

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 35**

Introduced by Howard, 9.

Read first time January 08, 2015

Committee:

1 A BILL FOR AN ACT relating to corporations; to amend Laws 2014, LB 749,  
2 section 295; and sections 21-402, 21-403, 21-404, 21-405, 21-407,  
3 21-408, 21-409, 21-410, 21-412, 21-414, and 70-1903, Revised  
4 Statutes Cumulative Supplement, 2014; to change the Nebraska Model  
5 Business Corporation Act operative date; to change Business  
6 Corporation Act references in the Nebraska Benefit Corporation Act  
7 and the Rural Community-based Energy Development Act; to provide an  
8 operative date; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Laws 2014, LB749, section 295, is amended to read:

2 Sec. 295. This act becomes operative on January 1, 2017 ~~2016~~.

3 Sec. 2. Section 21-402, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

5 21-402 (1) The Nebraska Benefit Corporation Act applies to all  
6 benefit corporations.

7 (2) The existence of a provision of the Nebraska Benefit Corporation  
8 Act does not of itself create an implication that a contrary or different  
9 rule of law is applicable to a business corporation that is not a benefit  
10 corporation. The act does not affect a statute or rule of law that is  
11 applicable to a business corporation that is not a benefit corporation.

12 (3) Except as otherwise provided in the Nebraska Benefit Corporation  
13 Act, the Nebraska Model Business Corporation Act is generally applicable  
14 to all benefit corporations. The specific provisions of the Nebraska  
15 Benefit Corporation Act control over the general provisions of the  
16 Nebraska Model Business Corporation Act. A benefit corporation may be  
17 subject simultaneously to the Nebraska Benefit Corporation Act and one or  
18 more other statutes that provide for the incorporation of a specific type  
19 of business corporation.

20 (4) A provision of the articles of incorporation or bylaws of a  
21 benefit corporation may not limit, be inconsistent with, or supersede a  
22 provision of the Nebraska Benefit Corporation Act.

23 Sec. 3. Section 21-403, Revised Statutes Cumulative Supplement,  
24 2014, is amended to read:

25 21-403 The following words and phrases when used in the Nebraska  
26 Benefit Corporation Act have the meanings given to them in this section  
27 unless the context clearly indicates otherwise:

28 (1) Benefit corporation means a business corporation:

29 (a) Which has elected to become subject to the act; and

30 (b) The status of which as a benefit corporation has not been  
31 terminated;

1 (2) Benefit director means the director designated as the benefit  
2 director of a benefit corporation under section 21-409;

3 (3) Benefit enforcement proceeding means any claim or action or  
4 proceeding for:

5 (a) Failure of a benefit corporation to pursue or create general  
6 public benefit or a specific public benefit purpose set forth in its  
7 articles of incorporation; or

8 (b) Violation of any obligation, duty, or standard of conduct under  
9 the act;

10 (4) Benefit officer means the officer designated as the benefit  
11 officer of a benefit corporation under section 21-411;

12 (5) Business corporation means a domestic corporation as defined in  
13 section 21-214 ~~21-2014~~;

14 (6) General public benefit means a material positive impact on  
15 society and the environment, taken as a whole, assessed against a third-  
16 party standard, from the business and operations of a benefit  
17 corporation;

18 (7) Independent means having no material relationship with a benefit  
19 corporation or a subsidiary of the benefit corporation. Serving as  
20 benefit director or benefit officer does not make an individual not  
21 independent. A material relationship between an individual and a benefit  
22 corporation or any of its subsidiaries will be conclusively presumed to  
23 exist if:

24 (a) The individual is, or has been within the last three years, an  
25 employee other than a benefit officer of the benefit corporation or a  
26 subsidiary;

27 (b) An immediate family member of the individual is, or has been  
28 within the last three years, an executive officer other than a benefit  
29 officer of the benefit corporation or a subsidiary; or

30 (c) There is beneficial or record ownership of five percent or more  
31 of the outstanding shares of the benefit corporation, calculated as if

