

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN NORM WALLIN, on April 19, 1993, at 4:00 p.m.

ROLL CALL

Members Present:

Rep. Norm Wallin, Chairman (R)
Rep. Ellen Bergman (R)
Rep. John Bohlinger (R)
Rep. Dave Brown (D)
Rep. Tim Dowell (D)
Rep. Dave Ewer (D)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Ed McCaffree (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Randy Vogel (R)
Rep. Karyl Winslow (R)
Rep. Diane Wyatt (D)

Members Excused: Rep. Ray Brandewie, Vice Chairman (R) and Rep. Sheila Rice (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Pat Bennett, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 426
Executive Action: SB 426

HEARING ON SENATE BILL 426

Opening Statement by Sponsor:

SEN. JOHN "ED" KENNEDY, JR., SD 33, Kalispell, introduced SB 426, as a response to a recent court case involving Carbon County. The Senate Local Government Committee requested the bill because of the concern that local governments would not be able to sell special improvement district (SID) bonds unless legislation was provided to clarify the obligation of local governments to make loans to the SID revolving fund. When local governments sell SID bonds they have, in the past, agreed to establish a revolving

fund from which they could borrow if the revenues pledged to pay the bonds are insufficient. Local governments have also agreed to levy taxes to loan to the revolving fund in case the revolving fund is inadequate. The nature of SIDs make it necessary to have some mechanism to handle shortfalls and delays in collecting assessments. In the Carbon County decision, the district court found that because the SID was insolvent the county could not be required to make loans to the revolving fund. The decision did not offer guidance as to when the agreement to levy taxes for the revolving fund can be enforced. The law for SID bond revolving funds for municipalities are nearly identical to county law in question. Most of Montana's larger municipalities and urban counties sell SID and RSID bonds every year to pay for water, sewer, paving, and other improvements. There is concern, due to the Carbon County decision, that cities and counties will not be able to sell bonds and planned SID and RSID projects will not be able to go forward as planned. SEN. KENNEDY said he is in agreement with the proposed amendments. He submitted written testimony in support of SB 426 from the city of Kalispell.

EXHIBIT 1**Proponents' Testimony:**

REP. DAVID EWER, HD 45, Helena, testified in favor of SB 426, and distributed the proposed amendments. EXHIBIT 2 He gave a brief history of SID financing, and noted there have only been a few cases where the bonds have been in default due to insufficient funds in the revolving fund. SB 426 attempts to establish limits as to when a community no longer has to make an assessment to the revolving fund from general fund monies. The state has chosen to finance many property improvements through SIDs. He said he had a problem with the court decision because it is too broad and does not fully articulate what those limits should be. If SB 426 does not pass it will be the courts who decide the limits. He stated the intention of how revolving funds or financing of SIDs and RSIDs is structured should be a legislative matter. The amendments include a statement of intent and a sunset provision which will terminate the authority to issue SID bonds as of July 1, 1995.

Bruce MacKenzie, Dorsey and Whitney, representing the Securities Industry Association, testified in support of SB 426. EXHIBIT 3

Anna Miller, Department of Natural Resources, (DNRC), testified in support of SB 426. EXHIBIT 4

Shelly Laine, Director of Administrative Services, City of Helena, testified in support of SB 426. EXHIBIT 5

Alec Hansen, Executive Director, Montana League of Cities and Towns, testified in support of SB 426 saying the bill balances the interests of the bond holders and the taxpayers. The bill will make it possible for cities, towns and counties to continue working with developers to finance important improvements. SB

426 will enable cities and counties to continue to issue RSID and SID bonds without unreasonable premiums and, at the same time, will assure the revenue oversight committee will conduct a thorough analysis of the SID financing laws.

John Shontz, Doney, Crowley & Shontz, representing Carbon County, testified in support of SB 426. He informed the Committee that Carbon County was opposed to the bill until amendments were agreed upon by both parties. Mr. Shontz gave a brief overview of the case involving Carbon County. Carbon County had an RSID which failed and Judge Honzel, in February, 1993, issued an opinion which was favorable to Carbon County and soon thereafter, SB 426 was introduced in the legislature. He said there are provisions in the bill that are important from a good government standpoint. Referring to page 17, lines 3 through 6, he stated the language was not requested by Carbon County and therefore, Carbon County does not support the amendment. There are better ways to finance RSID and SIDs, unfortunately there is not adequate time to prepare a good bill. SB 426, along with the work on the interim study will achieve that goal.

Carl Schweitzer, Montana Contractor's Association, testified in favor of SB 426 because of the jobs it will create in Montana.

REP. ALVIN ELLIS, HD 84, Red Lodge, appeared as a "modest proponent" of SB 426. He said he and other Carbon County representatives opposed the bill in the Senate and in the House Taxation Committee. However, Carbon County has an agreement with Dorsey and Whitney that they will support SB 426 but only with the amendments. He said the interest of the taxpayer is paramount with this legislation. The worst parts of the bill affecting the taxpayer have been removed with the amendments. It will still raise the standards as far as the responsibility to the revolving funds. REP. ELLIS said it has always been his position that someone other than county commissioners, who are not often educated in the areas of finance, must be looking at the collateral and underlying value of any bond instrument to give a second opinion of how valid that opinion is. He said he does not believe that bonds will not be sold if the bill does not pass. If you have a good track record and good collateral you will always be able to borrow money. He stated he did feel that the bill as amended would substantially change the law from its current status. There are approximately \$117 million worth of bonds that SB 426 will affect which have been sold, including what is sold between now and 1995.

