

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1351

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1351


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1351

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-2-05

Tape Number	Side A	Side B	Meter #
1	x		35.1-end
1		x	0-1.8
Committee Clerk Signature 			

Minutes:

Chairman Keiser: Opened the hearing on HB 1351.

Representative Iverson: Appeared in support of HB 1351 and also was a sponsor of the bill.

Al Jaeger, Secretary of State of ND: Appeared in opposition of HB 1351.

Provided a written statement (SEE ATTACHED TESTIMONY) I know that the introduction of this bill was well intended, but there are several concerns that I would have as Secretary of State, this is a bill that would put into the century code that would require me to make a study and place these requirements in such a matter, that it over looks that fact that I don't have the staff or resources to conduct as extensive of a study that is implied in this particular bill. I wasn't asked to prepare a fiscal note but in this case we would have to get a consultant in other words we would look at this as an unfunded mandate at our office with out

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1351

Hearing Date 2-2-05

any financial resources to achieve the purposes of the study. The question that is more important is if this is really needed. I don't think it is.

Representative Nottestad: I MOVE a DO NOT PASS on HB 1351.

Representative Dietrich: SECOND the DO NOT PASS motion on HB 1351.

Motion carried. **VOTE: 13-YES 0-NO 1-Absent (EKSTROM).**

Representative Boe will carry the bill on the floor.

Hearing closed.

Roll Call Vote #: 1 Date: 12-2-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1351

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Nottestad Seconded By Dietrich

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom		
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) 13 No 0

Absent (1) Rep Ekstrom

Floor Assignment Rep. Boe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 10, 2005 8:20 a.m.

Module No: HR-27-2358
Carrier: Boe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1351: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1351 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1351

BUSINESS ENTITIES IN EXISTENCE

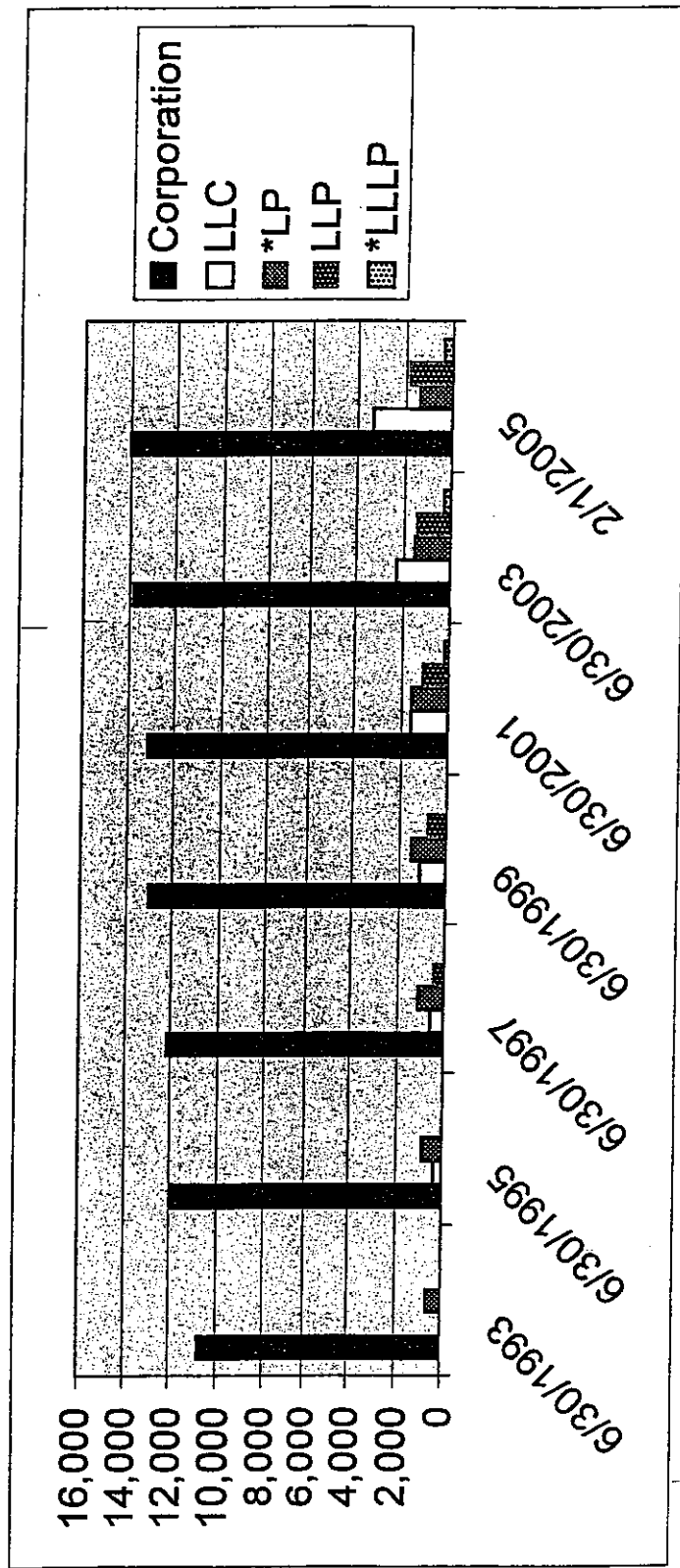
Entity Type	6/30/1993	6/30/1995	6/30/1997	6/30/1999	6/30/2001	6/30/2003	2/1/2005
Corporation	10,718	11,939	12,143	13,013	13,130	13,834	13,998
LLC		379	599	1,112	1,602	2,299	3,340
*LP	626	864	1,099	1,491	1,566	1,528	1,390
LLP		12	449	777	1,078	1,436	1,824
*LLLP					175	309	383

