

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 648*

Short Title: Benson Charter Revised.

(Local)

Sponsors: Representative Daughtry.

Referred to: Finance.

March 29, 1999

A BILL TO BE ENTITLED

1 AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF
2 BENSON.
3

4 The General Assembly of North Carolina enacts:

5 Section 1. The Charter of the Town of Benson is revised and consolidated to
6 read as follows:

7 **"THE CHARTER OF THE TOWN OF BENSON.**

8 "ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

9 "Section 1.1. **Incorporation.** The Town of Benson, North Carolina, in Johnston
10 County and the inhabitants thereof shall continue to be a municipal body politic and
11 corporate, under the name of the 'Town of Benson', hereinafter at times referred to as the
12 'Town'.

13 "Section 1.2. **Powers.** The Town shall have and may exercise all of the powers,
14 duties, rights, privileges, and immunities conferred upon the Town of Benson specifically
15 by this Charter or upon municipal corporations by general law. The term 'general law' is
16 employed herein as defined in G.S. 160A-1.

17 "Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those
18 existing at the time of ratification of this Charter, as set forth on the official map of the
19 Town and as they may be altered from time to time in accordance with law. An official
20 map of the Town, showing the current municipal boundaries, shall be maintained

1 permanently in the office of the Town Clerk and shall be available for public inspection.
2 Upon alteration of the corporate limits pursuant to law, the appropriate changes to the
3 official map shall be made and copies shall be filed in the office of the Secretary of State,
4 the Johnston County Register of Deeds, and the appropriate board of elections.

5 **"ARTICLE II. GOVERNING BODY.**

6 "Section 2.1. **Town Governing Body; Composition.** The Board of Commissioners,
7 hereinafter referred to as the 'Board', and the Mayor shall be the governing body of the
8 Town.

9 "Section 2.2. **Town Board; Composition; Terms of Office.** The Board shall be
10 composed of six members to be elected in the manner provided in Article III for terms of
11 four years, or until their successors are elected and qualified.

12 "Section 2.3. **Mayor; Duties.** The Mayor shall be elected by and from the qualified
13 voters of the Town voting at large in the manner provided in Article III for a term of two
14 years or until his or her successor is elected and qualified. The Mayor shall be the
15 official head of the Town government and shall preside at meetings of the Board. Where
16 there is an equal division upon any question, or upon the appointment of officers, the
17 Mayor shall determine the matter by his or her vote, but he or she shall vote in no other
18 case. The Mayor shall exercise such powers and perform such duties as are or may be
19 conferred upon him or her by the general laws of North Carolina, by this Charter, and by
20 the ordinances of the Town.

21 "Section 2.4. **Mayor Pro Tempore.** The Board shall choose one of its members to
22 act as Mayor Pro Tempore, and he or she shall perform the duties of the Mayor in the
23 Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term
24 of office, but shall serve in such capacity at the pleasure of the remaining members of the
25 Board.

26 "Section 2.5. **Meetings; Quorum.** In accordance with general law, the Board shall
27 establish a suitable time and place for its regular meetings. Special and emergency
28 meetings may be held as provided by general law. The quorum provisions of G.S. 160A-
29 74 shall apply.

30 "Section 2.6. **Voting.** Four affirmative votes, which may include the vote of the
31 Mayor in the event of equal division among the Board, shall be necessary to adopt any
32 ordinance or any resolution or motion having the effect of an ordinance. All other
33 matters to be voted upon shall be decided by a majority vote of those present and voting.

34 "Section 2.7. **Ordinances and Resolutions.** The adoption, amendment, repeal,
35 pleading, or proving of ordinances shall be in accordance with the applicable provisions
36 of the general laws not inconsistent with this Charter. The yeas and nays shall be taken
37 upon all ordinances and resolutions and entered upon the minutes of the Board. The
38 enacting clause of all ordinances shall read: 'Be it ordained by the Board of
39 Commissioners of the Town of Benson'. All ordinances and resolutions shall take effect
40 upon adoption unless otherwise provided therein.

41 "Section 2.8. **Qualifications for Office; Compensation; Vacancies.** The
42 qualifications and compensation of the Mayor and the Board shall be in accordance with
43 general law. In the event a vacancy occurs in the office of Mayor, the Board shall by a

1 majority vote appoint some qualified person to fill the same for the remainder of the
2 unexpired term. Any vacancy on the Board shall be filled by majority vote of the
3 remaining members of the Board for the remainder of the unexpired term. The person
4 appointed to fill a vacancy in the office of Board member for District 1, 2, or 3 must
5 reside in the district for which appointed.

