

State of North Carolina

ROY COOPER

GOVERNOR

October 8, 2018

Executive Order No. 69

RECONSTITUTING THE CLEAN WATER MANAGEMENT TRUST FUND BOARD OF TRUSTEES

WHEREAS, the Clean Water Management Trust Fund Board of Trustees is critical to the operation of the Clean Water Management 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-135.240, which establishes the Clean Water Management Trust Fund Board of Trustees (sometimes referred to as “the Board of Trustees”), 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-135.240 and reconstitute the Board of Trustees until it reconvenes in session beginning on November 27, 2018, at the earliest; and

WHEREAS, action is required to ensure the Clean Water Management Trust Fund Board of Trustees’ continuity and ability to perform its mission of allocating grant funds and developing grant criteria to enhance and preserve water quality, 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 Clean Water Management Trust Fund Board of Trustees to enable the Clean Water Management Trust Fund 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-135.240 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 by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Reconstituting the Clean Water Management Trust Fund Board of Trustees

The Clean Water Management Trust Fund Board of Trustees (“the Reconstituted Board”) is hereby reconstituted in compliance with the constitutional commands set forth in the Order. The

Reconstituted Board shall be administratively located within the North Carolina Department of Natural and Cultural Resources.

Section 2. Appointment and Removal

- a. The Reconstituted Board shall have, unless amended or rescinded by future Executive Order, nine (9) members: five (5) appointed by the Governor and four (4) by the General Assembly. Seven (7) appointed members of the Reconstituted Board are consistent with the composition of the former Clean Water Management Trust Fund Board of Trustees:
 - i. One (1) member shall be appointed by the Governor to the Reconstituted Board to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three (3).
 - ii. One (1) member shall be appointed by the Governor to the Reconstituted Board to a term that expires 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 Board to a term that expires on July 1 of years that are evenly divisible by three (3).
 - iv. One (1) member shall be appointed by the Governor to the Reconstituted Board to a term that expires 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 Board to a term that expires 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 Board upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three (3).
 - vii. One (1) member shall be appointed by the General Assembly to the Reconstituted Board upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that follow by one year those years that are evenly divisible by three (3).
 - viii. One (1) member shall be appointed by the General Assembly to the Reconstituted Board upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three (3).
 - ix. One (1) member shall be appointed by the General Assembly to the Reconstituted Board upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that follow by one 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 of this Executive Order, the Governor, pursuant to N.C. Gen. Stat. § 147-12, shall appoint, from among the previously existing members of the Clean Water Management Trust Fund Board of Trustees appointed by the General Assembly, four (4) interim members to those positions to ensure the Reconstituted Board's continuity and ability to perform its mission of allocating grant funds and developing grant criteria to enhance and preserve water quality, among other duties and responsibilities.
- d. Members may be removed pursuant to N.C. Gen. Stat. § 143B-16.

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

- a. The terms of Reconstituted Board members set forth below 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-135.240.
- b. Members appointed pursuant to Section 2.a(vi)-(ix) of this Executive Order shall serve for the following, interim terms:

- i. The interim member appointed to fill the position identified in Section 2.a(vi) of this Executive Order shall serve from the time of appointment until July 1, 2021.
 - ii. The interim member appointed to fill the position identified in Section 2.a(vii) of this Executive Order shall serve from the time of appointment until July 1, 2020.
 - iii. The interim member appointed to fill the position identified in Section 2.a(viii) of this Executive Order shall serve from the time of appointment until July 1, 2021.
 - iv. The interim member appointed to fill the position identified in Section 2.a(ix) of this Executive Order shall serve from the time of appointment until July 1, 2020.
- 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 three (3) year term lengths.
- d. The members identified in Section 2.a(i)-(v) of this Executive Order shall be appointed for three (3) year terms.
- e. No member of the Reconstituted Board shall serve more than two (2) consecutive three-year terms or a total of ten (10) years.
- f. An appointment to fill any vacancy on the Reconstituted Board created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in gubernatorial appointments shall be filled by the Governor. Vacancies in appointments made by the General Assembly shall be filled as provided in N.C. Gen. Stat. § 120-122.
- g. The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. When appointing members of the Reconstituted Board, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall give consideration to adequate representation from the various regions of the State and shall give consideration to the appointment of members who are knowledgeable in any of the following areas:
 - i. Acquisition and management of natural areas.
 - ii. Conservation and restoration of water quality.
 - iii. Wildlife and fisheries habitats and resources.
 - iv. Environmental management.
 - v. Historic preservation.
- h. The Governor shall appoint one (1) member to serve as Chair of the Reconstituted Board.
- i. The Reconstituted Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.
- j. A majority of the membership of the Reconstituted Board constitutes a quorum for the transaction of business.
- k. Each member of the Reconstituted Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of N.C. Gen. Stat. §§ 120-3.1, 138-5, and 138-6, as applicable. Per diem, subsistence, and travel expenses of members shall be paid from the Clean Water Management Trust Fund.
- l. All decisions heretofore made by the Clean Water Management Trust Fund Board of Trustees prior to the entry of the Order shall remain in full force and effect unless and until repealed or suspended by action of the Reconstituted Board.

Section 4. Powers and Duties

The Reconstituted Board shall continue to have the same functions, powers, duties, assets, liabilities, and allocation of resources the Clean Water Management Trust Fund Board of Trustees 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 Clean Water Management Fund Trust Fund Board of Trustees.

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

