

2017 HOUSE TRANSPORTATION

HB 1129

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1129
1/5/2017
#26615

- Subcommittee
 Conference Committee

Committee Clerk Signature

Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to hearing requirements for commercial vehicles and for commercial and noncommercial driver's licenses.

Minutes:

Attachment #1 and 2

Chairman Ruby brought HB 1129 before the committee.

Darcy Rosendahl, Deputy Director for ND Department of Transportation, spoke to the committee to support HB 1129. He provided written testimony. See attachment #1. (5:01)

Vice Chairman Rick C. Becker: On Line 13 Page 1, could that say, "remote. in person", like face time or another means that is readily accessible. My concern is that "reasonable facsimile" completely distorts the whole idea of the charging or arresting officer being present and contributing to the hearing.

Darcy Rosendahl: That is entailed in the part that says, "other electronic means as determined". We are willing to use any technology method that we can to conduct the hearing, rather than have everyone travel to one site.

Vice Chairman Rick C. Becker: Then would you be opposed to the removal of "facsimile services" or opposed to language that more specifically states that the conference can take place by whatever digital means can be used for the officer to be present in live time?

Darcy Rosendahl: We would be willing to modify it as long as it meets our intent.

Chairman Ruby: On line ten in one part you changed "conclusion" to "the date of the hearing", but then on line 20 you put in "within ten days after the close of the hearing", which means conclusion. Why don't you just say "the date of the hearing" in both places?

Darcy Rosendahl: I'm not sure why we did that. I will look into it. It should probably be the same. We will get back to you if we need an amendment.

Chairman Ruby: On the next page, Page 3 Line 4, under judiciary review, is it just cleaned up language where you strike that language because it is striking the same language as is right above it?

Darcy Rosendahl: Yes, it is just clean-up.

Vice Chairman Rick C. Becker: If it were worded that the officer must be present digitally through any type of remote access, wouldn't that negate the whole reason for having the mailing and ten-day thing? All the hearings would still be conducted as they are now, with the one exception that the officer doesn't need to be physically present but electronically present.

Darcy Rosendahl: We still need to mail out the official decision, the same as it would be if the hearing were in person. The telephonic or FaceTime part is just the conduct of the hearing.

Representative Nelson: It looks like in ALL cases there is no immediate taking of the license. The official notification lets the person know that their license has been revoked. So, why does it need to does it need to refer to the two different cases?

Darcy Rosendahl: I assume that in the hearings that we hold in person, the license will be taken at that point. The telephonic ones will have a mailing that notifies them that within three days their license is revoked. This is to clarify how we conduct the hearings and how we do the hearing part. We will look at this to get more clarification.

There was no further support for HB 1129. (20:16)

Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers, spoke in opposition to HB 1129. He presented written testimony, see attachment #2. (23:05)

Representative Jones: On Page 3 are you comfortable with the part that states the person may appeal within seven days after the date of the mailing?

Jackson Lofgren: We don't have a problem with that portion of the bill. The way the statute reads now, it is with the date of the hearing. In some instances, it might take that hearing officer a couple of days to get the hearing in the mail. This gives a little extension of time, and makes it more reasonable.

Representative Jones: I was concerned about the truck drivers in our area. A mailing from Newtown, North Dakota to Star Valley, WY, takes six days to arrive. The opportunity to appeal wouldn't get to the person in tiem, if he didn't check his mail that day. He would have lost his opportunity to appeal.

Jackson Lofgren: I do find the seven day's portion to be concerning. It could be a longer period of time. I would like to see the seven days be extended to 10-14 days, something that is more realistic.

Representative Jones: I would like to see an amendment to change that to 15 days, so these people don't lose the right to appeal a decision.

Representative Dobervich: Is there statute that requires that a person have an in-person hearing that this bill would violate?

Jackson Lofgren: I believe right now the Supreme Court says that unless the person waives the in-person hearing, it must be in-person. If there is a statutory change, and the legislature changes the law, that would go away.

