

SENATE BILL NO. 100

INTRODUCED BY GRAHAM

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 11, 1983	Introduced and referred to Committee on State Administration.
January 22, 1983	Committee recommend bill do pass as amended. Report adopted.
January 24, 1983	Bill printed and placed on members' desks.  Second reading, do pass.
January 25, 1983	Correctly engrossed.
January 27, 1983	Third reading, passed. Ayes, 47; Noes, 0. Transmitted to House.

IN THE HOUSE

January 28, 1983	Introduced and referred to Committee on State Administration.
February 19, 1983	Committee recommend bill be concurred in. Report adopted.
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

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 HB 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 \_\_\_, \_\_\_ P2d. \_\_\_, 39 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 M. 145, 350 P2d. 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 \_\_\_, \_\_\_ 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 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.

1 *Senate* BILL NO. *100*  
2 INTRODUCED BY *Shank*  
3 BY REQUEST OF THE CODE COMMISSIONER  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401,  
7 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-21-2114,  
8 13-27-105, 15-17-305, 15-24-922, 15-31-114, 15-31-509,  
9 15-31-526, 15-57-109, 19-6-203, 19-7-202, 22-1-218,  
10 46-30-301, MCA; AMENDING SECTION 4, CHAPTER 520, LAWS OF  
11 1981, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SUCH  
12 AMENDMENT; AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND  
13 15-31-542, MCA."  
14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
16 Section 1. Section 2-15-401, MCA, is amended to read:  
17 "2-15-401. Duties of secretary of state. In addition  
18 to the duties prescribed by the constitution, it is the duty  
19 of the secretary of state to:  
20 (1) attend at every session of the legislature for the  
21 purpose of receiving bills and resolutions and to perform  
22 such other duties as may be devolved upon him by resolution  
23 of the two houses or either of them;  
24 (2) keep a register of and attest the official acts of  
25 the governor, including all appointments made by him, with

1 date of commission and names of appointees and predecessors;  
2 (3) affix the great seal, with his attestation, to  
3 commissions, pardons, and other public instruments to which  
4 the official signature of the governor is required;  
5 (4) record in proper books all conveyances made to the  
6 state and all articles of incorporation filed in his office;  
7 (5) take and file in his office receipts for all books  
8 distributed by him and direct the county clerk of each  
9 county to do the same;  
10 (6) certify to the governor the names of those persons  
11 who have received at any election the highest number of  
12 votes for any office, the incumbent of which is commissioned  
13 by the governor;  
14 (7) furnish, on demand, to any person paying the fees  
15 therefor, a certified copy of all or any part of any law,  
16 record, or other instrument filed, deposited, or recorded in  
17 his office;  
18 (8) keep a fee book in which must be entered all fees,  
19 commissions, and compensation of whatever nature or kind by  
20 him earned, collected, or charged, with the date, name of  
21 payer, paid or unpaid, and the nature of the service in each  
22 case, which book must be verified annually by his affidavit  
23 entered therein;  
24 (9) file in his office descriptions of seals in use by  
25 the different state officers; INTRODUCED BILL

(10) discharge the duties of member of the board of examiners 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 Title 30, chapter 13, part 3;

~~(13) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the laws of Montana;~~

~~(14)~~ (13) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

~~(15)~~ (14) 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:

"7-2-2709. Special election on question of abandonment and consolidation. (1) (a) ~~Upon receipt of a certified copy within 14 days after transmittal of the resolution provided for in 7-2-2707, the governor shall, within 10 days thereafter, issue his proclamation calling a special election in the boards of county commissioners 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, ~~shall~~ would be attached and made a part, ~~shall, in a joint meeting and by joint resolution of such boards, call a special election in all affected counties.~~

(b) The ~~proclamation~~ 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 ~~proclamation~~ joint resolution calling the same, ~~provided that if~~ provided that if a general election will be held in the counties not less than 90 days or more than 120 days after the date of ~~such proclamation, the governor, in the proclamation, the resolution provided for in 7-2-2707, the joint resolution~~ shall direct that the question be submitted to the registered electors of the counties at the general election. The ~~proclamation~~ joint resolution shall be filed in the office of the secretary of state, and copies thereof shall be transmitted ~~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

1 named for the purpose in the petition; and

2 (b) to the registered electors of each county named

3 and designated in the resolution as a county to which a part

4 of the territory of the county proposed to be abandoned and

5 abolished shall be attached and made a part if the county

6 shall be so abandoned and abolished, the question of whether

7 or not the part of the territory of the county, if abandoned

8 and abolished, described in the resolution shall be attached

9 to and become a part of the county."

10 Section 3. Section 7-3-219, MCA, is amended to read:

11 "7-3-219. Type of election. Local government elections

12 shall be conducted on a:

13 (1) partisan basis ~~as provided in this title~~; or

14 (2) nonpartisan basis ~~as provided in this title~~."

15 Section 4. Section 7-3-314, MCA, is amended to read:

16 "7-3-314. Type of election. Local government elections

17 shall be conducted on a:

18 (1) partisan basis ~~as provided in this title~~; or

19 (2) nonpartisan basis ~~as provided in this title~~."

20 Section 5. Section 7-3-413, MCA, is amended to read:

21 "7-3-413. Type of election. Local government elections

22 shall be conducted on a:

23 (1) partisan basis ~~as provided in this title~~; or

24 (2) nonpartisan basis ~~as provided in this title~~."

25 Section 6. Section 7-3-513, MCA, is amended to read:

1 "7-3-513. Type of election. Local government elections

2 shall be conducted on a:

3 (1) partisan basis ~~as provided in this title~~; or

4 (2) nonpartisan basis ~~as provided in this title~~."

5 Section 7. Section 7-21-2114, MCA, is amended to read:

6 "7-21-2114. Investigation of possible licensing

7 violations. It shall be the duty of the board of county

8 commissioners or the ~~state~~ ~~examiner~~ department of

9 administration, when examining the treasurer's report, to

10 investigate if any persons are doing business in the county

11 without a license or if the amount of the license is

12 sufficient. In either event the treasurer shall be

13 officially notified."

14 Section 8. Section 13-27-105, MCA, is amended to read:

15 "13-27-105. Effective date of initiative and

16 referendum issues. (1) Unless the petition placing an

17 initiative issue on the ballot states otherwise, an

18 initiative issue, ~~other than a constitutional amendment~~,

19 approved by the people is effective on October 1 following

20 approval. However, if the issue delegates rulemaking

21 authority, it is effective no sooner than October 1

22 following approval.

23 (2) ~~Unless the legislature provides otherwise, a~~ A

24 constitutional amendment proposed by initiative or by the

25 legislature and approved by the people is effective on



1 October ~~July~~ 1 following approval.

2 (3) Unless specifically provided by the legislature in  
3 an act referred by it to the people or until suspended by a  
4 petition signed by at least 15% of the qualified electors in  
5 a majority of the legislative representative districts, an  
6 act referred to the people is in effect as provided by law  
7 until it is approved or rejected at the election. An act  
8 that is rejected is repealed effective the date the result  
9 of the canvass is filed by the secretary of state under  
10 13-27-503. An act referred to the people that was in effect  
11 at the time of the election and is approved by the people  
12 remains in effect. An act that was suspended by a petition  
13 and is approved by the people is effective the date the  
14 result of the canvass is filed by the secretary of state  
15 under 13-27-503. An act referred by the legislature that  
16 contains an effective date following the election becomes  
17 effective on that date if approved by the people. An act  
18 that provides no effective date and whose substantive  
19 provisions were delayed by the legislature pending approval  
20 at an election and that is approved is effective October 1  
21 following the election."

22 Section 9. Section 15-17-305, MCA, is amended to read:

23 "15-17-305. No sale unless directed by county  
24 commissioners. In case an assessment is made under 15-17-304  
25 and the lands are not redeemed from a previous sale had

1 under part 2, as provided by law, no sale must be had under  
2 the assessment authorized by 15-17-304 unless directed by  
3 the board of county commissioners."

4 Section 10. Section 15-24-922, MCA, is amended to  
5 read:

6 "15-24-922. Department to prescribe levy. The  
7 department of revenue is hereby empowered and it is made its  
8 duty to annually prescribe the levy to be made against  
9 livestock of all classes for the purpose above indicated,  
10 and the ~~various--boards--herein--named--shall--have~~ board of  
11 livestock has the right to recommend to said department the  
12 amount of such levy."

13 Section 11. Section 15-31-114, MCA, is amended to  
14 read:

15 "15-31-114. Deductions allowed in computing income. In  
16 computing the net income, the following deductions shall be  
17 allowed from the gross income received by such corporation  
18 within the year from all sources:

19 (1) All the ordinary and necessary expenses paid or  
20 incurred during the taxable year in the maintenance and  
21 operation of its business and properties, including  
22 reasonable allowance for salaries for personal services  
23 actually rendered, subject to the limitation hereinafter  
24 contained, rentals or other payments required to be made as  
25 a condition to the continued use or possession of property

1 to which the corporation has not taken or is not taking  
2 title or in which it has no equity. No deduction shall be  
3 allowed for salaries paid upon which the recipient thereof  
4 has not paid Montana state income tax; provided, however,  
5 that where domestic corporations are taxed on income derived  
6 from without the state, salaries of officers paid in  
7 connection with securing such income shall be deductible.

