

HOUSE BILL NO 67

INTRODUCED BY FABREGA, GOODOVER,
JACOBSEN, METCALF, BERGENE

BY REQUEST OF
THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on Business and Industry.
January 7, 1981	Fiscal note requested.
January 13, 1981	Fiscal note returned.
February 5, 1981	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 6, 1981	Bill printed and placed on members' desks.
February 7, 1981	Second reading, do pass as amended.
February 9, 1981	Correctly engrossed.
February 11, 1981	Third reading, passed. Ayes, 98; Noes, 0. Transmitted to Senate.

IN THE SENATE

February 12, 1981	Introduced and referred to Committee on Business and Industry.
March 11, 1981	Committee recommend bill be concurring in. Report adopted.
March 12, 1981	Second reading, concurred in.
March 14, 1981	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 17, 1981

Returned from Senate. Con-
curred in.

March 20, 1981

Sent to enrolling. Reported
correctly enrolled.

1 conduct of state matters and occupied principally by state
2 employees. State property for the purpose of this [act] does
3 not include vocational institutions or institutions of
4 higher education.

5 (8) "Vending facility" means an area and equipment
6 inclusive of vending machines on state property which is or
7 may be utilized in providing a food, beverage, or other
8 service to employees and other persons present on the
9 property.

10 (9) "Vending machine" means a device for the dispensing
11 of foodstuffs, liquids, or other products when money is
12 inserted into the device. Vending machine does not include
13 postage stamp machines or coin-operated telephones.

14 (10) "Vocational rehabilitation programs" means those
15 programs provided for under the federal Randolph-Sheppard
16 Act, as amended, and Title 53, chapter 7, part 3.

17 Section 3. Certification and eligibility of blind
18 persons. (1) The department shall certify for the purposes
19 of this [act] and the federal Randolph-Sheppard Act, as
20 amended, those persons who are blind persons as defined in
21 this [act] who the department has determined are in need of
22 vocational opportunities and are qualified to operate
23 vending facilities.

24 (2) Any person or vendor operating a vending facility
25 under the auspices of the blind vendor program administered

1 by the department prior to [the effective date of this act]
2 may be certified as a blind vendor for the purposes of this
3 [act].

4 (3) Only certified blind persons are eligible for the
5 vocational opportunities provided in this [act].

6 Section 4. Vending facilities, equipment, and supplies
7 -- available to certified blind persons. (1) The department
8 may make available to a certified blind person a vending
9 facility appropriate for providing that person with a
10 business opportunity determined by the department to be
11 suitable for that person.

12 (2) The department may, through the vocational
13 rehabilitation programs it administers, provide by sale,
14 lease, loan, or grant such equipment, stocks, and supplies
15 as may be necessary for a blind vendor to establish or
16 improve a vending facility business. The department shall
17 retain a first option to repurchase any equipment it has
18 sold to a blind vendor.

19 Section 5. Administration of vending facilities --
20 state properties. (1) The department of administration or
21 any other department of state government that administers
22 state property subject to this [act] shall transfer to the
23 department the management and control of any vending
24 facility that the department has determined is an
25 appropriate facility for the purposes of this [act] and that

1 the department has determined is needed for the purposes of
 2 this [act]. A lease or contract for the operation of a
 3 vending facility entered into prior to [the effective date
 4 of this act] is not subject to this [act] while the lease or
 5 contract remains in effect.

6 (2) The department of administration or any other
 7 department of state government that administers state
 8 property subject to this [act] shall give reasonable notice
 9 to the department of the expiration or termination of any
 10 lease or contract in effect for a vending facility.

11 (3) Upon receipt of the notice, the department shall
 12 give reasonable notice to the department of administration
 13 or other department of state government that sent the notice
 14 required in subsection (2) stating that the department has
 15 determined that the vending facility is either appropriate
 16 and needed for the purposes of this [act] or that it is not.

17 (4) A state agency administering state property shall
 18 consult with the department when planning for a new state
 19 building, planning for remodeling of or addition to an
 20 existing state building, or negotiating the lease of a
 21 building for state use, to determine what vending facilities
 22 might be appropriate for the site and plan for such vending
 23 facilities.

24 (5) The department shall administer those vending
 25 facilities which are determined to be appropriate and

1 necessary.

2 (6) The department is not subject to any requirements
 3 for competitive bidding on state leases or services to the
 4 state on vending facilities that are to be made available to
 5 certified blind persons or when purchasing initial supplies
 6 for the purpose of assisting a blind vendor.

7 (7) The department may temporarily operate a vending
 8 facility administered by the department if there is no
 9 certified blind person qualified to operate that facility.

10 (8) The department may, directly or through contractual
 11 arrangements, operate a facility consisting solely of
 12 vending machines if it has determined that operation by a
 13 blind vendor would be inappropriate.

14 (9) Neither a blind vendor nor the department is
 15 required to pay for rent, utilities, janitorial services, or
 16 building maintenance costs for the space occupied by a
 17 vending facility on state property.

18 (10) The department may purchase, sell, lease, maintain,
 19 and manage as necessary the equipment, stocks, and supplies
 20 required for the operation of those vending facilities
 21 administered as provided for in this [act].

22 Section 6. Health and retirement fund -- services to
 23 vendors. (1) The department may manage a health and
 24 retirement fund for blind vendors.

25 (2) The department may set aside a reasonable

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1 percentage of the net incomes earned by blind vendors from
 2 the operation of vending facilities on state and other
 3 property administered by the department to fund the
 4 operation of vending facilities and to fund the blind
 5 vendors' health and retirement fund.

6 (3) The department shall use all net income earned from
 7 facilities operated under the provisions of [section 5(7)
 8 and (8)] to fund services to blind vendors and to fund the
 9 blind vendors' health and retirement fund.

10 Section 7. Assurance of quality of service. After
 11 consultation with departments that are served by vending
 12 facilities subject to this [act], the department may take
 13 action as necessary to assure the quality of services being
 14 provided by blind vendors.

15 Section 8. Right to fair hearing. A blind vendor is
 16 entitled to a fair hearing for any grievance against the
 17 department.

18 Section 9. Administration of vending facilities on
 19 other property. The department may enter into agreements
 20 with private parties or governmental entities not otherwise
 21 coming under the provisions of this [act] owning or
 22 controlling other property for the establishment and
 23 administration of blind vendor operations.

24 Section 10. Implementation of Randolph-Sheppard Act, as
 25 amended. (1) The department may enter into agreements with

1 the federal government as provided for in the
 2 Randolph-Sheppard Act, as amended, for administering the
 3 Randolph-Sheppard Act for all state or federal purposes.

4 (2) The department may adopt rules to implement
 5 agreements with the federal government entered into under
 6 the Randolph-Sheppard Act, as amended.

