



Delaware Auditor of Accounts

GASB Entity Determination Analysis Memo

Delaware Transportation Authority, Transportation Trust Fund, and Delaware Transit Corporation

FSF User FSF User FSF user	Transportation Authority – Blended CU of the State DTC – Blended CU of the Transportation Authority TTF – Part of the Transportation Authority
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To complete our entity determination analysis, the Office of Auditor of Accounts (AOA) reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 –¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- *June 30, 2012 State of Delaware Comprehensive Annual Financial Report (CAFR)*
- *June 30, 2013 and 2012 Financial Statements – Delaware Transportation Authority and Transportation Trust Fund*
- *June 30, 2013 and 2012 Financial Statements – Delaware Transit Corporation*
- *2 Del. C. c. 13 – Delaware Transportation Authority*
- *2 Del. C. c.14 – Transportation Trust Fund*

NOTE: The analysis below is based on the documents/guidance reviewed, as detailed above. Additional information or legal interpretations of the portions of the Delaware Code reviewed could impact the analysis and impact a decision on the proper accounting treatment for the entity. The decision of what the appropriate accounting treatment is for the entity, based on a review of all applicable guidance/information, is solely the responsibility of management. As such, AOA does not make such conclusions herein.

In the current financial statement presentation, the Delaware Department of Transportation (DeIDOT) blends the activities of the Delaware Transportation Authority (Transportation Authority) into the DeIDOT financial statements. The Transportation Authority includes the activities of both the Transportation Trust Fund (TTF) and the Delaware Transit Corporation (DTC). This memo analyzes the Transportation Authority, THE TTF, and DTC. The reporting structure of the Transportation Authority is illustrated below.

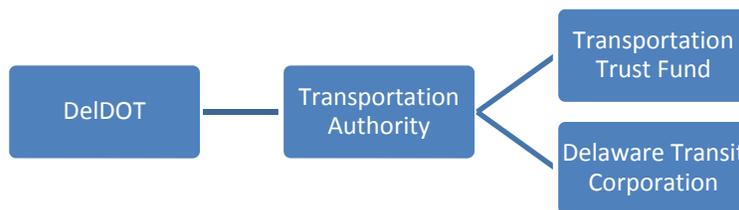


Figure 1: Transportation Authority Hierarchy



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1. *Transportation Authority and DTC - The PCU is legally separate. (§ 15)¹
 TTF - The PCU is not legally separate from the Transportation Authority (thus is a part of the State).*
2. *TTF – The PG holds the PCU’s corporate powers.*

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government.

Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name.

The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

Application to the Transportation Authority

The Transportation Authority is established as a body corporate and politic and a public instrumentality of the State, to be known as the “Delaware Transportation Authority” (2 Del. C. §1304 (a)).

The Transportation Authority has the right to sue in its own name, as well as the power to acquire, by purchase, lease, assignment, gift or otherwise any land or personal property for any transportation facility. The Transportation Authority may also manage, operate, sell, lease, or otherwise dispose of real and personal property acquired by the Transportation Authority (2 Del. C. §1309 (4) and (10)).

Application to DTC

The Transportation Authority is authorized to create or abolish a subsidiary corporation called the "Delaware Transit Corporation" to be the parent corporation of all subsidiaries created pursuant to this section to provide public transit services. DTC is declared to be a public benefit corporation constituting a public instrumentality of the State exercising public and essential governmental functions (2 Del. C. §1307 (a)). Thus, the DTC is legally separate from the Transportation Authority.

¹ Paragraph references are from GASB 14, as amended by GASB 61.



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Application to the TTF²

The Transportation Trust Fund Act created the TTF under the Transportation Authority, so TTF is not legally separate from the Transportation Authority. The TTF was created because the General Assembly determined that an additional means to finance the maintenance and development of the integrated highway, air and water transportation system (2 Del. C. §1402). The TTF is a special fund in which one or more accounts may be established to pay the taxes, fees, charges, tolls and revenues credited to the TTF. The Transportation Authority may transfer money from the TTF to a special fund of the State to meet obligations of the State (2 Del C. §1404).

Code excerpts are as follows:

2 Del. C. §1304. Established; Director.

- (a) There is hereby established a body corporate and politic, to be known as the “Delaware Transportation Authority.” The Authority shall be a public instrumentality of the State exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter is hereby determined to be an essential governmental function of the State in order to create an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State. The exercise of power by the Authority pursuant to this chapter is hereby mandated by the State as sovereign, it being the intention of the State to displace competition with regulation or monopoly public service.

2 Del. C. §1309. Powers.

The Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, to be exercised through the written approval of the Secretary, including, but without limiting the generality of the foregoing, the power to:

- (4) Sue in its own name;
- (10) Manage, operate, sell, lease, convey, enter into management contracts, grant options or exclusive licenses, or otherwise dispose of real and personal property acquired by the Authority, for such consideration and upon such terms as the Authority may determine to be reasonable

2 Del. C. §1307. Subsidiaries.

- (a) The Authority may create or abolish 1 or more subsidiary corporations and grant to such subsidiaries any or all of the powers to perform the duties, functions or activities granted by this

² Since the TTF is not legally separate from the Delaware Transportation Authority, it was not included in the additional evaluation contained in this memo.



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chapter to the Authority necessary or convenient to execute the powers and duties and to undertake the functions and activities granted by this chapter to the Authority with respect to any transportation facilities including but not limited to public transportation facilities and specialized transportation facilities except as proscribed by this section.

The Authority is authorized to create or abolish a subsidiary corporation called the "Delaware Transit Corporation" to be the parent corporation of all subsidiaries created pursuant to this section to provide public transit services. The Delaware Transit Corporation is declared to be a public benefit corporation constituting a public instrumentality of the State exercising public and essential governmental functions. The Delaware Transit Corporation and its public transportation services subsidiaries shall be under the direction and supervision of a Director who shall be appointed by the Secretary, with the written approval of the Governor, and who shall serve at the pleasure of the Secretary. The Director of the Delaware Transit Corporation may appoint a Deputy Director.

Each subsidiary shall have all the privileges, immunities, tax exemptions and other exemptions of the Authority. A subsidiary shall be created by filing with the Secretary of State a certificate of incorporation. Such certificate shall be filed by the Secretary. Such certificate shall set forth (1) the name of the subsidiary; (2) the address of the subsidiary; (3) the term of existence of the subsidiary; (4) the name of the original administrator of the subsidiary; (5) the purposes of the subsidiary; (6) the powers of the subsidiary granted by the Authority; and (7) such other matters as the Secretary may deem appropriate. If the Authority shall determine that 1 or more of its subsidiaries shall be a public benefit corporation, constituting a public instrumentality of the State exercising public and essential governmental functions, such certificate shall make such recital and such subsidiary shall be a body politic and corporate of the State.

