

HOUSE BILL 748

IN THE HOUSE

February 12, 1979

Introduced and referred to
Committee on Judiciary.

February 19, 1979

Committee recommend bill, do
pass.

February 20, 1979

On motion, taken from second
reading and referred to Judiciary.

1 House BILL NO. 748
 2 INTRODUCED BY Marks

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 5 THE LAWS RELATING TO INDUSTRIAL DEVELOPMENT PROJECTS;
 6 AUTHORIZING ADDITIONAL TYPES OF PROJECTS, LOAN AGREEMENTS,
 7 AND NOTES; AMENDING SECTIONS 90-5-101 THROUGH 90-5-106 AND
 8 90-5-109, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 90-5-101, MCA, is amended to read:
 12 "90-5-101. Definition of terms. As used in this part,
 13 unless the context otherwise requires, the following
 14 definitions apply:

15 (1) "Agricultural enterprises" means any agricultural
 16 enterprise, including but not limited to producing,
 17 warehousing, storing, fattening, treating, handling,
 18 distributing, or selling farm products or livestock.

19 (2) "Governing body" means the board or body in which
 20 the general legislative powers of the municipality or county
 21 are vested.

22 (3) "Mortgage" means a mortgage or ~~a mortgage and deed~~
 23 of trust or other security device.

24 (4) "Municipality" means any incorporated city or town
 25 in the state.

1 (5) "Project" means any land, any building or other
 2 improvement, and all real and personal properties except
 3 supplies and inventory deemed necessary in connection
 4 therewith, whether or not now in existence, which shall be
 5 suitable for use for commercial, manufacturing,
 6 agricultural, or industrial enterprises; recreation or
 7 tourist facilities; local state and federal governmental
 8 facilities; and ~~retirement~~ multifamily housing, hospitals,
 9 long-term care facilities, or medical facilities or any
 10 combination of the above."

11 Section 2. Section 90-5-102, MCA, is amended to read:
 12 "90-5-102. General municipal and county powers. (1) In
 13 addition to any other powers which it may now have, each
 14 municipality and each county shall have without any other
 15 authority the following powers:

16 (a) to acquire, whether by construction, purchase,
 17 devise, gift, or lease or any one or more of such methods,
 18 one or more projects which shall be located within this
 19 state and may be located within, without, partially within,
 20 or partially without the municipality or county;

21 (b) to lease to others any or all of its projects for
 22 such rentals and upon such terms and conditions as the
 23 governing body may deem advisable and as shall not conflict
 24 with the provisions of this part;

25 (c) to enter into a loan agreement by which a

1 ~~municipality or county will loan the proceeds of its revenue~~
 2 ~~bonds to others for the purpose of defraying the costs of~~
 3 ~~acquiring or improving any project or projects; upon such~~
 4 ~~terms and conditions as the governing body may stipulate so~~
 5 ~~long as they do not conflict with the provisions of this~~
 6 ~~part;~~

7 (c)(d) to issue revenue bonds for the purpose of
 8 defraying the cost of acquiring or improving any project or
 9 projects and to secure the payment of such bonds as provided
 10 in this part, which revenue bonds may be issued in two or
 11 more series or issues where deemed advisable, and each such
 12 series or issue may contain different maturity dates,
 13 interest rates, priorities on revenues available for payment
 14 of such bonds and priorities on securities available for
 15 guaranteeing payment thereof, and such other differing terms
 16 and conditions as are deemed necessary and are not in
 17 conflict with the provisions of this part; and

18 (d)(2) to sell and convey any real or personal
 19 property acquired as provided by subsection (1)(a) of this
 20 section and make such order respecting the same as may be
 21 deemed conducive to the best interest of the municipality or
 22 county; provided, that such sale or conveyance shall be
 23 subject to the terms of any lease but shall be free and
 24 clear of any other encumbrance.

25 (2) No municipality or county shall have the power to

1 operate, as a business or in any manner except as the lessor
 2 thereof, any project referred ~~financed pursuant to~~ in this
 3 section ~~part~~, nor shall they have any power to acquire by
 4 condemnation any such project or any part thereof by
 5 ~~condemnation to be financed."~~

6 Section 3. Section 90-5-103, MCA, is amended to read:

7 "90-5-103. Limited obligation bonds -- form and
 8 contents -- sale -- negotiability. (1) All bonds issued by a
 9 municipality or county under the authority of this part
 10 shall be limited obligations of the municipality or county.
 11 Bonds and interest coupons issued under the authority of
 12 this part shall not constitute or give rise to a pecuniary
 13 liability of the municipality or county or a charge against
 14 its general credit or taxing powers. Such limitation shall
 15 be plainly stated upon the face of each of such bonds.

