

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1528

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1528
2/6/2023

Relating to the final disposition of records.

Chairman Louser called to order 10:04 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Dakane, Johnson, Kasper, Koppelman, Schauer, Thomas, Tveit, Wagner, Warrey.

Members absent: Representatives Christy, Ruby

Discussion Topics:

- Personnel email for State business
- Backup solutions
- Recovering deleted Emails

In favor:

Representative Corey Mock, District 18, Grand Forks, proposed amendment #19236 and testimony #19237, #19238, #19239

Neutral:

Amy Bader, Records Management Administrator, ND Information Technology Department, #19183

Craig Felchle, Chief Technology Officer, ND Information Technology Department, (continuing testimony) #19183

Mary Kay Kelsch, Division Director, ND Office of the Attorney General (no written request)

Chairman Louser adjourned the meeting 11:03 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1528
2/14/2023

Relating to the final disposition of records.

Chairman Louser called to order 4:26 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Warrey.

Members Absent: Representative Wagner

Discussion Topics:

- Committee Action

Representative Corey Mock, District 18, Grand Forks, bill sponsor presented amendment LC #23.1015.02002.

Representative Koppelman proposed changes to the amendment, #20853, #23.1015.02003

Representative Koppelman moved to adopt the amendment LC #23.1015.02003.
Representative Kasper seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	AB
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 12-0-2

Representative Koppelman moved do pass as amended.
Representative Kasper seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	AB
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 12-0-2

Representative Koppelman will carry the bill.

Chairman Louser adjourned the meeting 4:51 PM

Diane Lillis, Committee Clerk

February 14, 2023

2-14-23

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:

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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.

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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

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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

REPORT OF STANDING COMMITTEE

HB 1528: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1528 was placed on the Sixth order on the calendar.

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.

Re-number accordingly

2023 SENATE STATE AND LOCAL GOVERNMENT

HB 1528

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1528
3/23/2023

Relating to the final disposition of records, mandatory records retention policies for state agencies, and the administration of employee accounts upon employee departure from an agency; to declare an emergency.

9:30 AM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Emails are records
- Consequences of a death
- Unforeseen events planning
- Planned successor
- Deletion of records

Rep Moch, Dist 18, bill sponsor testified in support. #26436, #26437.

Jack McDonald, ND Newspapers Assoc testified in support #26408.

Aimee Bader, ND Information Technology, testified via TEAMS neutral #26073.

Jessica Newby, ND Information Technology, testified neutral #26397.

Mary Kay Kelsch, Attorney General Office testified neutral with no written testimony.

Greg Felchle, ND Information Technology Dept answered questions.

Additional written testimony:

Mitchell Sanderson, Park River, ND neutral #25743.

10:33 AM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1528
3/30/2023

Relating to the final disposition of records, mandatory records retention policies for state agencies, and the administration of employee accounts upon employee departure from an agency; declare an emergency.
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10:30 AM Vice Chair reopened hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- New definitions
- Retained data
- Termination process
- Cybersecurity

Rep Mock, Dist 18, brought amendment and explained LC 23.1015.03002. #27075, #27076

Jessica Newby, ND Information Technology, answered questions. No written testimony.

Aimee Bader, ND Information Technology Risk/Compliance testified via TEAMS neutrally. #26691

Rep Mock came forward per Vice Chair Barta request to continue explanation.

Randy Christmann, Public Service Chair, testified in opposition #27043.

Shane Molender, State Historic Society testified neutral with no written testimony.

Jessica Newby, ND Information Technology, Risk/Compliance testified neutral #27036.

Molly Herington, Office Management Budget, explained what supervisor means. No written testimony.

Mary Kae Kelsch, attorney, Assist Attorney General, testified neutrally. No written testimony.

11:43 AM Vice Chair Barta closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1528
3/30/2023

Relating to the final disposition of records, mandatory records retention policies for state agencies, and the administration of employees accounts upon employee departure from an agency; declare an emergency.

3:15 PM Vice Chair Barta opened committee work.

Present: Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- A study only
- Off-boarding in ND

Sen Estenson moved to amend to make bill a study only.

Died for lack of a second.

Mary Kae Kelsch, Asst Attorney General, spoke on bill as a study only.

3:30 PM Vice Chair adjourned the meeting.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1528
4/6/2023

Relating to the final disposition of records, mandatory records retention policies for state agencies, and the administration of employee accounts upon employee departure from and agency; declare an emergency.

10:30 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Email only
- Record retention
- Security breaches

Chair Roers provided information and the committee recessed to wait for Rep Mock to address committee.

Committee came back to order at 10:49 AM

Rep Mock explained amendment 23.1015.03004 #27340, #27387

Randy Christmann, Chair Public Service Commission, provided information. No written testimony.

Craig Felchle, CIO ND Information Technology answered questions. No written testimony.

Mary Kae Kelsch, Asst Attorney General explained retention time. No written testimony.

Jessica Newby, ND Information Technology, Risk/Compliance talked about risks. No written testimony.

Sen Estenson moved to decrease retention to one year. Died for lack of second.

Sen Estenson moved amendment LC 23.1015.03004 and further amend.

Sen Barta seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

ROLL CALL VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Estenson moved a DO PASS as Amended.

Sen Barta seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	N
Senator Judy Estenson	Y
Senator Judy Lee	N

ROLL CALL VOTE: YES 4 NO – 2 Absent – 0 Motion PASSED

Sen Barta will carry the bill.

12:01 PM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

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4-6-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1528

Page 1, line 1, after "sections" insert "15-10-44,"

Page 1, line 2, after the second "the" insert "retention of electronic mail for institutions under the control of the state board of higher education,"

Page 1, line 4, after "agency" insert "; to provide for a legislative management study; to provide an effective date"

Page 1, after line 6, insert:

"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.

DR
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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."

Page 1, line 14, after the period insert "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."

Page 1, line 23, overstrike "3." and insert immediately thereafter "5."

Page 2, line 17, after "each" insert "departmental"

Page 2, line 17, replace "two years" with "one year"

Page 2, line 17, remove "office"

Page 2, line 18, remove "productivity software, limited to"

Page 2, line 18, remove "and personal file storage"

Page 2, line 19, replace "all supervisory positions" with "agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials"

Page 2, line 20, after "5." insert "Develop a training program for agencies regarding the management of state records."

6."

Page 2, line 21, replace "6. When the administrator deems appropriate, report" with:

"7. Receive reports of"

Page 2, line 22, replace "to" with ". Upon review of the report, the administrator shall"

Page 2, line 23, replace "Human" with "Recommend training for the noncompliant agency:"

b. Submit the report to human"

Page 2, line 23, after "services" insert "for consultation"

Page 2, line 25, replace "b. The" with:

"c. Submit the report to the"

Page 2, line 28, replace "c. The" with:

"d. Submit the report to the"

Page 2, line 29, after "services" insert "or the agency's human resources department"

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4-6-23

Page 4, line 3, after "Each" insert "departmental"

Page 4, line 3, remove "office productivity"

Page 4, line 4, remove "software, limited to"

Page 4, line 4, remove "all"

Page 4, line 5, replace "supervisory positions" with "agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials"

Page 4, line 22, after "and" insert ", if the administrator deems it necessary."

Page 4, line 23, remove "The employee's successor and the state archivist shall review the"

Page 4, remove lines 24 and 25

Page 5, line 4, replace "my" with "may"

Page 5, after line 13, insert:

"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."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1528, as engrossed: State and Local Government Committee (Sen. K. Roers, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1528 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "sections" insert "15-10-44,"

Page 1, line 2, after the second "the" insert "retention of electronic mail for institutions under the control of the state board of higher education,"

Page 1, line 4, after "agency" insert "; to provide for a legislative management study; to provide an effective date"

Page 1, after line 6, insert:

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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."

