## INTRODUCED BY GRAHAM

BY REOUEST OF THE CODE COMMISSIONER

IN THE SENATE

| January 11. 1983 | Introduced and reforred to Committem on gtate Administration. |
| :---: | :---: |
| January 22, 1983 | Comittee recomnend bill do pass as mended. Report acopted. |
| January 24, 1983 | Bill printed and placed on members' desks. |
|  | Second resding, do pass. |
| January 25, 1983 | Correctly engrossed. |
| January 27, 1983 | Third reading, passed. Ayes, 47: Noes, 0. Mransmitted to House. |
|  |  |
| January 28, 1983 | Introduced and referred to Committae on State Administration. |
| Pebruary 19, 1983 | Committea recommend bill be concurred in. Report sciopted. |
| March 2, 1983 | Second reading, concurred in. |
| March 3, 1983 | Third reading, concurred in. |

IN THE SENATE
March 4, 1983
Returned to Senate.
Sent to enrolling.
Reported correctly enrolled.

1983 Legislature
Code Commissioner Bill - Summary
SenateBill No. 100
AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-21-2114, 13-27-105, 15-17-305, 15-24-922, 15-31-114, 15-31-509, 15-57-109, 19-6-203, 19-7-202, 22-1-218, 46-30-301, MCA; AMENDING SECTION 4, CHAPTER 520, LAWS OF 1981 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SUCH AMENDMENT; AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND 15-31-542, MCA.

Section 1. 2-15-401. Deletes subsection (13) requiring the secretary of state to report changes of names to the legislative council for publication in the session laws. Under 27-31-205, by 1979 amendment, such name changes are reported to the legislative council directly by clerks of district courts. Senate Bill 46 proposes to repeal $27-31-205$ so that this requirement will be totally obsolete.

Section 2. 7-2-2709. The section provides that the governor by election proclamation is to set a date for county consolidation or abandonment elections. The 1979 revision of election laws eliminated the governor's election proclamation. Amendment would delete reference to an election proclamation, replacing it with a joint resolution of the boards of county commissioners of all the counties affected by a consolidation or abandonment.

Section 3. 7-3-219. This section was enacted in 1975 with the idea that $H B$ 122, 1977 , would pass and provide, in Title 7 , some election procedures. Delete "as provided in this title" twice in section -- there are no such provisions in Title 7. Only relevant election procedures are in Title 13.

Section 4. 7-3-314. See section 3 .
Section 5. 7-3-413. See section 3.
Section 6. 7-3-513. See section 3 .
Section 7. 7-21-2114. There is no state examiner -- his duties relating to local government are now a responsibility of the department of administration.

Section 8. 13-27-105. The effective date of constitutional amendments is July 1 following passage under Article XIV, sections 8 and 9, Montana constitution.

Section 9. 15-17-305. Inserted "of county commissioners" after "board" because 15-17-101(3) defines board as state tax
appeal board and the reference in this section is to the board of county commissioners.

Section 10. 15-24-922. The "various boards herein named" were consolidated under the board of livestock during executive reorganization.

Section 11. 15-31-114. Subsection (2) (b) (ii) (c) was declared unconstitutional because of retroactive application against persons who had complied with the current law in computing losses in the year they occurred, but later being held accountable for taxes on those prior years because of recent changes in tax law. First Federal Savings and Loan Assoc. v. Department of Revenue, _I_ M _ ,__ 39 St . Rep. 1802 (1982). (Note: $\overline{\text { As }}$ of $\overline{\text { October 29, 1982, First Federal }}$ Savings and Loan Assoc. v. Department of Revenue, supra, may come up for rehearing before the Montana Supreme Court. This amendment may have to be changed if a different decision is made upon rehearing.)

Section 12. 15-31-509. Section 15-31-542 was held to have been repealed in St. V. King Colony Ranch, $137 \mathrm{M} .145,350 \mathrm{P} 2 \mathrm{~d}$. 841 (1960), by a later enactment. Section 15-31-542 was also held not to have been reenacted by inclusion of the internal reference in this section after the date of the King Colony case because its inclusion was made without any legislative indication that reenactment was ever contemplated. Caterpillar Tractor Co. v . Department of Revenue, _M_ M__ P2d.__ 39 St. Rep. 1245 (1982).

Section 15-31-544 was added to this section because it is a general statute of limitation affecting the whole chapter. Section 15-31-544 was enacted in 1981 and should have been referenced in this section.

Section 13. 15-31-526. Caterpillar Tractor Co. V. Department of Revenue, M, M2d. 39 St . Rep. 1245 (1982) was involved with limitations dates for actions in the collections of corporate taxes. This section is amended to clarify that an action by the attorney general is governed by the same limitations that apply to the department of revenue.

Section 14. 15-57-109. Between 1977 and 1979 this section provided that $\$ 5.00$ of the license money was to go to funding administration of unfair trade practices laws contained in Title 30, chapter 14, part 2. The final sentence of the section was probably helpful during that time to specify departmental responsibilities.

Section 15. 19-6-203. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-6-101(1).

Section 16. 19-7-202. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-7-101(1).

Section 17. 22-1-218. Section 2-15-401(13) at one time exempted the secretary of state from provisions regarding libraries in the publication of session laws. The legislative council now publishes the session laws.

Section 18. 46-30-301. Typographical error. Reads "his" in the Uniform Criminal Extradition Act.

Section 19. Section 4, Ch. 520, L. 1981. Chapter 520, L. 1981, accomplished two purposes: It revised and clarified provisions on small business investment and raised the small business investment credit from $20 \%$ to $30 \%$. The revision and clarification provisions should be permanent law -- only the increase in the small business investment credit should be temporary. If sec. 4, Ch. 520, L. 1981, was to operate on the total bill needless confusion would arise from the termination of the clarification provisions. The amendment would keep the termination provisions applicable to the percentage increase but would make the general revisions part of permanent law. This section, under the coordination instruction in section 20 , would not affect any 1983 amendments on the percentage rate. This section would become effective upon passage and approval and apply as of January 1,1983 to ensure that there is no gap in the effectiveness and applicability of the clarification provisions.

Section 20. Coordination instruction. See explanation for section 19.

Section 21. Effective date. See explanation for section 19.

Section 22. Repealer.
A. 2-15-1627. The board of massage therapists was terminated under the sunset provisions of $2-8-103$ in 1981. This section, establishing the board, was not repealed during the 1981 session.
B. 7-13-2249. Proclamation of elections for county water and/or sewer districts. There are no longer proclamations of elections.
C. 15-31-542. Repealed by a later enactment. See explanation for section 12 .

