

1 HOUSE JOINT RESOLUTION NO. 38

2 INTRODUCED BY G. HERTZ

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4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA REQUESTING AN INTERIM STUDY OF THE EFFECT ON COUNTY FINANCES OF PLACING
6 LAND IN TRUST FOR MONTANA INDIAN TRIBES OR TRIBAL MEMBERS.

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8 WHEREAS, the State of Montana disclaimed jurisdiction, including tax jurisdiction, over Indian lands
9 pursuant to Article 1 of the Montana Constitution, which provides, "[a]ll provisions of the enabling act of Congress
10 (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution
11 of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands
12 owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the
13 congress of the United States, continue in full force and effect until revoked by the consent of the United States
14 and the people of Montana"; and

15 WHEREAS, Congress consented to state assumption of criminal jurisdiction in Indian country by the act
16 of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), as amended; and

17 WHEREAS, the State of Montana voluntarily assumed criminal jurisdiction over Indians and Indian
18 territory on the Flathead Reservation by section 2-1-301, MCA; and

19 WHEREAS, much of the responsibility for enforcing Montana criminal laws, including within the Flathead
20 Reservation, results in providing necessary services, and protecting the public health, safety, and welfare falls
21 on county governments; and

22 WHEREAS, the State of Montana assumed criminal jurisdiction over tribal members within the exterior
23 boundaries of the Flathead reservation and has failed to provide counties any funding for the cost of enforcement;
24 and

25 WHEREAS, county revenues are almost entirely dependent upon the taxation of taxable property within
26 the county; and

27 WHEREAS, Article 1 of the Montana Constitution prohibits county taxation of Indian land and other
28 property held in trust by the United States for Indians; and

29 WHEREAS, property over which the state lacks jurisdiction, such as land held in trust by the United
30 States for Indians, is not appraised by the Department of Revenue; and

1 WHEREAS, in the absence of a property appraisal by the Department, property tax equivalent payments
2 cannot be determined; and

3 WHEREAS, the designation of county boundaries and funding sources were established by the
4 Legislature during a time in which federal policy promoted the divestment of land ownership by Indians, and has
5 not been significantly reevaluated by the Legislature despite changes in federal Indian policy, which now allows
6 for Indians to reacquire formerly owned lands and return them to federal trust ownership; and

7 WHEREAS, some Indian tribes and individual Indians have successfully reacquired formerly owned lands
8 and returned such lands to federal trust ownership in accordance with federal law; and

9 WHEREAS, county representatives have asserted that the limited tax authority of county and other local
10 governments, particularly those in Indian country, has resulted in significant financial stress upon the
11 governments to provide essential services to protect the health, safety, and welfare of county residents.

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

15 That the Legislative Council be requested to designate an appropriate interim committee, pursuant to
16 section 5-5-217, MCA, to review the effect on local taxing jurisdictions of property held in trust for Indians.

17 BE IT FURTHER RESOLVED, that the committee consider whether and how to supplement or address
18 taxing jurisdictions for property held by the United States in trust for Indians within the jurisdiction's boundaries.

19 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
20 requirements, be concluded prior to September 15, 2018.

21 BE IT FURTHER RESOLVED, that each of the federally recognized tribes in Montana and impacted
22 counties be invited to meaningfully participate in the study.

23 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
24 comments, or recommendations of the appropriate committee, be reported to the 66th Legislature.

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