



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

**1. Rule-Making Agency:**

N.C. Department of the Secretary of State

**2. Rule citation & name:**

18 NCAC 06A .2120 - Sunset Provision

**3. Action:**

☐ Adoption

☒ Amendment

☐ Repeal

**4. Was this an Emergency Rule:**

☐ Yes

Effective date:

☒ No

**5. Provide dates for the following actions as applicable:**

a. Proposed Temporary Rule submitted to OAH: 4/16/2020

b. Proposed Temporary Rule published on the OAH website: April 21, 2020

c. Public Hearing date: 5/4/2020

d. Comment Period: 8 a.m. Monday, April 27, 2020 through 5 p.m. Monday, May 18, 2020

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 4/16/2020

f. Adoption by agency on: 6/1/2020

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: 7/1/2020

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

**6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

☒ A serious and unforeseen threat to the public health, safety or welfare.

☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.

Cite:

Effective date:

☐ A recent change in federal or state budgetary policy.

Effective date of change:

☐ A recent federal regulation.

Cite:

Effective date:

☐ A recent court order.

Cite order:

☐ State Medical Facilities Plan.

☐ Other:

**Explain:**

A Local Public Offering (LPO) is a kind of "crowdfunding" for the benefit of North Carolina businesses. North Carolina is currently the only state offering the LPO path. Although LPO crowdfunding is similar to Kickstarter and other types of crowdfunding, LPOs involve the offer and sale of securities (debt or equity). An LPO is a securities offering issued by a North Carolina business to North Carolina investors. The issuer has 12 months to raise up to \$250,000 in capital. LPO crowdfunding is a way for businesses to raise small amounts of money from a large number of investors.

SEE ATTACHMENT

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The Department has begun permanent rulemaking to extend the LPO Sunset Rules, but the earliest that an amendment can become effective under that process will be the end of this year. NC businesses cannot wait on a permanent rule to do their responsible LPO capital formation because of the economic distress accompanying the pandemic. They need to raise capital through the LPO method as soon as possible. If they have to wait until we complete permanent rulemaking, they will lose many months of fundraising through LPOs.

Paragraphs (a) and (b) of this Rule have different expiration dates that are intertwined and must be updated at the same time. Paragraph (a) has expired. That means the Department cannot currently accept new LPO filings from any businesses. Businesses cannot raise capital using the LPO method without first filing with the Department. By amending this Paragraph through temporary rulemaking, the Department will be able to accept applications as early as July 1, 2020. Under Paragraph (b), the LPO rules are valid until April 2021, but they cannot help any new NC business that was not approved as an LPO issuer before Paragraph (a) expired. Further, unless the deadline in Paragraph (b) is extended through temporary rulemaking, any new applications approved under the temporary amendment in Paragraph (a) would have less than 12 months to raise the necessary capital that is required to potentially build the business into a successful enterprise. A less than 12-month offering will also appear less attractive and more risky to investors, as 12 months is the customary period for securities offerings.

If the temporary rule is approved, the Department can accept new LPO filings as early as July 1, 2020. That means businesses can issue LPOs and raise capital needed now, while the crisis is at its peak.

If the Department relied only on permanent rulemaking, the earliest possible effective date will be in November or December 2020. Businesses will not be able to issue and fundraise with an LPO until then. That is an unnecessary delay in these challenging economic times for North Carolina business.

The Department will also pursue permanent rulemaking for the LPO Sunset Rule. This temporary rule, however, will address the immediate needs of the business community. It will encourage responsible capital formation to assist NC businesses impacted by the economic disruption caused by COVID-19. The temporary rule is necessary, in the public interest and welfare.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒

No

**9. Rule-making Coordinator:**

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**10. Signature of Agency Head\*:**

*Elaine F. Marshall*

**\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

**Typed Name:**

Elaine F. Marshall

**Title:**

Secretary of State

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**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

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**#6. Reason: A serious and unforeseen threat to the public health, safety or welfare.  
Explain. [Continued]**

North Carolina businesses asked for the LPO rules. The rules allow for responsible capital formation exclusively for NC businesses. The rules included a sunset designed to allow evaluation of the innovative LPOs. There are two Paragraphs in Rule 18 NCAC 06A .2120, "Sunset Provision." Paragraph (a) permits the Secretary to accept new LPO filings and Paragraph (b) sets the date for the expiration for all of the LPO rules. There is a 12 month difference between these two dates because 12 months is the period of time in which a business using the LPO rules would solicit investors to invest in the business.

In January 2020, the Department was considering whether or not to extend the Sunset Provision. At about that time, the Department began to receive inquiries regarding the sunset provision from the NC business community. The inquirers were supportive of the LPO rules. They urged the Department to extend the LPO rules.

The Department began work on an extension of the Sunset Provision. Then the COVID-19 pandemic was declared. The Department could not have foreseen the devastating effects of COVID-19 on businesses in March 2020 and since that time. COVID-19 has caused, and will continue to cause, substantial economic disruption to businesses. The Department is seeking to alleviate some of the burdens on small businesses that would avail themselves of LPOs to sustain themselves during these challenging economic times.

1 18 NCAC 06A .2120 is amended under temporary procedures as follows:

2  
3 **18 NCAC 06A .2120 SUNSET PROVISION**

4 (a) The Administrator shall not accept any new Form NCE-LPO or other filing related to a new LPO after April 1,  
5 2020 2025.

6 (b) The rules in this Section shall expire on April 1, ~~2021~~ 2026.

7  
8 *History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);*  
9 *Eff. April 1, 2017 to expire on April 1, 2021.*

10 *Amended eff. July 1, 2020, to expire on April 1, 2026.*