The Authority shall have no power or right (1) to grant any subsidiary the power to issue bonds, notes or other obligations of the subsidiary evidencing an obligation of the subsidiary to repay borrowed money, except that any subsidiary may borrow money for operating expenses for no more than 12 months in such amounts as may be approved in writing by the Secretary; or (2) to grant, donate, pledge, assign or otherwise transfer or create an obligation to transfer any revenues of the Authority derived from the operation of the Delaware Turnpike.

Chapter 69 of Title 29 shall not apply to any contracts between any subsidiary and an agency or department of the State or any of its political subdivisions. Except as otherwise provided by law, all agencies and departments of the State and any of its political subdivisions that contract with subsidiaries for service shall provide payment for such services at least 1 month prior to the rendering of such service. Subsidiaries will provide such agencies a status of their respective accounts on a monthly basis.



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2 Del. C. §1402. Legislative findings and determinations.

- (a) The General Assembly hereby reaffirms all the findings made by the General Assembly in §1302(a) of this title.
- (b) The General Assembly further finds, that, in addition to the creation of the Delaware Transportation Authority and the grant of powers to the Authority by Chapter 13 of this title, there is a growing urgency to provide additional means to finance the maintenance and development of the integrated highway and air and water transportation system in the State for the economic benefits of the State and for the welfare and safety of the users of this transportation system.
- (c) The General Assembly hereby determines that in order to provide additional means to finance this transportation system for the benefit of the State and the users of this transportation system, there shall be created a Transportation Trust Fund in the Authority and the Authority shall be granted the following powers, duties and functions relating to the management and disposition of receipts in the Transportation Trust Fund; and that the powers, duties and functions conferred on the Authority by this chapter constitute a valid public purpose and are necessary and proper for the purposes to be achieved by the Authority under this chapter; and that the expenditure of funds authorized by this chapter are for a valid public purpose and public use.

2 Del. C. §1404. Establishment of Transportation Trust Fund.

There is hereby established in the Authority a fund to be known as the "Transportation Trust Fund." Except as otherwise provided by contract between the Authority and the holders of bonds of the Authority and excluding the receipts and revenues of subsidiary corporations of the Authority, all taxes, fees, charges, tolls, reimbursements and revenues collected or received by or paid or appropriated to the Authority and any amounts received from the Corps of Engineers in connection with the construction or reconstruction of a bridge in the area of the St. Georges Bridge shall be credited to the Transportation Trust Fund. In addition, the proceeds of bonds issued by the Authority and supported by a pledge or other interest in the money in the Transportation Trust Fund shall be held in or for the Transportation Trust Fund. The Transportation Trust Fund shall be deemed to be a special fund. There may be established in the Transportation Trust Fund 1 or more accounts to which shall be credited and from which there shall be paid the taxes, fees, charges, tolls and revenues credited to the Transportation Trust Fund. The Authority may transfer money from the Transportation Trust Fund to a special fund of the State to meet obligations of the State payable from the Transportation Trust Fund. No such money credited to the Transportation Trust Fund, or any account in the Transportation Trust Fund, shall be available to pay any bonds issued by the Authority pursuant to any trust agreement or other contract entered into by the Authority prior to the creation of the Transportation Trust Fund unless the Authority specifically agrees to the contrary after the adoption of this chapter. Nothing in this chapter shall adversely affect the security of any bonds issued by the Authority pursuant to a trust agreement dated as of September 1, 1979, as amended, between the



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Authority and the trustee for holders of bonds secured thereunder or pursuant to a trust agreement dated as of September 1, 1981, as amended, between the Authority and the trustee for holders of bonds secured thereunder. Notwithstanding other provisions of the Delaware Code, transfers from the Transportation Trust Fund to other public agencies for projects approved in the annual Capital Improvements Act shall not require the approval of the Budget Commission or be subject to Chapter 69 of Title 29. Projects for which Transportation Trust Fund appropriations are provided in the Suburban Street, Drainage and Miscellaneous funding category in the annual Capital Improvements Act shall, whenever the prevailing wage provisions of §6960 of Title 29 would otherwise be applicable, be subject to the "highway construction" rate developed through the regulatory process implementing §6960 of Title 29.

3. *Transportation Authority and DTC - The PG appoints the majority of the PCU’s board. (§22-24)*

According to GASB, if a primary government appoints a simple majority of the organization’s governing board, it usually has a voting majority. However, if financial decisions require the approval of more than a simple majority, the primary government is not accountable for the organization.

For purposes of determining whether accountability exists, a primary government’s appointment authority should be substantive. In some cases the appointment authority of a primary government’s officials may be limited by a nomination process. For example, state statutes or local ordinances may require a primary government to select its appointees from a slate of candidates provided by one or more individuals or groups other than the primary government’s officials or appointees. A primary government’s appointment authority is not substantive if the number of candidates is severely limited by the nominating process, for example, if a primary government must select three appointees from a single slate of five candidates. Additionally, a primary government’s appointment authority may not be substantive if its responsibility is limited to confirming appointments made by individuals or groups other than the primary government’s officials or appointees.

In most instances, legal provisions for appointment of an organization’s officials also provide for continuing appointment authority. However, in the absence of continuing appointment authority, the ability of a primary government to unilaterally abolish an organization also provides the basis for ongoing accountability. Thus, a primary government that creates an organization (creation is tantamount to the initial appointment of the governing body) is accountable for the organization if the primary government can unilaterally abolish it. A primary government is considered to be accountable for an organization as long as continuing appointments are made by the primary government, even if those appointments are made by a subsequent administration.

Application to the Transportation Authority

The Delaware Code does not mention a governing board of the Transportation Authority; however, it states that all action by the Transportation Authority shall be taken by resolution of the Secretary of Transportation, the Director of the Office of Financial Management and Budget, and the Administrator of



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the Transportation Trust Fund (2 Del. C. §1304 (b)). The Administrator of the Transportation Trust Fund shall be appointed through the written approval of the Secretary of Transportation (2 Del. C. §1309 (16)). Further, the Secretary of Transportation is appointed by the Governor.

Application to DTC

DTC is operated by a Director who is appointed by the Secretary of Transportation. The Secretary is appointed by the Governor. No other oversight board exists for DTC (2 Del. C. §1307 (a)).

