



RECORDS MANAGEMENT

HB 1528: AMENDMENTS TO NDCC 54-46

NORTH
Dakota
Be Legendary.

HOUSE BILL 1528: OVERVIEW

- Primary Purpose: Mitigate risk of loss or deletion of state records due to the departure of a high-ranking official or the unexpected departure of personnel holding a supervisory position or above.

Highlights:

- Establishes a minimum 1-year retention on email for agency heads, elected officials, and those appointed by the Governor to fill a cabinet vacancy under NDCC 44-02.
- Establishes a requirement for state agencies to create and execute a succession plan for unexpected departures of supervisors and above that includes placing email and other personal files on hold until a successor can review the content and preserve any state records.
- Updates the definition of a state record and the duties of the State Records Administrator.



HB 1528: DUTIES OF ADMINISTRATOR

The “Administrator” referred to in HB 1528 is the State Records Administrator.

- As defined in century code (54-46-03), the State Records Administrator is a position appointed by the CIO (Chief Information Officer) to establish and administer a records management program for the executive branch of government.

Other duties of the Administrator:

- Conduct periodic surveys (audits) of the records management programs within state agencies.
- Establish and maintain a state records retention schedule and process(es) for proper disposition of records.

HB 1528 adds these duties:

- Ensure that each departmental agency maintains, for at least 1 year, email accounts for agency heads, elected executive branch officials, or those filling a vacancy under 44-02.
- Develop a training program regarding the management of state records.
- Receive reports of non-compliance with the records management program and take the appropriate action to help correct the issue.

HB 1528: EMAIL RETENTION

54-46-08.2 “Each departmental agency shall maintain, for at least 1 year, data contained in electronic mail accounts for agency heads, state officers appointed by the governor to fill vacancies under chapter 44-02 and elected executive branch officials.”

- NDIT will be managing this with automation in Microsoft Exchange.
 - Starting July 1, NDIT will ensure a minimum 1-year retention on all current users listed above.
 - If a user deletes an email, it will go to their Deleted Items folder for 93 days (or until manually purged) then will be kept in a secondary repository for one year.
 - Emails that are not deleted from the inbox will be kept until deleted and the user will see no visible change.
 - If needed, NDIT can produce these emails until the retention expires.



HB 1528: SUCCESSION PLANNING/HOLDS

A red rectangular stamp with the words "ON HOLD" in bold, black, uppercase letters, tilted slightly to the right.

54-46-08.3(a) “Each departmental agency shall develop policies related to the assumption of employee account ownership upon employee departure.”

The creation of this succession policy is the responsibility of each state agency.

- A “hold” is defined in 54-46-08.3(d) and means information cannot be deleted, destroyed, edited or otherwise altered and access must be restricted as long as the hold is in place.
- For an employee who hold a **supervisory position or above**, the employee account must be put on hold if the employee:
 - is terminated
 - is placed on administrative leave
 - resigns without notice
 - dies
 - has a circumstance or event the agency deems sufficient happen

HB 1528: HOLDS, cont.

- The account remains on hold until it has been reviewed by an appropriate individual:
 - The agency head
 - If the employee is the head of the agency, a state officer appointed by the Governor to fill a vacancy under 44-02, or an elected branch official, the account **MUST** be reviewed by the employee's successor (defined below) and, if necessary, under advisement of the State Archivist.
 - A records manager inside the agency
 - An employee designated by the agency head

Note: Holds should be applied to existing records at time of departure. Agencies do not need to create or retain extra copies of original records, emails, etc. to fulfill the requirement. This is against best practice for records management and is discouraged.

Definitions:

- **“Employee Account”** means physical and electronic files, communications, attachments and other information stored in an email account or electronic file storage account (such as OneDrive).
- **“Employee Successor”** means the person who is the permanent replacement for the position. It does not include someone active in the role or in the position temporarily.

HB 1528: EFFECT ON OPEN RECORDS



- Because this new law creates a repository of deleted emails for 1 year for scoped-in users, the state government is still in possession of these emails, and therefore they are subject to open/public records requests, unless exempted for another reason under statute.
- If needed, contact NDIT via ServiceNow for assistance querying the repository to fulfill the request.

HB 1528: AGENCY ACTION ITEMS

What Does My Agency Need to Do?

