



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Delaware Public Employees' Retirement System (DPERS)

FSF User

Part of Primary Government

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(GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 –¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)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*
- *June 30, 2012 Financial Statements – Delaware Public Employees' Retirement System*
- *29 Del C. c.83, Department of Finance*

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.

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| <ol style="list-style-type: none">1. <i>The PCU is not legally separate. (¶ 15)¹</i>2. <i>The PG holds the PCU's corporate powers. (¶ 15)</i> |
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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.

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



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Application to the Delaware Public Employees' Retirement System (DPERS)

DPERS is not legally separate from the State of Delaware because it is not established as a body corporate or a body corporate and politic (29 Del. C. §8308(b)(1) and §8308(c)(4)).

The DPERS also does not possess the corporate powers that would distinguish it as being legally separate from the State of Delaware. The Delaware Code is silent on the DPERS' ability to sue and be sued; although it does specify that Board members are not liable for any act or omission made during the member's tenure on the Board or for any loss incurred by any person as a result of the participation by any Board member in the Plan (29 Del. C. §8308 (j)).

The DPERS has the ability to make and enter into any and all contracts, agreements, or arrangements and to retain, employ and contract for the services of private and public financial institutions, depositories, consultants, investment advisors or managers, etc. for purposes of carrying out its mission (29 Del. C. §8308 (5)). However, these powers are not compelling enough to conclude that the Delaware Public Employee's Retirement System is legally separate from the State of Delaware.

Code excerpts are as follows:

29 Del. C. §8308. Board of Pension Trustees.

(b) The Board shall have:

- (1) The Board shall establish the Delaware Public Employees' Retirement System which has control and management of the state pension funds provided for in:
 - a. The State Employees' Pension Plan pursuant to Chapter 55 of this title;
 - b. The closed State Police Retirement Fund pursuant to subchapter II of Chapter 83 of Title 11;
 - c. The new State Police Retirement Fund pursuant to subchapter III of Chapter 83 of Title 11;
 - d. The State Judiciary Retirement Fund pursuant to Chapter 56 of this title;
 - e. The County and Municipal Employees' Retirement Fun pursuant to Chapter 55A of this title;
 - f. The County and Municipal Police/Firefighter Retirement Fund pursuant to Chapter 88 of Title 11;
 - g. The Volunteer Fireman's Pension Fund pursuant to Chapter 66A of Title 16;
 - h. The Diamond State Port Corporation Pension Plan pursuant to Chapter 87 of this title;