date of commission and names of appointees and predecessors;
(3) affix the great seal, with his attestation y to commissions, pardons, and other public instruments to which the official signature of the governor is required;
(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;
(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same:
(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;
(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law. records or other instrument filed, deposited, or recorded in his office;
(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;
(9) file in his office descriptions of seals in use by the different state officers; $\quad$ NTRODUCED BILL -2-
（10）discharge the duties of member of the board of examiners and of the board of 1 and commissioners and all other duties required of him by lawi
（11）report to the qovernor as prescribed in 2－7－102；
（12）register marks as provided in Title 30 ，chapter 13．part 3；
 ehanges－－of－names－－recetred－pursuant－－to－－27－3士－205－－－for pubtication－in－the－taws－of－Monternat
$\mathbf{f 4 4} \mathbf{4 1 3}$ report annually to the legislative council all watercourse name chanqes received pursuant to 85－2－134 for publication in the Laws of Montana；
＋$\ddagger$ Stilis keep a register of all applications for pardon or for commutation of any sentence，with a list of the official signatures and recomandations in favor of each application．＊
Section 2．Section $\mathbf{7 - 2 - 2 7 0 9 .}$ MCA，is amended to read：
－7－2－2709．Special election on question of abandonment and consolidation．（1）（a）甘pon－reeefpt－of－a－certifted－copy Hithin＿la＿days＿aftar transinital of the resolution provided for in 7－2－2707，the－governop－shoł7v－－within－－4日－－days therenftery－－tssue－－hts－－proctemetion－－eat＋tme－－－－spectot eqeetion－in the＿hoards＿of county comissioners of the county in which the petition referred to in the resolution was filed and in of each county designated in the resolution as
a county to which any of the territory of the county，if abandoned and abolished，shat7 would be attached and made a parte＿shalli＿＿in＿a＿joiot＿meeting＿and＿by＿ioint＿resolution＿of 5uch＿eroargse＿call＿a＿special＿election＿＿in＿＿all＿affected counties．
（b）The proetamation jointmesolution shall fix a day for holding the election in such counties，which shall be not 1 ess than 90 days or more than 120 days after the date of the governors－proetamation joint＿resolution calling the sameve provided－－thet－4f If a general election will be held in the counties not less than 90 days or more than 120 days after the date of sueh－proetamotiony－the－qovernory－in－the proetamotiony the resolution proxided＿for in＿7－2－2707e the ioint fesplution shall direct that the question be submitted to the reqistered electors of the counties at the general election．The procłamation ioint resolution shall be filed in the office of the secretary of state，and copies thereof shall be transifitted by－the－governor to the election administrator of each of the counties in which the election is to be held．
（2）At the election there shall be submitted：
（a）to the registered electors of the county in which the petition was filed，the question of whether or not the county shall be abandoned and abolished and its territory attached to and made a part of the county designated and
named for the purpose in the petition: and(b) to the reqistered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished shall be attached and made a part if the county shall be so abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution shall be attached to and become a part of the county."
Section 3. Section 7-3-219, MCAp is amended to readz
m-3-219. Type of election. Local government elections shall be conducted on a:
(1) partisan basis as-provided-in-thts-tittye; or
(2) nonpartisan basis es-prevtded-in-thts-t+tłe."
Section 4. Section 7-3-314, MCAq is amended to read:
*7-3-314. Type of election. Local government elections shall be conducted on a:
(1) partisan basis as-provided-in-thty-titte; or
(2) nonpartisan basis as-provided-in-this-titteok
Section 5. Section 7-3-413, MCA, is amended to read:
"7-3-413. Type of election. Local qovernment elections shall be conducted on $a=$
> (1) partisan basis os-provided-in-this-titte; or
> (2) nonpartisan basis as-previded-in-this-titte."

> Section 6. Section 7-3-513, MCA, is amended to read:
"7-3-513. Type of election. Local government elections shall be conducted on a:
(1) partisan basis es-provided-in-this-tittle; or
(2) nonpartisan basis os-provided-in-thta-titye."

Section 7. Section $7-21-2114$, MCA, is amended to read:
"7-21-2114. Investigation ${ }^{(1)}$ of possible licensing violations. It shall be the duty of the board of county commissioners or the stete---examinem department_of administration, when examining the treasurer*s report, to investigate if any persons are doing business in the county without a license or if the amount of the license is sufficient. In either event the treasurer shall be officially notified.*

Section 8. Section 13-27-105, MCA, is amended to read=
"13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an Initiative issueq_other__than_a_constitutional_amendmente approved by the people is effective on October 1 following approval. However, if the issue delegates rulemaking authority, it is effective no sooner than october 1 following approval.
(2) bintess--the--teaistature--provides--otherwiser-a A constitutional amendment proposed by initiatize_or by the leqislature and approved by the people is effective on

Beteber Hly 1 following approval.
(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least $15 \%$ of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contalins an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions mere delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election.*

Section 9. Section 15-17-305, MCA, is amended to read:
m15-17-305. No sale unless directed by county commissioners. In case an assessment is made under 15-17-304 and the lands are not redeemed from a previous sale had
under part 2, as provided by law no sale must be had under the assessment authorized by 15-17-304 unless directed by the board of county conmissioners*"

Section 10. Section 15-24-922. MCA, is amended to read:
"15-24-922. Department to prescribe levy. The department of revenue is hereby empowered and it is made its duty to annually prescribe the levy to be made against livertock of all classes for the purpose above indicated, and the vartous--troards--herein--named-shatt-have board_of Lixestock has the right to recommend to said department the amount of such levyom

Section 11. Section 15-31-114, MCA, is amended to read:
-15-31-114. Deductions allowed in coaputing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:
(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and propertiesy including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property
to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the reciplent thereof has not paid Montana state income tax; providede however. that where dowestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.
(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount pald out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhoustion thereof for which an allowance is or has been made.
(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction deterained according to the provisions of this subsection. The net
operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income. with the modifications specified m (li) of this subsectione If for any taxable period beginning after December 31, 1970, a net operating loss is sustalned, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable perlods following the taxable perlod of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net incore for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction
without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.
(i) The modifications referred to in (i) of this subsection shall be as follows:
(A) No net operating loss deduction shall be allowed.
(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.
tEt-Any-met-operating-7oss-carrted-over-to-any-taxabte Years-begtnning-ofter-Becember-319-19767-wat-be--ca7eu子teted under--the--provtstons-of--this-section--effective-for-the toxabte-year-for-whteh-the-retum-etatming-the-met-opereting 7oss-earryover-ts-fitede
(ili) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.
(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustalned by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidatione
(v) Notwithstanding the provisions of 15-31-531. interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.
(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1. 1971.
(3) In the case of mines, other natural deposits, ofl and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitallzing or expensing exploration and development costs and intangible driliing expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.
(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenancey or improvement of property or for the conduct of business uniess the income from such property or business would be taxable under this part.
(5) (a) Taxes paid within the year except the following:
(i) Taxes imposed by thls part.
(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.
(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.
(iv) Taxes imposed by any other state or country upon or measured by net income or profits.
(b) Taxes deductible under this part shall be construed to include taxes 1 mposed by any county, school district, or municipality of this state.
(6) Light vehicle 1 icense feesy as provided by 61-3-532, paid within the year.
(7) That portion of an energy-related investment allowed as a deduction under 15-32-103.
(8) (a) Except as provided in subsection (b). charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.
(b) The public service comission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsectione"
section 12. Section 15-31-509, MCA, is amended to
read:
m15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in 45-34-542 15-31-544, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. where, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:
(a) the taxpayer has by written agreement suspended the federal statute of 1 initations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:
(i) only so long as the suspension of the federal statute of 1 imitation; or
(i) until 1 year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the
$-14-$

## latest in time; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.
(2) No refund or credit shall be allowed or pald with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (i) of this section to extend the time within which the department may propose an additional assessment. the perlod within which a claim for refund or credit may be filed or a credit or refund allowed in the event no clalm is filed shall automatically be so extended."

