

LIMITED WAIVER OF LEGISLATIVE PRIVILEGE FOR
COMMUNICATIONS RELATED TO BILL DRAFTS

During each legislative session, members of the public as well as lobbyists and journalists request the communications related to a particular bill draft. These communications are traditionally referred to as “junque files.” Junque files typically include emails between the legislator and legislative staff, lobbyists, stakeholders, or other third parties regarding the drafting of the bill. The junque files may also include documents of draft language provided to the bill drafter. The Legislative Services Division has always responded promptly to a request for a junque file, while also informing the legislator that a junque file has been requested and provided.

This summer, however, a District Court judge issued a 30-page order¹ that held that a legislator’s communications between the legislator and legislative staff, lobbyists, stakeholders, or other third parties are considered privileged. The privilege does not extend to communications between a legislator and the executive branch or the judicial branch.² Moreover, the privilege does not extend to bill draft requests that are made by a legislative committee or the committee deliberations. **Since the issuance of the District Court order the Legislative Services Division was sued in a right-to-know action in which junque files were redacted based on the reasoning of the District Court order. It is unknown how the current litigation will resolve this question.**

The purpose of this document is to inform you of your potential rights under this order to exercise your privilege as a legislator to not provide communications that are subject to legislative privilege to the public. Communications, such as emails, between you and the executive branch or the judicial branch are not privileged under the District Court order and will be provided upon request. Additionally, the fact that a bill draft has been requested, all draft legislation that is provided to you from legislative staff, and all versions of your bill draft as it makes its way through the editing and preparation process will be provided upon request.

If you wish to waive your privilege as a legislator to not provide communications that are potentially subject to legislative privilege to the public, please sign on page 2 where indicated. If we do not receive this waiver from you, we will assume you wish to exercise your legislative privilege, and we will not provide privileged communications regarding your bill drafts unless directed otherwise by the court.

If you desire to maintain your potential privilege, please print your name on page 3 where indicated, and we will not make further contact with you. **The pending litigation may control the extent of your privilege.**

Lastly, please bear in mind that a Legal Review Note is required to be prepared under the Joint Rules of the Legislature and is therefore not considered a privileged document at this time.³

¹ See *Opinion and Order on Motion to Quash* (dated July 20, 2024) in [Montana Conservation Voters v. Jacobsen](#), (DDV-2023-702) (Montana First Judicial District).

² See *Order* at 29, lines 5-18.

³ See [Joint Rules of the Montana Legislature](#), Rule 10-130(6).

**LIMITED WAIVER OF LEGISLATIVE PRIVILEGE FOR COMMUNICATIONS RELATED TO
BILL DRAFTS FOR THE 2025 REGULAR LEGISLATIVE SESSION**

For the purposes of this waiver, the term “junque file” means a drafter’s written correspondence with legislators, contacts, constituents, and government agencies regarding a bill draft request that is saved to an electronic file by the research analyst or attorney. The term includes versions of bill drafts as they go through the production process. The term also includes materials that were used by legislative staff during the drafting process for a specific bill, including but not limited to the initial bill draft request, written correspondence from the legislator, research materials, relevant court opinions, model legislation, legislative attorney opinions, or any other materials relied on by legislative staff during the drafting process. The term does not include any correspondence regarding legislation after a bill is introduced.

I, _____ (please print full name) waive my legislative privilege as it applies to communications related to bill drafts that I have requested for the 2025 legislative session. This waiver is limited in scope and only applies to written materials that are maintained in what is commonly referred to as the “junque file” by the Legislative Services Division. ***By signing this waiver, I expressly maintain all other legislative privileges provided to me by law, including but not limited to the Montana Constitution, the Montana Code Annotated, and the common law for all other legislative business.*** I do not consent to providing any further responses to any question through testimony, oral responses, or written supplemental responses. Furthermore, I reserve the right to withdraw this waiver at any time.

Signature: _____ Date: _____

HD/SD District No.

If you sign and date this page, please return it to the Legislative Services Division. Thank you for your assistance.

ACKNOWLEDGEMENT OF LEGISLATIVE PRIVILEGE WAIVER

Dear Legislative Services Division:

I do not desire to sign a waiver of legislative privilege at this time.

_____ Date: _____

PRINT NAME

HD/SD District No.

Please retain pages 1 and 2 for your records and return this page to the Legislative Services Division. Thank you for your assistance.