8 (2) (a) All losses actually sustained and charged off  
9 within the year and not compensated by insurance or  
10 otherwise, including a reasonable allowance for the wear and  
11 tear and obsolescence of property used in the trade or  
12 business, such allowance to be determined according to the  
13 provisions of section 167 of the Internal Revenue Code in  
14 effect with respect to the taxable year. All elections for  
15 depreciation shall be the same as the elections made for  
16 federal income tax purposes. No deduction shall be allowed  
17 for any amount paid out for any buildings, permanent  
18 improvements, or betterments made to increase the value of  
19 any property or estate, and no deduction shall be made for  
20 any amount of expense of restoring property or making good  
21 the exhaustion thereof for which an allowance is or has been  
22 made.

23 (b) (i) There shall be allowed as a deduction for the  
24 taxable period a net operating loss deduction determined  
25 according to the provisions of this subsection. The net

1 operating loss deduction is the aggregate of net operating  
2 loss carryovers to such taxable period plus the net  
3 operating loss carrybacks to such taxable period. The term  
4 "net operating loss" means the excess of the deductions  
5 allowed by this section, 15-31-114, over the gross income,  
6 with the modifications specified in (ii) of this subsection.  
7 If for any taxable period beginning after December 31, 1970,  
8 a net operating loss is sustained, such loss shall be a net  
9 operating loss carryback to each of the three taxable  
10 periods preceding the taxable period of such loss and shall  
11 be a net operating loss carryover to each of the five  
12 taxable periods following the taxable period of such loss. A  
13 net operating loss for any taxable period ending after  
14 December 31, 1975, in addition to being a net operating loss  
15 carryback to each of the three preceding taxable periods,  
16 shall be a net operating loss carryover to each of the seven  
17 taxable periods following the taxable period of such loss.  
18 The portion of such loss which shall be carried to each of  
19 the other taxable years shall be the excess, if any, of the  
20 amount of such loss over the sum of the net income for each  
21 of the prior taxable periods to which such loss was carried.  
22 For purposes of the preceding sentence, the net income for  
23 such prior taxable period shall be computed with the  
24 modifications specified in (ii)(B) of this subsection and by  
25 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.

(ii) 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.

~~(C) Any net operating loss carried over to any taxable years beginning after December 31, 1970, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.~~

(iii) 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 sustained 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 consolidation.

(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, oil 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 capitalizing or expensing exploration and development costs and intangible drilling 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, maintenance, or improvement of property or for the conduct of business unless 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 this 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 imposed by any county, school district, or municipality of this state.

(6) Light vehicle license fees, 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 commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection."

Section 12. 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 ~~15-31-542~~ 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 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

1 latest in time; or

2 (b) a taxpayer has failed to file a report of changes  
3 in federal taxable income or an amended return as required  
4 by 15-31-506 until 5 years after the federal changes become  
5 final or the amended federal return was filed, whichever the  
6 case may be.

7 (2) No refund or credit shall be allowed or paid with  
8 respect to the year for which a return is filed after 5  
9 years from the last day prescribed for filing the return or  
10 after 1 year from the date of the overpayment, whichever  
11 period expires the later, unless before the expiration of  
12 such period the taxpayer files a claim therefor or the  
13 department of revenue has determined the existence of the  
14 overpayment and has approved the refund or credit thereof.  
15 If the taxpayer has agreed in writing under the provisions  
16 of subsection (1) of this section to extend the time within  
17 which the department may propose an additional assessment,  
18 the period within which a claim for refund or credit may be  
19 filed or a credit or refund allowed in the event no claim is  
20 filed shall automatically be so extended."

21 Section 13. Section 15-31-526, MCA, is amended to  
22 read:

23 "15-31-526. Action by attorney general. Action may be  
24 brought ~~at any time~~ by the attorney general of the state at  
25 the instance of the department, in the name of the state, to

1 recover the amount of any taxes, penalties, and interest due  
2 under this chapter."

3 Section 14. Section 15-57-109, MCA, is amended to  
4 read:

5 "15-57-109. Employment of staff -- disposal of license  
6 money. The department of revenue may employ such clerical  
7 and field assistance as necessary to carry out and  
8 administer the provisions of this chapter. All money  
9 collected under the provisions of this chapter shall be paid  
10 into the state treasury and credited to the general fund.  
11 ~~Administration--of--title--38,--chapter--14,--part-2,--is--the~~  
12 ~~responsibility--of--the--department--of--commerce."~~

13 Section 15. Section 19-6-203, MCA, is amended to read:

14 "19-6-203. Administrative expenses. (1) The expense of  
15 the administration of this chapter, exclusive of the payment  
16 of retirement allowances and other benefits, may be paid  
17 from the fund account.

18 (2) Before July 15 of each year, the board may compute  
19 the administrative costs for the immediately preceding  
20 fiscal year and transfer that amount from the fund account  
21 to the public employees' retirement system account in the  
22 agency fund."

23 Section 16. Section 19-7-202, MCA, is amended to read:

24 "19-7-202. Expenses of administration. (1) The expense  
25 of the administration of this chapter, exclusive of the

1 payment of retirement allowances and other benefits, may be  
2 paid from the fund account.

3 (2) Before July 15 of each year, the board may compute  
4 the administrative costs for the immediately preceding  
5 fiscal year and transfer that amount from the fund account  
6 to the public employees' retirement system account in the  
7 agency fund."

8 Section 17. Section 22-1-218, MCA, is amended to read:

9 "22-1-218. Exemptions. This part does not apply to  
10 officers of or affect the duties concerning publications  
11 distributed by:

12 (1) the state law library;

13 ~~(2) the secretary of state in connection with his~~  
14 ~~duties under 2-15-401(13);~~

15 ~~(3) the code commissioner in connection with his~~  
16 ~~duties under Title 1, chapter 11, as amended; and~~

17 ~~(4) the legislative council in connection with its~~  
18 ~~duties under 5-11-203, as amended."~~

19 Section 18. Section 46-30-301, MCA, is amended to  
20 read:

21 "46-30-301. Arrest of accused without warrant. The  
22 arrest of a person may be lawfully made also by any peace  
23 officer or a private person without a warrant upon  
24 reasonable information that the accused stands charged in  
25 the courts of a state with a crime punishable by death or

1 imprisonment for a term exceeding 1 year. When so arrested,  
2 the accused must be taken before a judge or magistrate with  
3 all practicable speed and complaint must be made against him  
4 under oath setting forth the ground for the arrest as in  
5 46-30-227. Thereafter ~~this~~ his answer shall be heard as if  
6 he had been arrested on a warrant."

7 Section 19. Section 4, Chapter 520, Laws of 1981, is  
8 amended to read:

9 "Section 4. Applicability. ~~This~~ The increase to 30%  
10 for the small business investment credit in 15-30-162(2)(a)  
11 and 15-31-123(4)(a) in this act is applicable only to  
12 taxable years beginning after December 31, 1980, and before  
13 January 1, 1983."

14 NEW SECTION. Section 20. Coordination instruction. If  
15 any act passed by the 48th legislature conflicts with the  
16 provisions of section 19 of this act by amendment of  
17 sections 15-30-162(2)(a), 15-31-123(4)(a), MCA, or section  
18 4, chapter 520, Laws of 1981, the provisions of the other  
19 act shall prevail over section 19 of this act and any  
20 amendment or amendatory effect on those sections by section  
21 19 of this act is void and of no effect to the extent of any  
22 conflict.

23 NEW SECTION. Section 21. Effective date. Sections 19  
24 and 20 are effective on passage and approval and apply as of  
25 January 1, 1983.

- 1        NEW SECTION. Section 22. Repealer.        Sections
- 2        2-15-1627, 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 HB 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 \_\_\_, \_\_\_ P2d. \_\_\_, 39 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 M. 145, 350 P2d. 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 \_\_\_, \_\_\_ 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 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.

Approved by Committee  
on State Administration

SENATE BILL NO. 100

INTRODUCED BY GRAHAM

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "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, 15-31-526, 15-57-109, 19-6-203, 19-7-202, 22-1-218, 46-30-301, MCA; ~~AMENDING SECTION 4, CHAPTER 528, 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."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 constitution, 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 him, with

date of commission and names of appointees and predecessors;  
(3) affix the great seal, with his attestation, 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, record, 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;

(10) discharge the duties of member of the board of examiners 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 Title 30, chapter 13, part 3;

~~(13) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;~~

~~(14)~~ (13) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

~~(15)~~ (14) 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:

"7-2-2709. Special election on question of abandonment and consolidation. (1) (a) ~~Upon receipt of a certified copy within 14 days after transmittal of the resolution provided for in 7-2-2707, the governor shall, within 10 days thereafter, issue his proclamation calling a special election in the boards of county commissioners 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, shall ~~would~~ be attached and made a part, ~~shall, in a joint meeting and by joint resolution of such boards, call a special election in all affected counties.~~

(b) The ~~proclamation 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 proclamation joint resolution~~ calling the same, ~~provided that if~~ If a general election will be held in the counties not less than 90 days or more than 120 days after the date of such ~~proclamation the governor in the proclamation, the resolution provided for in 7-2-2707, the joint resolution~~ shall direct that the question be submitted to the registered electors of the counties at the general election. The ~~proclamation joint resolution~~ shall be filed in the office of the secretary of state, and copies thereof shall be transmitted 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

1 named for the purpose in the petition; and  
 2 (b) to the registered electors of each county named  
 3 and designated in the resolution as a county to which a part  
 4 of the territory of the county proposed to be abandoned and  
 5 abolished shall be attached and made a part if the county  
 6 shall be so abandoned and abolished, the question of whether  
 7 or not the part of the territory of the county, if abandoned  
 8 and abolished, described in the resolution shall be attached  
 9 to and become a part of the county."