Section 13. Section 15-31-526, MCAp is amended to read:
-15-31-526. Action by attorney general. Action may be brought at-any-t+me by the attorney general of the state at the instance of the department, in the name of the state, to
recover the amount of any taxesp penalties, and interest due under this chapter**

Section 14. Section 15-57-109. HCA, is amended to read:
-15-57-109. Employment of staff -- disposal of Iicense money. The departant of revenue may employ such clerical and field assistance as necessary to carry out and administer the provisions of this chapter. All money coll cted under the provisions of this chapter shall be paid into the state treasury and credited to the general fund.
 responstbttity-of-the-department-of-comereer=

Section 15. Section 19-6-203, MCA, is amended to read:
"19-6-203. Administrative expenses. (1) The expense of the administration of this chapter exclusive of the payment of retirement allowances and other benefitsp may be paid from the fand account.
(2) Before July 15 of each yearg the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund account to the public employees" retirement system account in the agency fund."

Section 16. Section 19-7-202, MCAp is amended to read:
"19-7-202. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the
payment of retirement allowances and other benefitsy may be paid from the fund account.
(2) Before July 15 of each year, the board may conpute the administrative costs for the immediately preceding fiscal year and transfer that awount from the fund account to the public employees" retirement system account in the agency fund."

Section 17. Section 22-1-218, MCA, is amended to read:
"22-1-218. Exemptions. This part does not apply to officers of or affect the duties concerning publications distributed by:
(1) the state 1 aw ilbrary;
tzt--the-secretory--of--state--tn--connection-withihts

( $9+12)$ the code commissioner in connection with his duties under Title 1, chapter 11, as amended; and
t4tilit the legislative councll in connection with its duties under 5-11-203, as amended."

Section 18. Section 46-30-301, MCA, is amended to read:
*46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charqed in the courts of a state with a crime punishable by death or

Imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter this his answer shall be heard as If he had been arrested on a warrantan

Section 19. Section 4, Chapter 520, Laws of 1981, is anended to read:

Section 4. Applicability Fhts Ing_lacreaseto $30 \%$ for_the_seall_business_inuestment_credit_in_15=30-162(21) and_15-31-123i4)(al_in_this acte is applicable only to taxable years beginning after December 31 . 1980, and before January 1, 1983."

NEH SECTIONe Section 20. Coordination instruction. If any act passed by the 48 th legislature conflicts with the provisions of section 19 of this act by amendment of sections 15-30-162(2)(a), 15-31-123(4)(a), MCA or section 4, chapter 520, Laws of 1981 , the provisions of the other act shall prevail over section 19 of this act and any amendment or amendatory effect on those sections by section 19 of this act is void and of no effect to the extent of any conflict.

NEY SECIION. Section 21. Effective date. Sections 19 and 20 are effective on passage and approval and apply as of January 1, 1983.

Sections
2 2-15-1627, 7-13-2249, and 15-31-542, MCA, are repealed.
-End-

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Section 10. 15-24-922. The "various boards herein named" were consolidated under the board of livestock during executive reorganization.

Section 11. 15-31-114. Subsection (2) (b) (ii) (C) was declared unconstitutional because of retroactive application against persons who had complied with the current law in computing losses in the year they occurred, but later being held accountable for taxes on those prior years because of recent changes in tax law. First Federal Savings and Loan Assoc. v. Department of Revenue, $M$ P2d. , 39 St. Rep. 1802 (1982). (Note: $\overline{\text { As of October 29, 1982, First Federal }}$ Savings and Loan Assoc. v. Department of Revenue, supra, may come up for rehearing before the Montana Supreme court. This amendment may have to be changed if a different decision is made upon rehearing.)

Section 12. 15-31-509. Section 15-31-542 was held to have been repealed in St. v. King Colony Ranch, $137 \mathrm{M} .145,350 \mathrm{p} 2 \mathrm{~d}$. 841 (1960), by a later enactment. Section 15-31-542 was also held not to have been reenacted by inclusion of the internal reference in this section after the date of the King Colony case because its inclusion was made without any legislative indication that reenactment was ever contemplated. Caterpillar Tractor Co. v . Department of Revenue, M_ M_ P2d._ 39 St . Rep. 1245 (1982).

Section 15-31-544 was added to this section because it is a general statute of limitation affecting the whole chapter. Section 15-31-544 was enacted in 1981 and should have been referenced in this section.

Section 13. 15-31-526. Caterpillar Tractor Co. V. Department of Revenue, M , P2d._ 39 St . Rep. 1245 (1982) was involved with limitations dates for actions in the collections of corporate taxes. This section is amended to clarify that an action by the attorney general is governed by the same limitations that apply to the department of revenue.

Section 14. 15-57-109. Between 1977 and 1979 this section provided that $\$ 5.00$ of the license money was to go to funding administration of unfair trade practices laws contained in Title 30, chapter 14, part 2. The final sentence of the section was probably helpful during that time to specify departmental responsibilities.

Section 15. 19-6-203. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-6-101(1).

Section 16. 19-7-202. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-7-101(1).

Section 17. 22-1-218. Section 2-15-401(13) at one time exempted the secretary of state from provisions regarding libraries in the publication of session laws. The legislative council now publishes the session laws.

Section 18. 46-30-301. Typographical error. Reads "his" in the Uniform Criminal Extradition Act.

Section 19. Section 4, Ch. 520, L. 1981. Chapter 520, L. 1981, accomplished two purposes: It revised and clarified provisions on small business investment and raised the small business investment credit from $20 \%$ to $30 \%$. The revision and clarification provisions should be permanent law -- only the increase in the small business investment credit should be temporary. If sec. 4, Ch. 520, L. 1981, was to operate on the total bill needless confusion would arise from the termination of the clarification provisions. The amendment would keep the termination provisions applicable to the percentage increase but would make the general revisions part of permanent law. This section, under the coordination instruction in section 20 , would not affect any 1983 amendments on the percentage rate. This section would become effective upon passage and approval and apply as of January 1,1983 to ensure that there is no gap in the effectiveness and applicability of the clarification provisions.

Section 20. Coordination instruction. See explanation for section 19.

Section 21. Effective date. See explanation for section 19.

Section 22. Repealer.
A. 2-15-1627. The board of massage therapists was terminated under the sunset provisions of 2-8-103 in 1981. This section, establishing the board, was not repealed during the 1981 session.
B. 7-13-2249. Proclamation of elections for county water andor sewer districts. There are no longer proclamations of elections.
C. 15-31-542. Repealed by a later enactment. See explanation for section 12 .

Approved by Committee on State Administration

SENATE BILL NO. 100
INTRODUCED BY GRAHAM
BY REQUEST OF THE CODE COMHISSIONER

A BILL FOR AN ACT ENTITLED: -AN ACT TO GENERALLY REVISE THE LANS RELATING TO GQVERNMENT; AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219; 7-3-314: 7-3-413, 7-3-513, 7-21-2114* 13-27-105. 15-17-305, 15-24-922, 25-31-744 15-31-509. 15-31-526. 15-57-109. 19-6-203. 19-7-202. 22-1-218.

