

SENATE TRANSPORTATION COMMITTEE
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North Dakota Department of Transportation
Terra Miller-Bowley, Deputy Director for Administration

SB 2113

Mr. Chairman, members of the committee, my name is Terra Miller-Bowley and I am the Deputy Director for Administration for the North Dakota Department of Transportation (Department). I'm here today in support of Senate Bill 2113.

The purpose of this bill is to provide the authority for the Department's hearing officers to hold hearings in a telephonic, virtual, or other electronic format. The Department currently employs hearing officers who conduct administrative hearings regarding driver's license suspensions, revocations, and cancellations under authority of the Department.

Of the various administrative hearings conducted, most are implied consent hearings resulting in suspension or revocation of driving privileges, at times including commercial driver's licenses. These hearings involve the hearing officer, any witnesses, law enforcement officer(s) who investigated the occurrence and may have stopped and subsequently arrested the driver, and documents from the state crime laboratory relating to the administration of alcohol concentration testing.

These administrative proceedings are intended to be short in duration, typically less than an hour. In advance of the hearing, the petitioner or their counsel are sent notices regarding the hearing and copies of the documents comprising the hearing file. A majority of the hearing is limited to the testimony and cross-examination of the witnesses.

Under current law, as interpreted by the ND Supreme Court, these hearings must be held in-person, unless the petitioner or their counsel consent to a telephone hearing. The Court has ruled that the Department cannot unilaterally decide that a hearing will be by telephone, based upon an interpretation of statutory language enacted before the development of current teleconference or virtual meeting capabilities. Yet, the Department regularly holds telephone hearings where petitioners willingly agree to one.

In most cases there is little actual need to conduct the testimony face to face rather than by telephone or other electronic means. Yet, requiring the personal appearances of witnesses, including arresting officers, does result in cases being dismissed when witnesses, who may have been available by telephone, were not able to be present in person because of the obligations to other duties and responsibilities. Often there is little to no practical reason to hold the hearings in person other than a hope the officer is unavailable in-person, causing the Department to dismiss the suspension due to logistical technicalities that have nothing to do with the merits of the case.

There have been situations in which hearing officers have traveled a great distance for one hearing only to have the driver or attorney waive the hearing upon confirmation the arresting officer is in fact present. This is an unnecessary use of time and resources, in the hope of a dismissal of a proceeding because the arresting officer is physically unavailable even though the officer may

have been more readily available by telephone or video. The use of technologies advances the interests of having hearings in which all participants may more readily and affordably participate while providing more assurance dismissals are based upon the merits of the case. In fact, video conferencing actually allows hearing officers to more closely observe a witness by viewing them in an orientation that shows their full face rather than the usual profile view during an in-person hearing.

The Department seeks authority not to limit hearings but to expand the methods available to delivering them, bearing in mind the public safety goals of drivers licensing laws, including Implied Consent. COVID-19 presented historic challenges to all of society, including the delivery of government services. The Department responded by adding additional hearing options, specifically video conferencing, so participants could continue to attend hearings no matter their location. Many continue to prefer such options. This bill recognizes that new technologies are now a part of how business is done by authorizing the Department to utilize them in the delivery of its hearing opportunities.

This bill would also allow the Department the flexibility to take into account the circumstances of the witnesses and the potential nature of the evidence along with the due process rights of the driver, and strike an appropriate balance when determining the means of holding the hearing. The Department would still be able to have an “in-person” hearings.

Regarding the provision of the bill relating to notices, decisions or orders being alternatively delivered, current law assumes the use of the mail as substantially the only way to deliver notices and orders, not envisioning the advances which today allow this to be accomplished faster, more efficiently, and more economically. Recognizing these other options are available and already in use, this bill would allow the Department to more uniformly embrace the electronic means of delivery.

Mr. Chairman, that concludes my testimony, and I will be happy to answer any questions the committee may have.