10 Section 3. Section 7-3-219, MCA, is amended to read:

11 "7-3-219. Type of election. Local government elections  
 12 shall be conducted on a:

13 (1) partisan basis ~~as provided in this title~~; or

14 (2) nonpartisan basis ~~as provided in this title~~."

15 Section 4. Section 7-3-314, MCA, is amended to read:

16 "7-3-314. Type of election. Local government elections  
 17 shall be conducted on a:

18 (1) partisan basis ~~as provided in this title~~; or

19 (2) nonpartisan basis ~~as provided in this title~~."

20 Section 5. Section 7-3-413, MCA, is amended to read:

21 "7-3-413. Type of election. Local government elections  
 22 shall be conducted on a:

23 (1) partisan basis ~~as provided in this title~~; or

24 (2) nonpartisan basis ~~as provided in this title~~."

25 Section 6. Section 7-3-513, MCA, is amended to read:

1 "7-3-513. Type of election. Local government elections  
 2 shall be conducted on a:

3 (1) partisan basis ~~as provided in this title~~; or

4 (2) nonpartisan basis ~~as provided in this title~~."

5 Section 7. Section 7-21-2114, MCA, is amended to read:

6 "7-21-2114. Investigation of possible licensing  
 7 violations. It shall be the duty of the board of county  
 8 commissioners or the ~~state~~ ~~examiner~~ department of  
 9 administration, when examining the treasurer's report, to  
 10 investigate if any persons are doing business in the county  
 11 without a license or if the amount of the license is  
 12 sufficient. In either event the treasurer shall be  
 13 officially notified."

14 Section 8. Section 13-27-105, MCA, is amended to read:

15 "13-27-105. Effective date of initiative and  
 16 referendum issues. (1) Unless the petition placing an  
 17 initiative issue on the ballot states otherwise, an  
 18 initiative issue, other than a constitutional amendment,  
 19 approved by the people is effective on October 1 following  
 20 approval. However, if the issue delegates rulemaking  
 21 authority, it is effective no sooner than October 1  
 22 following approval.

23 (2) ~~Unless the legislature provides otherwise, a~~  
 24 constitutional amendment proposed by initiative or by the  
 25 legislature and approved by the people is effective on

1 October July 1 following approval.

2 (3) Unless specifically provided by the legislature in  
3 an act referred by it to the people or until suspended by a  
4 petition signed by at least 15% of the qualified electors in  
5 a majority of the legislative representative districts, an  
6 act referred to the people is in effect as provided by law  
7 until it is approved or rejected at the election. An act  
8 that is rejected is repealed effective the date the result  
9 of the canvass is filed by the secretary of state under  
10 13-27-503. An act referred to the people that was in effect  
11 at the time of the election and is approved by the people  
12 remains in effect. An act that was suspended by a petition  
13 and is approved by the people is effective the date the  
14 result of the canvass is filed by the secretary of state  
15 under 13-27-503. An act referred by the legislature that  
16 contains an effective date following the election becomes  
17 effective on that date if approved by the people. An act  
18 that provides no effective date and whose substantive  
19 provisions were delayed by the legislature pending approval  
20 at an election and that is approved is effective October 1  
21 following the election."

22 Section 9. Section 15-17-305, MCA, is amended to read:

23 "15-17-305. No sale unless directed by county  
24 commissioners. In case an assessment is made under 15-17-304  
25 and the lands are not redeemed from a previous sale had

1 under part 2, as provided by law, no sale must be had under  
2 the assessment authorized by 15-17-304 unless directed by  
3 the board of county commissioners."

4 Section 10. Section 15-24-922, MCA, is amended to  
5 read:

6 "15-24-922. Department to prescribe levy. The  
7 department of revenue is hereby empowered and it is made its  
8 duty to annually prescribe the levy to be made against  
9 livestock of all classes for the purpose above indicated,  
10 and the various--boards--herein--named--shall--have--power--of  
11 livestock has the right to recommend to said department the  
12 amount of such levy."

13 Section--11--Section--15-31-114--MCA--is--amended--to  
14 read:

15 "15-31-114--Deductions--allowed--in--computing--income--  
16 in--computing--the--net--income--the--following--deductions--shall  
17 be--allowed--from--the--gross--income--received--by--such  
18 corporation--within--the--year--from--all--sources--

19 (1)--All--the--ordinary--and--necessary--expenses--paid--or  
20 incurred--during--the--taxable--year--in--the--maintenance--and  
21 operation--of--its--business--and--properties--including  
22 reasonable--allowance--for--salaries--for--personal--services  
23 actually--rendered--subject--to--the--limitation--hereinafter  
24 contained--rentals--or--other--payments--required--to--be--made--as  
25 a--condition--to--the--continued--use--or--possession--of--property

1 to which the corporation has not taken or is not taking  
 2 title or in which it has no equity. No deduction shall be  
 3 allowed for salaries paid upon which the recipient thereof  
 4 has not paid Montana state income tax, provided, however,  
 5 that where domestic corporations are taxed on income derived  
 6 from without the state, salaries of officers paid in  
 7 connection with securing such income shall be deductible.  
 8 (2) (a) All losses actually sustained and charged off  
 9 within the year and not compensated by insurance or  
 10 otherwise, including a reasonable allowance for the wear and  
 11 tear and obsolescence of property used in the trade or  
 12 business, such allowance to be determined according to the  
 13 provisions of section 167 of the Internal Revenue Code in  
 14 effect with respect to the taxable year. All elections for  
 15 depreciation shall be the same as the elections made for  
 16 federal income tax purposes. No deduction shall be allowed  
 17 for any amount paid out for any buildings, permanent  
 18 improvements or betterments made to increase the value of  
 19 any property or estate, and no deduction shall be made for  
 20 any amount of expense of restoring property or making good  
 21 the exhaustion thereof for which an allowance is or has been  
 22 made.  
 23 (b) (i) There shall be allowed as a deduction for the  
 24 taxable period a net operating loss deduction determined  
 25 according to the provisions of this subsection. The net

1 operating loss deduction is the aggregate of net operating  
 2 loss carryovers to such taxable period plus the net  
 3 operating loss carrybacks to such taxable period. The term  
 4 "net operating loss" means the excess of the deductions  
 5 allowed by this section, 15-31-114, over the gross income,  
 6 with the modifications specified in (ii) of this subsection.  
 7 If for any taxable period beginning after December 31, 1970,  
 8 a net operating loss is sustained, such loss shall be a net  
 9 operating loss carryback to each of the three taxable  
 10 periods preceding the taxable period of such loss and shall  
 11 be a net operating loss carryover to each of the five  
 12 taxable periods following the taxable period of such loss. A  
 13 net operating loss for any taxable period ending after  
 14 December 31, 1975, in addition to being a net operating loss  
 15 carryback to each of the three preceding taxable periods,  
 16 shall be a net operating loss carryover to each of the seven  
 17 taxable periods following the taxable period of such loss.  
 18 The portion of such loss which shall be carried to each of  
 19 the other taxable years shall be the excess, if any, of the  
 20 amount of such loss over the sum of the net income for each  
 21 of the prior taxable periods to which such loss was carried.  
 22 For purposes of the preceding sentence, the net income for  
 23 such prior taxable period shall be computed with the  
 24 modifications specified in (ii) (b) of this subsection and by  
 25 determining the amount of the net operating loss deduction

1 without regard to the net operating loss for the loss period  
 2 or any taxable period thereafter; and the net income so  
 3 computed shall not be considered to be less than zero.

4 (ii) The modifications referred to in (i) of this  
 5 subsection shall be as follows:

6 (A) No net operating loss deduction shall be allowed.

7 (B) The deduction for depletion shall not exceed the  
 8 amount which would be allowable if computed under the cost  
 9 methods.

10 (C) Any net operating loss carried over to any taxable  
 11 years beginning after December 31, 1978, must be calculated  
 12 under the provisions of this section effective for the  
 13 taxable year for which the return claiming the net operating  
 14 loss carryover is filed.

15 (iii) A net operating loss deduction shall be allowed  
 16 only with regard to losses attributable to the business  
 17 carried on within the state of Montana.

18 (iv) In the case of a merger of corporations, the  
 19 surviving corporation shall not be allowed a net operating  
 20 loss deduction for net operating losses sustained by the  
 21 merged corporations prior to the date of mergers. In the case  
 22 of a consolidation of corporations, the new corporate entity  
 23 shall not be allowed a deduction for net operating losses  
 24 sustained by the consolidated corporations prior to the date  
 25 of consolidations.

