

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0502

**DEADLINE FOR RECEIPT: October 7, 2020**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*At line 1, please update your introductory statement to say "20 NCAC 03 .0502 is amended as published in 35:1 NCR 28 with changes as follows:"*

*Please compare this Rule to the [version in the Code](#). Please show changes to the language in the Code with underlines and strikethroughs as you did in the Register. Since this is an amendment, please show changes made post-publication with highlighting and brackets as described in 26 NCAC 02C .0405(b)(2). An example is available [here](#).*

*Were the changes made post-publication made in response to public comment?*

*In (a), is it necessary to retain the language "from time to time as circumstances require?"*

*At line 7, "this Section" refers to all rules in 20 NCAC 03 .0500. Was that your intent or did you intend to refer to "Paragraph (c) of this Rule?"*

*At line 9, please refer to "Paragraph (c) of this Rule."*

*Just to be clear, the contents of (c)(1)-(8) is language to be copied and pasted into the contract, correct? In other words, this is language that will govern people by virtue of the contract and not directly as a result of this Rule? If yes, since those are contract terms, I simply note the following as comments for (c)(1)-(8) for you to consider.*

*At lines 12-13 and 19, by "generally accepted auditing standards" are you referring to any specific standards? For example, are you referring to the Statements on Auditing Standards issued by the AICPA?*

*At line 16, delete or define "fully."*

*At line 25, please delete or define "clearly."*

*In (c)(4), line 31, please delete or define "sufficient."*

Ashley Snyder  
Commission Counsel

Date submitted to agency: September 23, 2020

*On page 2, line 3, please change “must” to “shall.”*

*In (5)(A), what are “material weaknesses” and “significant deficiencies?” Are these terms defined?*

*In (c)(5)(D), please change “must” to “shall.”*

*Note that “Financial Performance Indicators” and “Financial Performance Indicators of Concern” are defined in this Rule, but those definitions are not part of the requirements and conditions to be included in the contract.*

*In (c)(7), please delete or define “promptly.”*

*In (d), what is “Form LGC-205?” Is this the form promulgated by the Secretary in (a)? Is there a link to access this form?*

*Why is the first sentence in (e) necessary? Does it meet the definition of a “rule” in 150B-2(8a)?*

*If you keep this language, please capitalize “State” if you are only referring to North Carolina. Also, should this read “State’s agency” or “State agency?”*

*In (e), line 31, what “relevant criteria for gathering financial data” are you referring to? Are these criteria in rule?*

*At line 31, please delete or define “timely.”*

*In (e)(1) and (2), please place the “defined term” in quotations.*

*In (e)(1), lines 36-37, please delete “but are not limited to” because it is unnecessary.*

*Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: September 23, 2020

20 NCAC 03 .0502 is adopted as published in 35:1, page 28, with changes, as follows:

**20 NCAC 03 .0502            AUDIT CONTRACT**

(a) The Secretary may promulgate a standard audit contract designed to include the specific requirements in Subdivision (c) of this Rule. The Secretary may revise the standard audit contract from time to time as circumstances require provided that the contract continues to include the requirements of this Section. The requirements may be included in the contract either specifically or by reference to this Section.

(b) ~~Governmental~~ Government units and their independent auditors may submit contracts on their own forms provided that the form includes all requirements, either specifically or by reference, in Subdivision (c) of this Rule.

(c) The following requirements and conditions shall be included in all contracts for ~~governmental~~government units:

(1) The scope of the audit shall include all funds and ledgers of the ~~governmental~~government unit, and the requirement that the audit shall be conducted in accordance with generally accepted auditing standards and shall include such tests of the accounting records and such other procedures (including direct confirmation of tax, utility and other receivables) as are considered by the auditor to be necessary in the circumstances. Exceptions to the scope of the audit may be made only by specific approval of the Secretary or a deputy secretary and only for reasons that are fully explained as to the circumstances of the particular situation.

(2) The audit shall include a review of the internal control system of the ~~governmental~~government unit as provided by generally accepted auditing standards. The auditor shall forward a management letter to the government unit, detailing the auditor's findings and recommendations for improvement. The auditor shall forward a copy of the management letter to the Secretary.