Chairman Ruby: I had the opportunity to call in and present my side in an issue with an employee and a job service claim. I chose not to call in. Is the opportunity to use a telephonic hearing, unique to Department of Transportation, or do the other agencies afford that opportunity, but just don't publicize it if they don't have to?

Jackson Lofgren: In my experience if there is going to be an administrative hearing, and the parties don't agree to do it by telephonic testimony, generally it is before the Office of Administrative Hearings and is usually an in-person hearing. For example, if the Game and Fish have an alcohol violation, there is a report notice form and a suspension of the person's voting privileges. In their cases the Attorney General's Office handles the prosecution of the matter, and it goes to the before an in-person hearing before the Office of Administrative hearings. Unlike the Department of Transportation process, where it is hearing officer that handles everything, with Game and Fish they have a more formal process.

Representative Paur: Isn't it a long standing judicial tradition that you have the right to face your accuser in person?

Jackson Lofgren: Absolutely, our courts have long recognized that you can assess someone's credibility better by seeing them answering the questions and seeing them answering the questions. I would agree it has long been our tradition that in-person hearings get better testimony.

There was no further opposition to HB 1129.
The hearing on HB 1129 was closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1129-2
1/19/2017
#27161

- Subcommittee
 Conference Committee

Committee Clerk Signature

Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to hearing requirements for commercial vehicles and for commercial and noncommercial driver's licenses.

Minutes:

Chairman Ruby brought HB 1129 back before the committee and summarized the testimony. He asked the committee if he should ask Darcy Rosendahl come back to give more information. The idea is to make a hearing easier by conducting it electronically.

Representative Weisz: I think we know what the bill does. It is a matter of whether it should be the option of the person being tried to agree to have an electronic hearing or not. I think that it **should be** the party getting charged to have the choice of allowing an electronic hearing or not. It is clear that the Department just wants to use an electronic hearing if they think it is more convenient. The accused would have no say.

Chairman Ruby: I think that if we do something like this it should be at the approval of the person who is being charged. I don't know if it gave the option to them.

Representative Weisz: I don't think that it is clear. I don't think that the law judge should have the ability to make the choice. I don't have any problems with extending it to 15 days.

Representative Jones: On Page 1, Section 1, Line 13, it says, "as determined by the hearing officer." If someone would proffer an amendment to say something like, "by the hearing officer in coordination with the accused", then it wouldn't just say that the hearing officer can decide like himself.

Representative Weisz: It should **not** say in consulting with the hearing officer, it should only be at the option of the accused at the hearing.

Vice Chairman Rick C. Becker: What is required now is in person, and the person has their answer immediately. It doesn't get mailed out to them. They **may** do it by some long distance means, but when you look at the timing of things, it just moves it all within 10 or 15 days. It seems like if the hearing is in person, you should get the answer right away.

Representative Weisz: They don't now. The decision doesn't need to be made right away.

Vice Chairman Rick C. Becker: It says at the close of the hearing, immediately deliver. Line 8 page 4.

Representative Weisz: Inaudible, mic not on.

Discussion on the time of delivering the decision and the means.

Vice Chairman Rick C. Becker moved a DO NOT PASS on HB 1129.

Representative Grueneich seconded the motion.

Representative Weisz: I am going to resist the motion. I think the bill is fixable. The accused might be more likely to get to the hearing if they can do it electronically. I would be willing to work on it, but I don't like it the way that it is.

Vice Chairman Rick C. Becker withdrew his motion.

Representative Grueneich agreed to withdraw.

Chairman Ruby: We will give Representative Weisz some time to work on this bill.

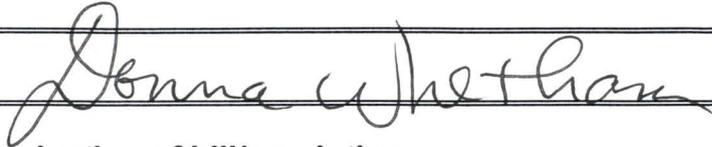
2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1129
2/3/2017
27885

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to hearing requirements for commercial vehicles and for commercial and noncommercial driver's licenses.

Minutes:

Attachment #1

Chairman Ruby: brought HB 1129 back before the committee.