1 all outstanding rights to acquire equity interests in the benefit  
2 corporation had been exercised, by:

3 (i) The individual; or

4 (ii) An entity:

5 (A) Of which the individual is a director, an officer, or a manager;  
6 or

7 (B) In which the individual owns beneficially or of record five  
8 percent or more of the outstanding equity interests, calculated as if all  
9 outstanding rights to acquire equity interests in the entity had been  
10 exercised;

11 (8) Minimum status vote means:

12 (a) In the case of a business corporation, in addition to any other  
13 required approval or vote, the satisfaction of the following conditions:

14 (i) The shareholders of every class or series are entitled to vote  
15 separately on a corporate action regardless of a limitation stated in the  
16 articles of incorporation or bylaws on the voting rights of any class or  
17 series; and

18 (ii) The corporate action must be approved by a vote of the  
19 shareholders of each class or series entitled to cast at least two-thirds  
20 of the votes that all shareholders of the class or series are entitled to  
21 cast on the action; and

22 (b) In the case of a domestic entity other than a business  
23 corporation, in addition to any other required approval, vote, or  
24 consent, the satisfaction of the following conditions:

25 (i) The holders of every class or series of equity interests in the  
26 entity that are entitled to receive a distribution of any kind from the  
27 entity are entitled to vote separately on or consent to the action  
28 regardless of any otherwise applicable limitation on the voting or  
29 consent rights of any class or series; and

30 (ii) The action must be approved by a vote or consent of the holders  
31 described in subdivision (i) of this subdivision entitled to cast at

1 least two-thirds of the votes or consents that all of those holders are  
2 entitled to cast on the action;

3 (9) Publicly traded corporation means a business corporation that  
4 has shares listed on a national securities exchange or traded in a market  
5 maintained by one or more members of a national securities association;

6 (10) Specific public benefit includes:

7 (a) Providing low-income or underserved individuals or communities  
8 with beneficial products or services;

9 (b) Promoting economic opportunity for individuals or communities  
10 beyond the creation of jobs in the normal course of business;

11 (c) Protecting or restoring the environment;

12 (d) Improving human health;

13 (e) Promoting the arts, sciences, or advancement of knowledge;

14 (f) Increasing the flow of capital to entities with a purpose to  
15 benefit society or the environment; and

16 (g) Conferring any other particular benefit on society or the  
17 environment;

18 (11) Subsidiary means in relation to a person, an entity in which  
19 the person owns beneficially or of record fifty percent or more of the  
20 outstanding equity interests; and

21 (12) Third-party standard means a recognized standard for defining,  
22 reporting, and assessing corporate social and environmental performance  
23 that is:

24 (a) Comprehensive because it assesses the effect of the business and  
25 its operations upon the interests listed in subdivisions (1)(a)(ii),  
26 (iii), (iv), and (v) of section 21-408;

27 (b) Developed by an entity that is not controlled by the benefit  
28 corporation;

29 (c) Credible because it is developed by an entity that both:

30 (i) Has access to necessary expertise to assess overall corporate  
31 social and environmental performance; and

1 (ii) Uses a balanced multistakeholder approach to develop the  
2 standard, including a reasonable public comment period; and

3 (d) Transparent because the following information is publicly  
4 available:

5 (i) About the standard:

6 (A) The criteria considered when measuring the overall social and  
7 environmental performance of a business; and

8 (B) The relative weightings, if any, of those criteria; and

9 (ii) About the development and revision of the standard:

10 (A) The identity of the directors, officers, material owners, and  
11 governing body of the entity that developed and controls revisions to the  
12 standard;

13 (B) The process by which revisions to the standard and changes to  
14 the membership of the governing body are made; and

15 (C) An accounting of the revenue and sources of financial support  
16 for the entity, with sufficient detail to disclose any relationships that  
17 could reasonably be considered to present a potential conflict of  
18 interest.