 AMENQMENFT AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND 15-31-542, MCA.*
be it enacted by the legislature of the state of muntana:
Section 1. Section 2-15-401, MCA, is amended to read:
-2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitutions it is the duty of the secretary of state to:
(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;
(2) keep a register of and attest the official acts of the governor, including all appointments made by himo with
date of commission and names of appointees and predecessors;
(3) affix the great seal. with his attestation to comissions, pardonse and other public instruments to which the official signature of the governor is required;
(4) recors in proper books all conveyances made to the state and all articles of incorporation filedin his office:
(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;
(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is comissioned by the governor;
(7) furnishe on demand, to any person paying the fees therefor: a certified copy of all or any part of any lawn record, or other instrument filed, deposited, or recorded in his office;
(8) keep a fee book in which must be entered all feesp comissions, and compensation of whatever nature or kind by his earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified amually by his affidavit entered therein:
(9) file in his office descriptions of seals in use by the different state officers;
(10) discharge the duties of member of the bourd of exaniners and of the board of land commissioners and all other duties required of him by law;
(11) report to the governor as prescribed in 2-7-102;
(12) register marks as provided in Tit\}e 30\% chapter 13. part 3:
ft3t-report-mannaity-te-the-Hegistative-councit-ott ehanges-of-nomes--reetived--pursuant--to---z7-31-ze5-for probtieation-in-the-tams-of-Montenet
t位1131 report annually to the legislative council all watercourse nawe changes received pursuant to 85-2-134 for publication in the Laws of Montana;
(H5+14) keep a register of all applications for pardon or for commutation of any sentences with a list of the official signatures and recommendations in favor of each application."

Section 2. section 7-2-2709, HCA, is amended to read:
"7-2-2709. Special election en question of abandonment and consolidation. (1) (a) Upon-reeetpt-of-e-certifited-copy Within. 14 _days_after transpitial of the resolution provided for in 7-2-27a7, the--governer--shatlo--within--t0-deys ther eafterv-issue-his--proctamation-eetiting-mo-speciat efeetrom-th the boards of county conalssioners of the county in which the petition referred to in the resolution was filed and in of each county designated in the resolution as

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namad for the purpose in the petition; and
(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished shall be attached and made a part if the county shall be so abandoned and abolished, the question of whether or not the part of the tersitory of the county, if abandoned and abolished, described in the resolution shall be attached to and becone a part of the countyon
Section 3. Section 7-3-219. MCA, is amended to read: "7-3-219. Type of election. Local government elections shall be conducted on a:
(1) partisan basis os-provided-in-this-titte; or
(2) nonpartisan basis es-prowided-in-thi-3-titte**
Section 4. Section 7-3-314, MCA, is amended to read:
*7-3-314. Type of election. Local government elections shall be conducted on a:
(1) partisan basis es-providec-fn-this-titte; or
(2) nonpartisan basis es-prowided-in-thts-titte="
Section 5. Section 7-3-413, MCA, is amended to read:
-7-3-413. Type of election. Local government elections shall be conducted on a:
(1) partisan basis es-propided-in-this-titte; or
(2) noapartisan basis as-provfied-in-thts-titteon
Section 6. Section 7-3-513. MCA, is amended to read:
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"7-3-513. Type of election. Local government elections shall be conducted on a:
(1) partisan basis os-provided-in-this-titte; or
(2) nonpartisan basis espovided-in-thiz-tititew

Section 7. Section 7-21-2114, MCAp is amended to read: -7-21-2114. Investigation of possible licensing violations. It shall be the duty of the board of county comissioners or the state-mexeminer departmentuaf administrationg then examining the treasurer*s reporty to investigate if any persons are doing business in the county without a license or if the amount of the license is sufficient. In either event the treasurer shall be officially notifiede*

Section 8. Section 13-27-105, MCA, is amended to read:
N13-27-105. Effective date of inftiative and referendum issues. (i) Unless the petition placing an initiative issue on the ballot states otherwiser an initiative issutz other than a constitutional amendaente approved by the people is effective on October 1 following approval. However, if the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.
(2) Untess-the--iegistature--provides--otherwisev-a $A$ constitutional amendment proposed by initiatiye or by the legislature and approved by the people is effective on

Eetober dulx 1 following approval．
（3）Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed oy at least $15 x$ of the qualified electors in a majority of the legislative representative districts，an act referred to the people is in effect as provided by law until it is approved or rejected at the election．An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13－27－503．An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect．An dct that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13－27－503．An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the prople．An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective uctober 1 following the electione＂

Section 9．Section 15－17－305，MCA，is amended to read： m15－17－305．No sale unless directed oy county commissioners．In case an assessment is made under 15－17－304 and the lands are not redeened from a previous sale had
under part 2 ，as provided by law，no sale must be had under the assessment authorized by 15－17－304 unless directed by the board of＿county＿comelssignecs．＂

Section 10．Section 15－24－922，MCA，is amended to read：
＂15－24－922．Department to prescribe levy．The department of revenue is hereby empowered and it is made ics Juty to annually prescribe the levy to be made against livestock of all ciasses for the purpose above indicated， and the various－－boards－－herein－－nomed－shot＋－have goacd＿af Livesteck has the right to recommend to said department the amount of such levyo＂

Saetron－ttv－－Seetion－－45－3t－4t4r－－MEAy－－is－－amended－－to read＊
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Section ll. Section 15-31-509, MCA, is amended to
read:
"15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in $\mathbf{t 5 - 3 4 - 5 4 2}$ 15-31-544, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the tax; the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribea for giving notice of a proposed assessment of additional tax shall not apply when:
(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section siall last:
(i) only solong as the suspension of the federal statute of limitation; or
(ii) until 1 year after any federal cnanges have oecome final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the

## latest in time; or

(b) a taxpayer has failed to file a report of cnanges in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal chanyes oecome final or the aniended federal return was filed, whichever the case may be.
(2) No refund or credit shall be allawed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, uniess before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and nas approved the refund or credit thereofe If the taxpayer has agreed in writing under the provisions of subsection (l) of this section to extend the time within which the department may propose an additional assessment. the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended."

Section 12. Section 15-31-526, MCA, is amended to read:
"15-31-526. Action by attorney general. Action may be brought at-any-time by the atturney general of the state at the instance of the department, in the name of the state, to
recover the amount of any taxes, penalties; and interest due under this chapter."

Section 13. Section 15-57-109, MCA, is amended to read:
"15-57-109. Employment of staff -- disposal of license money. The department of revenue may employ such clerical and fiela assistance as necessary to carry out and administer the provisions of this chapter. All money collected under the provisions of this cnapter shall be paid into the state treasury and credited to the general fund. Administration-of-fitte-30r--ehopter--14v--part--zy--is--the responsititity-of-the-department-of-commerees"

Section 14. Section 19-6-203, MCA, is amended to read:
"19-6-203. Administrative expenses. (1) The expense of the administration of chis chapter, exclusive of the payment of retirement allowances and other benefitsp may be paid from the fand account.
(2) Before July 15 of each year, the buard may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund account to the public employees" retirement system account in the agency fund."

