

SENATE BILL 423

Introduced by Brown, Robert, et al.

2/14	Introduced
2/14	Referred to Taxation
2/15	Fiscal Note Requested
2/21	Fiscal Note Received
2/21	Fiscal Note Printed
3/07	Hearing
3/13	Committee Report--Bill Passed as Amended
3/27	Referred to Taxation
	Died in Committee

1 *Senate* BILL NO. *423*  
2 INTRODUCED BY *Bob Brown*  
3 BY REQUEST OF THE GOVERNOR  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE QUARTERLY  
6 ESTIMATED PAYMENTS BY ALL TAXPAYERS SUBJECT TO CORPORATE  
7 LICENSE OR INCOME TAX WHO HAVE ANNUAL STATE TAX LIABILITIES  
8 IN EXCESS OF \$5,000; TO PROVIDE FOR PENALTIES FOR  
9 UNDERPAYMENT; AMENDING SECTIONS 15-31-101 AND 15-31-502,  
10 MCA; AND PROVIDING AN APPLICABILITY DATE."  
11

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

13 **Section 1.** Section 15-31-101, MCA, is amended to read:

14 "15-31-101. Organizations subject to tax. (1) The term  
15 "corporation" includes associations, joint-stock companies,  
16 common-law trusts and business trusts which do business in  
17 an organized capacity, and all other corporations whether  
18 created, organized, or existing under and pursuant to the  
19 laws, agreements, or declarations of trust of any state,  
20 country, or the United States.

21 (2) The terms "engaged in business" and "doing  
22 business" both mean actively engaging in any transaction for  
23 the purpose of financial or pecuniary gain or profit.

24 (3) Except as provided in 15-31-103 or 33-2-705(4) or  
25 as may be otherwise specifically provided, every corporation

1 engaged in business in the state of Montana shall annually  
2 pay to the state treasurer as a license fee for the  
3 privilege of carrying on business in this state such  
4 percentage or percentages of its total net income for the  
5 preceding taxable year at the rate hereinafter set forth. In  
6 the case of corporations having income from business  
7 activity which is taxable both within and without this  
8 state, the license fee shall be measured by the net income  
9 derived from or attributable to Montana sources as  
10 determined under part 3. This Except as provided in  
11 15-31-502, this tax is due and payable on the 15th day of  
12 the 5th month following the close of the taxable year of the  
13 corporation; however, the tax becomes a lien as provided in  
14 this chapter on the last day of the taxable year in which  
15 the income was earned and is for the privilege of carrying  
16 on business in this state for the taxable year in which the  
17 income was earned.

18 (4) Every bank organized under the laws of the state of  
19 Montana, of any other state, or of the United States and  
20 every savings and loan association organized under the laws  
21 of this state or of the United States is subject to the  
22 Montana corporation license tax provided for under this  
23 chapter. For taxable years beginning on and after January 1,  
24 1972, this subsection is effective in accordance with Public  
25 Law 91-156, section 2 (12 U.S.C. 548)."

**Section 2.** Section 15-31-502, MCA, is amended to read:

"15-31-502. **Assessment and payment of tax, penalty, and interest -- estimated tax payment.** (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit such the amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period. ~~If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect; if any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of 12% per annum from the due date until paid.~~

(2) Each corporation shall make estimated tax payments if its estimated tax can reasonably be expected to be \$5,000 or more. The estimated payments must be made in installments as follows:

(a) If the \$5,000 threshold is met or exceeded: The following percentages of the estimated tax must be paid on the 15th day of the applicable months:

4th month	6th month	9th month	12th month

Before the 1st day of the

4th month of the taxable

year: 25% 25% 25% 25%

After the last day of the

3rd month and before the

1st day of the 6th month of

the taxable year: 33 1/3% 33 1/3% 33 1/3%

After the last day of the

5th month and before the

1st day of the 9th month of

the taxable year: 50% 50%

After the last day of the

8th month and before the

12th month of the taxable

year: 100%

(b) If after paying any installment of estimated tax the taxpayer makes a new estimate, the amount of each installment, if any, is the amount that would have been paid if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:

(i) the difference between:

(A) the amount of estimated tax required to be paid before the date on which the new estimate was made; and

(B) the amount of estimated tax that would have been required to be paid before that date if the new estimate had

1 been made when the first estimate was made;

2 (ii) by the number of installments remaining to be paid  
3 on or after the date on which the new estimate was made.

