed to the Commission by the City Council and the Mayor's ex-officio designee shall constitute the entire Fayetteville Public Works Commission.

"§ 6A.2. Qualifications of Commissioners. The members of the Commission shall be residents of the City of Fayetteville at the time of their initial appointment and shall be persons of recognized ability and good business judgment and standing who, in the opinion of the City Council, can and will perform their official duties (i) in accordance with prudent management



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1 and sound financial principles, (ii) in the manner provided for in this Chapter, and (iii) to the
2 best interest of the City. If it is determined that a member of the Commission is no longer a
3 resident of the City, that seat shall immediately become vacant, and a successor shall be
4 appointed in accordance with Section 6.A1(b).

5 "§ 6A.3. Organization; chair, vice-chair, secretary, and treasurer. The members of the
6 Commission shall meet as soon after their appointment as possible and shall elect out of their
7 number a chair, vice-chair, secretary, and treasurer, each of whom shall be a different person.
8 The duties of each shall be as prescribed by the Commission from time to time but shall not be
9 inconsistent with the provisions of this Chapter. Each member of the Commission, including
10 the chair, but not the ex-officio City Council member, shall be entitled to vote on any question
11 before the Commission.

12 "§ 6A.4. Bonds of members of the Commission. Each voting member of the Commission
13 shall give bond to the City in the following amounts: the sum of fifty thousand dollars
14 (\$50,000) in the case of the treasurer, and twenty-five thousand dollars (\$25,000) for all other
15 members. All bonds required by this section shall be filed with the City Clerk. The provisions
16 of Article 72 of Chapter 58 of the General Statutes shall apply to bonds given under this
17 section.

18 "§ 6A.5. Compensation. The members of the Commission shall receive a salary as set by
19 the City Council on an annual basis. Beginning July 1, 2016, using 2015 as a base, the salary
20 set by the City Council shall be adjusted annually by the rate of change in the Consumer Price
21 Index as reported by the Bureau of Labor Statistics of the United States Department of Labor.

22 "§ 6A.6. Neglect of duty by member. A member of the Commission may be removed from
23 office by a two-thirds vote of the City Council if the member:

- 24 (1) Willfully neglects or fails to perform any duty required by the provisions of
25 this Chapter, any rule or regulation adopted by the Commission, or any
26 existing or future Bond Order or other financing instrument providing for
27 debt of the City payable from revenues of the utility system managed by the
28 Commission (hereinafter "Financing Documents").
- 29 (2) Fails to comply with an attendance policy adopted by the City Council that
30 is applicable to all other City boards and commissions.
- 31 (3) Is convicted of a felony.
- 32 (4) Is convicted of a misdemeanor involving moral turpitude, misrepresentation,
33 or fraud.

34 "§ 6A.7. Powers and duties of Commission. The powers and duties of the Commission are
35 as provided in this Chapter, including:

- 36 (1) In general. – Insofar as management, control, and operation of the electric
37 utility plant, waterworks, sewerage, and any other utility the Commission is
38 authorized to undertake under this Chapter, the Commission is a separate
39 and independent public authority within the meaning of G.S. 159-7(b)(10),
40 and the provisions of this Chapter shall be liberally construed to accomplish
41 this intent and purpose. Except as expressly provided in this Chapter and in
42 any Financing Documents, the Commission shall be free from the
43 jurisdiction, direction, or control of City officers and employees and of the
44 City Council.
- 45 (2) Policy matters. – The Commission shall have full charge and control over
46 policy matters related to and the general supervision and management of all
47 utilities under its management and control. The Commission may, from time
48 to time, establish, alter, or amend its bylaws, rules, and regulations in a
49 manner not inconsistent with the provisions of this Chapter, any Financing
50 Documents, or the laws of the State of North Carolina for the purpose of
51 managing and operating the utilities under its management and control.

1 (3) Rates. – The Commission is hereby fully authorized and empowered to fix
2 all rates, rents for electricity, water, sewage, and all other utilities and public
3 property under its management and control, subject to the limitations fixed
4 in any franchise heretofore granted or which may hereafter be granted for the
5 same. All rates and rents shall be established upon the terms and conditions
6 the Commission deems in the best interest of the City and the customers of
7 the Commission, shall be in compliance with any Financing Documents, and
8 shall be expected to be sufficient to fund cash reserves required by Section
9 6A.15 and allow for remittances to the City required by Section 6A.16. The
10 Commission shall collect all rates, rents, and profits accruing from the
11 utilities under its management and control and shall make all disbursements
12 on account of the same.

