

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
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DESCRIPTION

1437

2007 HOUSE JUDICIARY

HB 1437

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1437

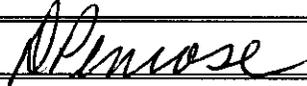
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/31/07

Recorder Job Number: 2345

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1437.

**Lt. Col. Dave Thiele, Staff Judge Advocate for the ND National Guard:** We are here in support of HB 1437. I had a chance to talk with Rep. Thoreson. The image of our service members is precious, particularly those lost. We have a say, "we want to always remember", but we want to do so in a way that is respectful and dignified. There have been cases across the country where that did not occur, where even family members objected to the use of the name or image of their loved one to no avail. What this bill will do is prevent that. The one thing that I want to make sure of, and I know that Rep. Thoreson has an amendment, is that we keep this narrow. That it is strictly for a commercial purpose. We get a lot of requests from businesses and individuals that want to pay proper respect to our service members; such as putting up a poster up their business wall and we certainly don't object to that, that is proper honoring and remembering of their sacrifice. I think this does what it is supposed to do. I think the amendment will keep it even narrower.

**Rep. Meyer:** I hope it gets amended a little bit, this bill, simply because when we were trying to put in an honorarium in Dunn County, ND. I ran into so many problems because when I went to our county auditor and asked for a list of the names because the agreement was that

we absolutely could not put that up unless we were sure that we found every single veteran and it was very difficult for me to get those names released, because they thought that it was an honorary hall, we never did get it done because of that.

**Lt. Col. Dave Thiele:** That's exactly what the concern is that we have. We don't want to have a chilling effect for the positive things. I think that we can all agree that if we had to go and seek out the permission of every family for these positive things, the short answer is that it probably just won't get done. We don't want that. We need to work together to make sure that doesn't happen, and make sure that this bill accomplishes the narrow goal that we intend and leaves open the positive things that we want to continue to happen. There are a lot of things going on just like you described, where people are trying to do the right thing, to pay proper respect and we want them to be able to do that in a manner that isn't so burdensome that it doesn't get done.

**Rep. Delmore:** I have a question in the beginning where it says that the person is not living. We have either / or. Then the individual's spouse would adequately take care of it.

**Lt. Col. Dave Thiele:** Yes, that is how I read the bill.

**Rep. Delmore:** Do you see a problem if you have the majority of the individual's surviving grandparents, spouse, children; that's making it pretty complex to track everybody down and get their equal vote. This could be something that could split the family.

**Lt. Col. Dave Thiele:** This isn't my language. But I think your concern is legitimate. The reality is that we have situations where the families aren't together as a unit, the surviving members. If it gets to that point where there isn't a surviving spouse or children that can give consent and you're going beyond that, potentially yes. I'm not sure how you are going to avoid that. You need somebody to give consent for the use of the name or image and if there isn't a

spouse or children, it's going to be parents and there could be a fractured parent unit and it could be a problem.

**Rep. Onstad:** Just for clarification, isn't it against the law to use anybody in a commercial purpose or advertising, is it not.

**Lt. Col. Dave Thiele:** I don't claim to be an expert in that area. I don't know.

**Chairman DeKrey:** Rep. Kretschmar said that you could pursue a civil action.

**Lt. Col. Dave Thiele:** It wouldn't be a criminal action. It's very difficult to pursue a civil cause of action, the cost alone is prohibitive. The particular case that is driving this legislation is a guy making t-shirts. To bring a civil action would obviously necessitate some month, time and effort.

**Rep. Klemin:** I'm wondering if there isn't an easier way to do this without having to get the permission of everybody. We have Probate Code that sets out orders of distribution of the intestacy. It seems to me that trying to track down the majority of all these people doesn't seem to be an easy task.

**Lt. Col. Dave Thiele:** That is a good idea, just using the same hierarchy that's in the probate code to define where you would go for consent.

**Rep. Klemin:** If this was a corporation that committed a class A misdemeanor there was a fine of \$15,000. What would happen if somebody was doing this in MN for somebody who lived in ND, or the estate is in ND.

**Lt. Col. Dave Thiele:** I don't think we would have jurisdiction with the offenses occurring outside our borders. It has limited application, it really affects people doing this within the state of ND where we have jurisdiction.

