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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(GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 –¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)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
- Delaware Civic Center Certificate of Incorporation
- House Bill 777 (Bond Bill Fiscal Year 1991)

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.

1. The PCU is legally separate. (¶ 15)[1]

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 Delaware Civic Center Corporation (the Corporation)

The Delaware Civic Center Corporation was established under the General Corporation Law of the State of Delaware (House Bill 777, Section 20 (d)). The Certificate of Incorporation also states that the

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

Corporation shall have the power and authority to do any and all acts as are necessary or conducive to the attainment of its purposes and objectives (Certificate of Incorporation, Item 3). The information reviewed does not specify the corporate powers described per GASB; however, this is not necessary since it is established as a corporation and is legally separate.

Excerpts are as follows:

House Bill No. 777

(d) The counsel to the Office is hereby authorized to act as Incorporator of and to establish a Civic Center Corporation (the "Corporation") pursuant to the General Corporation Law of the State of Delaware. The Corporation shall have five directors. Of the five directors, three directors shall be appointed or elected by the Governor, one of which shall be the President of the Corporation; one director shall be appointed or elected by the Mayor of the City of Dover; and one director shall be appointed or elected by the President of Kent County Levy Court. The directors of the Corporation may be the same individuals who served as members of the Committee, as established in Section 27, Volume 66, Chapter 360, Laws of Delaware.

Certificate of Incorporation, Item 3

As a means of accomplishing the foregoing purposes, the Corporation shall have the power and authority to do any and all acts as are necessary or conducive to the attainment of such purposes and objectives; provided, however, that notwithstanding any provision of this Certificate of Incorporation, the By-laws of the Corporation or applicable law to the contrary, the Corporation shall not have the power to carry on any activities which would cause it to fail to qualify, or to fail to continue to qualify, as (a) an organization exempt from federal income tax under Section50l(c) (3) of the Code or (b) an organization, contributions to which are deductible under sections 110, 2155 and 2522 of the Code. The corporation shall be authorized to solicit, receive and administer funds and grants from private and public entities and organizations for the above purposes, but the Corporation shall not be authorized to accept gifts or contributions for other than the purposes hereinabove stated. The funds of the Corporation shall not be restricted in use to people of any race, faith, color or creed, but such funds shall be administered on a non-discriminatory basis.

3. 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 Delaware Civic Center Corporation (the Corporation)

The Governor appoints or elects three of the five directors of the Corporation (House Bill 777, Section 20 (d)).

Excerpts are as follows:

House Bill No. 777, Section 20

(d) The counsel to the Office is hereby authorized to act as Incorporator of and to establish a Civic Center Corporation (the "Corporation") pursuant to the General Corporation Law of the State of Delaware. The Corporation shall have five directors. Of the five directors, three directors shall be appointed or elected by the Governor, one of which shall be the President of the Corporation; one director shall be appointed or elected by the Mayor of the City of Dover; and one director shall be appointed or elected by the President of Kent County Levy Court. The directors of the Corporation may be the same individuals who served as members of the Committee, as established in Section 27, Volume 66, Chapter 360, Laws of Delaware.

6. There is not a financial benefit/burden relationship. (¶ 27-33) The PG is not 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 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.

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.

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.

Application to the Delaware Civic Center Corporation (the Corporation)

There is not a financial benefit/burden relationship between the Corporation and the State. The Certificate of Incorporation states that the Corporation is created and organized to execute and perform its duties and obligations under an intergovernmental agreement with the City of Dover, Delaware, the Kent County Levy Court, and the Department of Finance on behalf of the State of Delaware for the purpose of providing funds to the Corporation which will enable the Corporation to apply funds to the development, construction and/or operation of the Dover Civic Center (Certificate of Incorporation, Item 3 (b)). However, the Dover Civic Center has yet to be constructed. In fact, the Fiscal Year 2014 Bond Bill directs the State Treasurer to de-authorize the remaining appropriation balances for the Delaware Civic Center. The Corporation did not receive any funding appropriations in the Fiscal Year 2014 Budget Bill either.

The statutory language reviewed did not provide any indication of an imposition of will.

