

LEGAL REVIEW NOTE

Bill No.: SB 21

LC#: 618

Short Title: Allowing legislative and executive leadership to vacate a writ of mandamus

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

SB 21, as drafted, amends section 27-26-102, MCA, which addresses writs of mandamus and in which cases one should be issued. SB 21 inserts a new subsection (3) that provides as follows:

- (3) (a) When a writ of mandamus is issued to compel an elected official listed in Article VI, section 1, of the Montana constitution, an individual legislator, or the legislature as a whole or in part, to produce documents or to perform or not to perform an

action, the president of the senate or the speaker of the house may file a pleading that vacates the writ in the court which issued it. The filing must be signed by either the president or the speaker and either the governor or the attorney general and be filed within ten business days of the writ's issuance by the court.

(b) When a writ is vacated pursuant to this subsection, the writ is considered vacated, is unenforceable, and may not be executed upon.

(c) An elected official for whom a notice vacating a writ of mandamus pursuant to this subsection may not be found in either civil or criminal contempt of court

SB 21, as drafted, may raise a potential separation of powers issue to the extent it allows legislative and executive officers to vacate a writ of mandamus that has been issued by a court of law.

The separation of powers clause of the Montana Constitution at Article III, section 1, provides:

Separation of powers. The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Requester Comments: