Overview

Article 1, section 1 of the bill prohibits political subdivisions from creating corporations except by special legislation. It permits a joint powers entity to incorporate as a nonprofit corporation, however, and subjects it to all laws that apply to the joint powers entity.

Section 2 allows any political subdivision that created a corporation before May 31, 1997, to ratify creation of the corporation and provide for its continued existence. If it does not do so within three years, the corporation is dissolved. The political subdivision must re-ratify the authority of the corporation every three years. The political subdivision cannot exempt the corporation from the open meeting law, the government data practices act, or records management. A corporation can only exercise the powers that the creating political subdivision can exercise.

Article 2 clarifies the authority of a municipality to own and operate facilities and channels for community television, and therefore, the authority of a political subdivision to create a corporation to do so.

Article 1
Corporations Created By Political Subdivisions

1 Creation of corporations by political subdivisions.

Subd. 1. Statutory authorization required. Prohibits any political subdivision or joint powers entity from creating a business or nonprofit corporation unless explicitly authorized by law to do so.

Subd. 2. Authority to incorporate a joint powers entity. Lets a joint powers entity incorporate as a nonprofit corporation. Requires such a corporation to comply with all laws applicable to the participating local governments. Specifies it possesses no greater authority than that held by the joint powers entity.

2 Existing corporations created by political subdivisions.
**Subd. 1. Definitions.** Defines "political subdivision" and "corporation" for the purposes of section 2. Political subdivision means any political subdivision of the state, or a joint powers entity created by a political subdivision.

A corporation is a corporation created before May 31, 1997, in which (1) the governing body of the political subdivision serves as the corporation's board, (2) members of the political subdivision's governing body are appointed to the corporation's board by virtue of their appointment or election to office and they constitute a majority of the corporation's board, or (3) the governing body of the political subdivision approves the budget or expenditures of the corporation (other than for oversight of public grants or loans). Corporation does not include a corporation created under other state statute or special law, or a corporation that raises funds for the political subdivision if less than a majority of the board are elected officials serving on the board by virtue of their election to office.

**Subd. 2. Resolution required.** Allows the political subdivision that created the corporation, or its successor, to ratify and provide for its continued existence by resolution. Requires the resolution to include the information required in subdivisions 4 to 9. Requires the resolution to be filed with the secretary of state. Requires an amended resolution to be filed if the articles of incorporation are later amended. If no resolution is adopted within three years, the corporation must be dissolved.

**Subd. 3. Amended articles of incorporation, bylaws.** Requires amended articles of incorporation, consistent with the ratifying resolution, if a corporation is continued by the creating political subdivision.

**Subd. 4. Existing contracts.** Allows the ratifying resolution to provide for the delayed application of otherwise required actions if necessary to avoid a breach or impairment of contract or obligation.

**Subd. 5. Need for corporation.** Requires a finding that a corporation is the best alternative to accomplish the purpose of the corporation.

**Subd. 6. Authorities and powers of corporation limited.** Requires the resolution to specify the corporation's powers and prohibits the corporation from exercising any powers exceeding those of the political subdivision that creates the corporation.

**Subd. 7. Board membership.** Requires a "but-for" finding for having a majority of the corporation's board consist of elected or appointed officials of the political subdivision.

**Subd. 8. Allocation of assets and liabilities.** Requires the joint powers agreement and the resolution of the joint powers board that created a corporation to specify how the assets and liabilities of the corporation are allocated or attributed to each member of the joint powers board. Provides that for a corporation created by more than one political subdivision (but without a joint powers agreement) to also provide for how the corporation's assets and liabilities will be attributed to each political subdivision, for the purposes of, for example, determining debt or levy limits.

**Subd. 9. Application of other laws.** Provides for all laws that apply to the political subdivision to apply to the corporation unless the resolution specifically exempts the corporation from part or all of a law. Requires a detailed and specific finding as to why the corporation cannot fulfill its purpose without the exemption. Prohibits exempting the corporation from the open meeting law, the government data practices act, or the law governing records management. Allows one to sue in district court to void the resolution on the grounds that the findings are not sufficiently detailed and specific, or that the corporation can fulfill its purpose if subject to a law from which the resolution exempts the corporation. Provides a nonexclusive list of laws that apply.

**Subd. 10. Three-year review of applicability of other laws.** Requires the political subdivision to review the activities of the corporation and determine if an exemption from a law under subdivision 9 should be continued. Requires the political subdivision to adopt a resolution to continue any exemption and file it with the secretary of state. Prohibits exempting a corporation from a law for the
first time under this subdivision.

Subd. 11. Taxes used for public purpose. Provides that if the political subdivision has authority under other law to appropriate tax revenues to the corporation, they must be used for a public purpose.

Subd. 12. Audit. Requires a corporation that receives any public money (other than grants or loans made under a competitive process for which other entities are eligible) to be audited and for the audit to be public information. Specifies that the data classification of an audit performed by the state auditor is governed by Minnesota Statutes, chapter 6.

Subd. 13. State auditor powers. Gives the state auditor the same powers over a corporation created by a political subdivision as the state auditor has over the political subdivision.

Subd. 14. Data classification. Classifies proprietary data relating to either private businesses or enterprises operated by the corporation that are in competition with other entities as private or nonpublic data.

3 Clarification. Provides that corporations that reported to the state auditor as corporations created by political subdivisions, but that do not meet the definition of a corporation in section 2, are unaffected by this act and may remain as established.

4 Repealer. Repeals the existing statute prohibiting political subdivisions from creating corporations without legislative authorization, including the sunset of existing corporations created by political subdivisions.

Article 2
Miscellaneous

Provides that municipalities may construct, purchase, and operate cable communications systems, or community television facilities and channels. "Municipality" includes cities, towns, and counties with respect to the unorganized parts of the county. Under article 1, a corporation created by a political subdivision can only exercise authority the political subdivision has. There is at least one existing corporation created by a political subdivision that operates community television. This makes explicit the political subdivision's authority, and therefore the corporation's authority, to operate community television.