HOUSE RESEARCH

Bill Summary

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Authors: Gunther and others

Subject: Region Nine Development Commission; creation of a nonprofit corporation

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Overview

Under Minnesota Statutes, section 465.717, a political subdivision of the state may not create a nonprofit or for-profit corporation without special legislation. (For additional background on this issue, see page 3.) This bill authorizes the region nine development commission to create a nonprofit corporation to fill gaps in regional services and funding of rural programs by improving the region's access to other funding sources. Region nine includes the counties of Sibley, Nicollet, LeSueur, Brown, Blue Earth, Waseca, Watonwan, Martin, and Faribault.

Section

1 **Region nine development commission; nonprofit corporation established.**

Subd. 1. Authorization. Permits the region nine development commission to establish a nonprofit corporation to receive donations from donors that require recipients to be nonprofit organizations and thereby expand the sources of funding for region nine's services. (Region nine's levy authority is set in Minn. Stat. § 462.396, subd. 2, at a maximum of $343,572 or 103% of the previous year's levy, whichever is greater.)

Subd. 2. Board of directors. Provides for a nine-member board appointed by the region nine development commission. Prohibits more than five region nine development commissioners from also serving on the nonprofit's board of directors. Prohibits compensation but allows expenses.

Subd. 3. Articles and bylaws. Directs the entity to be incorporated under chapter 317A and comply with that chapter except as otherwise provided in this act.

Subd. 4. Employees. Specifies that the nonprofit's employees are not public employees and do not participate in retirement, deferred compensation, insurance or other plans available to public employees.

Subd. 5. Contracting. Permits the development commission to enter into contracts and leases

with the nonprofit.

Subd. 6. Statutory compliance. (a) Provides that section 16A.695 applies to a management contract or lease agreement between the nonprofit and the development commission. (Section 16A.695 is the statute that implements compliance with constitutional requirements for use of state general obligation bond funds when a facility funded with state bond funds is leased to another entity to carry out the program for which the facility was funded. It also governs the sale of state bond financed property, and default.)

(b) Requires the nonprofit to comply with certain provisions in the statute governing ratification and continuation of nonprofit corporations created by political subdivisions:

Section 465.719, subdivision 9 - the nonprofit must comply with all laws with which the region nine development commission must comply, unless the resolution creating it specifically exempts it from a law and then the resolution must make a detailed and specific finding that the nonprofit cannot fulfill its purpose if it is subject to the law. Prohibits exemption from the open meeting law, data practices law, or records management act. Provides for challenges to a resolution that exempts the nonprofit from a law.

Section 465.719, subdivision 10 - if the nonprofit is exempted from any law that applies to the development commission, the development commission must revisit each exemption every three years and either ratify the exemption or remove it.

Section 465.719, subdivision 11 - if the nonprofit receives tax revenues from the development commission, they must be used only for a public purpose.

Section 465.719, subdivision 12 - requires an annual audit of the nonprofit by a CPA or the state auditor if the nonprofit receives public money.

Section 465.719, subdivision 13 - provides that the state auditor has the same powers with regard to the nonprofit as the state auditor has with regard to the development commission.

Section 465.719, subdivision 14 - addresses data classification for data created, collected, or maintained by the nonprofit.

Background on Establishing Nonprofit Corporations.

In 1986, the attorney general issued an opinion that local government units had no authority to establish nonprofit corporations.

In 1997, the legislature enacted legislation making this explicit; it prohibited a local government unit from creating a corporation without express legislative authorization.

In 1998, the legislature permitted existing corporations to continue until July 1, 1999, and directed the State Auditor to survey local governments for corporations created by them and make recommendations.

The 1999 Legislature delayed the expiration of corporations created by political subdivisions until July 1, 2001. It also established a task force to review the findings and recommendations of the state auditor on corporations created by political subdivisions and to develop legislation for the 2000 Legislature on whether existing corporations created by political subdivisions should be continued, dissolved, or restructured as private corporations. Legislation was developed by the task force and, with some changes, enacted by the 2000 Legislature.

The 2000 Legislature decided to continue to prohibit political subdivisions from creating corporations unless they are specifically authorized by law to do so. It also set requirements for ratifying the continuation of corporations previously created.