Representative Weisz: Discussed amendments. Today there was a discussion to change it to 15 days for notice to reply. Then that compresses the time to be able to hold the hearing. I don't have a specific amendment and if we do want to go past 10 days then you would have to give the department more time to schedule the hearing. They have a temporary license during that time so it isn't like they we be without the ability drive, prior to the hearing. I didn't have any amendments prepared for that particular part. If you did want to move the time, whatever you want to do. On page 1 line 11, there is discussion to extend that but I really do think we better allow 45 days or something to schedule the hearing. Because there could be some issues when compressing the time to schedule the hearings. (See Attachment #1).

Vice Chairman Rick C. Becker: On page 2 line 12, it talks about 10 days as well but that is different.

Representative Weisz: The only place would be on page 1 line 11, because they have 10 days to request the hearing if they want it.

Vice Chairman Rick C. Becker: Your suggestion would be 15 on that one?

Representative Weisz: If we do then we need to change the section of code that says they have to have the hearing within 30 days. The current bill says the department could do a hearing by electronic means. What this says is that it would still be up to the accused to determine if they wanted an electronic hearing but this amendment does allow the department to allow someone to testify if they are unavailable by telephone, television, fax or other electronic means. They could have the hearing per say without the permission of the accused. Gave example: it came up and you have an officer down at the DAPL protest and he gets called up so how would he get back to Devils Lake or Bismarck or wherever it is to

take part in the hearing and if he doesn't show then the case is dismissed. That is part of the argument that you should at least have some flexibility. Even on the defense side, if they had someone they would like to appear by telephone, then they would have the option to do that even if the hearing itself was in person.

Vice Chairman Rick C. Becker: Where is the language now? If I am understanding correctly it requires the consent of the accused to hold the trial by the means we are talking about.

Representative Weisz: This doesn't touch the current law, all this says "the hearing officer may allow the unavailable participant to appear by telephone". The current law says it is "with the approval or permission", so we are not changing current law.

Vice Chairman Rick C. Becker: How is this section different than the one we just worked on? The way I am looking at the amendment it says "upon notice to the hearing officer".

Representative Weisz: Some of it isn't. On page 1 line 11 where it starts at line 11, 12, and 13. That's gone where it says "hearing may be conducted as determined by the hearing officer" so we are back to where it is the accused and it is replaced with "if any participant is unavailable the officer may allow the unavailable participant to appear".
It I move to adopt the amendment to HB1129.

Vice Chairman Rick C. Becker: But if the accused wants an in person hearing they don't have that.

Representative Weisz: Right now if he requests that they have to have an in person hearing. Current law, nobody testified that they had to appear by electronic means.

Vice Chairman Rick C. Becker: I am just looking for that in law, because the amendment if we look at it by itself, if any participant can't appear in person the hearing officer has that ability to allow that person electronic means.

Representative Weisz: In other words currently if that person can't appear and I have requested and if the officer can't appear at the hearing the case is dismissed. What this is saying when I show up to the hearing and the hearing officer could say, officer so and so is stuck down in DAPL and I will allow him to appear by telephone.

Vice Chairman Rick C. Becker: So they can request an in person hearing but it doesn't mean everything is in person.

Representative Weisz: This is if you are unavailable then the hearing officer can have them appear by telephone. Often times an accused DUI individual will request a hearing in person and they show up and if the officer shows up they turn around and leave, because they don't have a case. If the officer doesn't show up then the case is dismissed and they win. I don't want to make it easier for the accused to get off. This is a suggestion and if you don't like it then you can vote against it.

Vice Chairman Rick C. Becker: I agree what you are saying is taking place and it is a last ditch hope for people who are guilty and then the officer doesn't come and then you get off. I do not condone that but I am a huge believer in proper due process. It is not criminal and it is a huge thing, if the accused requested is because it is more than just you being there with the hearing officer it is also for the accuser to face the prosecutor. The idea that they can use the telephone how do we know who is coaching them. I am concerned that electronic means may be email.