Opponents' Testimony:

REP. JERRY DRISCOLL, HD 92, Billings, testified against SB 426 saying the bill died 15-5 in House Taxation. Carbon County and its commissioners were against the bill. He said Carbon County will get out and yet 55 other counties will still be at risk. He noted there are two places where SIDs are sold: raw land to be developed and older parts of a community where improvements need

to be made. He stated he did not feel that homes or commercial businesses would be affected, however, the risk is with raw land. Carbon County had 160 acres to develop for housing, with nothing to put a lien against except the land. Improvements were calculated at \$6-7,000 per lot. Carbon County could not get that price so they reneged on the SID and now the bond counsel is on the hook and wants to put it back on the taxpayers. Regarding the Department of Natural Resources, their bonds are only sold to communities where there are existing improvements to put a lien against in case of default. The bill does not outlaw revolving accounts. He said the bill is actually a "non-jobs bill", because if you start assessing this revolving account it is money that cannot be spent on other things due to I-105. Under this bill, a developer could come in and sell the commissioners on a land development which may not be a good one. In Red Lodge the commissioners assessed mills against everyone in the county to do a development. He said he believes developers should have to be at risk as well, so they cannot default leaving the taxpayers the ones paying.

REP. ROYAL JOHNSON, HD 88, Billings, testifying against SB 426, stated the bill would eliminate a group of people who saw the danger in the bill pointed out by the law, which happens to be Carbon County. Addressing the sunset provision, he stated he disagreed with the amendment to sunset in 1995. REP. JOHNSON said SJR 33 is needed. He gave an example of a district in Billings, High Sierra which is in default, and the taxpayers of Billings are paying approximately \$300,000 per year to maintain that district. If SB 426 passes, the legislature will be passing on all of these problems to your constituents - the taxpayers.

Questions From Committee Members and Responses:

REP. BROWN asked Mr. Shontz if he would agree to taking Carbon County out of the bill. Mr. Shontz replied that the amendment excluding Carbon County was put in during the Senate Taxation Committee hearing. No one was there from Carbon County at the time. Carbon County did not ask for it, and is willing to swim with everyone else.

REP. BROWN asked Ms. Miller to comment on REP. DRISCOLL'S testimony regarding funds used on projects where improvements have already been made. Ms. Miller said DNRC programs require that the property within the district be 75% developed, therefore, the property within the district must have houses on it. This requirement leaves 25% of the properties undeveloped. She said DNRC is still taking a risk on those properties. Although it takes four years for property to go to tax deed, the state will have to raise taxes to pay the bonds when they are not collecting those monies.

REP. BROWN asked REP. DRISCOLL to respond. REP. DRISCOLL noted that if 75% of the property is developed and there is a lot in a particular SID that DNRC is involved in, if taxes were not paid

for a period of four years it would be taken for tax deed. The property would then be sold and the SID and existing taxes would be paid. In most cases, the amount of risk is small with the undeveloped lot.

REP. McCAFFREE asked Ms. Miller how many of the outstanding bonds are in default. Ms. Miller answered there are none in default.

REP. McCAFFREE asked Mr. MacKenzie why would anyone want to sacrifice the RSID and SID financing law by terminating the current law with a sunset clause in the bill. Mr. MacKenzie said the reason for it is the confusion. The reason for the revolving fund was to create improvements which would better the community. However, the opponent's objection is that general tax dollars should not be used to fund shortfalls.

REP. McCAFFREE noted that by voting on SB 426, the legislature will be raising taxes. This is a relief bill for the developers.

REP. HERRON asked REP. JOHNSON how he feels about the supreme court making the decision if the legislature chooses not to act on it. REP. JOHNSON replied he did not believe the legislature should attempt to address the situation. He said it was fine with him if it were to be resolved by the supreme court.

REP. HERRON asked REP. WANZENRIED about Evergreen's water system, stating that in the event there are problems, under this bill, everyone in Kalispell would have to help pay. REP. WANZENRIED said that was right.

REP. VOGEL asked REP. DRISCOLL if, within the court decision, the taxpayers will have to pay. REP. DRISCOLL replied no, the decision said if there is no chance of repayment, then it would no longer be necessary to assess the mills against taxpayers in the county. Therefore, the money would no longer be a loan, it is now a gift. In this case, Carbon County does not have to assess the mills to pay off the bondholders. If the bonds are in default, someone else has to pay or the bondholders lose.

REP. McCAFFREE asked Mr. MacKenzie if amendment #5 means it is not a debt to the county. Mr. MacKenzie replied that section says neither the loan, the revolving fund nor the bonds themselves constitute indebtedness as defined by the law. Indebtedness means it is carried by the full faith and credit of the taxpayers.