**Rep. Koppelman:** I think, but I'm not an expert, when you use images of people without their permission, its cause for civil action. I think there is also a safety valve if you take a picture

that is in a public arena, such as a basketball game and you take a picture of the crowd and you're sitting there, you don't have to go and ask for that person's permission to use that picture in the newspaper the next day. I think what we want to look at here, is there a way to deal with what you are talking about, I think we're all sensitive and sympathetic to that, without making it so unruly that it doesn't work. Maybe the bill could be amended that says the identifiable image of the person; whereas if you have a far away shot of some people in a uniform like yours, they maybe wouldn't know it was you unless they were close enough to get your name, etc. That way, it wouldn't have the unintended consequences for people who are trying to honor a military person.

**Lt. Col. Dave Thiele:** I think you have given another example of a potential unintended consequence. We want to do whatever we can to avoid whether the language you propose is the best option, we need to sit down and make sure that we are doing it right. I haven't had a chance to sit down and go over this with Rep. Thoreson. I'm more than happy to work with anybody to fine tune the legislation to get it to where we are all comfortable. I think you are right, we all agree that we want to fix the problem but we want to keep it narrow so we don't create problems.

**Rep. Wolf:** In the listing on lines 12 and 13, parents is not listed there.

**Lt. Col. Dave Thiele:** Yes, I didn't even catch that. Typically it would be spouse, children, then parents.

**Chairman DeKrey:** Thank you for appearing.

**Rep. Blair Thoreson:** I am the sponsor of this bill, and would ask for your support. I have an amendment which would make the bill read as follows: line 7, "a person is guilty of a class A misdemeanor if the person uses in conjunction with the sale of a good or service, the name or image of an individual who is in active duty or a former member of the armed forces without

first obtaining the consent of that individual and if that individual was living or deceased, the consent of the individual's surviving spouse, personal representative or a majority of the individual's surviving grandparents, siblings, children and grandchildren, who are at least 18 years of age." I believe there was a question about "parent" being left out. Is that correct. That is something else that should be included. As for the reason this bill is before you is because this came about because of a situation I became aware of where a person, bad actor, is selling for a profit, T-shirts that say on the front "Bush lied" and on the back "They died" and listed over those phrases are the names of every soldier killed in Iraq and Afghanistan. Regardless of your political beliefs or the feelings which any of us have about our current war on terror, I think that it's despicable that somebody would use these persons' names to promote their political statement and to profit off of it. I was aware that language such as ours, was passed in both states of OK and LA, TX is now also considering this and I believe they passed it in committee and it's going to their full assembly. I bring it before our legislature also because I feel that we should put a protection in our law for those families who've had to go through so much.

**Chairman DeKrey:** Thank you.

**Rep. Ralph Metcalf:** I am a sponsor and support this bill. My reason for being involved in this basically is very small and limited. With the ability of transcribing pictures from a small little camera, onto a T-shirt this big, without anybody's approval, can't be allowed to happen for our veterans who are returning and their families who might accidentally see this. I think it could be very devastating; especially if they didn't know it was out there and especially if the person who did this had put some language or something that would mock the involvement of this person in the armed forces. That's my main concern. I would hope that we could do

something, if this bill is the right method, I hope that we can accomplish it and make the changes necessary and I'm sure I'll leave that up to the committee.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Gene Kouba, ND Dept. of Veteran Affairs:** Bob Hanson, Commissioner of Veteran Affairs, he is in a budget meeting and sent me up here. He wishes to express support of this bill, as do I.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

**Jack McDonald, ND Newspaper Association and ND Broadcasters Association:** I am neutral. Just looking at this bill from the angle of the people who do a lot of advertising. I think the amendment that Rep. Thoreson proposed does a good job of starting to clean this bill up.

