

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 392

Short Title: Fayetteville Charter/PWC Changes. (Local)

Sponsors: Representatives Szoka, Floyd, Glazier, and Lucas (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Local Government, if favorable, Finance.

March 31, 2015

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE CHARTER OF THE CITY OF FAYETTEVILLE TO MAKE
3 CHANGES RELATED TO THE MEMBERSHIP AND OPERATION OF THE PUBLIC
4 WORKS COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter VI of the Charter of the City of Fayetteville, being Chapter
7 557 of the 1979 Session Laws, as amended by Chapter 756 of the 1981 Session Laws, S.L.
8 1998-61, and S.L. 2008-103 is repealed.

9 **SECTION 2.** The Charter of the City of Fayetteville, being Chapter 557 of the
10 1979 Session Laws, as amended, is amended by adding a new Chapter to read as follows:

11 "Chapter VIA. Public Works Commission.

12 "§ 6A.1. Commission continued; election and term of members; vacancy. (a) A
13 Commission of the City of Fayetteville to be known as the "Fayetteville Public Works
14 Commission" (hereinafter "Commission") as heretofore created, established, and now existing,
15 is hereby continued and the number of members shall increase, effective October 1, 2015, to
16 five. The terms of office of each member shall be four years, and the terms shall expire on the
17 date which the appointment was originally made. A new appointment shall be made in
18 September of 2015, and it shall be for a term of four years. As each appointment expires, the
19 City Council shall, at its regular meeting in September of each year, elect a member of the
20 Commission for a term of four years to replace the expiring member.

21 (b) No member of the Commission may serve more than two consecutive terms unless
22 the City Council, by a two-thirds vote, increases the number of consecutive terms allowed. No
23 person shall be eligible for appointment to the Commission who is an elected official of the
24 City of Fayetteville or an employee of the City or the Commission. However, the Mayor shall
25 annually designate a member of the City Council to serve on the Commission as an ex officio,
26 nonvoting member. If a member resigns, dies, or otherwise becomes incapable of performing
27 his or her duties, the City Council shall appoint a person to fill the remainder of the term. The
28 five members appointed to the Commission by the City Council shall constitute the entire
29 Fayetteville Public Works Commission.

30 "§ 6A.2. Qualifications of Commissioners. The members of the Commission shall be
31 residents of the City of Fayetteville and shall be persons of recognized ability and good
32 business judgment and standing who, in the opinion of the City Council, can and will perform
33 their official duties (i) in accordance with prudent management and sound financial principles,
34 (ii) in the manner provided for in this Chapter, and (iii) to the best interest of the City.



1 "§ 6A.3. Organization; chair, vice-chair, secretary, and treasurer. The members of the
2 Commission shall meet as soon after their election as possible and shall elect out of their
3 number a chair, vice-chair, secretary, and treasurer, each of whom shall be a different person.
4 The duties of each shall be as prescribed by the Commission from time to time but shall not be
5 inconsistent with the provisions of this Chapter. Each member of the Commission, including
6 the chair, but not the ex officio City Council member, shall be entitled to vote on any question
7 before the Commission.

8 "§ 6A.4. Bonds of members of the Commission. Each voting member of the Commission
9 shall give bond to the City in the following amounts: the sum of fifty thousand dollars
10 (\$50,000) in the case of the treasurer, and twenty-five thousand dollars (\$25,000) for all other
11 members. All bonds required by this section shall be filed with the City Clerk. The provisions
12 of Article 72 of Chapter 58 of the General Statutes shall apply to bonds given under this
13 section.

14 "§ 6A.5. Compensation. The members of the Commission shall receive a salary as set by
15 the City Council on an annual basis. Beginning July 1, 2016, using 2015 as a base, the salary
16 set by the City Council shall be adjusted annually by the rate of change in the Consumer Price
17 Index as reported by the Bureau of Labor Statistics of the United States Department of Labor.

18 "§ 6A.6. Neglect of duty by member. A member of the Commission may be removed from
19 office by a two-thirds vote of the City Council if the member:

- 20 (1) Is not a resident of the City of Fayetteville as required by Section 6A.2 of
21 this Chapter.
- 22 (2) Willfully neglects or fails to perform any duty required by the provisions of
23 this Chapter or any rule or regulation adopted by the Commission.
- 24 (3) Fails to comply with an attendance policy adopted by the City Council that
25 is applicable to all other City boards and commissions.
- 26 (4) Is convicted of a felony.
- 27 (5) Is convicted of a misdemeanor involving moral turpitude, misrepresentation,
28 or fraud.