Chairman Ruby: So if everyone would strike telephone and facsimile services and put other video means and would you add to that the amendment for 15 days.

Representative Weisz: I would move the amendments that we handed out with the change of eliminating telephone and fax and adding electronic video means and to amend line 11 on page 1 to 15 days and the section to go from 30 to 45 days to allow them that time to schedule the hearing.

Vice Chairman Rick C. Becker: seconded.

Chairman Ruby: Does everyone understand the amendment and is there any discussion of the intent?

Representative Weisz: We really haven't changed the intent of the bill because originally this was set up just so the hearing officer could do some of this through electronic means.

Chairman Ruby: This expands it somewhat, this allows the other participant as I understand it if they are not available now we are narrowing that down to video conference type thing.

Representative Weisz: We would be restricting the electronic part and eliminating telephone and fax and we are saying if you are unavailable you can use that so.

Representative Jones: The ones that are actually we are cutting their chances now by allowing the hearings to be done through these means.

Vice Chairman Rick C. Becker: Would the video electronic means have to say live or real time or something like that?

Representative O'Brien: There was one that was talking about prerecorded.

Representative Weisz: It does say appear, but if there is some concern we could just say to appear live.

Chairman Ruby: We have a motion and second before us. Voice vote taken: All ayes. Motion passed to adopt amendment to HB 1129.

Representative Weisz: I move a Do Pass as amended to HB 1129.

Representative Sukut: seconded.

House Transportation Committee

HB 1129

2/3/2017

Page 4

Roll call vote: Yes 9. No 3. Absent 2.

Representative Weisz: will carry the bill. Hearing adjourned

February 9, 2017

ET
2-9-17

p. 1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1129

Page 1, line 11, overstrike "ten" and insert immediately thereafter "fifteen"

Page 1, line 11, replace "The" with "If any participant to the hearing is unavailable to appear in person, the"

Page 1, line 12, remove "telephone."

Page 1, line 12, remove the second underscored comma

Page 1, line 13, remove "facsimile services."

Page 1, line 13, after "electronic" insert "video"

Page 3, line 27, overstrike "thirty" and insert immediately thereafter "forty-five"

Page 4, line 3, replace "The" with "If any participant to the hearing is unavailable to appear in person, the"

Page 4, line 4, remove "telephone."

Page 4, line 4, remove ", facsimile services."

Page 4, line 4, after "electronic" insert "video"

Renumber accordingly

Date: 2-3-17
 Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1129

House Transportation Committee

Subcommittee

Amendment LC# or Description: See below

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Rep. Weisz Seconded By Rep. Becker
R.C.

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz					
Rep. Greg Westlind					

Voice Votes

Motion carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: *In the hearing section 30+45 days*

Page 1 line 11 replace "The with "if"

Page 1, remove lines 12 and 13

Page 4, line 3 replace "The Administrative hearing --"

Page 4 remove lines 4 and 5 outline 11 page 1 to 15 days.

Date: 2-3-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1129

House Transportation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Weisz Seconded By Rep. Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Gretchen Dobervich	AB	
Vice Chair. Rick C. Becker	✓		Rep. Marvin Nelson		✓
Rep. Bert Anderson	AB				
Rep. Jim Grueneich	✓				
Rep. Terry Jones	✓				
Rep. Emily O'Brien	✓				
Rep. Mark Owens	✓				
Rep. Gary Paur		✓			
Rep. Randy Schobinger		✓			
Rep. Gary Sukut	✓				
Rep. Robin Weisz	✓				
Rep. Greg Westlind	✓				

Total (Yes) 9 No 3

Absent 2

Floor Assignment Rep. Weisz

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

REPORT OF STANDING COMMITTEE

HB 1129: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1129 was placed on the Sixth order on the calendar.

Page 1, line 11, overstrike "ten" and insert immediately thereafter "fifteen"

Page 1, line 11, replace "The" with "If any participant to the hearing is unavailable to appear in person, the"

Page 1, line 12, remove "telephone."

Page 1, line 12, remove the second underscored comma

Page 1, line 13, remove "facsimile services."