19 Sec. 4. Section 21-404, Revised Statutes Cumulative Supplement,  
20 2014, is amended to read:

21 21-404 A benefit corporation shall be incorporated in accordance  
22 with the Nebraska Model Business Corporation Act, but its articles of  
23 incorporation must also state that it is a benefit corporation.

24 Sec. 5. Section 21-405, Revised Statutes Cumulative Supplement,  
25 2014, is amended to read:

26 21-405 (1) An existing business corporation may become a benefit  
27 corporation under the Nebraska Benefit Corporation Act by amending its  
28 articles of incorporation so that they contain, in addition to the  
29 requirements of section 21-220 ~~21-2018~~, a statement that the corporation  
30 is a benefit corporation. In order to be effective, the amendment must be  
31 adopted by at least the minimum status vote.

1           (2) An entity that is not a benefit corporation may become a benefit  
2 corporation pursuant to subsection (1) of this section if the entity is  
3 (a) a party to a merger or conversion or (b) an exchanging entity in a  
4 share exchange, and the surviving, new, or resulting entity in the  
5 merger, conversion, or share exchange is to be a benefit corporation. In  
6 order to be effective, a plan of merger, conversion, or share exchange  
7 subject to this subsection must be adopted by at least the minimum status  
8 vote.

9           Sec. 6. Section 21-407, Revised Statutes Cumulative Supplement,  
10 2014, is amended to read:

11           21-407 (1) A benefit corporation shall have a purpose of creating  
12 general public benefit. This purpose is in addition to its purpose under  
13 section 21-226 ~~21-2024~~.

14           (2) The articles of incorporation of a benefit corporation may  
15 identify one or more specific public benefits that it is the purpose of  
16 the benefit corporation to create in addition to its purposes under  
17 section 21-226 ~~21-2024~~ and subsection (1) of this section. The  
18 identification of a specific public benefit under this subsection does  
19 not limit the purpose of a benefit corporation to create general public  
20 benefit under subsection (1) of this section.

21           (3) The creation of general public benefit and specific public  
22 benefit under subsections (1) and (2) of this section is in the best  
23 interests of the benefit corporation.

24           (4) A benefit corporation may amend its articles of incorporation to  
25 add, amend, or delete the identification of a specific public benefit  
26 that it is the purpose of the benefit corporation to create. In order to  
27 be effective, the amendment must be adopted by at least the minimum  
28 status vote.

29           Sec. 7. Section 21-408, Revised Statutes Cumulative Supplement,  
30 2014, is amended to read:

31           21-408 (1) In discharging the duties of their respective positions

1 and in considering the best interests of the benefit corporation, the  
2 board of directors, committees of the board, and individual directors of  
3 a benefit corporation:

4 (a) Shall consider the effects of any action or inaction upon:

5 (i) The shareholders of the benefit corporation;

6 (ii) The employees and work force of the benefit corporation, its  
7 subsidiaries, and its suppliers;

8 (iii) The interests of customers as beneficiaries of the general  
9 public benefit or specific public benefit purposes of the benefit  
10 corporation;

11 (iv) Community and societal factors, including those of each  
12 community in which offices or facilities of the benefit corporation, its  
13 subsidiaries, or its suppliers are located;

14 (v) The local and global environment;

15 (vi) The short-term and long-term interests of the benefit  
16 corporation, including benefits that may accrue to the benefit  
17 corporation from its long-term plans and the possibility that these  
18 interests may be best served by the continued independence of the benefit  
19 corporation; and

20 (vii) The ability of the benefit corporation to accomplish its  
21 general public benefit purpose and any specific public benefit purpose;

22 (b) May consider other pertinent factors or the interests of any  
23 other group that they deem appropriate; and

24 (c) Need not give priority to the interests of a particular person  
25 or group referred to in subdivision (a) or (b) of this subsection over  
26 the interests of any other person or group unless the benefit corporation  
27 has stated in its articles of incorporation its intention to give  
28 priority to certain interests related to its accomplishment of its  
29 general public benefit purpose or of a specific public benefit purpose  
30 identified in its articles of incorporation.