*Includes Foreigns

Corporations include:
 Business Corporations
 Farm Corporations
 Professional Corporations

LLCs include:
 Business LLCs
 Farm LLCs
 Professional LLCs

LLPs include:
 Business LLPs
 Professional LLPs



#1

BUSINESS ENTITIES IN EXISTENCE

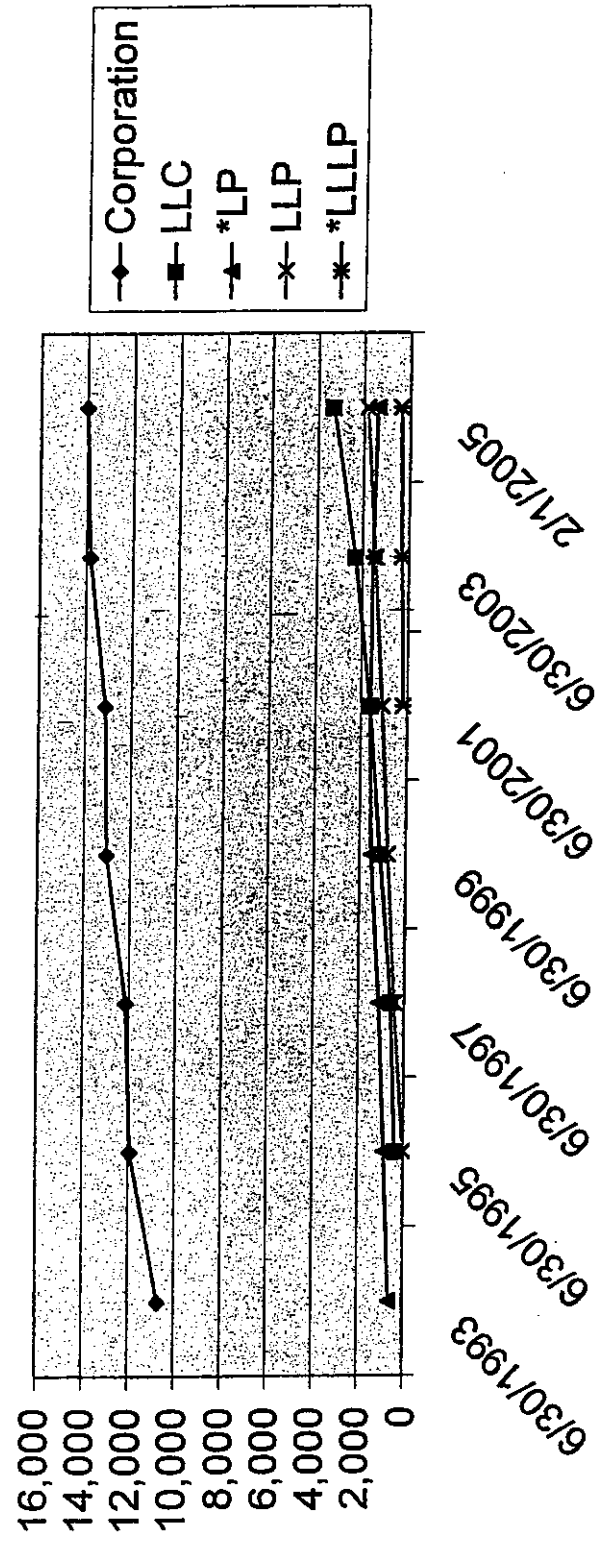
Entity Type	Biennium						
	6/30/1993	6/30/1995	6/30/1997	6/30/1999	6/30/2001	6/30/2003	2/1/2005
Corporation	10,718	11,939	12,143	13,013	13,130	13,834	13,998
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Corporations Include:
 Business Corporations
 Farm Corporations
 Professional Corporations