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3. "Departmental agency" means an agency, not including a board or commission as defined by titles 4.1 and 43.

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"c. Submit the report to the"

Page 2, line 28, replace "c. The" with:

"d. Submit the report to the"

Page 2, line 29, after "services" insert "or the agency's human resources department"

Page 4, line 3, after "Each" insert "departmental"

Page 4, line 3, remove "office productivity"

Page 4, line 4, remove "software, limited to"

Page 4, line 4, remove "all"

Page 4, line 5, replace "supervisory positions" with "agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials"

Page 4, line 22, after "and" insert ", if the administrator deems it necessary."

Page 4, line 23, remove "The employee's successor and the state archivist shall review the"

Page 4, remove lines 24 and 25

Page 5, line 4, replace "my" with "may"

Page 5, after line 13, insert:

**"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."

Renumber accordingly

TESTIMONY

HB 1528

NORTH
Dakota
Be Legendary.

Information Technology

House Industry, Business and Labor

February 6, 2023
Room 327C



RECORDS MANAGEMENT PROGRAM- OVERVIEW

- The Records Management Program is governed by North Dakota Century Code 54-46.
- Records Management in North Dakota is structured under North Dakota Information Technology (NDIT). The State Records Administrator oversees the Program and is appointed by the Chief Information Officer (CIO) per NDCC 54-46-03.
- NDCC 54-46-03 also outlines the establishment of a Records Management Program:
“The administrator shall establish and administer in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, and final disposition of state records.”

RECORDS MANAGEMENT PROGRAM- RETENTION SCHEDULE OVERVIEW

- The Records Retention Schedule is housed electronically in the Records Management System (RMS) which can be accessed publicly using a link from www.ndit.nd.gov : [Records Management - Record Series \(nd.gov\)](http://www.ndit.nd.gov/Records%20Management%20-%20Record%20Series)
- A Records Management Task Force (“the Task Force”) exists to approve additions or changes to the Records Retention Schedule. This approval process is a workflow built into RMS.
 - Per NDCC 54-46-08, the Task Force was created to assist agencies in establishing an accurate, legally-approved records retention schedule. It consists of the State Archivist, State Auditor, Attorney General, and State Records Administrator.
 - The Task Force is responsible for reviewing and assigning the historical, fiscal, and legal values to the record series being submitted by the Agency.
- The Records Retention Schedule is made up of Agency-Specific schedules as well as the North Dakota (ND) General Schedule, which is utilized by all State Agencies.

RECORDS MANAGEMENT PROGRAM- ND GENERAL SCHEDULE OVERVIEW

- The ND General Schedule contains record series that are commonly used by all State Agencies. Its purpose is to eliminate redundancies and improve consistency in application of records retention schedules. It was created in 1999 with the bulk of the original submissions being approved by the Task Force in early 2000. The project was managed by then-State Records Administrator Becky Lingle (retired February 2021).
- As of January 2023, there are 74 records series listed on the ND General Schedule.
- The State Records Administrator oversees (acts as Records Coordinator for) the ND General Schedule.
- Each year, State Agencies must report and certify records as disposed according to retention requirements on the ND General Schedule and Agency-Specific schedules. This is done in RMS.

RECORDS MANAGEMENT PROGRAM- RETENTION APPROVAL PROCESS

- Changes made to Agency-Specific Records Retention schedules begin with the designated Records Coordinator in each State Agency. This user places a request in RMS to add, change, or delete a records series that contains the information required to initiate the workflow process.
- This request is then routed to the Records Analyst assigned to that State Agency. The Analyst reviews the request and initiates routing to the Task Force.
- The Task Force members (State Auditor, Attorney General, and State Archivist) review the request and add appropriate values to required fields.
- Once approved by the Task Force, the request is given a final review by the State Records Administrator, including an approval of the final retention for the series (based on Task Force responses) before it is published to the Records Retention Schedule. This approval chain is date-stamped on the record series in RMS.
- Changes to the ND General Schedule go through the same workflow approval process but are initiated by the State Records Administrator rather than an Agency user.

RECORDS MANAGEMENT PROGRAM- TRANSFER OF RECORDS TO THE STATE ARCHIVES

- If records are identified as having historical value by the State Archivist, they must be disposed/transferred to the State Archives once the retention period has been met.
- Agencies work directly with State Archives staff to arrange pickup of physical records or transfer of electronic records. Electronic records require the submission of State Form Number (SFN) 60838- Electronic Records Transfer Information in advance of making the transfer.
- Once transfer of records is complete, the State Archives provides the Agency with a receipt (SFN 13351).
- Agencies will report the disposition of these records in RMS as part of their annual disposal process.

RECORDS MANAGEMENT PROGRAM- AGENCY REVIEWS

- Records Management is required by NDCC 54-46-04.2 to “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.”
- These reviews are done periodically by the Records Analyst assigned to that Agency under the direction of the State Records Administrator.
- Records Management Program elements reviewed include:
 - Agency Self-Evaluation: Prior to the review, Agencies complete a Program Assessment (SFN 59608) to determine Agency needs and status of their Records Management Program implementation.
 - Annual Record Disposals: The Records Analyst will review the Records Disposal Reports in RMS to determine if the Agency has completed their annual records disposals according to both their Agency-Specific schedule and the ND General Schedule.

RECORDS MANAGEMENT PROGRAM- AGENCY REVIEWS (CONT'D)

- Records Retention Schedule: The Records Analyst will review the Agency-Specific schedule with the Agency representatives (Records Coordinators) to determine if it is still current or if records need to be added, deleted, or changed.
- Filing System: The Records Analyst will evaluate the current filing systems used to store active and inactive records for efficiency.
- Forms Management: The Records Analyst will evaluate State Forms used by the Agency to determine compliance with established forms design standards.
- The Records Analyst will develop a report which summarizes the findings and recommendations of the review and provide it to the State Records Administrator and Agency Director.
 - The report is intended to provide the Agency with information required to maintain their records management program accurately and in compliance with applicable North Dakota Century Code statutes.

EMAIL – CURRENT STATE

- Email system: Cloud service managed by NDIT
- Email by itself is not a record
- Records may exist inside emails
- Data ownership resides with each respective agency
- Agencies formally request for NDIT to make changes to accounts
- Offboarding:
 - Agency requests account removal
 - Triggers 30-day window to review data
 - Data can be moved to any alternate storage location



CURRENT STATE OFFICE 365 ENVIRONMENT

G1 State

~850 Users

- No Technological Retention Capabilities
- No Technological Hold Capabilities

G1 Non-State

~1600 Users

- No Retention Capabilities
- No Hold Capabilities

G5 State

~10,250 Users

- Retention Capabilities
- E-Discovery Capabilities
- Possible event-based actions, future automation, disposition review

G5 Non-State

~50 Users

- Retention Capabilities
- E-Discovery Capabilities
- Possible event-based actions, future automation, disposition reviews



CURRENT STATE – SYSTEMS/SERVERS

- Hosting
 - Authority
 - 54-59-22. Required use of electronic mail, file and print server administration, database administration, application server, and hosting services
 - Approximately 2,300 Servers
 - Roughly 2,000-3,000 applications across State Government
 - Cloud Services can be unique
 - Exception process for externally provided solutions
- SLA's for Hosted Services
 - Daily Backup for 30 days (Servers)
 - Weekly for 7 weeks (Servers)
 - Exceptions exist and must be approved by the Systems Platforms Manager
 - Data Backups are optimized for Disaster Recovery Purposes and not intended to be used for records retention



CURRENT STATE – OTHER PLATFORMS

- Challenges:
 - Every Platform/Application itself has unique capabilities
 - Office 365, for example, has different capabilities than on-prem file storage
 - The standard EDMS solution is different from SharePoint, for example.
 - Many do not have any inherent capability for recovery after deletion within the application layer
 - Applications and hosting provided by exempted applications may require significant contract amendments to meet new standards for retention.
 - E-Discovery and Litigations holds are unique per product
 - Not all agencies are using NDIT for hosting
 - NDIT does not require services to be consumed in a specific manner today as it relates to retention but provides services based on Service Offering Descriptions and SLA's.
 - Retention to cover all systems and applications to a level not currently provided would carry a very large financial and operational impact.
 - Data can change multiple times per day.
 - Backup products operate on schedules that only capture data at certain points in time, but will often not capture all changes.