4 (c) The application of this section to taxable years of  
5 less than 12 months must be in accordance with regulations  
6 prescribed by the department.

7 (d) At the election of the corporation, any installment  
8 of the estimated tax may be paid before the date prescribed  
9 for its payment."

10 NEW SECTION. Section 3. Estimated payments -- tax  
11 returns -- penalties -- interest. (1) For corporations  
12 failing to make estimated payments according to the schedule  
13 provided in 15-31-502(2), there is assessed a 20%  
14 underpayment penalty calculated as follows:

15 (a) For purposes of this subsection, the amount of  
16 underpayment is in excess of the amount of the installment  
17 that would be required to be paid if the estimated tax were  
18 equal to 80% of the tax shown on the return for the taxable  
19 year or, if no return was filed, 80% of the tax for the year  
20 over the amount, if any, of the installment paid on or  
21 before the last date prescribed for payment.

22 (b) Notwithstanding the provisions of subsection  
23 (1)(a), the penalty with respect to an underpayment of any  
24 installment may not be imposed if the total amount of all  
25 payments of estimated tax made on or before the last date

1 prescribed for the payment of the installment equals or  
2 exceeds the amount that would have been required to be paid  
3 on or before that date if the estimated tax were the lesser  
4 of the following:

5 (i) the tax shown on the return of the corporation for  
6 the preceding taxable year if a return showing a liability  
7 for tax was filed for the preceding taxable year and the  
8 preceding year was a taxable year of 12 months;

9 (ii) an amount equal to the tax computed at the rates  
10 applicable to the taxable year, but otherwise on the basis  
11 of the facts shown on the return of the corporation for, and  
12 the law applicable to, the preceding taxable year; or

13 (iii) an amount equal to 80% of the tax for the taxable  
14 year, computed by placing on an annualized basis the taxable  
15 income:

16 (A) for the first 3 months of the taxable year in the  
17 case of the installment required to be paid in the 4th  
18 month;

19 (B) for the first 3 months or for the first 5 months of  
20 the taxable year in the case of the installment required to  
21 be paid in the 6th month;

22 (C) for the first 6 months or for the first 8 months of  
23 the taxable year in the case of the installment required to  
24 be paid in the 9th month; and

25 (D) for the first 9 months or for the first 11 months

1 of the taxable year in the case of the installment required  
2 to be paid in the 12th month of the taxable year.

3 (c) For purposes of subsection (1)(b)(iii), the taxable  
4 income must be placed on an annualized basis by:

5 (i) multiplying by 12 the taxable income referred to in  
6 subsection (1)(b)(iii); and

7 (ii) dividing the resulting amount by the number of  
8 months in the taxable year (3, 5, 6, 8, 9, or 11, as the  
9 case may be) referred to in subsection (1)(b)(iii).

10 (d) Notwithstanding subsections (1)(a) through (1)(c),  
11 the penalty with respect to an underpayment of any  
12 installment may not be imposed if the total amount of all  
13 payments of estimated tax made on or before the last date  
14 prescribed for the payment of the installment equals or  
15 exceeds 80% of the amount determined under subsection  
16 (1)(e).

17 (e) To determine the amount under this subsection for  
18 any installment:

19 (i) take the taxable income for all months during the  
20 taxable year preceding the filing month;

21 (ii) divide the amount by the base period percentage for  
22 all months during the taxable year preceding the filing  
23 month;

24 (iii) determine the tax on the amount calculated under  
25 subsection (1)(e)(ii); and

1 (iv) multiply the tax computed under subsection  
2 (1)(e)(iii) by the base period percentage for the filing  
3 month and all months during the taxable year preceding the  
4 filing month.

5 (f) For purposes of this subsection (1):

6 (i) the base period percentage for any period of months  
7 is the average percentage that the taxable income for the  
8 corresponding months in each of the 3 preceding taxable  
9 years bears to the taxable income of the 3 preceding years;

10 (ii) the term "filing month" means the month in which  
11 the installment is required to be paid;

12 (iii) this subsection (1) applies only if the base  
13 period percentage for any 6 consecutive months of the  
14 taxable year equals or exceeds 70%; and

15 (iv) the department may by rule provide for the  
16 determination of the base period percentage in the case of  
17 reorganizations, new corporations, and other similar  
18 circumstances.