LLCs Include:
 Business LLCs
 Farm LLCs
 Professional LLCs

LLPs Include:
 Business LLPs
 Professional LLPs

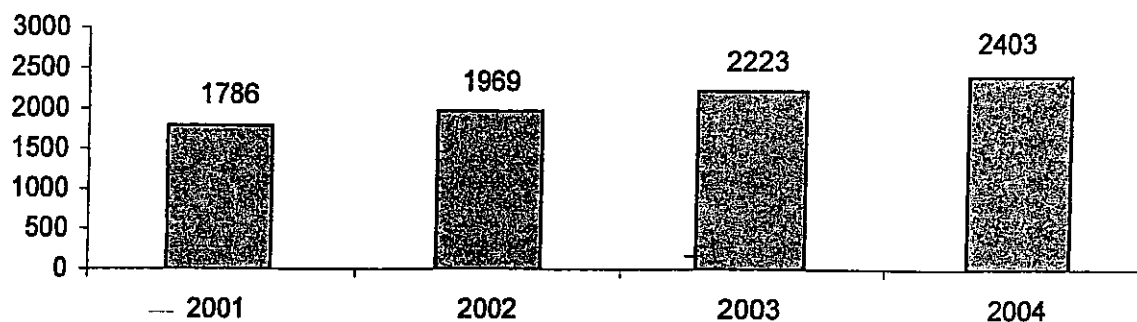


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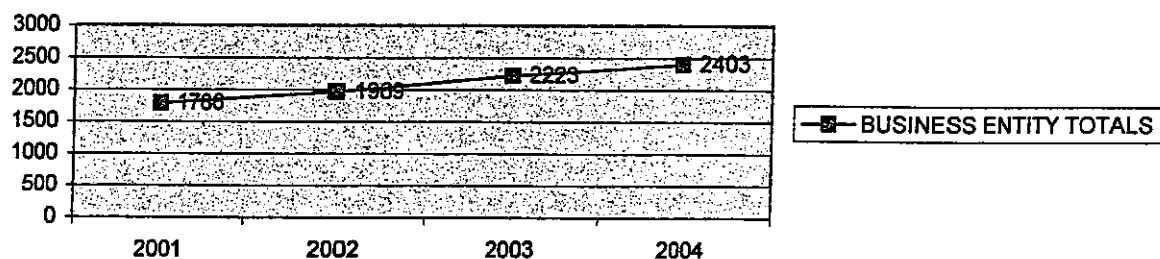
BUSINESS ENTITY TOTALS

