

CHAPTER NO. 199.

SENATE BILL NO. 104

INTRODUCED BY S. BROWN

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND  
REHABILITATION SERVICES

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 31, 1979	Committee recommend bill do pass as amended. Report adopted. Statement of Intent adopted.
February 2, 1979	Printed and placed on members' desks.
February 3, 1979	Second reading, do pass.
February 5, 1979	Considered correctly engrossed.
February 6, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 7, 1979	Introduced and referred to Committee on Judiciary.
March 5, 1979	Committee recommend bill be concurred in. Report adopted.
March 6, 1979	Second reading, concurred in.
March 8, 1979	Third reading, concurred in.

IN THE SENATE

March 9, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Senate* BILL NO. 104  
2 INTRODUCED BY *S. Beaman*

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND  
4 REHABILITATION SERVICES

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY  
7 THE RULEMAKING AUTHORITY OF THE DEPARTMENT OF SOCIAL AND  
8 REHABILITATION SERVICES; AMENDING SECTIONS 53-2-201,  
9 53-4-111, 53-4-304, 53-6-113, 53-7-102, 53-7-203, 53-7-302,  
10 53-20-204, 53-20-305, AND 53-20-402, MCA; AND REPEALING  
11 SECTIONS 53-4-212 AND 53-5-205, MCA."

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

14 Section 1. Section 53-2-201, MCA, is amended to read:  
15  
16 "53-2-201. Powers and duties of department. (1) The  
department shall:

17 (a) administer or supervise all forms of public  
18 assistance, child protection, and child welfare, including  
19 the provision of medical care payments in behalf of  
20 recipients of public assistance;

21 (b) administer or supervise all child welfare  
22 activities, including importation and exportation of  
23 children; licensing and supervising of private and local  
24 child-caring agencies; the care of dependent, neglected, and  
25 delinquent children in foster family homes, especially

1 children placed for adoption or those of illegitimate birth;  
2 (c) give consultant service to private institutions  
3 providing care for the needy, indigent, handicapped, or  
4 dependent adults;  
5 (d) cooperate with other state agencies and develop  
6 provisions for services to the blind, including the  
7 prevention of blindness, the location of blind persons,  
8 medical services for eye conditions, and vocational guidance  
9 and training of the blind;  
10 (e) provide services in respect to organization and  
11 supervise county departments of public welfare and county  
12 boards of public welfare in the administration of public  
13 assistance functions and for efficiency and economy;  
14 (f) assist and cooperate with other state and federal  
15 departments, bureaus, agencies, and institutions, when so  
16 requested, by performing services in conformity with public  
17 assistance purposes; and  
18 (g) administer and supervise all state and federal  
19 funds allocated to this--state--and--all--state--funds  
20 appropriated--to the department for public assistance;  
21 activities--the department shall do all things necessary in  
22 conformity with federal and state law for the proper  
23 fulfillment of public assistance purposes;  
24 (h) make rules governing payment for services and  
25 supplies authorized by this title and provided to recipients

1       of public assistance; and

2           (iii) make such rules and take such action as may be  
 3       necessary to carry out its duties as set forth in this  
 4       title.

5        (2) The department may:

6        (a) purchase, exchange, condemn, or receive by gift  
 7        either real or personal property which is necessary to carry  
 8        out its public assistance functions. Title to property  
 9        obtained under this subsection shall be taken in the name of  
 10      the state of Montana for the use and benefit of the  
 11      department.

12       (b) contract with the federal government to carry out  
 13      its public assistance functions. The department may do all  
 14      things necessary in order to avail itself of federal aid and  
 15      assistance.

16       (c) make rules, consistent with state and federal law,  
 17       establishing the amount, scope, and duration of services to  
 18       be provided under this title."

19       Section 2. Section 53-4-111, MCA, is amended to read:  
 20       "53-4-111. Administrative duties of department.  
 21      Subject to the authority and regulations of the department  
 22      and in cooperation with the federal government, the  
 23      department shall:

24            (iii) adopt rules necessary to carry out the purposes of  
 25       this part;

1            (ii) administer or supervise all child welfare  
 2       activities of the state except the child welfare activities  
 3       which are administered by the department of health and  
 4       environmental sciences."

5       Section 3. Section 53-4-304, MCA, is amended to read:  
 6       "53-4-304. Power and duties of department. (1) The  
 7       department shall establish, administer, and regulate a  
 8       continuing program of subsidized adoption.

