

HOUSE JOINT RESOLUTION NO. 36

INTRODUCED BY KEYSER, LEE, QUILICI, HAND, IVERSON, J. HAMMOND,
CURTISS, D. BROWN, RAMIREZ, DEVLIN

IN THE HOUSE

March 19, 1983	Introduced and referred to Committee on Natural Resources.
March 23, 1983	Committee recommend bill do pass as amended. Report adopted.
March 24, 1983	Bill printed and placed on members' desks.
March 26, 1983	On motion, consideration passed until 71st Legislative Day.
March 29, 1983	Second reading, pass consideration.
March 30, 1983	Second reading, do pass. Considered correctly engrossed.
March 31, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

April 5, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
April 8, 1983	Committee recommend bill be concurred in. Report adopted.
April 11, 1983	Second reading, concurred in.

April 12, 1983

Third reading, concurred
in. Ayes, 44; Noes, 4.

IN THE HOUSE

April 12, 1983

Returned to House.

April 13, 1983

Sent to enrolling.

Reported correctly enrolled.

1 House JOINT RESOLUTION NO. 36
2 INTRODUCED BY Reyes C. Lujan Hand
3 J. Harrison Curless Donna Ramirez Durkin
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN
6 INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF
7 THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND
8 WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE
9 PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;
10 REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE
11 LEGISLATURE.

13 WHEREAS, the right of the public to use waterways for
14 recreational and other purposes and the related issue of
15 navigability are unsettled in law; and

16 WHEREAS, ownership rights in land underlying waterways
17 and rights of adjacent landowners to place obstacles in
18 waterways or to restrict use of streambanks are also
19 unsettled; and

20 WHEREAS, the right of the public to use public land is
21 being inhibited by restrictions of access across private
22 adjoining land; and

23 WHEREAS, there is an increasing number of disputes
24 between private landowners and public users concerning the
25 use of public land and waterways; and

1 WHEREAS, both the adjacent private landowners and the
2 public have substantial interests involved in the resolution
3 of these conflicts.

5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
6 OF REPRESENTATIVES OF THE STATE OF MONTANA:

7 That an appropriate interim committee be assigned to
8 study ways to identify and preserve rights of landowners
9 adjacent to public land and waterways and to identify and
10 provide for rights of the public to access and use public
11 land and waterways. The study shall:

12 (1) identify possible methods of acquiring and
13 maintaining access across private land to public land and
14 waterways;

15 (2) clarify the right of the public to use waterways,
16 including:

17 (a) identification of waterways that may be used by
18 the public;

19 (n) further legislative definition of navigability, if
20 necessary;

21 (c) clarification of when a prescriptive use or
22 easement may exist; and

(d) use of adjacent uplands in conjunction with the right to use the waterway;

25 (3) identify use rights and title interests of

1 adjacent landowners in land under and adjacent to waterways,
2 including:
3 (a) the right to place fences, bridges, flumes, or
4 other obstacles in the waterway;
5 (b) consequent taxation liabilities; and
6 (c) mineral rights;
7 (4) establish the liabilities of landowners for
8 impeding the right of the public to use public land or
9 waterways and the liabilities of public users with respect
10 to violations of rights of adjacent landowners; and
11 (5) determine appropriate methods of enforcement.
12 BE IT FURTHER RESOLVED, that the committee report its
13 findings and recommendations to the 49th Legislature.

-End-

Approved by Committee
on Natural Resources

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the right of the public to use waterways for recreational and other purposes and the related issue of navigability are unsettled in law; and

WHEREAS, ownership rights in land underlying waterways and rights of adjacent landowners to place obstacles in waterways or to restrict use of streambanks are also unsettled; and

WHEREAS, the right of the public to use public land is being inhibited by restrictions of access across private adjoining land; and

WHEREAS, there is an increasing number of disputes between private landowners and public users concerning the

use of public land and waterways; and

WHEREAS, both the adjacent private landowners and the public have substantial interests involved in the resolution of these conflicts.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study ways to identify and preserve rights of landowners adjacent to public land and waterways and to identify and provide for rights of the public to access and use public land and waterways. The study COMMITTEE shall COOPERATE WITH ALL INTERESTED PERSONS TO THE FULLEST EXTENT POSSIBLE TO:

(1) identify possible methods of acquiring and maintaining access across private land to public land and waterways;

(2) clarify the right of the public to use waterways, including:

(a) identification of waterways that may be used by the public;

(b) further legislative definition of navigability, if necessary;

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WHEREAS, ownership rights in land underlying waterways and rights of adjacent landowners to place obstacles in waterways or to restrict use of streambanks are also unsettled; and

WHEREAS, the right of the public to use public land is being inhibited by restrictions of access across private adjoining land; and

WHEREAS, there is an increasing number of disputes between private landowners and public users concerning the

use of public land and waterways; and

WHEREAS, both the adjacent private landowners and the public have substantial interests involved in the resolution of these conflicts.

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(1) identify possible methods of acquiring and maintaining access across private land to public land and waterways;

(2) clarify the right of the public to use waterways, including:

(a) identification of waterways that may be used by the public;

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