REP. EWER asked REP. JOHNSON to clarify the bad parts of SB 426. REP. JOHNSON said the way the bill, in its amended form, places the definitive responsibility on the taxpayers currently residing in the entire city or county, not just on taxpayers in the particular area for which the bonds are issued. Since a municipality is a corporation it can take bankruptcy, such as Columbia Falls. However, the judicial route can be used by counties, like in the Carbon County case. The bill provides

credit enhancements.

REP. EWER asked Mr. Shontz if the bill provides credit enhancements. Mr. Shontz referred the question to Mr. MacKenzie, who responded that on page 3, section 3 of SB 426, it limits the amount of time for which the loan can be made. In actuality, they are pulling back the amount of credit that is available. The attorney general has said the loans must be made indefinitely until the bonds are paid in full, whereas the bill says the loans must be made until the date of maturity of the bonds or until the assessments are discharged. At the present time, there is no mechanism in place in the law to force or to enhance cities or counties taking tax deed.

REP. BOHLINGER asked REP. JOHNSON if proposed amendments 4 and 5 could prevent future fiascos, similar to the Billing's Sierra Heights situation, from occurring. REP. JOHNSON said those situations will stand a better chance of being dealt with under current law and with the court ruling.

REP. WYATT asked Mr. Morris to address the issue of indebtedness versus obligation and how it is affected with regard to current law and the bill. Mr. Morris replied that proposed amendment 5 is a clarification of a longstanding situation which has existed with RSIDs and SIDs. RSIDs and the 5% to secure the revolving fund do not constitute debt in terms of the debt limitations in the codes.

Closing by Sponsor:

SEN. KENNEDY thanked the committee and closed.

EXECUTIVE ACTION ON SENATE BILL 426

Motion: REP. EWER moved to adopt the proposed amendments and also to strike lines 3-6 on page 17. EXHIBIT 2

Discussion: The Committee discussed removing amendment 16 from the proposed amendments. EXHIBIT 2

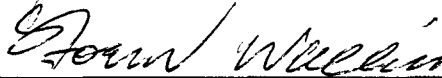
Motion/Vote: REP. BROWN moved to separate amendment 16 from the rest of the amendments. Motion carried unanimously.

Vote: TO ADOPT THE PROPOSED AMENDMENTS AND STRIKE LINES 3-6 ON PAGE 17. Motion carried on a 10-6 roll call vote.

Motion/Vote: REP. EWER MOVED SB 426 BE CONCURRED IN AS AMENDED. Motion carried on a 9-7 roll call vote. EXHIBIT 6

ADJOURNMENT

Adjournment: 6:00 p.m.



NORM WALLIN, Chairman



PAT BENNETT, Secretary

NW/pb

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT

COMMITTEE

ROLL CALL

DATE

April 19, 93

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN	✓		
REP. RAY BRANDEWIE, VICE CHAIRMAN			✓
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. DAVE BROWN	✓		
REP. TIM DOWELL	✓		1
REP. DAVID EWER	✓		
REP. STELLA JEAN HANSEN	✓		
REP. JACK HERRON	✓		
REP. ED McCAFFREE	✓		
REP. SHEILA RICE			✓
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. RANDY VOGEL	✓		
REP. KARYL WINSLOW	✓		
REP. DIANA WYATT	✓		

HOUSE STANDING COMMITTEE REPORT

April 20, 1993

Page 1 of 3

Mr. Speaker: We, the committee on Local Government report that Senate Bill 426 (third reading copy -- blue) be concurred in as amended .

Signed: 
Norm Wallin, Chair

And, that such amendments read:

Carried by: Rep. Ewer

1. Page 1.

Following: line 11

Insert: " Statement of Intent

A statement of intent is necessary for this bill because the bill contains provisions that are curative in nature. It is the intent of the legislature that except as otherwise provided in this bill or clearly articulated in bond resolutions passed by counties, cities, and towns, rural special improvement and special improvement district revolving funds created under Title 7, chapter 12, to secure bonds and warrants issued prior to the [effective date of this act] will loan funds to the districts in the event of deficiencies within a rural improvement district fund or special improvement district fund. The loans are subject to the limitations contained in the bond resolutions and Title 7, chapter 12. The obligation to loan funds is limited by the duration specified in this bill."

2. Page 2, line 9.

Strike: "(3)"

Insert: "(2)"

3. Page 2, line 23 through page 3, line 2.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

4. Page 3, lines 20 through 25.

Following: "(4)" on line 20

Strike: the remainder of subsection (4)

Insert: "The funding of a revolving fund under 7-12-2181 through 7-12-2185, any loan made from the revolving fund to a

Committee Vote:

Yes 1, No 1.

870947SC.Hpf

district fund, or any rural special improvement district bonds do not constitute indebtedness of the county within the meaning of any general, special, or local law."