6 "ARTICLE III. ELECTIONS.

7 "Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be
8 held in each odd-numbered year in accordance with the uniform municipal election laws
9 of North Carolina. Elections shall be conducted on a nonpartisan basis and the results
10 determined using the nonpartisan plurality election method as provided in G.S. 163-
11 279(a)(1) and G.S. 163-292.

12 "Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular
13 municipal election.

14 "Section 3.3. **Election of Commissioners.** The Commissioners serving on the date
15 of ratification of this Charter shall serve until the expiration of their terms or until their
16 successors are elected and qualified. In the 1999 election and every four years thereafter,
17 three Commissioners shall be elected, one each for Districts 1, 2, and 3 as the same are
18 described in Section 3.5 of this Article. Only voters residing in a district may vote for the
19 Commissioner for that district. In the 2001 election and every four years thereafter, three
20 Commissioners shall be elected by the voters of the entire Town.

21 "Section 3.4. **Voting.** In each election, each voter shall be entitled to vote for one
22 candidate for Mayor. In each election in which Commissioners for Districts 1, 2, and 3
23 are being chosen, each voter shall be entitled to vote for one candidate for Commissioner
24 for the district in which the voter resides. In each election in which the three
25 Commissioners to be elected by the entire Town are being chosen, the names of all
26 candidates for those offices shall be placed on a single ballot and each voter shall be
27 entitled to vote for one candidate only.

28 "Section 3.5. **District Boundaries.** The Districts for the election of Commissioners
29 are:

30 District 1. The eastern side of Town included within the following line beginning at
31 the intersection of Market Street with the southern Town limits and running clockwise to
32 the same point as follows: North on Market Street to Brocklyn Street, east on Brocklyn
33 to the western side of Interstate 95, north along the western side of Interstate 95 one
34 block to Harnett Street, west on Harnett one block to George Street, north on George (or
35 the line George would follow if extended north at that point) one block to Parrish Street,
36 west on Parrish to Dunn Street, north on Dunn three blocks to Hill Street, east on Hill to
37 Catherine Street, north on Catherine to Morris Avenue, east on Morris to Hall Street,
38 north on Hall two blocks to Branch Street, west on Branch to Johnson Street, north on
39 Johnson to U.S. Highway 301, east on 301 to the Town limits, then south and clockwise
40 along the Town limits to the starting point.

41 District 2. The middle portion of the Town included between the western boundary of
42 District 1 and the following line running south to north from its beginning at the
43 intersection of Ryals Street and Mann Street at the southern Town limits: North on Ryals

1 Street four blocks to Harnett Street, east on Harnett to Farmer Road, north on Farmer two
2 blocks to Main Street, east on Main one block to Wall Street, north on Wall one block to
3 Church Street, east on Church one block to the railroad tracks, north on the railroad
4 tracks to the Town limits at U.S. Highway 301.

5 District 3. The western side of Town including all of the Town west of the line
6 described above as the boundary for District 2.

7 "Section 3.6. **Special Elections and Referenda.** Special elections and referenda may
8 be held only as provided by general law or applicable local acts of the General Assembly.

9 **"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.**

10 "Section 4.1. **Form of Government.** The Town shall operate under the council-
11 manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of
12 the General Statutes.

13 "Section 4.2. **Town Manager; Appointment; Powers and Duties.** The Board shall
14 appoint a Town Manager who shall be responsible for the administration of all
15 departments of the Town government. The Town Manager shall have all the powers and
16 duties conferred by general law, except as expressly limited by the provisions of this
17 Charter, and the additional powers and duties conferred by the Board, so far as authorized
18 by general law.

19 "Section 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal
20 of the proceedings of the Board, to maintain official records and documents, to give
21 notice of meetings, and to perform such other duties required by law or as the Board may
22 direct.

23 "Section 4.4. **Finance Director.** The Board shall appoint a Finance Director to
24 perform the duties designated in G.S. 159-25 and such other duties as may be prescribed
25 by law or assigned by the Board.

26 "Section 4.5. **Tax Collector.** The Board shall appoint a Tax Collector pursuant to
27 G.S. 105-349 to collect all taxes owed to the Town, subject to general law, this Charter,
28 and Town ordinances.

