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**A new type of business with a built-in moral compass:
The Public Benefit Corporation**

By Glen R. McCluskey

As a devoted student of both nonprofit and for-profit corporations, I welcome a new corporate entity to Minnesota that is a hybrid of the two, the Public Benefit Corporation (PBC). A nonprofit has a charitable purpose, but is not allowed to make a profit. In contrast, a for-profit corporation has no legal obligation to be socially responsible; its purpose is to make money for its shareholders. A PBC is somewhere in the middle. It has an explicit purpose to serve the public good like a nonprofit, but it is taxed and regulated like any other business. It's the best of both worlds; it does something good for society, and it is designed to make a profit for its owners.

When the Minnesota PBC statute went into effect on January 1, 2015, the state joined about 25 other states with some form of PBC, often called "B" corporations. The new businesses adopting this corporate model range from a utility company in Vermont devoted to clean energy, to a manufacturer of environmentally friendly cleaning products in San Francisco.

I foresee a great interest in PBCs in Minnesota for these reasons:

- Minnesota has a long tradition of socially responsible corporations.
- The PBC structure fits the philosophy of an ongoing movement -- the Social Enterprise Alliance, which has a Twin Cities chapter. (see <https://www.se-alliance.org/>)

- PBCs have a built-in moral compass; the ethical principal that the public good is more important than money for its own sake is embedded into the fabric of the corporate culture.
- Adopting a noble purpose can help engage employees and heighten job satisfaction.
- Devotion to a good cause can attract like-minded investors and productive partnerships.
- It's the wave of the future: Millennials embrace the concept of "capitalism with a conscience."
- A social purpose enhances one's brand and can attract customers.

Of course, for-profit corporations and nonprofits will not disappear. Many current businesses have various degrees of commitment to social responsibility and have served our state very well. We also have many strong nonprofits that are not about to go away – the Mayo Clinic, for example. The PBC gives us a new option that fills in the spectrum of choices between profit and non-profit. It will be interesting to see how this experiment unfolds.

How do you set up a PBC?

When one files the papers for a PBC at the Secretary of State's office, it can be as a new enterprise or as a conversion from an existing entity. Either way, the documents that are submitted include a statement of the public benefit the new entity will serve. This can be a general good or a specific good, and the name or initials of each type become part of one's new corporate name: a General Benefit Corporation (GBC) or a Specific Benefit Corporation (SBC). So Acme Widgets, Inc. would become Acme Widgets, SBC. Or you might find a new venture, Jones and Skeezeix, GBC.

Minnesota's new statute defines "public benefit" as a net material positive impact from the business and its operations on society, the environment, and the well-being of present and future generations.

When an existing corporation converts to a PBC in mid-life, shareholders who wish to jump ship are allowed to do so under certain conditions and must be paid fair market value for their shares. The reverse is also true. A PBC can abandon its public benefit status through a vote of the

shareholders at any time. If it does this it is not allowed to go back to being a PBC for at least three years

What's different about operating the PBC?

The biggest change in moving from a for-profit to a PBC is a change in mindset and decision-making that follows the new purpose of serving the public good. The board of directors or shareholders of the PBC must abide by the public benefit purposes as stated in the articles. They cannot demand that all profits go to themselves. This sets the PBC well-apart from a Regular Corporation or LLC. The stockholders of a for-profit, for example, expect the company to maximize shareholder return. If the company gives a portion of its profits to charity, some irate stockholders may sue the company for giving away *their* money. This could not happen in a PBC. The stockholders have a new responsibility; it is their job to make sure the company holds true to its mission of serving the public good.

The state law requires that each PBC file an annual benefit report signed by its chief executive officer. The report must state how the PBC pursued and provided the benefit that it states in its articles. It must also state any circumstances that hindered its efforts. A PBC is not required to have its annual benefit report audited, certified, or otherwise evaluated by a third party. Furthermore, no government entity will review or criticize the reports so long as they meet the bare statutory requirements.

The annual reports will be available for public inspection, most likely on the Secretary of State's website. Failure to file the annual report could result in the revocation of the entity's status as a PBC and it would return to being a regular corporation under state law.

Next steps

Business owners and entrepreneurs interested in a PBC should consult with their counsel and accountant to learn about the various details of this new corporate entity. There are many pros and cons that need to be weighed before making such an important step. Taking due diligence is always the prudent thing to do.

As one who has worked with the social enterprise model with both for-profits and nonprofits, I expect substantial growth in this new type of corporation. This emerging sector calls for people with vision, pioneers with the courage to try changing the world while making a good living. It gives a new and positive twist to the American Dream. Good luck to you!

About Glen R. McCluskey

Glen R. McCluskey, Attorney at Law and MBA, is the principal of the McCluskey Law Office in St. Paul and is the founder of Business Launch and Nonprofit Launch. He provides free consultations about PBCs and the various alternatives -- for-profits and nonprofit corporations. He can be contacted at (651) 646-2669 or Glenlaw@attglobal.net.

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