



State of North Carolina

ROY COOPER
GOVERNOR

October 8, 2018

Executive Order No. 68

RECONSTITUTING THE CHILD CARE COMMISSION

WHEREAS, the Child Care Commission is 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-168.4, which establishes the structure for the Child Care Commission, 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-168.4 and reconstitute the Child Care Commission until it reconvenes in session beginning on November 27, 2018, at the earliest; and

WHEREAS, action is required to ensure the Child Care Commission’s continuity and ability to perform its duties with respect to licensing child care facilities and enforcing licensing standards, among other 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 Child Care Commission 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-168.4 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 Child Care Commission

The Child Care Commission (“Reconstituted Commission”) is hereby reconstituted in compliance with the constitutional commands set forth in the Order. The Reconstituted Commission shall be administered within the North Carolina Department of Health and Human Services.

Section 2. Appointment and Removal

The Reconstituted Commission shall have, unless amended or rescinded by future Executive Order, seventeen (17) members: nine (9) appointed by the Governor and eight (8) appointed by the General Assembly, none of whom may be employees of the State. Fifteen (15) members of the Reconstituted Commission are consistent with the composition of the former Child Care Commission:

- a. Nine (9) of the members shall be appointed by the Governor, to include:
 - i. For a term ending June 30, 2019, a member of the public, who: (1) is not employed in, or providing, child care and who has no financial interest in a child care facility; and (2) who is the parent of a child receiving child care services.
 - ii. For a term ending June 30, 2019, a member of the public, who: (1) is not employed in, or providing, child care and who has no financial interest in a child care facility; and (2) who is a pediatrician currently licensed to practice in North Carolina.
 - iii. For a term ending June 30, 2019, a child care provider affiliated with a for-profit family child care home.
 - iv. For a term ending June 30, 2019, a child care provider affiliated with a nonprofit child care facility.
 - v. For a term ending June 30, 2019, an early childhood education specialist.
 - vi. For a term ending June 30, 2020, a member of the public, who: (1) is not employed in, or providing, child care and who has no financial interest in a child care facility; and (2) who is the parent of a child receiving child care services.
 - vii. For a term ending June 30, 2020, a member of the public, who is not employed in, or providing, child care and who has no financial interest in a child care facility.
 - viii. For a term ending June 30, 2020, a child care provider affiliated with a for profit child care center.
 - ix. For a term ending June 30, 2020, an early childhood education specialist.
- b. Four (4) of the members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, to include:
 - i. For a term ending June 30, 2019, a member of the public, who: (1) is not employed in, or providing, child care and who has no financial interest in a child care facility; and (2) who is the parent of a child receiving child care services.
 - ii. For a term ending June 30, 2020, a member of the public, who is not employed in, or providing, child care and who has no financial interest in a child care facility.
 - iii. For a term ending June 30, 2019, a child care provider affiliated with a for-profit child care facility.
 - iv. For a term ending June 30, 2020, a child care provider affiliated with a nonprofit child care facility.
- c. Four (4) of the members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, to include:
 - i. For a term ending June 30, 2019, a child care provider affiliated with a for profit child care facility.
 - ii. For a term ending June 30, 2019, a child care provider affiliated with a nonprofit child care facility.
 - iii. For a term ending June 30, 2020, a member of the public, who is not employed in, or providing, child care and who has no financial interest in a child care facility.

- iv. For a term ending June 30, 2020, a member of the public, who: (1) is not employed in, or providing, child care and who has no financial interest in a child care facility; and (2) who is the parent of a child receiving child care services.
- d. In making appointments, each appointing authority shall specify under which subsection of this Executive Order the person is appointed.
- e. Until the General Assembly convenes and nominates members to fill the positions identified in Section 2.b and 2.c of this Executive Order, the Governor, pursuant to N.C. Gen. Stat. § 147-12, shall appoint, from among the previously existing members of the Child Care Commission appointed by the General Assembly, eight (8) interim members to those positions to ensure the Reconstituted Commission's continuity and ability to perform its duties with respect to licensing child care facilities and enforcing licensing standards, among other responsibilities.
- f. Members may be removed pursuant to N.C. Gen. Stat. § 143B-13(d).

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

- a. The terms of the members of the Reconstituted Commission 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-168.4.
- b. Members appointed by the Governor pursuant to Section 2.b and Section 2.c of this Executive Order shall serve for the balance of the terms identified therein.
- c. Following the expiration of the interim terms set forth in Section 3.b of this Executive Order, members appointed to fill the positions therein shall be subject to two-year term lengths.
- d. After the initial appointees' terms have expired, all members shall be appointed to serve two-year terms.
- e. Notwithstanding Section 2.e and Section 3.b of this Executive Order, appointments by the General Assembly shall be made in accordance with N.C. Gen. Stat. § 120-121.
- f. Any appointment to fill a vacancy on the Reconstituted Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.
- g. A vacancy occurring during a term of office is filled:
 - i. By the Governor, if the Governor made the initial appointment;
 - ii. By the General Assembly, if the General Assembly made the initial appointment in accordance with N.C. Gen. Stat. § 120-122.
- h. At its first meeting after this Executive Order, the Reconstituted Commission members shall elect a chair to serve a term ending June 30, 2020. The Chair shall be elected for two-year terms thereafter. The same member may serve as chair for two consecutive terms.
- i. Reconstituted Commission members may be reappointed and may succeed themselves for a maximum of four consecutive terms.
- j. Beginning in 2019, the Reconstituted Commission shall meet quarterly, and at other times at the call of the chair or upon written request of at least six (6) members.
- k. The members of the Reconstituted Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of N.C. Gen. Stat. § 138-5.
- l. A majority of the Reconstituted Commission shall constitute a quorum for the transaction of business.

- m. All clerical and other services required by the Reconstituted Commission shall be supplied by the Secretary of the North Carolina Department of Health and Human Services.

Section 4. Powers and Duties

The Reconstituted Commission shall continue to have the same functions, powers, duties, assets, liabilities, and allocation of resources the Child Care Commission 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 Child Care Commission.

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