7 Section 11. Authority to adopt rules. The department
 8 may adopt such rules as are necessary to effectuate this
 9 [act].

10 Section 12. Saving clause. This act does not affect
 11 rights and duties that matured, penalties that were
 12 incurred, or proceedings that were begun before the
 13 effective date of this act.

14 Section 13. Severability. If a part of this act is
 15 invalid, all valid parts that are severable from the invalid
 16 part remain in effect. If a part of this act is invalid in
 17 one or more of its applications, the part remains in effect
 18 in all valid applications that are severable from the
 19 invalid applications.

20 Section 14. Repealer. Sections 49-4-401 through
 21 49-4-406, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 49-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 7, 19 81, there is hereby submitted a Fiscal Note for House Bill 67 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

A proposal to allow the Social and Rehabilitation Services Department to administer certain areas in state buildings for the benefit of the blind.

Assumptions

The revenue impact is based on the loss of present rental contract in the amount of \$5,004 per year for the Mitchell cafe and current contracts for vending machine permits in State buildings amounting to \$7,000 per year.

Revenue Impact

	<u>FY 1982</u>	<u>FY 1983</u>	<u>Total Biennium</u>
Rent for Mitchell Building Cafe	\$ 5,004	\$ 5,004	\$10,008
Various Vending Machine Permits	<u>7,000</u>	<u>7,000</u>	<u>14,000</u>
Total Revenue Impact	\$12,004	\$12,004	\$24,008

Expense Impact

Janitorial Service - Capitol - 1,676 sq.ft.	\$ 922	\$ 1,006	\$ 1,928
Janitorial Service - Mitchell - 1,881 sq.ft.	<u>1,034</u>	<u>1,128</u>	<u>2,162</u>
Total Expense Impact	\$ 1,956	\$ 2,134	\$ 4,090
Net Cost to Department of Administration (in revenue loss and cost of maintenance)	\$13,960	\$14,138	\$28,098

The Department of Social and Rehabilitation Services indicates that net revenues and expenses will offset each other. No net increase to operational cost.

Net Loss to State	\$13,960	\$14,138	\$28,098
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Lyle Manley, for
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 1-13-81

1 STATEMENT OF INTENT

2 HOUSE BILL 67

3 House Business and Industry Committee

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5 The current statutory authority providing a preference
6 to blind and handicapped persons in the leasing of vending
7 facilities on state property is not adequate for the
8 purposes of authorizing the Department of Social and
9 Rehabilitation Services to administer the federal
10 Randolph-Sheppard Act for either federal or state purposes.
11 The state statutory scheme for providing a preference to
12 blind vendors in the leasing of vending areas in state
13 property is poorly defined and difficult to administer.

14 This act will provide specific statutory authority in
15 Section 10 by which the Department may administer the
16 programs it has established for the purposes of the federal
17 Randolph-Sheppard Act. Section 10, subsection 2 authorizes
18 the Department to adopt rules for the purposes of
19 implementing the administration of vending facilities on
20 federal property by the department as authorized in the
21 federal Randolph-Sheppard Act and for administering programs
22 mandated by the federal Randolph-Sheppard Act.

23 This act provides for a state program administered by
24 the department which will make available to qualified blind
25 persons vending facilities to be operated by them. This

1 programmatic statutory scheme is a more appropriate mode for
2 providing vocational opportunities to blind persons than was
3 the prior preference system. This scheme will insure that
4 federal and state vocational programs are available to those
5 blind persons who are most qualified to become blind
6 vendors. The preference system did not distinguish as to
7 degree of handicap or economic need. This scheme will also
8 insure continuity in the administering of these vending
9 facilities and related programs. The preference system did
10 not insure that vending facilities would be available to
11 qualified blind persons nor did it encourage the investment
12 or program resources in the training of qualified blind
13 persons and the equipping of vending facilities for
14 operation by them. This act clearly defines what state
15 property is subject to the act. This act also provides that
16 the Department may enter into agreements with private
17 parties and local governments in order to make vending
18 facilities on their properties available to qualified blind
19 vendors. The prior preference system in not defining the
20 property subject to the preference raised serious questions
21 as to its intended scope, nor did the prior preference
22 system allow for the expansion by agreement of the blind
23 vendor program into vending facilities on private property.

24 The act is intended to provide vocational training and
25 active employment for persons handicapped by blindness or

1 serious visual impairment. Since active employment is an
 2 important objective of the legislation, the act limits the
 3 department's ability to directly operate or to include in
 4 its vocational program such passive operations as
 5 maintenance of self-service vending machines, particularly
 6 on state property. While the department will be able to
 7 derive the revenues from vending machines which are now
 8 received by the Department of Administration, it is
 9 anticipated that the Department will continue the present
 10 practice of the Department of Administration and let
 11 contracts for provision of vending machines by competitive
 12 bid. The act specifically provides for a gradual phasing in
 13 of blind-vendor operated vending facilities in any case
 14 where the immediate implementation of the program would
 15 cause an economic hardship to the current vendor, who could
 16 otherwise expect a renewal of contract. The language is
 17 written in discretionary terms in order to permit the
 18 Department to respond to situations as they actually exist
 19 and to preclude the language being used to provide a new
 20 contract to a private vendor whose contract, in the normal
 21 course of events, would have been terminated without this
 22 act. However, it is intended that the Department employ its
 23 discretion in a compassionate manner to avoid inflicting
 24 economic hardship on an otherwise satisfactory private
 25 vendor. The Department is authorized to charge a fee in lieu

1 of rental to blind vendors on state property whose
 2 operations become financially successful. Again, the
 3 language is made discretionary so that the Department can
 4 deal with the situation as it actually exists in practice.
 5 However, the intent of this provision is that the Department
 6 charge to the financially successful blind vendor a fee in
 7 lieu of rental which will provide the state with some
 8 compensation for the use of the space without working a
 9 financial hardship on the blind vendor.

10 The certification of blind persons qualified to be
 11 blind vendors provided for in this act is necessary for
 12 administration by the Department of the federal
 13 Randolph-Sheppard Act on federal properties. This
 14 certification will constitute the "licensing" mandated in
 15 the federal Randolph-Sheppard Act. This certification will
 16 be utilized for the purposes of the state program as well.
 17 The administration of the program for federal and state
 18 purposes will be therefore more congruent.