5. Page 6, line 8 and page 13, line 2.

Following: "~~undertake~~"

Insert: "as the board may so agree to and undertake"

6. Page 6, line 14.

Following: "7-12-2183"

Strike: "(3)"

7. Page 9, lines 1 and 2.

Strike: "FOR AN IMPROVEMENT DISTRICT THAT HAS NOT BEEN SUBJECT TO SUBDIVISION REVIEW"

Insert: "if, on the date of issuance of the bond or warrant, the improvement district includes property that was divided after [the effective date of this act] without the division being reviewed and approved as a subdivision"

8. Page 9, line 24.

Strike: "(3)"

Insert: "(2)"

9. Page 10, lines 13 through 17.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

10. Page 11, lines 16 through 21.

Following: "(4)" on line 16

Strike: the remainder of subsection (4)

Insert: "The funding of a revolving fund under 7-12-4221 through 7-12-4225, any loan made from the revolving fund to a district fund, or any special improvement district bonds do not constitute indebtedness of the city or town within the meaning of any general, special, or local law."

11. Page 13, line 9.

Following: "7-12-4223"

Strike: "(3)"

12. Page 15, lines 20 and 21.

Strike: "FOR AN IMPROVEMENT DISTRICT THAT HAS NOT BEEN SUBJECT TO SUBDIVISION REVIEW"

Insert: "if, on the date of issuance of the bond or warrant, the improvement district includes property that was divided after [the effective date of this act] without the division being reviewed and approved as a subdivision"

13. Page 16, line 6.

Strike: "(5)"

Insert: "(4)"

14. Page 16, lines 9 and 10.

Strike: "whether the bonds or warrants were issued before or
after [the effective date of this act]"

15. Page 17, lines 3 through 6.

Strike: subsection (5) in its entirety

16. Page 17, line 10.

Strike: "REMEDIAL"

Insert: "curative"

-END-

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT

COMMITTEE

ROLL CALL VOTE

DATE 4/19/93 BILL NO. SB426 NUMBER 106

MOTION: Rep Ewer moved to accept
Amendments 1-15 -
Motion carried

(14)

NAME	AYE	NO
REP. RAY BRANDEWIE, VICE CHAIRMAN	Excused	✓
REP. ELLEN BERGMAN	✓	
REP. JOHN BOHLINGER	✓	
REP. DAVE BROWN	✓	
REP. TIM DOWELL	✓	
REP. DAVID EWER	✓	
REP. STELLA JEAN HANSEN	✓	
REP. JACK HERRON	✓	
REP. ED McCAFFREE		✓
REP. SHEILA RICE	Excused	✓
REP. TIM SAYLES		✓
REP. LIZ SMITH	✓	
REP. RANDY VOGEL		✓
REP. KARYL WINSLOW	Proxy	✓
REP. DIANA WYATT		✓
REP NORM WALLIN, CHAIRMAN	✓	

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT

COMMITTEE

ROLL CALL VOTE

DATE 4/19/93 BILL NO. SB 426 NUMBER 9-7

MOTION: Rep. Ewer moved SB 426
be concurred in as amended.

NAME	AYE	NO
REP. RAY BRANDEWIE, VICE CHAIRMAN proxy		✓
REP. ELLEN BERGMAN		✓
REP. JOHN BOHLINGER		✓
REP. DAVE BROWN	✓	
REP. TIM DOWELL	✓	
REP. DAVID EWER	✓	
REP. STELLA JEAN HANSEN	✓	
REP. JACK HERRON	✓	
REP. ED McCAFFREE		✓
REP. SHEILA RICE proxy	✓	
REP. TIM SAYLES proxy		✓
REP. LIZ SMITH	✓	
REP. RANDY VOGEL		✓
REP. KARYL WINSLOW proxy		✓
REP. DIANA WYATT	✓	
REP. NORM WALLIN, CHAIRMAN	✓	

The City of Kalispell

Incorporated 1892

CAPITOL
DATE 4/19/93
SB SB 426

Telephone (406) 752-6600
P.O. Box 1997
Zip 59903-1997

Douglas Raulhe
Mayor

Bruce Williams
City Manager

City Council
Members:

Gary W. Nystul
Ward I

Cliff Collins
Ward I

Barbara Moses
Ward II

Fred Buck
Ward II

Jim Atkinson
Ward III

Lauren Granmo
Ward III

Pamela B. Kennedy
Ward IV

M. Duane Larson
Ward IV

CITY OF KALISPELL TESTIMONY - SB #426 House Taxation - April 2, 1993

Chairman Gilbert, members of the House Taxation Committee
and Senator Kennedy:

I am Larry Gallagher, Planning, Economic and
Community Development Director for the City of Kalispell.
Today I represent the City of Kalispell's interest in
urging your support and passage of SB #426.

The Chairman has asked that we keep our testimony as
brief as possible. I will honor his request and furnish
written testimony to the committee which further details
how the City of Kalispell, its citizens and taxpayers
have and will continue to benefit because our city has
and hopes to continue utilizing the 5% SID Revolving
fund. Please read the example of taxpayer/citizen
benefit presented in the written testimony I will offer
the committee and had hoped to present today.

The City of Kalispell is presently experiencing
unprecedented growth, both commercial and residential.
As you are aware, the Special Improvement District
enabling legislation is one method local governments can
use to assist with the construction of streets, curbs,
gutters, sidewalks, sewer, water, fire hydrants, lighting
and landscaping, neighborhood parks and other
improvements essential to assure that quality livable
neighborhoods and business districts are available to
meet the growing demands for affordable housing and
businesses.