23.1015.02002 Draft

Sixty-eighth
Legislative Assembly
of North Dakota

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
3 records,mandatory records retention policies for state agencies, and the administration of
4 employee accounts upon employee departure from an agency.

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. Obtain reports from agencies as are required for the administration of the program.
- 18 5. Report noncompliance with the records management program to the office of the state
- 19 auditor or the office of the attorney general to determine appropriate action, at the
- 20 administrator's discretion.

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

23 **54-46-05. Duties of agency heads.**

24 The head of each agency shall:

- 25 1. Establish and maintain an active, continuing program for the economical and efficient
- 26 management of the records of the agency.
- 27 2. Make and maintain records containing adequate and proper documentation of the
- 28 organization, functions, policies, decisions, procedures, and essential transactions of
- 29 the agency designed to furnish information to protect the legal and financial rights of
- 30 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 5 of section 54-46-04.
6. Comply with the rules, standards, and procedures adopted by the administrator.

SECTION 4. 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 agency shall maintain, for at least one year, data contained in office productivity software, limited to electronic mail accounts and personal file storage, for all supervisory positions ~~develop policies related to the review of state data and notify the administrator of any policy changes made by July first of each year. Each agency shall retain state data received or created by each individual employed by the agency for a period of at least ninety days after the initial deletion of the state data to allow for the review of any administrative, legal, or fiscal information contained in the state data before permanent deletion. Any administrative, legal, or fiscal information contained in an employee's state data is considered a record and must be maintained pursuant to section 54-46-07 or evaluated and disposed of pursuant to this section or section 54-46-08.1.~~

~~1 a. For purposes of this subsection, "state data" includes any state employee
2 account, file, electronic mail, or other document containing state government
3 information that may have administrative, legal, or fiscal value.~~

~~4 b. For purposes of this subsection, "electronic mail" includes all information
5 contained in an electronic mail communication, including attachments.~~

6 3. a. Each agency shall develop policies related to the assumption of employee
7 account ownership upon employee departure. For an employee who holds a
8 supervisory position or above, the agency shall place an administrative hold on
9 an employee account to preserve the employee account in the event one of the
10 following occurs:

11 (1) The employee is terminated;

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

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

14 (4) The employee dies; or

15 (5) An event the agency deems sufficient to place the account on administrative
16 hold.

17 b. An agency shall ensure the employee account remains on administrative hold
18 until the account has been reviewed by the appropriate individual. The head of an
19 agency, or a records manager designated by the head of an agency, shall review
20 the employee account for all supervisory employees, except as required under
21 subdivision c.

22 c. If the employee was the head of an agency or a state officer appointed by the
23 governor under chapter 44-02, the employee account must be reviewed by the
24 employee's successor and the state archivist. The employee's successor and the
25 state archivist shall review the employee account for archival resources under
26 section 54-46-08.1, preserving archival resources as appropriate.

27 d. For purposes of this subsection:

28 (1) "Employee account" means physical files and electronic files,
29 communication, attachments, and other information stored in an employee
30 electronic mail account or electronic file storage account; and

1 (2) "Employee's successor" does not include an individual acting in the
2 successor's role or position temporarily before a successor is appointed
3 under section 44-02-03.

4 4. If a statute requiring retention of a record does not ~~either~~ provide a specific retention
5 period or specifically provide that the record be permanently retained, the
6 administrator, after completing the consultation required by this section, shall establish
7 a specific retention period for the record. The administrator shall annually survey the
8 state agencies and shall order final disposition under section 54-46-08.1 or section
9 54-46-09 of any records which have been determined to have no further
10 administrative, legal, or fiscal value pursuant to this section.

To the best of this office's knowledge and recollection, as assisted by existing records, the following constitutes the chronology of events regarding former Attorney General Stenehjem's and former Deputy Attorney General Seibel's email accounts.

1/29/22 evening	<p>Email from Ms. Brocker to the Attorney General's Office Information Technology Division (AGIT) directing former AG Stenehjem's email account to be shut down and the emails in his inbox, inbox folders, and sent items to be deleted on 1/31/22 – Email says "This was approved by Troy."</p> <p>The email also refers to a search for a password to AG Stenehjem's laptop. Access to the laptop was needed to retrieve personal information and photos for the Stenehjem family but was not needed to delete the email account.</p>
1/31/22 morning	Email from Ms. Brocker to AGIT saying laptop will be delivered to them for "wiping" but to preserve personal information
1/31/22	AGIT was able to reset AG Stenehjem's state account on his laptop without the password. AGIT moved photos from the laptop onto a drive for the Stenehjem family to use at AG Stenehjem's funeral. This was done because, once AG Stenehjem's state domain/account was deleted, the photos in that domain/account would no longer exist.
1/31/22	AGIT submitted a ticket to the North Dakota Information Technology Department (NDIT) to delete AG Stenehjem's email account. Request stated "Please delete Attorney General Stenehjem's email account. The deputy attorney general and his administrative assistant have already reviewed and retained what was needed."
4/27/22	AGIT opened a ticket to place former DAG Seibel's email account on Ms. Brocker's computer in response to a request from Ms. Brocker.
5/23/22	Ms. Brocker directed AGIT to delete former DAG Seibel's account. This was during an oral conversation and was not authorized by any Attorney General's Office personnel.
5/23/22	AGIT submitted a ticket to NDIT to delete former DAG Seibel's email account. Request stated "Please remove the shared mailbox with Liz Brocker and then delete the email account. Thank you!"
6/30/22	Open records requests for emails and other records relating to the south building were received.
circa 7/1/22	After asking AGIT for assistance producing emails responsive to the open records requests, DAG Ness was informed by AGIT that the email accounts for AG Stenehjem and DAG Seibel had been deleted. DAG Ness informed AG Wrigley.

7/1/22 - 7/14/22	DAG Ness had several telephone and email communications with AGIT and NDIT to determine whether AG Stenehjem's or former DAG Seibel's emails could be retrieved. NDIT and AGIT also communicated regarding this issue. NDIT and AGIT confirmed to DAG Ness the emails in the accounts could not be retrieved.
circa 7/5/22	Ms. Brocker confirmed she directed the deletion of the email accounts of former AG Stenehjem and former DAG Seibel. Ms. Brocker confirmed she directed the deletion of former AG Stenehjem's email pursuant to the approval of former DAG Seibel. Ms. Brocker was asked what authority she could offer for ordering the deletion of former DAG Seibel's account, and she did not provide any.
7/14/22	<p>AGIT identified that a cached version of some of former DAG Seibel's emails may be stored on the hard drive of DAG Seibel's former laptop and may be accessible through his state account, even though his state account no longer includes an email account. AGIT was able to access former DAG Seibel's state account and resurrected cached emails on the laptop.</p> <p>DAG Seibel's emails are being reviewed as expeditiously as possible to determine whether any are responsive to the open records request.</p> <p>Evaluation of whether other emails may be accessible will continue. It appears IT efforts have been exhausted, however.</p>



North Dakota House of Representatives

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COMMITTEES:
Appropriations

February 6, 2023

Chairman Scott Louser and House Industry, Business and Labor Committee
North Dakota State Capitol – Room 327C
Testimony in Support of HB 1528 – Retention of Email and Review of Records

Chairman Louser and Member of the House IBL Committee,

We are nearly one month away from the News Leaders Association annual Sunshine Week – March 12-18, 2023 – which is an initiative to promote open government.

