

**Amendment - 2nd Reading-yellow - Requested by: Daniel Emrich - (S) Committee of the Whole**

- 2025

69th Legislature 2025

Drafter: Julie Johnson,

SB0021.001.002

SENATE BILL NO. 21

INTRODUCED BY B. USHER

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING LEGISLATIVE AND EXECUTIVE LEADERSHIP TO VACATE A WRIT OF MANDAMUS BY JOINT PLEADING; PROHIBITING A CONTEMPT OF COURT FINDING; AND AMENDING SECTION 27-26-102, MCA."

WHEREAS, a district court issued a writ of mandamus that compelled an action of an elected official that was impossible to perform; and

WHEREAS, compelled performance of this action conflicted with legislative rules, the law, and the constitution; and

WHEREAS, when a writ of mandamus is issued and it is determined that compliance is impossible and the court has been notified that compliance is impossible, if the court does not vacate the writ of mandamus, the only remedy available pursuant to the separation of powers is for the elected official, with the agreement of legislative leadership or the legislature as a whole, to exercise constitutional powers to require the court by law to vacate the writ of mandamus; and

WHEREAS, this power is reserved for extraordinary cases and may only be exercised with the concurrence of the senate president or the speaker of the house when the legislature is not in session, or by the entire legislature through a joint resolution while in session.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 27-26-102, MCA, is amended to read:

**"27-26-102. When and by whom issued -- writ vacated by joint filing -- contempt proceedings unavailable.** (1) A writ of mandamus may be issued by the supreme court or the district court or any judge of the district court to any lower tribunal, corporation, board, or person to compel the performance of an act that

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the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by the lower tribunal, corporation, board, or person.

(2) ~~The Except as provided in subsection (3), the~~ writ must be issued in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law.

(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 of representatives the elected official or body subject to the writ may file a pleading notifying the court that issued the writ that compliance is impossible and state the reasons why compliance is not possible that vacates the writ in the court that issued it.~~ The filing must be signed by ~~the elected official and~~ either the president of the senate or the speaker of the house of representatives and filed with the court and ~~either the governor or the attorney general and be filed within 10 business days of the writ's issuance by the court.~~

(b) ~~If a writ of mandamus is issued to compel the legislature and the legislature is in session, the legislature may pass a resolution any time during the legislative session to notify the court that compliance is impossible.~~

(4) ~~If the court does not vacate the writ within 10 days after receiving notice that compliance is not possible under subsection (3), the elected official or body may file a pleading informing the court that the writ of mandamus must be vacated pursuant to the separation of powers doctrine.~~

~~(b)(5)~~ When a writ is vacated pursuant to ~~this~~ subsection ~~(3)~~ (4), the writ may not be enforced.

~~(e)(6)~~ An elected official for whom a notice vacating a writ of mandamus is issued pursuant to this subsection ~~(3)~~ section may not be found in either civil or criminal contempt of court."

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