19 This act provides that the Department may administer a
 20 health and retirement fund for the blind vendors. This fund
 21 as well as the blind vendors' program may be funded by a
 22 set-aside from the net income of blind vendors. This
 23 set-aside is to be a reasonable percentage which will not
 24 affect the financial status of the blind vendors to such a
 25 degree as to deny them the intended vocational and economic

1 benefits of the program. The health and retirement fund and
2 the blind vendors' program may be funded as well by the
3 Department from the income the Department may receive from
4 vending facilities which it may operate directly. The health
5 and retirement fund is authorized for the purpose of
6 implementing that aspect of the Federal Randolph-Sheppard
7 Act. The applicability of this fund to blind vendors on
8 state property will insure that there will be congruence
9 between the program as administered for federal and state
10 purposes.

11 This act states the authority of the Department for the
12 purposes of the act and provides the general criteria and
13 procedure for the transfer of the administration of vending
14 facilities on state property to the Department. The prior
15 preference system did not define administrative authority
16 nor did it state what the appropriate criteria and procedure
17 would be.

18 The act provides the Department with the rulemaking
19 authority necessary for the implementation in a definitive
20 manner of the purposes of this act.

Approved by Committee
on Business and Industry

1 HOUSE BILL NO. 67
 2 INTRODUCED BY FABREGA, GOODOVER,
 3 JACOBSEN, METCALF, BERGENE
 4 BY REQUEST OF
 5 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
 8 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MAY
 9 ADMINISTER CERTAIN AREAS IN STATE, FEDERAL, AND OTHER
 10 BUILDINGS FOR THE PURPOSE OF PROVIDING VENDING FACILITIES TO
 11 BLIND PERSONS WHO ARE IN NEED OF VOCATIONAL OPPORTUNITIES;
 12 REPEALING SECTIONS 49-4-401 THROUGH 49-4-406, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Purpose. It is the purpose of this [act],
 16 in recognition of the vocational and economic needs of blind
 17 persons, to make available to those blind persons in need of
 18 vocational opportunities space in state, federal, or other
 19 property appropriate for certain business operations and to
 20 assist those persons in the development of business
 21 operations.

22 Section 2. Definitions. As used in this [act] the
 23 following definitions apply:

24 (1) "Blind person" means a person whose central visual
 25 acuity does not exceed 20/200 in the better eye with

1 correcting lenses or whose visual acuity is greater than
 2 20/200 but is accompanied by a limitation in the fields of
 3 vision in the better eye to such a degree that the widest
 4 diameter of the visual field subtends an angle no greater
 5 than 20 degrees as determined by an ophthalmologist or a
 6 physician skilled in diseases of the eye.

7 (2) "Blind vendor" means a person certified as a blind
 8 person for the purpose of this [act] and who is operating a
 9 vending facility administered by the department.

10 (3) "Certified blind person" means a blind person who
 11 the department has determined to be a blind person as
 12 defined in this [act] who is in need of vocational
 13 opportunities, and who is qualified to operate a vending
 14 facility.

15 (4) "Department" means the department of social and
 16 rehabilitation services.

17 (5) "Federal property" means buildings or portions of
 18 buildings or other real property owned or leased by the
 19 federal government upon which the department may administer
 20 vending facilities by an agreement entered into under the
 21 authority of the federal Randolph-Sheppard Act, as amended.

22 (6) "Other property" means all real property other
 23 than state or federal property as defined in this [act].

24 (7) "State property" means those buildings or portions
 25 of buildings or other real property owned or leased UNDER A

1 LEASE-PURCHASE AGREEMENT, OR IN THE CASE OF A BUILDING,
 2 LEASED IN ITS ENTIRETY by the state or agencies of the state
 3 that are utilized in the conduct of state matters and
 4 occupied principally by state employees. State property for
 5 the purpose of this [act] does not include vocational
 6 institutions or institutions of higher education.

7 (8) "Vending facility" means an area and equipment
 8 inclusive of vending machines on state property which is or
 9 may be utilized in providing a food, beverage, or other
 10 service to employees and other persons present on the
 11 property.

12 (9) "Vending machine" means a device for the
 13 dispensing of foodstuffs, liquids, or other products when
 14 money is inserted into the device. Vending machine does not
 15 include postage stamp machines or coin-operated telephones.

16 (10) "Vocational rehabilitation programs" means those
 17 programs provided for under the federal Randolph-Sheppard
 18 Act, as amended, and Title 53, chapter 7, part 3.

19 Section 3. Certification and eligibility of blind
 20 persons. (1) The department shall certify for the purposes
 21 of this [act] and the federal Randolph-Sheppard Act, as
 22 amended, those persons who are blind persons as defined in
 23 this [act] who the department has determined are in need of
 24 vocational opportunities and are qualified to operate
 25 vending facilities.

1 (2) Any person or vendor operating a vending facility
 2 under the auspices of the blind vendor program administered
 3 by the department prior to [the effective date of this act]
 4 may be certified as a blind vendor for the purposes of this
 5 [act].

6 (3) Only certified blind persons are eligible for the
 7 vocational opportunities provided in this [act].

8 Section 4. Vending facilities, equipment, and supplies
 9 -- available to certified blind persons. (1) The department
 10 may make available to a certified blind person a vending
 11 facility appropriate for providing that person with a
 12 business opportunity determined by the department to be
 13 suitable for that person.

14 (2) The department may, through the vocational
 15 rehabilitation programs it administers, provide by sale,
 16 lease, loan, or grant such equipment, stocks, and supplies
 17 as may be necessary for a blind vendor to establish or
 18 improve a vending facility business. The department shall
 19 retain a first option to repurchase any equipment it has
 20 sold to a blind vendor.

21 Section 5. Administration of vending facilities --
 22 state properties. (1) The department of administration or
 23 any other department of state government that administers
 24 state property subject to this [act] shall transfer to the
 25 department the management and control of any vending

1 facility that the department has determined is an
 2 appropriate facility for the purposes of this [act] and that
 3 the department has determined is needed for the purposes of
 4 this [act]. A lease or contract for the operation of a
 5 vending facility entered into prior to [the effective date
 6 of this act] is not subject to this [act] while the lease or
 7 contract remains in effect. IN ADDITION, THIS [ACT] SHALL
 8 NOT BE INTERPRETED TO REQUIRE OR AUTHORIZE THE FAILURE TO
 9 RENEW ANY CONTRACT FOR A VENDING FACILITY ON STATE PROPERTY
 10 IN EFFECT ON [THE EFFECTIVE DATE OF THIS ACT] IF THE
 11 CONTRACT CONTAINS A PROVISION PERMITTING THE RENEWAL OF THE
 12 CONTRACT FOR A SPECIFIC TERM AT THE OPTION OF THE VENDOR OR
 13 THE STATE OR BOTH. IN ANY CASE WHERE THE DEPARTMENT
 14 DETERMINES THAT A PRIVATE VENDOR OPERATING A VENDING
 15 FACILITY ON STATE PROPERTY ON [THE EFFECTIVE DATE OF THIS
 16 ACT] WHO, BUT FOR THIS [ACT], COULD REASONABLY BE EXPECTED
 17 TO RENEW HIS CONTRACT FOR THE VENDING FACILITY WOULD BE
 18 SUBJECTED TO ECONOMIC HARDSHIP SHOULD THE CONTRACT BE
 19 ALLOWED TO EXPIRE AT THE END OF ITS TERM, THE DEPARTMENT MAY
 20 AGREE TO A ONE-TIME RENEWAL OF THAT VENDOR'S CONTRACT FOR
 21 THE VENDING FACILITY FOR A PERIOD NOT TO EXCEED 4 YEARS.