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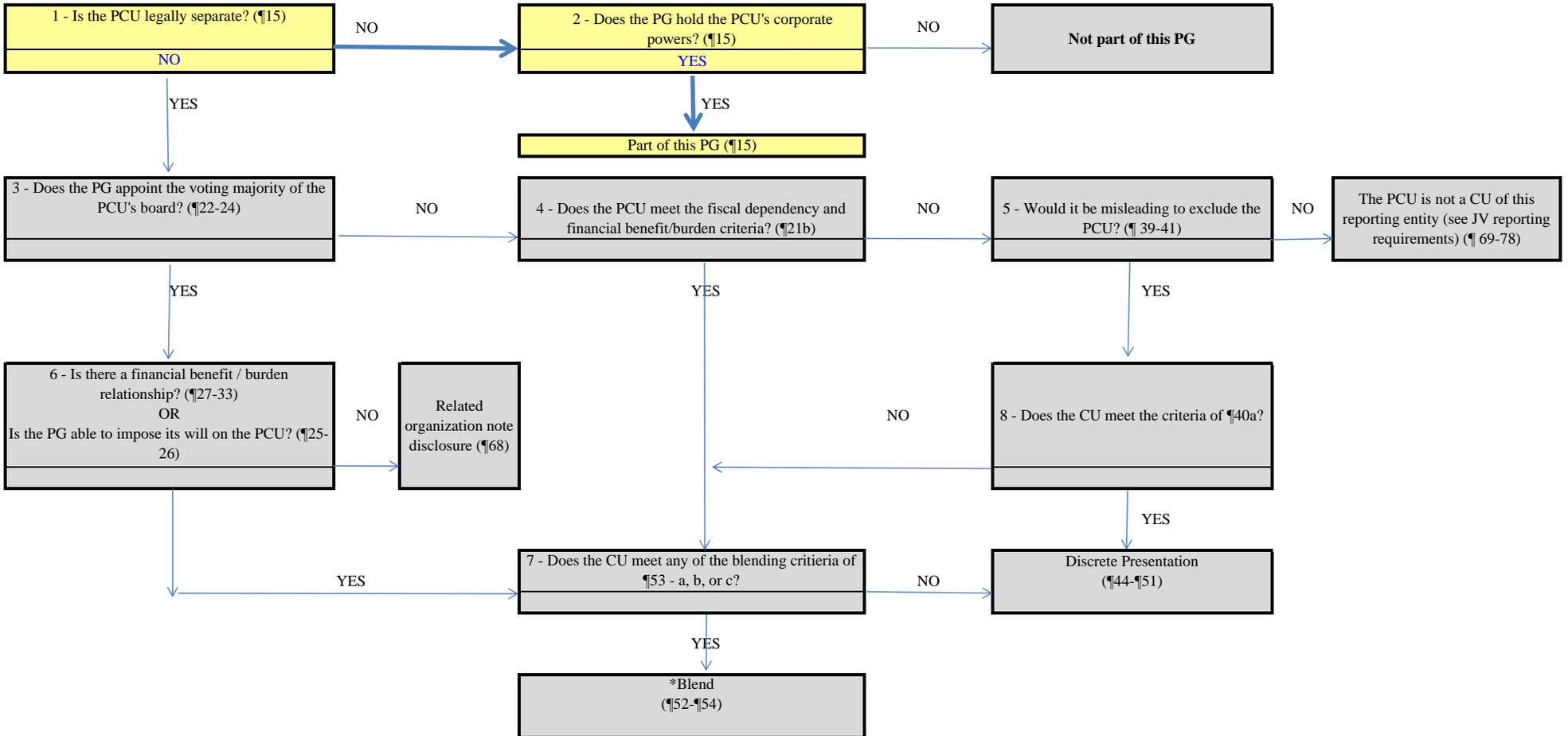
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- i. The County and Municipal Police/Firefighter Special Fund pursuant to Chapter 7 of Title 18;
 - j. The Special Pension Fund pursuant to Chapter 191, Volume 61, Laws of Delaware; and
 - k. The Local Government Retirement Investment Pool pursuant to Chapter 83 of this title.
- (c) In addition to the foregoing, the Board shall have the following powers, duties and functions:
- (4) To maintain and invest the pension funds qualified under Internal Revenue Code §401(a) [26 U.S.C. §401(a)] of the Delaware Public Employees' Retirement System. The assets of such funds may be commingled for investment purposes but will be maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of each separate fund as applicable. The Board shall also have the power and duty to maintain and invest the Volunteer Fireman's Pension Fund under §457(e)(11) of the Internal Revenue Code [26 U.S.C §457(e)(11)]. The assets of such fund will be invested separately and maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from assets of such fund.
 - (5) To make and enter into any and all contracts with any agency of the State, or any outside agency, for the purpose of assisting in the general administration of this section and the investing or advising as to the investment of the pension funds under its control and management.
- (j) The State shall indemnify a Board member to sit on a committee of the Board who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a Board member against expenses (including attorneys' fees if the Attorney General determines that he or she may not provide representation), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in the best interest of the State and with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. Expenses incurred in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of final disposition of such action, suit or proceeding if:
- (1) Initially authorized by a majority vote of the Board exclusive of the member or members to be indemnified unless more than a majority of the Board shall also be parties to the same action, suit or proceeding, in which instance, such authorization shall be by the Governor of the State; and
 - (2) Such Board member agrees to repay such amount if it is ultimately determined by the Board or the Governor, as the case may be, pursuant to paragraph (1) of this subsection that such member is not entitled to indemnification under this section.

**Delaware Auditor of Accounts
 GASB Determination Analysis Flowchart
 Delaware Public Employees' Retirement System**

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.

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