

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**HOUSE DRH50158-LB-142A (3/13)**

Short Title: Avery Fire Protection.

(Local)

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Sponsors: Representative Frye.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH AN AVERY  
COUNTY FIRE COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** There is hereby created the "Avery County Fire Commission" (hereinafter referred to as the "Commission"), which shall be a body corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

**SECTION 2.** The Avery County Board of Commissioners and the Commission shall jointly adopt a mission statement as well as a memorandum of understanding jointly agreed upon and clearly stating the expectations and obligations of each under this act.

**SECTION 3.(a)** The Commission shall consist of five persons who are residents of Avery County, two of whom shall be consumers appointed by the Board of Commissioners and two of whom shall be firemen approved by the Avery County Fire Association and appointed by the Board of Commissioners. The remaining member shall be chosen by the other four sitting members of the Commission. In case of a deadlock or failure of the seated members to act within 60 days to file the fifth seat, a five-member committee composed of the Chairman of the Board of Commissioners and another commissioner appointed by the Chairman, the President of the Fire Association, and another member of the Fire Association, and a fifth person chosen jointly by the other four members of the committee will make the appointment. The County Manager shall serve as a nonvoting ex officio member of the Commission and shall be the liaison from the Commission to the Board of Commissioners. No elected official may serve on the Commission. Any member of the Commission can be a member of a rescue unit, but membership in a rescue unit is not a prerequisite for any appointment.

1           **SECTION 3.(b)** One of the initial Fire Association appointees shall be  
2 appointed for a two-year term; the other shall be appointed for a one-year term. One of  
3 the initial appointees by the Board of Commissioners shall be appointed for a two-year  
4 term; the other shall be appointed for a one-year term. The at-large member appointed  
5 by the four seated members shall serve a two-year term. All successors shall serve  
6 two-year terms. Unexcused absence from two out of three consecutive, regularly  
7 scheduled meetings, or absence from one-third of the meetings per year, shall be  
8 grounds for removal from the Commission. Recurring noncompliance with Commission  
9 decisions or duly adopted policy enacted by a majority vote of the Commission shall be  
10 grounds for removal from the Commission by the Board of Commissioners.

11           **SECTION 3.(c)** The officers of the Commission shall consist of a chairman,  
12 a vice-chairman, and a secretary/clerk. At the first meeting of each calendar year, the  
13 Commission shall elect from its own membership, by majority vote, a chairman, a  
14 vice-chairman, and a secretary/clerk, each of whom shall serve for one year or until the  
15 officer's death, resignation, retirement, or removal. The chairman, vice-chairman, or  
16 secretary/clerk may be removed from office by a simple majority vote of the  
17 Commission whenever, in its judgment, the best interests of the Commission will be  
18 served thereby. The Commission shall fill any vacant officer's position within 30 days  
19 of the vacancy.

20           **SECTION 3.(d)** The chairman shall preside at all meetings of the  
21 Commission, appoint all subcommittees, serve as an ex officio member of such  
22 subcommittees, delegate responsibilities to members, notify members and the media of  
23 meeting times and dates, and, upon approval of the Commission member, sign all  
24 minutes and any such records, vouchers, or other documents connected with the work of  
25 the Commission requiring such signature. The chairman is responsible for the decorum  
26 of the meeting and may remove from the meeting, by simple majority, any member who  
27 is deemed to be disruptive.

28           In the absence of the chairman, the vice-chairman shall perform the duties of  
29 the chairman. The vice-chairman shall also exercise such duties as from time to time  
30 may be assigned to him by the chairman of the Commission.

31           The secretary/clerk shall record the actions of the Commission, maintain and  
32 secure all pertinent Commission material, and ensure adequate correspondence with  
33 Commission members. All approved minutes of Commission meetings will be made  
34 available for public review upon request.

35           **SECTION 3.(e)** The Commission shall meet at least monthly for regular  
36 meetings. The regular meetings shall be held in a public facility convenient to the  
37 public, preferably at the County Office Building.

38           The chairman may call such special meetings as may be deemed necessary to  
39 carry out the duties of the Commission, or upon the written request of at least three  
40 members, the chairman shall call a meeting within 10 days. Notice of special meetings  
41 shall be given to all Commission members at least 48 hours in advance of any such  
42 meetings.