~~(3) Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern.~~

~~(3)(5) The fee for the audit engagement shall be stated. All audit engagement fees and terms shall be clearly stated and shall allow for the computation of a final fee.~~

(4) The auditor shall, after completion of his or her examination, submit to the governing body a report of the audit with as many copies as requested in the contract. The report shall include all funds and ledgers included in the scope of the audit, and an expression of opinion on the financial statements included therein. If the expression of opinion is in any way modified or if an opinion is disclaimed or not included for any reason, sufficient reasons therefor shall be included in the report of audit. Copies of the audit report and any special reports issued as a result of the audit engagement shall be transmitted forthwith to the Secretary.

~~(5) The fee for the audit engagement shall be stated. All audit engagement fees and terms shall be clearly stated and shall allow for the computation of a final fee.~~

~~(5)(6)~~ (6) The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon

as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee must include:

- (A) the description of each finding, including all material weaknesses and significant deficiencies, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- (B) the status of the prior year audit findings;
- (C) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- (D) notification to the governing body that the governing body must develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under Rule 20 NCAC 03 .0508.

The Secretary shall verify auditors' compliance with the presentation requirement of Paragraph (c)(~~6~~5) of this Rule.

~~(6)(3)~~ Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern.

(7) The auditor shall promptly notify the governing body and the Secretary if circumstances disclosed during the audit call for an expanded scope of work by the auditor beyond that indicated by the auditor's audit planning and risk assessment.

(8) No agreement(s) relating to the audit engagement but not attached to and referenced in the audit contract shall be enforceable by any party to said agreement(s).

(d) Form LGC-205 shall be provided for the convenience of those auditors and government units who wish to use the form.

(e) The Commission is the state's agency charged with the duty of advising and assisting government unit officials in all phases of fiscal management, and with promoting sound fiscal management, careful borrowing, and sound debt management practices as described in Rule 20 NCAC 03 .0101. To fulfill these duties, and pursuant to its authority under G.S. 159-34(b), the Commission may establish relevant criteria for gathering financial data to timely assist and identify government units that are facing or may face fiscal management challenges or distress. For purposes of this Section, the following definitions apply:

- (1) Financial Performance Indicators are values derived from information included in the audited financial statements that assist the Secretary in improving the comparability of reporting a given government unit's financial condition and financial performance. These criteria include, but are not limited to, adequacy of a government unit's fund balance; liquidity or the ability to meet short-term

obligations; solvency or the ability to meet long-term obligations; debt service coverage; leverage; and such other indicators of financial condition and financial performance as the Secretary may from time to time establish.

- (2) Financial Performance Indicators of Concern are Financial Performance Indicators with values which may indicate inadequate financial conditions or fiscal management concerns within the government unit.

*History Note: Authority G.S. 159-3(f); 159-34;  
Eff. February 1, 1976;  
Readopted Eff. September 23, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
Amended Eff. November 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0505

**DEADLINE FOR RECEIPT: October 7, 2020**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Since this is a proposed amendment, please update your introductory statement and formatting as described in the technical change requests for Rule .0502 of this Section.*

*In (a), please refer to "Rule .0503 of this Section."*

*Please compare the first sentence in (a) with (b). Are invoices submitted to the Secretary or the Commission for approval? Please review the following sentence from G.S. 159-34(a):*

The audit shall be performed in conformity with generally accepted auditing standards. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval.

*In (a), what do you mean by "Payment before approval is a violation of law." Are you referring to a requirement set in statute or are you setting that requirement here in rule? If the former, please consider adding a cross-reference. If the latter, consider stating this as a requirement: "Invoices shall not be paid prior to approval."*

*In (c)(1)-(5), please do not capitalize the first word for each item in the list since each line ends with a semicolon and not a period.*

*At line 16, for formatting purposes, punctuation is considered part of the word. Please show the addition of the period as shown below.*

~~Secretary~~ Secretary.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: September 23, 2020

20 NCAC 03 .0505 is adopted as published in 35:1, page 30, with changes as follows:

**20 NCAC 03 .0505            AUDIT BILLINGS**

(a) All invoices for services rendered in an audit engagement as defined in Rule 20 NCAC 3 .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law.

(b) Invoices to be approved shall be submitted to the Secretary.

