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Public Corporations Balancing Autonomy and Accountability

Recent events involving the Greater Minnesota Corporation have called attention to that public corporation's degree of autonomy from state government. The Legislature has exempted other public corporations and state agencies from some laws that apply to executive branch state agencies. This information brief summarizes those exemptions.

An examination of the legislative creation of seven public groups, representing a variety of organizational forms, concluded that:

- No common set of rules automatically governs the operation of public corporations and other "semi-state" agencies.
- Public groups are generally required to follow the Open Meeting Law and the Data Practices Act.
- The Legislature has granted more exemptions from laws governing rulemaking, purchasing, budgeting and accounting, and employment.

The Legislature must balance competing policies in deciding whether or not these laws should apply to a group that the Legislature is creating. The Legislature may also consider the degree of public financial support for an organization in decisions about which laws should apply.

Policy Arguments Favoring Exemptions

The Legislature may want to give a group more operating flexibility than a traditional state agency. Especially for economic development agencies, this flexibility allows the group to move quickly to take advantage of opportunities. The Legislature may want the group to hire and compensate employees and purchase goods and services in a manner similar to a private corporation, instead of requiring compliance with procedures that govern public bodies. The Legislature also may want a group to look and act like a private corporation to improve its access to private funding sources and to attempt to remove it from politics.

Policy Arguments Against Exemptions

Laws requiring state agencies to meet openly, make data available to the public and purchase goods, hire employees and perform other tasks in a certain manner are tools to make government agencies accountable to elected officials and to the general public. To the extent that agencies are exempt from these laws, goals such as openness and accountability may be more difficult to achieve.

This brief is organized as follows:

A Chart Summarizing Laws Governing Agencies	3
Creating an Agency	4
Appointing a Governing Board	5
Laws Governing Agency Operations	7
Laws Governing Appointment and Compensation of Employees	12

The primary purposes of this paper are to demonstrate that the Legislature has granted some exemptions from laws governing executive branch agencies and to summarize those exemptions. This paper is not intended to list all state agency and public corporation exemptions. This paper is also not intended as a definitive legal opinion on which laws apply to public agencies. In some cases, the application of a law is not clear.

The groups covered in this information brief are:

- Agricultural Utilization Research Institute (AURI)
- Greater Minnesota Corporation (GMC)
- Minnesota Educational Computing Corporation (MECC)
- Lake Superior Center Authority
- Minnesota Project Outreach Corporation

- Minnesota Zoological Garden
- World Trade Center Corporation

The first five groups are generally considered public corporations or nonprofit corporations and are not thought of as executive branch state agencies. Most people consider the last two groups to be executive branch state agencies.

Laws Governing Agencies

This chart summarizes the accompanying text, showing if groups are subject to or exempt from laws that apply to executive branch state agencies. The following laws are included in the chart with their notation in parentheses: the Open Meeting Law, reporting requirements in the Ethical Practices Act, the Government Data Practices Act, expense reimbursement limits (expenses), the Administrative Procedure Act (APA), laws governing purchasing goods and services (purchasing), budgeting and accounting procedures, and civil service and collective bargaining laws (civil service).

Agency (Statute)	Type of Organization	Except as Provided for	
		Subject to:	Exempt from:
Agricultural Utilization Research Institute (1160.09)	Non-profit corporation	Probably none	Probably all
Greater Minnesota Corporation (1160)	Public corporation	Open meeting, data practices, ethical practices, most budgeting & accounting	APA, expenses, purchasing, civil service
Minnesota Educational Computing Consortium (119)	Public corporation	Open meeting, data practices, ethical practices	APA, purchasing, budgeting & accounting, civil service
Lake Superior Center Authority (Laws 1990, Chapter 535)	Public corporation	Open meeting, data practices, ethical practices	APA, expenses, purchasing, budgeting & accounting, civil service
Minnesota Project Outreach Corporation (116J.691)	Non-profit public corporation	Probably open meeting and data practices	APA, expenses, purchasing, budgeting & accounting, civil service, ethical practices
Minnesota Zoological Garden (85A)	Partnership between state and private sector	Open meeting, data practices, some purchasing, budgeting & accounting, civil service, expenses, some APA	Some APA, some purchasing, ethical practices
World Trade Center Corporation (44A)	Public corporation and state agency	Open meeting, data practices, expenses, ethical practices	APA, purchasing, budgeting & accounting, civil service

Creating an Agency

Increasingly, the Legislature creates public corporations and other semi-state agencies to deliver services, administer programs and perform public functions. These enterprises are generally exempt from many restrictions that apply to state agencies. Beyond this similarity there is much diversity in organizational form.