19 (2) If the tax for any corporation is not paid on or  
20 before the due date of the return as provided in  
21 15-31-111(2), there is assessed a penalty of 10% of the  
22 amount of the tax due, unless it is shown that the failure  
23 was due to reasonable cause and not to neglect.

24 (3) If any tax due under this chapter is not paid when  
25 due, by reason of extension granted or otherwise, interest

1 is added to the tax due at the rate of 12% a year from the  
2 due date until paid.

3 NEW SECTION. **Section 4. Extension of authority.** Any  
4 existing authority to make rules on the subject of the  
5 provisions of [this act] is extended to the provisions of  
6 [this act].

7 NEW SECTION. **Section 5. Saving clause.** [This act] does  
8 not affect rights and duties that matured, penalties that  
9 were incurred, or proceedings that were begun before [the  
10 effective date of this act].

11 NEW SECTION. **Section 6. Codification instruction.**  
12 [Section 3] is intended to be codified as an integral part  
13 of Title 15, chapter 31, part 5, and the provisions of Title  
14 15, chapter 31, part 5, apply to [section 3].

15 NEW SECTION. **Section 7. Applicability.** [This act]  
16 applies to taxable years beginning after December 31, 1989.

-End-

APPROVED BY COMMITTEE  
ON TAXATION

## SENATE BILL NO. 423

INTRODUCED BY B. BROWN, GILBERT

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE QUARTERLY ESTIMATED PAYMENTS BY ALL TAXPAYERS SUBJECT TO CORPORATE LICENSE OR INCOME TAX WHO HAVE ANNUAL STATE TAX LIABILITIES IN EXCESS OF \$5,000; TO PROVIDE FOR PENALTIES FOR UNDERPAYMENT; AMENDING SECTIONS 15-31-101 AND 15-31-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is not technically required for this bill because rulemaking authority to enforce the provisions of this bill is expanded in 15-31-501. However, in adopting this bill, the legislature intends that any rules promulgated by the department of revenue should conform as closely as possible with similar rules used by the internal revenue service for its enforcement of the quarterly payment of estimated taxes by corporations. Accordingly, the rules should, at a minimum, provide for the following:

(1) the determination of which corporations are required to pay estimated income taxes;

(2) installment schedules for the payment of estimated

taxes;

(3) the requirements for the payment of estimated taxes for short-period returns;

(4) procedures for the payment of estimated taxes in advance;

(5) procedures for the recomputation of estimated taxes;

(6) the payment of penalties and interest for failure to pay the estimated taxes when due;

(7) information that is required on the estimated tax return and on other forms that may be required by the department;

(8) the definition of terms and establishment of procedures as appropriate for the efficient administration of [this act].

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

**Section 1.** Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws

of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

**Section 2.** Section 15-31-502, MCA, is amended to read:

"15-31-502. Assessment and payment of tax,--penalty, and--interest -- estimated tax payment. (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit such the amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period. ~~if the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of 12% per annum from the due date until paid.~~

(2) Each corporation shall make estimated tax payments if its estimated tax can reasonably be expected to be \$5,000 or more. The estimated payments must be made in installments as follows:

(a) If the \$5,000 threshold is met or the estimated tax must be



1 exceeded: paid on the 15th day of the  
 2 applicable months:  
 3 4th 6th 9th 12th  
 4 month month month month  
 5 Before the 1st day of the  
 6 4th month of the taxable  
 7 year: 25% 25% 25% 25%  
 8 After the last day of the  
 9 3rd month and before the  
 10 1st day of the 6th month of  
 11 the taxable year: 33 1/3% 33 1/3% 33 1/3%  
 12 After the last day of the  
 13 5th month and before the  
 14 1st day of the 9th month of  
 15 the taxable year: 50% 50%  
 16 After the last day of the  
 17 8th month and before the  
 18 12th month of the taxable  
 19 year: 100%  
 20 (b) If after paying any installment of estimated tax  
 21 the taxpayer makes a new estimate, the amount of each  
 22 installment, if any, is the amount that would have been paid  
 23 if the new estimate had been made when the first estimate  
 24 for the taxable year was made, increased or decreased, as  
 25 the case may be, by the amount computed by dividing:

1 (i) the difference between:  
 2 (A) the amount of estimated tax required to be paid  
 3 before the date on which the new estimate was made; and  
 4 (B) the amount of estimated tax that would have been  
 5 required to be paid before that date if the new estimate had  
 6 been made when the first estimate was made;  
 7 (ii) by the number of installments remaining to be paid  
 8 on or after the date on which the new estimate was made.  
 9 (c) The application of this section to taxable years  
 10 of less than 12 months must be in accordance with  
 11 regulations prescribed by the department.  
 12 (d) At the election of the corporation, any  
 13 installment of the estimated tax may be paid before the date  
 14 prescribed for its payment."  
 15 NEW SECTION. Section 3. Estimated payments -- tax  
 16 returns -- penalties -- interest. (1) For corporations  
 17 failing to make estimated payments according to the schedule  
 18 provided in 15-31-502(2), there is assessed a 20% PER ANNUM  
 19 underpayment penalty calculated as follows:  
 20 (a) For purposes of this subsection, the amount of  
 21 underpayment is in excess of the amount of the installment  
 22 that would be required to be paid if the estimated tax were  
 23 equal to 80% of the tax shown on the return for the taxable  
 24 year or, if no return was filed, 80% of the tax for the year  
 25 over the amount, if any, of the installment paid on or

1 before the last date prescribed for payment.

2 (b) Notwithstanding the provisions of subsection  
3 (1)(a), the penalty with respect to an underpayment of any  
4 installment may not be imposed if the total amount of all  
5 payments of estimated tax made on or before the last date  
6 prescribed for the payment of the installment equals or  
7 exceeds the amount that would have been required to be paid  
8 on or before that date if the estimated tax were the lesser  
9 of the following:

10 (i) the tax shown on the return of the corporation for  
11 the preceding taxable year if a return showing a liability  
12 for tax was filed for the preceding taxable year and the  
13 preceding year was a taxable year of 12 months;

14 (ii) an amount equal to the tax computed at the rates  
15 applicable to the taxable year, but otherwise on the basis  
16 of the facts shown on the return of the corporation for, and  
17 the law applicable to, the preceding taxable year; or

18 (iii) an amount equal to 80% of the tax for the taxable  
19 year, computed by placing on an annualized basis the taxable  
20 income:

21 (A) for the first 3 months of the taxable year in the  
22 case of the installment required to be paid in the 4th  
23 month;

24 (B) for the first 3 months or for the first 5 months  
25 of the taxable year in the case of the installment required

1 to be paid in the 6th month;

2 (C) for the first 6 months or for the first 8 months  
3 of the taxable year in the case of the installment required  
4 to be paid in the 9th month; and

5 (D) for the first 9 months or for the first 11 months  
6 of the taxable year in the case of the installment required  
7 to be paid in the 12th month of the taxable year.

8 (c) For purposes of subsection (1)(b)(iii), the  
9 taxable income must be placed on an annualized basis by:

10 (i) multiplying by 12 the taxable income referred to  
11 in subsection (1)(b)(iii); and

12 (ii) dividing the resulting amount by the number of  
13 months in the taxable year (3, 5, 6, 8, 9, or 11, as the  
14 case may be) referred to in subsection (1)(b)(iii).

15 (d) Notwithstanding subsections (1)(a) through (1)(c),  
16 the penalty with respect to an underpayment of any  
17 installment may not be imposed if the total amount of all  
18 payments of estimated tax made on or before the last date  
19 prescribed for the payment of the installment equals or  
20 exceeds 80% of the amount determined under subsection  
21 (1)(e).

22 (e) To determine the amount under this subsection for  
23 any installment:

24 (i) take the taxable income for all months during the  
25 taxable year preceding the filing month;

1 (ii) divide the amount by the base period percentage  
2 for all months during the taxable year preceding the filing  
3 month;

4 (iii) determine the tax on the amount calculated under  
5 subsection (1)(e)(ii); and

6 (iv) multiply the tax computed under subsection  
7 (1)(e)(iii) by the base period percentage for the filing  
8 month and all months during the taxable year preceding the  
9 filing month.

10 (f) For purposes of this subsection (1):

11 (i) the base period percentage for any period of  
12 months is the average percentage that the taxable income for  
13 the corresponding months in each of the 3 preceding taxable  
14 years bears to the taxable income of the 3 preceding years;

15 (ii) the term "filing month" means the month in which  
16 the installment is required to be paid;

17 (iii) this subsection (1) applies only if the base  
18 period percentage for any 6 consecutive months of the  
19 taxable year equals or exceeds 70%; and

20 (iv) the department may by rule provide for the  
21 determination of the base period percentage in the case of  
22 reorganizations, new corporations, and other similar  
23 circumstances.

