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Richard Costa
Operator's Signature

10/16/03
Date

2003 HOUSE POLITICAL SUBDIVISIONS

HB 1437

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La Costa Richard
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10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1437

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 6, 2003

Tape Number	Side A	Side B	Meter #
1	X		22.3-51.6
1		X	0.0-5.9
Committee Clerk Signature <i>Micki Schmidt</i> 2-18-03			

Minutes:

TAPE 1: SIDE B:

(22.3) REP. GLEN FROSETH: We will open the hearing on HB 1437.

(22.5) REP. TRACY BOE: (Testimony in support) (See attachment #1) I threw this bill together because this came to my attention. The Attorney General's office has been issuing liqueur licenses on the Reservation based on private license. The problems that arose in the past, the Attorney General wrote a letter grandfathering all of the existing licenses. As soon as they try to transfer the license, they're not allowed to.

(25.0) BOB BENNETT; ATTORNEY GENERALS OFFICE: (Testimony-neutral) In 1983, the United States Supreme Court had authority. Explained liquor licenses.

(35.3) REP. NANCY JOHNSON: If Rollette County said they only want "x" number of licenses, would the Tribe give as many as they want? Is that going to be an issue between the county and the Tribe?

Richard
Operator's Signature

10/16/03
Date

Page 2

House Political Subdivisions Committee

Bill/Resolution Number HB 1437

Hearing Date: February 6, 2003

(35.8) BOB BENNETT: There are issues of the Tribes in the county anyway. It's possible that the Tribal Government can issue dozens of licenses. If you don't have a local license, you cannot get a state license. The Tribal authority cannot dictate to the county, but there is a federal law and this did happen in Spirit Lake Reservation. An issue came up in 1988, back to the dry reservation based upon their ordinance. It says, there will be no liquor sales within the reservation boundaries unless it's not within Indian country, or if the spending conforms to state law and with proper ordinance.

(44.1) REP. CAROL NIEMEIER: The tribes and the counties are both governing units. But the counties can supersede the tribal. Is that what this is telling us?

(44.6) BOB BENNETT: No. What we're saying is for purposes of the state liquor license, we can require every retail alcohol beverage you would have. We require the local licenses. What this does is establish an addition to a county license and a state license, a tribal license. The county would not be able to override the tribal.

(50.7) REP. ALON WIELAND: The county could not issue a license unless the tribe agreed?

(51.1) BOB BENNETT: The county could issue a license.

TAPE 1; SIDE B:

(4.0) REP. GLEN FROSETH: You need either a state and county license, city or tribal license?

(4.2) BOB BENNETT: If you don't have a state license, the wholesaler can lose their license.

(4.4) REP. GLEN FROSETH: Any further testimony? Opposition? Seeing none, we'll close the hearing. Does the committee want to act on this bill?

(4.7) REP. MARY EKSTROM: I WILL MOVE TO ADOPT THE AMENDMENT.

La Costa Rickford
Operator's Signature

10/16/03
Date

Page 3

House Political Subdivisions Committee

Bill/Resolution Number HB 1437

Hearing Date: February 6, 2003

(4.7) REP. NANCY JOHNSON: I SECOND IT.

(4.8) REP. GLEN FROSETH: Any further discussion on the amendment? Seeing none, all those in favor say I. 14-y; 0-n;

(5.0) REP. MARY EKSTROM: I WOULD MOVE A DO PASS AS AMENDED.

(5.1) REP. CAROL NIEMEIER: I SECOND IT.

(5.2) REP. GLEN FROSETH: Any discussion? I'll have the clerk take the Roll Call Vote:

12-y; 0-n; 2-absent; Carrier; Rep. Wieland

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1437

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

John Walstad
Code Revisor

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John Costa Richardson
Operator's Signature

10/16/03
Date

9:40 AM 2-6-03
#1

30670.0101
Title.

Prepared by the Legislative Council staff for
Representative Boe
January 24, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 1, replace "section" with "sections 5-01-01," and after "5-02-01" insert ", 5-02-01.1, 5-02-05.1, and 5-02-10"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
8. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
9. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
- 8- 10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
- 9- 11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.

- #1
40. 13. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume."

