

## Records and Drafting File Changes (7.2.2015)

*These changes protect the free flow of ideas, protect constituents' ability to have open dialogue with their representatives, and allow easier updates to records laws to keep up with advances in technology*

1. Allows for freer collaboration among the legislative service agencies in their work for the legislature
  - o Clarifies that service agencies are not prohibited from working together to serve the legislature
2. Closes LRB drafting files
  - o **Background**
    - Drafting files are currently used mostly for "gotcha" games between political foes, which have become even worse since they have been posted on LRB's website
    - Unlike many other states (such as Minnesota, Nebraska, and Vermont), Wisconsin has no confidentiality provision for the drafting files of introduced legislation
    - The result is a dramatic chilling effect between the Legislature and drafting attorneys
  - o **Protects legislative intent.** Legislative intent should be determined by committee action and floor debate, since the legislators in committee and on the floor don't even know the contents of a drafting file when they are voting on a bill
  - o **Protects the free flow of ideas.** Authors need to be able to have candid discussions with drafting attorneys and not be afraid of making suggestions or discussing an idea

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3. Exempts deliberative materials from the records law
  - o Provides that materials such as draft language, drafting correspondence, background information, and other "pre-decisional" documents are not subject to the records law
4. Establishes legislative privilege for court proceedings
  - o Provides that a legislator may assert privilege (similar to spouses or attorneys and clients) to protect communications they have with their staff, service agencies, and other people regarding legislative business
  - o **Protects the free flow of ideas.** Legislators need to be able to have candid discussions with service agencies and staff. Staff provide no value if legislators are afraid to talk openly about policy ideas. The alternative is greater reliance on lobbyists and interest groups
    - The proposal provides a statutory privilege for legislators that is similar to the privilege already afforded federal legislators and to varying degrees legislators in the states
  - o **Protects constituents.** Constituents need to be able to contact their legislator without fear of reprisal from political foes. The proposal gives legislators the right to refuse to disclose the identity of constituents who contact them about legislative business
5. Provides that the legislature may set its own rules for open records and records retention
  - o **Background**
    - Current law exempts members of the legislature from the records retention statutes that apply to most state agencies (see Wis. Stat. 16.61(2)(b)1.)
    - Likewise, current law already says that legislative rules on open meetings supersede the Open Meetings Law (see Wis. Stat. 19.87(2))
    - This proposal provides a similar mechanism for resolving conflicts between legislative policies and the Open Records Law
  - o **Enables the Legislature to adapt to changes in technology**
  - o **Gives the legislature clear authority to set policies for records retention**
  - o **Will ultimately provide requestors and records custodians with clarity and certainty, without costly and time-consuming litigation**