Code excerpts are as follows:

2 Del. C. §1304. Established; Director.

- (b) All action by the Authority shall be taken by resolution of the Secretary, the Director of the Office of Financial Management and Budget and the Administrator of the Transportation Trust Fund.

2 Del. C. §1309. Powers.

The Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, to be exercised through the written approval of the Secretary, including, but without limiting the generality of the foregoing, the power to:

- (16) Appoint and fix the salary of the administrator of any administration or subsidiary created pursuant to this chapter;

2 Del. C. §1307. Subsidiaries.

- (a) The Authority may create or abolish 1 or more subsidiary corporations and grant to such subsidiaries any or all of the powers to perform the duties, functions or activities granted by this chapter to the Authority necessary or convenient to execute the powers and duties and to undertake the functions and activities granted by this chapter to the Authority with respect to any transportation facilities including but not limited to public transportation facilities and specialized transportation facilities except as proscribed by this section.

The Authority is authorized to create or abolish a subsidiary corporation called the "Delaware Transit Corporation" to be the parent corporation of all subsidiaries created pursuant to this section to provide public transit services. The Delaware Transit Corporation is declared to be a public benefit corporation constituting a public instrumentality of the State exercising public and essential governmental functions. The Delaware Transit Corporation and its public transportation services subsidiaries shall be under the direction and supervision of a Director who shall be appointed by the Secretary, with the written approval of the Governor, and who shall serve at the



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pleasure of the Secretary. The Director of the Delaware Transit Corporation may appoint a Deputy Director.

[The remaining details of this legislation are included under section one of this entity determination analysis. See pages 3 and 4.]

**6. Transportation Authority and DTC – There is a financial benefit/burden relationship. (§ 27-33)
 The PG is also able to impose its will on the PCU. (§25-26)**

Financial Benefit to or Burden on a Primary Government

According to GASB, an organization can provide a financial benefit to, or impose a financial burden on, a primary government in a variety of ways. The benefit or burden may result from legal entitlements or obligations, or it may be less formalized and exist because of decisions made by the primary government or agreements between the primary government and a component unit. If a primary government appoints a voting majority of an organization’s officials or if the organization is fiscally dependent on the primary government *and* there is a potential for those organizations either to provide specific financial benefits to, or to impose specific financial burdens on, the primary government, the primary government is financially accountable for those organizations. An organization has a financial benefit or burden relationship with the primary government if, for example, *any one* of these conditions exists:

- a. The primary government is legally entitled to or can otherwise access the organization’s resources.
- b. The primary government is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, the organization.
- c. The primary government is obligated in some manner for the debt of the organization.

Exchange transactions between organizations and the primary government should not be considered manifestations of a financial benefit or burden relationship. In an exchange transaction, such as a purchase or sale of goods or services, each participant (the government or its employees rather than the citizenry) directly receives and sacrifices value. For example, funding by a primary government for higher education is not equivalent to purchasing educational services and would be considered a manifestation of a financial burden on the primary government.

The effect of the financial benefits or burdens on the primary government can be either direct or indirect. A direct financial benefit or burden occurs when the primary government itself is entitled to the resources or is obligated for the deficits or debts of the organization. An indirect benefit or burden exists if one or more of the primary government’s component units is entitled to the resources or is obligated for the deficits or debts of the organization. For purposes of this Statement, a financial benefit or burden



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relationship exists if the primary government is either directly or indirectly entitled to the resources or is either directly or indirectly obligated for the deficits or debts of an organization.

Legally Entitled to or Can Otherwise Access the Organization’s Resources. The ability to access the resources of an organization—not necessarily whether there was an actual transaction during the period—is the important factor for determining when a primary government is entitled to an organization’s resources. However, the ability to access the resources of an organization should be judged in light of the organization as a going concern; that is, a residual interest in the net assets of an organization in the event of dissolution is not equivalent to being entitled to its resources. If a primary government appoints a voting majority of an organization’s officials *and* is legally entitled to or can otherwise access the organization’s resources, the primary government is financially accountable for that organization.

Resources may flow from a component unit to a primary government for several reasons. Some organizations may operate activities, such as off-track betting or lotteries, for the principal purpose of generating net revenues that are accessible to the primary government. These organizations provide financial benefits to the primary government. Other organizations may operate activities (for example, public utilities) for the purpose of providing basic public services and charge rates sufficiently high to also provide a financial benefit to the primary government. These benefits may be characterized as “payments in lieu of taxes” or “contributions,” or they may simply be amounts remitted on request of the primary government. These organizations also provide financial benefits to the primary government.

Legally Obligated or Has Otherwise Assumed the Obligation to Finance the Deficits of, or Provide Financial Support to, the Organization. A primary government may be obligated to finance the deficits of, or provide financial support to, an organization in different ways. It could be legally obligated to do so, or it may choose to do so for a variety of reasons. If a primary government appoints a voting majority of an organization’s officials *and* is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, that organization, the primary government is financially accountable for that organization. The following are examples of financial burdens assumed by a primary government in support of certain organizations:

- a. Some organizations provide public services financed by user charges that are not expected to be sufficient to sustain their operations. This situation often results from providing services such as mass transit, higher education, and healthcare. In these cases, public policy may dictate that a state or local government provide financial support to the organization to increase the availability and affordability of the service to a broader segment of the citizenry. Examples of support include annual appropriations to help meet operating expenditures/expenses, periodic capital grants, and direct payment of capital expenditures or debt service.
- b. A primary government may assume an obligation to finance the deficits of an organization. These deficits may or may not be expected to recur annually. A financial burden exists if the primary government is obligated to finance an organization’s deficits even though there has not been, and may never be, a deficit to subsidize.



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Some organizations' operations are fully or partially funded by revenues generated through tax increment financing. Legally separate development or redevelopment authorities sometimes receive the incremental taxes that result from a tax increment financing arrangement. When this is done, *a taxing government temporarily waives its right to receive the incremental taxes from its own levy*. The incremental taxes instead are remitted to the separate organization. For purposes of this Statement, this type of tax increment financing should be considered evidence of an obligation to provide financial support to an organization (a financial burden), regardless of whether the primary government collects the taxes and remits them to the organization or the incremental taxes are paid directly to the organization.