31 (2) The consideration of interests and factors in the manner



1 required by subsection (1) of this section does not constitute a  
2 violation of section 21-2,102 ~~21-2095~~.

3 (3) Except as provided in the articles of incorporation or bylaws, a  
4 director is not personally liable for monetary damages for:

5 (a) Any action or inaction in the course of performing the duties of  
6 a director under subsection (1) of this section if the director performed  
7 the duties of office in compliance with section 21-2,102 ~~21-2095~~ and this  
8 section; or

9 (b) Failure of the benefit corporation to pursue or create general  
10 public benefit or specific public benefit.

11 (4) A director does not have a duty to a person that is a  
12 beneficiary of the general public benefit purpose or a specific public  
13 benefit purpose of a benefit corporation arising from the status of the  
14 person as a beneficiary.

15 (5) A director who makes a business judgment in good faith fulfills  
16 the duty under this section if the director:

17 (a) Is not interested in the subject of the business judgment;

18 (b) Is informed with respect to the subject of the business judgment  
19 to the extent the director reasonably believes to be appropriate under  
20 the circumstances; and

21 (c) Rationally believes that the business judgment is in the best  
22 interests of the benefit corporation.

23 Sec. 8. Section 21-409, Revised Statutes Cumulative Supplement,  
24 2014, is amended to read:

25 21-409 (1) The board of directors of a benefit corporation that is a  
26 publicly traded corporation shall, and the board of any other benefit  
27 corporation may, include a director, who:

28 (a) Shall be designated the benefit director; and

29 (b) Shall have, in addition to the powers, duties, rights, and  
30 immunities of the other directors of the benefit corporation, the powers,  
31 duties, rights, and immunities provided in this section.

1           (2) The benefit director shall be elected and may be removed in the  
2 manner provided by the Nebraska Model Business Corporation Act. The  
3 benefit director shall be an individual who is independent. The benefit  
4 director may serve as the benefit officer at the same time as serving as  
5 the benefit director. The articles of incorporation or bylaws of a  
6 benefit corporation may prescribe additional qualifications of the  
7 benefit director not inconsistent with this subsection.

8           (3) The benefit director shall prepare, and the benefit corporation  
9 shall include in the annual benefit report to shareholders required by  
10 section 21-413, the opinion of the benefit director on all of the  
11 following:

12           (a) Whether the benefit corporation acted in accordance with its  
13 general public benefit purpose and any specific public benefit purpose in  
14 all material respects during the period covered by the benefit report;

15           (b) Whether the directors and officers complied with subsection (1)  
16 of section 21-408 and subsection (1) of section 21-410, respectively; and

17           (c) If, in the opinion of the benefit director, the benefit  
18 corporation or its directors or officers failed to act or comply in the  
19 manner described in subdivisions (3)(a) and (b) of this subsection, a  
20 description of the ways in which the benefit corporation or its directors  
21 or officers failed to act or comply.

22           (4) The action or inaction of an individual in the capacity of a  
23 benefit director constitutes for all purposes an action or inaction of  
24 that individual in the capacity of a director of the benefit corporation.

25           (5) Regardless of whether the articles of incorporation or bylaws of  
26 a benefit corporation include a provision eliminating or limiting the  
27 personal liability of directors authorized by section 21-220 ~~21-2018~~, a  
28 benefit director is not personally liable for an act or omission in the  
29 capacity of a benefit director unless the act or omission constitutes  
30 self-dealing, willful misconduct, or a knowing violation of law.

31           Sec. 9. Section 21-410, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 21-410 (1) Each officer of a benefit corporation shall consider the  
3 interests and factors described in subsection (1) of section 21-408 in  
4 the manner provided in that subsection if:

5 (a) The officer has discretion to act with respect to a matter; and

6 (b) It reasonably appears to the officer that the matter may have a  
7 material effect on the creation by the benefit corporation of general  
8 public benefit or a specific public benefit identified in the articles of  
9 incorporation of the benefit corporation.

