

2009 HOUSE JUDICIARY

HB 1387

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1387


House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 7972, 7980, 8033

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1387.

Rep. Jim Kasper: Sponsor, support (didn't appear in person because he had appeared earlier in HB 1393, 1404).

Michael Eisert, private citizen, Fargo landlord: Support. This bill has to do with cable TV, dish TV, installers putting dishes on the house or apartment building, without the consent of the landlord. I brought pictures that I've taken of my property where the tenant had a dish installed without my consent. The installer drilled holes all over the house without the owner's consent and put the dish through the shingles without our consent. It's a lack of concern. The installer just started drilling holes. When confronted about this to the TV Dish company, they said it's not their fault because the installer is an independent contractor and we have nothing to do with it. I filed a report with the police, saying that I did not give permission for the installation or the holes. They told me it is a civil matter between the landlord and the tenant. On the installation paperwork, it says that the owner is to sign giving permission. The installer has the tenant sign for this; the tenant is not authorized to sign. The installer said he doesn't have time to track down the owner of the property. He has the tenant authorize installation,

instead of the owner. That doesn't make sense. Someone needs to be responsible for the damage. The tenant isn't going to be responsible to get the damage fixed.

Rep. Delmore: Do you state in your contract that the tenant does not have the ability to install dish TV.

Michael Eisert: No, our contract says that they cannot alter the building without our written consent. The tenant may not understand the contract they are signing from the installer.

Rep. Griffin: Do you point out in the contract to the tenant that if there is any damage that it will be taken from the security deposit.

Michael Eisert: Yes, and that is what will happen. But what happens if there is other damage as well when they move out, the security deposit probably won't cover everything; there needs to be accountability of the person selling the dish TV, etc. to tell the tenant that the landlord has to sign off on this installation.

Rep. Vig: Can you go after the installer.

Michael Eisert: I want to go after the company, because the company conveys to the independent installer where to go. I'm not as angry at the installer as I am at the company, because the installer is just trying to make a living. He shouldn't be responsible for doing the paperwork because somebody else told him who to contact.

Rep. Klemin: This bill might be able to be trimmed down a bit. Subsections 1 and 3 are very similar except that 1 is regarding a person that installs it, and 3 is talking about the tenant that authorizes the installation. The only difference is in #3 it says that the landlord can deduct the damage from the security deposit. If this is done and there is damage, can't you do that now? Can't you deduct the damage from the security deposit?

Michael Eisert: Here's the problem. One of the first things that they do is that they check the house, move in their furniture and get direct TV and now I'm on a bad foot with them already. I

want to have a good relationship with people. I don't the tenant probably had a good idea of what he was doing when he signed up for the dish TV and the installer had him sign the paperwork.

Rep. Klemin: Subsection 3 certainly isn't going to create a good relationship with the tenant if you charge him with a class B misdemeanor.

Michael Eisert: Yes, if you have this installed without my consent it is a class B misdemeanor, now it's a civil matter. I'm not saying that this can't be trimmed down. I'm just trying to get some teeth in it. I actually did not write this. Rep. Kasper actually called the state's attorney and he wrote this up.

Rep. Delmore: So you would be going to civil court instead of district court; what happens when you get a small claims case.

Michael Eisert: Yes, I don't want to go to district court, I just want the installation to be approved by the landlord. If the installer comes out and drills holes in your house, there is a \$1,000 fine. Once that happens, they probably won't make the same mistake again.

Rep. Wolf: What would happen if a renter would want cable, and the cable company puts in an ugly green box in the yard? The cable company says you don't have a choice. This is the new way of doing it, would you have a problem with that.

Michael Eisert: I don't like holes in my house. The person can put a post in the ground, and attach the box to the post.

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

Aaron Birst, ND Assoc of Counties, State's Attorneys: Opposed to criminal actions or penalties.

Rep. Klemin: When a corporation is guilty of a criminal offense like this, what's the penalty?

Aaron Birst: The penalty that would apply is \$500.00.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

(Reopened in same session)

Chairman DeKrey: We will take a look at HB 1387. The guy has a point. You own the house, you rent it to a tenant, direct TV should not be able to come in and start putting stuff on your house because some tenant wants it.