Obligated in Some Manner for the Debt of an Organization. An obligation for the debt of an organization is similar to the notion that a primary government may be obligated for future operating deficits. The obligation can be either expressed or implied. A primary government is obligated in some manner for the debt of an organization if (a) it is legally obligated to assume all or part of the debt in the event of default or (b) it *may* take certain actions to assume secondary liability for all or part of the debt, *and* the government takes, or has given indications that it will take, those actions. Conditions that indicate that a primary government is obligated in some manner include:

- a. The primary government is *legally obligated* to honor deficiencies to the extent that proceeds from other default remedies are insufficient.
- b. The primary government is *required* to temporarily cover deficiencies with its own resources until funds from the primary repayment source or other default remedies are available.
- c. The primary government is *required* to provide funding for reserves maintained by the debtor organization, or to establish its own reserve or guarantee fund for the debt.
- d. The primary government is *authorized* to provide funding for reserves maintained by the debtor organization or to establish its own reserve or guarantee fund *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- e. The primary government is *authorized* to provide financing for a fund maintained by the debtor organization for the purpose of purchasing or redeeming the organization's debt, or to establish a similar fund of its own, *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- f. The debtor government explicitly indicates by contract, such as the bond agreement or offering statement, that in the event of default the primary government *may* cover deficiencies although it has no legal obligation to do so. That is, the bond offering statement may specifically refer to a law that authorizes the primary government to include an appropriation in its budget to provide funds, if necessary, to honor the debt of the organization.



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- g. Legal decisions within the state or previous actions by the primary government related to actual or potential defaults on another organization's debt make it *probable* that the primary government will assume responsibility for the debt in the event of default.

If a primary government appoints a voting majority of an organization's officials *and* is obligated in some manner for the debt of that organization, the primary government is financially accountable for that organization.

Imposition of Will

A primary government that is accountable for an organization because it appoints a voting majority of that organization's governing body frequently has the ability to affect that organization's operations. Sometimes, however, based on the provisions of law or contract, the primary government has little influence over the organization's operations. Certain conditions indicate the primary government's ability to affect the day-to-day operations of an organization. These conditions are referred to in this Statement as a government's ability to impose its will on an organization. If a primary government appoints a voting majority of an organization's officials *and* has the ability to impose its will on the organization, the primary government is financially accountable for that organization.

A primary government has the ability to impose its will on an organization if it can significantly influence the programs, projects, activities, or level of services performed or provided by the organization. The existence of any one of the following conditions clearly indicates that a primary government has the ability to impose its will on an organization:

- a. The ability to remove appointed members of the organization's governing board at will.
- b. The ability to modify or approve the budget of the organization.
- c. The ability to modify or approve rate or fee changes affecting revenues, such as water usage rate increases.
- d. The ability to veto, overrule, or modify the decisions (other than those in b and c) of the organization's governing body.
- e. The ability to appoint, hire, reassign, or dismiss those persons responsible for the day-to-day operations (management) of the organization.

Other conditions may also indicate that a primary government has the ability to impose its will on an organization. In determining whether imposition of will exists, a distinction should be made between substantive approvals and ministerial (or compliance) approvals as discussed in paragraphs 17 and 18.



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Application to the Transportation Authority

The State provides financial support to the Transportation Authority. The primary funding of the TTF comes from motor fuel taxes, motor vehicle document fees, motor vehicle registration fees, and other transportation-related fees, which are imposed and collected by the State and transferred to the TTF. The State has irrevocably pledged, assigned, and continuously appropriated to the TTF these taxes and fees. The other major sources of revenue for the TTF are the Delaware Turnpike and the Delaware SR-1 Toll Roads, both of which the Transportation Authority owns and operates. The Transportation Authority may apply Trust Fund revenue for transportation projects, subject to the approval of the State, and may pledge any or all of this revenue to secure financing for these projects (2 Del. C. §1310 (b)).

The Delaware Code states that bonds issued by the Transportation Authority shall not constitute a debt or liability of the State or a pledge of the faith and credit of the State, repealing the statute which allowed the Transportation Authority to secure bonds with the full faith and credit of the State. According to the TTF's financial statements for the year ended June 30, 2013, the Transportation Authority had approximately \$246,000 in general obligation bonds, which are secured by the full faith and credit of the State. Once these bonds fully mature in Fiscal Year 2015, the State will not be obligated for the bonds of the Transportation Authority (2 Del. C. §1315). The Delaware Code further states that any obligations incurred by the Transportation Authority pursuant to an operating budget deemed adopted by the Transportation Authority shall be binding on the Transportation Authority (2 Del. C. §1417). The General Assembly may also dissolve the Transportation Authority on condition that the Transportation Authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations (2 Del. C. §1304 (c)).

The State may impose its will on the Transportation Authority because the General Assembly must approve the Transportation Authority's budget each fiscal year before its adoption by the Transportation Authority (2 Del. C. §1320 (f)). Although GASB only requires the existence of one imposition of will criteria, it is important to add that the Transportation Authority holds the ability to modify or approve its fares, fees, rates, rentals and tolls. The Transportation Authority's power to review and revise such tolls, fares, rents, rates and other charges shall not be subject to supervision or regulation by any department, division, commission, board, council, bureau or agency of the State (2 Del. C. §1310 (a) and (e)).

Application to DTC

The Transportation Authority provides operational subsidies each year to DTC which equals approximately 60% of DTC's total operating expenditures.

DTC also meets two of the imposition of will criteria. The Director of the DTC is appointed by the Secretary of Transportation, with written approval of the Governor, and shall serve at the pleasure of the Secretary (2 Del. C. §1307 (a)). Thus, the State has the ability to remove appointed members of the organization's governing board.



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DTC's budget was also included in the Fiscal Year 2014 Delaware Budget Bill. This gives the State the ability to modify or approve the budget for DTC.

Code excerpts are as follows:

2 Del. C. §1310. Revenues.

(b) The State hereby irrevocably pledges and assigns the motor fuel taxes imposed pursuant to Chapter 51 of Title 30, as amended, and the annual motor carrier registration fees imposed pursuant to §5211(a) of Title 30, as amended, collected by the State and deposited to the credit of the Authority to pay principal of, premium, if any, and interest on bonds of the Authority issued to finance the cost of transportation facilities as provided below. The State shall transfer all motor fuel taxes, and the annual motor carrier registration fees, as defined herein and in §5206 of Title 30, as amended, to the Authority for deposit into a motor fuel tax collection fund and a motor carrier registration collection fund. The Authority shall apply motor fuel taxes, and annual motor carrier registration fees, in the following order and for the following purposes, to the extent such revenues are available.