There are some problems with this bill. I come to this with all due respect to the service men and I have a son in the Guard, so I am certainly not doing anything critical here. There are some problems. First of all, misusing the name. When you say the name of any member of the Armed Forces or a former member of the Armed Forces, you're covering a wide swath. The name of anybody who's been in the Armed Services in ND or anybody formerly in the armed services, that's a wide net that you are casting that you are going to make a class A misdemeanor if you use it in some way without getting his permission. You are talking about people who were 50 years ago today, type of thing. You are talking about stories, maybe posters of WWII memorials, with the celebration of VJ Day, things like that. It's pretty broad, I don't know how you could even enforce it. The same with the image of an individual who is in active duty or former member of the armed forces. Again, that's an awfully wide swath, even in their uniform. I'm looking again at people who have 50 years ago, type of things, communities that celebrate their anniversaries, their centennials, they have pictures of people in uniform. You'll see on the walls of the Capitol in your meeting rooms, you will have several

pictures from WWII and WWI members in uniform. Using it for a commercial purpose for the sale of goods and services will help a lot, because I'm thinking of the many people who put posters in July 4<sup>th</sup> celebrations. They use pictures of these people who have been in the service, and I guess if you aren't selling anything, if you're just having the poster, that is probably pretty good. I would certainly be willing to work with a subcommittee and try to clean it up. There are some problems when you cast such a wide net and make it a class A misdemeanor. It's going to be pretty difficult to enforce. I understand the problem, and as I said, I'm not opposed to try and solve the problem, but it's a difficult problem to solve without creating problems for people who are trying to help out, like Rep. Meyer mentioned. I know that many newspapers will have a July 4<sup>th</sup> supplement and put in the armed forces day, veterans day, high school's have pictures up of former members and their service, the churches have pictures on the wall of soldiers to pray for them in the armed forces.

**Rep. Klemin:** The thing that comes to mind for me, are books about military units, wars, etc. about who served, and of course, the objective of the author is to sell books, and make a profit and there are lots of names of people in those books. Do you think that would affect this.

**Jack McDonald:** That's exactly the point I'm making. Even though you are saying use of history books, there are all kinds of people who are talking about their time in the war. Of someone put pictures in a calendar and gave it away free, is that a commercial purpose because it is advertising his business.

**Rep. Klemin:** My grandfather was in WWI, and one of the members of the unit wrote a book about that experience in WWI; if this had been the law at that time, he would have had, as the author, to go to the people in the unit if they are still alive and get their consent and if they weren't, they would have to go to some other heir or other person to get their consent before they could use any group photo, or whatever in this book.

**Jack McDonald:** This comes to mind now, for instance, that I believe that there are maybe 15 or 16 soldiers killed. For example, coming up on July 4<sup>th</sup>, Bismarck has their July 4<sup>th</sup> celebration and the Symphony has a concert. Let's just say you want to have poster to honor those 15 people were killed and maybe the others who were wounded, and they wanted to use the pictures and/or the names. That means that they have to go and get 15 different estates and find out all 15 different survivors' permission and remember some of those people live in other states now. It's a difficult task to try and get these signatures. There are even more than one attorney in probate where you have to try and get five people to agree. To try and track them all down is going to be very difficult. I think we can do something.

**Rep. Klemin:** We see news shots from Iraq or Afghanistan on the news on TV all the time.

Would this apply to that.

**Jack McDonald:** That could be one of the problems. I don't know where you draw the line. Somebody puts out a poster and gives it away for free, to honor the service men and women, but are they at the same time promoting their business.

**Rep. Klemin:** I can certainly see the problem here that's trying to be resolved; but there are legitimate uses too.

**Jack McDonald:** Don't misunderstand me or my organizations. We're not anywhere against the service people at all, and I see that there are problems with this bill.

**Rep. Koppelman:** As I look at this, the reference to name, reference to image specifies that it has to do with being depicted as a member of the armed forces. The name portion doesn't say that unless you read into that. You might want to clarify the use of their name would also be in that context, otherwise any time that anybody used their name for anything, they would be in trouble. Do you agree that's an issue.

**Jack McDonald:** Yes, it is.

**Chairman DeKrey:** Thank you. I will appoint a subcommittee of Rep. Dahl, Rep. Koppelman, and Rep. Delmore, and the ND Guard and Jack McDonald to work together to come up with some changes for the bill. Further testimony in opposition. We will close the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1437

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/6/07

Recorder Job Number: 2953

Committee Clerk Signature

*D. Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at HB 1437.

**Rep. Dahl:** At this point, it just seems unworkable because there are too many unintended consequences to this bill. There are two amendments before you. One is a resolution where LC would study it, or we amend it.