22 (2) The department of administration or any other
 23 department of state government that administers state
 24 property subject to this [act] shall give reasonable notice
 25 to the department of the expiration or termination of any

1 lease or contract in effect for a vending facility.

2 (3) Upon receipt of the notice, the department shall
 3 give reasonable notice to the department of administration
 4 or other department of state government that sent the notice
 5 required in subsection (2) stating that the department has
 6 determined that the vending facility is either appropriate
 7 and needed for the purposes of this [act] or that it is not.

8 (4) A state agency administering state property shall
 9 consult with the department when planning for a new state
 10 building, planning for remodeling of or addition to an
 11 existing state building, or negotiating the lease of a
 12 building for state use, to determine what vending facilities
 13 might be appropriate for the site and plan for such vending
 14 facilities.

15 (5) The department shall administer those vending
 16 facilities which are determined to be appropriate and
 17 necessary.

18 (b) The department is not subject to any requirements
 19 for competitive bidding on state leases or services to the
 20 state on vending facilities that are to be made available to
 21 certified blind persons or when purchasing initial supplies
 22 for the purpose of assisting a blind vendor.

23 (7) The department may temporarily operate a vending
 24 facility administered by the department if there is no
 25 certified blind person qualified to operate that facility.

1 (8) The department may, EXCEPT ON STATE PROPERTY,
 2 directly or through contractual arrangements, operate a
 3 facility consisting solely of vending machines if it has
 4 determined that operation by a blind vendor would be
 5 inappropriate. THE DEPARTMENT SHALL NOT DIRECTLY OPERATE
 6 VENDING MACHINES ON ANY STATE PROPERTY WHERE THE DEPARTMENT
 7 DOES NOT DIRECTLY OPERATE VENDING MACHINES ON [THE EFFECTIVE
 8 DATE OF THIS ACT], UNLESS, AFTER COMPETITIVE BID, THE
 9 DEPARTMENT IS UNABLE TO OBTAIN A SUITABLE PRIVATE CONTRACTOR
 10 TO OPERATE VENDING MACHINES ON THE STATE PROPERTY. THE
 11 DEPARTMENT SHALL NOT, EXCEPT THROUGH COMPETITIVE BID,
 12 AUTHORIZE A BLIND VENDOR TO OPERATE ON STATE PROPERTY A
 13 VENDING FACILITY WHICH CONSISTS SOLELY OR PRIMARILY OF
 14 VENDING MACHINES AND WHICH DOES NOT REQUIRE THE ACTIVE
 15 PRESENCE OF A VENDOR DURING ITS HOURS OF OPERATION.

16 (9) Neither a blind vendor nor the department is
 17 required to pay for rent, utilities, janitorial services IN
 18 ACCESSIBLE PUBLIC AREAS, or building maintenance costs for
 19 the space occupied by a vending facility on state property.
 20 THE DEPARTMENT MAY CHARGE A USE FEE IN LIEU OF RENTAL, ON A
 21 BASIS TO BE DETERMINED BY THE DEPARTMENT, IN THE CASE OF ANY
 22 BLIND VENDOR OPERATING A VENDING FACILITY ON STATE PROPERTY
 23 WHOSE NET INCOME FOR AT LEAST 10 OF THE PRECEDING 12 MONTHS
 24 HAS EXCEEDED TWICE THE POVERTY LEVEL INCOME FOR A NON-FARM
 25 FAMILY OF FOUR AS DETERMINED BY THE FEDERAL GOVERNMENT.

1 (10) The department may purchase, sell, lease,
 2 maintain, and manage as necessary the equipment, stocks, and
 3 supplies required for the operation of those vending
 4 facilities administered as provided for in this [act].
 5 (11) THE DEPARTMENT SHALL, BY RULE, PROVIDE FOR
 6 APPROPRIATE ALLOCATION BETWEEN THE DEPARTMENT AND THE BLIND
 7 VENDORS OF LIABILITY FOR THE OPERATION OF VENDING FACILITIES
 8 OPERATED PURSUANT TO THIS [ACT].

9 Section 6. Health and retirement fund -- services to
 10 vendors. (1) The department may manage a health and
 11 retirement fund for blind vendors.

12 (2) The department may set aside a reasonable
 13 percentage of the net incomes earned by blind vendors from
 14 the operation of vending facilities on state and other
 15 property administered by the department to fund the
 16 operation of vending facilities and to fund the blind
 17 vendors' health and retirement fund.

18 (3) The department shall MAY use all net income earned
 19 from facilities operated under the provisions of [section
 20 5(7) and (8)] to fund services to blind vendors and to fund
 21 the blind vendors' health and retirement fund.

22 Section 7. Assurance of quality of service. After
 23 consultation with departments that are served by vending
 24 facilities subject to this [act], the department may take
 25 action as necessary to assure the quality of services being

1 provided by blind vendors.

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3 entitled to a fair hearing for any grievance against the
4 department.

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8 coming under the provisions of this [act] owning or
9 controlling other property for the establishment and
10 administration of blind vendor operations.

11 Section 10. Implementation of Randolph-Sheppard Act,
12 as amended. (1) The department may enter into agreements
13 with the federal government as provided for in the
14 Randolph-Sheppard Act, as amended, for administering the
15 Randolph-Sheppard Act for all state or federal purposes.

16 (2) The department may adopt rules to implement
17 agreements with the federal government entered into under
18 the Randolph-Sheppard Act, as amended.

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20 may adopt such rules as are necessary to effectuate this
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23 rights and duties that matured, penalties that were
24 incurred, or proceedings that were begun before the
25 effective date of this act.

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2 invalid, all valid parts that are severable from the invalid
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4 one or more of its applications, the part remains in effect
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8 49-4-406, MCA, are repealed.

-End-

STATEMENT OF INTENT

HOUSE BILL 67

House Business and Industry Committee

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5 The current statutory authority providing a preference
6 to blind and handicapped persons in the leasing of vending
7 facilities on state property is not adequate for the
8 purposes of authorizing the Department of Social and
9 Rehabilitation Services to administer the federal
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11 The state statutory scheme for providing a preference to
12 blind vendors in the leasing of vending areas in state
13 property is poorly defined and difficult to administer.