2001 2002 2003 2004
1786 1969 2223 2403

NEW BUSINESS REGISTRATIONS



BUSINESS ENTITY TOTALS

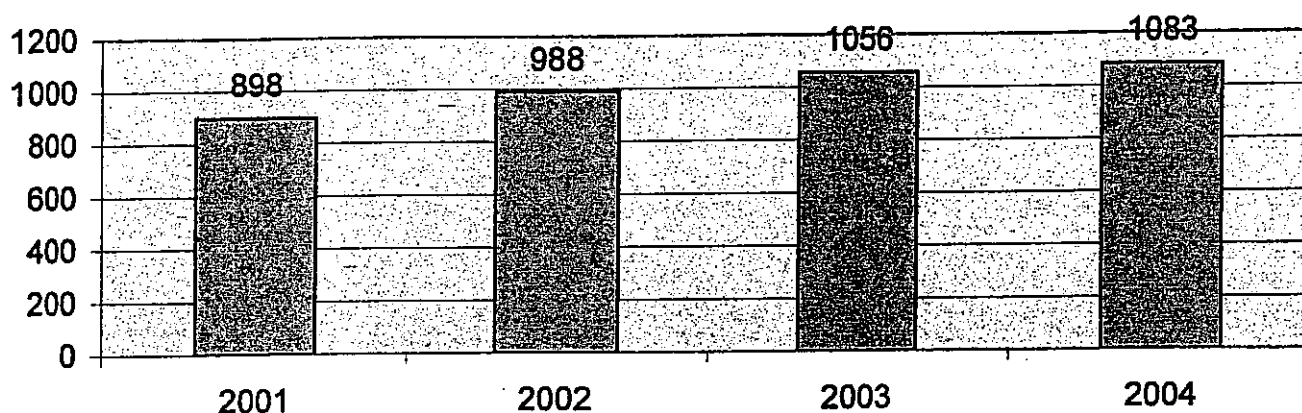


#4

CORPORATIONS ("NEW")

	2001	2002	2003	2004
BANK			1	1
BUSINESS CORPORATIONS	817	886	959	1006
FARM	31	38	31	28
PROFESSIONAL CORPORATION	50	64	65	48
TOTAL	898	988	1056	1083

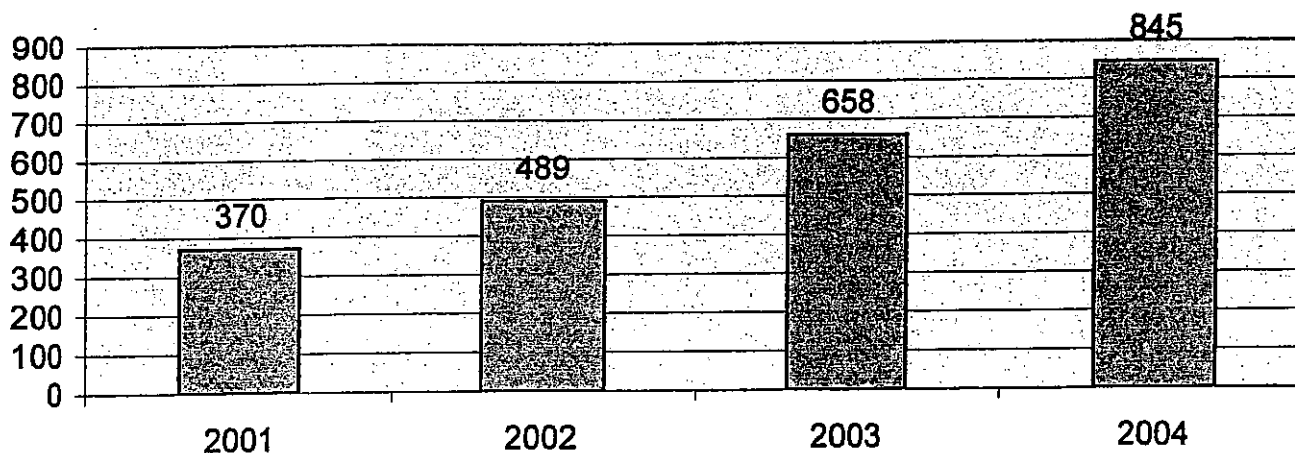
CORPORATIONS ("NEW")