Page 1, line 13, after "electronic" insert "video"

Page 3, line 27, overstrike "thirty" and insert immediately thereafter "forty-five"

Page 4, line 3, replace "The" with "If any participant to the hearing is unavailable to appear in person, the"

Page 4, line 4, remove "telephone."

Page 4, line 4, remove ", facsimile services."

Page 4, line 4, after "electronic" insert "video"

Re-number accordingly

2017 SENATE TRANSPORTATION

HB 1129

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1129
3/17/2017
29398

- Subcommittee
 Conference Committee

Committee Clerk Signature *Mary Munder*

Explanation or reason for introduction of bill/resolution:

Relating to hearing requirements for commercial vehicles and for commercial and non-commercial driver's licenses.

Minutes:

Attachment #1

Chairman Laffen: Opened the hearing on HB 1129.

Darcy Rosendahl, Deputy Director for the North Dakota Department of Transportation: I am here today in support of HB 1129. **See Attachment #1.** Read his testimony and explained the proposed amendment.

Chairman Laffen: Questions?

Senator Nelson: On a previous bill they wanted to change the days from 2 to 3 and get the current address. Can't you handle those things in your rules so we don't have to mess with them?

Darcy: Our changes have the same things that they are requesting. Address change I don't know if I can address that one.

Senator Nelson: On the back of the card in that little writing, it is telling us to change our address if we move, right?

Darcy: I believe there is a statute that you have to change your address if you move, and yes, it is on the back of your driver's license too.

Senator Campbell: So right now there is no telephone video conferences going on just telephone conferences?

Darcy: Yes, if it isn't in person it is a telephone hearing.

Senator Campbell: Is that just because the technology isn't there or is it something that hasn't been looked at?

Darcy: To be honest we haven't looked into it yet.

Chairman Laffen: Last year there were 1,710 consent hearings and 40 to 50% of them were done by telephone?

Darcy: That's correct.

Senator Clemens: So with current law, if the accused requests an in person hearing then the officer has to be there. Correct?

Darcy: Yes. If the officer doesn't show up, then the case is dismissed.

Senator Clemens: So is that the main tactic of an accused person, to hopefully not have that officer there so his case would get dismissed?

Darcy: I don't think that is routine, but there was some where the officer did arrive and they just waived the hearing then. So yes, that was a tactic in those cases.

Chairman Laffen: Any more questions? Further testimony in favor of HB 1129? Opposition?

(13:03) Senator Kelly Armstrong: I want to talk a little bit about the DUI. When you get arrested and charged with a DUI, two separate legal proceedings are initiated against you. One is the department of transportation administrative hearing and one is the criminal case. In order to keep your driver's license, you have to win both as a defendant. If you win the DOT hearing but lose the criminal case, you will lose your driver's license for 91 days. One of the reasons I am against this bill is the number of days we give them. It sometimes ends up stretching out to where the criminal case is ready to be done. We are wanting to keep the impaired drivers off the streets. So when you start spreading out the timelines you're backing up into the public policy reason. I do think the language should be changed so that telephonic hearing is a part of it again and this bill in current form does not allow for that and it seems silly. If we are going to spread the timelines out this far then why have administrative hearings? Let the criminal process play itself out. If we are really interested in increasing efficiencies that would be worth looking at. If you have a credibility issue it will end up in a jury trial.

Chairman Laffen: Questions? None. Thank you. Opposition?

(18:10) Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers: My organization has about 75 lawyers across the state of North Dakota who practice at least a portion of their legal practice to the area of criminal defense and I would urge a Do Not Pass on HB 1129 especially on the original version proposed by the department in the version that they're asking this committee to change it back to. I was a special assistant to Attorney General for the Department of Human Services, spent 5 years as Morton County Assistant State Attorney. I have put people in the penitentiary that will never walk out. I am very much a law and order person but I am also a fairness person. There is a lot of fairness lacking in this DOT process. There are tight timelines, proceedings happening at the same time, you only have the ten days, and losing your license is a big deal

with severe consequences. Driving, while it is a privilege is also your livelihood. HB 1129 makes it so you will never get an in-person hearing and there is a lot to be desired with a telephonic hearing. Because of these problems I would support a Do Not Pass. Let's leave the law the way it is and go from there.

