

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1528

Introduced by

Representatives Mock, Bosch, Ista, Kempenich, Louser, Roers Jones, Toman, Weisz

Senators Davison, Paulson, K. Roers, Wanzek

1 A BILL for an Act to amend and reenact sections 15-10-44, 54-46-02, 54-46-04, 54-46-05, and
2 54-46-08 of the North Dakota Century Code, relating to the retention of electronic mail for
3 institutions under the control of the state board of higher education, final disposition of records,
4 mandatory records retention policies for state agencies, and the administration of employee
5 accounts upon employee departure from an agency; to provide for a legislative management
6 study; to provide an effective date; and to declare an emergency.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 15-10-44 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **15-10-44. Higher education information technology - Board duties - Reports.**

- 11 1. The state board of higher education shall manage and regulate information technology
12 planning and services for institutions under its control, including:
- 13 a. Development of information technology policies, standards, and guidelines in
14 coordination with the information technology department.
 - 15 b. Implementation of a process for project management oversight and reporting.
 - 16 c. Integration of higher education information technology planning and reporting
17 with the board's strategic planning process and annual performance and
18 accountability report required by section 15-10-14.2.
 - 19 d. Participation in internet2 or other advanced higher education or research-related
20 networking projects as provided in section 54-59-08.
 - 21 e. Development of an annual report concerning higher education information
22 technology planning and services.

- 1 f. Requiring utilization by each institution under the control and supervision of the
2 board of systemwide electronic mail services provided by the board for all public
3 business electronic correspondence.
- 4 g. Development and implementation of an electronic mail retention policy for the
5 board and institutions under the supervision and control of the board which
6 requires retention of nonstudent employee electronic mail messages for at least
7 ~~two years~~one year after the creation or receipt of the message unless the
8 electronic mail message includes malware or regulated information as defined
9 under section 54-59.1-01.
- 10 2. The state board of higher education shall collaborate with the information technology
11 department to coordinate higher education information technology planning with
12 statewide information technology planning.
- 13 3. The state board of higher education shall provide advice to the information technology
14 department regarding the development of policies, standards, and guidelines relating
15 to access to or use of wide area network services as provided by section 54-59-09.
- 16 4. The state board of higher education shall present information regarding higher
17 education information technology planning, services, and major projects to the
18 information technology committee on request of the committee.

19 **SECTION 2. AMENDMENT.** Section 54-46-02 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **54-46-02. Definitions.**

22 As used in this chapter, unless the context or subject matter otherwise requires:

- 23 1. "Agency" means any department, office, commission, board, or other unit, however
24 designated, of the executive branch of state government, including the state board of
25 higher education and the entities under the control of the state board of higher
26 education.
- 27 2. "Data" does not include malware or regulated information as defined under section
28 54-59.1-01.
- 29 3. "Departmental agency" means an agency, not including a board or commission as
30 defined by titles 4.1 and 43.

1 4. "Record" means document, book, paper, photograph, electronic mail or
2 communication, sound recording or other material, regardless of physical form or
3 characteristics, made or received pursuant to law or in connection with the transaction
4 of official business activities, policies, or decisions that provide administrative,
5 operational, fiscal, historical, audit, or business value. Library and museum material
6 made or acquired and preserved solely for reference or exhibition purposes, extra
7 copies of documents preserved only for convenience of reference, nonbusiness-
8 related or draft electronic messages and stocks of publications and of processed
9 documents are not included within the definition of records as used in this chapter.

10 ~~3.5.~~ "State record" means:

- 11 a. A record of a department, office, commission, board, or other agency, however
12 designated, of the state government.
- 13 b. A record of the state legislative assembly held by an agency.
- 14 c. A record of any court of record, whether of statewide or local jurisdiction.
- 15 d. Any other record designated or treated as a state record under state law.

16 **SECTION 3. AMENDMENT.** Section 54-46-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-46-04. Duties of administrator.**

19 The administrator shall, with due regard for the functions of the agencies concerned:

- 20 1. Establish standards, procedures, and techniques for effective management of records.
- 21 2. Make continuing surveys of ~~paperwork~~ operations and recommend improvements in
22 current records management practices including the use of space, equipment, and
23 supplies employed in creating, maintaining, storing, and servicing records.
- 24 3. Establish standards for the preparation of schedules providing for the retention of state
25 records of continuing value and for the final disposition of state records no longer
26 possessing administrative, legal, or fiscal value.
- 27 4. Ensure that each departmental agency maintains, for at least two years one year, data
28 contained in ~~office productivity software, limited to~~ electronic mail accounts ~~and~~
29 ~~personal file storage~~ for ~~all supervisory positions~~ agency heads, state officers
30 appointed by the governor under chapter 44-02, and elected executive branch
31 officials.

1 5. Develop a training program for agencies regarding the management of state records.

2 6. Obtain reports from agencies as are required for the administration of the program.

3 ~~6. When the administrator deems appropriate, report~~

4 7. Receive reports of noncompliance with the records management program to. Upon
5 review of the report, the administrator shall:

6 a. ~~Human~~ Recommend training for the noncompliant agency;

7 b. Submit the report to human resource management services for consultation to
8 determine whether disciplinary action is appropriate;

9 ~~b. The~~

10 c. Submit the report to the office of the state auditor to include noncompliance
11 findings in the agency's audit and to determine whether reporting findings of
12 noncompliance to the legislative audit and fiscal review committee is appropriate;

13 or

14 ~~c. The~~

15 d. Submit the report to the office of the attorney general to determine appropriate
16 action, including prosecution or referral to human resource management services
17 or the agency's human resources department for disciplinary action.