Open records are anything but a foreign concept to the state of North Dakota. Our constitution enshrines the right in Article XI, Section 6:

“Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state... shall be public records, open and accessible for inspection during reasonable office hours.”

North Dakota Century Code expounds on this right within § 44-04-18: defining “reasonable office hours” as all regular office hours; requiring the name and contact information of a responsible person if regular office hours do not exist; limiting costs that may be charged for open records requests; explicitly stating the “[a]utomation of public records must not erode the right of access of those records”; etc.

Our commitment to openness, transparency, and proper accounting of records are features that highlight the strength of our democracy. Decades – if not generations – have passed with the public maintaining relative confidence that our laws and policies preserve public records and ensure unabridged public access.

It took the untimely death of one man – an institution upon himself – to expose a microscopic opening in our laws that would rupture into a chasm of confusion once exploited.

On the morning of Friday, January 28, 2022, North Dakota's longest tenured Attorney General, Wayne Stenehjem, was found unconscious in his home. By that evening, worry turned to sorrow as news spread that our widely beloved, lifelong public servant, colleague, and friend had passed away.

Little did we realize how much would be lost with his passing – especially in the days that followed.

Attached to my testimony is a timeline of events, assembled by the office of the Attorney General, and published as part of an ongoing investigation from Rob Port and Forum Communications.

This document illustrates the efforts and lengths of one staff member to systematically conceal and destroy all messages, documents, memories, and institutional context that was amassed over 7,697 days in office.

In late March, it was announced that Troy Seibel would be replaced as Deputy Attorney General which led to Mr. Seibel's resignation. On April 27th, Mr. Seibel's email account was transferred to another employee's computer and, approximately one month later, all items associated with Mr. Seibel's account were ordered to be deleted without clear authorization.

Around July 5, 2022, the individual who coordinated and ordered final destruction of all messages and files on accounts of Mr. Stenehjem and Mr. Seibel confirmed her actions and was unable to articulate any authority for the most recent disposition of accounts. She resigned on July 15, 2022; no charges for criminal Tampering with Public Records (or other potential criminal violations) have been filed by the Burleigh County States Attorney.

There is no debate regarding the impropriety of these actions. They are counter to the public's interest, erode trust in our government institutions, and tarnish the epilogue of a public official following his 44 years of legislative and executive service.

The question of legality, however, remains open and seemingly unanswered.

We cannot change the past. Despite admirable efforts, lost messages and files are beyond recovery. But with the wisdom of hindsight, we can remove ambiguity for the future.

HB 1528 – which will require amendments from its introduced version – seeks to:

- Codify and clarify existing definitions of “records” as they related to email;
- Permit our records management administrator to refer findings of noncompliance to the state auditor or attorney general, (when needed);
- Require agency heads to cooperate with our records management program and resolve findings of noncompliance as indicated in policy evaluations;
- Require agencies to retain email and files stored on affiliated storage programs for at least one year;
- Require policies and outline foundational actions that must be taken to review and retain records upon certain triggering events of state employees, agency heads, and public officials.

Attached to my testimony is a draft amendment in context (**23.1015.02002 draft**) with HB 1528 as filed. **These amendments are not final**; they require additional refinement and review by Legislative Council. North Dakota Information Technology Department (NDIT), the Office of the Attorney General (AG), and Human Resource Management Services (HRMS) have been consulted and continue to contribute to the final product of this legislation to ensure any statutory changes are primed for implementation and success.

I will walk through each section as outlined in the draft amendment:

Section 1

Updated our legal definition of “record” to include any electronic mail or communication that includes official business “**activities, policies, or decisions that provide administrative, operational, fiscal, historical, audit, or business value.**” This also clarifies that “**nonbusiness related or draft electronic messages**” are not considered records.

Under current law, email is not considered a record, but information contained in an email may be classified as a record if it contains information in connection with the transaction of official business. This affirms that email is a record and subject to applicable record retention policies if it contains information related to official business.

Section 2

Updates the duties of our records management program administrator by removing “paperwork” as an operational qualifier and allows the administrator discretion to report noncompliance to the state auditor and/or attorney general, if necessary.

Section 3

Updates statutory duties of an agency head to include cooperation with the records management program administrator regarding noncompliance findings.

Section 4

54-46-08(2) contains draft language to require each agency to maintain a default backup of email (e.g. Outlook) and files stored on an affiliated storage system (e.g. OneDrive) for at least one year. This archival storage solution is provided by our existing office productivity vendor (Microsoft) and the intent of this default backup setting is attainable within our licensing parameters.

A default backup of one year is specifically required for all users with supervisory or management responsibilities. This does not preclude agency or IT policies from expanding the service to all employees; intended to provide risk-tolerant flexibility for employees with minimal IT product needs.

Language on page 3 lines 23-25 is ***not intended*** to serve as an alternative method of records retention, nor a replacement of existing records management practices. Records – including email containing official business information as defined in Section 1 – are always to be processed and retained as required by law and policy. An extended backup of our cloud-based email solution provides added insurance against mishandled records or prematurely deleted files.

Additional note: proposed language was added as NDCC § 54-46-08(2) because it governs records management for all executive branch offices and agencies. NDCC § 54-59 – NDIT governing statutes – may also be amended for this provision, but the attorney general's office and ND University System are exempt from using NDIT as an email service provider.

Struck-through language in red beginning on page 3 line 25 and ending on page 4 line 5 remove original language in HB 1528. Further consultations have rendered this language unnecessary as we are accomplishing the intent of the bill with new language proposed by the amendment.

Administrative hold standards begin on page 4 line 6.

Administrative hold, as used in HB 1528, means the indefinite retention of all records, accounts, messages, documents, files, or other material assigned to that employee until proper review, processing, and retention (as necessary) is completed.

54-46-08(3a)

- Requires agencies to develop policies that outline who assume ownership of any employee account upon their departure.
- Requires agencies to place accounts of employees in a supervisory position or above on an administrative hold upon a triggering event:
 - Termination;
 - Administrative leave;
 - Resignation / separation without notice;
 - Death;
 - Other event deemed necessary by that agency

54-46-08(3b)

- Requires administrative holds for supervisory employees to remain in place until accounts and files have been reviewed and processed by the agency head or the agency's designated records manager.

54-46-08(3c)

- Requires administrative holds for agency heads, state officers appointed by the governor, or elected members of the executive branch (temporarily omitted from this draft) to remain in place until accounts are reviewed by the state archivist (for historical preservation purposes outlined in 54-46-08.1) and the appointed successor.

54-46-08(3d)

- Employee account is defined as physical and electronic files, communications, attachments, and other information stored in an employee email or digital storage account.
- Successor may not be interpreted as an individual acting in the successor's position temporarily before an appointment has been made per 44-02-03.

2. Falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when that person knows that the incident did not occur. "Security official" means a public servant responsible for averting or dealing with emergencies involving public safety.

12.1-11-04. General provisions.

1. Falsification is material under sections 12.1-11-01, 12.1-11-02, and 12.1-11-03 regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsification is material in a given factual situation is a question of law. It is no defense that the declarant mistakenly believed the falsification to be immaterial.
2. It is no defense to a prosecution under sections 12.1-11-01 or 12.1-11-02 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at a time when the actor represents it as being so verified shall be deemed to have been duly sworn or affirmed.
3. It is a defense to a prosecution under sections 12.1-11-01, 12.1-11-02, or 12.1-11-03 that the actor retracted the falsification in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding or the matter.
4. In sections 12.1-11-01 and 12.1-11-02, "statement" means any representation but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

12.1-11-05. Tampering with public records.