1 (v) Notwithstanding the provisions of 15-31-531,  
 2 interest shall not be paid with respect to a refund of tax  
 3 resulting from a net operating loss carryback or carryover.

4 (vi) The net operating loss deduction shall not be  
 5 allowed with respect to taxable periods which ended on or  
 6 before December 31, 1978, but shall be allowed only with  
 7 respect to taxable periods beginning on or after January 1,  
 8 1979.

9 (3) In the case of mines, other natural deposits, oil  
 10 and gas wells, and timber, a reasonable allowance for  
 11 depletion and for depreciation of improvements, such  
 12 reasonable allowance to be determined according to the  
 13 provisions of the Internal Revenue Code in effect for the  
 14 taxable years. All elections made under the Internal Revenue  
 15 Code with respect to capitalizing or expensing exploration  
 16 and development costs and intangible drilling expenses for  
 17 corporation license tax purposes shall be the same as the  
 18 elections made for federal income tax purposes.

19 (4) The amount of interest paid within the year on its  
 20 indebtedness incurred in the operation of the business from  
 21 which its income is derived, but no interest shall be  
 22 allowed as a deduction if paid on an indebtedness created  
 23 for the purchase, maintenance or improvement of property or  
 24 for the conduct of business, unless the income from such  
 25 property or business would be taxable under this part.



1       ~~{5}--{a}--taxes---paid---within---the---year---except---the~~  
 2       ~~following:~~  
 3       ~~{i}--taxes-imposed-by-this-part:~~  
 4       ~~{ii}--taxes-assessed-against-local-benefits--of--a--kind~~  
 5       ~~tending-to-increase-the-value-of-the-property-assessed;~~  
 6       ~~{iii}--taxes--on--or--according--to--or--measured-by-net~~  
 7       ~~income-or-profits-imposed-by-authority-of-the-government--of~~  
 8       ~~the-United-States;~~  
 9       ~~{iv}--taxes--imposed--by-any-other-state-or-country-upon~~  
 10       ~~or-measured-by-net-income-or-profits;~~  
 11       ~~{b}--taxes--deductible--under--this--part---shall---be~~  
 12       ~~construed--to--include--taxes--imposed-by-any-county, school~~  
 13       ~~district, or municipality of this state;~~  
 14       ~~{6}--light-vehicle--license--fees--as---provided---by~~  
 15       ~~61-3-532, paid-within-the-year;~~  
 16       ~~{7}--that--portion--of--an--energy-related--investment~~  
 17       ~~allowed-as-a-deduction-under-15-32-103;~~  
 18       ~~{8}--{a}---except--as---provided---in---subsection---{b}v~~  
 19       ~~charitable--contributions---and---gifts--that--qualify--for~~  
 20       ~~deduction-under-section-170-of-the-Internal-Revenue-Code--as~~  
 21       ~~amended;~~  
 22       ~~{b}--The-public-service-commission-shall-not--allow--in~~  
 23       ~~the--rate--base--of-a-regulated-corporation-the-inclusion-of~~  
 24       ~~contributions-made-under-this-subsection."~~  
 25       Section 11. Section 15-31-509, MCA, is amended to

1       read:  
 2       "15-31-509. Periods of limitation. (1) Except as  
 3       otherwise provided in this section and in ~~15-31-542~~  
 4       ~~15-31-544~~, no deficiency shall be assessed or collected with  
 5       respect to the year for which a return is filed unless the  
 6       notice of additional tax proposed to be assessed is mailed  
 7       within 5 years from the date the return was filed. For the  
 8       purposes of this section, a return filed before the last day  
 9       prescribed for filing shall be considered as filed on such  
 10       last day. Where, before the expiration of the period  
 11       prescribed for assessment of the tax, the taxpayer consents  
 12       in writing to an assessment after the time, the tax may be  
 13       assessed at any time prior to the expiration of the period  
 14       agreed upon. The limitations prescribed for giving notice of  
 15       a proposed assessment of additional tax shall not apply  
 16       when:  
 17       (a) the taxpayer has by written agreement suspended  
 18       the federal statute of limitations for collection of federal  
 19       tax, provided the suspension of the limitation set forth in  
 20       this section shall last:  
 21       (i) only so long as the suspension of the federal  
 22       statute of limitation; or  
 23       (ii) until 1 year after any federal changes have become  
 24       final or any amended federal return is filed as a result of  
 25       such suspension of the federal statute, whichever is the

1 latest in time; or

2 (b) a taxpayer has failed to file a report of changes  
3 in federal taxable income or an amended return as required  
4 by 15-31-506 until 5 years after the federal changes become  
5 final or the amended federal return was filed, whichever the  
6 case may be.

7 (2) No refund or credit shall be allowed or paid with  
8 respect to the year for which a return is filed after 5  
9 years from the last day prescribed for filing the return or  
10 after 1 year from the date of the overpayment, whichever  
11 period expires the later, unless before the expiration of  
12 such period the taxpayer files a claim therefor or the  
13 department of revenue has determined the existence of the  
14 overpayment and has approved the refund or credit thereof.  
15 If the taxpayer has agreed in writing under the provisions  
16 of subsection (1) of this section to extend the time within  
17 which the department may propose an additional assessment,  
18 the period within which a claim for refund or credit may be  
19 filed or a credit or refund allowed in the event no claim is  
20 filed shall automatically be so extended."

21 Section 12. Section 15-31-526, MCA, is amended to  
22 read:

23 "15-31-526. Action by attorney general. Action may be  
24 brought at any time by the attorney general of the state at  
25 the instance of the department, in the name of the state, to

1 recover the amount of any taxes, penalties, and interest due  
2 under this chapter."

3 Section 13. Section 15-57-109, MCA, is amended to  
4 read:

5 "15-57-109. Employment of staff -- disposal of license  
6 money. The department of revenue may employ such clerical  
7 and field assistance as necessary to carry out and  
8 administer the provisions of this chapter. All money  
9 collected under the provisions of this chapter shall be paid  
10 into the state treasury and credited to the general fund.  
11 ~~Administration of title 30, chapter 14, part 2, is the~~  
12 ~~responsibility of the department of commerce."~~

13 Section 14. Section 19-6-203, MCA, is amended to read:

14 "19-6-203. Administrative expenses. (1) The expense of  
15 the administration of this chapter, exclusive of the payment  
16 of retirement allowances and other benefits, may be paid  
17 from the fund account.

18 (2) Before July 15 of each year, the board may compute  
19 the administrative costs for the immediately preceding  
20 fiscal year and transfer that amount from the fund account  
21 to the public employees' retirement system account in the  
22 agency fund."

23 Section 15. Section 19-7-202, MCA, is amended to read:

24 "19-7-202. Expenses of administration. (1) The expense  
25 of the administration of this chapter, exclusive of the

1 payment of retirement allowances and other benefits, may be  
2 paid from the fund account.

3 (2) Before July 15 of each year, the board may compute  
4 the administrative costs for the immediately preceding  
5 fiscal year and transfer that amount from the fund account  
6 to the public employees' retirement system account in the  
7 agency fund."

8 Section 16. Section 22-1-218, MCA, is amended to read:

9 "22-1-218. Exemptions. This part does not apply to  
10 officers of or affect the duties concerning publications  
11 distributed by:

12 (1) the state law library;

13 ~~(2) the secretary of state in connection with his~~  
14 ~~duties under 2-15-401(13);~~

15 ~~(3) the code commissioner in connection with his~~  
16 ~~duties under Title 1, chapter 11, as amended; and~~

17 ~~(4) the legislative council in connection with its~~  
18 ~~duties under 5-11-203, as amended."~~

19 Section 17. Section 46-30-301, MCA, is amended to  
20 read:

21 "46-30-301. Arrest of accused without warrant. The  
22 arrest of a person may be lawfully made also by any peace  
23 officer or a private person without a warrant upon  
24 reasonable information that the accused stands charged in  
25 the courts of a state with a crime punishable by death or

1 imprisonment for a term exceeding 1 year. When so arrested,  
2 the accused must be taken before a judge or magistrate with  
3 all practicable speed and complaint must be made against him  
4 under oath setting forth the ground for the arrest as in  
5 46-30-227. Thereafter this his answer shall be heard as if  
6 he had been arrested on a warrant."

7 Section 19--Section 4--Chapter 520--Laws of 1981--is  
8 amended to read:

9 "Section 4--Applicability--This ~~The increase to 30%~~  
10 ~~for the small business investment credit in 15-30-162(2)(a)~~  
11 ~~and 15-31-123(4)(a) in this act is applicable only to~~  
12 ~~taxable years beginning after December 31, 1980, and before~~  
13 ~~January 1, 1983."~~

14 NEW SECTION--Section 20--Coordination--instructions  
15 if any act passed by the 48th legislature conflicts with the  
16 provisions of section 19 of this act by amendment of  
17 sections 15-30-162(2)(a) 15-31-123(4)(a) MCA or section  
18 4--chapter 520--Laws of 1981--the provisions of the other  
19 act shall prevail over section 19 of this act and any  
20 amendment or amendatory effect on those sections by section  
21 19 of this act is void and of no effect to the extent of any  
22 conflict.