16 (2) The bonds referred to in subsection (1) of this
 17 section may be executed and delivered at any time and from
 18 time to time, be in such form and denominations, be of such
 19 tenor, be in registered or bearer form either as to
 20 principal or interest or both, be payable in such
 21 installments and at such time or times not exceeding 30 40
 22 years from their date, be payable at such place or places,
 23 bear interest at such rate or rates, payable at such place
 24 or places, and evidenced in such manner, be redeemable prior
 25 to maturity, with or without premium, and contain such

1 provisions not inconsistent herewith as shall be deemed for
 2 the best interest of the municipality or county and provided
 3 for in the proceedings of the governing body whereunder the
 4 bonds shall be authorized to be issued.

5 (3) Any bonds issued under the authority of this part
 6 may be sold at public or private sale in such manner and at
 7 such time or times ~~and at such price, above or below par,~~ as
 8 may be ~~determined by the governing body to be~~ most
 9 ~~advantageous agreed upon by the lessee of the project or the~~
 10 ~~borrower of the funds to be loaned.~~ The municipality or
 11 county may pay all expenses, premiums, and commissions which
 12 the governing body may deem necessary or advantageous in
 13 connection with the authorization, sale, and issuance
 14 thereof from the proceeds of the sale of said bonds or from
 15 the revenues of the projects.

16 (4) All bonds issued under the authority of this part
 17 and all interest coupons applicable thereto shall be
 18 construed to be negotiable instruments despite the fact that
 19 they are payable solely from a specified source."

20 Section 4. Section 90-5-104, MCA, is amended to read:
 21 "90-5-104. Hearing. Prior to the issuance of any bonds
 22 under the authority of this part by any municipality or
 23 county, the governing body shall give notice and hold a
 24 public hearing on the proposed project. At least once a week
 25 for 3 consecutive weeks prior to the date set for the

1 hearing, the governing body shall publish in a newspaper of
 2 general circulation in the municipality or county a notice
 3 of the time and place of the hearing, the general nature of
 4 the project, the name of the lessee or borrower, and the
 5 estimated cost. The governing body shall ~~may~~ not approve
 6 ~~issue~~ the bonds ~~as provided in this part~~ unless it appears
 7 after the public hearing that such ~~approval~~ the acquisition
 8 or improvement of the project is in the public interest of
 9 the municipality or county."

10 Section 5. Section 90-5-105, MCA, is amended to read:

11 "90-5-105. Provisions for security of bondholders. (1)
 12 The payment of the principal of and interest on any bonds
 13 issued under the authority of this part shall be secured by
 14 a pledge of the revenues out of which such bonds shall be
 15 made payable.

16 (2) The principal of and interest on any bonds issued
 17 under the authority of this part may be secured by:

18 (a) a mortgage covering all or any part of the
 19 project;

20 (b) a pledge of the lease of or loan agreement
 21 relating to such project; or

22 (c) such other security device as may be deemed most
 23 advantageous by the issuing authority.

24 (3) (a) The proceedings under which the bonds are
 25 authorized to be issued under the provisions of this part

1 and any mortgage given to secure the same, including a
 2 mortgage given by the borrower or lessee, may contain any
 3 agreements and provisions customarily contained in
 4 instruments securing bonds, all as the governing body shall
 5 deem advisable and as shall not be in conflict with the
 6 provisions of this part, including, without limiting the
 7 generality of the foregoing, provisions respecting the:

8 (i) fixing and collection of rents or payments under
 9 any lease or loan agreement respecting the for--any project
 10 covered by such proceedings or mortgage;

11 (ii) terms to be incorporated in the lease of such
 12 project or loan agreement;

13 (iii) maintenance and insurance of such project;

14 (iv) creation and maintenance of special funds from the
 15 revenues of such project; and

16 (v) rights and remedies available in the event of a
 17 default to the bondholders or to the trustee under a
 18 mortgage.

19 (b) In making any such agreements or provisions, a
 20 municipality or county shall not have the power to obligate
 21 itself except with respect to the project and the
 22 application of the revenues therefrom and shall not have the
 23 power to incur a pecuniary liability or a charge upon its
 24 general credit or against its taxing powers.

25 (4) The proceedings authorizing any bonds under the

1 provisions of this part and any mortgage, including a
 2 mortgage given by the lessee or borrower, securing such
 3 bonds may provide that in the event of a default in the
 4 payment of the principal of or the interest on such bonds or
 5 in the performance of any agreement contained in such
 6 proceedings or mortgage, such payment and performance may be
 7 enforced by mandamus or by the appointment of a receiver in
 8 equity with power to charge and collect rents and to apply
 9 the revenues from the project in accordance with such
 10 proceedings or the provisions of such mortgage.

