

State of North Carolina

ROY COOPER
GOVERNOR

October 8, 2018

Executive Order No. 71

RECONSTITUTING THE PRIVATE PROTECTIVE SERVICES BOARD

WHEREAS, the Private Protective Services Board 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. § 74C-4, which establishes the structure for the Private Protective Services Board, 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. § 74C-4 and reconstitute the Private Protective Services Board until it reconvenes in session beginning on November 27, 2018, at the earliest; and

WHEREAS, action is required to ensure the Private Protective Services Board’s continuity and ability to administer licensing and set educational and training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State, 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 Private Protective Services Board 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. § 74C-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 Private Protective Services Board

The Private Protective Services Board (“Reconstituted Board”) is hereby reconstituted in compliance with the constitutional commands set forth in the Order. The Reconstituted Board shall be administered within the North Carolina Department of Public Safety (“DPS”).

Section 2. Membership

- a. The Reconstituted Board shall have, unless amended or rescinded by future Executive Order, fourteen (14) members: seven (7) appointed by the Governor and six (6) appointed by the General Assembly, along with the Secretary of DPS (“Secretary”). Nine (9) members of the Reconstituted Board along with the Secretary are consistent with the composition of the former Private Protective Services Board:
 - i. The Secretary or the Secretary's designated representative;
 - ii. Seven (7) persons appointed by the Governor;
 - iii. Three (3) persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and
 - iv. Three (3) persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
- b. One (1) of those members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, three (3) of the members appointed by the Governor, and all three (3) members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be licensees under this Chapter; all other appointees may not be licensees of the Reconstituted Board at the time of appointment or while serving as members.
- c. In making appointments, each appointing authority shall specify under which subsection of this Executive Order the person is appointed.
- d. Until the General Assembly convenes and nominates members to fill the positions identified in Section 2.a(iii) and (iv) of this Executive Order, the Governor, pursuant to N.C. Gen. Stat. § 147-12, shall appoint, from among the previously existing members of the Private Protective Services Board appointed by the General Assembly, six (6) interim members to those positions to ensure the Reconstituted Board’s continuity and ability to perform its mission of administering the licensing and setting educational and training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State, among other responsibilities.
- e. All appointments by the General Assembly shall be subject to the provisions of N.C. Gen. Stat. § 120-121, and vacancies in the positions filled by those appointments shall be filled pursuant to N.C. Gen. Stat. § 120-122.
- f. A Reconstituted Board member may be removed at the pleasure of the authority making the original appointment or by the Reconstituted Board for misconduct, incompetence, or neglect of duty.

Section 3. Member Terms, Vacancies, and Other Requirements

- a. The terms of the 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. § 74C-4.
- b. Members appointed pursuant to Section 2.a(iii) and (iv) of this Executive Order shall, upon interim appointment by the Governor, serve for the following, interim terms:
 - i. One (1) member who would otherwise be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve from the time of appointment until June 30, 2020.

- ii. One (1) member who would otherwise be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve from the time of appointment until June 30, 2021.
 - iii. One (1) member who would otherwise be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve from the time of appointment until June 30, 2020.
 - iv. One (1) member who would otherwise be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall serve from the time of appointment until June 30, 2021.
 - v. One (1) member who would otherwise be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall serve from the time of appointment until June 30, 2021.
 - vi. One (1) member who would otherwise be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall serve from the time of appointment until June 30, 2021.
- 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. Except as described in Sections 3.b and 3.c of this Executive Order, all persons appointed shall serve three-year terms. With the exception of the Secretary or the Secretary's designated representative, no person shall serve more than eight (8) consecutive years on the Reconstituted Board. Reconstituted Board members may continue to serve until their successors have been appointed.
 - e. Vacancies on the Reconstituted Board occurring for any reason shall be filled by the authority making the original appointment of the person causing the vacancy.
 - f. Each member of the Reconstituted Board, before assuming the duties of office, shall take an oath for the faithful performance of his or her duties.
 - g. Members of the Reconstituted Board who are State officers or employees shall receive no per diem compensation for serving on the Reconstituted Board, but shall be reimbursed for their expenses in accordance with N.C. Gen. Stat. § 138-6. Members of the Reconstituted Board who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Reconstituted Board, but shall be reimbursed for their expenses in accordance with N.C. Gen. Stat. § 138-6 in the same manner as State officers or employees. All other Reconstituted Board members shall receive per diem compensation and reimbursement in accordance with N.C. Gen. Stat. § 93B-5.
 - h. The Reconstituted Board shall elect a chair, vice-chair, and other officers and committee chairs from among its members as the Reconstituted Board deems necessary and desirable at the first meeting occurring after this Executive Order, with each individual so elected to serve a term ending upon the next elections for chair, vice-chair, and other officers and committee chairs during the first meeting after July 1, 2019. Beginning at the first meeting after July 1, 2019, and unless the General Assembly reconvenes and enacts a provision of law which amends the composition of the Reconstituted Board's membership, the chair and vice-chair shall be elected by the members of the Reconstituted Board for a term of one year. Chairs, vice-chairs, and other officers and committee chairs shall be eligible for reelection.
 - i. The Reconstituted Board shall meet at the call of the chair or a majority of the members of the Reconstituted Board at such time, date, and location as may be decided upon by a majority of the Reconstituted Board.

- j. All decisions heretofore made by the Private Protective Services Board, established pursuant to Chapter 74B or N.C. Gen. Stat. § 74C-4, shall remain in full force and effect unless and until repealed or suspended by action of the Reconstituted Board.
- k. The Reconstituted Board shall pay the appropriate state agency for the use of physical facilities and services provided to it by the state.

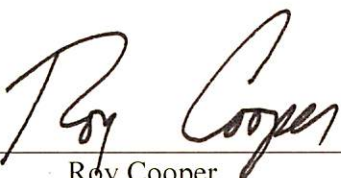
Section 4. Powers and Duties

The Reconstituted Board shall continue to have the same functions, powers, duties, assets, liabilities, and allocation of resources the Private Protective Services Board 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 Private Protective Services Board.

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