SB #426 Testimony

April 2, 1993

Page 2

Kalispell is currently considering issuing SID bonds to finance basic improvements to vacant land and lots it currently owns within the city limits, to encourage the public/private development of affordable housing. We plan on, or did until Judge Honzel's decision, issuing SID Bonds to finance our downtown parking program. Both projects will help manage growth and assist with meeting the affordable housing needs of Kalispell citizens. Since December 1, 1992, the City of Kalispell has approved subdivisions providing for over 300 dwelling units, some may require SID financing for part of the improvements required, amortizing and spreading the cost of improvements at lower than private financing rates, thus, lowering the cost of land.

Because Kalispell recognizes the risk associated with this type of financing, we are in the process of developing more restrictive guidelines for SID funding to reduce and hopefully limit any risk of default.

Kalispell's policy will require considerable developer equity in the project improvements, limiting SID bond proceed financing to street, curb, gutter and sidewalks. It is our opinion that a developer is less likely to walk away from a subdivision when he has hard cash equity in the sewer, water and fire hydrant improvements. We will also conduct a thorough and independent analysis of the potential risk involved and the underlying value of land and probable absorption rate of lots in any residential subdivision. We have learned from our experience that land values do go down and the demand for residential lots can erode before subdivisions are fully developed and occupied.

EXHIBIT 1

DATE 4/19/93

SB 426

SB #426 Testimony

April 2, 1993

Page 3

It is Kalispell's concern that without the amendments to the SID/RSID authorization contained in SB 426, the Bill before you today, that local governments will be unable to sell bonds because of the poor risk they represent to the bond buyer. We believe that the suggested amendments to present law, requiring local governments to fully fund the SID 5% Revolving Fund each and every year of the life of the bonds, seems to make extremely good management sense and provides the bond buyers with some sense of added security, aiding in the sale of bonds at reasonable tax exempt rates. A municipality's ability to issue Tax Exempt SID and RSID Bonds at reasonable rates, with unqualified opinions of bond counsel, is a real benefit to citizens and taxpayers.

THE KALISPELL EXAMPLE OF HOW THE TAXPAYER/CITIZEN HAS BENEFITED FROM THE SID 5% REVOLVING FUND: (Abbreviated - for full details please call Larry Gallagher, for a full description of actual \$ amounts involved.)

The Senate Taxation Committee members, and no doubt, this House Taxation Committee, were told that SB 426 should be killed because it was creating a General Obligation Bond and direct taxation without direct benefit for the citizens of this State. We strongly disagree with this observation by the opponents of SB 426 and would like to offer a specific example of how the citizen/taxpayer benefited because Kalispell was able to utilize the 5% SID Revolving Fund levy to save the taxpayers real dollars and also provide for affordable housing.

SB #426 Testimony

April 2, 1993

Page 4

In the mid 1980's the Buffalo Head Subdivision, a townhouse subdivision located in the NE quadrant of Kalispell went under for a myriad of reasons including developer deception. The city had financed all of the improvements with the sale of SID bonds. When lot sales faltered and several townhouses were foreclosed, the developer's took a walk and gave a Deed In-lieu-of Foreclosure to First Interstate Bank who held the unsold lots and many of the foreclosed townhouses as security.

First Interstate placed the project into its OREO (Other Real Estate Owned) portfolio and analyzed the value of the security. The Bank concluded the unsold lots, capable of accommodating 53 dwelling units, were not worth as much as the outstanding balance on the SID bonds and so, elected to stop making the annual SID payments on the unsold lots. In lieu of continuing payments, the bank gave the City of Kalispell a Quit Claim Deed to the property and walked away from the obligation.

The City of Kalispell listed the property for sale with a Realtor and used its 5% SID Revolving Fund to make the annual payments on the outstanding bonds...thereby protecting its credit and keeping the bonds from default. The project remained unsold for over two years as land values continued to decline during the period 1988 - 1990. The SID Revolving Fund enabled Kalispell to protect its investment in the project and forestall a fire sale at very distressed prices despite urging by some land speculators and disgruntled taxpayers to do so.

If Judge Honzel's opinion had existed in 1988, we believe the City of Kalispell --the taxpayers of our City, would have been forced to take an unnecessary hit. A forced sale would have resulted in a substantial loss, a default on bonds outstanding, loss of creditworthiness and the city's ability to hold out for a better deal.

EXHIBIT ¹
DATE 4/19/93
SB 426

SB #426 Testimony

April 2, 1993

Page 5

Now, to address the issues raised by the opponents when the Senate Taxation considered SB 426, we offer our rebuttal of the misleading statements and assumption that SB #426 would "stick the taxpayers with paying for a dead horse --representing a general obligation without any benefit or representation." We disagree.

In Kalispell, the taxpayers citywide and particularly the residents of the entire NE quadrant of Kalispell now drive on well designed paved streets instead of narrow dirt or mud roads, the prime source of unbreathable air during the dry seasons. The taxpayers and citizens of Kalispell have a water and sewer system and looped fire protection in the Buffalo Head Subdivision instead of individual wells and septic systems and the garden hose or pumper truck as the only means of fire protection. All of these improvements have real and measurable value to the entire city, not just the residents and the original developers of Buffalo Head.