23 NEW SECTION--Section 21--Effective dates--Sections 19  
24 and 20 are effective on passage and approval and apply as of  
25 January 1, 1983.

- 1        **NEW SECTION.** Section 18. Repealer.        Sections
- 2        2-15-1627, 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 HB 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 \_\_\_, \_\_\_ P2d. \_\_\_, 39 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 M. 145, 350 P2d. 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 \_\_\_, \_\_\_ 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 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.

## 1 SENATE BILL NO. 100

2 INTRODUCED BY GRAHAM

3 BY REQUEST OF THE CODE COMMISSIONER

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401,  
7 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-21-2114,  
8 13-27-105, 15-17-305, 15-24-922, ~~15-31-124~~, 15-31-509,  
9 15-31-526, 15-57-109, 19-6-203, 19-7-202, 22-1-210,  
10 46-30-301, MCA; AMENDING SECTION 4, CHAPTER 520, LAWS OF  
11 1981, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR SUCH  
12 AMENDMENT; AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND  
13 15-31-542, MCA."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 2-15-401, MCA, is amended to read:

17 "2-15-401. Duties of secretary of state. In addition  
18 to the duties prescribed by the constitution, it is the duty  
19 of the secretary of state to:

20 (1) attend at every session of the legislature for the  
21 purpose of receiving bills and resolutions and to perform  
22 such other duties as may be devolved upon him by resolution  
23 of the two houses or either of them;

24 (2) keep a register of and attest the official acts of  
25 the governor, including all appointments made by him, with

1 date of commission and names of appointees and predecessors;

2 (3) affix the great seal, with his attestation, to  
3 commissions, pardons, and other public instruments to which  
4 the official signature of the governor is required;

5 (4) record in proper books all conveyances made to the  
6 state and all articles of incorporation filed in his office;

7 (5) take and file in his office receipts for all books  
8 distributed by him and direct the county clerk of each  
9 county to do the same;

10 (6) certify to the governor the names of those persons  
11 who have received at any election the highest number of  
12 votes for any office, the incumbent of which is commissioned  
13 by the governor;

14 (7) furnish, on demand, to any person paying the fees  
15 therefor, a certified copy of all or any part of any law,  
16 record, or other instrument filed, deposited, or recorded in  
17 his office;

18 (8) keep a fee book in which must be entered all fees,  
19 commissions, and compensation of whatever nature or kind by  
20 him earned, collected, or charged, with the date, name of  
21 payer, paid or unpaid, and the nature of the service in each  
22 case, which book must be verified annually by his affidavit  
23 entered therein;

24 (9) file in his office descriptions of seals in use by  
25 the different state officers;



(10) discharge the duties of member of the board of examiners 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 Title 30, chapter 13, part 3;

~~(13) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;~~

~~(14) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;~~

~~(15) 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:

"7-2-2709. Special election on question of abandonment and consolidation. (1) (a) ~~Upon receipt of a certified copy within 14 days after transmittal of the resolution provided for in 7-2-2707, the governor shall, within 10 days thereafter, issue his proclamation calling a special election in the boards of county commissioners 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, ~~shall~~ would be attached and made a part, shall, in a joint meeting and by joint resolution of such boards, call a special election in all affected counties.

(b) The ~~proclamation~~ 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 ~~proclamation~~ joint resolution calling the same. ~~provided that if~~ provided that if a general election will be held in the counties not less than 90 days or more than 120 days after the date of such ~~proclamation~~ joint resolution, ~~the governor, in the proclamation, the resolution provided for in 7-2-2707, the joint resolution shall direct that the question be submitted to the registered electors of the counties at the general election. The proclamation joint resolution shall be filed in the office of the secretary of state, and copies thereof shall be transmitted 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 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 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, MCA, is amended to read:

"7-3-219. Type of election. Local government elections shall be conducted on a:

- (1) partisan basis ~~as provided in this title~~; or
- (2) nonpartisan basis ~~as provided in this title~~."

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 ~~as provided in this title~~; or
- (2) nonpartisan basis ~~as provided in this title~~."

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 ~~as provided in this title~~; or
- (2) nonpartisan basis ~~as provided in this title~~."

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 ~~as provided in this title~~; or
- (2) nonpartisan basis ~~as provided in this title~~."

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 commissioners or the ~~state examiner~~ 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 issue, other than a constitutional amendment, 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) ~~Unless the legislature provides otherwise, a~~ constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on

1 October July 1 following approval.

2 (3) Unless specifically provided by the legislature in  
3 an act referred by it to the people or until suspended by a  
4 petition signed by at least 15% of the qualified electors in  
5 a majority of the legislative representative districts, an  
6 act referred to the people is in effect as provided by law  
7 until it is approved or rejected at the election. An act  
8 that is rejected is repealed effective the date the result  
9 of the canvass is filed by the secretary of state under  
10 13-27-503. An act referred to the people that was in effect  
11 at the time of the election and is approved by the people  
12 remains in effect. An act that was suspended by a petition  
13 and is approved by the people is effective the date the  
14 result of the canvass is filed by the secretary of state  
15 under 13-27-503. An act referred by the legislature that  
16 contains an effective date following the election becomes  
17 effective on that date if approved by the people. An act  
18 that provides no effective date and whose substantive  
19 provisions were delayed by the legislature pending approval  
20 at an election and that is approved is effective October 1  
21 following the election."

22 Section 9. Section 15-17-305, MCA, is amended to read:

23 "15-17-305. No sale unless directed by county  
24 commissioners. In case an assessment is made under 15-17-304  
25 and the lands are not redeemed from a previous sale had

1 under part 2, as provided by law, no sale must be had under  
2 the assessment authorized by 15-17-304 unless directed by  
3 the board of county commissioners."

4 Section 10. Section 15-24-922, MCA, is amended to  
5 read:

6 "15-24-922. Department to prescribe levy. The  
7 department of revenue is hereby empowered and it is made its  
8 duty to annually prescribe the levy to be made against  
9 livestock of all classes for the purpose above indicated,  
10 and the various--boards--herein--named--shall--have board of  
11 livestock has the right to recommend to said department the  
12 amount of such levy."

13 ~~Section 11. Section 15-31-114, MCA, is amended to~~  
14 ~~read:~~

15 ~~"15-31-114. Deductions allowed in computing income~~  
16 ~~in computing the net income, the following deductions shall~~  
17 ~~be allowed from the gross income received by such~~  
18 ~~corporation within the year from all sources:~~

19 ~~{1} All the ordinary and necessary expenses paid or~~  
20 ~~incurred during the taxable year in the maintenance and~~  
21 ~~operation of its business and properties, including~~  
22 ~~reasonable allowance for salaries for personal services~~  
23 ~~actually rendered, subject to the limitation hereinafter~~  
24 ~~contained, rents or other payments required to be made as~~  
25 ~~a condition to the continued use or possession of property~~

1 to which the corporation has not taken or is not taking  
 2 title or in which it has no equity. No deduction shall be  
 3 allowed for salaries paid upon which the recipient thereof  
 4 has not paid Montana state income tax provided however  
 5 that where domestic corporations are taxed on income derived  
 6 from without the state salaries of officers paid in  
 7 connection with securing such income shall be deductible  
 8 (2) (a) All losses actually sustained and charged off  
 9 within the year and not compensated by insurance or  
 10 otherwise including a reasonable allowance for the wear and  
 11 tear and obsolescence of property used in the trade or  
 12 business such allowance to be determined according to the  
 13 provisions of section 167 of the Internal Revenue Code in  
 14 effect with respect to the taxable year. All elections for  
 15 depreciation shall be the same as the elections made for  
 16 federal income tax purposes. No deduction shall be allowed  
 17 for any amount paid out for any buildings permanent  
 18 improvements or betterments made to increase the value of  
 19 any property or estate and no deduction shall be made for  
 20 any amount of expense of restoring property or making good  
 21 the exhaustion thereof for which an allowance is or has been  
 22 made  
 23 (b) (i) There shall be allowed as a deduction for the  
 24 taxable period a net operating loss deduction determined  
 25 according to the provisions of this subsection. The net

1 operating loss deduction is the aggregate of net operating  
 2 loss carryovers to such taxable period plus the net  
 3 operating loss carrybacks to such taxable period. The term  
 4 "net operating loss" means the excess of the deductions  
 5 allowed by this section 15-31-114 over the gross income  
 6 with the modifications specified in (ii) of this subsection  
 7 if for any taxable period beginning after December 31, 1978  
 8 a net operating loss is sustained such loss shall be a net  
 9 operating loss carryback to each of the three taxable  
 10 periods preceding the taxable period of such loss and shall  
 11 be a net operating loss carryover to each of the five  
 12 taxable periods following the taxable period of such loss. A  
 13 net operating loss for any taxable period ending after  
 14 December 31, 1975 in addition to being a net operating loss  
 15 carryback to each of the three preceding taxable periods  
 16 shall be a net operating loss carryover to each of the seven  
 17 taxable periods following the taxable period of such loss.  
 18 The portion of such loss which shall be carried to each of  
 19 the other taxable years shall be the excess if any of the  
 20 amount of such loss over the sum of the net income for each  
 21 of the prior taxable periods to which such loss was carried.  
 22 For purposes of the preceding sentence the net income for  
 23 such prior taxable period shall be computed with the  
 24 modifications specified in (ii) (b) of this subsection and by  
 25 determining the amount of the net operating loss deduction

1 without regard to the net operating loss for the loss period  
2 or any taxable period thereafter, and the net income so  
3 computed shall not be considered to be less than zero.

