

Alert: Minnesota Passes Public Benefit Corporation Act - A New Option for Publicly-Minded Minnesota Businesses

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After many years of thinking, drafting and discussion, on April 29th Governor Dayton signed the Minnesota Public Benefit Corporation Act. That signature means that Minnesota has joined the growing number of states that permit a hybrid form of corporation—one which explicitly permits a for-profit business to inject public benefit considerations directly into its organizational DNA.

By electing to become a public benefit corporation, a corporation will be obligating itself to pursue general or specific public benefits among the corporation's primary objectives—that is, the public benefits do not take a backseat to maximization of profits. Instead, a public benefit corporation is operated with an eye toward a "triple bottom line": people, the planet, and profits. This is a familiar concept in the social enterprise sector, which has for years been populated by entrepreneurs who have been reluctant to agree to hidebound divisions between activities aimed at making money and activities aimed at doing good. What's new in the Public Benefit Corporation Act is that, for the first time, there is a choice of corporate form that is specifically designed to allow business owners, just by choosing a public benefit corporation, to put shareholders and the wider marketplace alike on notice about organizational priorities.

What It Is

A public benefit corporation is, at its heart, a business corporation. The new statute is designed to function in tandem with the existing Minnesota Business Corporations Act, and as a result, most of the statutory provisions and case law interpreting the Business Corporations Act will apply to public benefit corporations. However, a public benefit corporation opts to be defined by a number of distinguishing characteristics:

- **Public Benefit Purposes.** A public benefit corporation, in its articles of incorporation, self-identifies as either a general benefit corporation or a specific benefit corporation. A general benefit corporation elects "to pursue "a net material positive impact . . . on society, the environment, and the well-being of present and future generations." A specific benefit corporation commits to a narrower type of public benefit, electing to articulate and pursue "one or more positive impacts (or reduction of a negative impact) on specified categories of natural persons, entities, communities or interests (other than shareholders in

their capacity as shareholders)."

- Name / Branding. Each public benefit corporation will be branded by its legal name as belonging to one of the above two categories through the designations "General Benefit Corporation" (abbreviated "GBC") or "Specific Benefit Corporation" ("SBC").
- Duties of Directors. In making decisions on behalf of the corporation, directors of a public benefit corporation must consider the public benefit purposes set forth in the corporation's articles, the interests of shareholders, and the interests of non-shareholder constituencies. The Act specifically provides that shareholder profits are not to be given presumptive priority over the other considerations.
- Reporting. Each public benefit corporation must file an annual report with the Secretary of State that details how the corporation pursued its general or specific public benefit goals in the previous year. A general benefit corporation's annual report must refer to an independent third-party standard selected by the board of directors (though no audit or certification is required from the third party that created the standard). The Act requires the Secretary of State to revoke a corporation's public benefit status if it fails to file an annual report.

What It Isn't

Forming a public benefit corporation may provide helpful clarity to business owners, directors, shareholders, and the public concerning a business's operating mission, but there are some important considerations that the Act does not attempt to address:

- No Special Tax Status. The Act does not create a new corporate tax status, nor does election to be a public benefit corporation confer tax-exempt status or transform a for-profit enterprise into a nonprofit organization. A public benefit corporation is taxed as a regular business corporation - either as a C corporation under the Internal Revenue Code or, if it qualifies and makes an election, as a Subchapter S corporation.
- Not a License or Certification. The Act does not articulate a uniform standard or set of standards by which public benefit corporations must operate, nor does it create a standards board or any other review body to evaluate a public benefit corporation's compliance with its stated mission.
- No Third-Party Enforcement Authority. The Act does not grant any government body or third party the right to enforce a public benefit corporation's compliance with its stated public benefit purposes. Shareholders, however, have the right to bring an action if the corporation fails to pursue its public benefit purposes, and the annual report filed with the Secretary of State is subject to penalties of perjury if it is not accurate.

How To Make the Election



A new Minnesota corporation may elect to be a public benefit corporation by filing conforming articles of incorporation with the Minnesota Secretary of State. An existing corporation may amend its articles with shareholder approval—dissenting shareholders will be allowed to redeem their shares at fair value prior to a corporation's conversion to public benefit status.

Is a Public Benefit Corporation Right for You?

Business owners have a variety of entity choices available to them—the public benefit corporation simply adds another means (but not the only means!) by which socially minded businesses can distinguish themselves from other businesses. Whether this new form is the right choice for your business will always depend on your specific goals and priorities. We can help you make a selection that suits your business.

Jennifer Reedstrom Bishop and Greg Larson are members of Gray Plant Mooty's Health and Nonprofit Practice Group, and both are members of the Nonprofit Corporations subcommittee of the Minnesota State Bar Association's Business Law section. In addition, Jennifer Reedstrom Bishop served as a member of the MSBA's public benefit corporation drafting committee, which assisted the legislature with researching and drafting the Minnesota Public Benefit Corporation Act.