9        (2) The department shall keep such records as are  
 10      necessary to evaluate the program in terms of the number of  
 11      children adopted under the program, the cost of the program,  
 12      and any other pertinent information.

13           (iii) the department may adopt rules necessary for the  
 14       proper administration of this part."

15       Section 4. Section 53-6-113, MCA, is amended to read:  
 16       "53-6-113. Department to adopt rules. The department  
 17      of social and rehabilitation services shall adopt  
 18      appropriate rules not inconsistent with this part to  
 19      administer and supervise the program uniformly throughout  
 20      the state and shall define medical assistance by rules.  
 21      Medical assistance shall be furnished through payments to  
 22      providers of services and supplies as contemplated in this  
 23      part."

24       Section 5. Section 53-7-203, MCA, is amended to read:  
 25       "53-7-203. Purchase of sheltered employment services.

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18 recipients of public assistance;

19 (b) administer or supervise all child welfare  
20 activities, including importation and exportation of  
21 children; licensing and supervising of private and local  
22 child-caring agencies; the care of dependent, neglected, and  
23 delinquent children in foster family homes, especially

1 children placed for adoption or those of illegitimate birth;  
2 (c) give consultant service to private institutions  
3 providing care for the needy, indigent, handicapped, or  
4 dependent adults;  
5 (d) cooperate with other state agencies and develop  
6 provisions for services to the blind, including the  
7 prevention of blindness, the location of blind persons,  
8 medical services for eye conditions, and vocational guidance  
9 and training of the blind;  
10 (e) provide services in respect to organization and  
11 supervise county departments of public welfare and county  
12 boards of public welfare in the administration of public  
13 assistance functions and for efficiency and economy;  
14 (f) assist and cooperate with other state and federal  
15 departments, bureaus, agencies, and institutions, when so  
16 requested, by performing services in conformity with public  
17 assistance purposes; and  
18 (g) administer and supervise all state and federal  
19 funds allocated to this--state--and--all--state--funds  
20 appropriated--to the department for public assistance;  
21 activities--the department shall do all things necessary in  
22 conformity with federal and state law, for the proper  
23 fulfillment of public assistance purposes;  
24 (h) make rules governing payment for services and  
25 supplies authorized by this title and provided to recipients

1       of public assistance; and  
 2       (ii) make such rules and take such action as may be  
 3       necessary to carry out its duties as set forth in this  
 4       title.

5       (2) The department may:

6       (a) purchase, exchange, condemn, or receive by gift  
 7       either real or personal property which is necessary to carry  
 8       out its public assistance functions. Title to property  
 9       obtained under this subsection shall be taken in the name of  
 10      the state of Montana for the use and benefit of the  
 11      department.

12      (b) contract with the federal government to carry out  
 13      its public assistance functions. The department may do all  
 14      things necessary in order to avail itself of federal aid and  
 15      assistance.

16      (c) make rules, consistent with state and federal laws,  
 17      establishing the amount, scope, and duration of services to  
 18      be provided under this title."

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 20      "53-4-111. Administrative duties of department.  
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 22      and in cooperation with the federal government, the  
 23      department shall:

24       (ii) adopt rules necessary to carry out the purposes of  
 25      this part;

1       (2) administer or supervise all child welfare  
 2       activities of the state except the child welfare activities  
 3       which are administered by the department of health and  
 4       environmental sciences."

5       Section 3. Section 53-4-304, MCA, is amended to read:  
 6       "53-4-304. Power and duties of department. (1) The  
 7       department shall establish, administer, and regulate a  
 8       continuing program of subsidized adoption.

9       (2) The department shall keep such records as are  
 10      necessary to evaluate the program in terms of the number of  
 11      children adopted under the program, the cost of the program,  
 12      and any other pertinent information.

13       (3) The department may adopt rules necessary for the  
 14      proper administration of this part."

15      Section 4. Section 53-6-113, MCA, is amended to read:  
 16      "53-6-113. Department to adopt rules. The department  
 17      of social and rehabilitation services shall adopt  
 18      appropriate rules not inconsistent with this part to  
 19      administer and supervise the program uniformly throughout  
 20      the state and shall define medical assistance by rules.  
 21      Medical assistance shall be furnished through payments to  
 22      providers of services and supplies as contemplated in this  
 23      part."

24      Section 5. Section 53-7-203, MCA, is amended to read:  
 25      "53-7-203. Purchase of sheltered employment services.

