

## 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."

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 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 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 may file a pleading that vacates the writ in the court that 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 10 business days of the writ's issuance by the court.

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

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

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