

HOUSE JUDICIARY COMMITTEE
March 10, 2021 – 11:00 AM – Justice Wing 327B

North Dakota Department of Transportation
Clint Morgenstern, Staff Attorney

SB 2113

Mr. Chairman, members of the committee, my name is Clint Morgenstern and I serve as a staff attorney for the North Dakota Department of Transportation (Department). I am here today in support of Senate Bill 2113 and to propose an amendment.

The Department introduced this bill to expand the methods of delivering administrative hearings to licensees. COVID-19 presented historic challenges to all of society, including the delivery of government services. The Department responded to an emergency order issued by the governor by adding hearing options, particularly 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 these methods, with the licensee's consent.

The bill currently reads, "...at the *discretion* of the licensee...". The Department would like to replace, "at the *discretion* of the licensee" with "at the *consent* of the licensee." The Department supports this version because use of the word "discretion" could be interpreted to allow the licensee to dictate the type of electronic means used, even if the type selected is not available to all participants, including law enforcement, at all locations or under all circumstances. Using the word "consent" would allow the department to reach an agreement as far as the type of hearing that we would be able to provide.

For example, if the department were unable to provide a virtual electronic hearing due to service outage or unavailability, we believe the word "discretion" could be viewed as an excuse to allow the licensee to demand an electronic or other format type of hearing that the Department would not be able accommodate. This action could then force a dismissal of the licensee's hearing. The Department would support a do pass recommendation with our amendments.

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