Section 15. Section 19-7-202, MCA, is amended to read:
"19-7-202. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the

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payment of retirement allowances and other benefits, may be paid from the fund assquat.
(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund accouat to the public employees" retirement system account in the agency fund.:
Section 16. Section 22-1-218, MCA, is amended to read:
"22-1-218. Exemptions. This part does not apply to officers of or affect the duties concerning publications distributed by:
(1) the state law library;
tzt-the-seeretary-of-stote--in--eonnection--mith-his dutfes-uader-z-t5-4ettさ3tt
t \(3+121\) the code comissioner in connection with his duties under title l, chapter ll, as agendedi and
t4t(3) the legislative council in connection with its duties under 5-11-203, as amended="
Section 17. Section 40-30-301, MCA, is amended to read:
"46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or
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imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter this bis answer shall be heard as if he had been arrested on a warrant."
 amended-to-readt





 ff-any-act-passed-by-the-4eth-tegistatare-conftiets-with-the provisions--of--section--t9--of--this--act--br--amendment-of
 4 --ehapter--5zey--Eaws-of-499ty-the-provistons-of-the-other act-shałt-prevai+-over--section--49--of--thiy--act--and--any amenament--or-amendatory-effeet-on-those-seetions-by-seetion 19-of-this-aet-is-void-and-of-ne-effeet-to-the-extent-of-any eonftict.
 and-ze-afe-effeetive-on-pessage-and-approvat-and-appty-as-of densary-ty- $\mathbf{t 9 8 3}$.

## SE 0100/02

## 1 NEH_SECLIONe Section ld. Repealer. <br> Sections

 2-15-1027, 7-13-2249, and 15-31-542, MCA, are repealed.-End-

1983 Legislature
Code Commissioner Bill - Summary
SenateBill No. 100
AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-21-2114, 13-27-105, 15-17-305, 15-24-922, 15-31-114, 15-31-509, 15-57-109, 19-6-203, 19-7-202, 22-1-218, 46-30-301, MCA; AMENDING SECTION 4, CHAPTER 520, LAWS OF 1981 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SUCH AMENDMENT; AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND 15-31-542, MCA.

Section 1. 2-15-401. Deletes subsection (13) requiring the secretary of state to report changes of names to the legislative council for publication in the session laws. Under 27-31-205, by 1979 amendment, such name changes are reported to the legislative council directly by clerks of district courts. Senate Bill 46 proposes to repeal $27-31-205$ so that this requirement will be totally obsolete.

Section 2. 7-2-2709. The section provides that the governor by election proclamation is to set a date for county consolidation or abandonment elections. The 1979 revision of election laws eliminated the governor's election proclamation. Amendment would delete reference to an election proclamation, replacing it with a joint resolution of the boards of county commissioners of all the counties affected by a consolidation or abandonment.

Section 3. 7-3-219. This section was enacted in 1975 with the idea that $H B$ 122, 1977, would pass and provide, in Title 7, some election procedures. Delete "as provided in this title" twice in section -- there are no such provisions in Title 7. Only relevant election procedures are in Title 13.

Section 4. 7-3-314. See section 3 .
Section 5. 7-3-413. See section 3 .
Section 6. 7-3-513. See section 3.
Section 7. 7-21-2114. There is no state examiner -- his duties relating to local government are now a responsibility of the department of administration.

Section 8. 13-27-105. The effective date of constitutional amendments is July 1 following passage under Article XIV, sections 8 and 9, Montana constitution.

Section 9. 15-17-305. Inserted "of county commissioners" after "board" because 15-17-101(3) defines board as state tax
appeal board and the reference in this section is to the board of county commissioners.

Section 10. 15-24-922. The "various boards herein named" were consolidated under the board of livestock during executive reorganization.

Section 11. 15-31-114. Subsection (2)(b)(ii)(C) was declared unconstitutional because of retroactive application against persons who had complied with the current law in computing losses in the year they occurred, but later being held accountable for taxes on those prior years because of recent changes in tax law. First Federal Savings and Loan Assoc. v. Department of Revenue, $M, \quad$ P2d._, $39 \mathrm{St}$. Rep. 1802 (1982). (Note: As of October 29, 1982, First Federal Savings and Loan Assoc. v. Department of Revenue, supra, may come up for rehearing before the Montana Supreme Court. This amendment may have to be changed if a different decision is made upon rehearing.)

Section 12. 15-31-509. Section 15-31-542 was held to have been repealed in St. V. King Colony Ranch, $137 \mathrm{M} .145,350 \mathrm{P} 2 \mathrm{~d}$. 841 (1960), by a later enactment. Section 15-31-542 was also held not to have been reenacted by inclusion of the internal reference in this section after the date of the King Colony case because its inclusion was made without any legislative indication that reenactment was ever contemplated. Caterpillar Tractor Co. v . Department of Revenue, _M_ M__ P2d.__ 39 St. Rep. 1245 (1982).

Section 15-31-544 was added to this section because it is a general statute of limitation affecting the whole chapter. Section 15-31-544 was enacted in 1981 and should have been referenced in this section.

Section 13. 15-31-526. Caterpillar Tractor Co. V. Department of Revenue, M, M2d._ 39 St. Rep. 1245 (1982) was involved with limitations dates for actions in the collections of corporate taxes. This section is amended to clarify that an action by the attorney general is governed by the same limitations that apply to the department of revenue.

Section 14. 15-57-109. Between 1977 and 1979 this section provided that $\$ 5.00$ of the license money was to go to funding administration of unfair trade practices laws contained in Title 30, chapter 14, part 2. The final sentence of the section was probably helpful during that time to specify departmental responsibilities.

Section 15. 19-6-203. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-6-101(1).

Section 16. 19-7-202. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-7-101(1).

Section 17. 22-1-218. Section 2-15-401(13) at one time exempted the secretary of state from provisions regarding libraries in the publication of session laws. The legislative council now publishes the session laws.

Section 18. 46-30-301. Typographical error. Reads "his" in the Uniform Criminal Extradition Act.

Section 19. Section 4, Ch. 520, L. 1981. Chapter 520, L. 1981, accomplished two purposes: It revised and clarified provisions on small business investment and raised the small business investment credit from $20 \%$ to $30 \%$. The revision and clarification provisions should be permanent law -- only the increase in the small business investment credit should be temporary. If sec. 4, Ch. 520, L. 1981, was to operate on the total bill needless confusion would arise from the termination of the clarification provisions. The amendment would keep the termination provisions applicable to the percentage increase but would make the general revisions part of permanent law. This section, under the coordination instruction in section 20 , would not affect any 1983 amendments on the percentage rate. This section would become effective upon passage and approval and apply as of January 1,1983 to ensure that there is no gap in the effectiveness and applicability of the clarification provisions.

Section 20. Coordination instruction. See explanation for section 19.

Section 21. Effective date. See explanation for section 19.

Section 22. Repealer.
A. 2-15-1627. The board of massage therapists was terminated under the sunset provisions of 2-8-103 in 1981. This section, establishing the board, was not repealed during the 1981 session.
B. 7-13-2249. Proclamation of elections for county water and/or sewer districts. There are no longer proclamations of elections.
C. 15-31-542. Repealed by a later enactment. See explanation for section 12 .

SEMATE BILA NO. 100
INTRODUCED BY GRAMAM
by request of the code commissionea
a bill for an act entitiedz oan act to generally revise the LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219, 7-3-3149, 7-3-413, 7-3-513, 7-21-2114. 13-27-105. 15-17-305. 15-24-922. $45-71$.124. 15-31-509. 15-31-526. 15-57-109. 19-6-203. 19-7-202\% 22-1-218.

