

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 673

Short Title: Avery Fire Protection.

(Local)

Sponsors: Representative Frye.

Referred to: Ways and Means.

March 26, 2003

A BILL TO BE ENTITLED

1 AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH AN AVERY
2 COUNTY FIRE COMMISSION.
3

4 The General Assembly of North Carolina enacts:

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

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

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

28 **SECTION 3.(b)** One of the initial Fire Association appointees shall be
29 appointed for a two-year term; the other shall be appointed for a one-year term. One of

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

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

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

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

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

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

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

41 Three or more members shall constitute minimum attendance to conduct
42 business.

43 Notice of the agenda items to be considered at each regular meeting shall be
44 communicated to all members at least three days prior to each meeting. All meetings

1 shall be conducted with strict compliance to the duly adopted Commission policy and
2 procedures manual.

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

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

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

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

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

42 **SECTION 5.** The Commission has the same exemptions in respect to
43 payment of taxes and license fees and eligibility for sales and use tax refunds to the

1 same extent as provided for municipal corporations by the laws of the State of North
2 Carolina.

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

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

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

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

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