



# SENATE BILL 381: Reconstitute/Clarify Boards and Commissions.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	December 12, 2019
<b>Introduced by:</b>		<b>Prepared by:</b>	Kristen L. Harris Staff Attorney
<b>Analysis of:</b>	S.L. 2019-32		

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**OVERVIEW:** *S.L. 2019-32 reconstitutes several boards and commissions that were held to have unconstitutionally appointed memberships, makes corrections to remedy those deficiencies, and makes other clarifying changes.*

*This act became effective July 1, 2019. All rules, regulations, and decisions made by the predecessor boards and authorities reconstituted in this act must remain in full force and effect until and unless duly modified by the successor entities.*

**CURRENT LAW & BACKGROUND:** The Clean Water Management Trust Fund (CWMTF) Board of Trustees, the North Carolina Parks and Recreation Authority, the Child Care Commission, the Private Protective Services Board, the Rural Infrastructure Authority, and the State Building Commission were held to be unconstitutionally constituted, pursuant to the holdings in *McCrorry v. Berger* and *Cooper v. Berger*.

## **BILL ANALYSIS:**

### **Part I. Clean Water Management Trust Fund Clarifications**

**Section 1.(a)** rewrites the statutes governing the Clean Water Management Trust Fund (CWMTF) to reconstitute the Board of Trustees and make various other changes. The changes to this Part are as follows:

- Designates "Land and Water Fund" as an alternative name for the CWMTF.
- Allows the CWMTF to receive money from hazard mitigation funds from FEMA and other agencies.
- Clarifies Fund Purposes to prevent encroachment, provide buffers, and preserve natural habitats around military installations, and adds a new purpose to protect and restore floodplains and wetlands.
- Reconstitutes the CWMTF Board and adds removal authority for misfeasance, malfeasance and nonfeasance.
- Provides that 2 appointments are made by the General Assembly upon recommendation of the President Pro Tempore (was 3), 2 are made by the General Assembly upon recommendation of the Speaker (was 3), and 5 are made by the Governor (was 3).
- Adds new development grant criteria, requiring the CWMTF Board to consider:
  - The objectives of basinwide integrated water management plans.
  - The value of preserving water supply capacity by preventing sedimentation and nutrient pollution.

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- The rate and likelihood of land-use change and development.
- The development grant criteria also directs the CWMTF Board to give priority to projects that are part of comprehensive, long-term land-use plans by State agencies, local government units, or a nonprofit corporation dedicated to the conservation of the State cultural, environmental, or natural resources.
- Makes CWMTF employees subject to the North Carolina Human Resources Act.
- Repeals the CWMTF Advisory Council.
- Makes conforming changes throughout.

**Section 1.(b) and Section 1.(c)** make conforming changes.

**Section 1.(d)** repeals the Solid Waste Management Loan Program and Local Government Special Obligation Bond Act. Administration of the program was given to the CWMTF in 2011. This program has never been used or funded.

**Section 1.(e)** directs the CWMTF Board to report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission, the relevant House and Senate Appropriations subcommittees, and the Fiscal Research Division regarding the implementation of Section 1.(a) of this bill no later than July 1, 2020.

## **Part II. North Carolina Parks and Recreation Authority Reconstitution**

**Section 2** reconstitutes the North Carolina Parks and Recreation Authority, which administers the Parks and Recreation Trust Fund (PARTF). It also provides that 2 appointments are made by the General Assembly upon recommendation of the President Pro Tempore of the Senate (was 3), 2 are made by the General Assembly upon recommendation of the Speaker of the House of Representatives (was 3), and 5 are made by the Governor (was 3).

## **Part III. Child Care Commission Reconstitution**

**Section 3** reconstitutes the Child Care Commission. It provides that 9 appointments are made by the Governor (was 7), 4 are made by the General Assembly upon recommendation of the President Pro Tempore of the Senate (was 5), and 4 are made by the General Assembly upon recommendation of the Speaker of the House of Representatives (was 5). It also provides that Commission members may be removed by the Governor for misfeasance, malfeasance, or nonfeasance.

## **Part IV. Private Protective Services Board Reconstitution**

**Section 4** reconstitutes the Private Protective Services Board. It provides that 7 appointments are made by the Governor (was 3), 3 are made by the General Assembly upon recommendation of the President Pro Tempore of the Senate (was 5), and 3 are made by the General Assembly upon recommendation of the Speaker of the House of Representatives (was 5). The Secretary of Public Safety or the Secretary's designated representative continues to serve on the Board.

## **Part V. Rural Infrastructure Authority Reconstitution and Clarification**

**Section 5** reconstitutes the Rural Infrastructure Authority and makes the following changes to it. It increases the membership from 16 to 17 members and provides that the Secretary of Commerce or the Secretary's designee serves as a voting member. It provides that 8 appointments are made by the Governor (was 5), 4 are made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate (was 5), and 4 are made by the General Assembly upon the recommendation of the Speaker of the House of Representatives (was 5).

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## **Part VI. State Building Commission Reconstitution**

**Section 6** reconstitutes the State Building Commission and provides that 5 members are appointed by the Governor (was 3), 2 members are appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate (was 3), and 2 members are appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives (was 3). This section allows the Governor to remove members for misfeasance, malfeasance, or nonfeasance.

**EFFECTIVE DATE:** This act became effective July 1, 2019. All rules, regulations, and decisions made by the predecessor boards and authorities reconstituted in the bill must remain in full force and effect until and unless duly modified by the successor entities.

*\* Staff Attorney Kyle Evans, Legislative Analysis Division, substantially contributed to this summary.*