

SENATE JOINT RESOLUTION NO. 8

INTRODUCED BY STORY

IN THE SENATE

January 15, 1985	Introduced and referred to Committee on State Administration.
January 23, 1985	Committee recommend bill do pass. Report adopted.
January 24, 1985	Bill printed and placed on members' desks.
January 25, 1985	Second reading, do pass.
January 26, 1985	Considered correctly engrossed.
January 28, 1985	Third reading, passed. Ayes, 49; Noes, 0.
	Transmitted to House.

IN THE HOUSE

January 29, 1985	Introduced and referred to Committee on State Administration.
March 5, 1985	Committee recommend bill be concurrent in. Report adopted.
March 9, 1985	Second reading, concurrent in.
March 11, 1985	Third reading, concurrent in. Returned to Senate.

IN THE SENATE

March 12, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

1 Senate JOINT RESOLUTION NO. 8
 2 INTRODUCED BY Stony
 3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
 5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS
 6 OF THE UNITED STATES TO ENACT LEGISLATION REVISING THE
 7 FEDERAL CONDEMNATION PROCEDURES TO AFFORD GREATER
 8 CONSIDERATION TO THE INTERESTS OF THE LANDOWNER.

9
 10 WHEREAS, the federal procedures for the exercise of the
 11 power of eminent domain provide fewer protections for the
 12 landowner than do the condemnation procedures of Montana and
 13 many other states; and

14 WHEREAS, the federal condemnation procedures provide in
 15 40 U.S.C.A. 258(a) through 258(f) for taking of possession
 16 and title by declaration of taking in advance of final
 17 judgment in a condemnation proceeding; and

18 WHEREAS, the declaration of taking procedure is not
 19 necessary because Rule 71(a) 28 U.S.C.A. (Condemnation of
 20 Property), Federal Rules of Civil Procedure, provides a fair
 21 and complete procedure without the supplemental declaration
 22 of taking provisions; and

23 WHEREAS, the purpose of the declaration of taking
 24 provisions is to provide means by which the United States
 25 can acquire quickly fee simple absolute title to land for

1 use of the United States; and

2 WHEREAS, that purpose is either abused by a condemning
 3 agency hoping to intimidate a landowner to accept a low
 4 condemnation offer or is greatly outweighed by the interests
 5 of the landowner in maintaining possession and title until a
 6 condemnation hearing is completed under Rule 71A, Federal
 7 Rules of Civil Procedure; and

8 WHEREAS, Rule 71A(1), Federal Rules of Civil Procedure,
 9 prohibits an award of costs and attorney fees to the
 10 prevailing party in condemnation cases, although Montana and
 11 other states provide for an award of costs and attorney fees
 12 and at least one federal court has stated that the federal
 13 approach may no longer be the wisest law; and

14 WHEREAS, federal law precludes reversion to the
 15 landowner of condemned property subsequently abandoned or
 16 used for a purpose other than the original condemnation
 17 purpose, although Montana and other states have provisions
 18 for reversion in certain instances.

19
 20 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
 21 OF REPRESENTATIVES OF THE STATE OF MONTANA:

22 That the Congress of the United States is most
 23 earnestly requested to repeal 40 U.S.C.A. 258(a) through
 24 258(f), which provides for taking of possession and title by
 25 declaration of taking in advance of final judgment in a

1 condemnation proceeding; and

2 BE IT FURTHER RESOLVED, that the Congress of the United
3 States is most earnestly requested to enact legislation
4 providing for a court award of necessary expenses of
5 litigation to the condemnee when the landowner prevails by
6 receiving an award in excess of the final offer of the
7 condemnor, thus superseding Rule 71A(1), Federal Rules of
8 Civil Procedure, Title 28, U.S.C.A., which presently
9 prohibits such an award; and

10 BE IT FURTHER RESOLVED, that the Congress of the United
11 States is most earnestly requested to enact legislation
12 providing for reversion of condemned property to the
13 condemnee or his successor in interest upon abandonment or
14 discontinuance of the use for which the property was
15 condemned; and

16 BE IT FURTHER RESOLVED, that the Secretary of State
17 send copies of this resolution to the President of the
18 United States and to each member of the Congress of the
19 United States.

-End-

APPROVED BY COMM.
ON LOCAL GOVERNMENT

Senate JOINT RESOLUTION NO. 8

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION REVISING THE FEDERAL CONDEMNATION PROCEDURES TO AFFORD GREATER CONSIDERATION TO THE INTERESTS OF THE LANDOWNER.

WHEREAS, the federal procedures for the exercise of the power of eminent domain provide fewer protections for the landowner than do the condemnation procedures of Montana and many other states; and

WHEREAS, the federal condemnation procedures provide in 40 U.S.C.A. 258(a) through 258(f) for taking of possession and title by declaration of taking in advance of final judgment in a condemnation proceeding; and

WHEREAS, the declaration of taking procedure is not necessary because Rule 71(a) 28 U.S.C.A. (Condemnation of Property), Federal Rules of Civil Procedure, provides a fair and complete procedure without the supplemental declaration of taking provisions; and

WHEREAS, the purpose of the declaration of taking provisions is to provide means by which the United States can acquire quickly fee simple absolute title to land for

use of the United States; and

WHEREAS, that purpose is either abused by a condemning agency hoping to intimidate a landowner to accept a low condemnation offer or is greatly outweighed by the interests of the landowner in maintaining possession and title until a condemnation hearing is completed under Rule 71A, Federal Rules of Civil Procedure; and

WHEREAS, Rule 71A(1), Federal Rules of Civil Procedure, prohibits an award of costs and attorney fees to the prevailing party in condemnation cases, although Montana and other states provide for an award of costs and attorney fees and at least one federal court has stated that the federal approach may no longer be the wisest law; and

WHEREAS, federal law precludes reversion to the landowner of condemned property subsequently abandoned or used for a purpose other than the original condemnation purpose, although Montana and other states have provisions for reversion in certain instances.

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

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1 Senate JOINT RESOLUTION NO. B

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REFERENCE BILL
SJR 8

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