

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 392
Committee Substitute Favorable 4/16/15
Committee Substitute #2 Favorable 4/28/15
Senate Judiciary I Committee Substitute Adopted 6/23/16
PROPOSED SENATE COMMITTEE SUBSTITUTE H392-PCS40683-TM-61

Short Title: Fayetteville Charter/PWC Changes.

(Local)

Sponsors:

Referred to:

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 557
7 of the 1979 Session Laws, as amended by Chapter 756 of the 1981 Session Laws, S.L. 1998-61,
8 and S.L. 2008-103, is repealed.

9 **SECTION 2.** The Charter of the City of Fayetteville, being Chapter 557 of the 1979
10 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 Commission
13 of the City of Fayetteville to be known as the "Fayetteville Public Works Commission"
14 (hereinafter "Commission"), as heretofore created, established, and now existing, is hereby
15 continued and the number of members shall be four. The terms of office of each member shall be
16 four years, and the terms shall expire four years from the date on which the appointment was
17 originally made, provided that a member shall continue to serve until a successor is appointed. A
18 new appointment shall be made in September of 2016, and it shall be for a term of four years. As
19 each appointment expires, the City Council shall, at its regular meeting in September of each year,
20 elect a member of the Commission for a term of four years to replace the expiring member. In
21 addition, the Mayor shall annually designate a member of the City Council to serve on the
22 Commission as an ex officio, nonvoting member.

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

30 "§ 6A.2. Qualifications of Commissioners. The members of the Commission shall be residents
31 of the City of Fayetteville at the time of their initial appointment and must remain so throughout
32 their tenure on the Commission and shall be persons of recognized ability and good business
33 judgment and standing who, in the opinion of the City Council, can and will perform their official



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

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

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

18 "§ 6A.5. Compensation. The members of the Commission shall receive a salary as set by the
19 City Council on an annual basis. Beginning July 1, 2016, using 2015 as a base, the salary set by
20 the City Council shall be adjusted annually by the rate of change in the Consumer Price Index as
21 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 this
25 Chapter, any rule or regulation adopted by the Commission, or any existing or
26 future Bond Order or other financing instrument providing for debt of the City
27 payable from revenues of the utility system managed by the Commission
28 (hereinafter "Financing Documents").
- 29 (2) Fails to comply with an attendance policy adopted by the City Council that is
30 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, or
33 fraud.

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

- 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 public
39 authority within the meaning of G.S. 159-7(b)(10) or as defined by State statute
40 except as expressly provided in this Chapter and in any Financing Documents.
- 41 (2) Policy matters. – The Commission shall have full charge and control over
42 policy matters related to and the general supervision and management of all
43 utilities under its management and control. The Commission may, from time to
44 time, establish, alter, or amend its bylaws, rules, and regulations in a manner
45 not inconsistent with the provisions of this Chapter, any Financing Documents,
46 or the laws of the State of North Carolina for the purpose of managing and
47 operating the utilities under its management and control.
- 48 (3) Rates. – The Commission is hereby fully authorized and empowered to fix all
49 rates and rents for electricity, water, sewage, and all other utilities and public
50 property under its management and control, subject to the limitations fixed in
51 any franchise heretofore granted or which may hereafter be granted for the

1 same. All rates and rents shall be established upon the terms and conditions the
2 Commission deems in the best interest of the City and the customers of the
3 Commission, shall be in compliance with any Financing Documents, and shall
4 be expected to be sufficient to fund cash reserves required by Section 6A.15 of
5 this Chapter and allow for remittances to the City required by Section 6A.16 of
6 this Chapter. The Commission shall collect all rates, rents, and profits accruing
7 from the utilities under its management and control and shall make all
8 disbursements on account of the same.

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

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

25 (6) Power to sue and be sued. – The Commission is hereby fully authorized and
26 empowered to sue and be sued in its own name and to plead and be impleaded.

27 (7) Limitation on expending funds and offering financial incentives. –
28 Notwithstanding any other provision in this Charter, the Commission shall have
29 no authority, absent prior approval given by the City Council, to make or give
30 grants, contributions, gifts, donations, or sponsorships or to expend any funds
31 or to offer any financial incentives for any purposes not directly related to the
32 powers and duties of the Commission under this section. This includes, without
33 limitation, any activities for economic development within the scope of
34 G.S. 158-7, et seq., or for any community, charitable, social, educational, or
35 civic purpose, except that the Commission may make expenditures for the
36 purposes of public education relating to and encouraging conservation and
37 efficient use of water, wastewater, and electricity services. The City Council
38 may grant authority for activities otherwise prohibited by this section by a
39 general policy adopted in a resolution or by approval of individual activities.

40 (8) Not a public utility. – For the purposes of Chapter 62 of the General Statutes,
41 the Commission shall be considered a municipality.

42 "§ 6A.8. Delegation of authority to officers or employees; appointment of general manager.

