

CHAPTER NO. 656.

HOUSE BILL NO. 845

INTRODUCED BY RAMIREZ

IN THE HOUSE

February 16, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Business and Industry.
March 7, 1979	Committee recommend bill be concurred in. Report adopted.
March 8, 1979	On motion, taken from second reading and rereferred to Committee on Taxation. Motion adopted.
April 6, 1979	Committee recommend bill be concurred in as amended. Report adopted.
April 9, 1979	Second reading, concurred in.
April 11, 1979	Third reading, concurred in as amended.

IN THE HOUSE

April 12, 1979	Returned from second house. Concurred in as amended.
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April 13, 1979

Second reading, amendments adopted.

April 16, 1979

Third reading, amendments adopted. Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 845

1 INTRODUCED BY James

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
5 CLARIFYING THE LAWS RELATING TO INDUSTRIAL REVENUE PROJECTS
6 AND FINANCING; AUTHORIZING ADDITIONAL TYPES OF PROJECTS;
7 ALLOWING LOCAL GOVERNMENTS TO LOAN THE PROCEEDS OF BOND
8 SALES AND TO MAKE TEMPORARY LOANS PRIOR TO THE ISSUE OF THE
9 BONDS; AMENDING SECTIONS 90-5-101 THROUGH 90-5-106 AND
10 90-5-108, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 90-5-101, MCA, is amended to read:
14
15 "90-5-101. Definition of terms. As used in this part,
16 unless the context otherwise requires, the following
17 definitions apply:

18 (1) "Agricultural enterprises" means any agricultural
19 enterprises--including include but are not limited to
20 producing, warehousing, storing, fattening, treating,
21 handling, distributing, or selling farm products or
22 livestock.

23 (2) "Governing body" means the board or body in which
24 the general legislative powers of the municipality or county
25 are vested.

26 (3) "Mortgage" means a mortgage or a mortgage-and deed

1 of trust or other security device.

2 (4) "Municipality" means any incorporated city or town
3 in the state.

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

14 Section 2. Section 90-5-102, MCA, is amended to read:
15
16 "90-5-102. General municipal and county powers. (1) In
17 addition to any other powers which it may now have, each
18 municipality and each county shall have without any other
19 authority the following powers:

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

25 (b) to lease to others any or all of its projects for
such rentals and upon such terms and conditions as the

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1 governing body may deem advisable and as shall not conflict
 2 with the provisions of this part;

3 ~~for to enter into agreements upon terms the governing~~
 4 ~~body considers advisable and not in conflict with the~~
 5 ~~provisions of this part to loan the proceeds of its revenue~~
 6 ~~bonds to others for the purpose of defraying the cost of~~
 7 ~~acquiring or improving any project;~~

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

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

1 (2) ~~No municipality or county shall have the power -- to~~
 2 ~~operate any project financed by the sale of revenue~~
 3 ~~bonds as a business or in any manner except as the lessor~~
 4 ~~therof -- any project referred to in this section, nor shall~~
 5 ~~they have any power to acquire any such project or any part~~
 6 ~~thereof by condemnation."~~

7 Section 3. Section 90-5-103, MCA, is amended to read:
 8 "90-5-103. Limited obligation bonds -- form and
 9 contents -- sale -- negotiability. (1) All bonds issued by a
 10 municipality or county under the authority of this part
 11 shall be limited obligations of the municipality or county.
 12 Bonds and interest coupons issued under the authority of
 13 this part shall not constitute or give rise to a pecuniary
 14 liability of the municipality or county or a charge against
 15 its general credit or taxing powers. Such limitation shall
 16 be plainly stated upon the face of each of such bonds.

17 (2) The bonds referred to in subsection (1) of this
 18 section may be executed and delivered at any time and from
 19 time to time, be in such form and denominations, be of such
 20 tenor, be in registered or bearer form either as to
 21 principal or interest or both, be payable in such
 22 installments and at such time or times not exceeding 30
 23 years from their date, be payable at such place or places,
 24 bear interest at such rate or rates, payable at such place
 25 or places, and evidenced in such manner, be redeemable prior

1 to maturity, with or without premium, and contain such
 2 provisions not inconsistent herewith as shall be deemed for
 3 the best interest of the municipality or county and provided
 4 for in the proceedings of the governing body whereunder the
 5 bonds shall be authorized to be issued.

