

Senate Bill 21 proposes a change to state law regarding writs of mandamus—court orders that compel government officials or entities to perform specific duties they are legally required to do. SB 21 would allow legislative and executive leaders, specifically the President of the Senate, the Speaker of the House, the Governor, or the Attorney General, to jointly vacate (cancel) a court-issued writ of mandamus.

Sponsor: Senator Barry Usher (R-Billings)

This is a Senate Select Committee on Judicial Oversight and Reform requested bill.

What is a Writ of Mandamus?

A writ of mandamus is a court order that directs a government official, agency, or entity to perform a specific duty that they are legally required to do. It is typically issued when someone has no other legal remedy, and the official has failed or refused to fulfill their legal obligation.

For example, a writ of mandamus might be used to compel a public official to release public records if they are legally required to do so but have not complied. It ensures that government actions align with the law.

There's a legal note. Why?

A legal note on a proposed bill is an analysis created by Legislative Services that assesses its legal implications, including constitutionality, compliance with existing laws, and potential legal consequences.

- SB 21 potentially conflicts with Montana's constitutional principle of separation of powers (Article III, Section 1). This clause divides government powers into three branches - Legislative, Executive, and Judicial - and prohibits one branch from exercising powers belonging to another.
- By allowing legislative and executive officers to unilaterally vacate a writ issued by the judiciary, the bill may undermine the judiciary's authority to enforce its rulings, creating constitutional tension.
- SB 21 raises serious questions about constitutionality, particularly regarding judicial authority and separation of powers.

There are a number of statutory conflicts.

- **Section 27-26-102, MCA:** The bill amends this section to allow the Senate president or House speaker to file a pleading vacating a writ in the issuing court, making the writ unenforceable.
- **Section 27-26-206, MCA:** Courts retain the authority to enforce writs and impose penalties.
- **Section 27-26-403, MCA:** Provides that damages and costs may be awarded against state, county, or municipal officers in mandamus cases.
- **Section 27-26-103, MCA:** States that the Montana Rules of Civil Procedure apply to all proceedings involving writs of mandamus.
- **In addition, Rule 70(a), MRCP,** provide that if a judgment requires a party to perform a specific act (which is the definition of mandamus), and the party fails to comply, the court may order the act to be done at the disobedient party's expense, by another party appointed by the court.

If SB 21 passes, the existing statutory remedies and existing court jurisdiction related to writs of mandamus will be placed in an irreconcilable conflict. Those conflicts would have to be resolved by the district courts and/or the Supreme Court. Passing SB 21 would likely lead to unnecessary, expensive, prolonged, and unsuccessful litigation due to its constitutional and statutory conflicts.

Friends of the Third Branch informs Montanans about developments that impact their courts, their judges, and protects Montanan's Constitutional system ensuring governmental checks and balances.