Rep. Klemin: I would delete subsection 2 and 3, and revise the language in subsection one, line 8 to say that a person that installs or authorizes the installation of a fixture, etc. and on line 9, put in "written" consent.

Rep. Griffin: Treble damages is much more of a civil remedy. I don't think the court would give triple restitution.

Rep. Klemin: The way I look at it, in the first sentence says criminal and the second sentence says civil. We have treble damages right now in the landlord/tenant laws if the landlord doesn't pay back the security deposit within 30 days, is subject to treble damages. That is the same kind of a civil remedy.

Rep. Dahl: Would this be covered under the first bill we heard, about the recklessly damages someone else's property and the pecuniary loss is more than a value of \$2,000. Would that not be covered?

Rep. Klemin: I don't think so, because you're probably not talking about \$2,000 damage here and #2, I don't remember exactly what the definition of recklessly is, but the defense would be well, I was out there to the house and he authorized me to drill the holes and put the satellite dish in, so how could that have been recklessly. I don't think it is covered by existing law.

Rep. Delmore: Do we want the person who did the installation or the company that sold the product to begin with to be the responsible party.

Rep. Klemin: It depends, person means an individual, a company, a corporation, LLC, etc.

That's why they used the word "person" so it's not limited to the individual that does that. But that doesn't exclude the individual that does it either.

Rep. Koppelman: I am assuming that is why they used the word person.

Rep. Klemin: This would require written consent of the landlord.

Rep. Griffin: My suggestion is that the person who installs the dish TV shall receive the written consent of the owner, take the class B misdemeanor out of it.

Chairman DeKrey: Rep. Griffin, please come with a written amendment this afternoon.

(Reopened in afternoon session)

Chairman DeKrey: We will take a look at HB 1387.

Rep. Griffin: I move the Griffin amendment.

Rep. Delmore: Second.

Ch. DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

11 YES 0 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kingsbury

Griffin

PROPOSED AMENDMENT TO HOUSE BILL 1387

Page 1, line 9, replace "without" with "shall obtain" and after the second "the" insert "written"

Page 1, line 10, remove "is guilty of a class B misdemeanor"

Page 1, remove lines 13 through 23

Page 2, remove lines 1 through 8

Renumber accordingly

VK
1/28/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1387

Page 1, line 8, remove "1."

Page 1, line 9, replace "without" with "shall obtain" and after the second "the" insert "written"

Page 1, line 10, remove "is guilty of a class B misdemeanor" and replace "In addition, that" with "That"

Page 1, remove lines 13 through 23

Page 2, remove lines 1 through 8

Renumber accordingly

Date: 1/28/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1384

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE

HB 1387: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1387 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "1."

Page 1, line 9, replace "without" with "shall obtain" and after the second "the" insert "written"

Page 1, line 10, remove "is guilty of a class B misdemeanor" and replace "In addition, that" with "That"

Page 1, remove lines 13 through 23

Page 2, remove lines 1 through 8

Renumber accordingly

2009 SENATE JUDICIARY

HB 1387

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1387

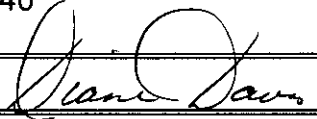
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/2/09

Recorder Job Number: 9940

Committee Clerk Signature



Minutes: Senator Nething, Chairman

Relating to the authorization of installation of fixtures on a rental property.

Representative Jim Kasper – Introduces the bill – He tells of an owner of a rental property, coming to him with a problem with satellite dish installation. Under current law there is a form that is supposed to be signed by the landlord. He showed him this form, on it there is a place for the owner's signature and for the renter's signature and on the back of the form shows the penalties for violation for not signing the form. On the form he showed him the front page was signed by only the renter. That renter had called for a satellite dish installation, it had to be done twice and did do damage to some roof shingles. The landlord got stuck for the damages. This bill says, that the written consent of the landlord or the owner and if that is not done up to triple damages could be awarded. He hands out FCC Restrictions on where a dish can be placed.