- (1) To pay principal of, premium, if any, and interest on bonds of the Authority issued subsequent to the effective date of this section, as amended, to finance costs of transportation facilities described in subdivisions (2) and (3) of §1312 of this title, as amended;
- (2) To pay any amounts that may be owing to a debt service reserve fund established by resolution or trust indenture of the Authority to secure the payment of bonds issued subsequent to the effective date of this section, as amended, for projects described in subdivisions (2) and (3) of §1312 of this title, as amended; and
- (3) To pay the remainder of the motor fuel taxes to the operating fund created by the Authority pursuant to a trust agreement dated as of September 1, 1979, between the Authority and the trustee for bonds issued under that trust agreement for application in the same manner as revenues derived from the Delaware Turnpike.

2 Del. C. §1315. Credit of State not pledged to Authority bonds.

Bonds issued by the Authority under this chapter shall not constitute a debt or liability of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but such bonds, unless refunded by bonds of the Authority authorized by this chapter, shall be payable solely from funds and property pledged, assigned or available for their payment as specifically authorized in the resolution authorizing such bonds or in the trust indenture securing such bonds. All bonds shall contain on the face thereof a statement to the effect that the Authority is obligated to pay such bonds and the interest thereon only from revenues or other specifically pledged property, and that neither the State nor any political subdivision thereof is



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obligated to pay the bonds or the interest thereon and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out this chapter, other than for the issuance of general obligation bonds by the State, shall be payable solely from funds provided under this chapter and nothing in this chapter shall be construed to authorize the Authority to incur indebtedness or any liability on behalf of or payable by the State or any political subdivision thereof.

2 Del. C. §1417. Budget of Authority.

The expenditures of the Authority from the Transportation Trust Fund, including expenditures required to be made by resolutions or trust agreements made or to be made by the Authority, shall be approved annually by the General Assembly. The obligations under any such resolution or trust agreement shall be met solely from motor fuel taxes, motor vehicle document fees, motor vehicle registration fees, motor carrier road use taxes and registration fees, the moneys transferred or disbursed to the Transportation Trust Fund pursuant to §307 of Title 21, receipts and revenues derived from the Delaware Turnpike and any other receipts and revenues of the Authority pledged and assigned to the holders of bonds of the Authority. The budget for capital and operating expenditures of the Authority payable from the Transportation Trust Fund shall be presented annually by the Authority to the General Assembly. If the General Assembly does not approve the operating budget of the Authority prior to July 1 for the year such budget is submitted, the operating budget, as submitted to the General Assembly, shall be deemed adopted by the Authority until such time as the budget is approved by the General Assembly, provided that the operating expenditures of the Authority shall not exceed similar expenditures of the Authority for the year prior to the budget year by more than a factor equal to the Consumer Price Index as defined in §1320(f) of this title. Any obligations incurred by the Authority pursuant to an operating budget deemed adopted by the Authority shall be binding on the Authority. Failure by the General Assembly to approve the capital or operating budget of the Authority shall not affect or impair the obligation of the Authority to meet its obligations to holders of outstanding bonds. The provisions of Chapter 84 of Title 29, including the establishment of priorities for spending state funds, shall apply to available money and bonding capacity in the Transportation Trust Fund for highway projects. The Authority’s annual budget as prepared and approved shall reflect that a significant objective of this chapter is to achieve adequate funding and predictable implementation of the Department of Transportation’s Capital Improvement Program and other needs of the transportation system.

2 Del. C. §1304. Established; Director.

- (c) The Authority may be dissolved by an act of the General Assembly on condition that the Authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the Authority, all property, funds and assets thereof shall be vested in the State.



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2 Del. C. §1320. Special provisions relating to Delaware Turnpike.

- (f) A budget for each fiscal year of the Authority shall be prepared by the Authority and submitted to the General Assembly at the same time the State prepares and submits its annual budget appropriation bill to the General Assembly. The annual budget shall show, among other things, the operating expenses of the Authority for each subsidiary, and the estimated amount required to be deposited in various funds created by any resolution pursuant to which bonds have been issued or any trust indenture securing such bonds, including but not limited to an operating fund. The budget shall be approved by the General Assembly before its adoption by the Authority.

In approving the budget of the Authority, the General Assembly shall not:

- (1) Approve an amount for operating expenses of the Delaware Turnpike less than the amount actually incurred as operating expenses for the Delaware Turnpike in the last prior fiscal year of the Authority, plus an inflation factor equal to the United States Consumer Price Index (CPI) or successor indices, annualized at November of the year prior to the year for which such budget is prepared, unless the budget prepared by the Authority requests a lesser amount.
- (2) Approve an amount for application to pay debt service on bonds and an amount to meet any debt service reserve fund requirement less than the amounts required, by any resolution of the Authority pursuant to which bonds of the Authority are issued or pursuant to a trust indenture pursuant to which bonds are secured, to pay debt service on bonds and to meet any debt service reserve requirements.

If the General Assembly does not approve the budget of the Authority prior to July 1 for the year such budget is submitted, the budget, as submitted to the General Assembly, shall be adopted by the Authority until such time as a budget is approved by the General Assembly. Any obligations incurred by the Authority pursuant to an adopted budget shall be binding.

2 Del. C. §1310. Revenues.

- (a) The Authority may make and enforce such rules and regulations and establish, fix and revise from time to time, and charge and collect (or authorize by contract, franchise, lease or otherwise, the establishment, fixing, revising, changing, charging and collecting of) such charges, fares, fees, rates, rentals and tolls for the use of any transportation facility, or parts or sections thereof, operated by the Authority, as the Authority may deem necessary, proper, desirable or reasonable, subject to this chapter. The Authority may contract with any person desiring the use of any part of such transportation facilities, including rights-of-way for placing thereon, telephone, telegraph, electric light or power lines, gas stations, garages, restaurants and advertisements or for any other purposes, and fix the terms, conditions, charges, fares, fees, rates, rentals and tolls for such use. Such charges, fares, fees, rates, rentals and tolls shall be so fixed and changed from time to time



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in respect to the aggregate of charges, fares, fees, rates, rentals and tolls from any such transportation facility in order to provide a fund sufficient with other available revenues, if any:

- (1) To pay the operating expenses of the Authority with respect to such transportation facility;
 - (2) To pay the principal of premium, if any, and interest on bonds of the Authority issued under this chapter, including bonds issued to refund such bonds at or prior to maturity thereof, and bond financing costs, with respect to such transportation facility; and
 - (3) To provide operating and debt service reserve funds of such character and amount as the Authority shall determine to be necessary to ensure proper maintenance of such transportation facility and to protect the holders of such bonds.
- (e) The Authority’s power to review and revise such tolls, fares, rents, rates and other charges shall not be subject to supervision or regulation by any department, division, commission, board, council, bureau or agency of the State or any political subdivision thereof. The Authority will consider the purposes of this chapter when establishing such charges, fares, fees, rates, rentals and tolls.