29 "§ 6A.7. Powers and duties of Commission. The powers and duties of the Commission are
30 as provided in this Chapter, including:

- 31 (1) In general. – Insofar as management, control, and operation of the electric
32 utility plant, waterworks, sewerage, and any other utility the Commission is
33 authorized to undertake under this Chapter, the Commission is a separate
34 and independent unit of government, and the provisions of this Chapter shall
35 be liberally construed to accomplish this intent and purpose. Except as
36 expressly provided in this Chapter, the Commission shall be free from the
37 jurisdiction, direction, or control of City officers and employees and of the
38 City Council.
- 39 (2) Policy matters. – The Commission shall have full charge and control over
40 policy matters related to and the general supervision and management of all
41 utilities under its management and control. The Commission may, from time
42 to time, establish, alter, or amend its bylaws, rules, and regulations in a
43 manner not inconsistent with the provisions of this Chapter or the laws of the
44 State of North Carolina for the purpose of managing and operating the
45 utilities under its management and control.
- 46 (3) Rates. – The Commission is hereby fully authorized and empowered to fix
47 all rates, rents for electricity, water, sewage, and all other utilities and public
48 property under its management and control, subject to the limitations fixed
49 in any franchise heretofore granted or which may hereafter be granted for the
50 same. All rates and rents shall be established upon the terms and conditions
51 the Commission deems in the best interest of the City and the customers of

1 the Commission. The Commission shall collect all rates, rents, and profits
2 accruing from the utilities under its management and control and shall make
3 all disbursements on account of the same.

4 (4) Supervision of utility plants. – The Commission shall have charge of and
5 control over and shall supervise the construction, repairing, alteration, or
6 enlargement of the electric plant, waterworks plant, sewerage plant, any
7 other utility plant the Commission is authorized to operate, and all utility
8 assets, with power and authority to make all necessary contracts relating to
9 the same, including the purchase of all necessary sites, machinery, supplies,
10 and other property, and the employment of necessary labor and other help in
11 the construction, repairing, alteration, or enlargement.

12 (5) Management of utility property. – The Commission is hereby fully
13 authorized and empowered to (i) make all necessary contracts in the property
14 management of the utilities and other property under its management and
15 control and (ii) employ and discharge all necessary superintendents, clerks,
16 accountants, laborers, and other help in the management; to prescribe the
17 duties and fix the salaries of each; and to require such bonds of each as the
18 Commission may deem proper to the successful management of the
19 property.

20 "§ 6A.8. Delegation of authority to officers or employees; appointment of general manager.

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

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

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

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

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

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

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

38 (6) To employ a chief financial officer who may be given the authority to handle
39 the day-to-day financial operations of the Commission, including billings
40 and receiving payment for services provided by the Commission. All
41 moneys accruing from the charges for utility services or rental of utility
42 facilities shall be deposited in the appropriate Commission enterprise fund
43 and the chief financial officer shall keep an account of the same.

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

48 "§ 6A.9 Title to property; acquisition and disposal of property. The title to all property
49 under the management and control of the Commission shall be and remain in the name of the
50 City of Fayetteville. Nothing in this Chapter shall be construed as conferring upon the
51 Commission any power or authority to convey title to, sell, lease, or otherwise dispose of any

1 utilities, buildings, or other real property held in the name of the City of Fayetteville, but under
2 the Commission's management and control, unless the transaction is approved by the City
3 Council by resolution.

4 "§ 6A.10. Sale of utility services. The Commission is hereby authorized and empowered to
5 extend its electric system, water system, sewerage system, and any other utility service system
6 authorized in this Chapter and to sell electricity, water, sewer service, and any other authorized
7 utility service in any geographical area permitted in G.S. 160A-312. The City Council shall not
8 directly or indirectly require any individual, group, or developer to request annexation of its
9 property by the City in order to receive utility service from a utility under the management and
10 control of the Commission. The Commission may adopt schedules of rents, rates, fees, charges,
11 and penalties that vary according to classes of service, and different schedules may be adopted
12 for services provided outside the corporate limits of the City.

13 "§ 6A.11. Billing electric utility customers. The Commission shall provide electric power
14 for street lighting on all City streets and thoroughfares that are served by the Commission's
15 electric utility service and shall bill the appropriate electric utility customer for the same,
16 except the City of Fayetteville. The Commission shall not be responsible for providing street
17 lighting on City streets and thoroughfares that are not served by the Commission's electric
18 utility service.

19 "§ 6A.12. Budget. The Commission is a public authority as defined in G.S. 159-7(10) and
20 therefore shall prepare a budget as provided in Article 3 of Subchapter III of Chapter 159 of the
21 General Statutes and shall publish the budget in the manner provided for in G.S. 159-12.

22 "§ 6A.13. Records and accounts. The Commission shall keep full and accurate minutes of
23 all official meetings held as provided in G.S. 143-318.10 and shall exercise fiscal control
24 related to all matters, including establishing and maintaining an accounting system and
25 designating an official depository as provided in Part 3 of Article 3 of Subchapter III of Chapter
26 159 of the General Statutes.

27 "§ 6A.14. Receipts and disbursements. All funds handled by the Commission shall be paid
28 over to the treasurer thereof, and all disbursements by the Commission shall only be made by
29 order upon the treasurer, signed by the secretary, and countersigned by the chair thereof. All
30 orders shall state for what object the same is drawn, and a record shall be kept of all such
31 orders.

