

State of North Carolina

ROY COOPER
GOVERNOR

October 8, 2018

Executive Order No. 72

RECONSTITUTING THE RURAL INFRASTRUCTURE AUTHORITY

WHEREAS, the Rural Infrastructure Authority 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-472.128, which establishes the Rural Infrastructure 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-472.128 and reconstitute the Rural Infrastructure Authority until it reconvenes in special session beginning on November 27, 2018, at the earliest; and

WHEREAS, action is required to ensure the Rural Infrastructure Authority’s continuity and ability to perform its mission of allocating grant funds and developing grant criteria to enhance rural infrastructure, 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 Rural Infrastructure 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-472.128 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 Rural Infrastructure Authority

The Rural Infrastructure Authority (“the Reconstituted Authority”) is hereby reconstituted in compliance with the constitutional commands set forth in the Order. The Reconstituted Authority shall be administered within the North Carolina Department of Commerce (“Commerce”).

Section 2. Appointment and Removal

- a. The Reconstituted Authority shall have, unless amended or rescinded by future Executive Order, sixteen (16) members: nine (9) appointed by the Governor, and six (6) appointed by the General Assembly, along with the Secretary of Commerce (“Secretary”), who shall serve as a nonvoting ex officio member of the Reconstituted Authority, except in the case of a tie. Eleven (11) appointed members and one (1) ex officio member of the Reconstituted Authority are consistent with the composition of the former Rural Infrastructure Authority:
 - i. The Secretary, who shall serve as a nonvoting ex officio member, except in the case of a tie.
 - ii. Three (3) members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and they shall each represent a Tier 1 or Tier 2 county.
 - iii. Three (3) members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and they shall each represent a Tier 1 or Tier 2 county.
 - iv. Nine (9) members appointed by the Governor, and they shall each represent a Tier 1 or Tier 2 county.
- 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(ii)-(iii) of this Executive Order, the Governor, pursuant to N.C. Gen. Stat. § 147-12, shall appoint, from among the previously existing members of the Rural Infrastructure Authority appointed by the General Assembly, six (6) interim members to those positions to ensure the Reconstituted Authority’s continuity and ability to perform its mission of allocating grant funds and developing grant criteria to enhance rural infrastructure, among other duties and responsibilities.
- d. Members may be removed in accordance with N.C. Gen. Stat. § 143B-13. A member who misses three (3) consecutive meetings of the Reconstituted Authority may be removed for nonfeasance.

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

- a. The terms of the 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-472.128.
- b. Members appointed pursuant to Section 2.a(ii)-(iii) and Section 2.c of this Executive Order shall serve the following, interim terms:
 - i. Two (2) members appointed to fill the positions identified in Section 2.a(ii) and one (1) member appointed to fill the position identified in Section 2.a(iii) shall serve from the time of appointment until June 30, 2020.
 - ii. One (1) member appointed to fill the position identified in Section 2.a(ii) and two members appointed to fill the positions identified in Section 2.a(iii) 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-year term lengths.
- d. Terms. – Members shall serve for a term of three (3) years. No member of the Reconstituted Authority shall serve for more than two (2) consecutive terms, but a person who has been an appointed member for two (2) consecutive terms may be reappointed after not serving as a member of the Reconstituted Authority for a period of at least three (3) years. An initial term that was two (2) years or less shall not be counted in determining the limitation on consecutive terms.