Senator Nething – Asks if this bill has been amended in the House.

Kasper – Said yes they had.

Senator Lyson – Asks why the landlord doesn't go after the renter.

Kasper – Responds that everyone thinks it is not their fault. The installer is the one who should be following the law. A lot of people who sign a lease do not read it, don't care and do

whatever they want. We are saying the installers need to follow the law. There is a lot of frustration on the part of the landlords.

Senator Olafson – Asks why it is anymore important for the installer to be aware of the law than the tenant.

Kasper – Replies, ignorance is not an excuse. The current law under FCC says that the owners may prohibit placement of items on their property. Installers who put an item on a rental piece of property without trying to find the owner and took the signature of the tenant are violating the law. This puts some teeth into the penalties.

Senator Fiebiger – Asks what statute he is speaking about.

Kasper – The statute he is referring to is a contract statute when you have a landlord enter into a contract with a tenant.

Senator Fiebiger – Asks if the problem maker here is the tenant.

Kasper – Responds, there is dual responsibility, there is a form that should be signed by the landlord. The installers know the law but they are not following the law.

Senator Fiebiger – Looking at the bill where is the liability is for the landlord that has someone install it without authority.

Kasper – Going back to contract law. The installer is doing the work, they are violating the law by installing without a signature.

Senator Fiebiger – Are we going to now require installers to track down every owner even when they live out of state.

Kasper – Gives an example of how they could get that signature.

Senator Schneider – Asks why they have triple damages.

Kasper – He has no problem amending it down to actual damages.

Opposition

Lisa McCabe – Director, Public Policy and Outreach for Satellite Broadcasting Association.

See written testimony.

Senator Nething – Asks why is there a problem if all your rules are in place.

McCabe – Responds, she doesn't know if this is an isolated case or how prolific this is.

Senator Nething – Says, you already have to get permission, correct?

McCabe – Yes, on the back of the service orders

Senator Nething – Asks her, why she would object to this if your installers are already doing this.

McCabe – Responds it isn't necessary. The bill asks the installer to track down the owner and she thinks that should be between the landlord and the tenant.

Senator Nething – Asks her for a quick synopsis of her company.

McCabe – Describes what they do and the training her installers go through.

Senator Fiebiger – Asks if she is familiar with an electrical code.

McCabe – Said she doesn't know the specifics of the code but that the training follows the NEC code.

Senator Fiebiger – Asks if she agrees it would hard for the installers in terms of their ability to do business.

McCabe – Said yes, especially in rural states where you may have a long distance between landlords and tenants.

Senator Nething – Asks if she testified in the House.

McCabe – Responds no.

Senator Olafson – Said it sounds like the industry is already doing a good job of policing itself on this issue. Probably the last thing your industry wants to get dragged into are disputes between landlords and tenants.

McCabe – Replies, on occasions they have issues like this but there is monitoring that is done. They try to be responsible.

Travis Johnson – Owner of Northland Communications – He understands where this bill is coming from but believes it is an isolated incident. They have training in place. They carry general liability insurance. If they do damage it is their responsibility to cover the damage. He believes ultimately it is the responsibility of the landlord to have it in his contract with the tenant to have these issues covered and that it isn't done without his approval.

Senator Nething – Asks him if his main concern with this bill is obtaining the signature of the landlord. If this bill was drafted so the tenant had to obtain the signature would it make a difference?

Johnson – Replies, it would. He explains his process when someone calls for a dish, it is hard to know whether it is the owner or not.

Claus Lembke – Offers some language that could be used in the bill.