14 This act will provide specific statutory authority in
15 Section 10 by which the Department may administer the
16 programs it has established for the purposes of the federal
17 Randolph-Sheppard Act. Section 10, subsection 2 authorizes
18 the Department to adopt rules for the purposes of
19 implementing the administration of vending facilities on
20 federal property by the department as authorized in the
21 federal Randolph-Sheppard Act and for administering programs
22 mandated by the federal Randolph-Sheppard Act.

23 This act provides for a state program administered by
24 the Department which will make available to qualified blind
25 persons vending facilities to be operated by them. This

1 programmatic statutory scheme is a more appropriate mode for
2 providing vocational opportunities to blind persons than was
3 the prior preference system. This scheme will insure that
4 federal and state vocational programs are available to those
5 blind persons who are most qualified to become blind
6 vendors. The preference system did not distinguish as to
7 degree of handicap or economic need. This scheme will also
8 insure continuity in the administering of these vending
9 facilities and related programs. The preference system did
10 not insure that vending facilities would be available to
11 qualified blind persons nor did it encourage the investment
12 of program resources in the training of qualified blind
13 persons and the equipping of vending facilities for
14 operation by them. This act clearly defines what state
15 property is subject to the act. This act also provides that
16 the Department may enter into agreements with private
17 parties and local governments in order to make vending
18 facilities on their properties available to qualified blind
19 vendors. The prior preference system in not defining the
20 property subject to the preference raised serious questions
21 as to its intended scope, nor did the prior preference
22 system allow for the expansion by agreement of the blind
23 vendor program into vending facilities on private property.

24 The act is intended to provide vocational training and
25 active employment for persons handicapped by blindness or

1 serious visual impairment. Since active employment is an
 2 important objective of the legislation, the act limits the
 3 department's ability to directly operate or to include in
 4 its vocational program such passive operations as
 5 maintenance of self-service vending machines, particularly
 6 on state property. While the department will be able to
 7 derive the revenues from vending machines which are now
 8 received by the Department of Administration, it is
 9 anticipated that the Department will continue the present
 10 practice of the Department of Administration and let
 11 contracts for provision of vending machines by competitive
 12 bid. The act specifically provides for a gradual phasing in
 13 of blind-vendor operated vending facilities in any case
 14 where the immediate implementation of the program would
 15 cause an economic hardship to the current vendor, who could
 16 otherwise expect a renewal of contract. The language is
 17 written in discretionary terms in order to permit the
 18 Department to respond to situations as they actually exist
 19 and to preclude the language being used to provide a new
 20 contract to a private vendor whose contract, in the normal
 21 course of events, would have been terminated without this
 22 act. However, it is intended that the Department employ its
 23 discretion in a compassionate manner to avoid inflicting
 24 economic hardship on an otherwise satisfactory private
 25 vendor. The Department is authorized to charge a fee in lieu

1 of rental to blind vendors on state property whose
 2 operations become financially successful. Again, the
 3 language is made discretionary so that the Department can
 4 deal with the situation as it actually exists in practice.
 5 However, the intent of this provision is that the Department
 6 charge to the financially successful blind vendor a fee in
 7 lieu of rental which will provide the state with some
 8 compensation for the use of the space without working a
 9 financial hardship on the blind vendor.

10 The certification of blind persons qualified to be
 11 blind vendors provided for in this act is necessary for
 12 administration by the Department of the federal
 13 Randolph-Sheppard Act on federal properties. This
 14 certification will constitute the "licensing" mandated in
 15 the federal Randolph-Sheppard Act. This certification will
 16 be utilized for the purposes of the state program as well.
 17 The administration of the program for federal and state
 18 purposes will be therefore more congruent.

19 This act provides that the Department may administer a
 20 health and retirement fund for the blind vendors. This fund
 21 as well as the blind vendors' program may be funded by a
 22 set-aside from the net income of blind vendors. This
 23 set-aside is to be a reasonable percentage which will not
 24 affect the financial status of the blind vendors to such a
 25 degree as to deny them the intended vocational and economic

1 benefits of the program. The health and retirement fund and
2 the blind vendors' program may be funded as well by the
3 Department from the income the Department may receive from
4 vending facilities which it may operate directly. The health
5 and retirement fund is authorized for the purpose of
6 implementing that aspect of the federal Randolph-Sheppard
7 Act. The applicability of this fund to blind vendors on
8 state property will insure that there will be congruence
9 between the program as administered for federal and state
10 purposes.

11 This act states the authority of the Department for the
12 purposes of the act and provides the general criteria and
13 procedure for the transfer of the administration of vending
14 facilities on state property to the Department. The prior
15 preference system did not define administrative authority
16 nor did it state what the appropriate criteria and procedure
17 would be.

18 The act provides the Department with the rulemaking
19 authority necessary for the implementation in a definitive
20 manner of the purposes of this act.

1 HOUSE BILL NO. 67
 2 INTRODUCED BY FABREGA, GOODOVER,
 3 JACOBSEN, METCALF, BERGENE
 4 BY REQUEST OF
 5 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
 8 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MAY
 9 ADMINISTER CERTAIN AREAS IN STATE, FEDERAL, AND OTHER
 10 BUILDINGS FOR THE PURPOSE OF PROVIDING VENDING FACILITIES TO
 11 BLIND PERSONS WHO ARE IN NEED OF VOCATIONAL OPPORTUNITIES;
 12 REPEALING SECTIONS 49-4-401 THROUGH 49-4-406, MCA."

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

15 Section 1. Purpose. It is the purpose of this [act],
 16 in recognition of the vocational and economic needs of blind
 17 persons, to make available to those blind persons in need of
 18 vocational opportunities space in state, federal, or other
 19 property appropriate for certain business operations and to
 20 assist those persons in the development of business
 21 operations.

22 Section 2. Definitions. As used in this [act] the
 23 following definitions apply:

24 (1) "Blind person" means a person whose central visual
 25 acuity does not exceed 20/200 in the better eye with

1 correcting lenses or whose visual acuity is greater than
 2 20/200 but is accompanied by a limitation in the fields of
 3 vision in the better eye to such a degree that the widest
 4 diameter of the visual field subtends an angle no greater
 5 than 20 degrees as determined by an ophthalmologist or a
 6 physician skilled in diseases of the eye.

7 (2) "Blind vendor" means a person certified as a blind
 8 person for the purpose of this [act] and who is operating a
 9 vending facility administered by the department.

10 (3) "Certified blind person" means a blind person who
 11 the department has determined to be a blind person as
 12 defined in this [act] who is in need of vocational
 13 opportunities, and who is qualified to operate a vending
 14 facility.