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

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

- 1 (1) To determine the number of employees necessary for the operation of the
2 utilities and to establish their duties and compensation.
- 3 (2) To control the construction and repairs of utility facilities.
- 4 (3) To prepare plans and specifications, accept bids, and execute contracts
5 according to standards established by the Commission.
- 6 (4) To execute and enforce all rules, regulations, programs, plans, and decisions
7 made or adopted by the Commission.
- 8 (5) To prepare and submit to the Commission periodic reports on the Commission's
9 compliance with relevant local, State, and federal laws.
- 10 (6) To employ a chief financial officer who may be given the authority to handle
11 the day-to-day financial operations of the Commission, including billings and
12 receiving payment for services provided by the Commission. All moneys
13 accruing from the charges for utility services or rental of utility facilities shall
14 be deposited in the appropriate Commission enterprise fund, and the chief
15 financial officer shall keep an account of the same.
- 16 (7) To designate an employee to serve as Clerk to the Commission. The Clerk
17 shall, among other things, record the minutes, including all actions taken, at
18 official meetings of the Commission and maintain the official records of the
19 Commission.

20 "§ 6A.9. Title to property; acquisition and disposal of property. Title to all vehicles and
21 equipment purchased or otherwise acquired by the Commission and used or employed by the
22 Commission in the discharge of its duties may be held in the name of the Commission. All other
23 real or personal property related to, used, or necessary for the operation of the utility systems
24 under the management and control of the Commission (including plants, transmission and
25 distribution mains and lines, other real property, fixtures, appurtenances, inventory, accounts, and
26 revenues) shall be and remain in the name of the City of Fayetteville. Nothing in this Chapter shall
27 be construed as conferring upon the Commission any power or authority to convey title or
28 ownership to sell, lease, or otherwise transfer or dispose of any property owned or held in the
29 name of the City of Fayetteville, but under the management and control of the Commission, unless
30 such transaction is approved by resolution of the City Council and is in compliance with the
31 Financing Documents.

32 "§ 6A.10. Sale of water service. The Commission is hereby authorized and empowered to
33 extend its water system and to sell water in any geographical area permitted in G.S. 160A-312 or
34 other State law. The City Council shall not directly or indirectly require any individual, group, or
35 developer to request annexation of its property by the City in order to receive water service from a
36 water system under the management and control of the Commission. The Commission may adopt
37 schedules of rents, rates, fees, charges, and penalties that vary according to classes of service, and
38 different schedules may be adopted for services provided outside the corporate limits of the City.

39 "§ 6A.11. Billing electric utility customers. The Commission shall provide electric power for
40 street lighting on all City streets and thoroughfares that are served by the Commission's electric
41 utility service and shall bill the appropriate electric utility customer for the same, except the City
42 of Fayetteville. The Commission shall not be responsible for providing street lighting on City
43 streets and thoroughfares that are not served by the Commission's electric utility service.

44 "§ 6A.12. Budget. The Commission is a public authority as defined in G.S. 159-7(b)(10) and
45 therefore shall prepare a budget as provided in Article 3 of Subchapter III of Chapter 159 of the
46 General Statutes and shall publish the budget in the manner provided for in G.S. 159-12. Approval
47 of the budget by the City Council is not required.

48 "§ 6A.13. Records and accounts. The Commission shall keep full and accurate minutes of all
49 official meetings held as provided in G.S. 143-318.10 and shall exercise fiscal control related to all
50 matters, including establishing and maintaining an accounting system and designating an official

1 depository as provided in Part 3 of Article 3 of Subchapter III of Chapter 159 of the General
2 Statutes.

3 "§ 6A.14. Receipts and disbursements. All funds handled by the Commission shall be paid
4 over to the treasurer thereof, and all disbursements by the Commission shall only be made by
5 order upon the treasurer, signed by the secretary, and countersigned by the chair thereof. All
6 orders shall state for what object the same is drawn, and a record shall be kept of all such orders.

7 "§ 6A.15. Cash reserves. Subject to the provisions in any Financing Documents, in each fiscal
8 year, the Commission shall maintain in the Electric Fund, the Water/Wastewater Fund, and any
9 other utility fund established pursuant to this Chapter, sufficient cash reserves to cover not less
10 than 90 days' operating expenses, capital outlay, and debt service on outstanding revenue bonds or
11 notes, as shown by the budget ordinance, but shall set a target for cash reserves to cover not less
12 than 120 days or as otherwise required by any Financing Documents.

13 "§ 6A.16. Remittances to City. Beginning July 1, 2016, and each year thereafter, the
14 Commission shall, each month, if funds are available without violating the provisions of any
15 Financing Documents, remit to the City one-twelfth of an annual amount equal to two and
16 forty-five one hundredths percent (2.45%) of the value of the Total Net Position of the Electric
17 Fund as reported in the Comprehensive Annual Financial Report for the Public Works
18 Commission for each immediately preceding fiscal year ending June 30. There shall be no
19 additional cash contributions or transfers from the Commission to the City unless the following
20 conditions are met: (i) the Mayor declares a state of emergency under the authority granted in
21 G.S. 166A-19.22(a) and (ii) the Commission and City Council agree on the amount of the cash
22 contribution or transfer. No transfer of funds from the Commission to the City shall exceed the
23 amount authorized in G.S. 159-13(14).