Senator Clemens: The hearing could work both ways right?

Jackson: Yes, most definitely. That's why the hearing has to be in person unless both parties agree. The problem with HB 1129 is it gives the department the authority to say no, it is going to be by telephone, and that is what we have an issue with.

Chairman Laffen: Questions?

Senator Rust: Is the law that we have in front of us, is it to protect the person who is accused of a crime or is it helpful in protecting society from getting drunk drivers off the road?

Jackson: There are a lot of people in the shades of gray areas that get caught up in this too, and this at least allows them to have an in-person hearing.

Chairman Laffen: Questions? None. Thank you. Opposition to HB 1129? None. Neutral? None. We will close the hearing on HB 1129.

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1129
3/23/2017
29615

- Subcommittee
 Conference Committee

Committee Clerk Signature *Mary Munder*

Explanation or reason for introduction of bill/resolution:

Relating to hearing requirements for commercial vehicles and for commercial and non-commercial driver's licenses.

Minutes:

Chairman Laffen: Reopened the hearing on HB 1129.

Senator Rust: I am inclined to agree with Senator Kelly Armstrong.

Chairman Laffen: Yes, I talked with him as well and this is going the wrong way. We want to make it go quicker and not lengthen the process.

Senator Casper: Both this bill and HB 1328, I am going to oppose both. The department is doing stuff that I would rather not see them do. I think it is completely unreasonable that someone would have a violation in Williston and have to go to Fargo for the hearing. I think this committee in our discussions has made that point to the DOT and I hope they take it to heart. I personally find if so chosen by the people of Fargo, to come back next time and we will sponsor the bill, making some changes. We are a little ahead of ourselves right now. At this time, I am going to oppose both pieces of legislation and we will see what happens the next Biennium.

Senator Rust: It seems to me that someone who is over their limit, is just trying to keep on the road, driving when they shouldn't be.

Senator Casper: I would add that driving is a privilege and not a right, and with the privilege comes the responsibilities of following our North Dakota state laws, but I also think the DOT should be a little reasonable too.

Senator Casper: I move for a Do Not Pass on first engrossment of HB 1129.

Senator Rust: Seconded

Chairman Laffen: Discussion? None.

Roll Call: Yeas-5, Nays-0, Absent-1. Motion passes.

Senator Casper will carry the bill.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. "Enter Bill/Resolution No." HB1129**

Senate Transportation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Casper Seconded By Rust

Senators	Yes	No	Senators	Yes	No
Chairman Lonnie J. Laffen	✓		Senator Carolyn Nelson	✓	
Senator Tom Campbell					
Senator David Rust	✓				
Senator David Clemens	✓				
Vice Chairman Jonathan Casper	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Casper

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

REPORT OF STANDING COMMITTEE

HB 1129, as engrossed: Transportation Committee (Sen. Laffen, Chairman)
recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1129 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1129

HOUSE TRANSPORTATION COMMITTEE
January 5, 2017; 10:45 AM, Ft. Totten Room

North Dakota Department of Transportation
Darcy Rosendahl, Deputy Director

HB 1129

HB 1129
1
1-5-17

Mr. Chairman, members of the committee, my name is Darcy Rosendahl and I serve as the Deputy Director for the ND Department of Transportation (Department). I'm here today in support of House Bill 1129.

The purpose of this bill is to provide the authority for the Department's hearing officers to determine when telephonic hearings will be conducted by allowing them to consider the circumstances in individual cases. 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 developing a record consisting of testimony from witnesses, usually including 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 given notice and the documents that comprise the hearing file. The bulk of the time at 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 have to be held in-person, unless the person waives an in person hearing. The Court has ruled the Department cannot unilaterally decide that a hearing will be telephonic. Yet, the Department regularly holds telephone hearings where petitioners willingly waive their right to an in-person hearing.