43           Three or more members shall constitute minimum attendance to conduct  
44 business.

1 Notice of the agenda items to be considered at each regular meeting shall be  
2 communicated to all members at least three days prior to each meeting. All meetings  
3 shall be conducted with strict compliance to the duly adopted Commission policy and  
4 procedures manual.

5 **SECTION 3.(f)** Each Commission member shall be entitled to one vote.  
6 Members must register their request to abstention from voting on matters that would  
7 pose for them a conflict of interest. Abstention may be allowed only by approval of a  
8 majority of the remaining members.

9 **SECTION 3.(g)** The Commission policy and procedures manual and  
10 changes thereto shall be approved by the Avery County Board of Commissioners.

11 **SECTION 3.(h)** The Commission shall adopt suitable bylaws policy and  
12 procedures, contracts, rules, and regulations for its management subject to approval by  
13 the Avery County Board of Commissioners. The bylaws may be amended by a vote of  
14 the Commission subject to the approval of the Avery County Board of Commissioners.  
15 The members of the Commission may receive compensation or per diem and shall be  
16 allowed their actual traveling expenses incurred in transacting the business and at the  
17 insistence of the Commission.

18 **SECTION 4.** The Commission may:

- 19 (1) Purchase, acquire, establish, construct, own, control, lease, improve,  
20 maintain, or operate real or personal property.
- 21 (2) Sue and be sued in the name of the Commission.
- 22 (3) Make contracts and hold any personal property necessary for the  
23 exercise of the powers of the Commission.
- 24 (4) Make all reasonable rules and regulations it deems necessary for the  
25 proper maintenance, use, operation, and control of Commission  
26 property and provide penalties for the violations of these rules and  
27 regulations; provided, the rules and regulations are not in conflict with  
28 the laws of North Carolina or local ordinance.
- 29 (5) Sell, lease, or otherwise dispose of any property, real or personal,  
30 belonging to the Commission according to general law applicable to  
31 counties.
- 32 (6) Sale of real property shall be made in accordance with general law  
33 applicable to counties.
- 34 (7) Be responsible for any and all insurance claims or liabilities. Avery  
35 County does not incur any personal or property liability.
- 36 (8) Deposit or invest and reinvest any of its funds as provided by the Local  
37 Government Finance Act, as it may be amended from time to time.
- 38 (8) Have a corporate seal, which may be altered at will.
- 39 (9) Contract with and accept grants from other agencies or representatives  
40 of said governmental bodies.
- 41 (10) Acquire from the county, either by gift or for such consideration as the  
42 county may deem wise, any real or personal property which it now  
43 owns or may hereafter acquire.

1           **SECTION 5.** The Commission has the same exemptions in respect to  
2 payment of taxes and license fees and eligibility for sales and use tax refunds to the  
3 same extent as provided for municipal corporations by the laws of the State of North  
4 Carolina.

5           **SECTION 6.** The Commission shall make an annual report to the Avery  
6 County Board of Commissioners setting forth in detail the operations and transactions  
7 conducted by it pursuant to this act. The Commission shall not have the power to pledge  
8 the credit of Avery County, or any subdivision thereof, or to impose any obligation on  
9 Avery County, or any of its subdivisions, except when that power is expressly granted  
10 by statute.

11           **SECTION 7.** The Avery County Board of Commissioners shall appropriate  
12 funds derived from the Avery County Fire Tax to carry out the provisions of this act in  
13 any proportion or upon any basis as may be determined by the Avery County Board of  
14 Commissioners and the Commission.

15           **SECTION 8.** The powers granted to the Commission shall not be effective  
16 until the members of the Commission have been appointed by the Avery County Board  
17 of Commissioners, and nothing in this act shall require the Board of Commissioners to  
18 make the initial appointments. It is the intent of this act to enable but not to require the  
19 formation of the Commission.

20           **SECTION 9.** If any one or more sections, clauses, sentences, or parts of this  
21 act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the  
22 remaining provisions thereof but shall be confined in its operation to the specific  
23 provisions held to be invalid and in the inapplicability or invalidity of any section,  
24 clause, sentence, or part of this act in one or more instances or circumstances shall not  
25 be taken to affect or prejudice in any way its applicability or validity in any other  
26 instance.

27           **SECTION 10.** This act is effective when it becomes law.