 AMEMOMENF AND REPEALING SECTIONS 2-15-1627. 7-13-2249. AND 15-31-542. MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE SFATE OF MOMTMMA:
Section 1. Section 2-15-401, HCA, is amended to read:
m2-15-401. Duties of secretary of state, In addition to the duties prescribed by the constitutions it is the duty of the secretary of state to:
(1) attend at every session of the legisiature for the purpose of receiving bilis and resolutions and to perform such other duties as may be devolved upon hie by resolution of the two houses or either of them;
(2) keep a register of and attest the official acts of the governorg including all appointmants made by hime with
dete of comisisian and names of appointees and predecessors;
(3) affix the great seal. with his attestetbons to comissiensp pardonse and other publife instruments to which the official signature of the governor is required;
(4) record in proper books all conveyances made to the state and all articles of incorporation filedin his offices
(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same:
(6) certify to the governor the names of these persons who have received at any efection the highest number of votes for any office, the incumbent of which is commissioned by the governor:
(7) furnish, on demand, to any person paying the fees therefor* a certified copy of all or any part of any law. record, or other instrument filede depositeade or recorded in his office;
(8) keep a fee book in which mest be entered all fees, comisstons, and compensation of whatever nature or kind by him earnedy collected, or charged, with the datep name of payer, paid or unpaide and the nature of the service in each case, which book must be verified annually by his affidavit entered thereini
(9) file in his office descriptions of seals in use by the different state officers;

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    (10) discharge the duties of member of the board of
examiners and of the board of land comissioners and all
other duties required of him by lav;
    (11) report to the governor as prescribed in 2-7-102;
    (12) register marks as provided in Title 30. chapter
    13. part 3;
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pwbliceti-0n-in-the-tewg-of-Nontenert
            t4ficlui report anmually to the legislative comocil all
    watercourse name changes received pursuant to 85-2-134 for
    publiretion in the Lams of Montana:
            f15+114) keep a register of all applicatlons for pardon
        or for comutation of any sertmeng with a list of the
        official signatures and recommendations in favor of each
        application."
            Section 2. Section 7-2-2709, MCA, is amended to read:
            m7-2-2709. Special election en question of mbandonment
    and consolidation. (1) (a) Upon-preetpteof-p-certetfied-eopy
    Mltblnil4 days after framxmitital of the resolution provided
    for in T-2-2707, them-gevernep-shol4%-within-40-doys
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    In which the petition referred to:in the resolution was
    filed and in of each county designated in the resolution as
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                                    -3-
    > a county to which any of the territory of the country if abandoned and abol ished, stret7 mould be attached and made a parta shalls in a joint meating and by Jointirosolution_of such_poardse_call:a_spacial_oliction_in_ail_affected countias.
> (b) The ppoctanntian joliaticasolintion shall fix a day for holding the election in such counties, which shall be not less than 90 days or more than 120 days after the date of the gevernoreteprectometton loint rasalution calling the sameva prewtetu-that-tf If general election will be held in the counties not less than 90 days or more than 120 days after the date of sweh-prewtemotieny-the-governerp-in-the proefometrows the cesolvition providedifoc in. 7-2-2707a the joiat cherglution shall difect that the question be subnitted to the registered electors of the counties at the general election. The prectemetton fointiresolution shall be fited in the office of the secretary of states and copies thereof shall be transwitted by-the-governor to the election administrator of each of the counties in which the election is to be helde
> (2) Lt the election there shall be submitted:
> (a) to the registered electors of the county in which the petition was filed, the question of whather or not the county shall be abandoned and abolished and its teriitory attached to and made a part of the county designated and
named for the purpose in the petition; and
(D) to the registered electors of each county named and designated in the resolution as a county to which a part of the territiory of the county proposed to be abandoned and abolished shall be attached and made part if the county shall be so abandoned and abolistued, the quastion of whether or not the part of the territory of the county if abandoned and abolished, described in the resolution shall be attached to and become a part of the countyo.
Section 3. Section 7-3-219; MCAv is amended to read:
m-3-219. Type of election. Local government elections shall be conducted on a:
(1) partisan basis es-ppentdet-incthts-titiles or
(2) nonpartisan basis es-prowided-in-thia-titie."
Section to Section 7-3-314, MCAP is amended to read:
"7-3-314. Type of election. Local government elections shall be conducted on a:
(1) partisan basis es-pfowdect-if-this-titites or
(2) nonpartisan basis es-prowided-in-thtm-t+tite"
Section 5. Section 7-3-413. MCA, is amended to readz
"7-3-413. Type of election. Local government elections Shall be conducted on a:
(1) partisan basis es-prowheder-in-thro-titte; or
(2) nonpartisan basis es-proutdiedmin-this-titte."
Section 6. Section 7-3-513, MCAp is amended to read:
©7-3-513. Type of election. Local government elections shall be conducted on a:
(1) partisan basis es-providethin-thry-twelez or
(2) nonpartision basis eo-ppovided-tn-thte-ctitiv."

Section 7. Section 7-21-2114, MCA, is amended to read:
-7-21-2114. Investigation of possible licensing violations. It shall be the duty of the board of county comissioners or the eterem-menevner deparimantionf administration etren examining the treasurer"s report. to Investigate if any persons are doing business in the county without alicense or if the amount of the iicense is sufficiente In either event the treasurer shall be officially notified."

Section 8. Section 13-27-105. MCA, is amended to readz
w13-27-105. Effective date of initiative and referendum issuese (1) Unless the petition placing an initiative issue on the ballot states otherwisen an initiative issueg_other_shan_an_constitutional_amendaentas approved by the people is effective on Dctober 1 following approval. However, if the issue delegates rulemaking authority, It is effective no sooner than october 2 following approval.
(2) Untess-the--7egisleture-provides--otherwisev-t A constitutional amendment proposed by initiatilye_or by the legislature and approved by the people is effective on
under part 2, as provided by law, no sale must be had under the assessment authorized oy 15-17-304 unless directed by the board of_county_comissionsis."

Section 10. Section 15-24-922, MCA, is amended to read:
"15-24-922. Department to prescribe levye The department of revenue is hereby empowered and it is made its duty to annually prescribe the levy to be aade against livestock of all classes for the purpose above indicated. and the various--boerds--herein--named-shotr-have poard_of Lixesteck_bas the right to recommend to said department the amount of such 1 evy."
 read
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#### Abstract

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Section 11. Section 15-31-509, MCA, is amended to
read:
"15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in $\mathbf{t 5 - 3 t - 5 4 2}$ 15-31-544, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within $s$ years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the taxp the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:
(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:
(i) only so long as the suspension of the federal statute of limitation; or
(ii) until 1 year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute. whichever is the


#### Abstract

latest In time; or (b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes becoue final or the amended federal return was filed, whichever the case may be. (2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever pertod expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereofe If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the department may propose an additional assessment. the period within which a claim for refund or credit may be filed or credit or refund allowed in the event no clatm is filed shall automatically be so axtended." section 12. Section 15-31-526, MCA, is amernded to read: -15-31-526. Action by attorney generale Action may be brought at-any-time by the attorney general of the state at the instance of the department, in the name of the state, to