**Chairman DeKrey:** Here is the problem. I talked with Col. Thiele, in the Guard right before we came up. Rep. Thoreson is pretty upset, I guess Arkansas did pass out a bill, and he feels that we should pass out the same one. After I talked with Col. Thiele, there's as many good things going on with the images and names of these guys that have been killed, and there have been very few bad things happening. So if we do something about their images and names, we will actually be doing more harm than good. So I talked with Jack McDonald and there are plenty of 1<sup>st</sup> amendment issues in this bill. You may disagree with me, but the way I see it is, kill the bill, which probably wouldn't be very popular, because it deals with a popular issue, or we can amend it to a study resolution. If we kill the bill, we can always still pick up a study resolution that Rep. Dahl handed out.

**Rep. Koppelman:** I would move the amendment .0102.

**Rep. Wolf:** Second.

**Rep. Koppelman:** The subcommittee has been working on this bill. I spoke with Col. Thiele three times and what you explained is what he told us as well. I think that you're correct, Rep. Thoreson was upset and I asked Col. Thiele to call and talk with him and so I hope that's going to help that situation. I think the bottom line, you're right, I don't think anyone really wants to go on record as opposing this kind of legislation, and yet we do see huge problems with the bill as it stood. I think this amendment to turn it into the study is the best way to go.

**Rep. Delmore:** I am going to oppose the study resolution, simply because I don't think, even if we study this, and I don't know if LC would study it anyway and with the study, you could study it forever. There are certain rights to freedom of speech and those things that are there. I think that the current resolution addresses the issue in a fair and honorable way. I think it says what the committee wants to say. I would much rather go with the concurrent resolution that actually says, hey this is how we feel in committee, we honor those people and so on, rather than a study resolution that's probably not going to go anywhere.

**Rep. Koppelman:** I will withdraw my motion.

**Rep. Wolf:** I withdraw my second.

**Chairman DeKrey:** We will take a look at this tomorrow.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1437

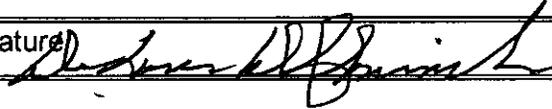
House Judiciary Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3004

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** Opened the hearing on HB 1437.

Our options are to amend it and do a study or kill the bill and then the committee can put National Resolutions in for a study. That is pretty much our options.

**Rep. Kim Koppelman** I would prefer to put in a study resolution than an amendment or kill this bill. Seems to me that would serve the same purpose in the end, but it would look better if we didn't kill the bill.

**Rep. Kim Koppelman Moved the amendment Seconded By Rep. Chris Griffin**

No Discussion:

Voice vote carried

**Do Pass As Amended Motion Made By Rep. Dahl Seconded By Rep. Kingsbury**

Discussion:

**Rep. William Kretschmar** I am going to vote against it.

**Chairman DeKrey:** The very reason these guys died is defending those freedom for people that perhaps don't even deserve it. I could not sleep. We are trying to honor them and protect them and on the flip side of that would actually dishonoring what they actually died for. So I

agree with Rep. Kim Koppelman that politically we should make it a study and not take this on.

That was my thoughts.

**Vote:            12    Yes   2    No   0    Absent    Carrier: Rep. DeKrey**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 8, replace "an advertisement for a commercial purpose" with "conjunction with the sale of a good or service"

Page 1, line 9, remove "in"

Page 1, line 10, remove "that member's armed forces uniform" and after "without" insert "first"

Renumber accordingly

**House Amendments to HB 1437 (70581.0102) - Judiciary Committee 02/02/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the feasibility and desirability of restricting the unauthorized use of the name or image of a current or former member of the military.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of restricting the unauthorized use of the name or image of a current or former member of the military. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-7-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1437

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Rep. Dahl Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. DeKrey

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

**REPORT OF STANDING COMMITTEE**

**HB 1437: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1437 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the feasibility and desirability of restricting the unauthorized use of the name or image of a current or former member of the military.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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Renumber accordingly

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1437

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1437

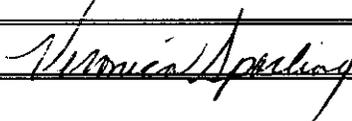
Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 03/15/07

Recorder Job Number: 5147, 5148

Committee Clerk Signature



Minutes:

JOB # 5147

Roll was taken and all members were present.