29 "Section 4.6. **Town Attorney.** The Board shall appoint a Town Attorney licensed to
30 practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
31 Town, advise Town officials, and perform other duties required by law or as the Board
32 may direct. The Town Attorney shall serve at the pleasure of the Board and shall receive
33 such compensation as the Board shall determine.

34 "Section 4.7. **Other Administrative Officers and Employees.** The Board may
35 authorize other positions to be filled by appointment by the Town Manager, and may
36 organize the Town government as deemed appropriate, subject to the requirements of
37 general law.

38 **"ARTICLE V. REGULATORY JURISDICTION.**

39 "Section 5.1. **Effect of Ordinances on Town Property.** All applicable ordinances
40 of the Town shall have full force and effect upon and within all property, rights-of-way,
41 and facilities owned or leased by the Town, whether located within or outside the
42 corporate limits.

43 **"ARTICLE VI. POLICE.**

1 "Section 6.1. **Jurisdiction Extended.** In addition to their authority within the
2 corporate limits, Town police shall have all the powers invested in law-enforcement
3 officers by statute or common law within one and one-half miles of the corporate limits
4 of the Town, and on all property owned by or leased to the Town wherever located.

5 **"ARTICLE VII. STREETS AND SIDEWALKS.**

6 "Section 7.1. **Assessments for Street Improvements.** In addition to any authority
7 that is now or may hereafter be granted by general law for making street improvements,
8 the Board is authorized to order to be made or to make street improvements according to
9 the standards and specifications of the Town and to assess the total costs, or a portion
10 thereof, against abutting property owners in accordance with the provisions of this
11 Article.

12 "Section 7.2. **When Petition Unnecessary.** The Board may order street
13 improvements and assess the total costs or a portion thereof, exclusive of the costs
14 incurred at street intersections, against the abutting property owners according to one or
15 more of the assessment bases set forth in Article 10 of Chapter 160A of the General
16 Statutes, without the necessity of a petition, upon the finding by the Board of one of the
17 following:

- 18 (1) That such street or part thereof is unsafe for vehicular traffic and it is in
19 the public interest to make such improvement.
- 20 (2) That it is in the public interest to connect two streets or portions of a
21 street already improved.
- 22 (3) That it is in the public interest to widen a street, or part thereof, that is
23 already improved, except that assessments for widening any street or
24 portion of a street without petition shall be limited to the cost of
25 widening and otherwise improving the street in accordance with the
26 street classification and improvement standards established by the
27 Town's thoroughfare or major street plan for the particular street or part
28 thereof to be widened and improved under the authority granted by this
29 Article.

30 "Section 7.3. **Street Improvement Defined.** 'Street improvement' shall include
31 grading, regrading, surfacing, resurfacing, widening, paving, and repaving streets, the
32 acquisition of rights-of-way, and the construction or reconstruction of curbs, gutters, and
33 street drainage facilities.

34 "Section 7.4. **Sidewalk Improvements.** In addition to any authority that is now or
35 may hereafter be granted by general law for making sidewalk improvements, the Board is
36 authorized to order to be made or to make sidewalk improvements or repairs according to
37 the standards and specifications of the Town, and to assess the total costs, or a portion
38 thereof, against abutting property owners according to one or more of the assessment
39 bases set forth in Article 10 of Chapter 160A of the General Statutes, except that the
40 Board may order the cost of sidewalk improvements made only on one side of a street to
41 be assessed against property owners abutting both sides of the street.

42 "Section 7.5. **Assessment Procedure.** In ordering street or sidewalk improvements
43 without a petition and assessing the cost thereof under authority of this Article, the Board

1 shall comply with the procedure provided by Article 10 of Chapter 160A of the General
2 Statutes, except those provisions relating to the petition of property owners and the
3 sufficiency thereof.

4 "Section 7.6. **Effect of Assessments.** The effect of the act of levying assessments
5 under authority of this Article shall for all purposes be the same as if the assessments
6 were levied under authority of Article 10 of Chapter 160A of the General Statutes.

