

1 SENATE BILL NO. 21

2 INTRODUCED BY B. USHER

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

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

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

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

12 **"27-26-102. When and by whom issued -- writ vacated by joint filing -- contempt proceedings**
13 **unavailable.** (1) A writ of mandamus may be issued by the supreme court or the district court or any judge of
14 the district court to any lower tribunal, corporation, board, or person to compel the performance of an act that
15 the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party
16 to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully
17 precluded by the lower tribunal, corporation, board, or person.

18 (2) The writ must be issued in all cases in which there is not a plain, speedy, and adequate remedy
19 in the ordinary course of law.

20 (3) (a) When a writ of mandamus is issued to compel an elected official listed in Article VI, section
21 1, of the Montana constitution, an individual legislator, or the legislature as a whole or in part, to produce
22 documents or to perform or not to perform an action, the president of the senate or the speaker of the house of
23 representatives may file a pleading that vacates the writ in the court that issued it. The filing must be signed by
24 either the president or the speaker and either the governor or the attorney general and be filed within 10
25 business days of the writ's issuance by the court.

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

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

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