Close the hearing on HB1387

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1387

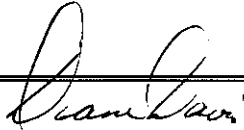
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/23/09

Recorder Job Number: 11366

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Senator Lyson motions for a do not pass

Senator Nelson seconds

Vote – 6-yes, 0 no

Senator Lyson will carry

REPORT OF STANDING COMMITTEE

HB 1387, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1387 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1387

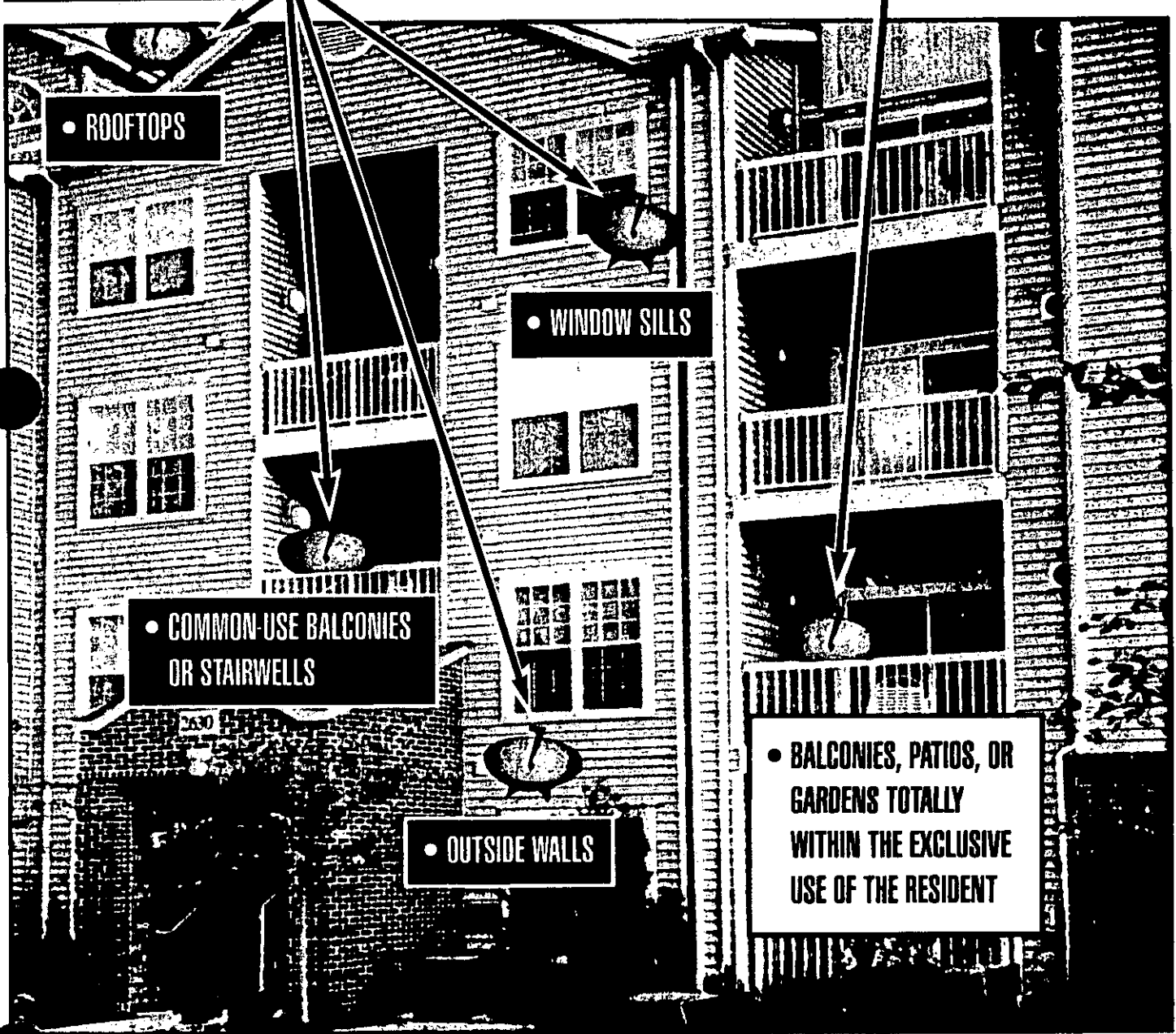
FCC RESTRICTIONS

ON THE PLACEMENT OF SATELLITE DISHES
1 METER OR LESS (PIZZA-STYLE)



**OWNERS MAY PROHIBIT
PLACEMENT ON:**

**OWNERS MAY NOT
UNREASONABLY PROHIBIT
PLACEMENT ON:**



NOTE: NO HOLES MAY BE DRILLED IN OUTSIDE WALLS, ROOF, OR WINDOWS. NO HOLES MAY BE DRILLED IN A BALCONY RAILING. NO PART OF THE DISH OR ANTENNA CAN EXTEND BEYOND THE BALCONY RAILING LINE.