Public Corporations

Despite the lack of a precise definition, several enterprises are created as public corporations. No general statutes explicitly govern the operation of a public corporation. Four organizations, the Greater Minnesota Corporation, Minnesota Educational Computing Consortium, World Trade Center Corporation, and the Lake Superior Center Authority are designated public corporations. The powers of the GMC and the Lake Superior Center Authority are defined with reference to the Minnesota Business Corporation Act (Minn. Stat. chapter 302A). In contrast, the World Trade Center is both a public corporation and a state agency.

Non-Profit Corporations

Non-profits are a well defined organizational type covered by the Minnesota nonprofit corporation act, (Minn. Stat., chapter 317A) and the Internal Revenue Code. They are autonomous from state government. In 1989, the Agricultural Utilization Research Institute was changed to a non-profit corporation. Its autonomy seems limited by its connection to the public Greater Minnesota Corporation.

Non-Profit Public Corporation

This organizational type is not well defined. Minnesota Project Outreach is a non-profit public corporation subject to the Minnesota non-profit corporation act.

Public-Private Partnership

The Minnesota Zoo is a partnership between the state and the private sector. It is not expressly a state agency or any other organizational type.

State Agencies

The Legislature creates some organizations without explicitly defining them as executive branch agencies, non-profit corporations, or public corporations. The World Trade Center, as both a public corporation and a state agency, is specifically exempted from many of the provisions that govern state agencies.

Appointing a Governing Board

Appointed boards govern all of the groups discussed here. The composition and method of appointment of these boards differs in several ways from the boards of executive branch agencies.

Appointments

State Agencies: The Legislature generally requires the Governor to appoint the members of executive branch agencies that have boards, or specifies that persons holding designated positions (e.g. commissioners) will serve on the board. It is unusual for a group outside of state government to make appointments directly to the board of a state agency.

Other Groups: The statutes governing some of the agencies discussed here permit outside groups to make some board appointments:

- Six of the 15 board members for the World Trade Center are appointed by an association of members of the World Trade Center.
- Fifteen of the 30 Zoo board members are appointed by the board.
- The Governor appointed the initial Greater Minnesota Corporation board, but the board will fill all vacancies except for the Commissioner of Trade and Economic Development.
- Some AURI board members are appointed by groups outside of state government.

Open Appointments Law

State Agencies: This law requires that vacancies on state and metropolitan boards be published in the State Register, and sets a process for making nominations.

Other Groups: The open appointments law clearly applies to the Zoo and the World Trade Center. It is not clear if it applies to the other groups.

Senate Confirmation

State Agencies: The Senate must confirm the Governor's appointments to major executive branch boards.

Other Groups: Senate confirmation is not required for the Minnesota Educational Computing Consortium, Minnesota Project Outreach, the Zoo Board, the Lake Superior Center Authority, the Agricultural Utilization Research Institute, or the six World Trade Center board members who are not appointed by the Governor. The Senate must confirm appointments to the Greater Minnesota Corporation board, even though future appointments will be made by the board, not the Governor.

Legislators

State Agencies: Legislators generally cannot serve as voting members of executive branch boards, because the state constitution prohibits dual office-holding, and because of principles of separation of powers. Legislators generally can serve as non-voting members of executive branch boards.

Other Groups: Legislators serve as voting members on the boards of the World Trade Center, Minnesota Project Outreach, and AURI.

Laws Governing Agency Operations

Application of Expense Reimbursement for Board Members to:

State Agencies (Minn. Stat., section 15.0575) Per diem for members of boards is limited to \$55. Expense reimbursement is identical to the reimbursement for certain executive branch employees. Executive branch reimbursement is governed by collective bargaining agreements or compensation plans which must be approved by the Legislature.

Other Groups The following groups appear to be exempt from the board member compensation limits imposed on state agencies.

- The Agricultural Utilization Research Institute and Minnesota Project Outreach appear to have only self-imposed restrictions on compensation for board members or expense reimbursement. Articles of incorporation, corporate by-laws, or actions of the board can set compensation levels and expense policies.
- The Greater Minnesota Corporation is allowed to pay reasonable compensation to board members and reimburse reasonable expenses. Lake Superior Center Authority board members are not compensated, but are reimbursed for reasonable expenses. Every year, the commissioner of finance must review GMC and Lake Superior Center Authority payments.
- The statute creating MECC does not address board member compensation.