1 (1) The department may purchase for severely handicapped  
 2 persons sheltered employment services from any sheltered  
 3 workshop in Montana or work activity services from any work  
 4 activity center within Montana. The performance of and  
 5 payment for such services shall be subject to postaudit  
 6 review by the state auditor.

7 (2) The department shall maintain a register of  
 8 nonprofit organizations which it and other appropriate state  
 9 and federal agencies have inspected and certified as meeting  
 10 required standards and as qualifying to serve the needs of  
 11 such severely handicapped or disadvantaged persons.  
 12 Eligibility of organizations to receive the funds specified  
 13 by this part shall be based upon standards and criteria  
 14 promulgated by the department.

15 ~~(3) The department is authorized to promulgate such  
 16 rates as it may deem necessary or proper to carry out the  
 17 provisions of this section."~~

18 Section 6. Section 53-7-302, MCA, is amended to read:  
 19 "53-7-302. Administration. The department shall  
 20 provide the services authorized by this part to blind  
 21 individuals determined by it to be eligible therefor. In  
 22 carrying out the purposes of this part, the department may,  
 23 among other things:

24 (1) cooperate with other departments, agencies, and  
 25 institutions, both public and private, in providing the

1 services authorized by this part to blind individuals; in  
 2 studying the problems involved therein; and in establishing,  
 3 developing, and providing in conformity with the purposes  
 4 of this part, such programs, facilities, and services as may  
 5 be necessary or desirable;

6 (2) enter into reciprocal agreements with other states  
 7 to provide the services authorized by this part to residents  
 8 of the states concerned;

9 (3) conduct research and compile statistics relating  
 10 to the provision of services to or the need of services of  
 11 blind individuals;

12 (4) provide supplementary services to any applicant or  
 13 recipient who is in need of treatment either to prevent  
 14 blindness or to restore his eyesight, whether or not he is  
 15 blind, if he is otherwise qualified for services or training  
 16 under this part and if the supplementary services are  
 17 recommended because of the findings of an ophthalmologist or  
 18 optometric examination. The supplementary services may  
 19 include necessary travel and other expenses to receive  
 20 treatment from a hospital or clinic designated by the  
 21 department.

22 ~~(5) take other action necessary or appropriate to  
 23 carry out this part."~~

24 Section 7. Section 53-20-204, MCA, is amended to read:  
 25 "53-20-204. Rules. ~~(1) The department may adopt rules~~

1 necessary-for-the-proper-administration-of-this-part  
 2       (f2)--The department shall adopt rules in cooperation  
 3 with the board of nursing under which a properly trained  
 4 staff member of a facility providing services to  
 5 developmentally disabled persons under this part may assist  
 6 and supervise a client of the facility in taking medication  
 7 if the medication is usually self-administered and if a  
 8 physician has prescribed the assistance."

9       Section 8. Section 53-20-305, MCA, is amended to read:  
 10       "53-20-305. Local control of homes subject to  
 11 departmental rules. Community homes for the developmentally  
 12 disabled may be under local control, and the nonprofit  
 13 corporations or associations operating said community homes  
 14 are authorized to establish homes and programs they believe  
 15 in the best interest of their homes. The--director--of--the  
 16 department--of--social--and--rehabilitation--services--shall--adopt  
 17 reasonable--rules--and--standards--to--carry--out--the  
 18 administration--and--purposes--of--this--part."

19       Section 9. Section 53-20-402, MCA, is amended to read:  
 20       "53-20-402. Legislative findings and directives. (1)  
 21 In recognition of the need to provide supervision and  
 22 protection from exploitation for the developmentally  
 23 disabled and in acknowledgment of the desirability of  
 24 providing such services outside the state institutions, the  
 25 legislature hereby finds and declares that a program should

1       be established by the department to provide protective  
 2 services for the developmentally disabled. Such a program  
 3 should be designed to provide the services set forth in this  
 4 part for developmentally disabled persons.

5       (2) The--director--of--the--department--shall--adopt--rules  
 6 for--the--administration--of--this--part. The department shall  
 7 develop a statewide system of protective service in  
 8 accordance with regulations and standards established by the  
 9 department with respect to this program. The department  
 10 may:

11       (a) provide direct services;  
 12       (b) enter into a contract with any responsible agency,  
 13 public or private, for provision of protective service by  
 14 the agency;

15       (c) accept appointment by any district court as  
 16 guardian, trustee, protector, or trustee and protector of a  
 17 mentally retarded or other developmentally disabled person."

