AN ACT

ENTITLED, An Act to revise certain provisions of the South Dakota Business Corporations Act regarding the issuance of shares and cumulative voting for directors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 47-1A-621 be amended to read as follows:

47-1A-621. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissary notes, services performed, contracts for services to be performed, or other securities of the corporation. Before the corporation may issue shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefore are fully paid and nonassessable.

The corporation may place in escrow any shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

Section 2. That § 47-1A-728 be amended to read as follows:

47-1A-728. Unless otherwise provided in the articles of incorporation, directors are elected by

a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. Shareholders may cumulate their votes for directors. However, shareholders may not cumulate their votes for director if the articles of incorporation include a statement that cumulative voting for directors is not allowed. The right to cumulate votes for directors means that the shareholders are entitled to multiply the number of votes that they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

Section 3. The provisions of section 1 of this Act are effective on the date that Article XVII, section 8, of the South Dakota Constitution is amended pursuant to the general election of 2012.

Section 4. The provisions of section 2 of this Act are effective on the date that Article XVII, section 5, of the South Dakota Constitution is amended pursuant to the general election of 2012.

An Act to revise certain provisions of the South Dakota Business Corporations Act regarding the issuance of shares and cumulative voting for directors.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1056

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Chief Clerk

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_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1056
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State