

February 14, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1528

Page 1, line 1, replace "section" with "sections 54-46-02, 54-46-04, 54-46-05, and"

Page 1, line 2, after "records" insert ", mandatory records retention policies for state agencies, and the administration of employee accounts upon employee departure from an agency; and to declare an emergency"

Page 1, after line 3, insert:

**"SECTION 1. 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. "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. "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 2. 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 agency maintains, for at least two years, data contained in office productivity software, limited to electronic mail accounts and personal file storage for all supervisory positions.
5. Obtain reports from agencies as are required for the administration of the program.
6. When the administrator deems appropriate, report noncompliance with the records management program to:
  - a. Human resource management services to determine whether disciplinary action is appropriate;
  - b. 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
  - c. The office of the attorney general to determine appropriate action, including prosecution or referral to human resource management services for disciplinary action.

**SECTION 3. 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."

Page 1, line 13, remove "develop policies related to the review of state data and notify the"

Page 1, remove lines 14 through 24

Page 2, remove line 1

Page 2, line 2, replace "contained in an electronic mail communication, including attachments" with "maintain, for at least two years, data contained in office productivity software, limited to electronic mail accounts and personal file storage, for all supervisory positions"

Page 2, line 3, after "3." insert "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 the state archivist. The employee's successor and the state archivist shall review the employee account for archival

resources under section 54-46-08.1, preserving archival resources as appropriate.

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."

Page 2, after line 9, insert:

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

Renumber accordingly