

HOUSE TRANSPORTATION COMMITTEE
January 22, 2021, 9 AM – Room 327E

North Dakota Department of Transportation
Robin Rehborg, Deputy Director for Driver Safety
HB 1336

Good morning Chairman Ruby and members of the House Transportation Committee. My name is Robin Rehborg and I am the Deputy Director for Driver Safety for the North Dakota Department of Transportation (NDDOT). I am here this morning to provide information for HB 1336. Thank you for your time today.

HB 1336 will amend and reenact section 39-08-01.6 of the North Dakota Century Code, relating to sealing a criminal record of a driving under the influence offense.

This bill may result in further non-compliance under Section 164 for DOT. Section 164 is a federal law that requires states to impose certain minimum penalties for all repeat intoxicated drivers. The Federal implementing regulations define a repeat intoxicated driver as "a person who has been convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period." The three required minimum penalties are a mandatory license sanction, assessment and treatment, and a mandatory minimum sentence.

In the 2019 legislative session, two law changes introduced new mechanisms by which DUI convictions may be sealed or dismissed within the mandatory five-year lookback period required by Section 164, with the result that some intoxicated drivers may not be sentenced as repeat offenders for a second or subsequent offense, and would therefore not be subject to the enhanced penalties for repeat offenses in North Dakota laws.

These law changes resulted in North Dakota being deemed non-compliant under Section 164 and subject to an annual penalty transfer of funds. The penalty transfer equates to 2.5 percent of NDDOT's roadway apportionments for the National Highway Performance Program (NHPP) and Surface Transportation Block Grant (STBG) and equals about \$5.9 million annually. These funds are not lost for the DOT, but they are now under the control of NHTSA not North Dakota. The funds must be used for alcohol-impaired driving prevention programs and/or highway safety improvement program activities only not for constructing needed roads or bridges.

We are in the process of consulting with the National Highway Traffic Safety Administration (NHTSA) to determine how this bill conflicts with Section 164, but we may not have a determination for several weeks.

Since North Dakota is already non-compliant under Section 164, there would be no compounding federal penalty, but returning control to North Dakota is made more difficult.