18       Section 10. Section 53-7-102, MCA, is amended to read:

19       "53-7-102. Powers and duties of department. The  
 20 department of social and rehabilitation services:

21       (1) shall--adopt--rules--governing--personnel--standards--  
 22 the--protection--of--records--and--confidential--information--the  
 23 manner--and--form--of--filing--applications--eligibility--and  
 24 investigation--and--determination--thereof--for--vocational  
 25 rehabilitation--services--procedures--for--fair--hearings--and

1       any other rules necessary to carry out this part;  
2       (f2) except as otherwise provided by law, shall provide  
3       vocational rehabilitation services to eligible disabled  
4       individuals;  
5       (f3) shall take any other action it considers necessary  
6       or appropriate to carry out the purposes of this part;  
7       (f4) (21) may cooperate with other agencies and  
8       institutions, both public and private, in providing for  
9       vocational rehabilitation of disabled individuals, in  
10      studying the problems involved in vocational rehabilitation,  
11      and establishing, developing, and providing necessary  
12      programs, facilities, and services;  
13      (f5) (31) may conduct research and compile statistics  
14      relating to the vocational rehabilitation of disabled  
15      individuals;  
16      (f6) (41) may accept and use gifts to carry out this  
17      part. Gifts made under conditions which the department  
18      considers proper and consistent with this part may be  
19      accepted and shall be held, invested, reinvested, and used  
20      in accordance with the conditions of the gift."

21       Section 11. Repealer. Sections 53-4-212 and 53-5-205,  
22       MCA, are repealed.

-End-

*SB 104*

STATE OF MONTANA

Request No. 480-79

FISCAL NOTE

Form BD-15

In compliance with a written request received March 11, 1979, there is hereby submitted a Fiscal Note for Senate Bill 104 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 104 is an act to give express rulemaking authority for certain programs to the Department of Social and Rehabilitation Services.

ASSUMPTIONS:

The Department of Social and Rehabilitation Services has been exercising rulemaking authority for the programs outlined in SB 104 under implied authority.

FISCAL IMPACT:

None.

*Richard A. Tracy Jr.*  
BUDGET DIRECTOR  
Office of Budget and Program Planning  
Date: 3/13/79

1 STATEMENT OF INTENT RE: SB 104  
2  
3

4 A statement of intent is required for this bill in that  
5 it delegates authority to adopt rules in sections 1 through  
6 4.

7 1. Under present law, SRS has express rulemaking  
8 authority to carry out most of its duties under Title 53.  
9 The Department's present authority includes the power to  
10 adopt rules to implement and carry out the following: child  
11 welfare services; Aid to Dependent Children programs;  
12 subsidized adoption; protective services for adults; Medical  
13 Assistance programs; sheltered workshop programs; community  
14 based services; community homes and protective services for  
15 the developmentally disabled; and vocational rehabilitation  
16 programs.

17 2. While there are duties for which SRS has express  
18 rulemaking authority, there also are duties for which the  
19 Department's rulemaking authority could only be implied. The  
20 Montana Administrative Procedure Act, Section  
21 2-4-102(11)(a), MCA, requires that substantive rules be  
22 adopted under express authority in order to be valid. Under  
23 an agreement with the Administrative Code Committee, SRS  
24 introduced legislation to eliminate this gap in the  
25 Department's express authority. This bill gives SRS express

1 rulemaking authority to adopt rules to comply with federal  
2 law; to carry out its responsibilities for public welfare;  
3 and to administer vocational rehabilitation for the blind.  
4 3. The express authority given to SRS under this bill  
5 will allow the Department to adopt rules which cover the  
6 following areas: eligibility requirements for various  
7 services; scope of services to be offered; specific criteria  
8 that providers of services must meet to qualify as  
9 providers; how, when, and in what form various types of  
10 assistance will be offered; and procedure for applying for  
11 and receiving aids. The area of social services is a field  
12 which evolves as the needs of the population change. Federal  
13 programs and their concomitant regulations are constantly  
14 being revised and altered. This legislation allows SRS to  
15 adapt the specifics of its social services programs to meet  
16 those federal changes but within the confines of state law.  
17 First adopted by the SENATE JUDICIARY COMMITTEE on  
18 January 29, 1979.