LLC's "NEW"

	2001	2002	2003	2004
FMLC	8	6	14	9
LLC'S	359	475	641	826
PLC	3	8	3	10
TOTAL	370	489	658	845

LLC'S ("NEW")

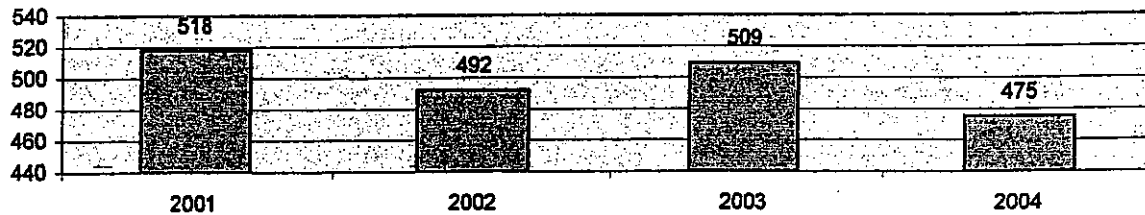


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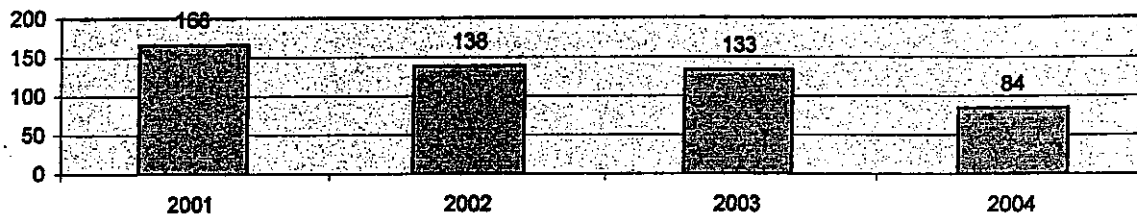
PARTNERSHIPS

	2001	2002	2003	2004	4-yr Total
LP	166	138	133	84	519
LLP/PLL	282	301	308	333	1224
LLLP	70	53	68	58	249
TOTAL	518	492	509	475	