More importantly, because the City had the 5% SID Revolving Fund and other sources of funds available and the statutory mechanism to invest them in the project without the cloud of Judge Honzel's decision, Kalispell was able to pay the annual debt service, stay out of default, protect the credit of the city and its taxpayers and hold on until land prices for undeveloped lots recovered.

SB #426 Testimony

April 2, 1993

Page 6

During the holding period, several developers and land speculators urged the city to hold an auction or sell the remaining Buffalo Head lots at values below the actual outstanding balance on the bonds, i.e., for less than the cost of the improvements. The City said no. In late 1990 the city received a formal offer from a buyer and a recommendation from its broker to sell the remaining land for \$165,000, to be paid over a two year period. The Honzel decision may have forced the sale at that time. However, based on sound advise regarding market trends indicating a turnaround in values and because Kalispell was able to use its 5% Revolving Fund to keep the project from default, Kalispell held out and sold all of the remaining property in late 1991 for \$295,000, all cash on closing, to a developer who is now developing affordable housing on the land.

The Citizens and Taxpayers of Kalispell can measure real benefits because of the 5% SID Revolving Fund and sound fiscal management by its elected and appointed officials. We urge your favorable consideration and passage of SB # 426.

Amendments to Senate Bill No. 426
Third Reading Copy

For the Committee of the Whole

Prepared by Lee Heiman
April 19, 1993
Version 3

1. Title, line 7.

Following: " ; "

Insert: "ESTABLISHING A TERMINATION DATE FOR THE ISSUANCE OF
SPECIAL IMPROVEMENT DISTRICT BONDS AND RURAL IMPROVEMENT
DISTRICT BONDS;"

2. Page 1.

Following: line 11

Insert: " Statement of Intent

A statement of intent is necessary for this bill because the bill contains provisions that are curative in nature. It is the intent of the legislature that except as otherwise provided in this bill or clearly articulated in bond resolutions passed by counties, cities, and towns, rural special improvement and special improvement district revolving funds created under Title 7, chapter 12, to secure bonds and warrants issued prior to the [effective date of this act] will loan funds to the districts in the event of deficiencies within a rural improvement district fund or special improvement district fund. The loans are subject to the limitations contained in the bond resolutions and Title 7, chapter 12. The obligation to loan funds is limited by the duration specified in this bill."

3. Page 2, line 9.

Strike: "(3)"

Insert: "(2)"

4. Page 2, line 23 through page 3, line 2.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

5. Page 3, lines 20 through 25.

Following: "(4)" on line 20

Strike: the remainder of subsection (4)

Insert: "The funding of a revolving fund under 7-12-2181 through 7-12-2185, any loan made from the revolving fund to a district fund, or any rural special improvement district bonds do not constitute indebtedness of the county within the meaning of any general, special, or local law."

6. Page 6, line 8.

Following: "~~undertake~~"

Insert: "as the board may so agree to and undertake"

7. Page 6, line 14.

Following: "7-12-2183"

Strike: "(3)"

8. Page 9, lines 1 and 2.

Strike: "FOR AN IMPROVEMENT DISTRICT THAT HAS NOT BEEN SUBJECT TO SUBDIVISION REVIEW"

Insert: "if, on the date of issuance of the bond or warrant, the improvement district includes property that was divided after [the effective date of this act] without the division being reviewed and approved as a subdivision"

9. Page 9, line 24.

Strike: "(3)"

Insert: "(2)"

10. Page 10, lines 13 through 17.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

11. Page 11, lines 16 through 21.

Following: "(4)" on line 16

Strike: the remainder of subsection (4)

Insert: "The funding of a revolving fund under 7-12-4221 through 7-12-4225, any loan made from the revolving fund to a district fund, or any special improvement district bonds do not constitute indebtedness of the city or town within the meaning of any general, special, or local law."

12. Page 13, line 9.

Following: "7-12-4223"

Strike: "(3)"

13. Page 15, lines 20 and 21.

Strike: "FOR AN IMPROVEMENT DISTRICT THAT HAS NOT BEEN SUBJECT TO SUBDIVISION REVIEW"

Insert: "if, on the date of issuance of the bond or warrant, the improvement district includes property that was divided after [the effective date of this act] without the division being reviewed and approved as a subdivision"

14. Page 16, lines 9 and 10.

Strike: "whether the bonds or warrants were issued before or after [the effective date of this act]"

15. Page 17, line 10.

Strike: "REMEDIAL"

Insert: "curative"

16. Page 17.

Following: line 6

Insert: "NEW SECTION. Section 13. Termination of authority to issue bonds. (1) The authority of a county to issue new rural special improvement district bonds under Title 7, chapter 12, part 21, terminates July 1, 1995.

(2) The authority of a city or town to issue new

*separate
from
others*

special improvement district bonds under Title 7, chapter 12, parts 42 and 43, terminates July 1, 1995."