Excerpts are as follows:

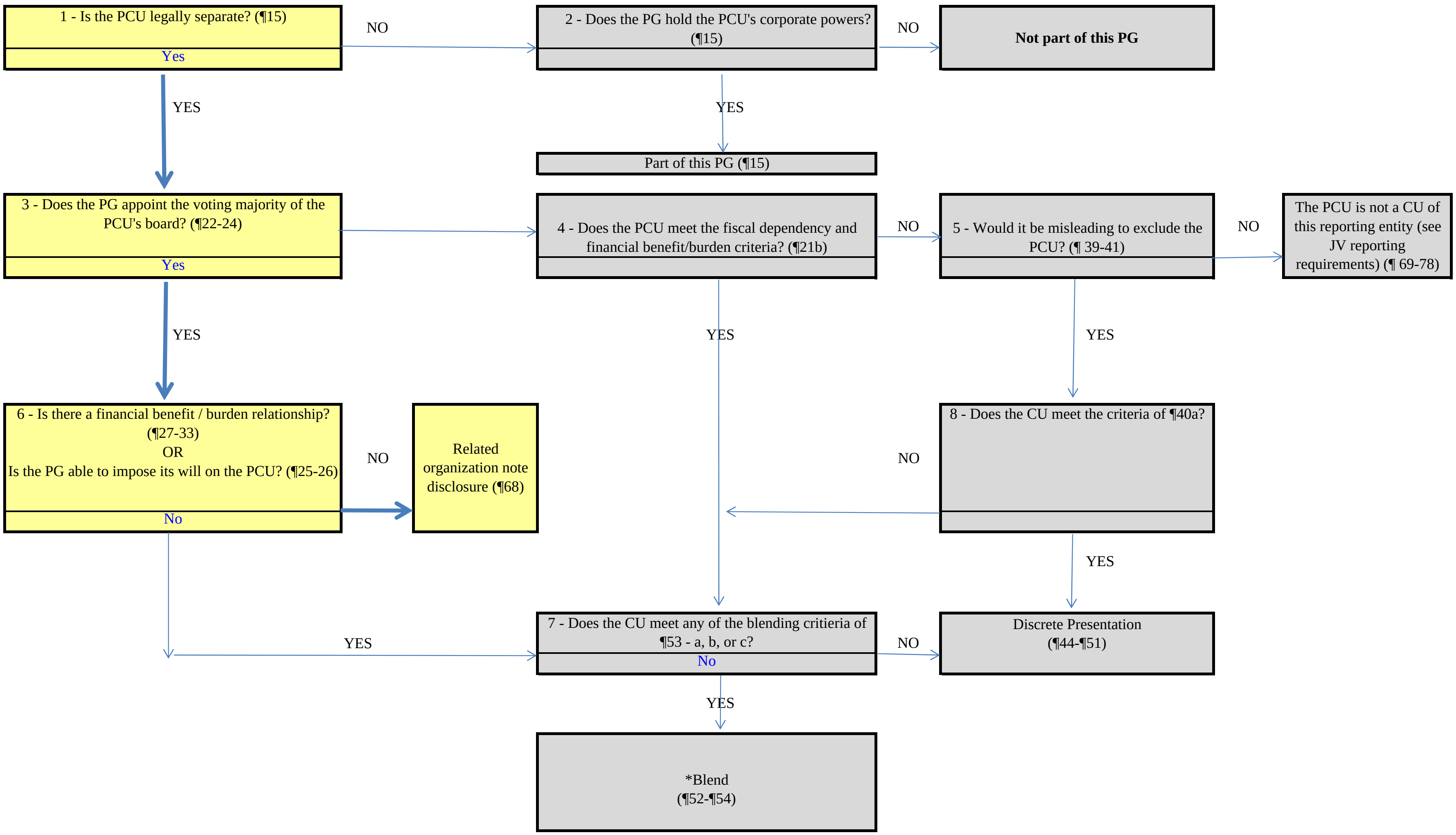
Certificate of Incorporation, Item 3

b. to execute and perform its duties and obligations under an intergovernmental agreement, as it may be amended from time to time, with the City of Dover, Delaware, the Kent county Levy court and the Department of Finance on behalf of the State of Delaware for the purpose of providing funds to the Corporation which will enable the Corporation to apply funds to the development, construction and/or operation of the Dover Civic Center;

Delaware Auditor of Accounts
GASB Determination Analysis Flowchart
Delaware Civic Center 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.

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