2 Del. C. §1307. Subsidiaries.

- (a) The Authority may create or abolish 1 or more subsidiary corporations and grant to such subsidiaries any or all of the powers to perform the duties, functions or activities granted by this chapter to the Authority necessary or convenient to execute the powers and duties and to undertake the functions and activities granted by this chapter to the Authority with respect to any transportation facilities including but not limited to public transportation facilities and specialized transportation facilities except as proscribed by this section.

The Authority is authorized to create or abolish a subsidiary corporation called the "Delaware Transit Corporation" to be the parent corporation of all subsidiaries created pursuant to this section to provide public transit services. The Delaware Transit Corporation is declared to be a public benefit corporation constituting a public instrumentality of the State exercising public and essential governmental functions. The Delaware Transit Corporation and its public transportation services subsidiaries shall be under the direction and supervision of a Director who shall be appointed by the Secretary, with the written approval of the Governor, and who shall serve at the pleasure of the Secretary. The Director of the Delaware Transit Corporation may appoint a Deputy Director.

[The remaining details of this legislation are included under section one of this entity determination analysis. See pages 3 and 4.]



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**7. Transportation Authority – The CU meets the blending criteria of ¶53, a, b. or c for the State of Delaware.
 DTC – The CU meets the blending criteria of ¶53, a, b. or c for the Transportation Authority**

According to GASB, a component unit should be included in the reporting entity financial statements using the blending method in any of these circumstances:

- a. The component unit’s governing body is substantively the same³ as the governing body of the primary government *and* (1) there is a financial benefit or burden relationship between the primary government and the component unit, as described in paragraphs 27–33, or (2) management of the primary government has operational responsibility for the component unit. Management of a primary government has operational responsibility for a component unit if it manages the activities of the component unit in essentially the same manner in which it manages its own programs, departments, or agencies.

Management, for purposes of this determination, consists of the person(s), below the level of the governing board, responsible for the day-to-day operations of the primary government (for example, a county executive or city manager).

- b. The component unit provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefits the primary government even though it does not provide services directly to it. The essence of this type of arrangement is much the same as an internal service fund – the goods or services are provided to the government itself rather than to the citizenry. Usually the services provided by a blended component unit are financing services provided solely to the primary government. For example, a building authority may be created to finance the construction of office buildings for the primary government. However, a component unit that provides services to more than just the primary government should also be blended if the services provided to others are insignificant to the overall activities of the component unit. Other component units that should be blended are those that exclusively, or almost exclusively, benefit the primary government by providing services indirectly; for example, a component unit that provides services on behalf of the primary government to its employees rather than directly to the primary government itself.
- c. The component unit’s total debt outstanding, including leases, is expected to be repaid entirely or almost entirely with resources of the primary government. Repayment generally occurs through a

³ “Substantively the same” means sufficient representation of the primary government’s entire governing body on the component unit’s governing body to allow complete control of the component unit’s activities. To illustrate, the board of a city redevelopment authority may be composed entirely of the city council and the mayor, serving *ex officio*. The primary government is, essentially, serving as the governing body of the component unit. On the other hand, the board of a public housing authority composed of the city mayor and two council members (from a total of ten) ordinarily would not be substantively the same as the city’s governing body. This criterion will rarely, if ever, apply to a state government because of the impracticality of providing sufficient representation of the state’s entire governing body.



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continuing pledge and appropriation by the primary government to the component unit that, in turn, pledges those appropriation payments as the primary source of repayment for its debt.

Application to the Transportation Authority

Based on review and consideration of all of the guidance above, including the criteria of ¶53(a) through (c), we conclude the following:

- a. The governing body of the Transportation Authority is not substantially the same as that of the State. Further, management of the primary government does not have operational responsibility for the component unit.
- b. The Transportation Authority exclusively, or almost exclusively, benefits the primary government. The powers of the Transportation Authority are determined to be an essential government function of the State in order to create an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State (2 Del. C. §1304 (a)).
- c. The debt of the Transportation Authority is not expected to be repaid with the resources of the primary government.

Application to DTC

Based on review and consideration of all of the guidance above, including the criteria of ¶53(a) through (c), we conclude that DTC would be a discretely presented component unit if it were not for the GASB Codification illustrated below:

- a. The governing body of the DTC is not substantially the same as that of the Transportation Authority. Further, management of the primary government does not have operational responsibility for the component unit.
- b. DTC exclusively, or almost exclusively, benefits the primary government. The powers of DTC are determined to be an essential government function of the State.
- c. DTC has not bonded debt and therefore the Transportation Authority has no pledge of appropriation.

In summary, the Transportation Authority is blended into the DelDOT financial statements because DelDOT is the agency it supports. The TTF is a part of the Transportation Authority. The Transportation Authority has no operations other than that of the TTF and DTC. DTC is a blended component unit of the Transportation Authority. The GASB Codification states that “the component unit financial data that are incorporated into a reporting entity’s financial statements should include the data from all of its component units. In effect, this section should be applied in layers “from the bottom up.” At each layer,



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the definition and display provisions should be applied before the layer is included in the financial statements of the next level of the reporting government.”⁴

Code excerpts are as follows:

2 Del. C. §1304. Established; Director.

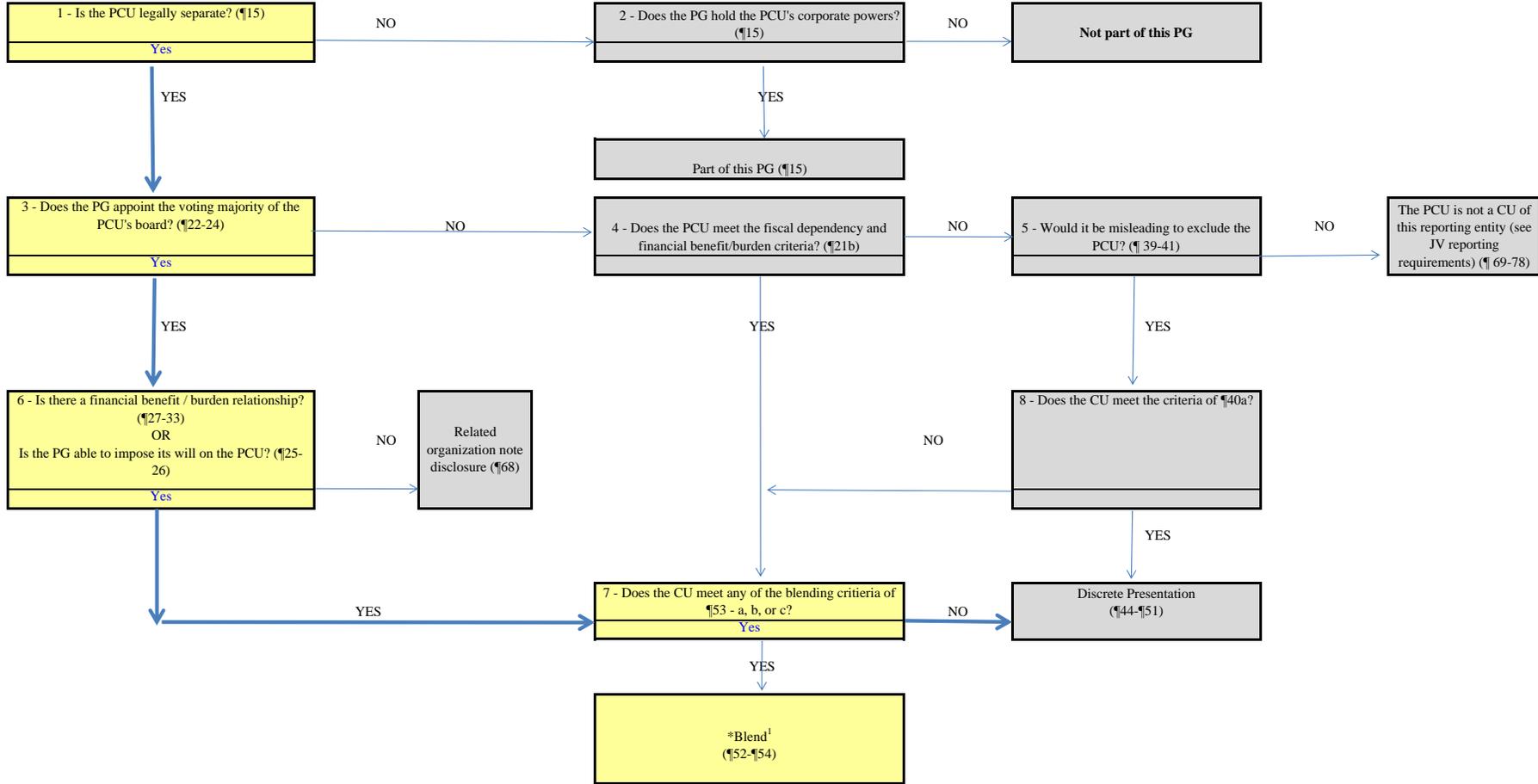
- (a) There is hereby established a body corporate and politic, to be known as the "Delaware Transportation Authority." The Authority shall be a public instrumentality of the State exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter is hereby determined to be an essential governmental function of the State in order to create an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State. The exercise of power by the Authority pursuant to this chapter is hereby mandated by the State as sovereign, it being the intention of the State to displace competition with regulation or monopoly public service.

⁴ Refer to an example of this standard at GASB Cod. §2600.106.

**Delaware Auditor of Accounts
 GASB Determination Analysis Flowchart
 Delaware Transportation Authority**

See below for GASB 61 flowchart analysis (refer to the entity determination analysis memo that expands of the guidance used to answer each question in the flowchart below).

Note: Paragraph references are from GASB 14, as amended by GASB 61.



*Note: A potential component unit for which a primary government is financially accountable may be fiscally dependent on and have a financial benefit or burden relationship with another government. An organization should be included as a component unit of only one reporting entity. Professional judgement should be used to determine the most appropriate reporting entity (§21b and §34-§38). A primary government that appoints a voting majority of the governing board of a component unit of another government should make the disclosures required by §68 for related organizations.