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

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

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

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

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

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

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

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

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

25 (3) (a) The proceedings under which the bonds are

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

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

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

14 (iii) maintenance and insurance of such project;

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

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

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

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

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

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

2 *90-5-106. Determination of costs -- terms of lease.

3 (1) Prior to the leasing of any project or entering into a

4 loan agreement concerning a project, the governing body must

5 determine and find the following:

6 (a) the amount necessary to pay the principal of and

7 the interest on the bonds proposed to be issued to finance

8 such project;

9 (b) the amount necessary to be paid into any reserve

10 funds which the governing body may deem it advisable to

11 establish in connection with the retirement of the proposed

12 bonds and the maintenance of the project including taxes;

13 and

14 (c) the estimated cost of maintaining the project in

15 good repair and keeping it properly insured, unless the

16 terms under which the project is to be leased or the lease

17 or loan agreement provide that the lessee or borrower shall

18 maintain the project and carry all proper insurance with

19 respect thereto.

20 (2) The determinations and findings of the governing

21 body required to be made by subsection (1) shall be set

22 forth in the proceedings under which the proposed bonds are

23 to be issued. Prior to the issuance of the any bonds

24 authorized by this part, the municipality or county shall

25 lease the project to a lessee or lessees or enter into a

1 loan agreement with a borrower under or a lease or loan

2 agreement conditioned upon completion of the project by the

3 lessees or borrowers and providing for payment to the

4 municipality or county of such rentals or payments as, upon

5 the basis of such determinations and findings, will be

6 sufficient to:

7 (a) pay the principal of and interest on the bonds

8 issued to finance the project;

9 (b) pay the taxes on the project;

10 (c) build up and maintain any reserves deemed by the

11 governing body to be advisable in connection therewith; and

12 (d) pay the costs of maintaining the project in good

13 repair and keeping it properly insured, unless the lease or

14 loan agreement of lease obligates the lessees or borrowers

15 to pay for the maintenance and insurance of the project.

16 (3) Subject to the limitations of this part, the

17 lease, loan agreements or extensions or modifications

18 thereof may contain such other terms and conditions as may

19 be mutually acceptable to the parties and, notwithstanding

20 any other provisions of law relating to the sale of property

21 owned by municipalities and counties, such lease may contain

22 an option for the lessees may be granted to a lessee to

23 purchase the project on such terms and conditions as may be

24 mutually acceptable to the parties."

25 Section 7. Section 90-5-108, MCA, is amended to read:

1 "90-5-108. Use of proceeds of bond sales. (1) The
 2 proceeds from the sale of any bonds issued under authority
 3 of this part shall be applied only for the purpose for which
 4 the bonds were issued, or to discharge any existing
 5 indebtedness secured by a lien against a project or any part
 6 of a project. However, if the project is a hospital or
 7 long-term care facility leased or owned by a nonprofit
 8 corporation, the proceeds from the sale of bonds may be used
 9 to discharge indebtedness for an improvement to the project.

10 (2) Any accrued interest and premium received in any
 11 such sale shall be applied to the payment of the principal
 12 of or the interest on the bonds sold. If for any reason any
 13 portion of such proceeds shall not be needed for the purpose
 14 for which the bonds were issued, then such unneeded portion
 15 of said proceeds shall be applied to the payment of the
 16 principal of or the interest on said bonds."

17 NEW SECTION. Section 8. Temporary loans. (1) The
 18 governing body of a municipality or county may issue a loan
 19 to the borrower or a lessee of a project to provide funds
 20 immediately required for a project if bonds for the project
 21 have been authorized but not yet sold.

22 (2) The loan:

23 (a) must be issued by a resolution of the governing
 24 body under such terms as it may determine;
 25 (b) may not exceed the amount of the authorized bond;

1 (c) must be repaid with such interest as the governing
 2 body may require within 24 months after the loan is made;
 3 and
 4 (d) must be evidenced by notes payable to the
 5 municipality or county.

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5 CLARIFYING THE LAWS RELATING TO INDUSTRIAL REVENUE PROJECTS
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8 SALES AND TO MAKE TEMPORARY LOANS PRIOR TO THE ISSUE OF THE
9 BONDS; AMENDING SECTIONS 90-5-101 THROUGH 90-5-106 AND
10 90-5-108, MCA."