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recover the amount of any taxes, penalties, and interest due
under this chapter."
    Section 13. Section 15-57-109. MCA, is amended to
read:
    *15-57-109. Employment of staff -- disposal of license
money. The department of revenue may employ such clerical
and field assistance as necessary to carry out and
administer the provisions of this chapter. All money
collected under the provisions of this chapter shall be paid
into the state treasury and credited to the general fund.
Admin+stretion-of-Fitte-30ym-chepter--34%--part--Zy--is--the
Fesponsibititty-of-the-department-of-conmefee**
Section 14. Section 19-6-203, MCA, is amended to read:
"19-6-203. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefitsp may be paid from the fund account.
(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund account to the public employees* retirement system account in the agency fund."
Section 15. Section 19-7-202. MCA, is amended to read:
w19-7-202. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the
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-16-
SB 100

payment of retirement allowances and other benefitsy may be
imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter this his answer shall be beard as if he had been arrested on a warranta"
 omended-to-readt





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 and-2日-ofe-effeetrve-on-pessage-and-approvat-and-oppty-as-of dafuafy-to- $\mathbf{2 9 0 3}$

## 1 NEH_SECLIONE Section 18. Repealer. <br> Sections

2 2-15-1027, 7-13-2249, and 15-31-542, MCA, are repealed.
-End-

1983 Legislature
Code Commissioner Bill - Summary
Senate Bill No. 100
AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-21-2114, 13-27-105, 15-17-305, 15-24-922, 15-31-114, 15-31-509, 15-57-109, 19-6-203: 19-7-202, 22-1-218, 46-30-301, MCA; AMENDING SECTION 4, CHAPTER 520, LAWS OF 1981 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SUCH AMENDMENT; AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND 15-31-542, MCA.

Section 1. 2-15-401. Deletes subsection (13) requiring the secretary of state to report changes of names to the legislative council for publication in the session laws. Under 27-31-205, by 1979 amendment, such name changes are reported to the legislative council directly by clerks of district courts. Senate Bill 46 proposes to repeal 27-31-205 so that this requirement will be totally obsolete.

Section 2. 7-2-2709. The section provides that the governor by election proclamation is to set a date for county consolidation or abandonment elections. The 1979 revision of election laws eliminated the governor's election proclamation. Amendment would delete reference to an election proclamation, replacing it with a joint resolution of the boards of county commissioners of all the counties affected by a consolidation or abandonment.

Section 3. 7-3-219. This section was enacted in 1975 with the idea that $H B 122,1977$, would pass and provide, in Title 7 , some election procedures. Delete "as provided in this title" twice in section -- there are no such provisions in Title 7. Only relevant election procedures are in Title 13.

Section 4. 7-3-314. See section 3.
Section 5. 7-3-413. See section 3.
Section 6. 7-3-513. See section 3.
Section 7. 7-21-2114. There is no state examiner -- his duties relating to local government are now a responsibility of the department of administration.

Section 8. 13-27-105. The effective date of constitutional amendments is July 1 following passage under Article XIV, sections 8 and 9, Montana constitution.

Section 9. 15-17-305. Inserted "of county commissioners" after "board" because 15-17-101(3) defines board as state tax
appeal board and the reference in this section is to the board of county commissioners.

Section 10. 15-24-922. The "various boards herein named" were consolidated under the board of livestock during executive reorganization.

Section 11. 15-31-114. Subsection (2) (b) (ii) (C) was declared unconstitutional because of retroactive application against persons who had complied with the current law in computing losses in the year they occurred, but later being held accountable for taxes on those prior years because of recent changes in tax law. First Federal Savings and Loan Assoc. v. Department of Revenue, M , $\quad$, 2 d . $\quad$ St. Rep. 1802 (1982). (Note: $\overline{\text { As of }} \overline{\text { October 29, 1982, First Federal }}$ Savings and Loan Assoc. v. Department of Revenue, supra, may come up for rehearing before the Montana Supreme Court. This amendment may have to be changed if a different decision is made upon rehearing.)

Section 12. 15-31-509. Section 15-31-542 was held to have been repealed in St. V. King Colony Ranch, 137 M. 145, 350 P 2 d . 841 (1960), by a later enactment. Section 15-31-542 was also held not to have been reenacted by inclusion of the internal reference in this section after the date of the King Colony case because its inclusion was made without any legislative indication that reenactment was ever contemplated. Caterpillar Tractor Co.
 Rep. 1245 (1982).

Section 15-31-544 was added to this section because it is a general statute of limitation affecting the whole chapter. Section 15-31-544 was enacted in 1981 and should have been referenced in this section.

Section 13. 15-31-526. Caterpillar Tractor Co. V. Department of Revenue, $\frac{M}{\prime}$ P2d. 39 St. Rep. 1245 (1982) was involved with limitations dates for actions in the collections of corporate taxes. This section is amended to clarify that an action by the attorney general is governed by the same limitations that apply to the department of revenue.

Section 14. 15-57-109. Between 1977 and 1979 this section provided that $\$ 5.00$ of the license money was to go to funding administration of unfair trade practices laws contained in Title 30, chapter 14, part 2. The final sentence of the section was probably helpful during that time to specify departmental responsibilities.

Section 15. 19-6-203. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-6-101(1).

Section 16. 19-7-202. The word "fund" amended into this section in 1981 was inaccurate and should have been "account", which is defined at 19-7-101(1).

Section 17. 22-1-218. Section 2-15-401(13) at one time exempted the secretary of state from provisions regarding libraries in the publication of session laws. The legislative council now publishes the session laws.

Section 18. 46-30-301. Typographical error. Reads "his" in the Uniform Criminal Extradition Act.

Section 19. Section 4, Ch. 520, L. 1981. Chapter 520, L. 1981, accomplished two purposes: It revised and clarified provisions on small business investment and raised the small business investment credit from 20\% to $30 \%$. The revision and clarification provisions should be permanent law -- only the increase in the small business investment credit should be temporary. If sec. 4, Ch. 520, L. 1981, was to operate on the total bill needless confusion would arise from the termination of the clarification provisions. The amendment would keep the termination provisions applicable to the percentage increase but would make the general revisions part of permanent law. This section, under the coordination instruction in section 20 , would not affect any 1983 amendments on the percentage rate. This section would become effective upon passage and approval and apply as of January 1,1983 to ensure that there is no gap in the effectiveness and applicability of the clarification provisions.

Section 20. Coordination instruction. See explanation for section 19.

Section 21. Effective date. See explanation for section 19.

Section 22. Repealer.
A. 2-15-1627. The board of massage therapists was terminated under the sunset provisions of 2-8-103 in 1981. This section, establishing the board, was not repealed during the 1981 session.
B. 7-13-2249. Proclamation of elections for county water and/or sewer districts. There are no longer proclamations of elections.
C. 15-31-542. Repealed by a later enactment. See explanation for section 12 .