- e. Officers. – The Reconstituted Authority members shall select from among the membership of the Reconstituted Authority a person to serve as chair and vice-chair. The chair and vice-chair shall each serve for a term of one (1) year, but may be re-elected to serve successive terms.
- f. Compensation. — Reconstituted Authority members shall receive no salary as a result of serving on the Reconstituted Authority, but are entitled to per diem and allowances in accordance with N.C. Gen. Stat. § 138-5 and N.C. Gen. Stat. § 138-6, as appropriate.
- g. Meetings. – The Secretary shall convene the first meeting of the Reconstituted Authority within thirty (30) days after the appointment of the Reconstituted Authority members under subsection (b) of this section. Meetings shall be held as necessary as determined by the Reconstituted Authority.
- h. Quorum. – A majority of the members of the Reconstituted Authority constitutes a quorum for the transaction of business. A vacancy in the membership of the Reconstituted Authority does not impair the right of the quorum to exercise all rights and to perform all duties of the Reconstituted Authority.
- i. Vacancies. – A vacancy on the Reconstituted Authority shall be filled in the same manner in which the original appointment was made, and the term of the member filling the vacancy shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with N.C. Gen. Stat. § 120-122.
- j. Removal. – Members may be removed in accordance with N.C. Gen. Stat. § 143B-13. A member who misses three consecutive meetings of the Reconstituted Authority may be removed for nonfeasance.

Section 4. Powers and Duties

The Reconstituted Authority has the following powers and duties:

- a. To receive and review applications from local government units for grants or loans authorized under N.C. Gen. Stat. § 143B-472.127.
- b. To award grants or loans as provided in N.C. Gen. Stat. § 143B-472.127. In awarding grants or loans under N.C. Gen. Stat. § 143B-472.127(a), priority shall be given to local government units of the counties that have one of the 80 highest rankings under N.C. Gen. Stat. § 143B-437.08 (“Development tier designation”).
- c. To formulate policies and priorities for grant and loan making under N.C. Gen. Stat. § 143B-472.127, which shall include, among other things, providing for (i) at least four grant application cycles during each fiscal year, (ii) the timely distribution of grants and loans so as to allow local government units to undertake infrastructure and other projects authorized under this Part without undue delay, and (iii) the use of federal funds first instead of General Fund appropriations where the project meets federal requirements or guidelines.
- d. To establish a threshold amount for emergency grants and loans that may be awarded by the Assistant Secretary of Commerce without the prior approval of the Reconstituted Authority. Any emergency grants or loans awarded by the Assistant Secretary of Commerce pursuant to this subdivision shall meet the requirements of N.C. Gen. Stat. § 143B-472.127(a) or (b), and shall comply with policies and procedures adopted by the Reconstituted Authority. The Assistant Secretary of Commerce shall, as soon as practicable, inform the Reconstituted Authority of any emergency grants or loans made under this subdivision, including the name of the local government unit to which the grant or loan was made, the amount of the grant or loan, and the project for which the grant or loan was requested.
- e. To determine ways in which the Rural Economic Development Division can aid local government units in meeting the costs for preliminary project planning needed for making an application for a grant or loan under N.C. Gen. Stat. § 143B-472.127.
- f. To determine ways in which the Rural Economic Development Division can effectively disseminate information to local government units about the availability of grants or loans under N.C. Gen. Stat. § 143B-472.127, the application and review process, and any other information that may be deemed useful to local government units in obtaining grants or loans.

- g. To review from time to time the effectiveness of the grant or loan programs under N.C. Gen. Stat. § 143B-472.127 and to determine ways in which the programs may be improved to better serve local government units.
- h. No later than September 1 of each year, to submit a report to the Senate Appropriations Committee on Natural and Economic Resources, the House Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division that details all of the following:
 - i. Total number of awards made in the previous fiscal year.
 - ii. Geographic display of awards made.
 - iii. Total number of jobs created in the previous fiscal year.
 - iv. Recommended policy changes that would benefit economic development in rural areas of the State.

Section 5. Miscellaneous

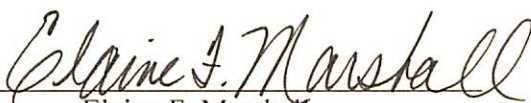
- a. This Executive Order does not conflict with or abrogate existing law.
- b. This Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order of the Governor, or unless the General Assembly reconvenes and enacts a provision of law which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

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