Page 1, line 8, after "and" insert "a local license from"

Page 1, line 9, remove "or the governing body of an Indian tribe", overstrike "board of county commissioners", and remove "as the"

Page 1, line 10, remove "location requires." and after the comma insert "the board of county commissioners or the governing body of an Indian tribe, as the location requires."

Page 1, after line 12, insert:

"SECTION 3. AMENDMENT. Section 5-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county ~~or~~ a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days, and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
 - c. Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and
 - d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 4. AMENDMENT. Section 5-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

#1

5-02-05.1. Sunday alcoholic beverage permit - Penalty.

1. Any ~~city or county~~ local governing body may issue a Sunday alcoholic beverage permit to a qualified alcoholic beverage licensee licensed under this chapter or to a publicly owned or operated facility. For purposes of this section, "qualified alcoholic beverage licensee" has the same meaning as in section 5-02-01.1. A county may not issue a permit under this section to a retail alcoholic beverage establishment located within the geographical boundaries of a city.
2. The authority for issuing the permit rests solely with the local governing body of the city or county. A permit may be granted only upon proper application to and approval by the governing body, and must include payment of a fee determined by the governing body. A permit granted by the ~~city or county~~ local governing body may be effective for more than one Sunday.
3. Under the permit, alcoholic beverages may be distributed and dancing may be permitted in the establishment or facility. A ~~city or county~~ local governing body may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority of the permit. The establishment or facility granted the permit shall enforce the requirements of this section.
4. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

SECTION 5. AMENDMENT. Section 5-02-10 of the North Dakota Century Code is amended and reenacted as follows:

5-02-10. Hearing on alleged violations. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the attorney general, city attorney, or state's attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the local governing body or forward such affidavit to the attorney general. Upon receipt of any such affidavit the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by the local governing body, a copy of this affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or the use of an electronic recording device."

Renumber accordingly

Date: 2-6-03

Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1437

House "POLITICAL SUBDIVISION" Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Ekstrom Seconded By Rep. Niemeier

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froese	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Grosz	✓				
Gil Herbel	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos	✓				
Dale Severson	9				
Alon Wieland	✓				
Bruce Eckre	✓				
Mary Ekstrom	✓				
Carol A. Niemeier	✓				
Sally M. Sandvig	0				
Vonnie Pietsch	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Ekstrom Rep. Wieland

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

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Colista Rickford
Operator's Signature

10/6/03
Date

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 8:12 p.m.

Module No: HR-23-1924
Carrier: Wieland
Insert LC: 30670.0101 Title: .0200

REPORT OF STANDING COMMITTEE

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

Page 1, line 1, replace "section" with "sections 5-01-01," and after "5-02-01" insert ", 5-02-01.1, 5-02-05.1, and 5-02-10"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
8. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
9. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
- 8- 10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
- 9- 11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 6:12 p.m.

Module No: HR-23-1924
Carrier: Wieland
Insert LC: 30670.0101 Title: .0200

- 40- 13. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume."

Page 1, line 8, after "and" insert "a local license from"

Page 1, line 9, remove "or the governing body of an Indian tribe", overstrike "board of county commissioners", and remove "as the"

Page 1, line 10, remove "location requires," and after the comma insert "the board of county commissioners or the governing body of an Indian tribe, as the location requires."

Page 1, after line 12, insert:

"SECTION 3. AMENDMENT. Section 5-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county, a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days, and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
 - c. Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and
 - d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 4. AMENDMENT. Section 5-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-05.1. Sunday alcoholic beverage permit - Penalty.

1. Any ~~city or county~~ local governing body may issue a Sunday alcoholic beverage permit to a qualified alcoholic beverage licensee licensed under this chapter or to a publicly owned or operated facility. For purposes of this section, "qualified alcoholic beverage licensee" has the same meaning as in section 5-02-01.1. A county may not issue a permit under this section to a retail alcoholic beverage establishment located within the geographical boundaries of a city.
2. The authority for issuing the permit rests solely with the local governing body ~~of the city or county~~. A permit may be granted only upon proper application to and approval by the governing body, and must include payment of a fee determined by the governing body. A permit granted by the ~~city or county~~ local governing body may be effective for more than one Sunday.
3. Under the permit, alcoholic beverages may be distributed and dancing may be permitted in the establishment or facility. A ~~city or county~~ local governing body may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority of the permit. The establishment or facility granted the permit shall enforce the requirements of this section.
4. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

SECTION 5. AMENDMENT. Section 5-02-10 of the North Dakota Century Code is amended and reenacted as follows:

5-02-10. Hearing on alleged violations. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the attorney general, city attorney, or state's attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the local governing body or forward such affidavit to the attorney general. Upon receipt of any such affidavit the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by the local governing body, a copy of this affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or the use of an electronic recording device."