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18 enterprises--including includes but are not limited to
19 producing, warehousing, storing, fattening, treating,
20 handling, distributing, or selling farm products or
21 livestock.

22 (2) "Governing body" means the board or body in which
23 the general legislative powers of the municipality or county
24 are vested.

(3) "Mortgage" means a mortgage or e-mortgage-and deed

1 of trust or other security device.

2 (4) "Municipality" means any incorporated city or town
3 in the state.

4 (5) "Project" means any land; any building or other
5 improvements; and all ANY OTHER real and/or personal
6 properties; ~~except business inventories and supplies~~ deemed
7 necessary in connection therewith, whether or not now in
8 existence, which shall be suitable for use for commercial,
9 manufacturing, agricultural, or industrial enterprises;
10 recreation or tourist facilities; ~~local~~ state and federal
11 governmental facilities; ~~and~~ retirement multifamily housing,
12 hospitals, long-term care facilities, or medical facilities;
13 and any combination of these projects."

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

1 governing body may deem advisable and as shall not conflict
 2 with the provisions of this part;

3 ~~to enter into agreements upon terms the governing~~
 4 ~~body considers advisable and not in conflict with the~~
 5 ~~provisions of this part, to loan the proceeds of its revenue~~
 6 ~~bonds to others for the purpose of defraining the cost of~~
 7 ~~acquiring or improving any project;~~

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

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

1 (2) No municipality or county shall have the power to
 2 ~~operate any project financed by the sale of revenue~~
 3 ~~bonds as a business or in any manner except as the lessor~~
 4 ~~thereof--any-project-referred-to-in-this-section, nor shall~~
 5 ~~they have any power to acquire any such project or any part~~
 6 ~~thereof by condemnation."~~

7 Section 3. Section 90-5-103, MCA, is amended to read:
 8 ~~*90-5-103. Limited obligation bonds -- form and~~
 9 ~~contents -- sale -- negotiability. (1) All bonds issued by a~~
 10 ~~municipality or county under the authority of this part~~
 11 ~~shall be limited obligations of the municipality or county.~~
 12 ~~Bonds and interest coupons issued under the authority of~~
 13 ~~this part shall not constitute or give rise to a pecuniary~~
 14 ~~liability of the municipality or county or a charge against~~
 15 ~~its general credit or taxing powers. Such limitation shall~~
 16 ~~be plainly stated upon the face of each of such bonds.~~

17 (2) The bonds referred to in subsection (1) of this
 18 section may be executed and delivered at any time and from
 19 time to time, be in such form and denominations, be of such
 20 tenor, be in registered or bearer form either as to
 21 principal or interest or both, be payable in such
 22 installments and at such time or times not exceeding 30
 23 years from their date, be payable at such place or places,
 24 bear interest at such rate or rates, payable at such place
 25 or places, and evidenced in such manner, be redeemable prior

1 to maturity, with or without premium, and contain such
 2 provisions not inconsistent herewith as shall be deemed for
 3 the best interest of the municipality or county and provided
 4 for in the proceedings of the governing body whereunder the
 5 bonds shall be authorized to be issued.

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

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

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

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

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

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

19 (a) a mortgage covering all or any part of the
 20 project;
 21 (b) a pledge of the lease of or loan agreement
 22 relating to such project; or
 23 (c) such other security device as may be deemed most
 24 advantageous by the issuing authority.

25 (3) (a) The proceedings under which the bonds are

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

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

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

14 (iii) maintenance and insurance of such project;

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

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

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

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

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

1 Section 6. Section 90-5-106, MCA, is amended to read:
 2 "90-5-106. Determination of costs -- terms of lease.
 3 (1) Prior to the leasing of any project or entering into a
 4 loan agreement concerning a project, the governing body must
 5 determine and find the following:

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

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

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

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

1 loan agreement with a borrower under on a lease or loan
 2 agreement conditioned upon completion of the project by the
 3 lessees or borrowers and providing for payment to the
 4 municipality or county of such rentals or payments as, upon
 5 the basis of such determinations and findings, will be
 6 sufficient to:

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

9 (b) pay the taxes on the project;

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

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

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

25 Section 7. Section 90-5-108, MCA, is amended to read:

1 *90-5-108. Use of proceeds of bond sales. 111 The
 2 proceeds from the sale of any bonds issued under authority
 3 of this part shall be applied only for the purpose for which
 4 the bonds were issued or to discharge any existing
 5 indebtedness secured by a lien against a project or any part
 6 of a project A HOSPITAL OR LONG-TERM CARE FACILITY LEASED OR
 7 OWNED BY A NONPROFIT CORPORATION. However, if the project is
 8 NOT a hospital or long-term care facility leased or owned by
 9 a nonprofit corporation, the proceeds from the sale of bonds
 10 may NOT be used to discharge indebtedness for Missouri an
 11 improvement to the project.