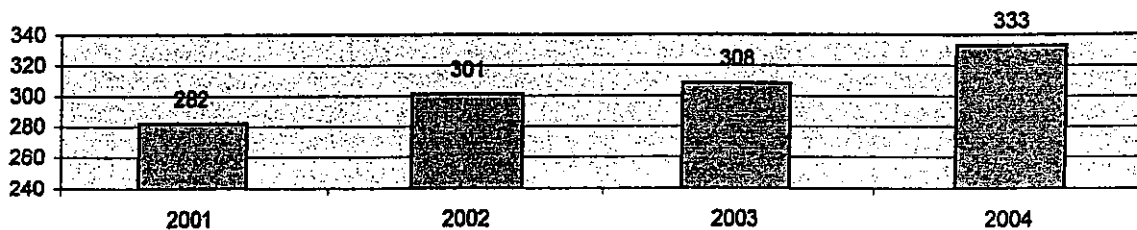
PARTNERSHIPS TOTALS



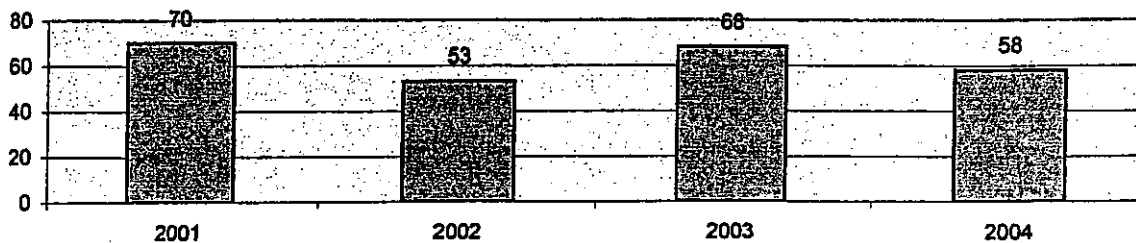
LP



LLP/PLL



LLLP

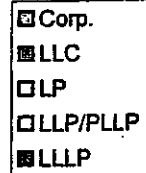
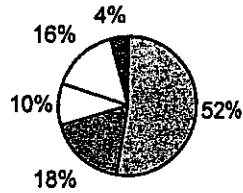


ANNUAL PERCENT

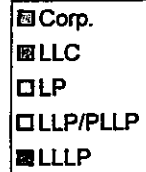
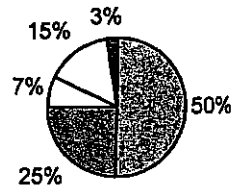
	2001	2002	2003	2004
Corp.	50.2	50.1	47.5	45
LLC	17.1	24.8	29.5	35.1
LP	9.2	7	5.9	3.4
LLP/PLL	15	15.2	13.8	13.8
LLLP	3.9	2.6	3	2.4

#4

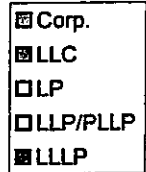
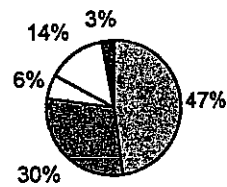
2001



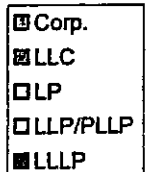
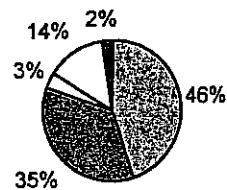
2002



2003



2004



TO: Extend America, Inc.
Greg Adams
Eugenie Mansfield
Stuart Campbell

FROM: Sarah English Tune

DATE: February 2, 2002[TIP:1]

RE: Comparison between North Dakota and Delaware Corporation Laws

I.I. ISSUE

1. Are there any significant differences between North Dakota and Delaware corporate law?
2. If there are any significant differences, what are the implications of such differences?

II.II. DISCUSSION

A. Comparison of Corporate Statute

The provisions of the North Dakota Business Corporation Act (the "North Dakota Corporation Act") and the parallel provisions of the Delaware General Corporation Law (the "Delaware Corporation Law") are not significantly different, with a couple of exceptions discussed below. However, Delaware corporate statute is more comprehensive in addressing different corporate aspects and issues. The primary differences between the North Dakota and Delaware corporate statutes are as follows:

1. Cumulative Voting

The most unusual feature of the North Dakota corporate law, is that the North Dakota Constitution grants shareholders of a corporation the right to cumulative voting in the selection of directors - i.e., the right to vote the number of shares owned by a shareholder multiplied by the number of directors to be elected for one or more nominees. This right cannot be denied by the corporation's articles of incorporation or bylaws. In contrast, the Delaware General Corporation Law allows a company to grant such cumulative voting rights to shareholders but does not mandate such rights. Cumulative voting is meant to protect the interests of minority shareholders by increasing their voting power in the elections of directors. This unusual feature of the North Dakota Corporation Act could interfere with the company's desired governance structure and prove cumbersome at a company's annual meetings.

2. Preemptive Rights

The North Dakota Corporation Act gives a shareholder preemptive rights, i.e., the right to maintain such shareholder's proportionate ownership interest in the company by subscribing for more stock, in relation to additional issuances of stock unless a company's articles of incorporation or board denies or limits such right. In Delaware, preemptive rights must be explicitly granted by a company's articles of incorporation. Preemptive rights have the effect of protecting the proportionate ownership of existing shareholders. Even though North Dakota law grants a shareholder such rights by default, a company can easily eliminate such rights in its articles of incorporation.