15 (4) "Department" means the department of social and
 16 rehabilitation services.

17 (5) "Federal property" means buildings or portions of
 18 buildings or other real property owned or leased by the
 19 federal government EXCLUDING MILITARY RESERVATIONS upon
 20 which the department may administer vending facilities by an
 21 agreement entered into under the authority of the federal
 22 Randolph-Sheppard Act, as amended.

23 (6) "Other property" means all real property other
 24 than state or federal property as defined in this [act].

25 (7) "State property" means those buildings or portions

1 of buildings or other real property owned or leased UNDER A
 2 LEASE-PURCHASE AGREEMENT, OR IN THE CASE OF A BUILDING,
 3 LEASED IN ITS ENTIRETY by the state or agencies of the state
 4 that are utilized in the conduct of state matters and
 5 occupied principally by state employees. State property for
 6 the purpose of this [act] does not include vocational
 7 institutions or institutions of higher education.

8 (8) "Vending facility" means an area and equipment
 9 inclusive of vending machines on state property which is or
 10 may be utilized in providing a food, beverage, or other
 11 service to employees and other persons present on the
 12 property.

13 (9) "Vending machine" means a device for the
 14 dispensing of foodstuffs, liquids, or other products when
 15 money is inserted into the device. Vending machine does not
 16 include postage stamp machines or coin-operated telephones.

17 (10) "Vocational rehabilitation programs" means those
 18 programs provided for under the federal Randolph-Sheppard
 19 Act, as amended, and Title 53, chapter 7, part 3.

20 Section 3. Certification and eligibility of blind
 21 persons. (1) The department shall certify for the purposes
 22 of this [act] and the federal Randolph-Sheppard Act, as
 23 amended, those persons who are blind persons as defined in
 24 this [act] who the department has determined are in need of
 25 vocational opportunities and are qualified to operate

1 vending facilities.

2 (2) Any person or vendor operating a vending facility
 3 under the auspices of the blind vendor program administered
 4 by the department prior to [the effective date of this act]
 5 may be certified as a blind vendor for the purposes of this
 6 [act].

7 (3) Only certified blind persons are eligible for the
 8 vocational opportunities provided in this [act].

9 Section 4. Vending facilities, equipment, and supplies
 10 -- available to certified blind persons. (1) The department
 11 may make available to a certified blind person a vending
 12 facility appropriate for providing that person with a
 13 business opportunity determined by the department to be
 14 suitable for that person.

15 (2) The department may, through the vocational
 16 rehabilitation programs it administers, provide by sale,
 17 lease, loan, or grant such equipment, stocks, and supplies
 18 as may be necessary for a blind vendor to establish or
 19 improve a vending facility business. The department shall
 20 retain a first option to repurchase any equipment it has
 21 sold to a blind vendor.

22 Section 5. Administration of vending facilities --
 23 state properties. (1) The department of administration or
 24 any other department of state government that administers
 25 state property subject to this [act] shall transfer to the

1 department the management and control of any vending
 2 facility that the department has determined is an
 3 appropriate facility for the purposes of this [act] and that
 4 the department has determined is needed for the purposes of
 5 this [act]. A lease or contract for the operation of a
 6 vending facility entered into prior to [the effective date
 7 of this act] is not subject to this [act] while the lease or
 8 contract remains in effect. IN ADDITION, THIS [ACT] SHALL
 9 NOT BE INTERPRETED TO REQUIRE OR AUTHORIZE THE FAILURE TO
 10 RENEW ANY CONTRACT FOR A VENDING FACILITY ON STATE PROPERTY
 11 IN EFFECT ON [THE EFFECTIVE DATE OF THIS ACT], IF THE
 12 CONTRACT CONTAINS A PROVISION PERMITTING THE RENEWAL OF THE
 13 CONTRACT FOR A SPECIFIC TERM AT THE OPTION OF THE VENDOR OR
 14 THE STATE OR BOTH. IN ANY CASE WHERE THE DEPARTMENT
 15 DETERMINES THAT A PRIVATE VENDOR OPERATING A VENDING
 16 FACILITY ON STATE PROPERTY ON [THE EFFECTIVE DATE OF THIS
 17 ACT] WHO, BUT FOR THIS [ACT], COULD REASONABLY BE EXPECTED
 18 TO RENEW HIS CONTRACT FOR THE VENDING FACILITY WOULD BE
 19 SUBJECTED TO ECONOMIC HARDSHIP SHOULD THE CONTRACT BE
 20 ALLOWED TO EXPIRE AT THE END OF ITS TERM, THE DEPARTMENT MAY
 21 AGREE TO A ONE-TIME RENEWAL OF THAT VENDOR'S CONTRACT FOR
 22 THE VENDING FACILITY FOR A PERIOD NOT TO EXCEED 4 YEARS.

23 (2) The department of administration or any other
 24 department of state government that administers state
 25 property subject to this [act] shall give reasonable notice

1 to the department of the expiration or termination of any
 2 lease or contract in effect for a vending facility.

3 (3) Upon receipt of the notice, the department shall
 4 give reasonable notice to the department of administration
 5 or other department of state government that sent the notice
 6 required in subsection (2) stating that the department has
 7 determined that the vending facility is either appropriate
 8 and needed for the purposes of this [act] or that it is not.

9 (4) A state agency administering state property shall
 10 consult with the department when planning for a new state
 11 building, planning for remodeling of or addition to an
 12 existing state building, or negotiating the lease of a
 13 building for state use, to determine what vending facilities
 14 might be appropriate for the site and plan for such vending
 15 facilities.

16 (5) The department shall administer those vending
 17 facilities which are determined to be appropriate and
 18 necessary.

19 (6) The department is not subject to any requirements
 20 for competitive bidding on state leases or services to the
 21 state on vending facilities that are to be made available to
 22 certified blind persons or when purchasing initial supplies
 23 for the purpose of assisting a blind vendor.

24 (7) The department may temporarily operate a vending
 25 facility administered by the department if there is no

1 certified blind person qualified to operate that facility.

2 (8) The department may, EXCEPT ON STATE PROPERTY,
3 directly or through contractual arrangements, operate a
4 facility consisting solely of vending machines if it has
5 determined that operation by a blind vendor would be
6 inappropriate. THE DEPARTMENT SHALL NOT DIRECTLY OPERATE
7 VENDING MACHINES ON ANY STATE PROPERTY WHERE THE DEPARTMENT
8 DOES NOT DIRECTLY OPERATE VENDING MACHINES ON [THE EFFECTIVE
9 DATE OF THIS ACT], UNLESS, AFTER COMPETITIVE BID, THE
10 DEPARTMENT IS UNABLE TO OBTAIN A SUITABLE PRIVATE CONTRACTOR
11 TO OPERATE VENDING MACHINES ON THE STATE PROPERTY. THE
12 DEPARTMENT SHALL NOT, EXCEPT THROUGH COMPETITIVE BID,
13 AUTHORIZE A BLIND VENDOR TO OPERATE ON STATE PROPERTY A
14 VENDING FACILITY WHICH CONSISTS SOLELY OR PRIMARILY OF
15 VENDING MACHINES AND WHICH DOES NOT REQUIRE THE ACTIVE
16 PRESENCE OF A VENDOR DURING ITS HOURS OF OPERATION.