4 (iii) The modifications referred to in (i) of this  
5 subsection shall be as follows:

6 (A) No net operating loss deduction shall be allowed.

7 (B) The deduction for depletion shall not exceed the  
8 amount which would be allowable if computed under the cost  
9 methods.

10 (C) Any net operating loss carried over to any taxable  
11 years beginning after December 31, 1978, must be calculated  
12 under the provisions of this section effective for the  
13 taxable year for which the return claiming the net operating  
14 loss carryover is filed.

15 (iii) A net operating loss deduction shall be allowed  
16 only with regard to losses attributable to the business  
17 carried on within the state of Montana.

18 (iv) In the case of a merger of corporations, the  
19 surviving corporation shall not be allowed a net operating  
20 loss deduction for net operating losses sustained by the  
21 merged corporations prior to the date of merger. In the case  
22 of a consolidation of corporations, the new corporate entity  
23 shall not be allowed a deduction for net operating losses  
24 sustained by the consolidated corporations prior to the date  
25 of consolidation.

1 (v) Notwithstanding the provisions of 15-31-531,  
2 interest shall not be paid with respect to a refund of tax  
3 resulting from a net operating loss carryback or carryover.

4 (vi) The net operating loss deduction shall not be  
5 allowed with respect to taxable periods which ended on or  
6 before December 31, 1970, but shall be allowed only with  
7 respect to taxable periods beginning on or after January 1,  
8 1971.

9 (3) In the case of mines, other natural deposits, oil  
10 and gas wells, and timber, a reasonable allowance for  
11 depletion and for depreciation of improvements, such  
12 reasonable allowance to be determined according to the  
13 provisions of the Internal Revenue Code in effect for the  
14 taxable years. All elections made under the Internal Revenue  
15 Code with respect to capitalizing or expensing exploration  
16 and development costs and intangible drilling expenses for  
17 corporation license tax purposes shall be the same as the  
18 elections made for federal income tax purposes.

19 (4) The amount of interest paid within the year on its  
20 indebtedness incurred in the operation of the business from  
21 which its income is derived, but no interest shall be  
22 allowed as a deduction if paid on an indebtedness created  
23 for the purchase, maintenance or improvement of property or  
24 for the conduct of business, unless the income from such  
25 property or business would be taxable under this part.

1       ~~{5}--(a)--Taxes---paid---within---the---year---except---the~~  
2       ~~following:~~  
3       ~~{1}--Taxes-imposed-by-this-part:~~  
4       ~~{i}--Taxes-assessed-against-local-benefits--of-a-kind~~  
5       ~~tending-to-increase-the-value-of-the-property-assessed;~~  
6       ~~{ii}--Taxes-on--or--according--to--or--measured-by-net~~  
7       ~~income-or-profits-imposed-by-authority-of-the-government--of~~  
8       ~~the-United-States;~~  
9       ~~{iv}--Taxes--imposed--by-any-other-state-or-country-upon~~  
10       ~~or-measured-by-net-income-or-profits;~~  
11       ~~{b}--Taxes--deductible-under--this--part---shall---be~~  
12       ~~construed--to--include--taxes--imposed-by-any-county, school~~  
13       ~~district, or municipality of this state;~~  
14       ~~{6}--Light-vehicle-license-fees--as---provided---by~~  
15       ~~61-3-532, paid-within-the-year;~~  
16       ~~{7}--That--portion--of--an-energy-related--investment~~  
17       ~~allowed-as-a-deduction-under-15-32-103;~~  
18       ~~{8}--(a)--Except--as---provided---in---subsection---(b),~~  
19       ~~charitable--contributions--and--gifts--that--qualify--for~~  
20       ~~deduction-under-section-170-of-the-Internal-Revenue-Code--as~~  
21       ~~amended;~~  
22       ~~{b}--The-public-service-commission-shall-not--allow--in~~  
23       ~~the--rate--base--of-a-regulated-corporation--the-inclusion-of~~  
24       ~~contributions-made-under-this-subsection."~~  
25       Section 11. Section 15-31-509, MCA, is amended to

1       read:  
2       "15-31-509. Periods of limitation. (1) Except as  
3       otherwise provided in this section and in ~~15-31-542~~  
4       ~~15-31-544~~, no deficiency shall be assessed or collected with  
5       respect to the year for which a return is filed unless the  
6       notice of additional tax proposed to be assessed is mailed  
7       within 5 years from the date the return was filed. For the  
8       purposes of this section, a return filed before the last day  
9       prescribed for filing shall be considered as filed on such  
10       last day. Where, before the expiration of the period  
11       prescribed for assessment of the tax, the taxpayer consents  
12       in writing to an assessment after the time, the tax may be  
13       assessed at any time prior to the expiration of the period  
14       agreed upon. The limitations prescribed for giving notice of  
15       a proposed assessment of additional tax shall not apply  
16       when:  
17       (a) the taxpayer has by written agreement suspended  
18       the federal statute of limitations for collection of federal  
19       tax, provided the suspension of the limitation set forth in  
20       this section shall last:  
21       (i) only so long as the suspension of the federal  
22       statute of limitation; or  
23       (ii) until 1 year after any federal changes have become  
24       final or any amended federal return is filed as a result of  
25       such suspension of the federal statute, whichever is the

1 latest in time; or

2 (b) a taxpayer has failed to file a report of changes  
3 in federal taxable income or an amended return as required  
4 by 15-31-506 until 5 years after the federal changes become  
5 final or the amended federal return was filed, whichever the  
6 case may be.

7 (2) No refund or credit shall be allowed or paid with  
8 respect to the year for which a return is filed after 5  
9 years from the last day prescribed for filing the return or  
10 after 1 year from the date of the overpayment, whichever  
11 period expires the later, unless before the expiration of  
12 such period the taxpayer files a claim therefor or the  
13 department of revenue has determined the existence of the  
14 overpayment and has approved the refund or credit thereof.  
15 If the taxpayer has agreed in writing under the provisions  
16 of subsection (1) of this section to extend the time within  
17 which the department may propose an additional assessment,  
18 the period within which a claim for refund or credit may be  
19 filed or a credit or refund allowed in the event no claim is  
20 filed shall automatically be so extended."

21 Section 12. Section 15-31-526, MCA, is amended to  
22 read:

23 "15-31-526. Action by attorney general. Action may be  
24 brought at-any-time by the attorney general of the state at  
25 the instance of the department, in the name of the state, to

1 recover the amount of any taxes, penalties, and interest due  
2 under this chapter."

3 Section 13. Section 15-57-109, MCA, is amended to  
4 read:

5 "15-57-109. Employment of staff -- disposal of license  
6 money. The department of revenue may employ such clerical  
7 and field assistance as necessary to carry out and  
8 administer the provisions of this chapter. All money  
9 collected under the provisions of this chapter shall be paid  
10 into the state treasury and credited to the general fund.  
11 ~~Administration of title 38, chapter 14, part 2, is the~~  
12 ~~responsibility of the department of commerce."~~

13 Section 14. Section 19-6-203, MCA, is amended to read:

14 "19-6-203. Administrative expenses. (1) The expense of  
15 the administration of this chapter, exclusive of the payment  
16 of retirement allowances and other benefits, may be paid  
17 from the fund account."

18 (2) Before July 15 of each year, the board may compute  
19 the administrative costs for the immediately preceding  
20 fiscal year and transfer that amount from the fund account  
21 to the public employees' retirement system account in the  
22 agency fund."

23 Section 15. Section 19-7-202, MCA, is amended to read:

24 "19-7-202. Expenses of administration. (1) The expense  
25 of the administration of this chapter, exclusive of the

1 payment of retirement allowances and other benefits, may be  
2 paid from the fund account.

3 (2) Before July 15 of each year, the board may compute  
4 the administrative costs for the immediately preceding  
5 fiscal year and transfer that amount from the fund account  
6 to the public employees' retirement system account in the  
7 agency fund."

8 Section 16. Section 22-1-218, MCA, is amended to read:

9 "22-1-218. Exemptions. This part does not apply to  
10 officers of or affect the duties concerning publications  
11 distributed by:

12 (1) the state law library;

13 (2) the secretary of state in connection with his  
14 duties under 2-15-401(13);

15 (3) the code commissioner in connection with his  
16 duties under Title 1, chapter 11, as amended; and

17 (4) the legislative council in connection with its  
18 duties under 5-11-203, as amended."

19 Section 17. Section 46-30-301, MCA, is amended to  
20 read:

21 "46-30-301. Arrest of accused without warrant. The  
22 arrest of a person may be lawfully made also by any peace  
23 officer or a private person without a warrant upon  
24 reasonable information that the accused stands charged in  
25 the courts of a state with a crime punishable by death or

1 imprisonment for a term exceeding 1 year. When so arrested,  
2 the accused must be taken before a judge or magistrate with  
3 all practicable speed and complaint must be made against him  
4 under oath setting forth the ground for the arrest as in  
5 46-30-227. Thereafter this his answer shall be heard as if  
6 he had been arrested on a warrant."