EXHIBIT 2
DATE 4/19/93
SB 426

WHY SENATE BILL 426 IS NEEDED

1. Special Improvement Districts and Rural Special Improvement District Bonds are an important finance tool for local government projects including paving, curb and gutter sidewalk projects and installing and extending water and sewer connections.
2. Special Improvement District Bonds are payable solely from special assessments on the property located within a district. If one property owner is not timely in paying the assessments, the bonds would default.
3. In order for these bonds to be marketable and sell at cost-effective interest rates, it is necessary that some form of additional security be provided. In 1929, the legislature authorized cities and counties to provide that additional security through the creation of revolving funds. The revolving fund makes loans to the district to pay principal and interest on the bonds with the loans to be repaid after the bonds. The revolving fund obtains money for these loans from either a general fund transfer or a tax levy not to exceed 5% of the total bonds outstanding. The revolving fund can never exceed more than 5% of the bonds outstanding. Since 1983 cities and counties have had the option of issuing bonds not secured by the revolving fund.
4. A recent Helena District Court opinion has raised questions regarding the enforceability of the covenants that a city or county may make regarding the revolving fund. As a result of that opinion, like school district bonds, there are serious questions regarding the marketability of special improvement district bonds. Even if some bonds are marketable, it is believed significantly higher rates of interest will have to be paid.
5. A significant number of cities and counties have projects for which they are eager to sell bonds and start construction this season. These cities and counties recognize the implications of pledging the revolving fund. This bill would allow special improvement district financing to proceed subject to a new requirements for publishing notice that local governments intend to use a revolving fund and that the council or commission would consider additional factors which are designed to minimize the potential liability of the general taxpayer to fund the revolving fund.
6. In addition to the increased requirements for issuance, SB 426 imposes a limit on the duration of a city or county's obligation to make loans to the revolving fund. Under current law there is no limitation and there is a question when the obligation terminates. Under SB 426, the obligation to make loans terminates on the later of the final stated maturity of the bonds or the date all special assessments have either been paid or discharged.
7. A city or county is not obligated to create a special improvement district, issue special improvement district bonds, or pledge its revolving fund. This bill makes clear that the a city or county's covenants regarding the revolving fund are enforceable and provides assurances to persons who lend the city or county money by buying their bonds in reliance upon those promises.

EXHIBIT 4
DATE 4/19/93
SB SB 426

TESTIMONY - SB 426

DNRC by Anna Miller

The Department of Natural Resources and Conservation (DNRC) has two loan programs which make loans to municipalities for water and sewer facilities. The State Revolving Fund (SRF) program and the Coal Severance Tax (CST) loan program have loans outstanding of 10 million dollars. These loans were made to municipalities with the revolving funds in place to be used as security.

If the DNRC is to continue its loan programs and the revolving fund is not in place the loan and their repayment become very risky investments for the state.

For many types of infrastructure projects Special Improvement Districts or Rural Special Improvement Districts are the only types of financing that are logical for the community to use.

Therefore, the DNRC supports SB 426 and encourages its passage.

Important Points to be made for SB 426

- 1) SID or RSID are the only sensible financing tool. General Obligation or Revenue Bonds won't work. Bedroom communities which are developing and are hooking into existing water and sewer systems must pay for their infrastructure.
- 2) If there is no revolving fund, this is a security risk for the state. Private investor may not buy municipal SID or RSID bond issues. Interest rates will go up substantially on SID and RSID bonds.
- 3) A minority of revolving funds are in trouble; the majority of revolving funds are in good financial shape.
- 4) Many SID and RSID loans have been authorized but not closed on. If the state doesn't choose to finance these loans there could be federal dollars for grants lost to the state and the project may not be build. Example - Evergreen.
- 5) SID and RSID are very delicate. If one person does not pay, the bond issue is in default. That's why SID and RSID revolving funds are so essential.
- 6) Cities and counties, may be need to look at an area before they allow it to issue SID or RSID bonds. Maybe areas should be 50% to 75% developed before SID or RSID bonds are issued.

DATE 4/19/93
SB SB 426

MR. CHAIRMAN/MEMBERS OF THE COMMITTEE:

MY NAME IS SHELLY LAINE, AND I AM THE DIRECTOR OF ADMINISTRATIVE SERVICES FOR THE CITY OF HELENA. THE HELENA CITY COMMISSION SUPPORTS SB426.

WE PRESENTLY HAVE OVER \$3 MILLION IN OUTSTANDING SID BONDS. IT HAS BEEN A VALUABLE FINANCING TOOL IN THE PAST. WITH DEVELOPMENT STARTING TO REKINDLE, WE HAVE DONE A FEW ISSUES RECENTLY AS WELL. WITHOUT THIS LEGISLATION, THE FUTURE OF SID BONDS AS A FINANCING TOOL IS UNCERTAIN AT BEST. THE TIMING IS UNFORTUNATE GIVEN THE RECENT BURST OF DEVELOPMENT.

SINCE THE CARBON COUNTY DECISION, WE HAVE TRIED TO LAUNCH AN SID. WE WERE TOLD BY ONE BOND COUNSEL FIRM THAT THEY WOULD NOT WORK ON THE DEAL UNLESS THIS LEGISLATION PASSED. ALL OTHERS STATED THAT THEY WOULD BE BOND COUNSEL, BUT IF SB426 DIDN'T PASS, THE ODDS THAT THE BONDS WOULD SELL, PARTICULARLY UPON FAVORABLE TERMS, WERE UNCERTAIN.