17 (9) Neither a blind vendor nor the department is
18 required to pay for rent, utilities, janitorial services IN
19 ACCESSIBLE PUBLIC AREAS, or building maintenance costs for
20 the space occupied by a vending facility on state property.
21 THE DEPARTMENT MAY CHARGE A USE FEE IN LIEU OF RENTAL, ON A
22 BASIS TO BE DETERMINED BY THE DEPARTMENT, IN THE CASE OF ANY
23 BLIND VENDOR OPERATING A VENDING FACILITY ON STATE PROPERTY
24 WHOSE NET INCOME FOR AT LEAST 10 OF THE PRECEDING 12 MONTHS
25 HAS EXCEEDED TWICE THE POVERTY LEVEL INCOME FOR A NON-FARM

1 FAMILY OF FOUR AS DETERMINED BY THE FEDERAL GOVERNMENT.

2 (10) The department may purchase, sell, lease,
3 maintain, and manage as necessary the equipment, stocks, and
4 supplies required for the operation of those vending
5 facilities administered as provided for in this [act].

6 (11) THE DEPARTMENT SHALL, BY RULE, PROVIDE FOR
7 APPROPRIATE ALLOCATION BETWEEN THE DEPARTMENT AND THE BLIND
8 VENDORS OF LIABILITY FOR THE OPERATION OF VENDING FACILITIES
9 OPERATED PURSUANT TO THIS [ACT].

10 Section 6. Health and retirement fund -- services to
11 vendors. (1) The department may manage a health and
12 retirement fund for blind vendors.

13 (2) The department may set aside a reasonable
14 percentage of the net incomes earned by blind vendors from
15 the operation of vending facilities on state and other
16 property administered by the department to fund the
17 operation of vending facilities and to fund the blind
18 vendors' health and retirement fund.

19 (3) The department shall MAY use all net income earned
20 from facilities operated under the provisions of [section
21 5(7) and (8)] to fund services to blind vendors and to fund
22 the blind vendors' health and retirement fund.

23 Section 7. Assurance of quality of service. After
24 consultation with departments that are served by vending
25 facilities subject to this [act], the department may take

1 action as necessary to assure the quality of services being
2 provided by blind vendors.

3 Section 8. Right to fair hearing. A blind vendor is
4 entitled to a fair hearing for any grievance against the
5 department.

6 Section 9. Administration of vending facilities on
7 other property. The department may enter into agreements
8 with private parties or governmental entities not otherwise
9 coming under the provisions of this [act] owning or
10 controlling other property for the establishment and
11 administration of blind vendor operations.

12 Section 10. Implementation of Randolph-Sheppard Act,
13 as amended. (1) The department may enter into agreements
14 with the federal government as provided for in the
15 Randolph-Sheppard Act, as amended, for administering the
16 Randolph-Sheppard Act for all state or federal purposes.

17 (2) The department may adopt rules to implement
18 agreements with the federal government entered into under
19 the Randolph-Sheppard Act, as amended.

20 Section 11. Authority to adopt rules. The department
21 may adopt such rules as are necessary to effectuate this
22 [act].

23 Section 12. Saving clause. This act does not affect
24 rights and duties that matured, penalties that were
25 incurred, or proceedings that were begun before the

1 effective date of this act.

2 Section 13. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

8 Section 14. Repealer. Sections 49-4-401 through
9 49-4-406, MCA, are repealed.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 67

3 House Business and Industry Committee
4

5 The current statutory authority providing a preference
6 to blind and handicapped persons in the leasing of vending
7 facilities on state property is not adequate for the
8 purposes of authorizing the Department of Social and
9 Rehabilitation Services to administer the federal
10 Randolph-Sheppard Act for either federal or state purposes.
11 The state statutory scheme for providing a preference to
12 blind vendors in the leasing of vending areas in state
13 property is poorly defined and difficult to administer.

14 This act will provide specific statutory authority in
15 Section 10 by which the Department may administer the
16 programs it has established for the purposes of the federal
17 Randolph-Sheppard Act. Section 10, subsection 2 authorizes
18 the Department to adopt rules for the purposes of
19 implementing the administration of vending facilities on
20 federal property by the department as authorized in the
21 federal Randolph-Sheppard Act and for administering programs
22 mandated by the federal Randolph-Sheppard Act.

23 This act provides for a state program administered by
24 the Department which will make available to qualified blind
25 persons vending facilities to be operated by them. This

1 programmatic statutory scheme is a more appropriate mode for
2 providing vocational opportunities to blind persons than was
3 the prior preference system. This scheme will insure that
4 federal and state vocational programs are available to those
5 blind persons who are most qualified to become blind
6 vendors. The preference system did not distinguish as to
7 degree of handicap or economic need. This scheme will also
8 insure continuity in the administering of these vending
9 facilities and related programs. The preference system did
10 not insure that vending facilities would be available to
11 qualified blind persons nor did it encourage the investment
12 of program resources in the training of qualified blind
13 persons and the equipping of vending facilities for
14 operation by them. This act clearly defines what state
15 property is subject to the act. This act also provides that
16 the Department may enter into agreements with private
17 parties and local governments in order to make vending
18 facilities on their properties available to qualified blind
19 vendors. The prior preference system in not defining the
20 property subject to the preference raised serious questions
21 as to its intended scope, nor did the prior preference
22 system allow for the expansion by agreement of the blind
23 vendor program into vending facilities on private property.