13 (4) Supervision of utility plants. – The Commission shall have charge of and
14 control over and shall supervise the construction, repairing, alteration, or
15 enlargement of the electric plant, waterworks plant, sewerage plant, any
16 other utility plant the Commission is authorized to operate, and all utility
17 facilities and projects, with power and authority to make all necessary
18 contracts relating to the same, including the purchase of all necessary sites,
19 machinery, supplies, and other property, and the employment of necessary
20 labor and other help in the construction, repairing, alteration, or enlargement.

21 (5) Management of utility property. – The Commission is hereby fully
22 authorized and empowered to (i) make all necessary contracts in the
23 management of the utilities and pertaining to such property under its
24 management and control and (ii) employ and discharge all necessary
25 superintendents, clerks, accountants, laborers, and other help in the
26 management; to prescribe the duties and fix the salaries of each; and to
27 require such bonds of each as the Commission may deem proper to the
28 successful management of the property. Such contracts may include
29 agreements for the bulk sale or purchase of power, water, or capacity.

30 "§ 6A.8. Delegation of authority to officers or employees; appointment of general manager.

31 (a) The Commission may delegate authority to officers or employees of the Commission as it
32 deems necessary or convenient for the operation of the utilities authorized in this Chapter.
33 However, the Commission shall not delegate the authority to approve budgets or set rates.

34 (b) The Commission shall appoint and employ a general manager who shall be qualified
35 by training and experience to supervise and manage the day-to-day operation of the utilities
36 authorized in this Chapter. The general manager shall serve under the direction and control of
37 the Commission and at the pleasure of the Commission, which shall fix the general manager's
38 salary. The Commission may delegate to the general manager the following powers and duties:

39 (1) To determine the number of employees necessary for the operation of the
40 utilities and to establish their duties and compensation.

41 (2) To control the construction and repairs of utility facilities.

42 (3) To prepare plans and specifications, accept bids, and execute contracts
43 according to standards established by the Commission.

44 (4) To execute and enforce all rules, regulations, programs, plans, and decisions
45 made or adopted by the Commission.

46 (5) To prepare and submit to the Commission periodic reports on the
47 Commission's compliance with relevant local, State, and federal laws.

48 (6) To employ a chief financial officer who may be given the authority to handle
49 the day-to-day financial operations of the Commission, including billings
50 and receiving payment for services provided by the Commission. All
51 moneys accruing from the charges for utility services or rental of utility

1 facilities shall be deposited in the appropriate Commission enterprise fund
2 and the chief financial officer shall keep an account of the same.

3 (7) To designate an employee to serve as Clerk to the Commission. The Clerk
4 shall, among other things, record the minutes, including all actions taken, at
5 official meetings of the Commission and maintain the official records of the
6 Commission.

7 "§ 6A.9 Title to property; acquisition and disposal of property. The title to all plants,
8 property, and equipment used and necessary for operating the utility systems under the
9 management and control of the Commission shall be and remain in the name of the City of
10 Fayetteville. Nothing in this Chapter shall be construed as conferring upon the Commission any
11 power or authority to convey title to, sell, lease, or otherwise dispose of any utilities, plants,
12 property, or equipment held in the name of the City of Fayetteville, but under the Commission's
13 management and control, unless the transaction is approved by the City Council by resolution
14 and is in compliance with any Financing Documents.

15 "§ 6A.10. Sale of utility services. The Commission is hereby authorized and empowered to
16 extend its electric system, water system, sewerage system, and any other utility service system
17 authorized in this Chapter and to sell electricity, water, sewer service, and any other authorized
18 utility service in any geographical area permitted in G.S. 160A-312 or other State law. The City
19 Council shall not directly or indirectly require any individual, group, or developer to request
20 annexation of its property by the City in order to receive utility service from a utility under the
21 management and control of the Commission. The Commission may adopt schedules of rents,
22 rates, fees, charges, and penalties that vary according to classes of service, and different
23 schedules may be adopted for services provided outside the corporate limits of the City.

24 "§ 6A.11. Billing electric utility customers. The Commission shall provide electric power
25 for street lighting on all City streets and thoroughfares that are served by the Commission's
26 electric utility service and shall bill the appropriate electric utility customer for the same,
27 except the City of Fayetteville. The Commission shall not be responsible for providing street
28 lighting on City streets and thoroughfares that are not served by the Commission's electric
29 utility service.