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 104

2 INTRODUCED BY S. BROWN

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7 THE--RULEMAKING--AUTHORITY--OF--THE--DEPARTMENT--OF--SOCIAL--AND  
8 REHABILITATION--SERVICES; AMENDING--SECTIONS--53-2-201,  
9 53-4-201, 53-4-304, 53-6-203, 53-7-102, 53-7-203, 53-7-302,  
10 53-20-204, 53-20-305, AND--53-20-402--NEA--AND--REPEATING  
11 SECTIONS--53-4-202--AND--53-5-205--NEA--TO GIVE EXPRESS  
12 RULEMAKING AUTHORITY FOR CERTAIN PROGRAMS TO THE DEPARTMENT  
13 OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS  
14 53-2-201, 53-3-102, 53-5-304, AND 53-7-302, MCA."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Refer to Introduced Bill

18 (Strike everything after the enacting clause and insert:)

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20 "53-2-201. Powers and duties of department. (1) The  
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5 delinquent children in foster family homes, especially  
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11 provisions for services to the blind, including the  
12 prevention of blindness, the location of blind persons,  
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14 and training of the blind;  
15 (e) provide services in respect to organization and  
16 supervise county departments of public welfare and county  
17 boards of public welfare in the administration of public  
18 assistance functions and for efficiency and economy;  
19 (f) assist and cooperate with other state and federal  
20 departments, bureaus, agencies, and institutions, when so  
21 requested, by performing services in conformity with public  
22 assistance purposes; and  
23 (g) administer and supervise all state and federal  
24 funds allocated to this--state--and--all--state--funds  
25 appropriated--to the department for public assistance

1 activities----the---department---shall and do all things  
 2 necessary, in conformity with federal and state law, for the  
 3 proper fulfillment of public assistance purposes; and  
 4 (b) make rules governing payment for services and  
supplies provided to recipients of public assistance.

5 (2) The department may:

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 7 either real or personal property which is necessary to carry  
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 9 obtained under this subsection shall be taken in the name of  
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12 (b) contract with the federal government to carry out  
 13 its public assistance functions. The department may do all  
 14 things necessary in order to avail itself of federal aid and  
 15 assistance.

16 (c) make rules consistent with state and federal laws  
establishing the amount, scope, and duration of services to  
be provided to recipients of public assistance."

17 SECTION 2. SECTION 53-3-102, MCA, IS AMENDED TO READ:  
 18 "53-3-102. Administration. The department and county  
 19 departments of public welfare are hereby authorized and  
 20 charged with the administration and supervision of general  
 21 relief under the powers, duties, and functions as prescribed  
 22 in chapter 2 of this title. The department may adopt rules

1 and take other action necessary to carry out its  
 2 responsibilities under this chapter."

3 SECTION 3. SECTION 53-5-304, MCA, IS AMENDED TO READ:  
 4 "53-5-304. Standards for adult foster family care  
 5 homes. The department may establish by rules standards by  
 6 which private residences may be licensed as adult foster  
 7 family care homes. These standards shall provide for the  
 8 safety and comfort of the residents and shall be subject to  
 9 the advice and recommendations of the department of health  
 10 and environmental sciences in relation to fire and safety  
 11 requirements."

12 SECTION 4. SECTION 53-7-302, MCA, IS AMENDED TO READ:  
 13 "53-7-302. Administration. The department shall  
 14 provide the services authorized by this part to blind  
 15 individuals determined by it to be eligible therefor. In  
 16 carrying out the purposes of this part, the department may,  
 17 among other things:

18 (1) cooperate with other departments, agencies, and  
 19 institutions, both public and private, in providing the  
 20 services authorized by this part to blind individuals; in  
 21 studying the problems involved therein; and in establishing,  
 22 developing, and providing, in conformity with the purposes  
 23 of this part, such programs, facilities, and services as may  
 24 be necessary or desirable;

25 (2) enter into reciprocal agreements with other states

1 to provide the services authorized by this part to residents  
2 of the states concerned;

3 (3) conduct research and compile statistics relating  
4 to the provision of services to or the need of services of  
5 blind individuals;

6 (4) provide supplementary services to any applicant or  
7 recipient who is in need of treatment either to prevent  
8 blindness or to restore his eyesight, whether or not he is  
9 blind, if he is otherwise qualified for services or training  
10 under this part and if the supplementary services are  
11 recommended because of the findings of an ophthalmologist or  
12 optometric examination. The supplementary services may  
13 include necessary travel and other expenses to receive  
14 treatment from a hospital or clinic designated by the  
15 department.

