

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.
----------------	---

April 13, 1979

Second reading, amendments  
adopted.

April 16, 1979

Third reading, amendments  
adopted. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 845  
 2 INTRODUCED BY Lamney  
 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 "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-agricultural~~  
 18 ~~enterprises--including~~ include 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.  
 25 (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; any building or other  
 5 improvement; and all real and personal properties, except  
 6 business inventories and supplies, 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; and-retirement multifamily housing, hospitals,  
 12 long-term care facilities, or medical facilities; and any  
 13 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:  
 19 (a) to acquire, whether by construction, purchase,  
 20 devise, gift, or lease or any one or more of such methods,  
 21 one or more projects which shall be located within this  
 22 state and may be located within, without, partially within,  
 23 or partially without the municipality or county;  
 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 ~~(d)~~ (d) 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 ~~(e)~~ (e) to sell and convey any real or personal  
20 property acquired as provided by subsection (1)(3) 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 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."

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

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

(1) Prior to the leasing of any project ~~or entering into a~~  
~~loan agreement concerning a project~~, the governing body must  
determine and find the following:

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

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

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

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

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

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

(b) pay the taxes on the project;

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

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

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

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

H.B. 27

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.

-End-

FILE 7-4



## HOUSE BILL NO. 845

INTRODUCED BY RAMIREZ

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

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

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

"90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

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

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

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

of trust or other security device.

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

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

Section 2. Section 90-5-102, MCA, is amended to read:

"90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

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

(b) to lease to others any or all of its projects for 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 ~~(c)(d) 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 ~~(d)(e) 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 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."

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

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

(1) Prior to the leasing of any project or entering into a loan agreement concerning a project, the governing body must determine and find the following:

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

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

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

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

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

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

(b) pay the taxes on the project;

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

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

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

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

1 "90-5-108. Use of proceeds of bond sales. (11) 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 (12) 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 (1) 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 (2) The loan  
 25 (a) 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 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 9. 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

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

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

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

"90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

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

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

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

of trust or other security device.

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

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

Section 2. Section 90-5-102, MCA, is amended to read:

"90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

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

(b) to lease to others any or all of its projects for 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 {e}(d) 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 {e}(e) 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

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

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

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

Section 4. Section 90-5-104, MCA, is amended to read:

"90-5-104. Hearing. Prior to the issuance of any bonds under the authority of this part by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week

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

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

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

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

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

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

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

(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."

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

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

(1) Prior to the leasing of any project ~~or entering into a loan agreement concerning a project~~, the governing body must determine and find the following:

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

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

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

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

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

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

(b) pay the taxes on the project;

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

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

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

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 loans AUTHORIZED.~~  
20 ~~(1) 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 ~~(2) The loan~~

25 ~~(a) 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 bond~~  
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 ORDER~~  
15 ~~OF THE LENDER OR TO THE ORDER. 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