FINANCIAL ADVISORS TOLD US THAT AS WELL. ONE SAID THAT THE FIRM WOULD NOT BID ON BONDS UNLESS THIS LEGISLATION PASSED, AND THEREFORE DIDN'T FEEL COMFORTABLE ACTING AS FINANCIAL ADVISOR PARTICULARLY IN THE MARKETING PHASE.

ITS CLEAR TO SEE FROM THIS EXAMPLE THAT THIS LEGISLATION IS CRUCIAL. NOT ONLY FOR FUTURE SIDS BUT FOR PRESENT ONES AS WELL. FOR THE \$3 MILLION THAT IS OUTSTANDING, THE CITY NEEDS TO BE ASSURED THAT THE REVOLVING FUND CAN BE USED AS SECURITY IN THE EVENT THE SID PAYMENTS ARE NOT MADE ON TIME. WE HAVE MADE THIS PROMISE TO OUR BONDHOLDERS AND WOULD SINCERELY LIKE TO KEEP THAT PROMISE. INCIDENTALLY, HELENA HAS NOT LEVIED TAXES FOR THE REVOLVING FUND FOR 13 YEARS. A GREAT MAJORITY OF THE FUNDS IN THE REVOLVING ARE THERE BECAUSE OF THE FIVE PERCENT DEPOSIT REQUIRED FROM THE DEVELOPERS OR THE DISTRICT. WITHOUT THIS LEGISLATION, IT APPEARS THAT A TAXPAYER MAY BE ABLE TO STOP THE CITY FROM USING AVAILABLE FUNDS WITHIN OUR SID REVOLVING FUND TO ENSURE PAYMENT ON THE BONDS.

THE AMENDMENT INCLUDED IN SECTION 10 OF THE BILL DOES CONCERN US. WE ARE EXPECTING AN SID IN AN OLDER SECTION OF HELENA WHICH IS DEVELOPED BUT NOT PAVED. THIS SECTION WAS NOT SUBJECT TO THE SUBDIVISION AND PLATTING ACT AS IT WAS DEVELOPED PRIOR TO THE ACT. IT APPEARS THAT THIS SECTION MAY PRECLUDE US FROM DOING AN SID IN THAT AREA. WE WOULD LIKE TO SEE THAT SECTION AMENDED IN SOME WAY.

THANK YOU.

City of Helena, Montana

Amendments to Senate Bill No. 426
Third Reading Copy

For the Committee of the Whole

Prepared by Lee Heiman
April 19, 1993
Version 3

1. Page 1.

Following: line 11

Insert: " Statement of Intent

A statement of intent is necessary for this bill because the bill contains provisions that are curative in nature. It is the intent of the legislature that except as otherwise provided in this bill or clearly articulated in bond resolutions passed by counties, cities, and towns, rural special improvement and special improvement district revolving funds created under Title 7, chapter 12, to secure bonds and warrants issued prior to the [effective date of this act] will loan funds to the districts in the event of deficiencies within a rural improvement district fund or special improvement district fund. The loans are subject to the limitations contained in the bond resolutions and Title 7, chapter 12. The obligation to loan funds is limited by the duration specified in this bill."

2. Page 2, line 9.

Strike: "(3)"

Insert: "(2)"

3. Page 2, line 23 through page 3, line 2.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

4. Page 3, lines 20 through 25.

Following: "(4)" on line 20

Strike: the remainder of subsection (4)

Insert: "The funding of a revolving fund under 7-12-2181 through 7-12-2185, any loan made from the revolving fund to a district fund, or any rural special improvement district bonds do not constitute indebtedness of the county within the meaning of any general, special, or local law."

5. Page 6, line 8 and page 13, line 2.

Following: "~~undertake~~"

Insert: "as the board may so agree to and undertake"

6. Page 6, line 14.

Following: "7-12-2183"

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7. Page 9, lines 1 and 2.

Strike: "FOR AN IMPROVEMENT DISTRICT THAT HAS NOT BEEN SUBJECT TO

SUBDIVISION REVIEW"

Insert: "if, on the date of issuance of the bond or warrant, the improvement district includes property that was divided after [the effective date of this act] without the division being reviewed and approved as a subdivision"

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Following: "7-12-4223"

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Strike: "FOR AN IMPROVEMENT DISTRICT THAT HAS NOT BEEN SUBJECT TO SUBDIVISION REVIEW"

Insert: "if, on the date of issuance of the bond or warrant, the improvement district includes property that was divided after [the effective date of this act] without the division being reviewed and approved as a subdivision"

13. Page 16, line 6.

Strike: "(5)"

Insert: "(4)"

14. Page 16, lines 9 and 10.

Strike: "whether the bonds or warrants were issued before or after [the effective date of this act]"

15. Page 17, lines 3 through 6.

Strike: subsection (5) in its entirety

16. Page 17, line 10.

Strike: "REMEDIAL"

Insert: "curative"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Local Government COMMITTEE

BILL NO. SB 426

DATE 4/19/93

SPONSOR(S) Senator John "Ed" Kennedy

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Shelly Ann Laine	City of Helena	✓	
Bruce MacKenzie	D.A. Dawson - SIA	✓	
J. Shontz	Cash Co.	>	
Anna Miller	DNR	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.