In most cases there is little actual need to conduct the testimony face to face rather than by telephone. 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 office is in fact present. This results in wasted time and resources, moreover, dismissal of a suspension due to the "no show" technicality prevents a prompt removal of a potentially dangerous driver from the roads.

The fundamental purpose of this bill is to ensure the state meets its responsibility in assuring dangerous drivers are removed from the public roadway. A recent example of the difficulties posed by requiring in person hearings when officers may have other obligations are the many Implied Consent cases dismissed this year because arresting officers were serving in the area of the pipeline protests and thus unable to be present in person for an administrative hearing. Frequently, the law enforcement officers were willing to testify telephonically and there were no other circumstances in those cases that made an in person hearing necessary.

This bill would 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" hearing if, under the circumstances of a particular case, it would be in the best interest of the parties and the Department to do so.

In order to incorporate this change and to provide consistency the bill also provides that the hearing officer will issue a decision within 10 days of the date of the hearing to allow the hearing to be completed. Currently the law is designed to issue a decision at the conclusion of the "in-person" hearing. This procedure is often unworkable due to time constraints and cases in which the hearing officer must hold the record open to complete research or accept additional evidence in the case. Additionally changes have been made in this bill clarifying when an appeal must be taken. Currently the law defining the appeal deadline is based upon "in-person" hearings.

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

#2
HB 1129
1-5-17

**Testimony of Jackson J. Lofgren, President of the North Dakota
Association of Criminal Defense Lawyers, before the House Transportation
Committee on HB 1129**

Good Morning,

My name is Jackson Lofgren and I am the President of the North Dakota Association of Criminal Defense Lawyers. Our organization is comprised of lawyers throughout the State of North Dakota. We would urge a **"no"** vote on HB 1129.

The ability to drive is essential to every North Dakotan. We are a rural state where public transportation is not readily available. The loss of the ability to drive often results in a loss of employment and the ability to maintain a person's livelihood.

Currently, administrative hearings before the Department of Transportation must be in person unless the parties consent to a telephonic hearing. It has long been recognized by the court system that a witness should be required to testify in person so the trier of fact can assess the witness's candor and demeanor. Further, having the witness testify in person prevents the witness from referring to manuals or other outside sources while testifying and requires the witness testify from memory.

House Bill 1129 allows the hearing officer to unilaterally decide to hold an administrative hearing by telephonic or other electronic means. Because the ability to drive is so important a person should be allowed to have an in person hearing. We would urge a **"no"** vote on HB 1129.

Thank You,

Jackson J. Lofgren

HB 1129
2-3-17
#1

Prepared by Legislative Counsel Intern 7 for
Rep. Weisz
January 27, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1129

Page 1, Line 11, replace "The" with "If, upon notice to the hearing officer, any participant to the hearing is unavailable to appear in person, the hearing officer may allow the unavailable participant to appear by ~~telephone~~, ~~television~~, ~~facsimile services~~, or other electronic *video* means."

Page 1, remove lines 12 and 13

Page 4, Line 3, replace "The administrative hearing may be conducted in total or in part by" with "If, upon notice to the hearing officers, any participant to the hearing is unavailable to appear in person, the hearing officer may allow the unavailable participant to appear by ~~telephone~~, ~~facsimile services~~ or other electronic means."

Page 4, remove lines 4 and 5

Re-number accordingly

SENATE TRANSPORTATION COMMITTEE
March 17, 2017 - Lewis & Clark Room

Attachment # 1 pgs
HB 1129 3-17-17

North Dakota Department of Transportation
Darcy Rosendahl, Deputy Director

HB 1129

Mr. Chairman, members of the committee, my name is Darcy Rosendahl and I serve as the Deputy Director for the ND Department of Transportation (Department). I'm here today in support of House Bill 1129 with a proposed amendment that would take it back to its original intent.

The intent of this bill was to provide the authority for the Department's hearing officers to determine when telephonic hearings would be conducted by allowing them to consider the circumstances in individual cases. With the engrossed version it appears the Department would no longer be able to conduct telephonic hearings. The Department currently employs hearing officers who conduct administrative hearings regarding driver's license suspensions, revocations and cancellations under authority of the Department. Last year there were 1,710 implied consent hearings conducted by our three full time and four part time hearing officers.

