



State of North Carolina

ROY COOPER
GOVERNOR

October 8, 2018

Executive Order No. 70

RECONSTITUTING THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY

WHEREAS, the North Carolina Parks and Recreation Authority is critical to the operation of the Parks and Recreation Authority Trust Fund, an important executive branch entity that has substantial work in progress that is important to the people of the State of North Carolina; and

WHEREAS, on August 31, 2018, a three-judge panel issued an order declaring that N.C. Gen. Stat. § 143B-135.202, which establishes the structure for the North Carolina Parks and Recreation Authority, is unconstitutional and permanently enjoined (the "Order"); and

WHEREAS, the General Assembly has indicated that it will not take action to remedy the constitutional defects in N.C. Gen. Stat. § 143B-135.202 and reconstitute the North Carolina Parks and Recreation Authority until it reconvenes in session beginning on November 27, 2018, at the earliest; and

WHEREAS, action is required to ensure the North Carolina Parks and Recreation Authority's continuity and ability to perform its mission of allocating grant funds from the Park and Recreation Authority Trust Fund to support the acquisition of land for state and local parks and the construction and renovation of parks and recreational projects and facilities benefitting the public, among other duties and responsibilities; and

WHEREAS, Article III, Section 5(10) of the North Carolina Constitution establishes that the Governor "may make such changes in the allocation of [executive] offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration"; and

WHEREAS, this Executive Order reconstitutes the North Carolina Parks and Recreation Authority in order to continue its important work; and

WHEREAS, it is the undersigned's intention herein to remedy only the constitutional defects identified by the three-judge panel in the Order and to otherwise continue in place the remainder of N.C. Gen. Stat. § 143B-135.202 as enacted by the General Assembly; and

WHEREAS, the changes set forth in this Executive Order do not affect existing law as the laws in question are "void and permanently enjoined."

NOW, THEREFORE, by the authority vested in me as Governor under the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Reconstituting the North Carolina Parks and Recreation Authority

The North Carolina Parks and Recreation Authority (“the Reconstituted Authority”) is hereby reconstituted in compliance with the constitutional commands set forth in the Order. The Reconstituted Authority shall be administered by the North Carolina Department of Natural and Cultural Resources (sometimes referred to as “DNCR”).

Section 2. Appointment and Removal

- a. The Reconstituted Authority shall have, unless amended or rescinded by future Executive Order, nine (9) members: five (5) appointed by the Governor and four (4) appointed by the General Assembly. Seven (7) members of the Reconstituted Authority are consistent with the composition of the former North Carolina Parks and Recreation Authority:
 - i. One (1) member shall be appointed by the Governor to the Reconstituted Authority, with a term expiring on July 1 of years that are evenly divisible by three (3).
 - ii. One (1) member shall be appointed by the Governor to the Reconstituted Authority, with a term expiring on July 1 of years that follow by one year those years that are evenly divisible by three (3).
 - iii. One (1) member shall be appointed by the Governor to the Reconstituted Authority, with a term expiring on July 1 of years that precede by one year those years that are evenly divisible by three (3).
 - iv. One (1) member shall be appointed by the Governor to the Reconstituted Authority, with a term expiring on July 1 of years that are evenly divisible by three (3).
 - v. One (1) member shall be appointed by the Governor to the Reconstituted Authority, with a term expiring on July 1 of years that are evenly divisible by three (3).
 - vi. One (1) member shall be appointed by the General Assembly to the Reconstituted Authority upon the recommendation of the Speaker of the House of Representatives, as provided in N.C. Gen. Stat. § 120-121, with a term expiring on July 1 of years that follow by one (1) year those years that are evenly divisible by three (3).
 - vii. One (1) member shall be appointed by the General Assembly to the Reconstituted Authority upon the recommendation of the Speaker of the House of Representatives, as provided in N.C. Gen. Stat. § 120-121, with a term expiring on July 1 of years that precede by one (1) year those years that are evenly divisible by three (3).
 - viii. One (1) member shall be appointed by the General Assembly to the Reconstituted Authority upon the recommendation of the President Pro Tempore of the Senate, as provided in N.C. Gen. Stat. § 120-121, with a term expiring on July 1 of years that follow by one (1) year those years that are evenly divisible by three (3).
 - ix. One (1) member shall be appointed by the General Assembly to the Reconstituted Authority upon the recommendation of the President Pro Tempore of the Senate, as provided in N.C. Gen. Stat. § 120-121, with a term expiring on July 1 of years that precede by one (1) year those years that are evenly divisible by three (3).
- b. In making appointments, each appointing authority shall specify under which subsection of this Executive Order the person is appointed.
- c. Until the General Assembly convenes and nominates members to fill the positions identified in Section 2.a(vi) - (ix) of this Executive Order, the Governor, pursuant to N.C. Gen. Stat. § 147-12, shall appoint, from the previously existing members of the North Carolina Parks and Recreation Authority appointed by the General Assembly, four (4) interim members to those positions to ensure the Reconstituted Authority’s continuity and