3. Summary of Differences

The table below presents a summary description of the significant differences between Delaware General Corporation Law and the North Dakota Corporation Act:

Subject	North Dakota	Delaware
Cumulative Voting	Guaranteed by state constitution. May not be prohibited by articles of incorporation.	Denied in absence of grant in articles of incorporation.
Preemptive Rights	Granted unless denied or limited in articles of incorporation.	Denied in absence of grant in articles of incorporation.
Bylaws	Not mandatory.	Required.
Amending Bylaws	After the adoption of the initial bylaws, the board may not adopt, amend or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies on the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.	The certificate of incorporation may provide that the directors can adopt, amend or repeal bylaws.
Quorum for Board action	Majority by default; larger or smaller number as provided in articles or bylaws. No minimum number.	Majority by default; larger or smaller number as provided in articles or bylaws, but no smaller than 1/3 of the directors.
Votes required for directors action by written consent	All directors; If so provided in the articles, and only for actions other than those requiring shareholder approval, actions can be taken by the number of directors required for approval of the action at issue at a meeting at which all directors are present, if so provided by articles.	All directors.
Committees of the board	Committee members do not have to be board members unless the articles or bylaws provide otherwise.	Committee members must be board members.
Committee of disinterested persons	Discretionary authority of board to establish a committee made up of two or more disinterested directors or other disinterested persons to decide on whether to pursue certain legal right or remedy of the corporation.	No equivalent provision.
Officers required	Must have a president, one or more vice presidents, a secretary and a treasurer.	No specific requirement other than one of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors.
Annual meetings of shareholders	Not mandatory unless required by articles or bylaws.	Required.

Special meetings	Can be called by the president, two or more directors, 10% shareholder and anyone else authorized to call such a meeting by the articles or the bylaws.	Can be called by the board, and any other person authorized to call such a meeting in the articles or the bylaws.
Notice of Meeting	Must be given between 50 to 10 days before the date of meeting.	Must be given between 60 to 10 days before the date of meeting.
Shareholders action by written consent	Must be signed by all shareholders entitled to vote. Or if provided in the articles, must be signed by all shareholders who own voting power equal to the voting power that would be required to take same action at a meeting of shareholders at which all shareholders were present.	Must be signed by shareholders holding not less than the number of votes necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
Indemnification of directors, officers and employees, etc.	Requires indemnification if the person (a) acted in good faith, (b) believed that the conduct was not opposed to the best interest of the corporation (c) received no improper personal benefit and (d) with respect to criminal proceedings, had no reasonable cause to believe the conduct was unlawful. However, a company's articles or bylaws may prohibit or limit indemnification as long as the conditions or prohibits apply equally to all persons or to all persons in a given class.	Empowers a company to indemnify if the person (a) acted in good faith (b) believed that the conduct was not opposed to the best interest of the corporation (c) received no improper personal benefit and (d) with respect to criminal proceedings, had no reasonable cause to believe the conduct was unlawful. Mandates indemnification if an indemnified person is successful on the merits in defense of any action, suit or proceeding.

B. Case Law

More importantly, Delaware has a well-developed body of law which offers courts' interpretations and in-depth analyses of provisions of the Delaware Corporation Law and other corporate governance issues, whether or not the Delaware Corporation Law specifically addresses such issues. By contrast, there is very little case law interpreting or analyzing provisions of North Dakota Corporation Act or general corporate law issues. As a result, Delaware would generally offer a greater degree of certainty and clearer guidance than North Dakota with respect to understanding the nature of the applicable state law and achieving legal compliance.

III. CONCLUSION

The advantages of choosing Delaware as the state of incorporation are primarily (a) the flexibility of the corporate statute to provide greater power to the corporation and the board of directors and (b) the well developed body of case law. Although the North Dakota corporate statute has some differences, they neither present insurmountable problems nor necessitate forming the Company in Delaware.