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Social Enterprise Update: California Governor Signs Bills Creating Flexible Purpose Corporations and Benefit Corporations

Nearing the midnight hour on Sunday October 9, 2011, Governor Brown signed into law two bills that will both take effect on January 1, 2012. Both of these bills will provide an opportunity to form for-profit corporations in California that also promote a social or charitable purpose.

Senate Bill 201 adds the Flexible Purpose Corporation as an option to the California Corporations Code. Flexible Purpose Corporations are going to be ideal for social entrepreneurs who want to set up businesses that can also spend resources on charitable causes, socially beneficial causes, labor, and the environment, without having to worry about maximizing profits for shareholders.

A Flexible Purpose Corporation can fashion Articles of Incorporation to provide for both a business purpose PLUS (i) one or more enumerated charitable or public purpose activities that could be carried out by a nonprofit public benefit corporation **and / or** (ii) the purpose of promoting positive short-term or long-term effects or minimizing adverse short-term or long-term effects upon any of the following: employees, suppliers, customers, creditors, the community, or the environment.

Assembly Bill 361 adds the Benefit Corporation as an option to the California Corporations Code. While the Flexible Purpose Corporation is an entirely new form of legal entity, the Benefit Corporation already exists in several states, although some of the provisions differ from state to state. The Benefit Corporation is ideal for those entities seeking "B Corporation" certification because it was sponsored by B Labs, the owner of the "B Corporation" trademark and because it requires that Benefit Corporations satisfy an objective, outside third-party standard, such as the one offered by B Labs.

Although in most cases I favor the Flexible Purpose Corporation, having been one of its drafters, I believe that both forms will be highly valuable for California moving forward.

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