1. A person is guilty of an offense if he:
 - a. Knowingly makes a false entry in or false alteration of a government record; or
 - b. Knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record.
2. The offense is:
 - a. A class C felony if committed by a public servant who has custody of the government record.
 - b. A class A misdemeanor if committed by any other person.
3. In this section "government record" means:
 - a. Any record, document, or thing belonging to, or received or kept by the government for information or record.
 - b. Any other record, document, or thing required to be kept by law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section.

12.1-11-06. Public servant refusing to perform duty.

Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

12.1-11-07. Fraudulent practice in urine testing.

A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance. A person is guilty of a class A misdemeanor if that person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.

23.1015.02003
Title.03000

Prepared by the Legislative Council staff for
House Industry, Business and Labor
Committee

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"

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

HB 1528

(Records)

There are Federal laws and case laws for the retention of emails.

The AG emails being deleted is in violation of Federal retention laws and NDCC 12.1, NDCC 54 and NDCC 44!

I am available to stand for questions on HB 1528.

Aimee Bader, CRA

State Records Administrator

Records Management/GRC Team Lead

(701)795-3051 • aimee.bader@nd.gov • www.nd.gov/itd



TESTIMONY OF
Jessica Newby
GOVERNANCE, RISK, AND COMPLIANCE LEAD
NORTH DAKOTA INFORMATION TECHNOLOGY DEPARTMENT
BEFORE THE 68th LEGISLATIVE SESSION
SENATE STATE AND LOCAL GOVERNMENT COMMITTEE
MARCH 23, 2023
NEUTRAL TESTIMONY - HOUSE BILL 1528

Chairman Roers, members of the Senate State and Local Government Committee, my name is Jessica Newby and I am the Governance, Risk and Compliance Lead for the North Dakota Information Technology Department (NDIT). I am here today to provide neutral testimony on House Bill 1528.

The Governance, Risk and Compliance (GRC) team is part of the overall NDIT cybersecurity team. One of the functions of the GRC team is to assist state agencies with navigating the complexities of federal security requirements, maintaining compliance with information exchange agreements and regulatory compliance frameworks. These requirements are in place to protect citizen data.

GRC also manages audit coordination when federal regulators, such as the IRS and Social Security Administration (SSA), come onsite to verify adherence to requirements. Some of the language contained in this bill could restrict the ability of agencies to comply with these regulatory requirements.

For example: Every state agency that accepts credit card payments must comply with the Payment Card Industry - Data Security Standard (PCI-DSS).

PCI-DSS 3.3.1 states that Sensitive Authentication Data (SAD) "is not retained after authorization, even if encrypted. All sensitive authentication data received is rendered unrecoverable upon completion of the authorization process."

According to the regulations, "SAD is very valuable to malicious individuals as it allows them to generate counterfeit payment cards and create fraudulent transactions. Therefore, the storage of SAD upon completion of the authorization process is prohibited."

PCI rules require stored credit card data to be encrypted prior to processing, which means that email is not an acceptable method for accepting credit card information. While no state agency allows credit card data to be sent by email, some agencies do have paper voucher forms that can be mailed in. Unfortunately, very little can be done to prevent someone from attaching and emailing the information anyway. When this happens, the onus is on the agency to properly dispose of the data.

Another example, from a recent audit of a state agency by the Social Security Administration: The agency has an information exchange agreement with SSA in order to verify benefit eligibility requirements, which is a business process requirement of the agency. During the audit, it was disclosed by the agency that the SSA reports were sent by email, but the emails were deleted within 30 days. The resulting audit finding required remediation to "provide policy and/or configuration evidence of retention period for emails that include the SVES batch files as attachments".

While it is permissible for the reports to be retained in hard copy or in an approved electronic system, SSA does not allow email to be used as a system for retention due to the risk this presents.

So why does email present such a great risk? According to study completed by Deloitte, 91% of all cyber-attacks begin with a phishing email to an unexpected victim. One of the common methods attackers use, called credential harvesting, starts with a phishing email that contains a link. When clicked, the link takes the victim to a fake sign-in page that often looks identical to an "official" sign-in page. However, when the victim types in a username and password on the fake sign-in page, the information is recorded by the bad guys, who now have all the information they need to access to the victim's email box and all the emails that are contained within.

While retaining emails that contain decisions about day-to day operations of state agencies, for example, prompts openness and transparency in government, retaining emails that may contain sensitive, confidential, or otherwise restricted information pertaining to citizens of North Dakota is risky. The longer emails are required or allowed to be retained, the great the risk.

It is estimated that in one year, a direct client care worker could accumulate emails containing personal health information for as many as 2,000 individuals. Should a data breach occur, the federal Health Information Portability and Accountability Act (HIPPA) allows regulators to levy fines as high as \$10,000 per violation of the Act.

Phishing emails also can contain malicious attachments or content. Every day, state employees report phishing emails using the phishing alert button. Those reports go to our cybersecurity team to investigate. Of the thousands that are reported each week, hundreds of emails are found to contain links to credential harvesters or contain other malicious content.

Under the current language of this bill, our security team would not be able to permanently remove those emails from our system, as they do today. While the emails still could be removed from the user's inbox, by remaining in retention, those emails could accidentally be provided as part of an open records request, potentially infecting the recipient of the records request.

This bill contains an emergency clause. In order to be properly implemented, additional time may be needed to create necessary policies and procedures, as well as educate agencies on the potential impacts.

I would be happy to work with any members of the Committee or the bill sponsors on some minor amendments to the bill that would address some of the key areas I spoke about today.

Thank you and I would be happy to stand for questions.

March 23, 2023

Senate State & Local Government Committee HB 1528
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CHAIRMAN ROERS AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm here on behalf of the North Dakota Newspaper and Broadcasters Associations. We support this bill and ask for your do pass recommendation.

Open records laws were part of the Dakota Territorial Laws and are enconced in our Constitution. They have served North Dakota citizens well and have made North Dakota one of the nation's leaders in government transparency and citizen access to public information.

However, like so many facets of our lives these days, technology is making major differences. One of those is public records. Our open records laws were written when there were actual written paper records to deal with. Now paper records are almost a thing of the past and nearly all public business is conducted online via different platforms.

HB 1528 goes a long way to make sure these records remain open and to the public.

We respectfully request your do pass on this bill. Thank you for your time and consideration. I would be happy to answer any questions.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Corey Mock

District 18
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COMMITTEES:
Appropriations

March 23, 2023

Chair Kristin Roers and Senate State and Local Government Committee
North Dakota State Capitol – Room JW216
Testimony in Support of HB 1528 (Email Retention)

Chair Roers and Members of the Senate State & Local Government Committee,

Last week was national Sunshine Week, an annual initiative to promote open government organized by the News Leaders Association.

Open records are anything but a foreign concept to the state of North Dakota. In fact, our constitution enshrines the right in Article XI, Section 6:

“Unless otherwise provided by law, all records of public or governmental bodies boards, bureaus, commissions, or agencies of the state... shall be public records, open and accessible for inspection during reasonable office hours.”

North Dakota Century Code expounds on this right within § 44-04-18: defining “reasonable office hours” as all regular office hours; requiring the name and contact information of a responsible person if regular office hours do not exist; limiting costs that may be charged for open records requests; explicitly stating the “[a]utomation of public records must not erode the right of access of those records”; etc.

Our commitment to openness, transparency, and proper accounting of records are features that highlight the strength of our democracy. Decades – if not generations – have passed with the public maintaining relative confidence that our laws and policies preserve public records and ensure unabridged public access.

It was the untimely death of one man – an institution upon himself – that exposed a microscopic opening in our laws that would rupture into a chasm of confusion once exploited.

On the morning of Friday, January 28, 2022, North Dakota’s longest tenured Attorney General, Wayne Stenehjem, was found unconscious in his home. By that evening, worry turned to sorrow as news spread that our widely beloved, lifelong public servant, colleague, and friend had passed away.