32 "§ 6A.15. Cash reserves. In each fiscal year, the Commission shall maintain in the Electric
33 Fund, the Water/Wastewater Fund, and any other utility fund established pursuant to this
34 Chapter, sufficient cash reserves to cover not less than 90 days' operating expenses, capital
35 outlay, and debt service on outstanding revenue bonds or notes, as shown by the budget
36 ordinance, but shall set a target for cash reserves to cover not less than 120 days.

37 "§ 6A.16. Remittances to City. Beginning July 1, 2015, the Commission shall, within 45
38 days of the financial close of each month, remit to the City of Fayetteville five percent (5%) of
39 the gross retail sales, less any taxes, of all utility services, except water and sewer services,
40 provided to residential, commercial, and industrial customers of the Commission. There shall
41 be no additional cash contributions or transfers from the Commission to the City unless the
42 following conditions are met: (i) the Mayor declares a state of emergency under the authority
43 granted in G.S. 160A-19.22(a); and (ii) the Commission and City Council agree on the amount
44 of the cash contribution or transfer. No transfer of funds from the Commission to the City shall
45 exceed the amount authorized in G.S. 159-13(14).

46 "§ 6A.17. Audit of books; access to financial records. At the end of each fiscal year, the
47 books, accounts, and records of the Commission shall be audited by a certified public
48 accountant or an accountant certified by the Local Government Commission as provided in
49 G.S. 159-34. The City Council shall select the auditor, and the auditor shall report directly to
50 the City Council. Upon giving reasonable notice, the City Council shall have full access to the
51 books, accounts, and records of the Commission.

1 "§ 6A.18. Quarterly and annual reports. (a) The Commission shall, on a quarterly basis,
2 provide to the City Council a report on its activities and the utilities under its management and
3 control. The City Council shall collaborate with the Commission to determine the form and
4 content of the quarterly report.

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

10 "§ 6A.19. Revenue bonds. The City Council shall have the sole authority to issue revenue
11 bonds pursuant to the provisions of Article 5 of Subchapter IV of Chapter 159 of the General
12 Statutes for the purpose of providing funds for the construction, repairing, alteration,
13 enlargement, extension, or acquisition of any utility, building, or other property under the
14 Commission's management and control. However, if the revenue bonds are to be payable in
15 whole or in part from the revenues of a utility under the management and control of the
16 Commission, the City Council and Commission shall, by majority vote of each entity, prior to
17 the issuance of the revenue bonds, agree on the capital costs of the project, the amount of the
18 bonds, and the amount of interest that will be paid on the bonds. The term "capital costs" is as
19 defined in G.S. 159-48(h). The proceeds from the sale of any revenue bonds shall be paid over
20 to the treasurer of the Commission, who shall disburse the same as provided in this Chapter.

21 "§ 6A.20. Contracts. All contracts, purchases, leases, or agreements made by or on behalf of
22 the Commission shall be in accordance with the laws of the State of North Carolina. Any
23 contract undertaken by the Commission that requires the estimated expenditure of funds in the
24 amounts provided for in G.S. 143-129 shall be approved by at least three members of the
25 Commission. The Commission may enter into binding contracts and agreements with the City.

26 "§ 6A.21. Services provided by Commission to City. The Commission shall pay for
27 services received from the City, and the City shall pay for any services received from the
28 Commission, and the payments shall be accounted for as provided by this Chapter, general law,
29 or guidelines established by the Local Government Commission. The services shall only be
30 provided by the City or Commission if they can be performed at or below prevailing market
31 rates. If the services cannot be provided at or below prevailing market rates, the City or
32 Commission shall provide its own services or contract with a third party to provide the services.

33 "§ 6A.22. Special assessments. The City Council shall have the sole authority to make
34 special assessments against benefitted property as provided in Article 10 of Chapter 160A of
35 the General Statutes. However, at least 10 days prior to adopting a preliminary resolution
36 outlining the proposed special assessment under G.S. 160A-223, the City Council shall notify
37 the Commission of its intent to make special assessments for any purpose related to the
38 provision of utility services within the Commission's management and control. The
39 Commission may, in its discretion, provide comment and information to the City Council
40 related to the proposed special assessments, but they shall not be binding on the City Council.

41 "§ 6A.23. Retirement System. The Commission may participate in the North Carolina Local
42 Governmental Employees' Retirement System.

43 "§ 6A.24. Investment authority. In addition to the authority granted in G.S. 159-30, the
44 Commission may invest and reinvest any of the Commission's employee benefit funds held in
45 trust, risk reserve funds, and capital reserves, as designated from time to time by the
46 Commission, in one or more of the types of securities or other investments authorized by State
47 law for the State Treasurer in G.S. 147-69.2(b)(1)-(6) and (8)."

48 **SECTION 3.** Notwithstanding the provisions of Section 1 of this act, the current
49 members of the Public Works Commission of the City of Fayetteville, being Lynne Green,
50 Mike Lallier, Darsweil Rogers, and Wade R. Fowler, Jr., may continue to serve on the

1 Commission until their successor is appointed in September of 2015, 2016, 2017, and 2018,
2 respectively.

3 **SECTION 4.** This act becomes effective July 1, 2015.