Application of Open Meeting Law to:

State Agencies (Minn. Stat., section 471.705): Meetings of public bodies, including state agencies, must be open to the public. The open meeting law does not apply to private corporations. It is likely, but not absolutely clear in the absence of specific statutory language, that public corporations are subject to the open meeting law, even if they are granted many of the powers of private corporations.

Other Groups The Open Meeting Law clearly applies to the GMC, MECC, Zoo, and World Trade Center. The law probably applies to Minnesota Project Outreach and the Lake Superior Center Authority, because these agencies are designated as public corporations. The law probably does not apply to the Agricultural Utilization Research Institute, because the governing statute designates this group as a nonprofit corporation, not as a public corporation.

Application of Data Practices Act to:

State Agencies (Minn. Stat., chapter 13): The government data practices act establishes a presumption that most government data is available to the public. There are various exceptions to this policy. The law does not apply to private corporations. As is the case with the open meeting law, this law likely applies to public corporations.

Other Groups The act clearly applies to the GMC, Zoo, MECC, and World Trade Center. It probably applies to Minnesota Project Outreach and the Lake Superior Center Authority, because these agencies are designated as public corporations. Application to the Agricultural Utilization Research Institute is not clear. An argument can be made that the act applies, because the act covers any "board... or authority created pursuant to law". However, AURI's statutory designation as a nonprofit corporation may mean it is not covered by the data practices act.

Application of Ethical Practices Act to:

State Agencies (Minn. Stat., chapter 10A): Commissioners, deputy and assistant commissioners and members of most state boards must file statements of economic interest with the Ethical Practices Board. These officials are also required to disclose certain conflicts of interest.

Other Groups The following groups are treated differently from executive branch state agencies:

- Minnesota Zoo board members are exempt from filing statements of economic interest, but must not have a direct or immediate family financial interest in a business that provides goods or services to the zoo.
- Greater Minnesota Corporation board members must not only file statements of economic interest, but must also file statements disclosing certain contributions to public officials and political funds.
- Agricultural Utilization Research Institute and Minnesota Project Outreach board members do not appear to be subject to the ethical practices act. However, three of the nine AURI board members and four of nine Project Outreach board members must comply with the act because they are legislators, commissioners or members of the Greater Minnesota Corporation board.

Application of Administrative Procedure Act to:

State Agencies (Minn. Stat., chapter 14): Executive branch agencies must follow APA procedures when adopting rules that affect the public. These procedures generally provide for publication of proposed rules in the State Register, an opportunity for a public hearing, and an evaluation of the need for and reasonableness of the rules by the independent Office of Administrative Hearings.

Executive branch agencies must follow contested case procedures when a hearing is required to determine the rights of individuals in particular cases. These procedures require that a hearing be conducted by the Office of Administrative Hearings.

Other Groups All of the groups are exempt from some or all of the APA:

- The World Trade Center Corporation is specifically exempt from all of the APA.
- The Agricultural Utilization Research Institute, MECC, Minnesota Project Outreach, the Greater Minnesota Corporation, and the Lake Superior Center Authority are probably exempt from the APA because they are public corporations and not state agencies. The latter two groups must publish their bylaws in the State Register.
- For most rulemaking, the Zoo board is specifically exempt from all of the APA. However, it must publish its rules in the State Register. Rules dealing with protection of zoo property and conduct of visitors are subject to the APA.

Application of Purchasing Laws to:

State Agencies (Minn. Stat., chapter 16B): The Commissioner of Administration performs or supervises most state agency purchasing. State law requires competitive bidding for most purchases of goods or construction services worth more than \$15,000. For consultant and professional services contracts, there is some oversight by the Commissioner of Administration. The law imposes various other requirements related to purchasing, such as attempts to purchase from small businesses and businesses owned by women and minorities.

Other Groups All of the groups except the Zoo appear to be exempt from the purchasing laws. The Zoo is partially exempt. The Zoo is exempt from much of the supervisory authority of the Commissioner of Administration. However, it is subject to the laws governing competitive bidding, consultant contracts, purchasing from small and targeted groups businesses, art in state buildings, and compensation for use of personal vehicles.

Application of Tort Claims to:

State Agencies (Minn. Stat., section 3.732): State law limits the amount the state will pay for tort claims, and also provides that the state is not liable for certain kinds of losses. The law requires the state to reimburse employees for expenses related to tort claims arising within the scope of employment. There is a similar law that applies to municipalities.

Other Groups The state tort claims law covers the World Trade Center, the Zoo, and the Greater Minnesota Corporation. The law does not appear to apply to MECC, Minnesota Project Outreach or to the Lake Superior Center Authority. However, the municipal law applies to "public corporations", so these groups are likely covered by that law. The Agricultural Utilization Research Institute is a nonprofit corporation and likely is not covered by either the state or municipal tort claim law.