We are still realizing the consequences of those events. (For example: an extended, separate conversation can and should be had about succession planning at all levels of government.)

One discovery that emerged was the apparent ability for email – along with any information and broader context for past and current state business – to be erased. Because email itself is not classified as a “record,” any statutory obligations to review or retain items of this nature are ambiguous, at best.

Worsening the perception of these events was the fact that orders to dispose of email were given without clear or validated authority. Those complying with these requests were right to do so; challenging or refusing these work orders could be interpreted as insubordination.

Was the bulk disposition of email and other electronic files a legal action? That question remains open and seemingly unanswered. Moreover, any ability to assuage concerns of misconduct were lost when Mr. Stenehjem’s user accounts were deleted on Monday, January 31, 2022 (and unrecoverable 30-days later.)

We cannot change the past. But we have the ability and responsibility to learn from our experiences. HB 1528 is our opportunity to remove ambiguity and hopefully prevent similar circumstances from ever happening again.

Before I walk through the bill, I want to express my gratitude for several agencies (and notable staff members within each) who continue to hone HB 1528. Responsible public policy is a team effort; the work of those MVPs and their respective teams deserve to be acknowledged:

North Dakota Information Technology Department: Greg Hoffman, Craig Felche, Aimee Bader

Human Resource Management Services / OMB: Molly Herrington, Lynn Hart, Hannah Wolf

Office of the Attorney General: Mary Kae Kelsch, Claire Ness

Legislative Council: Levi Kinnischtzke, Liz Fordahl

Amendments for HB 1528 have been drafted and submitted with my testimony. For the purposes of this walkthrough I will be referencing version 23.1015.03001m.

Generally speaking, HB 1528 seeks to:

- Codify and clarify existing definitions of “records” as they relate to email;
- Permit our records management administrator to refer findings of noncompliance to HR, state auditor, or attorney general (when applicable);
- Require agency heads to cooperate with our records management program and resolve findings of noncompliance, as indicated in policy evaluations;
- Require agencies to retain a retrievable version of email and cloud-based enterprise files for a minimum of two years;
- Codify the existence of records management training programs;
- Require automatic “freezing” of records, files, and artifacts for the purposes of review and management upon certain triggering events of supervisory positions, agency heads, and elected officials.

Section 1

Updates our legal definition of “record” to include electronic mail or communication that includes official business “activities, policies, or decisions that provide administrative, operational, fiscal, historical, audit, or business value.” This also clarifies that “nonbusiness related or draft electronic messages” are not considered records.

Under current law, email is not considered a record, but information contained in an email may be classified as a record if it contains information in connection with the transaction of official business. This section codifies existing record management policies and removes ambiguity within statute.

Section 2

Updates duties of our records management program administrator. This section requires that all state agencies maintain data contained in email and files managed in our cloud-based, office productivity software (our current vendor / product is Microsoft Office 365) for at least two years.

Additionally, the records management program administrator shall develop a records management training program, which currently exists. This codifies an existing program.

If noncompliance is found, changes proposed give the records administrator the ability to report findings with recommended actions to

- The agency itself;
- HRMS for review of any further disciplinary or corrective action;
- State auditor, which may include noncompliance findings in the agency's audit or provide in a report to LAFRC;
- Attorney general, to determine appropriate action, including prosecution or referral to HR for noncriminal action

Section 3

Updates statutory duties of an agency head to include cooperation with the records management program administrator regarding findings of noncompliance.

Section 4

Requires each agency to maintain a default backup of email (e.g. Outlook) and files stored on an affiliated cloud-based storage system (e.g. OneDrive) for at least two years. This is statutorily consistent with email retention requirements of nonstudent accounts within the ND University System (NDCC 15-10-44). This archival storage solution is an existing feature provided by our current office productivity vendor (Microsoft) and is attainable with our current licenses.

A default backup of two years is specifically required for all users with supervisory responsibilities. This does not preclude agency or IT policies from expanding that requirement to all employees.

Keep in mind: this is not an alternative to records retention policies. A two-year default archive ensures retrievability, if needed. All existing records management policies, including record retention schedules, must still be followed.

Beginning on line 11 of page 4:

- Each agency must develop a custody of ownership policy upon employee departure.
- For employees with supervisory responsibilities, all accounts associated with that employee must be placed on hold (defined on line 7 page 5) if one of the following actions occurs:
 - employee is involuntarily terminated;
 - employee is placed on administrative leave;
 - employee resigns or departs without notice;
 - employee passes away; or
 - other event(s) specified by the agency

- Accounts of supervisory employees that are on hold must be reviewed by head of their agency, a records manager, or other designated employee (e.g. direct supervisor).
- If a hold is triggered for an agency head, appointed official, or state elected official, accounts are on hold until they can be reviewed by the appointed successor and state archivist (consistent with 54-46-08.1).
- Terms for employee account, employee's successor, and "on hold" are defined on the top of page 5.

House Industry Business and Labor committee felt it was necessary for these changes to go into effect upon enrollment. Understanding the work needed to implement some policies, Section 5 was added to delay the effective date until the beginning of the fiscal year (July 1, 2023.)

There may be additional requests for archival exemptions related to email that contain malicious or highly sensitive content. We are exploring those considerations with agency partners; if language can be developed that is consistent with the intent of HB 1528 and logistically feasible, I will be glad to work with the committee to develop that amendment.

Thank you for your time, effort, and attention.

23.1015.03001

FIRST ENGROSSMENT

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 54-46-02, 54-46-04, 54-46-05, and 54-46-08 of
2 the North Dakota Century Code, relating to the final disposition of records, mandatory records
3 retention policies for state agencies, and the administration of employee accounts upon
4 employee departure from an agency: to provide an effective date; 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. Develop a training program for agencies regarding the management of state records.
- 21 ~~6. Obtain reports from agencies as are required for the administration of the program.~~
- 22 ~~6. When the administrator deems appropriate, report~~
- 23 7. Receive reports of noncompliance with the records management program to. Upon
- 24 review of the report, the administrator shall:
 - 25 a. HumanRecommend training for the noncompliant agency;
 - 26 b. Submit the report to human resource management services for consultation to
 - 27 determine whether disciplinary action is appropriate;
 - 28 ~~b. The~~
 - 29 c. Submit the report to the office of the state auditor to include noncompliance
 - 30 findings in the agency's audit and to determine whether reporting findings of

- 1 noncompliance to the legislative audit and fiscal review committee is appropriate;
2 or
3 ~~e. The~~
4 d. Submit the report to the office of the attorney general to determine appropriate
5 action, including prosecution or referral to human resource management services
6 or the agency's human resources department for disciplinary action.