12 121 Any accrued interest and premium received in any
 13 such sale shall be applied to the payment of the principal
 14 of or the interest on the bonds sold. If for any reason any
 15 portion of such proceeds shall not be needed for the purpose
 16 for which the bonds were issued, then such unneeded portion
 17 of said proceeds shall be applied to the payment of the
 18 principal of or the interest on said bonds."

19 NEW SECTION Section 8. Temporary loans AUTHORIZED.
 20 tit-The-governing-body-of-a-municipality-or-county-may-issue
 21 a-loan-to-the-borrower-or-a-lessee-of-a-project--to--provide
 22 funds--immediately--required--for-a-project-if-bonds-for-the
 23 project--have--been--authorized--but--not--yet--sold.
 24 t27--The-loan
 25 t27--must--be--issued--by-a-resolution--of--the--governing

1 body--under--such--terms--as--it--may--determine
 2 t27--may--not--exceed--the--amount--of--the--authorized--bonds
 3 t27--must--be--repaid--with--such--interest--as--the--governing
 4 body--may--require--within--24--months--after--the--loan--is--made
 5 end
 6 t27--must--be--evidenced--by--notes--payable--to--the
 7 municipality--or--county--AFTER--THE--AUTHORIZATION--OF--BONDS
 8 UNDER--THIS--PART--A--MUNICIPALITY--OR--COUNTY--MAY--MAKE--TEMPORARY
 9 LOANS--UPON--SUCH--TERMS--AS--IT--BY--RESOLUTION--DETERMINES
 10 NECESSARY--TO--PROVIDE--FUNDS--IMMEDIATELY--REQUIRED--FOR--THE
 11 PURPOSE--AUTHORIZED--SUCH--LOANS--MAY--NOT--EXCEED--THE--AMOUNT--OF
 12 THE--BONDS--AND--MUST--BE--EVIDENCED--BY--NOTES--SUBJECT--TO--THE
 13 PROVISIONS--OF--90-5-103--EACH--NOTE--SHALL--BE--DUE--WITHIN--24
 14 MONTHS--OF--THE--DATE--OF--THE--LOAN--AND--IS--PAYABLE--TO--THE--ORDER
 15 OF--THE--LENDER--OR--TO--THE--BEARER--EACH--NOTE--MUST--BE--REPAID
 16 WITH--INTEREST--FROM--THE--PROCEEDS--OF--THE--BONDS--WHEN--ISSUED--AND
 17 DELIVERED--TO--THE--PURCHASER--WHEN--BY--THE--TERMS--OF--THE--BOND
 18 RESOLUTION--OR--INDENTURE--THE--PROCEEDS--MAY--BE--RELEASED--FOR
 19 THAT--PURPOSE.

20 SECTION 9a THERE IS A NEW MCA SECTION THAT READS:
 21 Board of aeronautics. The board of aeronautics may
 22 exercise the power and authority of a municipality under
 23 Title 90, chapter 5, part 1, MCA, with respect to projects
 24 suitable for use by commercial enterprises providing
 25 scheduled air transportation services primarily within the

1 state if such projects are located within or based and used
2 primarily within the state. For purposes of this section,
3 the board of aeronautics shall be considered a municipality
4 and a governing body thereof under Title 90, chapter 5, part
5 1, MCA, and shall give notice of the public hearing required
6 by 90-5-104 in three newspapers published and circulating
7 generally in the state and shall not issue any bonds unless
8 it appears, after the public hearing, that the acquisition
9 or improvements of the project is in the public interest of
10 the state. For purposes of this section, projects suitable
11 for commercial enterprises providing scheduled air
12 transportation services shall include but are not limited to
13 aircraft parts, aircraft, hangars, storage and aircraft
14 maintenance facilities, fuel facilities, and other personal
15 or real property suitable for use by a scheduled air
16 transportation enterprise.