SENATE BILL NO. 100
INTRODUCED BY GRAHAM
gY REqUEST OF THE CODE COMAISSIONER

A BILL FDR AN ACT ENTITLED: WAN ACT TO GENERALEY REVISE THE LAWS RELATING TO GOVERNAENT: AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, T-21-2114. 13-27-105, 15-17-305, 15-24-922, t5-34-4447 15-31-509, 15-31-526, 15-57-109, 19-6-203, 19-7-202, 22-1-218,

 AMENOMENFF AND REPEALITGG SECTIONS 2-15-1627, 7-13-2249, MND 15-31-542, MCA."
be it enacted by the legislature of the state of montana:
Section 1. Section $\mathbf{2 - 1 5 - 4 0 1 , ~ M C A , ~ i s ~ a m e n d e d ~ t o ~ r e a d : ~}$ -2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:
(1) attend at every session of the legislature for the purnose of receiving bllls and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;
(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with
date of commission and names of appointees and predecessors;
(3) affix the great seal, with his attestation to comsaissions, pardons, and other public instruments to which the official signature of the governor is required;
(4) record in proper books all conveyances made to the state and all articies of incorporation filed in his office;
(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;
(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;
(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;
(B) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him parned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annualiy by his affidavit entered therein;
(9) file in his office descriptions of seals in use by the different state officers;

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            (10) discharge the duties of member of the doard of
examiners and of the board of land commissioners and all
other duties required of him by lawi
            (11) report to the governor as prescribed in 2-7-102;
            (12) register marks as provided in Title 30. chapter
13, part 3:
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honges--of--names--received--pur suent--te---z7-3t-zes---for
pobtieation-in-the-kams-of-Montenof
    t#4+{l31 report annually to the legislative council all
watercourse name changes received pursuant to 85-2-134 for
publication in the Laws of Montana;
    t+5+1141 keep a register of all applications for pardon
or for commutation of any sentence, with a list of the
official signatures and recommendations in favor of each
application."
    Section 2. Section 7-2-2709, MCA, is amended to read:
    m7-2-2709. Special election on question of abandonment
and consolidotion. (1) (a) 甘pon-receipt-of-a-cer&ified-eopy
Hithi~_li_daxs_aftecrtcansmittal of the resolution provided
for in 7-2-2707, the--governor--sma+tv--within--i0--days
thereaftefr-~ig9ue--his--proetametion--ea+7ing---*---speetat
efection-in the_boards_of_county_comulssioners_of the county
in which the petition referred to in the resolution was
filed and in of each county designated in the resolution as
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a county to which any of the territory of the county, if abandoned and abolished, shot7 mauld be attached and made a partz__shalle__in_a_doint_meeting_and_by_igint_cesolutien_of sucb__boardsı_call_a__special__election__in__all__offected caunties•
(t) The oroetametion joint_resolution shall fix a day for holding the election in such counties, which shall be not less than 90 days or more than 120 days after the date of the governor*s-proetametion join土_cesolution calling the samere provided--thet-if If a general election will be neld in the counties not less than 90 days or more than 120 days after the date of sueh-proctemtiont-the-governoff-in-the
 ioint resolution shall direct that the question be submitted to the registered electors of the counties at the general election. The proctamotion joint_resolutian shall be filed in the office of the secretary of state, and copies thereof shall be transmitted by--the--qovernor to the election administrator of each of the counties in which the election is to be held.
(2) At the election there shall be subaitted:
(a) to the registerea electors of the county in which the petition was filed, the question of whether or not the county sinall be abandoned and abolished and its territory attached to and made a part of the county designated and
sa

-7-3-513. Type of election. Local government elections stall be conducted on a:
(1) partisan basis es-provided-tn-this-titte; or
(2) nonpartisan basis as-provided-in-this-t+tłe."

Section 7. Section 7-21-2114, MCA, is amended to read:
-T-21-2114. Investigation of possible licensing violations. It shall be the duty of the board of county commissioners or the state---exem+ner departmant_of adainistratign, when examining the treasurer"s report, to investigate if any persons are doing business in the county without a ilicense or if the amount of the jicense is sufficient. In either event the treasurer shall be officially notified."

Section 8. Section 13-27-105, MCA, is amended to read:
n13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states othermise, an initiative issuen__other_fhan__a_constitutional_anendaente approved by the people is effective on October 1 following approval. However, if the issue delegates rulemaking authorityp it is effective no sooner than October 1 following approval.
(2) Gntess--the--7eqistature--provides--otherwiter-a A constitutional amendment oroposed bx initiative_or by the legislature and approved by the people is effective on

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under part 2, as provided by law, no sale must be had under
the assessment authorized by 15-17-304 unless directed by
the board of_county comaisslogerso"
    Section 10. Section 15-24-922, MCA, is amended to
read:
    "15-24-922. Department to prescribe levy. The
department of revenue is hereby empowered and it is made its
duty to anmully prescribe the levy to be made against
livestock of all classes for the purpose above indicated,
and the vartogs--boords--heretn--nemed-shett-hove poard_of
lixestack_bas the right to recommend to said department the
amount of such levy.*
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        Section 11. Section 15-31-509, MCA, is amended to
read:
"15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in \(x-5-3 z-54 z\) 15=31=244, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within \(s\) years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last daye where, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:
(a) the taxpayer has by written agreement suspended the foderal statute of 1 imitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:
(i) only so long as the suspension of the federal statute of 1 imitation; or
(ii) until 1 year after any federal changes have become fingl or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the
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SB 100
latest in time; or
(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.
(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever periof expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended."

Section 12. Section 15-31-526, MCA, is amended to read:
*15-31-526. Action by attorney general. Action may be brought ot-any-time by the attorney general of the state at the instance of the department, in the name of the state, to
recover the amount of any taxes. penalties, and interest due under this chapter.*
section 13. section 15-57-109, MCA, is amended to read:

M15-57-109. Employment of staff -- disposal of license money. The department of revenue may employ such clerical and field assistance as necessary to carry out and administer the provisions of this chapter. All money collected under the provisions of this chapter shall be paid into the state treasury and credited to the general fund. Administration-of-干it+e-30v--enopter-- \(447-\)-part--zp--is--the responstbit+ty-of-the-department-of-eomereew"

Section 14. Section 19-t,-203, MCA. is alaended to readz
n19-6-203. Administracive expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund account.
(2) Before July 15 of each year, the board may compute the sdministrative costs for the immediately preceding fiscal year and transfer that amount from the fund accaunt to the public employees" retirement system account in the agency fund.m

Section 15. Section 19-7-202, MCA, is amended to read:
n19-7-202. Expenses of administration. (1) The expense
of the administration of this chaptery exclusive of the

imprisonment for a term exceeding 1 year．When so arrestede the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46－30－227．Thereafter this hls answer shall be heard as if he had been arrested on warranta＂
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1 SEH_SECIION Section 18. Repealer. Sections
2 2-15-1627, 1-13-2249, and 15-31-542, MCA, are repealed.
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[^0]:    a county to which any of the territory of the county, if abandoned and abolished. shatl yould be attached and made a parte_shalle in_a_joint meeting_and_by foint resolution of such_poardse call a_special election in_all affected counties.
    (b) The proetemotion jolnt resalution shall fix a day for holding the election in such counties, which shall be not less than 90 days or more than 120 days after the date of the governorns-proetamation joint resolution calling the sameve provided-thet-if Lf a general election will be held in the counties not less than 90 days or more than 120 days after the date of such-proetametiony-the-governory-in-the proctometiony the resolution provided for in $7-2-2707$, the Joint resolution shall direct that the question be subaitted to the registered electors of the counties at the general election. The prectametion joint resolution shall be filed in the office of the secretary of state, and copies thereof shall be transmilted by--the--govemor to the election administrator of each of the counties in which the election is to be hela.
    (2) At the election there shall be submitted:
    (a) to the registered electors of the county in which the petition was filed, the question of whether or not the county shall be abandoned and abolished and its territory attached to and made a part of the county designated and