16 (5) make rules and take other action necessary or  
17 appropriate to carry out this part."

-End-

**STATEMENT OF INTENT RE: SB 104**

4           A statement of intent is required for this bill in that  
5   it delegates authority to adopt rules in sections 1 through  
6   4.

7           1. Under present law, SRS has express rulemaking  
8 authority to carry out most of its duties under Title 53.  
9 The Department's present authority includes the power to  
10 adopt rules to implement and carry out the following: child  
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13 Assistance programs; sheltered workshop programs; community  
14 based services; community homes and protective services for  
15 the developmentally disabled; and vocational rehabilitation  
16 programs.

17           2. While there are duties for which SRS has express  
18 rulemaking authority, there also are duties for which the  
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20 Montana Administrative Procedure Act, Section  
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22 adopted under express authority in order to be valid. Under  
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24 introduced legislation to eliminate this gap in the  
25 Department's express authority. This bill gives SRS express

1 rulemaking authority to adopt rules to comply with federal  
2 law; to carry out its responsibilities for public welfare;  
3 and to administer vocational rehabilitation for the blind.  
4 3. The express authority given to SRS under this bill  
5 will allow the Department to adopt rules which cover the  
6 following areas: eligibility requirements for various  
7 services; scope of services to be offered; specific criteria  
8 that providers of services must meet to qualify as  
9 providers; how, when, and in what form various types of  
10 assistance will be offered; and procedure for applying for  
11 and receiving aid. The area of social services is a field  
12 which evolves as the needs of the population change. Federal  
13 programs and their concomitant regulations are constantly  
14 being revised and altered. This legislation allows SRS to  
15 adapt the specifics of its social services programs to meet  
16 these federal changes but within the confines of state law.

17 First adopted by the SENATE JUDICIARY COMMITTEE on  
18 January 29, 1979.

SENATE BILL NO. 104

INTRODUCED BY S. BROWN

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND  
REHABILITATION SERVICES

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE--AND--CLARIFY  
7 THE--RULEMAKING--AUTHORITY--OF--THE--DEPARTMENT--OF--SOCIAL--AND  
8 REHABILITATION--SERVICES,--AMENDING--SECTIONS--53-2-201,  
9 53-4-222,--53-4-304,--53-6-223,--53-7-102,--53-7-203,--53-7-302,  
10 53-20-204,--53-20-305,--AND--53-20-402,--NEAT--AND--REPEALING  
11 SECTIONS--53-4-222--AND--53-5-205--MEA TO GIVE EXPRESS  
12 RULEMAKING AUTHORITY FOR CERTAIN PROGRAMS TO THE DEPARTMENT  
13 OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS  
14 53-2-201, 53-3-102, 53-5-304, AND 53-7-302, MCA."

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

Refer to Introduced Bill

18 (Strike everything after the enacting clause and insert:)

19 SECTION 1. SECTION 53-2-201, MCA, IS AMENDED TO READ:  
20 \*53-2-201. Powers and duties of department. (1) The  
21 department shall:

22 (a) administer or supervise all forms of public  
23 assistance, child protection, and child welfare, including  
24 the provision of medical care payments in behalf of  
25 recipients of public assistance;

1 activities---The---department---shall and do all things  
 2 necessary, in conformity with federal and state law, for the  
 3 proper fulfillment of public assistance purposes; and  
 4 (b) make rules governing payment for services and  
supplies provided to recipients of public assistance.

5 (2) The department may:

6 (a) purchase, exchange, condemn, or receive by gift  
 7 either real or personal property which is necessary to carry  
 8 out its public assistance functions. Title to property  
 9 obtained under this subsection shall be taken in the name of  
 10 the state of Montana for the use and benefit of the  
 11 department.

12 (b) contract with the federal government to carry out  
 13 its public assistance functions. The department may do all  
 14 things necessary in order to avail itself of federal aid and  
 15 assistance.

16 (c) make rules consistent with state and federal law,  
establishing the amount, scope, and duration of services to  
be provided to recipients of public assistance."

17 SECTION 2. SECTION 53-3-102, MCA, IS AMENDED TO READ:  
 18 "53-3-102. Administration. The department and county  
 19 departments of public welfare are hereby authorized and  
 20 charged with the administration and supervision of general  
 21 relief under the powers, duties, and functions as prescribed  
 22 in chapter 2 of this title. The department may adopt rules

1 and take other action necessary to carry out its  
 2 responsibilities under this chapter."