30 "§ 6A.12. Budget. The Commission is a public authority as defined in G.S. 159-7(10) and
31 therefore shall prepare a budget as provided in Article 3 of Subchapter III of Chapter 159 of the
32 General Statutes and shall publish the budget in the manner provided for in G.S. 159-12.
33 Approval of the budget by the City Council is not required.

34 "§ 6A.13. Records and accounts. The Commission shall keep full and accurate minutes of
35 all official meetings held as provided in G.S. 143-318.10 and shall exercise fiscal control
36 related to all matters, including establishing and maintaining an accounting system and
37 designating an official depository as provided in Part 3 of Article 3 of Subchapter III of Chapter
38 159 of the General Statutes.

39 "§ 6A.14. Receipts and disbursements. All funds handled by the Commission shall be paid
40 over to the treasurer thereof, and all disbursements by the Commission shall only be made by
41 order upon the treasurer, signed by the secretary, and countersigned by the chair thereof. All
42 orders shall state for what object the same is drawn, and a record shall be kept of all such
43 orders.

44 "§ 6A.15. Cash reserves. Subject to the provisions in any Financing Documents, in each
45 fiscal year, the Commission shall maintain in the Electric Fund, the Water/Wastewater Fund,
46 and any other utility fund established pursuant to this Chapter, sufficient cash reserves to cover
47 not less than 90 days' operating expenses, capital outlay, and debt service on outstanding
48 revenue bonds or notes, as shown by the budget ordinance, but shall set a target for cash
49 reserves to cover not less than 120 days or as otherwise required by any Financing Documents.

50 "§ 6A.16. Remittances to City. Beginning July 1, 2015, and each year thereafter, the
51 Commission shall, each month, if funds are available without violating the provisions of any

1 Financing Documents, remit to the City one-twelfth (1/12) of an annual amount equal to five
2 and two-tenths percent (5.20%) of the gross retail metered sales, less any taxes, of all utility
3 services, except water and sewer services, provided to residential, commercial, and industrial
4 customers of the Commission as reported on the Statement of Revenues, Expenses, and
5 Changes in Net Position of the Commission's most recent audited financial statement. Metered
6 sales to the City and Commission shall be excluded from the calculation. There shall be no
7 additional cash contributions or transfers from the Commission to the City unless the following
8 conditions are met: (i) the Mayor declares a state of emergency under the authority granted in
9 G.S. 160A-19.22(a) and (ii) the Commission and City Council agree on the amount of the cash
10 contribution or transfer. No transfer of funds from the Commission to the City shall exceed the
11 amount authorized in G.S. 159-13(14).

12 "§ 6A.17. Audit of books; access to financial records. At the end of each fiscal year, the
13 books, accounts, and records of the Commission shall be audited by a certified public
14 accountant or an accountant certified by the Local Government Commission as provided in
15 G.S. 159-34. The City Council shall select the auditor, and the auditor shall report directly to
16 the City Council. Upon giving reasonable notice, the City Council shall have full access to the
17 books, accounts, and records of the Commission.

18 "§ 6A.18. Quarterly and annual reports. (a) The Commission shall, on a quarterly basis,
19 provide to the City Council a report on its activities and the utilities under its management and
20 control. The City Council shall collaborate with the Commission to determine the form and
21 content of the quarterly report.

22 (b) The Commission shall, at the end of each fiscal year, publish in the manner
23 provided for in G.S. 159-12 a complete report which shall include all financial operations of the
24 Commission during the year and any other items, facts, and information determined by the City
25 Council to be in the public interest. The City Council shall collaborate with the Commission to
26 determine the form and content of the annual report.

27 "§ 6A.19. Revenue bonds. The City Council shall have the sole authority to issue revenue
28 bonds pursuant to the provisions of Article 5 of Subchapter IV of Chapter 159 of the General
29 Statutes for the purpose of providing funds for the construction, repairing, alteration,
30 enlargement, extension, or acquisition of any utility, building, or other property under the
31 Commission's management and control. However, if the revenue bonds are to be payable in
32 whole or in part from the revenues of a utility under the management and control of the
33 Commission, the City Council and Commission shall, by majority vote of each entity, prior to
34 the issuance of the revenue bonds, agree on the capital costs of the project and the amount of
35 the bonds. The term "capital costs" is as defined in G.S. 159-48(h). In addition, the City
36 Council must approve by majority vote the incurring of debt or other financing of the utilities
37 that involves the pledging or securing of the revenues, utilities, plant, property, or equipment to
38 which it holds title pursuant to Section 6A.9. The proceeds from the sale of any revenue bonds
39 or from the issuance of other debt referenced in the preceding sentence shall be paid over to the
40 treasurer of the Commission as agent for the city, who shall disburse the same as provided in
41 this Chapter and in compliance with the requirements of any Financing Documents.