18 **SECTION 4. AMENDMENT.** Section 54-46-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-46-05. Duties of agency heads.**

21 The head of each agency shall:

- 22 1. Establish and maintain an active, continuing program for the economical and efficient
23 management of the records of the agency.
- 24 2. Make and maintain records containing adequate and proper documentation of the
25 organization, functions, policies, decisions, procedures, and essential transactions of
26 the agency designed to furnish information to protect the legal and financial rights of
27 the state and of persons directly affected by the agency's activities.
- 28 3. Submit to the administrator, in accordance with the standards adopted by the
29 administrator, schedules proposing the length of time each state record series
30 warrants retention for administrative, legal, or fiscal purposes after it has been
31 received by the agency.

- 1 4. Submit to the administrator lists of state records in the custody of the agency which
- 2 are not needed in the transaction of current business and which do not have
- 3 administrative, legal, or fiscal value.
- 4 5. Cooperate with the administrator in the conduct of surveys made by the administrator
- 5 pursuant to this chapter, including resolving findings of noncompliance with the
- 6 records management program as may be indicated in the final survey report. Failure to
- 7 cooperate with the administrator may result in reported noncompliance as authorized
- 8 under subsection 6 of section 54-46-04.
- 9 6. Comply with the rules, standards, and procedures adopted by the administrator.

10 **SECTION 5. AMENDMENT.** Section 54-46-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **54-46-08. Determination necessary for final disposition of records - Review of state**
13 **data.**

- 14 1. Prior to the final disposition of any type or class of record, the administrator, after
15 consultation with the official or department head ~~concerned~~downing the record, the
16 attorney general, the state auditor, and the state archivist, shall determine that the type
17 or class of record has no further administrative, legal, or fiscal value and is subject to
18 final disposition under section 54-46-08.1 or section 54-46-09.
- 19 2. Each ~~departmental~~ agency shall maintain, for at least ~~two years~~one year, data
20 contained in ~~office productivity software, limited to~~ electronic mail accounts for ~~all~~
21 ~~supervisory positions~~agency heads, state officers appointed by the governor under
22 chapter 44-02, and elected executive branch officials.
- 23 3. a. Each agency shall develop policies related to the assumption of employee
24 account ownership upon employee departure. For an employee who holds a
25 supervisory position or above, the agency shall place on hold an employee
26 account to preserve the employee account if one of the following occurs:
 - 27 (1) The employee is involuntarily terminated;
 - 28 (2) The employee is placed on administrative leave;
 - 29 (3) The employee resigns or departs without notice;
 - 30 (4) The employee dies; or
 - 31 (5) An event the agency deems sufficient to place the account on hold.

1 b. An agency shall ensure the employee account remains on hold until the account
2 has been reviewed by the appropriate individual. The head of an agency, a
3 records manager, or an employee designated by the head of an agency, shall
4 review the employee account for all supervisory employees, except as required
5 under subdivision c.

6 c. If the employee was the head of an agency, a state officer appointed by the
7 governor under chapter 44-02, or an elected executive branch official, the
8 employee account must be reviewed by the employee's successor and, if the
9 administrator deems it necessary, the state archivist. ~~The employee's successor~~
10 and the state archivist shall review the employee account for archival resources
11 under section 54-46-08.1, preserving archival resources as appropriate.

12 d. For purposes of this subsection:

13 (1) "Employee account" means physical files and electronic files,
14 communications, attachments, and other information stored in an employee
15 electronic mail account or electronic file storage account;

16 (2) "Employee's successor" does not include an individual acting in the
17 successor's role or position temporarily before a successor is appointed
18 under section 44-02-03; and

19 (3) "On hold" means in a state of preservation in which nothing ~~my~~ may be
20 altered and for which access is immediately restricted to review by the
21 appropriate individual as required under this subsection.

22 4. If a statute requiring retention of a record does not either provide a specific retention
23 period or specifically provide that the record be permanently retained, the
24 administrator, after completing the consultation required by this section, shall establish
25 a specific retention period for the record. The administrator shall annually survey the
26 state agencies and shall order final disposition under section 54-46-08.1 or section
27 54-46-09 of any records which have been determined to have no further
28 administrative, legal, or fiscal value pursuant to this section.

29 **SECTION 6. LEGISLATIVE MANAGEMENT STUDY - EXECUTIVE BRANCH BOARD**
30 **AND COMMISSION POLICIES.**

- 1 1. During the 2023-24 interim, the legislative management shall consider studying the
2 records management policies of state agencies, including boards and commissions.
3 The study must include:
 - 4 a. A review of policy uniformity and training resources;
 - 5 b. An analysis of technological capabilities and limitations;
 - 6 c. Evaluation of the feasibility of providing electronic mail and file service solutions
7 for statewide public entities, including boards and commissions; and
 - 8 d. An analysis of the development, implementation, enforcement, and auditing of
9 records management policies and practices.
- 10 2. The legislative management shall report its findings and recommendations, together
11 with any legislation required to implement the recommendations, to the sixty-ninth
12 legislative assembly.

13 **SECTION 7. EFFECTIVE DATE.** This Act becomes effective on July 1, 2023.

14 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.