- Create or update a succession policy that accounts for the changes in statute due to HB 1528.
- Contact NDIT:
 - if a scoped-in user departs. Identify their immediate successor, if possible.
 - to place holds on applicable software solutions and to assign a reviewer.
 - to remove/lift the hold when review is complete.
 - for assistance with open records requests that require a query of retained emails.
- Contact agency IT, administrative or other staff, or vendors as needed to apply and remove holds for other software and hardware solutions and physical records.
- Ensure the succession policy is being executed properly and any records identified during the review process are managed according to an agency-specific or the North Dakota General retention schedule and agency procedures.

HB 1528: CONTACTING NDIT

- Requests to NDIT’s Service Desk can be submitted through ServiceNow. The Email/Collaboration option will be updated to include options to accommodate needs based on HB 1528.
- Log into the ServiceNow portal.
- Choose “Request Something”
- Choose “Email/Collaboration Tools”
- Click the box for HB 1528
- Complete the required information
- Click “Submit”

Example of some of the changes to the form →

- Requests can be standalone or part of offboarding.
- This option can also be used to request an email query.

Click Here to submit a mailbox request for HB 1528 |

* Does the requested for account meet the criteria to apply a hold, as outlined in ND 54-46-08? ⓘ

North Dakota Century Code 54-46-08 >> ❌

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.

Yes ▾

* Please select the type of account to remove ⓘ

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. ❌

-- None -- ▾

* Please enter the email addresses that should review this account. ⓘ

Please enter email addresses below. The accounts listed will automatically receive updates to the status of this request. ❌

Separate email addresses with commas. A single space between email addresses after the comma is allowed. Formatting is checked for each email address ((e.g. email1@nd.gov, email2@nd.gov) OR (email1@nd.gov,email2@nd.gov)).

HB 1528: PENALTIES

- HB 1528 establishes the following possibilities regarding non-compliance under 54-46-04:



**KEEP
CALM
AND
STAY OUT
OF TROUBLE**

- Additional training provided to the non-compliant agency
- Agency heads satisfactorily resolves findings
- A report submitted to one or all of the following to determine appropriate action or discipline:
 - HR
 - State Auditor's Office
 - Office of Attorney General

HB 1528: REDEFINING STATE RECORDS

- HB 1528 updates the definition of a record in century code:

"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.

This new definition specifically mentions email, but only if it meets the underlined criteria. It also establishes that non-business email and drafts (un-sent) emails are not considered records for this purpose. (NDCC 54-46-02.4)

HB 1528: MANAGING RECORDS IN EMAIL

- HB 1528 does not affect how any employee (including those subject to minimum retention and holds) should manage records in their email.
- An email program itself (Outlook, Gmail, etc) is not a system of record, and nothing should be stored there long-term. However, email messages and their attachments can be records and are subject to the same requirements as other state records.
- Best practice is to act quickly on emails. While this can be overwhelming, it can also:
 - Reduce risk of exposing sensitive information should there be an email breach by a malicious actor.
 - Ensure that all State Records are properly stored and protected.
 - Save time searching through emails and folders, and on eDiscovery and open records requests.
 - Ease the daily stress of simply having so many items in your email.

MANAGING RECORDS IN EMAIL, cont.

1. Determine: Is it a Record?

- Compare it to the definitions in NDCC 54-46-02. Is the email:
 - a message that was created or received in the transaction of official business?
 - evidence of official policies, actions, decisions or transactions?
- Emails are not considered records if:
 - they are emails where you are part of a mass distribution or are in draft status
 - they are not business related or provide no business value



2. Apply Retention Requirements

- Retention is based on the content of the email message or attachment (consider whether you need to preserve both?)
- Records in email should be moved out of email program and stored by record type in appropriate repository.
- Non-records should be considered transitory and deleted as soon as possible.

HB 1528: CONCLUSION



- Starting July 1, 2023 NDIT will preserve email for agency heads, elected officials, and those appointed under NDCC 44-02 for a minimum of 1 year.
- Starting July 1, 2023 all state agencies must have a succession plan in place that includes the processes for preserving and reviewing email and personal files for departing staff as outlined in this bill.



QUESTIONS?

- **Link to the final bill:** [Enrolled House Bill No. 1528 - Sixty-eighth Legislative Assembly of North Dakota - LC Number 23.1015.06000 \(ndlegis.gov\)](#)
- **Contact NDIT Records Management:**
Aimee Bader, State Records Administrator/Records Management Team Lead
aimee.bader@nd.gov or (701)-795-3051
Records Management Website: [Records Management | North Dakota Information Technology \(nd.gov\)](#)
- **Contact the NDIT Service Desk:** [Support | North Dakota Information Technology \(nd.gov\)](#)