ability to perform its mission of allocating grant funds from the Park and Recreation Authority Trust Fund to support the acquisition of land for state and local parks and the construction and renovation of parks and recreational projects and facilities benefitting the public, among other responsibilities.

- d. Any member of the Reconstituted Authority may be removed by the relevant appointing authority for misfeasance, malfeasance or nonfeasance.

Section 3. Member Terms, Vacancies, Qualifications, and Other Requirements

- a. The terms of members of the Reconstituted Authority shall be effective and control until such times, if any, that the General Assembly enacts a provision of law to replace N.C. Gen. Stat. § 143B-135.202.
- b. Members appointed pursuant to Section 2.a(vi) - (ix) and Section 2.c of this Executive Order shall serve for the following, interim terms:
 - i. The member appointed to fill the position identified in Section 2.a(vi) shall serve from the time of appointment until July 1, 2020.
 - ii. The member appointed to fill the position identified in Section 2.a(vii) shall serve from the time of appointment until July 1, 2021.
 - iii. The member appointed to fill the position identified in Section 2.a(viii) shall serve from the time of appointment until July 1, 2020.
 - iv. The member appointed to fill the position identified in Section 2.a(ix) shall serve from the time of appointment until July 1, 2021.
- c. Following the expiration of the interim terms identified in Section 3.b of this Executive Order, members appointed to fill the positions therein shall be subject to three-year term lengths.
- d. Notwithstanding Section 3.b of this executive order, members shall be appointed for staggered, three-year terms.
- e. After serving two (2) consecutive three-year terms, a member is not eligible for appointment to the Reconstituted Authority for at least one (1) year after the expiration date of that member's most recent term. Upon the expiration of a three-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by N.C. Gen. Stat. § 128-7.
- f. A vacancy on the Reconstituted Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in Section 2.a, Section 2.b, and Section 3.b of this Executive Order. An appointment to fill a vacancy shall be for the unexpired balance of the term.
- g. The members of the Reconstituted Authority shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance.
- h. The Governor shall appoint one (1) member of the Reconstituted Authority to serve as Chair.
- i. The members of the Reconstituted Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of N.C. Gen. Stat. § 138-5.
- j. The Reconstituted Authority shall meet at least quarterly at a time and place designated by the Chair.
- k. A majority of the Reconstituted Authority shall constitute a quorum for the transaction of business.
- l. All clerical and other services required by the Reconstituted Authority shall be provided by the DNCR Secretary.

Section 4. Powers and Duties

The Reconstituted Authority shall continue to have the same functions, powers, duties, assets, liabilities, and allocation of resources the North Carolina Parks and Recreation Authority possessed prior to the entry of the Order.

Section 5. Miscellaneous

- a. This Executive Order does not conflict with or abrogate existing law.
- b. This Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order of the Governor, or unless the General Assembly reconvenes and enacts a provision of law which amends the composition of the North Carolina Parks and Recreation Authority.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the 8th day of October, in the year of our Lord two thousand eighteen.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