24 (2) If the tax for any corporation is not paid on or  
25 before the due date of the return as provided in

1 15-31-111(2), there is assessed a penalty of 10% of the  
2 amount of the tax due, unless it is shown that the failure  
3 was due to reasonable cause and not to neglect.

4 (3) If any tax due under this chapter is not paid when  
5 due, by reason of extension granted or otherwise, interest  
6 is added to the tax due at the rate of 12% a year from the  
7 due date until paid.

8 NEW SECTION. Section 4. Extension of authority. Any  
9 existing authority to make rules on the subject of the  
10 provisions of [this act] is extended to the provisions of  
11 [this act].

12 NEW SECTION. Section 5. Saving clause. [This act]  
13 does not affect rights and duties that matured, penalties  
14 that were incurred, or proceedings that were begun before  
15 [the effective date of this act].

16 NEW SECTION. Section 6. Codification instruction.  
17 [Section 3] is intended to be codified as an integral part  
18 of Title 15, chapter 31, part 5, and the provisions of Title  
19 15, chapter 31, part 5, apply to [section 3].

20 NEW SECTION. Section 7. Applicability. [This act]  
21 applies to taxable years beginning after December 31, 1989.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB423, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act to require quarterly estimated payments by all taxpayers subject to corporate license or income tax who have annual state tax liabilities in excess of \$5,000; to provide for penalties for underpayment; and providing an applicability date.

ASSUMPTIONS:

1. Corporation license tax collections are projected to be \$49,207,000 in FY90 and \$49,503,000 in FY91 (REAC).
2. The percentage distribution of corporate tax liabilities across taxable income brackets in 1987 is assumed constant in future years.
3. Corporations will submit through required estimated payments 80% of their total tax liability.
4. The requirement to submit estimated payments will apply to approximately 1,000 corporations. These 1,000 corporations account for 77.4% of revenue collected from the corporation license or income tax.
5. Short-term interest rates are estimated to be 7.1% for FY90 and 6.8% in FY91.(REAC)
6. The submission of quarterly estimated tax payments will increase the workload of the Natural Resource and Corporation Tax Division. An additional 1,000 forms and payments will be received quarterly by the division. This additional workload requires the addition of 1.00 FTE, a grade 11 audit technician, plus annual printing and postage costs. It also will require a one-time expenditure for furniture for this position, and a one-time expenditure for the changing of the corporation tax computer system and the revenue control system to account for the changed method of tax receipts.
7. Additional interest earned due to the change in the timing of the receipts is estimated to be \$67,000 in FY90 and \$686,000 in FY91.

FISCAL IMPACT:Revenue Impact:

	FY '90			FY '91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Corporation Tax	\$49,207,000	\$ 57,139,168	\$7,932,168	\$49,503,000	\$ 63,368,790	\$13,865,790
Interest on						
Investments	14,920,000	14,987,000	67,000	14,282,000	14,968,000	686,000
TOTAL	\$64,127,000	\$ 72,126,168	\$7,999,168	\$63,785,000	\$ 78,336,790	\$14,551,790

*Ray Shackelford* 2/21/89  
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Bob Brown* 2/21/89  
 BOB BROWN, PRIMARY SPONSOR DATE

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Fund Information:FY '90

	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund	\$43,774,764	\$ 48,491,560	\$4,716,796
Foundation Program	11,271,392	13,087,727	1,816,335
Sinking Fund	4,959,413	5,758,600	799,187
Local Government	4,121,431	4,788,282	666,850
Total	\$64,127,000	\$ 72,126,168	\$7,999,168

FY '91

<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
\$43,291,993	\$ 52,125,430	\$ 8,833,437
11,332,029	14,514,621	3,182,592
4,986,093	6,386,433	1,400,340
4,174,885	5,310,306	1,135,421
\$63,785,000	\$ 78,336,790	\$14,551,790

Expenditure Impact:

(General Fund)

FY '90

	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	0	\$17,057	\$17,057
Operating Expense	0	5,000	5,000
Capital Outlay	0	2,500	2,500
Total	0	\$24,557	\$24,557

FY '91

<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
0	\$17,313	\$17,313
0	1,000	1,000
0	0	0
0	\$18,313	\$18,313

Long-Range Effect:

There is no impact on revenue beyond FY91; the above impacts reflect a one-time acceleration of collections that will occur in the 1991 biennium only.

SB 423