

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1528
(Representatives Mock, Bosch, Ista, Kempenich, Louser, Roers Jones, Toman, Weisz)
(Senators Davison, Paulson, K. Roers, Wanzek)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. The state board of higher education shall manage and regulate information technology planning and services for institutions under its control, including:
 - a. Development of information technology policies, standards, and guidelines in coordination with the information technology department.
 - b. Implementation of a process for project management oversight and reporting.
 - c. Integration of higher education information technology planning and reporting with the board's strategic planning process and annual performance and accountability report required by section 15-10-14.2.
 - d. Participation in internet2 or other advanced higher education or research-related networking projects as provided in section 54-59-08.
 - e. Development of an annual report concerning higher education information technology planning and services.
 - f. Requiring utilization by each institution under the control and supervision of the board of systemwide electronic mail services provided by the board for all public business electronic correspondence.
 - g. Development and implementation of an electronic mail retention policy for the board and institutions under the supervision and control of the board which requires retention of nonstudent employee electronic mail messages for at least ~~two years~~one year after the creation or receipt of the message unless the electronic mail message includes malware or regulated information as defined under section 54-59.1-01.
2. The state board of higher education shall collaborate with the information technology department to coordinate higher education information technology planning with statewide information technology planning.
3. The state board of higher education shall provide advice to the information technology department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services as provided by section 54-59-09.

4. The state board of higher education shall present information regarding higher education information technology planning, services, and major projects to the information technology committee on request of the committee.

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

54-46-02. Definitions.

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

1. "Agency" means any department, office, commission, board, or other unit, however designated, of the executive branch of state government, including the state board of higher education and the entities under the control of the state board of higher education.
 2. "Data" does not include malware or regulated information as defined under section 54-59.1-01.
 3. "Departmental agency" means an agency, not including a board or commission as defined by titles 4.1 and 43.
 4. "Record" means document, book, paper, photograph, electronic mail or communication, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business activities, policies, or decisions that provide administrative, operational, fiscal, historical, audit, or business value. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, nonbusiness-related or draft electronic messages and stocks of publications and of processed documents are not included within the definition of records as used in this chapter.
- ~~3-5.~~ "State record" means:
- a. A record of a department, office, commission, board, or other agency, however designated, of the state government.
 - b. A record of the state legislative assembly held by an agency.
 - c. A record of any court of record, whether of statewide or local jurisdiction.
 - d. Any other record designated or treated as a state record under state law.

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

54-46-04. Duties of administrator.

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

1. Establish standards, procedures, and techniques for effective management of records.
2. Make continuing surveys of ~~paperwork~~ operations and recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, storing, and servicing records.
3. Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the final disposition of state records no longer possessing administrative, legal, or fiscal value.

4. Ensure that each departmental agency maintains, for at least one year, data contained in electronic mail accounts for agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials.
5. Develop a training program for agencies regarding the management of state records.
6. Obtain reports from agencies as are required for the administration of the program.
7. Receive reports of noncompliance with the records management program. Upon review of the report, the administrator shall:
 - a. Recommend training for the noncompliant agency;
 - b. Submit the report to human resource management services for consultation to determine whether disciplinary action is appropriate;
 - c. Submit the report to the office of the state auditor to include noncompliance findings in the agency's audit and to determine whether reporting findings of noncompliance to the legislative audit and fiscal review committee is appropriate; or
 - d. Submit the report to the office of the attorney general to determine appropriate action, including prosecution or referral to human resource management services or the agency's human resources department for disciplinary action.

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

54-46-05. Duties of agency heads.

The head of each agency shall:

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

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

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

1. Prior to the final disposition of any type or class of record, the administrator, after consultation with the official or department head ~~concerned~~downing the record, the attorney general, the state auditor, and the state archivist, shall determine that the type or class of record has no further administrative, legal, or fiscal value and is subject to final disposition under section 54-46-08.1 or section 54-46-09.
2. Each departmental agency shall maintain, for at least one year, data contained in electronic mail accounts and personal file storage, for agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials.
3. a. Each agency shall develop policies related to the assumption of employee account ownership upon employee departure. For an employee who holds a supervisory position or above, the agency shall place on hold an employee account to preserve the employee account if one of the following occurs:
 - (1) The employee is involuntarily terminated;
 - (2) The employee is placed on administrative leave;
 - (3) The employee resigns or departs without notice;
 - (4) The employee dies; or
 - (5) An event the agency deems sufficient to place the account on hold.
- b. An agency shall ensure the employee account remains on hold until the account has been reviewed by the appropriate individual. The head of an agency, a records manager, or an employee designated by the head of an agency, shall review the employee account for all supervisory employees, except as required under subdivision c.
- c. If the employee was the head of an agency, a state officer appointed by the governor under chapter 44-02, or an elected executive branch official, the employee account must be reviewed by the employee's successor and, if the administrator deems it necessary, the state archivist.
- d. For purposes of this subsection:
 - (1) "Employee account" means physical files and electronic files, communications, attachments, and other information stored in an employee electronic mail account or electronic file storage account;
 - (2) "Employee's successor" does not include an individual acting in the successor's role or position temporarily before a successor is appointed under section 44-02-03; and
 - (3) "On hold" means in a state of preservation in which nothing may be altered and for which access is immediately restricted to review by the appropriate individual as required under this subsection.
4. If a statute requiring retention of a record does not either provide a specific retention period or specifically provide that the record be permanently retained, the administrator, after completing the consultation required by this section, shall establish a specific retention period for the record. The administrator shall annually survey the state agencies and shall order final disposition under section 54-46-08.1 or section 54-46-09 of any records which have been determined to have no further administrative, legal, or fiscal value pursuant to this section.

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

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1528 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,
at _____ o'clock _____ M.

Secretary of State