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

9 **54-46-05. Duties of agency heads.**

10 The head of each agency shall:

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

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

1 **54-46-08. Determination necessary for final disposition of records - Review of state**
2 **data.**

- 3 1. Prior to the final disposition of any type or class of record, the administrator, after
4 consultation with the official or department head ~~concerned~~downing the record, the
5 attorney general, the state auditor, and the state archivist, shall determine that the type
6 or class of record has no further administrative, legal, or fiscal value and is subject to
7 final disposition under section 54-46-08.1 or section 54-46-09.
- 8 2. Each agency shall maintain, for at least two years, data contained in office productivity
9 software, limited to electronic mail accounts and personal file storage, for all
10 supervisory positions.
- 11 3. a. Each agency shall develop policies related to the assumption of employee
12 account ownership upon employee departure. For an employee who holds a
13 supervisory position or above, the agency shall place on hold an employee
14 account to preserve the employee account if one of the following occurs:
- 15 (1) The employee is involuntarily terminated;
16 (2) The employee is placed on administrative leave;
17 (3) The employee resigns or departs without notice;
18 (4) The employee dies; or
19 (5) An event the agency deems sufficient to place the account on hold.
- 20 b. An agency shall ensure the employee account remains on hold until the account
21 has been reviewed by the appropriate individual. The head of an agency, a
22 records manager, or an employee designated by the head of an agency, shall
23 review the employee account for all supervisory employees, except as required
24 under subdivision c.
- 25 c. If the employee was the head of an agency, a state officer appointed by the
26 governor under chapter 44-02, or an elected executive branch official, the
27 employee account must be reviewed by the employee's successor and the state
28 archivist. The employee's successor and the state archivist shall review the
29 employee account for archival resources under section 54-46-08.1, preserving
30 archival resources as appropriate.
- 31 d. For purposes of this subsection:

- 1 (1) "Employee account" means physical files and electronic files,
2 communications, attachments, and other information stored in an employee
3 electronic mail account or electronic file storage account;
4 (2) "Employee's successor" does not include an individual acting in the
5 successor's role or position temporarily before a successor is appointed
6 under section 44-02-03; and
7 (3) "On hold" means in a state of preservation in which nothing my be altered
8 and for which access is immediately restricted to review by the appropriate
9 individual as required under this subsection.

10 4. If a statute requiring retention of a record does not either provide a specific retention
11 period or specifically provide that the record be permanently retained, the
12 administrator, after completing the consultation required by this section, shall establish
13 a specific retention period for the record. The administrator shall annually survey the
14 state agencies and shall order final disposition under section 54-46-08.1 or section
15 54-46-09 of any records which have been determined to have no further
16 administrative, legal, or fiscal value pursuant to this section.

17 **SECTION 5. EFFECTIVE DATE.** This Act becomes effective on July 1, 2023.

18 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

I am available to stand for questions on HB 1528.

Aimee Bader, CRA

State Records Administrator

Records Management/GRC Team Lead

(701)795-3051 • aimee.bader@nd.gov • www.nd.gov/itd



TESTIMONY OF
Jessica Newby
GOVERNANCE, RISK, AND COMPLIANCE LEAD
NORTH DAKOTA INFORMATION TECHNOLOGY DEPARTMENT
BEFORE THE 68th LEGISLATIVE SESSION
SENATE STATE AND LOCAL GOVERNMENT COMMITTEE
MARCH 30, 2023
NEUTRAL TESTIMONY - HOUSE BILL 1528

Chairman Roers, members of the Senate State and Local Government Committee, my name is Jessica Newby and I am the Governance, Risk and Compliance Lead for the North Dakota Information Technology Department (NDIT). I am here today to provide neutral testimony on House Bill 1528.

When I testified before this committee last week, a few outstanding questions remained regarding the ability to remove emails that contain sensitive/restricted data or malicious content. For the last week, our team has spent a great deal of time working with our vendor to find a solution and has been determined that a feasible solution does not yet exist for an organization of our size.

I bring this to your attention to make you aware of the risk this presents in our environment and to ask you to consider reducing the required retention period to one year, at least until a technical solution can be developed that would allow for the removal of sensitive data.

So how is risk quantified? By looking at the likelihood of an event occurring and the impact it will have, should it occur. If the event was a data breach, for example, the likelihood would be low, since we have security in place to hopefully protect us.

However, when you look at impact.... According to the IBM Security, the per-record cost of a data breach in 2022 was \$164. It is estimated that in one year, a client care worker could accumulate emails containing personal health information for as many as 2,000 individuals. In the event a data breach should occur, that represents a potential cost of \$328,000 per employee, per year of data retained. More employees plus more records equals more risk. So how do we reduce the risk? Either reduce the number of employees or reduce the number of records.

The technical implementation required for this bill also creates another potential risk related to open records. Agencies use various methods to search for emails and documents but, commonly, employees in question will simply search their own email to look for any records that complies with the request. Once retention is in place, this method will no longer work, because the deleted but retained emails and documents are not visible or accessible by the employee.

In order to enable agencies to conduct open records searches, an individual at each agency will have to be designated, assigned a special role and trained in using eDiscovery tools. This role is particularly sensitive, because the assigned individual will be able to search for and potentially read any email sent or received by anyone within their agency.

Thank you and I would be happy to stand for questions.

House Bill 1528

Presented by: Randy Christmann, Chair
Public Service Commission

Before: Senate State and Local Government Committee
Honorable Kristin Roers, Chair

Date: March 30, 2023

TESTIMONY

Madam Chair and members of the committee, I'm Randy Christmann, Chair of the Public Service Commission, here to testify on HB 1528. It is my assumption that this legislation is a response to what happened last year in one situation, in one agency, by two people who are no longer there. In my opinion, nothing really needs to be done because the current language in Section 4 of the bill (especially #'s 1 and 2) already addresses the issue. If people do not properly follow the current requirements they are probably not going to follow new ones either. But if it is determined that something more needs to be done, it should not be rushed into. This is the kind of technical, far-reaching policy that should be addressed through an interim study. It will affect different agencies in different ways.

If changes are going to be made this hastily, I recommend retention for 6 months instead of 2 years. Certainly no more than 1 year. Retaining all these emails and records will require so much time to search that this is going to get very expensive for either agencies or for the people requesting records. If sudden departures of key people are the issue, six months should be plenty of time.

The focus of any proposed legislation should be elected officials, agency heads, and deputies, not all supervisors. Supervisors are not defined, but could include even someone supervising a single new trainee. Keeping all the emails and files of this many people, for such long periods of time, will make searches enormous, time consuming, and expensive. People other than elected officials, agency heads, and deputies should simply be subject to the record retention policy of their individual agency. Agency record retention policies should probably be audited or reviewed by an interim legislative committee occasionally to assure they meet minimum standards.

Drafts should not be retained at all. This will lessen the willingness of people to think boldly and collaborate with co-workers to create the best possible final product.

Finally, I am not sure the state archivist should be part of a review. In the case of the PSC, that would be turning over trade secret protected information to someone beyond the intended recipients.

In addition to the complexity of handling open records requests that this legislation will cause, it should also be noted that under this proposal the state will be storing massive amounts of very sensitive information. If there is ever a breach at ITD, the state's liability could be scary.

This concludes my testimony. Thank you for your time and I am available for questions.

23.1015.03002

FIRST ENGROSSMENT

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 emails for institutions
3 under the control of the state board of higher education, final disposition of records, mandatory
4 records retention policies for state agencies, and the administration of employee accounts upon
5 employee departure from an agency: to provide for a legislative management study; to provide
6 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 after the creation or receipt of the message unless the electronic mail
8 message includes malware or regulated information as defined under section
9 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.
- 30 4. "Record" means document, book, paper, photograph, electronic mail or
31 communication, sound recording or other material, regardless of physical form or

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

8 ~~3.5.~~ "State record" means:

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

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

16 **54-46-04. Duties of administrator.**

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

- 18 1. Establish standards, procedures, and techniques for effective management of records.
- 19 2. Make continuing surveys of ~~paperwork~~ operations and recommend improvements in
20 current records management practices including the use of space, equipment, and
21 supplies employed in creating, maintaining, storing, and servicing records.
- 22 3. Establish standards for the preparation of schedules providing for the retention of state
23 records of continuing value and for the final disposition of state records no longer
24 possessing administrative, legal, or fiscal value.
- 25 4. Ensure that each departmental agency maintains, for at least two years, data
26 contained in office productivity software, limited to electronic mail accounts and
27 personal file storage for all supervisory positions.
- 28 5. Develop a training program for agencies regarding the management of state records.
- 29 6. Obtain reports from agencies as are required for the administration of the program.
- 30 ~~6. When the administrator deems appropriate, report~~

- 1 7. Receive reports of noncompliance with the records management program~~to~~. Upon
2 review of the report, the administrator shall:
- 3 a. ~~Human~~Recommend training for the noncompliant agency;
4 b. Submit the report to human resource management services for consultation to
5 determine whether disciplinary action is appropriate;
6 ~~b. The~~
7 c. Submit the report to the office of the state auditor to include noncompliance
8 findings in the agency's audit and to determine whether reporting findings of
9 noncompliance to the legislative audit and fiscal review committee is appropriate;
10 or
11 ~~c. The~~
12 d. Submit the report to the office of the attorney general to determine appropriate
13 action, including prosecution or referral to human resource management services
14 or the agency's human resources department for disciplinary action.