7 Section 19. Section 47. Chapter 520, Laws of 1981, is  
8 amended to read:

9 "Section 47. Applicability. This increase to 39%  
10 for the small business investment credit in 15-30-162(2)(a)  
11 and 15-31-123(4)(a) in this act, is applicable only to  
12 taxable years beginning after December 31, 1980, and before  
13 January 1, 1983."

14 NEW SECTION. Section 20. Coordination. Instructions  
15 if any act passed by the 48th legislature conflicts with the  
16 provisions of section 19 of this act by amendment of  
17 sections 15-30-162(2)(a), 15-31-123(4)(a), MCA, or section  
18 47, chapter 520, Laws of 1981, the provisions of the other  
19 act shall prevail over section 19 of this act and any  
20 amendment or amendatory effect on those sections by section  
21 19 of this act is void and of no effect to the extent of any  
22 conflicts.

23 NEW SECTION. Section 21. Effective dates. Sections 19  
24 and 20 are effective on passage and approval and apply as of  
25 January 1, 1983.



- 1        **NEW\_SECTION.** Section 18. Repealer.        Sections
- 2        2-15-1627, 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 HB 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

*- Please attach To SB 100 -*

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 \_\_\_, \_\_\_ P2d. \_\_\_, 39 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 M. 145, 350 P2d. 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 \_\_\_, \_\_\_ 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 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

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "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, 15-31-526, 15-57-109, 19-6-203, 19-7-202, 22-1-218, 46-30-301, MCA; AMENDING ~~SECTION 47--CHAPTER--528--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."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 constitution, 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 him, with

date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, 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, record, 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;

(10) discharge the duties of member of the board of examiners 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 Title 30, chapter 13, part 3;

~~{13} report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the laws of Montana;~~

~~{14}{13}~~ report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

~~{15}{14}~~ 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:

"7-2-2709. Special election on question of abandonment and consolidation. (1) (a) ~~Upon receipt of a certified copy within 14 days after transmittal~~ of the resolution provided for in 7-2-2707, ~~the governor shall within 10 days thereafter, issue his proclamation calling a special election in the boards of county commissioners 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, ~~shall~~ would be attached and made a part, ~~shall, in a joint meeting and by joint resolution of such boards, call a special election in all affected counties.~~

(b) The ~~proclamation 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 proclamation joint resolution~~ calling the same, ~~provided that if~~ If a general election will be held in the counties not less than 90 days or more than 120 days after the date of such ~~proclamation the governor in the proclamation the resolution provided for in 7-2-2707, the joint resolution~~ shall direct that the question be submitted to the registered electors of the counties at the general election. The ~~proclamation joint resolution~~ shall be filed in the office of the secretary of state, and copies thereof shall be transmitted ~~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

1 named for the purpose in the petition; and  
 2 (b) to the registered electors of each county named  
 3 and designated in the resolution as a county to which a part  
 4 of the territory of the county proposed to be abandoned and  
 5 abolished shall be attached and made a part if the county  
 6 shall be so abandoned and abolished, the question of whether  
 7 or not the part of the territory of the county, if abandoned  
 8 and abolished, described in the resolution shall be attached  
 9 to and become a part of the county."

10 Section 3. Section 7-3-219, MCA, is amended to read:

11 "7-3-219. Type of election. Local government elections  
 12 shall be conducted on a:

- 13 (1) partisan basis ~~as provided in this title~~; or  
 14 (2) nonpartisan basis ~~as provided in this title~~."

15 Section 4. Section 7-3-314, MCA, is amended to read:

16 "7-3-314. Type of election. Local government elections  
 17 shall be conducted on a:

- 18 (1) partisan basis ~~as provided in this title~~; or  
 19 (2) nonpartisan basis ~~as provided in this title~~."

20 Section 5. Section 7-3-413, MCA, is amended to read:

21 "7-3-413. Type of election. Local government elections  
 22 shall be conducted on a:

- 23 (1) partisan basis ~~as provided in this title~~; or  
 24 (2) nonpartisan basis ~~as provided in this title~~."

25 Section 6. Section 7-3-513, MCA, is amended to read:

1 "7-3-513. Type of election. Local government elections  
 2 shall be conducted on a:

- 3 (1) partisan basis ~~as provided in this title~~; or  
 4 (2) nonpartisan basis ~~as provided in this title~~."

5 Section 7. Section 7-21-2114, MCA, is amended to read:

6 "7-21-2114. Investigation of possible licensing  
 7 violations. It shall be the duty of the board of county  
 8 commissioners or the ~~state--examiner~~ department of  
 9 administration, when examining the treasurer's report, to  
 10 investigate if any persons are doing business in the county  
 11 without a license or if the amount of the license is  
 12 sufficient. In either event the treasurer shall be  
 13 officially notified."

14 Section 8. Section 13-27-105, MCA, is amended to read:

15 "13-27-105. Effective date of initiative and  
 16 referendum issues. (1) Unless the petition placing an  
 17 initiative issue on the ballot states otherwise, an  
 18 initiative issue, other than a constitutional amendment,  
 19 approved by the people is effective on October 1 following  
 20 approval. However, if the issue delegates rulemaking  
 21 authority, it is effective no sooner than October 1  
 22 following approval.

23 (2) ~~Unless the legislature provides otherwise a~~  
 24 constitutional amendment proposed by initiative or by the  
 25 legislature and approved by the people is effective on

1 October July 1 following approval.

2 (3) Unless specifically provided by the legislature in  
3 an act referred by it to the people or until suspended by a  
4 petition signed by at least 15% of the qualified electors in  
5 a majority of the legislative representative districts, an  
6 act referred to the people is in effect as provided by law  
7 until it is approved or rejected at the election. An act  
8 that is rejected is repealed effective the date the result  
9 of the canvass is filed by the secretary of state under  
10 13-27-503. An act referred to the people that was in effect  
11 at the time of the election and is approved by the people  
12 remains in effect. An act that was suspended by a petition  
13 and is approved by the people is effective the date the  
14 result of the canvass is filed by the secretary of state  
15 under 13-27-503. An act referred by the legislature that  
16 contains an effective date following the election becomes  
17 effective on that date if approved by the people. An act  
18 that provides no effective date and whose substantive  
19 provisions were delayed by the legislature pending approval  
20 at an election and that is approved is effective October 1  
21 following the election."

22 Section 9. Section 15-17-305, MCA, is amended to read:

23 "15-17-305. No sale unless directed by county  
24 commissioners. In case an assessment is made under 15-17-304  
25 and the lands are not redeemed from a previous sale had

1 under part 2, as provided by law, no sale must be had under  
2 the assessment authorized by 15-17-304 unless directed by  
3 the board of county commissioners."

4 Section 10. Section 15-24-922, MCA, is amended to  
5 read:

6 "15-24-922. Department to prescribe levy. The  
7 department of revenue is hereby empowered and it is made its  
8 duty to annually prescribe the levy to be made against  
9 livestock of all classes for the purpose above indicated,  
10 and the various--boards--herein--named--shall--have--board--of  
11 livestock--has the right to recommend to said department the  
12 amount of such levy."

13 Section--11--Section--15-31-114--MCA--is--amended--to  
14 read:

15 "15-31-114--Deductions--allowed--in--computing--income--  
16 in--computing--the--net--income--the--following--deductions--shall  
17 be--allowed--from--the--gross--income--received--by--such  
18 corporation--within--the--year--from--all--sources--

19 (1)--All--the--ordinary--and--necessary--expenses--paid--or  
20 incurred--during--the--taxable--year--in--the--maintenance--and  
21 operation--of--its--business--and--properties--including  
22 reasonable--allowance--for--salaries--for--personal--services  
23 actually--rendered--subject--to--the--limitation--hereinafter  
24 contained--rents--or--other--payments--required--to--be--made--as  
25 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 recipient thereof has not paid Montana state income tax; provided, however, that where domestic 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 paid 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 exhaustion 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 determined 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 in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, 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 periods following the taxable period 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 income 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

1 without regard to the net operating loss for the loss period  
 2 or any taxable period thereafter, and the net income so  
 3 computed shall not be considered to be less than zero.

4 (ii) The modifications referred to in (i) of this  
 5 subsection shall be as follows:

6 (A) No net operating loss deduction shall be allowed.

7 (B) The deduction for depletion shall not exceed the  
 8 amount which would be allowable if computed under the cost  
 9 method.

10 (C) Any net operating loss carried over to any taxable  
 11 years beginning after December 31, 1978, must be calculated  
 12 under the provisions of this section effective for the  
 13 taxable year for which the return claiming the net operating  
 14 loss carryover is filed.

15 (iii) A net operating loss deduction shall be allowed  
 16 only with regard to losses attributable to the business  
 17 carried on within the state of Montana.

18 (iv) In the case of a merger of corporations, the  
 19 surviving corporation shall not be allowed a net operating  
 20 loss deduction for net operating losses sustained by the  
 21 merged corporations prior to the date of merger. In the case  
 22 of a consolidation of corporations, the new corporate entity  
 23 shall not be allowed a deduction for net operating losses  
 24 sustained by the consolidated corporations prior to the date  
 25 of consolidation.