-End-

HOUSE BILL NO. 845

INTRODUCED BY RAMIREZ

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
5 CLARIFYING THE LAWS RELATING TO INDUSTRIAL REVENUE PROJECTS
6 AND FINANCING; AUTHORIZING ADDITIONAL TYPES OF PROJECTS;
7 ALLOWING LOCAL GOVERNMENTS TO LOAN THE PROCEEDS OF BOND
8 SALES-AND-TO-MAKE-TEMPORARY-LOANS-PRIOR-TO-THE-ISSUE-OF--THE
9 BONDS; AMENDING SECTIONS 90-5-101 THROUGH 90-5-106 AND
10 90-5-108, MCA."

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

13 Section 1. Section 90-5-101, MCA, is amended to read:

14 "90-5-101. Definition of terms. As used in this part,

15 unless the context otherwise requires, the following

16 definitions apply:

17 (1) "Agricultural enterprises" means any agriculture
18 enterprises--including includes but are not limited to
19 producing, warehousing, storing, fattening, treating,
20 handling, distributing, or selling farm products or
21 livestock.

22 (2) "Governing body" means the board or body in which
23 the general legislative powers of the municipality or county
24 are vested.

(3) "Mortgage" means a mortgage or a-mortgage-and deed

1 of trust or other security devices.

2 (4) "Municipality" means any incorporated city or town
3 in the state.

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

24 (b) to lease to others any or all of its projects for
25 such rentals and upon such terms and conditions as the

1 governing body may deem advisable and as shall not conflict
 2 with the provisions of this part;

3 ~~(c) to enter into agreements, upon terms the governing
 4 body considers advisable and not in conflict with the
 5 provisions of this part, to loan the proceeds of its revenue
 6 bonds to others for the purpose of defraying the cost of
 7 acquiring or improving any project;~~

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

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

1 (2) No municipality or county shall have the power--to
 2 ~~may operate any project financed by the sale of revenue
 3 bonds as a business or in any manner except as the lessor
 4 thereof--any-project-referred-to-in-this-section, nor shall
 5 they have any power to acquire any such project or any part
 6 thereof by condemnation."~~

7 Section 3. Section 90-5-103, MCA, is amended to read:
 8 "90-5-103. Limited obligation bonds -- form and
 9 contents -- sale -- negotiability. (1) All bonds issued by a
 10 municipality or county under the authority of this part
 11 shall be limited obligations of the municipality or county.
 12 Bonds and interest coupons issued under the authority of
 13 this part shall not constitute or give rise to a pecuniary
 14 liability of the municipality or county or a charge against
 15 its general credit or taxing powers. Such limitation shall
 16 be plainly stated upon the face of each of such bonds.

17 (2) The bonds referred to in subsection (1) of this
 18 section may be executed and delivered at any time and from
 19 time to time, be in such form and denominations, be of such
 20 tenor, be in registered or bearer form either as to
 21 principal or interest or both, be payable in such
 22 installments and at such time or times not exceeding 30
 23 years from their date, be payable at such place or places,
 24 bear interest at such rate or rates, payable at such place
 25 or places, and evidenced in such manner, be redeemable prior

1 to maturity, with or without premium, and contain such
 2 provisions not inconsistent herewith as shall be deemed for
 3 the best interest of the municipality or county and provided
 4 for in the proceedings of the governing body whereunder the
 5 bonds shall be authorized to be issued.

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

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

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

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

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

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

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

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

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

25 (3) (a) The proceedings under which the bonds are

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

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

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

14 (iii) maintenance and insurance of such project;

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

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

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

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

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

1 Section 6. Section 90-5-106, MCA, is amended to read:
 2 "90-5-106. Determination of costs -- terms of lease.
 3 (1) Prior to the leasing of any project or entering into a
 4 loan agreement concerning a project, the governing body must
 5 determine and find the following:

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

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

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

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

1 loan agreement with a borrower under an a lease or loan
 2 agreement conditioned upon completion of the project by the
 3 lessees or borrowers and providing for payment to the
 4 municipality or county of such rentals or payments as, upon
 5 the basis of such determinations and findings, will be
 6 sufficient to:

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

9 (b) pay the taxes on the project;

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

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

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

25 Section 7. Section 90-5-108, MCA, is amended to read:

1 "90-5-108. Use of proceeds of bond sales. (1) The
 2 proceeds from the sale of any bonds issued under authority
 3 of this part shall be applied only for the purpose for which
 4 the bonds were issued or to discharge any existing
 5 indebtedness secured by a lien against a project or any part
 6 of a project A HOSPITAL OR LONG-TERM CARE FACILITY LEASED OR
 7 OWNED BY A NONPROFIT CORPORATION. However, if the project is
 8 not a hospital or long-term care facility leased or owned by
 9 a nonprofit corporation, the proceeds from the sale of bonds
 10 may not be used to discharge indebtedness for without an
 11 improvement to the project.