Senator Dever, Chairman, opened the hearing on HB 1437.

Representative Blair Thoreson was the prime sponsor of HB 1437 but was not available to introduce the bill. In his absence Lieutenant Colonel Dave Thiele with the North Dakota National Guard introduced the bill. He said that Representative Thoreson by sponsoring this bill identified a serious potential problem for our service members, i.e. inappropriate use of their names or images. He explained that what is driving the issue is a particular case where an individual created a tee shirt putting the names of all our fallen service members on it. Family members of the fallen service members strongly objected to that and contacted that individual. He refused to take the names off. He was selling the tee shirts in Arizona. That is what precipitated the original form of this bill which would have made it a Class A Misdemeanor to use the names or images for commercial purpose without consent. At first glance Colonel Thiele thought this was a good idea. We don't want to see our service members' names or images used inappropriately. But as he looked into it it became more clear to him that this may not

be helpful legislation. It was discussed in the House. The big concern is the chilling effect it might have on what he would consider positive use of service members' images. It's not uncommon for his office to get a call from a business or an individual requesting a photo of guard members from across the state. To require that business or individual to contact all of the families to get consent would be daunting to say the least. Even within the families there are strong disagreements about the service and the war and the use. Some parents would be in support and some wouldn't. When you consider the isolated case in Arizona, and try to create legislation to prevent other similar uses you have to keep in mind how it may affect the positive uses of such images. There was also testimony brought forward about other commercial uses such as books. The authors would be required to get specific permission. There were other concerns raised about the constitutionality. He doesn't get too concerned about that but it's out there that that's an issue. Texas and Georgia have proposed legislation. Federal legislation is in the hopper. He thinks this just needs to be watched very carefully. If there are abuses that need to be addressed by the legislature, he will be back. He feels the limited benefit doesn't outweigh the potential negatives. He feels we need to monitor whether the pictures of our service people are being used appropriately.

Senator Nelson asked if parents wearing tee shirts with a picture of a deceased family member who served would be affected by this.

Lieutenant Colonel Thiele said, "no." The original bill was designed for commercial application, but then what would you define as commercial? With the reality of the

polarization in our country over the war, if a business owner decided to put the images

up in his store simply as a proper recognition he could see someone out there saying, "No that's a commercial application. "

Senator Nelson said you could say an obituary is a commercial application because you pay for obituaries.

Lieutenant Colonel Thiele said it does create some significant problems. In our state we have seen only attempts to create a positive image of our service members. We should continue to facilitate the positive images and uses. If in two years we see issues and problems we can come back and address them at that time. In North Dakota we are pretty good at exerting our own form of pressure short of legislation. We don't tolerate that kind of thing very well. The person in Arizona is the first one to admit that the initiation of the legislation gave him a lot of free publicity.

Senator Nelson asked what action Colonel Thiele preferred the committee to take, just kill the bill and then just deal with it yourself?

Colonel Thiele said that's fine. He didn't propose the study; some people haven't heard what we have heard today and that creates some concern. Do you want to mandate a study? No.

Senator Oehlke commented that there are no copyrights on printing the flags of the branches of the service. He is wondering if some of this would get into freedom of speech issues.

Colonel Thiele said the individual in Arizona is on record on his website as saying he is just waiting for the right person in the states to pass legislation to agree to bring a lawsuit.

Senator Lee asked if it is a first amendment issue.

Colonel Thiele said it is. Where do you find the balance between free speech?

Senator Horne questioned whether this would be a suggestion that they study it or a mandate.

Senator Dever said it is a mandate when it says "shall" in a bill. In a resolution "shall study" means they are going to consider studying it.

There was further discussion about the possible ramifications if this bill would pass.

Support: -

Opposition: -

Neutral: -

Chairman Dever closed the hearing on HB 1437.

JOB # 5148

A do not pass motion was made by Senator Lee.

The motion was seconded by Senator Nelson.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: J. Lee

Date : 3-15-07  
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1437

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do not pass

Motion Made By Lee Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Lee

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

REPORT OF STANDING COMMITTEE (410)  
March 15, 2007 12:07 p.m.

Module No: SR-49-5401  
Carrier: J. Lee  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1437, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1437 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1437