24 "§ 6A.17. Audit of books; access to financial records. At the end of each fiscal year, the books,
25 accounts, and records of the Commission shall be audited by a certified public accountant or an
26 accountant certified by the Local Government Commission as provided in G.S. 159-34. The City
27 Council shall select the auditor, and the auditor shall report directly to the City Council and the
28 Commission. Upon giving reasonable notice, the City Council shall have full access to the books,
29 accounts, and records of the Commission.

30 "§ 6A.18. Quarterly and annual reports. (a) The Commission shall, on a quarterly basis,
31 provide to the City Council a report on its activities and the utilities under its management and
32 control. The City Council shall collaborate with the Commission to determine the form and
33 content of the quarterly report.

34 (b) The Commission shall, at the end of each fiscal year, publish in the manner provided
35 for in G.S. 159-12 a complete report that includes all financial operations of the Commission
36 during the year and any other items, facts, and information determined by the City Council to be in
37 the public interest. The City Council shall collaborate with the Commission to determine the form
38 and content of the annual report.

39 "§ 6A.19. Revenue bonds. The City Council shall have the sole authority to issue revenue
40 bonds pursuant to the provisions of Article 5 of Subchapter IV of Chapter 159 of the General
41 Statutes for the purpose of providing funds for the construction, repairing, alteration, enlargement,
42 extension, or acquisition of any utility, building, or other property under the Commission's
43 management and control. However, if the revenue bonds are to be payable in whole or in part from
44 the revenues of a utility under the management and control of the Commission, the City Council
45 and Commission shall, by majority vote of each entity, prior to the issuance of the revenue bonds,
46 agree on the capital costs of the project and the amount of the bonds. The term "capital costs" is as
47 defined in G.S. 159-48(h). In addition, the City Council must approve by majority vote the
48 incurring of debt or other financing of the utilities that involves the pledging or securing of the
49 revenues, utilities, plant, property, or equipment to which it holds title pursuant to Section 6A.9 of
50 this Chapter. The proceeds from the sale of any revenue bonds or from the issuance of other debt
51 referenced in the preceding sentence shall be paid over to the treasurer of the Commission as agent

1 for the City, who shall disburse the same as provided in this Chapter and shall be applied in the
2 manner set forth in the Financing Documents.

3 "§ 6A.20. Contracts. All contracts, purchases, leases, or agreements made by or on behalf of
4 the Commission shall be in accordance with the laws of the State of North Carolina. Any contract
5 undertaken by the Commission that requires the estimated expenditure of funds in the amounts
6 provided for in G.S. 143-129 shall be approved by a majority vote of the City Council. Approval
7 of contracts below the threshold amount in G.S. 143-129 shall be by at least three members of the
8 Commission without the need for further action by the City Council. Contracts that do not require
9 approval by the City Council may be entered into by and in the name of the Public Works
10 Commission of the City of Fayetteville, but contracts requiring approval by the City Council and
11 all contracts involving the acquisition, titling, or conveyance of any interest in real property
12 managed by the Commission shall be in the name of the City of Fayetteville.

13 "§ 6A.21. Shared or centralized services. The Commission shall pay for services received from
14 the City, and the City shall pay for any services received from the Commission, and the payments
15 shall be accounted for as provided by this Chapter, general law, or guidelines established by the
16 Local Government Commission. The services shall only be provided by the City or Commission if
17 they can be performed at or below prevailing market rates. If the services cannot be provided at or
18 below prevailing market rates, the City or Commission shall provide its own services or contract
19 with a third party to provide the services.

20 "§ 6A.22. Special assessments. The City Council may impose a special assessment for any
21 purpose related to the provision of utility services against benefitted property as provided in
22 Article 10 of Chapter 160A of the General Statutes.

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

25 "§ 6A.24. Investment authority. In addition to the authority granted in G.S. 159-30, the
26 Commission may invest and reinvest any of the Commission's employee benefit funds held in
27 trust, risk reserve funds, and capital reserves, as designated from time to time by the Commission,
28 in one or more of the types of securities or other investments authorized by State law for the State
29 Treasurer in G.S. 147-69.2(b)(1) through (6) and (8)."

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

35 **SECTION 4.** Nothing herein is intended to contravene any provision of any Financing
36 Documents, and therefore, to the extent required for compliance with the express provisions of
37 such Financing Documents, all of the following apply:

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

1 (5) To the extent that Section 6A.16 of the Charter is inconsistent with the
2 document titled "Agreement Between the City of Fayetteville and the Public
3 Works Commission of the City of Fayetteville Establishing a Formal Operating
4 Transfer," originally dated May 12, 2008, and as amended from time to time
5 thereafter, then the provisions of Section 6A.16 of the Charter shall control.

6 **SECTION 5.** This act becomes effective July 1, 2016.