10 (2) The consideration of interests and factors in the manner  
11 described in subsection (1) of this section does not constitute a  
12 violation of section 21-2,107 ~~21-2099~~.

13 (3) Except as provided in the articles of incorporation or bylaws,  
14 an officer is not personally liable for monetary damages for:

15 (a) An action or inaction as an officer in the course of performing  
16 the duties of an officer under subsection (1) of this section if the  
17 officer performed the duties of the position in compliance with section  
18 21-2,107 ~~21-2099~~ and this section; or

19 (b) Failure of the benefit corporation to pursue or create general  
20 public benefit or specific public benefit.

21 (4) An officer does not have a duty to a person that is a  
22 beneficiary of the general public benefit purpose or a specific public  
23 benefit purpose of a benefit corporation arising from the status of the  
24 person as a beneficiary.

25 (5) An officer who makes a business judgment in good faith fulfills  
26 the duty under this section if the officer:

27 (a) Is not interested in the subject of the business judgment;

28 (b) Is informed with respect to the subject of the business judgment  
29 to the extent the officer reasonably believes to be appropriate under the  
30 circumstances; and

31 (c) Rationally believes that the business judgment is in the best

1 interests of the benefit corporation.

2 Sec. 10. Section 21-412, Revised Statutes Cumulative Supplement,  
3 2014, is amended to read:

4 21-412 (1)(a) Except in a benefit enforcement proceeding, no person  
5 may bring an action or assert a claim against a benefit corporation or  
6 its directors or officers with respect to:

7 (i) Failure to pursue or create general public benefit or a specific  
8 public benefit set forth in its articles of incorporation; or

9 (ii) Violation of an obligation, duty, or standard of conduct under  
10 the Nebraska Benefit Corporation Act.

11 (b) A benefit corporation is not liable for monetary damages under  
12 the act for any failure of the benefit corporation to pursue or create  
13 general public benefit or a specific public benefit.

14 (2) A benefit enforcement proceeding may be commenced or maintained  
15 only:

16 (a) Directly by the benefit corporation; or

17 (b) Derivatively in accordance with the Nebraska Model Business  
18 Corporation Act by:

19 (i) A person or group of persons that owned beneficially or of  
20 record at least two percent of the total number of shares of a class or  
21 series outstanding at the time of the act or omission complained of;

22 (ii) A director;

23 (iii) A person or group of persons that owned beneficially or of  
24 record five percent or more of the outstanding equity interests in an  
25 entity of which the benefit corporation is a subsidiary at the time of  
26 the act or omission complained of; or

27 (iv) Other persons as specified in the articles of incorporation or  
28 bylaws of the benefit corporation.

29 (3) For purposes of this section, a person is the beneficial owner  
30 of shares or equity interests if the shares or equity interests are held  
31 in a voting trust or by a nominee on behalf of the beneficial owner.

1           Sec. 11. Section 21-414, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3           21-414 (1) A benefit corporation shall send its annual benefit  
4 report to each shareholder:

5           (a) Within one hundred twenty days following the end of the fiscal  
6 year of the benefit corporation; or

7           (b) At the same time that the benefit corporation delivers any other  
8 annual report to its shareholders.

9           (2) A benefit corporation shall post all of its benefit reports on  
10 the public portion of its Internet web site, if any, except that the  
11 compensation paid to directors and financial or proprietary information  
12 included in the benefit reports may be omitted from the benefit reports  
13 as posted.

14           (3) If a benefit corporation does not have an Internet web site, the  
15 benefit corporation shall provide a copy of its most recent benefit  
16 report, without charge, to any person that requests a copy, except that  
17 the compensation paid to directors and financial or proprietary  
18 information included in the benefit report may be omitted from the copy  
19 of the benefit report provided.

