

# State of North Carolina

**ROY COOPER**  
GOVERNOR

October 8, 2018

Executive Order No. 73

## RECONSTITUTING THE STATE BUILDING COMMISSION

**WHEREAS**, the State Building 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. § 143-135.25, which establishes the structure for the State Building 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. § 143-135.25 and reconstitute the State Building Commission until it reconvenes in session beginning on November 27, 2018, at the earliest; and

**WHEREAS**, action is required to ensure the State Building Commission’s continuity and ability to perform its mission of developing procedures to direct and guide the State’s capital facilities development and management program, 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 State Building 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. § 143-135.25 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 by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

### **Section 1. Reconstituting the State Building Commission**

The State Building Commission (“the Reconstituted Commission”) is hereby reconstituted in compliance with the constitutional commands set forth in the Order. The Reconstituted Commission shall be established within the North Carolina Department of Administration.

## **Section 2. Appointment and Removal**

- a. The Reconstituted Commission 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) appointed members of the Reconstituted Commission are consistent with the composition of the former State Building Commission:
  - i. A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three (3) persons nominated by the North Carolina Chapter of the American Institute of Architects, shall be appointed by the Governor to the Reconstituted Commission.
  - ii. A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three (3) persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, shall be appointed by the General Assembly to the Reconstituted Commission upon the recommendation of the President Pro Tempore of the Senate in accordance with N.C. Gen. Stat. § 120-121.
  - iii. A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three (3) persons nominated by the Carolinas AGC (Associated General Contractors), shall be appointed by the General Assembly to the Reconstituted Commission upon the recommendation of the Speaker of the House of Representatives in accordance with N.C. Gen. Stat. § 120-121.
  - iv. A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three (3) persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, shall be appointed by the Governor to the Reconstituted Commission.
  - v. A public member shall be appointed by the Governor.
  - vi. A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three (3) persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, shall be appointed by the Governor.
  - vii. An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three (3) persons nominated by the Board of Governors of The University of North Carolina, shall be appointed by the Governor to the Reconstituted Commission.
  - viii. A public member who is knowledgeable in the building construction or building maintenance area shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with N.C. Gen. Stat. § 120-121.
  - ix. A representative of local government, chosen from among not more than two (2) persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with N.C. Gen. Stat. § 120-121.
- 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 the among the previously existing members of the State

Building Commission appointed by the General Assembly, four (4) interim members to those positions to ensure the Reconstituted Commission's continuity and ability to perform its mission of developing procedures to direct and guide the State's capital facilities development and management program, among other duties and responsibilities.

- d. 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 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. § 143-135.25.
- b. Members appointed pursuant to Section 2.a(ii), (iii), (viii), and (ix) of this Executive Order 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(ii) shall serve from the time of appointment until June 30, 2020.
  - ii. The member appointed to fill the position identified in Section 2.a(iii) shall serve from the time of appointment until June 30, 2020.
  - iii. The member appointed to fill the position identified in Section 2.a(viii) shall serve from the time of appointment until June 30, 2021.
  - iv. The member appointed to fill the position identified in Section 2.a(ix) shall serve from the time of appointment until June 30, 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 three-year term lengths.
- d. Notwithstanding Section 3.c, members shall be appointed for staggered three-year terms. For the purposes of determining how these terms will be staggered, the terms of members appointed to the Reconstituted Commission pursuant to Section 2.a(i), (ii), and (iii) of this Executive Order shall be deemed to expire June 30, 2020; the initial terms of members appointed pursuant to Section 2.a(iv), (v), and (vi) shall be deemed to expire June 30, 2019; and the initial terms of members appointed pursuant to Section 2.a(vii), (viii), and (ix) shall be deemed to expire June 30, 2021.
- e. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Reconstituted Commission.
- f. Members may serve no more than six (6) consecutive years.
- g. Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with N.C. Gen. Stat. § 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.
- h. The State Construction Office of the Department of Administration shall provide staff to the Reconstituted Commission. The Chair of the Reconstituted Commission shall provide direction to the State Construction Office on its work for the Commission.
- i. The Director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.
- j. The Chair of the Reconstituted Commission shall be elected by the Reconstituted Commission. The Secretary of State shall serve as chair until a chair is elected.

- k. Beginning in 2019, the Reconstituted Commission shall meet at least four (4) times a year on or about January 15, April 15, July 15, and October 15. The Reconstituted Commission shall also meet upon the call of the chair, or upon call of at least five (5) members. The Secretary of State shall call the first meeting within thirty (30) days of the effective date of this Executive Order; the first order of business at the first meeting shall be the election of a chair by the Reconstituted Commission.
- l. Members of the Reconstituted Commission who are not State officers or employees shall receive per diem of one hundred dollars (\$100.00) a day when the Reconstituted Commission meets and shall be reimbursed for travel and subsistence as provided in N.C. Gen. Stat. § 138-5. Members who are state officers or employees shall be reimbursed for travel and subsistence as provided in N.C. Gen. Stat. § 138-6.


**Section 4. Powers and Duties**

The Reconstituted Commission shall have the same functions, powers, duties, assets, liabilities, and allocation of resources that the State Building 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 State Building 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 8<sup>th</sup> day of October, in the year of our Lord two thousand eighteen.

  
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Roy Cooper  
Governor

**ATTEST:**

  
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Rodney S. Maddox  
Chief Deputy Secretary of State