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

17 **54-46-05. Duties of agency heads.**

18 The head of each agency shall:

- 19 1. Establish and maintain an active, continuing program for the economical and efficient
20 management of the records of the agency.
- 21 2. Make and maintain records containing adequate and proper documentation of the
22 organization, functions, policies, decisions, procedures, and essential transactions of
23 the agency designed to furnish information to protect the legal and financial rights of
24 the state and of persons directly affected by the agency's activities.
- 25 3. Submit to the administrator, in accordance with the standards adopted by the
26 administrator, schedules proposing the length of time each state record series
27 warrants retention for administrative, legal, or fiscal purposes after it has been
28 received by the agency.
- 29 4. Submit to the administrator lists of state records in the custody of the agency which
30 are not needed in the transaction of current business and which do not have
31 administrative, legal, or fiscal value.

1 5. Cooperate with the administrator in the conduct of surveys made by the administrator
2 pursuant to this chapter, including resolving findings of noncompliance with the
3 records management program as may be indicated in the final survey report. Failure to
4 cooperate with the administrator may result in reported noncompliance as authorized
5 under subsection 6 of section 54-46-04.

6 6. Comply with the rules, standards, and procedures adopted by the administrator.

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

9 **54-46-08. Determination necessary for final disposition of records - Review of state**
10 **data.**

11 1. Prior to the final disposition of any type or class of record, the administrator, after
12 consultation with the official or department head ~~concerned~~downing the record, the
13 attorney general, the state auditor, and the state archivist, shall determine that the type
14 or class of record has no further administrative, legal, or fiscal value and is subject to
15 final disposition under section 54-46-08.1 or section 54-46-09.

16 2. Each departmental agency shall maintain, for at least two years, data contained in
17 office productivity software, limited to electronic mail accounts and personal file
18 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 6. LEGISLATIVE MANAGEMENT STUDY - EXECUTIVE BRANCH BOARD**
27 **AND COMMISSION POLICIES.** During the 2023-24 interim, the legislative management shall
28 consider studying the records retention policies, technological standards, and administrative
29 policies of boards and commissions of the executive branch of state government. The study
30 must include a review of the relevant statutory provisions, current policies and practices, and
31 input from stakeholders. The legislative management shall report its findings and

1 recommendations, together with any legislation required to implement the recommendations, to
2 the sixty-ninth legislative assembly.

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

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

54-59-01. Definitions.

As used in this chapter:

1. "Agency" or "entity" does not include any agricultural commodity promotion group or any occupational or professional board.
2. "Cybersecurity" means processes or capabilities, wherein, systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.
3. "Cybersecurity strategy" means a vision, plan of action, or guiding principles. Unless otherwise defined in this chapter, the term does not mean an associated operational plan.
4. "Department" means the information technology department.
5. "Information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.
6. "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

23.1015.03004

FIRST ENGROSSMENT

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 emails for institutions
3 under the control of the state board of higher education, final disposition of records, mandatory
4 records retention policies for state agencies, and the administration of employee accounts upon
5 employee departure from an agency; to provide for a legislative management study; to provide
6 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 after the creation or receipt of the message unless the electronic mail
8 message includes malware or regulated information as defined under section
9 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.
- 30 4. "Record" means document, book, paper, photograph, electronic mail or
31 communication, sound recording or other material, regardless of physical form or

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

8 ~~3-5.~~ "State record" means:

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

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

16 **54-46-04. Duties of administrator.**

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

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

- 1 ~~6. When the administrator deems appropriate, report~~
2 7. Receive reports of noncompliance with the records management program ~~to~~. Upon
3 review of the report, the administrator shall:
4 a. Human Recommend training for the noncompliant agency;
5 b. Submit the report to human resource management services for consultation to
6 determine whether disciplinary action is appropriate;
7 ~~b. The~~
8 c. Submit the report to the office of the state auditor to include noncompliance
9 findings in the agency's audit and to determine whether reporting findings of
10 noncompliance to the legislative audit and fiscal review committee is appropriate;
11 or
12 ~~e. The~~
13 d. Submit the report to the office of the attorney general to determine appropriate
14 action, including prosecution or referral to human resource management services
15 or the agency's human resources department for disciplinary action.

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

18 **54-46-05. Duties of agency heads.**

19 The head of each agency shall:

- 20 1. Establish and maintain an active, continuing program for the economical and efficient
21 management of the records of the agency.
22 2. Make and maintain records containing adequate and proper documentation of the
23 organization, functions, policies, decisions, procedures, and essential transactions of
24 the agency designed to furnish information to protect the legal and financial rights of
25 the state and of persons directly affected by the agency's activities.
26 3. Submit to the administrator, in accordance with the standards adopted by the
27 administrator, schedules proposing the length of time each state record series
28 warrants retention for administrative, legal, or fiscal purposes after it has been
29 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~~owning 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, data contained in
- 20 ~~office productivity software, limited to~~ electronic mail accounts for all supervisory
- 21 ~~positions~~ agency heads, state officers appointed by the governor under chapter 44-02,
- 22 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 may be altered
20 and for which access is immediately restricted to review by the appropriate
21 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.

23.1015.03005
Title.04000

Adopted by the Senate State and Local
Government Committee
April 6, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1528

Page 1, line 1, after "sections" insert "15-10-44,"

Page 1, line 2, after the second "the" insert "retention of electronic mail for institutions under the control of the state board of higher education,"

Page 1, line 4, after "agency" insert "; to provide for a legislative management study; to provide an effective date"

Page 1, after line 6, insert:

"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."

Page 1, line 14, after the period insert "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."

Page 1, line 23, overstrike "3." and insert immediately thereafter "5."

Page 2, line 17, after "each" insert "departmental"

Page 2, line 17, replace "two years" with "one year"

Page 2, line 17, remove "office"

Page 2, line 18, remove "productivity software, limited to"

Page 2, line 18, remove "and personal file storage"

Page 2, line 19, replace "all supervisory positions" with "agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials"

Page 2, line 20, after "5." insert "Develop a training program for agencies regarding the management of state records.

6."

Page 2, line 21, replace "6. When the administrator deems appropriate, report" with:

"7. Receive reports of"

Page 2, line 22, replace "to" with ". Upon review of the report, the administrator shall"

Page 2, line 23, replace "Human" with "Recommend training for the noncompliant agency:"

b. Submit the report to human"

Page 2, line 23, after "services" insert "for consultation"

Page 2, line 25, replace "b. The" with:

"c. Submit the report to the"

Page 2, line 28, replace "c. The" with:

"d. Submit the report to the"

Page 2, line 29, after "services" insert "or the agency's human resources department"

Page 4, line 3, after "Each" insert "departmental"

Page 4, line 3, remove "office productivity"

Page 4, line 4, remove "software, limited to"

Page 4, line 4, remove "all"

Page 4, line 5, replace "supervisory positions" with "agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials"

Page 4, line 22, after "and" insert ", if the administrator deems it necessary."

Page 4, line 23, remove "The employee's successor and the state archivist shall review the"

Page 4, remove lines 24 and 25

Page 5, line 4, replace "my" with "may"

Page 5, after line 13, insert:

"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."

Renumber accordingly