Application of Budgeting and Accounting Controls to:

State Agencies (Minn. Stat., chapter 16A): The Governor's office and the Department of Finance review and control executive agency budget requests to the Legislature. After the Legislature appropriates money, executive branch agencies are subject to Department of Finance accounting and expenditure controls. The law also sets standards for the establishment of fees charged by agencies, including approval of the Commissioner of Finance.

Other Groups Most of the groups are exempt from the budgeting and accounting controls. The controls apply to the following groups:

- The Zoo is subject to all of the budgeting and accounting controls, but is exempt from the standards and procedures governing fee-setting.
- The Greater Minnesota Corporation is subject to many of the significant controls: financial reporting, budgeting, accounting, and allotment and encumbrance of appropriations.
- MECC must submit its biennial budget to the Commissioner of Finance by October each even-numbered year.

Application of Audits to:

State Agencies (Minn. Stat., section 3.971): All financial affairs of state departments and agencies are audited by the Legislative Auditor. The Legislative Auditor must also audit the financial records and transactions of certain other enterprises that are funded completely or partially by the state. All contracts between state agencies and public accountants must be reviewed by the Legislative Auditor.

Other Groups The Agricultural Utilization Research Institute is subject to all the auditing requirements of state agencies. In addition, AURI must hire a certified public accountant. The Legislative Auditor is directed to conduct an annual audit of the Lake Superior Center Authority. Financial audits are required of all groups except MECC. Some organizations are directed to hire certified public accountants to perform these audits:

- The Greater Minnesota Corporation, and the Minnesota Zoo must hire a CPA to conduct an annual financial audit. A CPA must conduct a compliance audit for the GMC. Both are also subject to additional audits by the Legislative Auditor.
- Minnesota Project Outreach must contract with a CPA for annual financial and compliance audits but is not specifically subject to additional legislative audits.

Laws Governing Appointment and Compensation of Employees

In creating semi-governmental organizations, the Legislature can provide for: staffing by existing state agency employees; hiring new employees in the state service; or hiring employees outside the state system. Many of the terms and conditions of state employment are governed by collective bargaining agreements or compensation plans approved by the Legislature. These include salary, insurance, and other benefits. The Legislature has also chosen to extend some or all of the conditions and privileges of state employment to directors, officers and employees of certain semi-governmental enterprises.

Application of Civil Service and Collective Bargaining to:

State Agencies (Minn. Stat., chapters 43A and 179A): State employees are hired and serve under civil service laws in either the classified or unclassified service. Most are covered by collective bargaining agreements.

Other Groups Employees of the Minnesota Zoo are state employees. AURI has no employees, relying on GMC to provide staff. The remaining organizations, including GMC, hire outside the state system. Of these, only GMC is required to file an affirmative action plan with the state. Every biennium, GMC, MECC and the World Trade Center must report on their employee compensation plans to the Legislative Commission on Employee Relations.

Application of Retirement Benefits to:

State Agencies (Minn. Stat., chapter 352): Most state employees have retirement coverage under the Minnesota State Retirement System. Minnesota has one retirement plan for the classified service and another for employees in the unclassified service.

Other Groups The Legislature has given the boards of several organizations the option of participating in the state's unclassified retirement plan. This option has been extended to the World Trade Center, MECC, GMC, and through GMC to AURI. Only employees of Minnesota Project Outreach are clearly precluded from participation in the retirement plans. The status of employees of the Lake Superior Center Authority is unclear, but they are probably precluded from participation.

Application of Insurance to:

State Agencies (Minn. Stat., section 43A.27): State employees receive insurance coverage under the state employee group insurance plans administered by the Department of Employee Relations.

Other Groups As with retirement benefits, the boards of the World Trade Center, MECC and GMC can offer the state insurance plan to their employees, officers and directors; Minnesota Project Outreach is ineligible; and the Lake Superior Authority is probably ineligible.

Application of Compensation of Chief Executive to:

State Agencies (Minn. Stat., chapter 15A): The Legislature ratifies the Governor's salary recommendations for executive branch agency heads. These salaries must be within ranges that the Legislature establishes. The Legislature has also forbidden units of local government from paying an employee more than 95 percent of the Governor's salary.

Other Groups There is no statutory limit on the salary of the chief executive of the Lake Superior Center Authority or of Minnesota Project Outreach. Salaries for the chief executives of the other groups are limited to either specified executive branch commissioners' salaries or to 95 percent of the Governor's salary.