1 (v) Notwithstanding the provisions of 15-31-531,  
 2 interest shall not be paid with respect to a refund of tax  
 3 resulting from a net operating loss carryback or carryover.

4 (vi) The net operating loss deduction shall not be  
 5 allowed with respect to taxable periods which ended on or  
 6 before December 31, 1978, but shall be allowed only with  
 7 respect to taxable periods beginning on or after January 1,  
 8 1979.

9 (3) In the case of mines, other natural deposits, oil  
 10 and gas wells, and timber, a reasonable allowance for  
 11 depletion and for depreciation of improvements, such  
 12 reasonable allowance to be determined according to the  
 13 provisions of the Internal Revenue Code in effect for the  
 14 taxable years. All elections made under the Internal Revenue  
 15 Code with respect to capitalizing or expensing exploration  
 16 and development costs and intangible drilling expenses for  
 17 corporation license tax purposes shall be the same as the  
 18 elections made for federal income tax purposes.

19 (4) The amount of interest paid within the year on its  
 20 indebtedness incurred in the operation of the business from  
 21 which its income is derived, but no interest shall be  
 22 allowed as a deduction if paid on an indebtedness created  
 23 for the purchase, maintenance, or improvement of property or  
 24 for the conduct of business, unless the income from such  
 25 property or business would be taxable under this part.

1        (5) ~~--(a) Taxes paid within the year except the~~  
 2        following:

3        (i) ~~--Taxes imposed by this part;~~

4        (ii) ~~--Taxes assessed against total benefits of a kind~~  
 5        ~~tending to increase the value of the property assessed;~~

6        (iii) ~~--Taxes on or according to or measured by net~~  
 7        ~~income or profits imposed by authority of the government of~~  
 8        ~~the United States;~~

9        (iv) ~~--Taxes imposed by any other state or country upon~~  
 10        ~~or measured by net income or profits;~~

11        (b) ~~--Taxes deductible under this part shall be~~  
 12        ~~construed to include taxes imposed by any county, school~~  
 13        ~~district, or municipality of this state;~~

14        (6) ~~--Eight vehicle license fees as provided by~~  
 15        ~~61-3-532, paid within the year;~~

16        (7) ~~--That portion of an energy-related investment~~  
 17        ~~allowed as a deduction under 15-32-103;~~

18        (8) ~~--(a) Except as provided in subsection (b),~~  
 19        ~~charitable contributions and gifts that qualify for~~  
 20        ~~deduction under section 170 of the Internal Revenue Code, as~~  
 21        ~~amended;~~

22        (b) ~~--The public service commission shall not allow in~~  
 23        ~~the rate base of a regulated corporation the inclusion of~~  
 24        ~~contributions made under this subsection;~~

25        Section 11. Section 15-31-509, MCA, is amended to

1        read:

2        "15-31-509. Periods of limitation. (1) Except as

3        otherwise provided in this section and in ~~15-31-542~~

4        ~~15-31-544~~, no deficiency shall be assessed or collected with

5        respect to the year for which a return is filed unless the

6        notice of additional tax proposed to be assessed is mailed

7        within 5 years from the date the return was filed. For the

8        purposes of this section, a return filed before the last day

9        prescribed for filing shall be considered as filed on such

10        last day. Where, before the expiration of the period

11        prescribed for assessment of the tax, the taxpayer consents

12        in writing to an assessment after the time, the tax may be

13        assessed at any time prior to the expiration of the period

14        agreed upon. The limitations prescribed for giving notice of

15        a proposed assessment of additional tax shall not apply

16        when:

17        (a) the taxpayer has by written agreement suspended

18        the federal statute of limitations for collection of federal

19        tax, provided the suspension of the limitation set forth in

20        this section shall last:

21        (i) only so long as the suspension of the federal

22        statute of limitation; or

23        (ii) until 1 year after any federal changes have become

24        final or any amended federal return is filed as a result of

25        such suspension of the federal statute, whichever is the

1 latest in time; or

2 (b) a taxpayer has failed to file a report of changes  
3 in federal taxable income or an amended return as required  
4 by 15-31-506 until 5 years after the federal changes become  
5 final or the amended federal return was filed, whichever the  
6 case may be.

7 (2) No refund or credit shall be allowed or paid with  
8 respect to the year for which a return is filed after 5  
9 years from the last day prescribed for filing the return or  
10 after 1 year from the date of the overpayment, whichever  
11 period expires the later, unless before the expiration of  
12 such period the taxpayer files a claim therefor or the  
13 department of revenue has determined the existence of the  
14 overpayment and has approved the refund or credit thereof.  
15 If the taxpayer has agreed in writing under the provisions  
16 of subsection (1) of this section to extend the time within  
17 which the department may propose an additional assessment,  
18 the period within which a claim for refund or credit may be  
19 filed or a credit or refund allowed in the event no claim is  
20 filed shall automatically be so extended."

21 Section 12. Section 15-31-526, MCA, is amended to  
22 read:

23 "15-31-526. Action by attorney general. Action may be  
24 brought at any time by the attorney general of the state at  
25 the instance of the department, in the name of the state, to

1 recover the amount of any taxes, penalties, and interest due  
2 under this chapter."

3 Section 13. Section 15-57-109, MCA, is amended to  
4 read:

5 "15-57-109. Employment of staff -- disposal of license  
6 money. The department of revenue may employ such clerical  
7 and field assistance as necessary to carry out and  
8 administer the provisions of this chapter. All money  
9 collected under the provisions of this chapter shall be paid  
10 into the state treasury and credited to the general fund.  
11 ~~Administration of Title 30, chapter 14, part 2, is the~~  
12 ~~responsibility of the department of commerce."~~

13 Section 14. Section 19-6-203, MCA, is amended to read:

14 "19-6-203. Administrative expenses. (1) The expense of  
15 the administration of this chapter, exclusive of the payment  
16 of retirement allowances and other benefits, may be paid  
17 from the fund account.

18 (2) Before July 15 of each year, the board may compute  
19 the administrative costs for the immediately preceding  
20 fiscal year and transfer that amount from the fund account  
21 to the public employees' retirement system account in the  
22 agency fund."

23 Section 15. Section 19-7-202, MCA, is amended to read:

24 "19-7-202. Expenses of administration. (1) The expense  
25 of the administration of this chapter, exclusive of the

1 payment of retirement allowances and other benefits, may be  
2 paid from the fund account.

3 (2) Before July 15 of each year, the board may compute  
4 the administrative costs for the immediately preceding  
5 fiscal year and transfer that amount from the fund account  
6 to the public employees' retirement system account in the  
7 agency fund."

8 Section 16. Section 22-1-218, MCA, is amended to read:

9 "22-1-218. Exemptions. This part does not apply to  
10 officers of or affect the duties concerning publications  
11 distributed by:

12 (1) the state law library;

13 {2}--the secretary of state--in connection with his  
14 duties under 2-15-401{13}†

15 {3}†(2) the code commissioner in connection with his  
16 duties under Title 1, chapter 11, as amended; and

17 {4}†(3) the legislative council in connection with its  
18 duties under 5-11-203, as amended."

19 Section 17. Section 46-30-301, MCA, is amended to  
20 read:

21 "46-30-301. Arrest of accused without warrant. The  
22 arrest of a person may be lawfully made also by any peace  
23 officer or a private person without a warrant upon  
24 reasonable information that the accused stands charged in  
25 the courts of a state with a crime punishable by death or

1 imprisonment for a term exceeding 1 year. When so arrested,  
2 the accused must be taken before a judge or magistrate with  
3 all practicable speed and complaint must be made against him  
4 under oath setting forth the ground for the arrest as in  
5 46-30-227. Thereafter this his answer shall be heard as if  
6 he had been arrested on a warrant."

7 Section-19--Section--4--Chapter-528--laws-of-1981--is  
8 amended-to-read:

9 "Section-4--Applicability--This--the-increase--to--308  
10 for--the-small-business-investment-credit-in-15-38-162{2}†††  
11 and-15-31-123{4}†††--this--act--is--applicable--only--to  
12 taxable--years--beginning--after--December-31--1980--and--before  
13 January-1--1983"

14 NEW-SECTION--Section-28--Coordination--instructions  
15 if-any-act-passed-by-the-48th-legislature-conflicts-with-the  
16 provisions--of--section--19--of--this--act--by--amendment-of  
17 sections-15-38-162{2}†††-15-31-123{4}†††-MCA--or--section  
18 4--chapter--528--laws-of-1981--the-provisions-of-the-other  
19 act-shall-prevail-over--section--19--of--this--act--and--any  
20 amendment--or--amendatory-effect-on-those-sections-by-section  
21 19-of-this-act-is-void-and-of-no-effect-to-the-extent-of-any  
22 conflicts

23 NEW-SECTION--Section-21--Effective-date--Sections-19  
24 and-28-are-effective-on-passage-and-approval-and-apply-as-of  
25 January-1--1983

- 1        ~~NEW\_SECTION~~ Section 18. Repealer.        Sections
- 2        2-15-1627, 7-13-2249, and 15-31-542, MCA, are repealed.

-End-