3 SECTION 3. SECTION 53-5-304, MCA, IS AMENDED TO READ:  
 4 "53-5-304. Standards for adult foster family care  
 5 homes. The department may establish by rules standards by  
 6 which private residences may be licensed as adult foster  
 7 family care homes. These standards shall provide for the  
 8 safety and comfort of the residents and shall be subject to  
 9 the advice and recommendations of the department of health  
 10 and environmental sciences in relation to fire and safety  
 11 requirements."

12 SECTION 4. SECTION 53-7-302, MCA, IS AMENDED TO READ:  
 13 "53-7-302. Administration. The department shall  
 14 provide the services authorized by this part to blind  
 15 individuals determined by it to be eligible therefor. In  
 16 carrying out the purposes of this part, the department may,  
 17 among other things:

18 (1) cooperate with other departments, agencies, and  
 19 institutions, both public and private, in providing the  
 20 services authorized by this part to blind individuals; in  
 21 studying the problems involved therein; and in establishing,  
 22 developing, and providing, in conformity with the purposes  
 23 of this part, such programs, facilities, and services as may  
 24 be necessary or desirable;

25 (2) enter into reciprocal agreements with other states

1 to provide the services authorized by this part to residents  
2 of the states concerned;

3 (3) conduct research and compile statistics relating  
4 to the provision of services to or the need of services of  
5 blind individuals;

6 (4) provide supplementary services to any applicant or  
7 recipient who is in need of treatment either to prevent  
8 blindness or to restore his eyesight, whether or not he is  
9 blind, if he is otherwise qualified for services or training  
10 under this part and if the supplementary services are  
11 recommended because of the findings of an ophthalmologist or  
12 optometric examination. The supplementary services may  
13 include necessary travel and other expenses to receive  
14 treatment from a hospital or clinic designated by the  
15 department.

16 (5) make rules and take other action necessary or  
17 appropriate to carry out this part."

-End-

STATEMENT OF INTENT RE: SB 104

A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through .

7           1. Under present law, SRS has express rulemaking  
8        authority to carry out most of its duties under Title 53.  
9        The Department's present authority includes the power to  
10      adopt rules to implement and carry out the following: child  
11      welfare services; Aid to Dependent Children programs;  
12      subsidized adoption; protective services for adults; Medical  
13      Assistance programs; sheltered workshop programs; community  
14      based services; community homes and protective services for  
15      the developmentally disabled; and vocational rehabilitation  
16      programs.

17       2. While there are duties for which SRS has express  
18 rulemaking authority, there also are duties for which the  
19 Department's rulemaking authority could only be implied. The  
20 Montana Administrative Procedure Act, Section  
21 2-4-102(11)(a), MCA, requires that substantive rules be  
22 adopted under express authority in order to be valid. Under  
23 an agreement with the Administrative Code Committee, SRS  
24 introduced legislation to eliminate this gap in the  
25 Department's express authority. This bill gives SRS express

1 rulemaking authority to adopt rules to comply with federal  
2 law; to carry out its responsibilities for public welfare;  
3 and to administer vocational rehabilitation for the blind.  
4  
5 3. The express authority given to SRS under this bill  
6 will allow the Department to adopt rules which cover the  
7 following areas: eligibility requirements for various  
8 services; scope of services to be offered; specific criteria  
9 that providers of services must meet to qualify as  
10 providers; how, when, and in what form various types of  
11 assistance will be offered; and procedure for applying for  
12 and receiving aid. The area of social services is a field  
13 which evolves as the needs of the population change. Federal  
14 programs and their concomitant regulations are constantly  
15 being revised and altered. This legislation allows SRS to  
16 adapt the specifics of its social services programs to meet  
17 those federal changes but within the confines of state law.  
18  
19 First adopted by the SENATE JUDICIARY COMMITTEE on  
20 January 29, 1979.