**Satellite Broadcasting
and Communications
Association**

**Testimony of Lisa V. McCabe
Director, Public Policy and Outreach
Satellite Broadcasting & Communications Association
Before the North Dakota Senate Judiciary Committee
Regarding House Bill No. 1387, March 2, 2009**

Thank you for the opportunity to testify before the Judiciary Committee. I am Lisa McCabe, Director of Public Policy and Outreach for the Satellite Broadcasting & Communications Association of America ("SBCA").

The SBCA is the national trade organization representing all segments of the satellite industry. It is committed to expanding the utilization of satellite technology for the broadcast delivery of video, audio, data, music, voice, interactive and broadband services. SBCA is composed of satellite service providers, equipment manufacturers, distributors, retailers, and national and regional distribution companies that make up the satellite services industry. The satellite industry has over 100,000 subscribers in North Dakota and employs hundreds of people in the state.

On behalf of the satellite industry, SBCA hereby testifies in opposition to House Bill No. 1387. This bill unfairly targets installers and is also in violation of federal law that provides consumers the right to get satellite service. More importantly, we believe that this is fundamentally a landlord-tenant issue that is more appropriately addressed in a lease agreement between the two parties.

The industry has a permission program in place

It is important to note that both Dish Network and DirecTV, satellite programming providers in North Dakota, currently have programs in place that ascertain information regarding whether the potential subscriber is a home owner or renter from consumers at the time of initializing service and provide documentation for the tenant to seek landlord permission prior to installing equipment. This is part of a training requirement for both company-employed and contracted installers. This is provided to the consumers as a separate document for signature. Because a process is already in place to obtain landlord approval, legislation in this area is unnecessary.

This issue raised by the legislation can be addressed in North Dakota standard lease agreements

The proposed legislation addresses the contractual obligations a tenant has to inform its landlord. The standard North Dakota Residential lease agreement already exists

and any notification regarding satellite dishes or any type of modification to the structure is already covered by the state's standard lease language:

7. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.

Legislation regarding this issue is unnecessary as it can be addressed by a landlord in the terms of the lease with tenants. In fact, the lease terms are the proper place to dictate what contractual obligations the tenant has to inform the landlord of ANY type of modification to the structure, if allowed at all; including running cable for any telecommunications service if it is not already there or installing an appliance, etc.

The proposed legislation violates federal law

Additionally, the notice requirement runs afoul of federal law as it is a restriction that unreasonably delays or prevents installation, maintenance or use of satellite services. The FCC derived its authority to create the OTARD Rule via the Telecommunications Act of 1996 ("1996 Act"). In Section 207 of the 1996 Act, Congress directed the FCC to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or digital broadcast satellite services."

The OTARD Rule was adopted on August 5, 1996 and as amended, applies to video antennas, including direct-to-home satellite dishes that are less than one meter in diameter, as well as TV antennas, and wireless cable antennas. The OTARD Rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance, or use; (2) unreasonably increase the cost of installation, maintenance, or use; or (3) preclude reception of an acceptable quality signal. Finally, the OTARD Rule supersedes restrictions by state and local governments, as well as non-governmental entities, including homeowner associations, community associations, and landlords. Requiring the installer to track down a landlord for permission if they are out of the city, county, state or country would greatly delay installation.

Further, the damages specified in the bill seem harsh and unworkable. The bill makes the installer subject to damages caused by the installation. It is unclear as to how damages would be determined and making the installer the target of any litigation takes responsibility away from the tenant who would likely already be in violation of any tenant landlord agreement by having any changes made to a property without the landlord's consent.

Thank you for the opportunity to testify regarding HB No. 1387. We are happy to answer any questions.