12 (2) Any accrued interest and premium received in any
 13 such sale shall be applied to the payment of the principal
 14 of or the interest on the bonds sold. If for any reason any
 15 portion of such proceeds shall not be needed for the purpose
 16 for which the bonds were issued, then such unneeded portion
 17 of said proceeds shall be applied to the payment of the
 18 principal of or the interest on said bonds."

19 NEW SECTION--Section 8. Temporary bonds AUTHORIZED--
 20 (1) The governing body of a municipality or county may issue
 21 bonds to the borrower or a lessee of a project to provide
 22 funds immediately required for a project if bonds for the
 23 project have been authorized but not yet sold.

24 (2) The bonds
 25 (3) must be issued by a resolution of the governing

1 body under such terms as it may determine
 2 (b) may not exceed the amount of the authorized bonds
 3 (c) must be repaid with such interest as the governing
 4 body may require within 24 months after the loan is made
 5 and
 6 (d) must be evidenced by notes payable to the
 7 municipality or county. AFTER THE AUTHORIZATION OF BONDS
 8 UNDER THIS PART, A MUNICIPALITY OR COUNTY MAY MAKE TEMPORARY
 9 LOANS UPON SUCH TERMS AS IT BY RESOLUTION DETERMINES
 10 NECESSARY TO PROVIDE FUNDS IMMEDIATELY REQUIRED FOR THE
 11 PURPOSE AUTHORIZED. SUCH LOANS MAY NOT EXCEED THE AMOUNT OF
 12 THE BONDS AND MUST BE EVIDENCED BY NOTES SUBJECT TO THE
 13 PROVISIONS OF 90-5-103. EACH NOTE SHALL BE DUE WITHIN 24
 14 MONTHS OF THE DATE OF THE LOAN AND IS PAYABLE TO THE BORER
 15 OF THE LENDER OR TO THE BEARER. EACH NOTE MUST BE REPAYED
 16 WITH INTEREST FROM THE PROCEEDS OF THE BONDS WHEN ISSUED AND
 17 DELIVERED TO THE PURCHASER WHEN BY THE TERMS OF THE BOND
 18 RESOLUTION OR INDENTURE THE PROCEEDS MAY BE RELEASED FOR
 19 THAT PURPOSE.

20 SECTION 8. THERE IS A NEW MCA SECTION THAT READS:
 21 Board of aeronautics. The board of aeronautics may
 22 exercise the power and authority of a municipality under
 23 Title 90, chapter 5, part 1, MCA, with respect to projects
 24 suitable for use by commercial enterprises providing
 25 scheduled air transportation services primarily within the

1 state if such projects are located within or based and used
2 primarily within the state. For purposes of this section,
3 the board of aeronautics shall be considered a municipality
4 and a governing body thereof under Title 90, chapter 5, part
5 1, MCA, and shall give notice of the public hearing required
6 by 90-5-104 in three newspapers published and circulating
7 generally in the state and shall not issue any bonds unless
8 it appears, after the public hearing, that the acquisition
9 or improvements of the project is in the public interest of
10 the state. For purposes of this section, projects suitable
11 for commercial enterprises providing scheduled air
12 transportation services shall include but are not limited to
13 aircraft parts, aircraft, hangars, storage and aircraft
14 maintenance facilities, fuel facilities, and other personal
15 or real property suitable for use by a scheduled air
16 transportation enterprise.

-End-

April 6, 1979

SENATE STANDING COMMITTEE REPORT
(Taxation)

That House Bill No. 845, third reading bill, be amended as follows:

1. Title, line 8.

Strike: "AND TO MAKE TEMPORARY LOANS PRIOR TO THE ISSUE OF THE BONDS"

2. Page 11, line 19.

Strike: section 8 in its entirety

Renumber: subsequent section