20           (4)(a) Concurrently with the delivery of the benefit report to  
21 shareholders under subsection (1) of this section, the benefit  
22 corporation shall deliver a copy of the benefit report to the Secretary  
23 of State for filing, except that the compensation paid to directors and  
24 financial or proprietary information included in the benefit report may  
25 be omitted from the benefit report as delivered to the Secretary of  
26 State.

27           (b) The Secretary of State shall charge a fee in the amount  
28 prescribed in subdivision (a)(30) of section 21-205 ~~(1)(y) of section~~  
29 ~~21-2005~~ for filing a benefit report. The fee shall be remitted to the  
30 State Treasurer for credit to the Corporation Cash Fund.

31           Sec. 12. Section 70-1903, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 70-1903 For purposes of the Rural Community-Based Energy Development  
3 Act:

4 (1) C-BED project or community-based energy development project  
5 means a new energy generation project using wind, solar, biomass, or  
6 landfill gas as the fuel source that:

7 (a) Has at least twenty-five percent of the gross power purchase  
8 agreement payments flowing to the qualified owner or owners or as  
9 payments to the local community; and

10 (b) Has a resolution of support adopted:

11 (i) By the county board of each county in which the C-BED project is  
12 to be located; or

13 (ii) By the tribal council for a C-BED project located within the  
14 boundaries of an Indian reservation;

15 (2) Electric utility means an electric supplier that:

16 (a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt  
17 or larger transmission lines in the State of Nebraska;

18 (b) Owns more than two hundred megawatts of electric generating  
19 facilities; and

20 (c) Has the obligation to directly serve more than two hundred  
21 megawatts of wholesale or retail electric load in the State of Nebraska;

22 (3) Gross power purchase agreement payments means the total amount  
23 of payments during the first twenty years of the agreement;

24 (4) Payments to the local community include, but are not limited to:

25 (a) Lease and easement payments to property owners made as part of a  
26 C-BED project;

27 (b) Contract payments for concrete, steel, gravel, towers, turbines,  
28 blades, wire, or engineering, procurement, construction, geotechnical,  
29 environmental, meteorological, or legal services or payments for other  
30 components, equipment, materials, or services that are necessary to  
31 permit or construct the C-BED project and that are provided by a company

1 that has been organized or incorporated in Nebraska under Nebraska law  
2 and has employed at least five Nebraska residents for at least eighteen  
3 months prior to the date of the project application for certification as  
4 a C-BED project; and

5 (c) Payments that are for physical parts, materials, or components  
6 that are manufactured, assembled, or fabricated in Nebraska and that are  
7 not described in subdivision (a) or (b) of this subdivision.

8 Such payments need not be made directly from power purchase  
9 agreement revenue and may be made from other funds in advance of  
10 receiving power purchase agreement revenue; and

11 (5) Qualified owner means:

12 (a) A Nebraska resident;

13 (b) A limited liability company that is organized under the Nebraska  
14 Uniform Limited Liability Company Act and that is made up of members who  
15 are Nebraska residents;

16 (c) A Nebraska nonprofit corporation organized under the Nebraska  
17 Nonprofit Corporation Act;

18 (d) An electric supplier as defined in section 70-1001.01, except  
19 that ownership in a single C-BED project is limited to no more than:

20 (i) Fifteen percent either directly or indirectly by a single  
21 electric supplier; and

22 (ii) A combined total of twenty-five percent ownership either  
23 directly or indirectly by multiple electric suppliers;

24 (e) A tribal council;

25 (f) A domestic corporation organized in Nebraska under the Nebraska  
26 Model Business Corporation Act and domiciled in Nebraska; or

27 (g) A cooperative corporation organized under sections 21-1301 to  
28 21-1306 and domiciled in Nebraska.

29 Sec. 13. This act becomes operative on January 1, 2017.

30 Sec. 14. Original Laws 2014, LB749, section 295; and sections  
31 21-402, 21-403, 21-404, 21-405, 21-407, 21-408, 21-409, 21-410, 21-412,

1 21-414, and 70-1903, Revised Statutes Cumulative Supplement, 2014, are  
2 repealed.