

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 392
Committee Substitute Favorable 4/16/15
Committee Substitute #2 Favorable 4/28/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H392-CSRN-56 [v.7]
06/22/2016 07:45:21 PM

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557 of the 1979 Session Laws, as amended by Chapter 756 of the 1981 Session Laws, S.L. 1998-61, and S.L. 2008-103, is repealed.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 be four. 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of each member shall be four years, and the terms shall expire four years from the date on which the appointment was originally made, provided that a member shall continue to serve until a successor is appointed.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 2016, 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. 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 four 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 must remain so throughout their tenure on the Commission 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 and sound financial principles, (ii) in the



* H 3 9 2 - C S R N - 5 6 *

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

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

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

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

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

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

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

- (1) In general. – Insofar as management, control, and operation of the electric utility plant, waterworks, sewerage, and any other utility the Commission is authorized to undertake under this Chapter, the Commission is a public authority within the meaning of G.S. 159-7(b)(10) or as defined by State statute except as expressly provided in this Chapter and in any Financing Documents.
- (2) Policy matters. – The Commission shall have full charge and control over policy matters related to and the general supervision and management of all utilities under its management and control. The Commission may, from time to time, establish, alter, or amend its bylaws, rules, and regulations in a manner not inconsistent with the provisions of this Chapter, any Financing Documents, or the laws of the State of North Carolina for the purpose of managing and operating the utilities under its management and control.
- (3) Rates. – The Commission is hereby fully authorized and empowered to fix all rates and rents for electricity, water, sewage, and all other utilities and public property under its management and control, subject to the limitations fixed in any franchise heretofore granted or which may hereafter be granted for the same. All rates and rents shall be established upon the terms and conditions the

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

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

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

(6) Power to Sue and Be Sued.-The Commission is hereby fully authorized and empowered to sue and be sued in its own name, plead and be impleaded.

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

"§ 6A.8. Delegation of authority to officers or employees; appointment of general manager. (a) The Commission may delegate authority to officers or employees of the Commission as it deems necessary or convenient for the operation of the utilities authorized in this Chapter. However, the Commission shall not delegate the authority to approve budgets or set rates.

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

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

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

- (3) To prepare plans and specifications, accept bids, and execute contracts according to standards established by the Commission.
- (4) To execute and enforce all rules, regulations, programs, plans, and decisions made or adopted by the Commission.
- (5) To prepare and submit to the Commission periodic reports on the Commission's compliance with relevant local, State, and federal laws.
- (6) To employ a chief financial officer who may be given the authority to handle the day-to-day financial operations of the Commission, including billings and receiving payment for services provided by the Commission. All moneys accruing from the charges for utility services or rental of utility facilities shall be deposited in the appropriate Commission enterprise fund, and the chief financial officer shall keep an account of the same.
- (7) To designate an employee to serve as Clerk to the Commission. The Clerk shall, among other things, record the minutes, including all actions taken, at official meetings of the Commission and maintain the official records of the Commission.

"§ 6A.9. Title to property; acquisition and disposal of property. The title to all real property, fixtures, and appurtenances under the management and control of the Commission shall be in the name of the City of Fayetteville. Title to all items of personal property used or employed by the Commission in the discharge of its duties shall be in the name of the Public Works Commission of the City of Fayetteville. Nothing in this Chapter shall be construed as conferring upon the Commission any power or authority to convey title to, sell, lease, or otherwise dispose of any utilities, plants, property, or equipment held in the name of the City of Fayetteville, but under the Commission's management and control, unless the transaction is approved by the City Council by resolution and is in compliance with any Financing Documents.

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

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

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

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

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

1 "§ 6A.15. Cash reserves. Subject to the provisions in any Financing Documents, in each fiscal
2 year, the Commission shall maintain in the Electric Fund, the Water/Wastewater Fund, and any
3 other utility fund established pursuant to this Chapter, sufficient cash reserves to cover not less
4 than 90 days' operating expenses, capital outlay, and debt service on outstanding revenue bonds or
5 notes, as shown by the budget ordinance, but shall set a target for cash reserves to cover not less
6 than 120 days or as otherwise required by any Financing Documents.

7 "§ 6A.16. Remittances to City. Beginning July 1, 2016, and each year thereafter, the
8 Commission shall, each month, if funds are available without violating the provisions of any
9 Financing Documents, remit to the City one-twelfth (1/12) of an annual amount equal to two and
10 forty-five one hundredths percent (2.45%) of the value of the Total Net Position of the Electric
11 Fund as reported in the Comprehensive Annual Financial Report for the Public Works
12 Commission for each immediately preceding fiscal year ending June 30. There shall be no
13 additional cash contributions or transfers from the Commission to the City unless the following
14 conditions are met: (i) the Mayor declares a state of emergency under the authority granted in
15 G.S. 160A-19.22(a), and (ii) the Commission and City Council agree on the amount of the cash
16 contribution or transfer. No transfer of funds from the Commission to the City shall exceed the
17 amount authorized in G.S. 159-13(14).

18 "§ 6A.17. Audit of books; access to financial records. At the end of each fiscal year, the books,
19 accounts, and records of the Commission shall be audited by a certified public accountant or an
20 accountant certified by the Local Government Commission as provided in G.S. 159-34. The City
21 Council shall select the auditor, and the auditor shall report directly to the City Council and the
22 Commission. Upon giving reasonable notice, the City Council shall have full access to the books,
23 accounts, and records of the Commission.

24 "§ 6A.18. Quarterly and annual reports. (a) The Commission shall, on a quarterly basis,
25 provide to the City Council a report on its activities and the utilities under its management and
26 control. The City Council shall collaborate with the Commission to determine the form and
27 content of the quarterly report.

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

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

48 "§ 6A.20. Contracts. All contracts, purchases, leases, or agreements made by or on behalf of
49 the Commission shall be in accordance with the laws of the State of North Carolina. Any contract
50 undertaken by the Commission that requires the estimated expenditure of funds in the amounts
51 provided for in G.S. 143-129 shall be approved by a majority vote of the City Council. Approval

of contracts below the threshold amount in G.S. 143-129 shall be by at least three members of the Commission without the need for further action by the City Council. Contracts that do not require approval by the City Council may be entered into by and in the name of the Public Works Commission of the City of Fayetteville, but contracts requiring approval by the City Council and all contracts involving the acquisition, titling, or conveyance of any interest in real property managed by the Commission shall be in the name of the City of Fayetteville.

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

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

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

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

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

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

- (1) The actions of the Commission authorized pursuant to the terms of this new Chapter VIA of the Charter of the City of Fayetteville shall be deemed to be caused by actions of the City.
- (2) No provisions of these amendments to the Charter shall be interpreted or applied to change the ownership or status of any revenues, plant, property, or equipment pledged as security for any outstanding indebtedness, and any such revenues, plant, property, and equipment shall remain so pledged.
- (3) The budget process, the handling of records and accounts, receipts and disbursements, maintenance of cash reserves, remittances of funds to the City, and payment of bond proceeds as set forth in Sections 6A.12 through 6A.16 and Section 6A.19 of the Charter amendments shall be subject to the terms of any Financing Documents.
- (4) Nothing herein shall be deemed to limit, impair, or alter the rights vested to bondholders or creditors under any Financing Documents.
- (5) To the extent that Section 6A.16 of the Charter is inconsistent with the document titled "Agreement Between the City of Fayetteville and the Public Works Commission of the City of Fayetteville Establishing a Formal Operating Transfer," originally dated May 12, 2008, and as amended from time to time thereafter, then the provisions of Section 6A.16 of the Charter shall control.

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