7 "Section 7.7. **Acceptance of Conveyance in Satisfaction of Assessments.** The
8 Town Tax Collector or other official or employee of the Town having charge of the
9 collection of special assessments, shall have the right, power, and authority, by and with
10 the approval of the Board first had and obtained, to receive and accept a fee simple
11 conveyance to the Town of any lot or parcel of land in the Town, free and clear of other
12 encumbrances, in full settlement and satisfaction of any street or sidewalk assessments
13 outstanding and unpaid against the property. Such right, power, and authority shall be
14 limited to conveyance of the whole of the lot or parcel of land against which the
15 particular assessments involved were levied. No lot or tract of land may be divided and
16 such right, power, and authority exercised as to a part of the property originally embraced
17 in and covered by the assessments. In the case of such conveyance, it shall not be
18 necessary that the street or sidewalk assessments against the property be foreclosed, but
19 the Town, upon the receipt of any such conveyance, shall become and be the absolute fee
20 simple owner of the property as fully to all intents and purposes as if purchased in and
21 through foreclosure proceedings for the enforcement of such street or sidewalk
22 assessments.

23 "ARTICLE VIII. WATER AND SEWER.

24 "Section 8.1. **Corner Lot Exemptions.** The Board is hereby authorized to establish,
25 by ordinance or resolution, schedules of exemptions for assessments for water and sewer
26 line extensions for corner lots when water or sewer lines, or both, are installed along both
27 sides of such lots and when the cost of such installation along both sides were or are
28 financed in whole or in part by assessments. The schedules of exemptions may be
29 classified as to land uses (residential, commercial, industrial, institutional, or agricultural)
30 and shall be uniform for each such classification used, except that no schedule of
31 exemptions may provide for exemption of more than fifty percent (50%) of the frontage
32 on any side of a corner lot, or 150 feet, whichever is greater.

33 "Section 8.2. **Alternative Method of Assessment.** In addition to, and as an
34 alternative, to the methods provided in G.S. 160A-218 for assessing the costs of water
35 and sewer lines and laterals, the Board, if in its opinion it would be more equitable to do
36 so, is hereby authorized in its discretion to levy any such assessments according to either
37 of the following methods: (1) equally against each of the lots capable of being served
38 by the lines, or (2) on the basis of the footage of land upon a public street by an equal rate
39 per foot of such frontage.

40 Instead of assessing the total cost of a particular project as herein provided, the Board
41 may annually, between the first days of January and July of each year, determine the
42 average cost of installing water and sewer mains or lines and on the basis of the
43 determination may make assessments of the average cost during the following fiscal year

1 beginning July 1. The average cost of the installation shall include the cost of the
2 particular size and material of lines completed during the preceding calendar year. It may
3 also include the anticipated increase in labor and material costs based upon the average of
4 such increases during the preceding five calendar years. The assessment of the average
5 cost of the line shall not be made until after the particular assessment project has been
6 completed. The purpose of this section is to: (1) distribute more equitably the cost
7 of the installation of water and sewer lines throughout the Town; (2) permit a property
8 owner to know in advance what the cost of installation of water and sewer lines
9 benefiting his or her property will be; and (3) permit the most expeditious assessment of
10 cost against property after completion of the installation of the lines. The actual cost of
11 acquisition of rights-of-way may also be assessed as part of the cost of an individual
12 project. If the right-of-way costs have not been determined and assessed with the
13 assessment of the average installation costs at the time of the completion of the project,
14 the costs may be assessed separately when they are determined.

15 **"ARTICLE IX. WATER AND SEWER LINE CAPACITY CHARGES.**

16 "Section 9.1. **Definitions.** The following definitions apply in this Article:

- 17 (1) Capital costs. – Costs spent for upgrading, expanding, and developing
18 water and sewer lines intended to serve the customers of the Town's
19 water and sewer treatment system.
- 20 (2) Developer. – An individual, corporation, partnership, organization,
21 association, firm, political subdivision, or other legal entity constructing
22 or creating new construction.
- 23 (3) New construction. – Any new development, construction, or
24 installation that results in the use of the Town's water and sewer lines
25 and includes current users of that system that require additional capacity
26 from the lines.
- 27 (4) Capacity charge. – The charge imposed upon new construction as
28 defined herein pursuant to the grant of regulatory authority contained
29 herein.

30 "Section 9.2. **Imposition of Capacity Charge.** Subject to the conditions set forth in
31 this Article, the Board may adopt ordinances imposing and collecting a capacity charge
32 on developers of all new construction, and may enact such other ordinances, resolutions,
33 rules, and regulations that are necessary or expedient to implement such charges.

34 "Section 9.3. **Basis of Capacity Charge.** The amount of each capacity charge
35 imposed and collected shall be based upon reasonable and uniform consideration of
36 capital costs ultimately to be incurred by the Town as a result of the new construction,
37 but the charge may differ from line to line. The capacity charge must bear a direct
38 relationship to the additional or expanded capital costs incurred or ultimately to be
39 incurred for the upgrading, expanding, or developing of water and sewer lines. The
40 amount of each capacity charge shall be based on qualified needs and specific
41 classifications and rates, which shall be uniformly applied to all members of a class, but
42 the Town may vary the charges from line to line.