11 (5) Any mortgage made under--the--provisions--of--this
 12 part by the municipality or county or by the lessee or
 13 borrower to secure bonds issued thereunder hereunder may
 14 also provide that, in the event of a default in the payment
 15 thereof or the violation of any agreement contained in the
 16 mortgage, the mortgage may be foreclosed and the project
 17 sold under proceedings in equity or in any other manner now
 18 or hereafter permitted by law. Such mortgage may al
 19 provide that any trustee under such mortgage or the holder
 20 of any of the bonds secured thereby may become the purchaser
 21 at any foreclosure sale if the highest bidder therefor. No
 22 breach of any such agreement shall impose any pecuniary
 23 liability upon a municipality or county or any charge upon
 24 their general credit or against their taxing powers."

25 Section 6. Section 90-5-106, MCA, is amended to read:

1 "90-5-106. Determination of costs -- terms of lease.

2 (1) Prior to the leasing of any project or the entering into
3 of a loan agreement with respect thereto, the governing body
4 must determine and find the following:

5 (a) the amount necessary to pay the principal of and
6 the interest on the bonds proposed to be issued to finance
7 such project;

8 (b) the amount necessary to be paid into any reserve
9 funds which the governing body may deem it advisable to
10 establish in connection with the retirement of the proposed
11 bonds and the maintenance of the project including taxes;
12 and

13 (c) the estimated cost of maintaining the project in
14 good repair and keeping it properly insured, unless the
15 ~~terms under which the project is to be leased of the lease~~
16 or loan agreement provide that the lessee shall maintain the
17 project and carry all proper insurance with respect thereto.

18 (2) The determinations and findings of the governing
19 body required to be made by subsection (1) shall be set
20 forth in the proceedings under which the proposed bonds are
21 to be issued. Prior to the issuance of the any bonds
22 authorized by this part, the municipality or county shall
23 lease the project to a lessee or lessees or enter into a
24 loan agreement with a borrower or borrowers under on a lease
25 or loan agreement conditioned upon completion of the project

1 by the lessee or borrowers and providing for payment to the
2 municipality or county of such rentals or payments as, upon
3 the basis of such determinations and findings, will be
4 sufficient to:

5 (a) pay the principal of and interest on the bonds
6 issued to finance the project;

7 (b) pay the taxes on the project;

8 (c) build up and maintain any reserves deemed by the
9 governing body to be advisable in connection therewith; and

10 (d) pay the costs of maintaining the project in good
11 repair and keeping it properly insured, unless the lease or
12 loan agreement of lease obligates the lessees or borrowers
13 to pay for the maintenance and insurance of the project.

14 (3) Subject to the limitations of this part, the lease
15 or loan agreement or extensions or modifications thereof may
16 contain such other terms and conditions as may be mutually
17 acceptable to the parties and, notwithstanding any other
18 provisions of law relating to the sale of property owned by
19 municipalities and counties, ~~such lease may contain~~ an
20 option may be granted to a lessee for ~~the lessees~~ to
21 purchase the project on such terms and conditions as may be
22 mutually acceptable to the parties."

23 Section 7. Section 90-5-109, MCA, is amended to read:
24 "90-5-109. Cost of projects. (1) The cost of acquiring
25 or improving any project shall be deemed to include the

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1 following:

2 ~~(1)(a)~~ the actual cost of acquiring or improving real
3 estate for any project;

4 ~~(2)(b)~~ the actual cost of construction of all or any
5 part of a project which may be constructed, including
6 architects' and engineers' fees;

7 ~~(3)(c)~~ all expenses in connection with the
8 authorization, sale, and issuance of the bonds to finance
9 such acquisition or improvement;

10 ~~(4)(d)~~ bond reserves and premiums for insurance of
11 lease rentals pledged to pay the bonds; and

12 ~~(5)(e)~~ the interest on such bonds for a reasonable
13 time prior to construction, during construction, and for not
14 exceeding 6 months after completion of construction.

15 ~~(2) Bonds may be issued and the proceeds from the sale~~
16 ~~may be applied to discharge any existing indebtedness~~
17 ~~secured by a lien against a project or any part thereof,~~
18 ~~except with respect to a hospital or long-term care facility~~
19 ~~comprising a project and leased or owned by a nonprofit~~
20 ~~corporation, in which case indebtedness may be discharged~~
21 ~~only in connection with an improvement to the project."~~

22 NEW SECTION. Section 8. Temporary loans authorized.
23 After the authorization of bonds under this part, a
24 municipality or county may make temporary loans upon such
25 terms as it by resolution determines necessary to provide

1 funds immediately required for the purpose authorized. Such
2 loans may not exceed the amount of the bonds and must be
3 evidenced by notes subject to the provisions of 90-5-103.
4 Each note shall be due within 24 months of the date of the
5 loan and is payable to the order of the lender or to the
6 bearer. Each note must be repaid with interest from the
7 proceeds of the bonds when issued and delivered to the
8 purchaser when, by the terms of the bond resolution or
9 indenture, the proceeds may be released for that purpose.

10 Section 9. Codification. Section 8 is intended to be
11 codified as an integral part of Title 90, chapter 5, and the
12 provisions contained in Title 90, chapter 5, apply to
13 section 8.

-End-