42 "§ 6A.20. Contracts. All contracts, purchases, leases, or agreements made by or on behalf of
43 the Commission shall be in accordance with the laws of the State of North Carolina. Any
44 contract undertaken by the Commission that requires the estimated expenditure of funds in the
45 amounts provided for in G.S. 143-129 shall be approved by at least three members of the
46 Commission. The Commission may enter into binding contracts and agreements with the City.
47 The Commission may financially support local initiatives, such as economic development,
48 which may enhance or support the provision and growth of utility services if approved by at
49 least three members of the Commission.

50 "§ 6A.21. Services provided by Commission to City. The Commission shall pay for
51 services received from the City, and the City shall pay for any services received from the

1 Commission, and the payments shall be accounted for as provided by this Chapter, general law,
2 or guidelines established by the Local Government Commission. The services shall only be
3 provided by the City or Commission if they can be performed at or below prevailing market
4 rates. If the services cannot be provided at or below prevailing market rates, the City or
5 Commission shall provide its own services or contract with a third party to provide the services.

6 "§ 6A.22. Special assessments. The City Council, by a vote of two thirds, may impose a
7 special assessment for any purpose related to the provision of utility services against benefitted
8 property as provided in Article 10 of Chapter 160A of the General Statutes. The assessment
9 amount and terms shall be agreed upon by both the City Council and the Commission.

10 "§ 6A.23. Retirement System. The Commission may participate in the North Carolina Local
11 Governmental Employees' Retirement System.

12 "§ 6A.24. Investment authority. In addition to the authority granted in G.S. 159-30, the
13 Commission may invest and reinvest any of the Commission's employee benefit funds held in
14 trust, risk reserve funds, and capital reserves, as designated from time to time by the
15 Commission, in one or more of the types of securities or other investments authorized by State
16 law for the State Treasurer in G.S. 147-69.2(b)(1)-(6) and (8)."

17 **SECTION 3.** Notwithstanding the provisions of Section 1 of this act, the current
18 members of the Public Works Commission of the City of Fayetteville, being Lynne Greene,
19 Michael G. Lallier, Darsweil Rogers, and Wade R. Fowler, Jr., may continue to serve on the
20 Commission until their successor is appointed in September of 2015, 2016, 2017, and 2018,
21 respectively.

22 **SECTION 4.** The procedures of the Charter do not purport to contain all acts
23 necessary to carry the power, duty, function, privilege, or immunity into execution and
24 therefore the Charter procedure shall be supplemented by the general law procedure; but in case
25 of conflict or inconsistency between the two procedures, the Charter procedures shall control,
26 pursuant to G.S. 160A-3(b).

27 **SECTION 5.** Nothing herein is intended to contravene any provision of any
28 Financing Documents, and therefore, to the extent required for compliance with the express
29 provisions of such Financing Documents:

- 30 (1) The actions of the Commission authorized pursuant to the terms of this new
31 Chapter VIA of the Charter of the City of Fayetteville shall be deemed to be
32 caused by actions of the City;
- 33 (2) No provisions of these amendments to the Charter shall be interpreted or
34 applied to change the ownership or status of any revenues, plant, property, or
35 equipment pledged as security for any outstanding indebtedness, and any
36 such revenues, plant, property, and equipment shall remain so pledged;
- 37 (3) The budget process, the handling of records and accounts, receipts and
38 disbursements, maintenance of cash reserves, remittances of funds to the
39 City, and payment of bond proceeds as set forth in Sections 6A-12 through
40 6A-16 and Section 6A-19 of the Charter amendments shall be subject to the
41 terms of any Financing Documents; and
- 42 (4) Nothing herein shall be deemed to limit, impair, or alter the rights vested to
43 bondholders or creditors under any Financing Documents.

44 **SECTION 6.** This act becomes effective July 1, 2015.