Of the various administrative hearings conducted, most are implied consent hearings resulting in suspension or revocation of driving privileges, which at times include commercial driver's licenses. These hearings involve the hearing officer developing a record consisting of testimony from witnesses, including 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 given notice and the documents that comprise the hearing file. The bulk of the time at the hearing is limited to the testimony and cross-examination of the witnesses.

The ND Supreme Court has interpreted, because of the way current law is written, that these hearings have to be held in-person, unless the person waives an in person hearing. The Court has ruled the Department cannot unilaterally decide that a hearing will be telephonic. There are other state agencies that are allowed to determine the type of administrative hearing they conduct because they do not have law restricting them. Yet, the Department regularly holds telephone hearings where petitioners willingly waive their right to an in-person hearing. The yearly amount of telephonic hearings is typically between 40% -50%.

In most cases there is little actual need to conduct the testimony face to face rather than by telephone. 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 results in wasted time and resources. A recent example of the difficulties posed by requiring in-person hearings when officers may have other obligations are the many Implied Consent cases dismissed this past year because arresting officers were serving in the area of the pipeline protests and thus unable to be present in person for an administrative hearing. Frequently, the law enforcement officers were willing to testify telephonically and there were no other circumstances in those cases that made an in person hearing necessary.

Moreover, dismissal of a suspension due to the "no show" technicality prevents a prompt removal of a potentially dangerous driver from the roads. The fundamental purpose of this bill is to ensure the state meets its responsibility in assuring potentially dangerous drivers are removed from the public roadway.

Even if this bill passes as requested by the Department, we still intend to conduct in person hearings. However, this bill would 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.

In order to incorporate this change and to provide consistency, the bill also provided that the hearing officer will issue a decision within 10 days of the date of the hearing to allow the hearing to be completed. Currently, the law is designed to issue a decision at the conclusion of the "in-person" hearing. This procedure is often unworkable due to time constraints and cases in which the hearing officer must hold the record open to complete research or accept additional evidence in the case. Additionally, changes have been made in this bill clarifying when an appeal must be taken. Currently, the law defining the appeal deadline is based upon "in-person" hearings.

The changes to page 1 in the proposed amendment return the bill to its original intent which would allow the hearing officer, when necessary, to determine that instead of an in-person hearing, a hearing would be held by some electronic means.

The changes to page 2 in the proposed amendment are to clarify current internal process.

The change to page 3 in the proposed amendment is to add consistency to the amendment passed by the House.

The first two changes to page 4 in the proposed amendment is the same as the changes to page 1, which returns the bill to its original intent which would allow the hearing officer, when necessary, to determine that instead of an in-person hearing, a hearing would be held by some electronic means.

The third change to page 4 in the proposed amendment is to correct a grammatical error.

The last change to page 4 in the proposed amendment is the same as the changes to page 2, which clarifies current internal process.

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1129

Page 1, line 12, replace "If any participant to the hearing is unavailable to appear in person, the" with "The administrative hearing may be conducted in total or in part by telephone, television, or other electronic means as determined by the hearing officer."

Page 1, remove lines 13 and 14

Page 2, line 9, after "If the" insert immediately thereafter "hearing officer does not find against the individual, the hearing officer shall extend any valid temporary operator's permit for an additional twenty days"

Page 2, remove line 10

Page 2, line 11, remove "reinstatement unless the person is otherwise ineligible for driving privileges"

Page 3, line 24, overstrike "ten" and insert immediately thereafter "fifteen"

Page 4, line 3, replace "If any participant to the hearing is unavailable to appear in person, the" with "The administrative hearing may be conducted in total or in part by telephone, television, or other electronic means as determined by the hearing officer."

Page 4, remove lines 4 and 5

Page 4, line 16, replace "issues" with "issued"

Page 4, line 27, replace "finds in favor of the person, the decision must include" with "does not find against the individual, the hearing officer shall extend any valid temporary operator's permit for an additional twenty days"

Page 4, remove line 28

Re-number accordingly