-2-

SB 104

1 SENATE BILL NO. 104  
2 INTRODUCED BY S. BROWN  
3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND  
4 REHABILITATION SERVICES  
5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE--AND--CLARIFY  
7 THE--RULEMAKING--AUTHORITY--OF--THE--DEPARTMENT--OF--SOCIAL--AND  
8 REHABILITATION--SERVICES;--AMENDING--SECTIONS--53-2-201,  
9 53-4-111,--53-4-304,--53-6-113,--53-7-102,--53-7-203,--53-7-302,  
10 53-20-204,--53-20-305,--AND--53-20-402,--MEAN--AND--REPEATING  
11 SECTIONS--53-4-212,--AND--53-5-205,--MEAN TO GIVE EXPRESS  
12 RULEMAKING AUTHORITY FOR CERTAIN PROGRAMS TO THE DEPARTMENT  
13 OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS  
14 53-2-201, 53-3-102, 53-5-304, AND 53-7-302, MCA."

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

**Refer to Introduced Bill**

18 (Strike everything after the enacting clause and insert:)

19 SECTION 1. SECTION 53-2-201, MCA, IS AMENDED TO READ:  
20 "53-2-201. Powers and duties of department. (1) The  
21 department shall:

22 (a) administer or supervise all forms of public  
23 assistance, child protection, and child welfare, including  
24 the provision of medical care payments in behalf of  
25 recipients of public assistance;

- (b) administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;
- (c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;
- (d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;
- (e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;
- (f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes; and
- (g) administer and-supervise all state and federal funds allocated to this--state--and--all--state--funds appropriated--to the department for public assistance

1 activities---the---department---shall and do all things  
 2 necessary, in conformity with federal and state law, for the  
 3 proper fulfillment of public assistance purposes;*and*  
 4 ibl make rules governing payment for services and  
 5 supplies provided to recipients of public assistance.

6 (2) The department may:

7 (a) purchase, exchange, condemn, or receive by gift  
 8 either real or personal property which is necessary to carry  
 9 out its public assistance functions. Title to property  
 10 obtained under this subsection shall be taken in the name of  
 11 the state of Montana for the use and benefit of the  
 12 department.

13 (b) contract with the federal government to carry out  
 14 its public assistance functions. The department may do all  
 15 things necessary in order to avail itself of federal aid and  
 16 assistance.

17 (c) make rules consistent with state and federal law,  
 18 establishing the amounts, scope, and duration of services to  
 19 be provided to recipients of public assistance."

20 SECTION 2. SECTION 53-3-102, MCA, IS AMENDED TO READ:  
 21 "53-3-102. Administration. The department and county  
 22 departments of public welfare are hereby authorized and  
 23 charged with the administration and supervision of general  
 24 relief under the powers, duties, and functions as prescribed  
 25 in chapter 2 of this title. The department may adopt rules

1 and take other action necessary to carry out its  
 2 responsibilities under this chapter."

3 SECTION 3. SECTION 53-5-304, MCA, IS AMENDED TO READ:  
 4 "53-5-304. Standards for adult foster family care  
 5 homes. The department may establish by rules standards by  
 6 which private residences may be licensed as adult foster  
 7 family care homes. These standards shall provide for the  
 8 safety and comfort of the residents and shall be subject to  
 9 the advice and recommendations of the department of health  
 10 and environmental sciences in relation to fire and safety  
 11 requirements."

12 SECTION 4. SECTION 53-7-302, MCA, IS AMENDED TO READ:  
 13 "53-7-302. Administration. The department shall  
 14 provide the services authorized by this part to blind  
 15 individuals determined by it to be eligible therefor. In  
 16 carrying out the purposes of this part, the department may,  
 17 among other things:

18 (1) cooperate with other departments, agencies, and  
 19 institutions, both public and private, in providing the  
 20 services authorized by this part to blind individuals; in  
 21 studying the problems involved therein; and in establishing,  
 22 developing, and providing, in conformity with the purposes  
 23 of this part, such programs, facilities, and services as may  
 24 be necessary or desirable;

25 (2) enter into reciprocal agreements with other states

1 to provide the services authorized by this part to residents  
2 of the states concerned;

3 (3) conduct research and compile statistics relating  
4 to the provision of services to or the need of services of  
5 blind individuals;

6 (4) provide supplementary services to any applicant or  
7 recipient who is in need of treatment either to prevent  
8 blindness or to restore his eyesight, whether or not he is  
9 blind, if he is otherwise qualified for services or training  
10 under this part and if the supplementary services are  
11 recommended because of the findings of an ophthalmologist or  
12 optometric examination. The supplementary services may  
13 include necessary travel and other expenses to receive  
14 treatment from a hospital or clinic designated by the  
15 department.

16 (5) make rules and take other action necessary or  
17 appropriate to carry out this part.\*

-End-