Renumber accordingly

2003 SENATE POLITICAL SUBDIVISIONS

HB 1437

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Richard Costa
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1437

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 28, 2003

Tape Number	Side A	Side B	Meter #
1		X	2750 - 6005
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK opened the hearing on HB 1437. All senators (6) present.

HB 1437 relates to retail licenses to sell alcoholic beverages.

REPRESENTATIVE TRACY BOE, District 9, introduced HB 1437. Four the last approximately forty years the attorney generals office has been issuing alcohol beverage sale license on the reservation, pursuant tribal licenses and no where in the statute did that appear. They tried to rectify it by grandfathering letters which ended up causing more problems when they try and transfer a license. If someone tries to sell their license or transfer it to the next generation the problem keeps coming up. This bill would take care of this. The bill that he first introduced would just address being able to issue a license based on the tribal license. It was brought to his attention that he had missed a lot of things like Sunday permits and special events permits, so it was amended substantially to accommodate that.

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10/16/03
Date

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number HB 1437

Hearing Date February 28, 2003

Bob Bennett, Attorney Generals Office, appeared in a neutral position because they administer this license. He provided back ground as to how we got to where we are at today. The current ND law requires that though the state can issue a state alcohol beverage at our office it is necessary to have a local license and the statute 5-02-01 basically just refers to city and county licenses. The attorney generals office can not issue a state license unless they have a local license. Since 1983 the attorney general office has recognized a tribal license in place of a local license so they can get a state license. There was little or no problem until about 1999. The issue came up whether the state should continue to recognize the tribal license as opposed to a city or county license. This was not a problem with the cities or counties. In about 1999, there was an individual who wanted to sell alcohol at the Trenton Indian Service District in Williams Co and an inquiry was made to the office by the States Attorney to determine whether or not the Trenton Indian Services could sell alcohol beverages in that area. The issue came up to whether or not the state should continue to recognize these tribal licenses as opposed to a city or county license. In 1999 there was a meeting in the attorney generals office and the determination was made that they could not accept tribal licenses. The law says they have to have a city or county license but because people have relied on this they were not going to put people out of business. It was hoped the 2001 legislative session would change this but there was no law change in 2001. HB 1437 basically does two things. It defines what a local license is. It also excludes the cities from any tribal oversight. If there is a city within the exterior boundaries of a reservation a tribal license will not be accepted as a federal recognized tribal license. It has to be a city license. However if the establishment is outside the city limits and is within the reservation we can accept either a county license or tribal license.

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Operator's Signature

Yolanda Rickford

10/16/03
Date

Page 3
Senate Political Subdivisions Committee
Bill/Resolution Number HB 1437
Hearing Date February 28, 2003

Discussion: Tape 1, Side B, Meter # 4250 - 5978

No other questions.

CHAIRMAN COOK closed the hearing on HB 1437.

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1437

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date **March 7, 2003 (Action)**

Tape Number	Side A	Side B	Meter #
1	X		2196 - 2867
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK called the committee to order. All members (6) were present.

CHAIRMAN COOK recalled from the testimony, the problem with this bill is that the state has no authority to issue a state license legally on the reservation and this bill is intended to make it legal.

SENATOR JUDY LEE moved a DO PASS on HB 1437.

SENATOR SYVERSON seconded the motion.

Roll call vote: 6 Yes 0 No 0 Absent

Carrier: **SENATOR COOK**

Date: 3-7-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1437

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Judy Lee Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator John O. Syverson, V C	X				
Senator Gary A. Lee	X				
Senator Judy Lee	X				
Senator Linda Christenson	X				
Senator Michael Polovitz	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Cook

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

REPORT OF STANDING COMMITTEE (410)
March 7, 2003 12:11 p.m.

Module No: SR-41-4217
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1437, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1437 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-41-4217

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Salvatore Riccardi
Operator's Signature

10/16/03
Date