

**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 ~~section~~sections 54-46-02, 54-46-04, 54-46-05, and  
2 54-46-08 of the North Dakota Century Code, relating to the final disposition of records,  
3 mandatory records retention policies for state agencies, and the administration of employee  
4 accounts upon employee departure from an agency; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 54-46-02 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-46-02. Definitions.**

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

10 1. "Agency" means any department, office, commission, board, or other unit, however  
11 designated, of the executive branch of state government, including the state board of  
12 higher education and the entities under the control of the state board of higher  
13 education.

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

23 3. "State record" means:

- 1 a. A record of a department, office, commission, board, or other agency, however
- 2 designated, of the state government.
- 3 b. A record of the state legislative assembly held by an agency.
- 4 c. A record of any court of record, whether of statewide or local jurisdiction.
- 5 d. Any other record designated or treated as a state record under state law.

6 **SECTION 2. AMENDMENT.** Section 54-46-04 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-46-04. Duties of administrator.**

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

- 10 1. Establish standards, procedures, and techniques for effective management of records.
- 11 2. Make continuing surveys of ~~paperwork~~ operations and recommend improvements in
- 12 current records management practices including the use of space, equipment, and
- 13 supplies employed in creating, maintaining, storing, and servicing records.
- 14 3. Establish standards for the preparation of schedules providing for the retention of state
- 15 records of continuing value and for the final disposition of state records no longer
- 16 possessing administrative, legal, or fiscal value.
- 17 4. Ensure that each agency maintains, for at least two years, data contained in office
- 18 productivity software, limited to electronic mail accounts and personal file storage for
- 19 all supervisory positions.
- 20 5. Obtain reports from agencies as are required for the administration of the program.
- 21 6. When the administrator deems appropriate, report noncompliance with the records
- 22 management program to:
- 23 a. Human resource management services to determine whether disciplinary action
- 24 is appropriate;
- 25 b. The office of the state auditor to include noncompliance findings in the agency's
- 26 audit and to determine whether reporting findings of noncompliance to the
- 27 legislative audit and fiscal review committee is appropriate; or
- 28 c. The office of the attorney general to determine appropriate action, including
- 29 prosecution or referral to human resource management services for disciplinary
- 30 action.

1       **SECTION 3. AMENDMENT.** Section 54-46-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-46-05. Duties of agency heads.**

4       The head of each agency shall:

- 5       1. Establish and maintain an active, continuing program for the economical and efficient  
6           management of the records of the agency.
- 7       2. Make and maintain records containing adequate and proper documentation of the  
8           organization, functions, policies, decisions, procedures, and essential transactions of  
9           the agency designed to furnish information to protect the legal and financial rights of  
10          the state and of persons directly affected by the agency's activities.
- 11       3. Submit to the administrator, in accordance with the standards adopted by the  
12          administrator, schedules proposing the length of time each state record series  
13          warrants retention for administrative, legal, or fiscal purposes after it has been  
14          received by the agency.
- 15       4. Submit to the administrator lists of state records in the custody of the agency which  
16          are not needed in the transaction of current business and which do not have  
17          administrative, legal, or fiscal value.
- 18       5. Cooperate with the administrator in the conduct of surveys made by the administrator  
19          pursuant to this chapter, including resolving findings of noncompliance with the  
20          records management program as may be indicated in the final survey report. Failure to  
21          cooperate with the administrator may result in reported noncompliance as authorized  
22          under subsection 6 of section 54-46-04.
- 23       6. Comply with the rules, standards, and procedures adopted by the administrator.

24       **SECTION 4. AMENDMENT.** Section 54-46-08 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26       **54-46-08. Determination necessary for final disposition of records - Review of state**  
27 **data.**

- 28       1. Prior to the final disposition of any type or class of record, the administrator, after  
29          consultation with the official or department head ~~concerned~~downing the record, the  
30          attorney general, the state auditor, and the state archivist, shall determine that the type

1 or class of record has no further administrative, legal, or fiscal value and is subject to  
2 final disposition under section 54-46-08.1 or section 54-46-09.

3 ~~2. Each agency shall develop policies related to the review of state data and notify the  
4 administrator of any policy changes made by July first of each year. Each agency shall  
5 retain state data received or created by each individual employed by the agency for a  
6 period of at least ninety days after the initial deletion of the state data to allow for the  
7 review of any administrative, legal, or fiscal information contained in the state data  
8 before permanent deletion. Any administrative, legal, or fiscal information contained in  
9 an employee's state data is considered a record and must be maintained pursuant to  
10 section 54-46-07 or evaluated and disposed of pursuant to this section or section  
11 54-46-08.1.~~

12 ~~a. For purposes of this subsection, "state data" includes any state employee-~~  
13 ~~account, file, electronic mail, or other document containing state government~~  
14 ~~information that may have administrative, legal, or fiscal value.~~

15 ~~b. For purposes of this subsection, "electronic mail" includes all information~~  
16 ~~contained in an electronic mail communication, including attachments~~maintain, for at  
17 least two years, data contained in office productivity software, limited to electronic mail  
18 accounts and personal file storage, for all supervisory positions.

19 3. a. Each agency shall develop policies related to the assumption of employee  
20 account ownership upon employee departure. For an employee who holds a  
21 supervisory position or above, the agency shall place on hold an employee  
22 account to preserve the employee account if one of the following occurs:

23 (1) The employee is involuntarily terminated;

24 (2) The employee is placed on administrative leave;

25 (3) The employee resigns or departs without notice;

26 (4) The employee dies; or

27 (5) An event the agency deems sufficient to place the account on hold.

28 b. An agency shall ensure the employee account remains on hold until the account  
29 has been reviewed by the appropriate individual. The head of an agency, a  
30 records manager, or an employee designated by the head of an agency, shall

1 review the employee account for all supervisory employees, except as required  
2 under subdivision c.  
3 c. If the employee was the head of an agency, a state officer appointed by the  
4 governor under chapter 44-02, or an elected executive branch official, the  
5 employee account must be reviewed by the employee's successor and the state  
6 archivist. The employee's successor and the state archivist shall review the  
7 employee account for archival resources under section 54-46-08.1, preserving  
8 archival resources as appropriate.  
9 d. For purposes of this subsection:  
10 (1) "Employee account" means physical files and electronic files,  
11 communications, attachments, and other information stored in an employee  
12 electronic mail account or electronic file storage account;  
13 (2) "Employee's successor" does not include an individual acting in the  
14 successor's role or position temporarily before a successor is appointed  
15 under section 44-02-03; and  
16 (3) "On hold" means in a state of preservation in which nothing may be altered  
17 and for which access is immediately restricted to review by the appropriate  
18 individual as required under this subsection.  
19 4. If a statute requiring retention of a record does not either provide a specific retention  
20 period or specifically provide that the record be permanently retained, the  
21 administrator, after completing the consultation required by this section, shall establish  
22 a specific retention period for the record. The administrator shall annually survey the  
23 state agencies and shall order final disposition under section 54-46-08.1 or section  
24 54-46-09 of any records which have been determined to have no further  
25 administrative, legal, or fiscal value pursuant to this section.

26 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.