1 "Section 9.4. **Procedure.** Before adopting or amending any capacity charge
2 ordinance authorized by this Article, the Board shall hold a public hearing. A notice of
3 the public hearing shall be given so as to conform with G.S. 160A-364, as it may be
4 amended from time to time. No capacity charge ordinance shall be adopted or amended
5 without first giving the planning board a reasonable opportunity to make comments and
6 recommendations to the Board.

7 "Section 9.5. **Use of Capacity Charges.** Monies collected as capacity charges from
8 a developer shall be placed in a separate trust fund. All such revenues shall be spent for
9 the capital facilities for which they were collected.

10 **"ARTICLE X. CLAIMS AGAINST THE TOWN.**

11 "Section 10.1. **Settlement of Claims by Town Manager.** The Board may authorize
12 the Town Manager to settle claims against the Town for: (1) personal injuries or
13 damages to property when the amount involved does not exceed the sum of five thousand
14 dollars (\$5,000) and does not exceed the actual loss sustained, including loss of time,
15 medical expenses, and any other expenses actually incurred, and (2) the taking of small
16 portions of private property that are needed for the rounding of corners at intersections of
17 streets when the amount involved in any such settlement does not exceed five thousand
18 dollars (\$5,000) and does not exceed the actual loss sustained. Settlement of a claim by
19 the Town Manager pursuant to this section shall constitute a complete release of the
20 Town from any and all damages sustained by the person involved in the settlement in any
21 manner arising out of the incident, occasion, or taking complained of. All such
22 settlements and all such releases shall be approved by the Town Attorney.

23 **"ARTICLE XI. EXTRATERRITORIAL JURISDICTION.**

24 "Section 11.1. **Jurisdiction Extended.** The area over which the Town exercises its
25 extraterritorial jurisdiction may be extended pursuant to Chapter 804 of the 1986 Session
26 Laws, any subsequent local acts, and any applicable general laws."

27 Section 2. The purpose of this act is to revise the Charter of the Town of
28 Benson and to consolidate certain acts concerning the property, affairs, and government
29 of the Town. It is intended to continue without interruption those provisions of prior acts
30 that are expressly consolidated into this act so that all rights and liabilities that have
31 accrued are preserved and may be enforced.

32 Section 3. This act does not repeal or affect any acts concerning the property,
33 affairs, or government of public schools or any acts validating official actions,
34 proceedings, contracts, or obligations of any kind.

35 Section 4. The provisions of Article III of this act are intended to codify and
36 continue, without change, the terms of the election plan ordered by the United States
37 District Court for the Eastern District of North Carolina on November 22, 1988, in
38 Johnson v. Town of Benson, No. 88-240.CIV-5.

39 Section 5. The following acts, having served the purposes for which they were
40 enacted or having been consolidated into this act, are expressly repealed:

41 Chapter 623 of the 1971 Session Laws, except Section 4.

42 Chapter 71 of the 1989 Session Laws.

43 Chapter 477 of the 1989 Session Laws.

1 Section 6. The Mayor and Board serving on the date of ratification of this act
2 shall serve until the expiration of their terms or until their successors are elected and
3 qualified.

4 Section 7. This act does not affect any rights or interests that arose under any
5 provisions repealed by this act.

6 Section 8. All existing ordinances, resolutions, and other provisions of the
7 Town of Benson not inconsistent with the provisions of this act shall continue in effect
8 until repealed or amended.

9 Section 9. No action or proceeding pending on the effect date of this act by or
10 against the Town or any of its departments or agencies shall be abated or otherwise
11 affected by this act.

12 Section 10. If any provision of this act or application thereof is held invalid,
13 such invalidity shall not affect other provisions or applications of this act that can be
14 given effect without the invalid provision or application, and to this end the provisions of
15 this act are declared to be severable.

16 Section 11. Whenever a reference is made in this act to a particular provision
17 of the General Statutes and such provision is later amended, superseded, or recodified,
18 the reference shall be deemed amended to refer to the amended General Statute, or to the
19 General Statute that most clearly corresponds to the statutory provision that is superseded
20 or recodified.

21 Section 12. This act is effective when it becomes law.