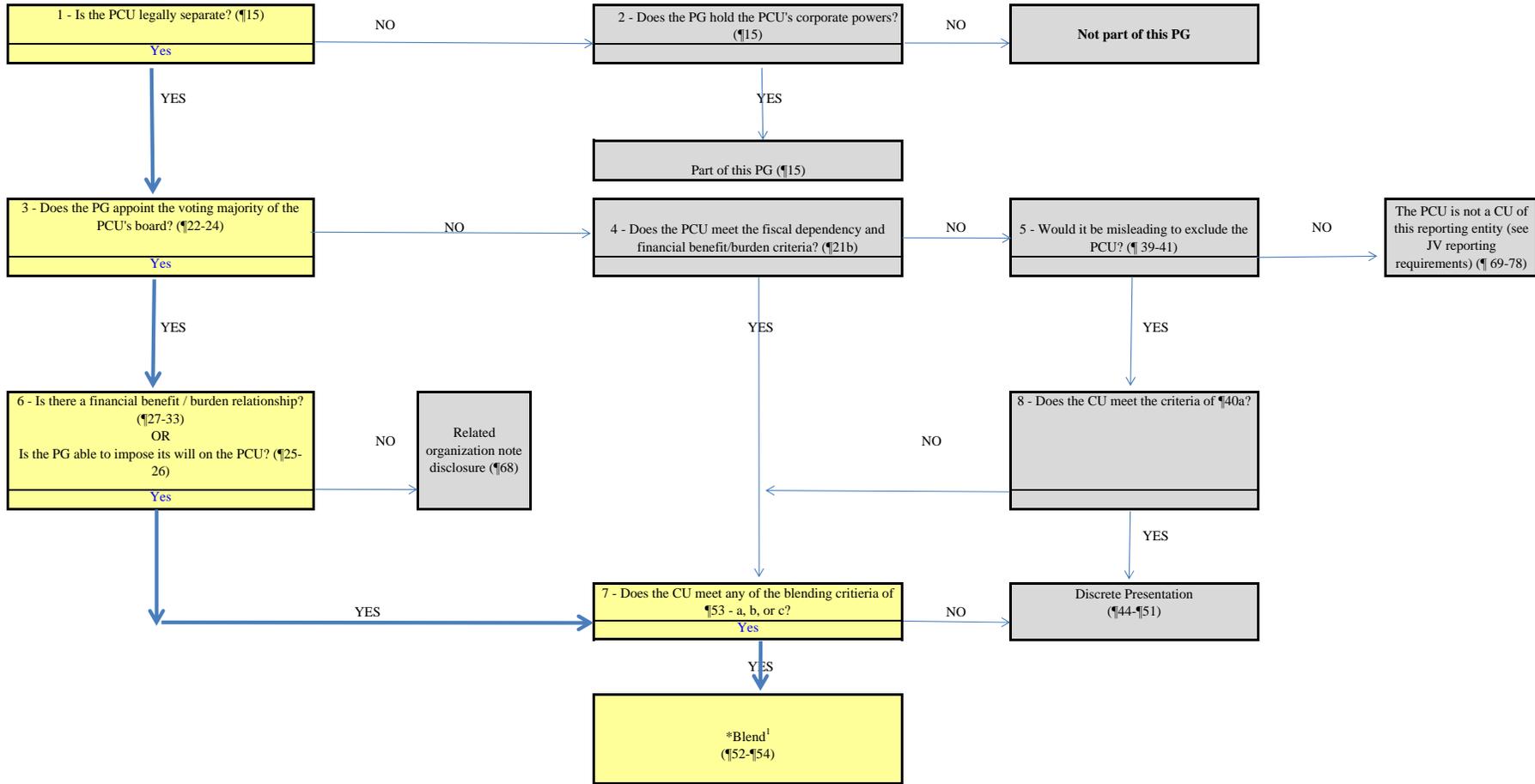
1 - Blended CU of DelDOT

PCU = Potential Component Unit
 PG = Primary Government
 CU = Component Unit
 JV = Joint Venture

**Delaware Auditor of Accounts
 GASB Determination Analysis Flowchart
 Delaware Transit Corporation**

See below for GASB 61 flowchart analysis (refer to the entity determination analysis memo that expands of the guidance used to answer each question in the flowchart below).

Note: Paragraph references are from GASB 14, as amended by GASB 61.



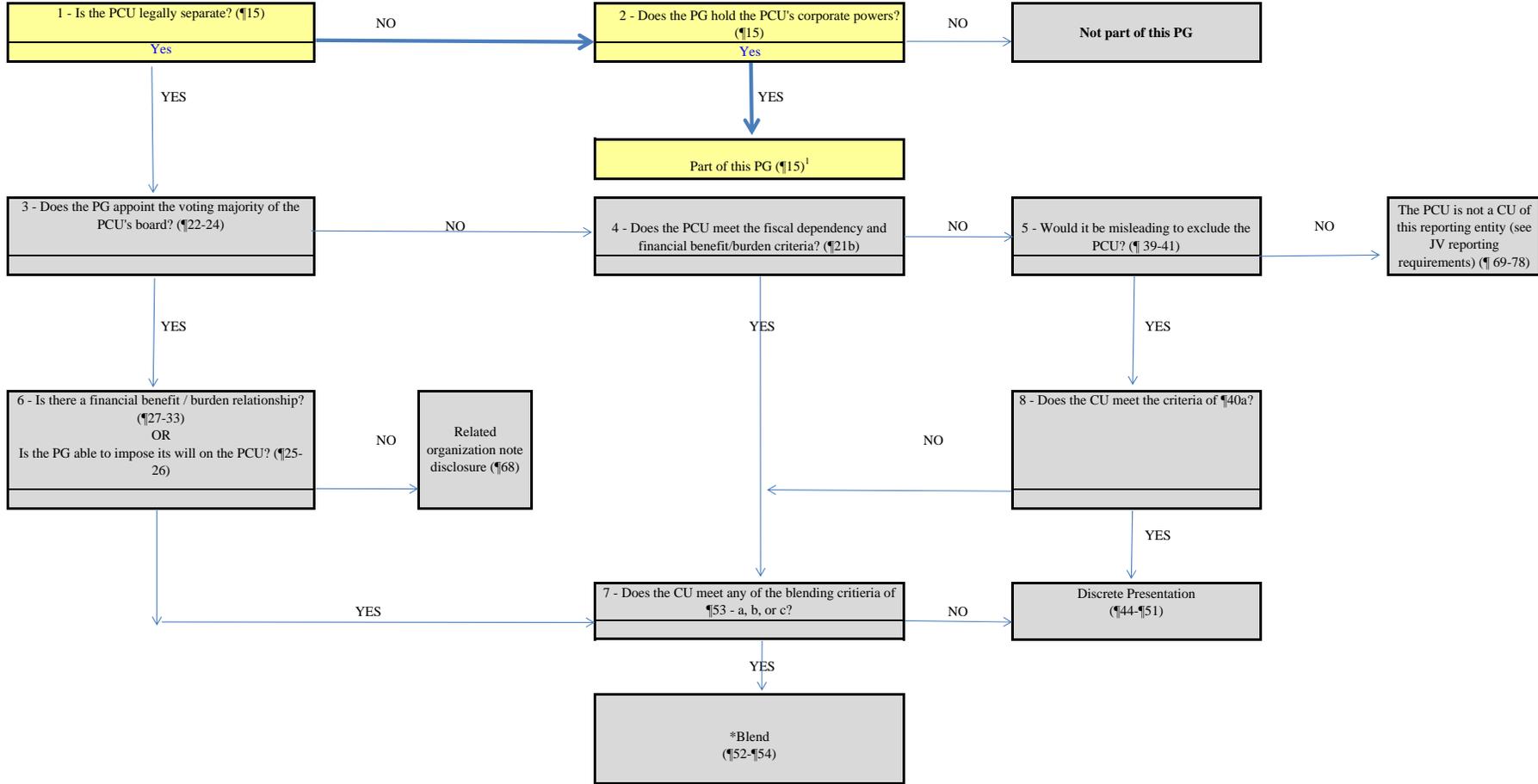
*Note: A potential component unit for which a primary government is financially accountable may be fiscally dependent on and have a financial benefit or burden relationship with another government. An organization should be included as a component unit of only one reporting entity. Professional judgement should be used to determine the most appropriate reporting entity (§21b and §34-§38). A primary government that appoints a voting majority of the governing board of a component unit of another government should make the disclosures required by §68 for related organizations.

¹ - Blended CU of the Delaware Transportation Authority

**Delaware Auditor of Accounts
GASB Determination Analysis Flowchart
Transportation Trust Fund**

See below for GASB 61 flowchart analysis (refer to the entity determination analysis memo that expands of the guidance used to answer each question in the flowchart below).

Note: Paragraph references are from GASB 14, as amended by GASB 61.



*Note: A potential component unit for which a primary government is financially accountable may be fiscally dependent on and have a financial benefit or burden relationship with another government. An organization should be included as a component unit of only one reporting entity. Professional judgement should be used to determine the most appropriate reporting entity (§21b and §34-§38). A primary government that appoints a voting majority of the governing board of a component unit of another government should make the disclosures required by §68 for related organizations.

¹ Part of the Delaware Transportation Authority.

PCU = Potential Component Unit
PG = Primary Government
CU = Component Unit
JV = Joint Venture