(c) Invoices shall be approved only under the following circumstances:

- (1) There is a valid contract;
- (2) The report of audit has been received;
- (3) The audit billing conforms to the requirements of the contract and of this Section;
- (4) The audit billing shows all calculations necessary to compute the fee from the rates and terms shown in the contract; and
- (5) There are no circumstances known to the Secretary indicating that the audit report may fail to conform to the requirements of the contract and of this Section.

Notwithstanding the above, the Commission may approve interim billings up to a maximum of 75 percent of the ~~last~~ billings for the last annual audit of the subject unit submitted to the Secretary. Provided however, that the Secretary or a deputy secretary may approve a higher or lower amount if he or she finds that such would be more equitable under a particular set of circumstances.

*History Note: Authority G.S. 159-3(f); 159-34;*

*Eff. February 1, 1976;*

*Readopted Eff. September 23, 1977;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;*

*Amended Eff. November 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0508

**DEADLINE FOR RECEIPT: October 7, 2020**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Please update your introductory statement to say: "20 NCAC 03 .0508 is adopted as published in 35:1 NCR 30 with changes as follows:"*

*Since this is an adoption, please do not change the formatting. Changes made post-publication to proposed adoptions are shown with only one level of formatting, underlines and strikethroughs.*

*Were the changes made post-publication made in response to public comment?*

*As used throughout this Rule, please define "significant deficiencies" and "material weaknesses."*

*In (b)(1)(B), please change "must" to "shall" at line 24.*

*At line 27, please delete or define "reasonably."*

*In (c), please delete or define "fully."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: September 23, 2020



20 NCAC 03 .0508 is adopted as published in 35:1, page 30, with changes as follows:

**20 NCAC 03 .0508      RESPONSE TO THE INDEPENDENT AUDITOR’S FINDINGS,  
RECOMMENDATIONS, AND FISCAL MATTERS**

(a) If the governing body of a ~~unit of local government or public authority~~government unit is notified by its independent auditor that the audited financial statements presented to the governing body included one or more significant deficiencies, material weaknesses, other findings or if the auditor determined that Financial Performance Indicators of Concern were identified based on information presented in the audited financial statements, then the governing body shall develop a “Response to the Auditor’s Findings, ~~Recommendations~~Recommendations, and Fiscal Matters” (~~“Response”~~)(“Response”), pursuant to this Rule, signed by a majority of the members of the governing ~~body~~body. ~~The governing body shall and forward a copy of this response~~ submit the Response to the Secretary within 60 days of the auditor’s presentation.

(b) The Response shall address each significant deficiency, material ~~weaknesses~~weakness and other ~~finding(s)~~ audit finding presented to the governing body and shall provide a ~~financial~~ plan to address each Financial Performance Indicator of Concern reported to the governing ~~body~~body. ~~and~~ The Response shall include the following:

(1)      Audit Findings

(A)      A written description of the ~~procedure~~procedure, or process~~process, or action plan~~ developed by the ~~local government~~government unit to address each finding, including all material weaknesses and significant deficiencies, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successors.

(B)      The description must provide specific and detailed steps with measurable results ~~sufficient detail~~ that allow the governing body ~~and the auditor to conclude~~ can determine that the ~~procedure~~procedure, or process~~process, or action plan~~ as implemented and followed by the staff of the government unit, will reasonably address the specific audit finding, ~~and is being properly implemented~~. The description may include such information as the date for implementation, the position titles responsible for implementation, ~~the~~ positions performing the procedures or processes, ~~the~~ frequency of performance, and other matters necessary to evaluate the success of the procedure or process.

(2)      Financial Performance Indicators of Concern

(A)      A written description of the ~~plan~~procedure, process, or action plan developed by the ~~governing body~~government unit to address each Financial Performance Indicator of Concern.

(B)      The ~~plan~~description must provide ~~sufficient details~~specific and detailed steps with measurable results that allow the governing body to ~~and the auditor can determine~~ conclude that it will reasonably address ~~the~~ each specific Financial Performance

~~Indicator(s)~~Indicator of Concern. The description may include such information as the time period required for improvement, any governing body action required for implementation, the steps to increase revenue or reduce expenses, the frequency of performance evaluation, and other matters necessary to evaluate the success of the plan.

~~(c) (C)~~ If the governing body disagrees with an audit finding, it shall fully describe its disagreement and explain the factors that support this ~~determination.~~ determination in its Response.

*History Note: Authority G.S. 159-3(f); 159-34;  
Eff. November 1, 2020.*