24 The act is intended to provide vocational training and
25 active employment for persons handicapped by blindness or

1 serious visual impairment. Since active employment is an
 2 important objective of the legislation, the act limits the
 3 department's ability to directly operate or to include in
 4 its vocational program such passive operations as
 5 maintenance of self-service vending machines, particularly
 6 on state property. While the department will be able to
 7 derive the revenues from vending machines which are now
 8 received by the Department of Administration, it is
 9 anticipated that the Department will continue the present
 10 practice of the Department of Administration and let
 11 contracts for provision of vending machines by competitive
 12 bid. The act specifically provides for a gradual phasing in
 13 of blind-vendor operated vending facilities in any case
 14 where the immediate implementation of the program would
 15 cause an economic hardship to the current vendor, who could
 16 otherwise expect a renewal of contract. The language is
 17 written in discretionary terms in order to permit the
 18 Department to respond to situations as they actually exist
 19 and to preclude the language being used to provide a new
 20 contract to a private vendor whose contract, in the normal
 21 course of events, would have been terminated without this
 22 act. However, it is intended that the Department employ its
 23 discretion in a compassionate manner to avoid inflicting
 24 economic hardship on an otherwise satisfactory private
 25 vendor. The Department is authorized to charge a fee in lieu

1 of rental to blind vendors on state property whose
 2 operations become financially successful. Again, the
 3 language is made discretionary so that the Department can
 4 deal with the situation as it actually exists in practice.
 5 However, the intent of this provision is that the Department
 6 charge to the financially successful blind vendor a fee in
 7 lieu of rental which will provide the state with some
 8 compensation for the use of the space without working a
 9 financial hardship on the blind vendor.

10 The certification of blind persons qualified to be
 11 blind vendors provided for in this act is necessary for
 12 administration by the Department of the federal
 13 Randolph-Sheppard Act on federal properties. This
 14 certification will constitute the "licensing" mandated in
 15 the federal Randolph-Sheppard Act. This certification will
 16 be utilized for the purposes of the state program as well.
 17 The administration of the program for federal and state
 18 purposes will be therefore more congruent.

19 This act provides that the Department may administer a
 20 health and retirement fund for the blind vendors. This fund
 21 as well as the blind vendors' program may be funded by a
 22 set-aside from the net income of blind vendors. This
 23 set-aside is to be a reasonable percentage which will not
 24 affect the financial status of the blind vendors to such a
 25 degree as to deny them the intended vocational and economic

1 benefits of the program. The health and retirement fund and
2 the blind vendors' program may be funded as well by the
3 Department from the income the Department may receive from
4 vending facilities which it may operate directly. The health
5 and retirement fund is authorized for the purpose of
6 implementing that aspect of the federal Randolph-Sheppard
7 Act. The applicability of this fund to blind vendors on
8 state property will insure that there will be congruence
9 between the program as administered for federal and state
10 purposes.

11 This act states the authority of the Department for the
12 purposes of the act and provides the general criteria and
13 procedure for the transfer of the administration of vending
14 facilities on state property to the Department. The prior
15 preference system did not define administrative authority
16 nor did it state what the appropriate criteria and procedure
17 would be.

18 The act provides the Department with the rulemaking
19 authority necessary for the implementation in a definitive
20 manner of the purposes of this act.

HOUSE BILL NO. 67

INTRODUCED BY FABREGA, GOODOVER,
JACOBSEN, METCALF, BERGENE

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MAY ADMINISTER CERTAIN AREAS IN STATE, FEDERAL, AND OTHER BUILDINGS FOR THE PURPOSE OF PROVIDING VENDING FACILITIES TO BLIND PERSONS WHO ARE IN NEED OF VOCATIONAL OPPORTUNITIES; REPEALING SECTIONS 49-4-401 THROUGH 49-4-406, MCA."

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

Section 1. Purpose. It is the purpose of this [act], in recognition of the vocational and economic needs of blind persons, to make available to those blind persons in need of vocational opportunities space in state, federal, or other property appropriate for certain business operations and to assist those persons in the development of business operations.

Section 2. Definitions. As used in this [act] the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with

correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Blind vendor" means a person certified as a blind person for the purpose of this [act] and who is operating a vending facility administered by the department.

(3) "Certified blind person" means a blind person who the department has determined to be a blind person as defined in this [act] who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) "Department" means the department of social and rehabilitation services.

(5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government EXCLUDING MILITARY RESERVATIONS upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) "Other property" means all real property other than state or federal property as defined in this [act].

(7) "State property" means those buildings or portions

1 of buildings or other real property owned or leased UNDER A
 2 LEASE-PURCHASE AGREEMENT, OR IN THE CASE OF A BUILDING,
 3 LEASED IN ITS ENTIRETY by the state or agencies of the state
 4 that are utilized in the conduct of state matters and
 5 occupied principally by state employees. State property for
 6 the purpose of this [act] does not include vocational
 7 institutions or institutions of higher education.

8 (8) "Vending facility" means an area and equipment
 9 inclusive of vending machines on state property which is or
 10 may be utilized in providing a food, beverage, or other
 11 service to employees and other persons present on the
 12 property.

13 (9) "Vending machine" means a device for the
 14 dispensing of foodstuffs, liquids, or other products when
 15 money is inserted into the device. Vending machine does not
 16 include postage stamp machines or coin-operated telephones.

17 (10) "Vocational rehabilitation programs" means those
 18 programs provided for under the federal Randolph-Sheppard
 19 Act, as amended, and Title 53, chapter 7, part 3.

20 Section 3. Certification and eligibility of blind
 21 persons. (1) The department shall certify for the purposes
 22 of this [act] and the federal Randolph-Sheppard Act, as
 23 amended, those persons who are blind persons as defined in
 24 this [act] who the department has determined are in need of
 25 vocational opportunities and are qualified to operate

1 vending facilities.

2 (2) Any person or vendor operating a vending facility
 3 under the auspices of the blind vendor program administered
 4 by the department prior to [the effective date of this act]
 5 may be certified as a blind vendor for the purposes of this
 6 [act].

7 (3) Only certified blind persons are eligible for the
 8 vocational opportunities provided in this [act].

9 Section 4. Vending facilities, equipment, and supplies
 10 -- available to certified blind persons. (1) The department
 11 may make available to a certified blind person a vending
 12 facility appropriate for providing that person with a
 13 business opportunity determined by the department to be
 14 suitable for that person.

15 (2) The department may, through the vocational
 16 rehabilitation programs it administers, provide by sale,
 17 lease, loan, or grant such equipment, stocks, and supplies
 18 as may be necessary for a blind vendor to establish or
 19 improve a vending facility business. The department shall
 20 retain a first option to repurchase any equipment it has
 21 sold to a blind vendor.

22 Section 5. Administration of vending facilities --
 23 state properties. (1) The department of administration or
 24 any other department of state government that administers
 25 state property subject to this [act] shall transfer to the

1 department the management and control of any vending
 2 facility that the department has determined is an
 3 appropriate facility for the purposes of this [act] and that
 4 the department has determined is needed for the purposes of
 5 this [act]. A lease or contract for the operation of a
 6 vending facility entered into prior to [the effective date
 7 of this act] is not subject to this [act] while the lease or
 8 contract remains in effect. IN ADDITION, THIS [ACT] SHALL
 9 NOT BE INTERPRETED TO REQUIRE OR AUTHORIZE THE FAILURE TO
 10 RENEW ANY CONTRACT FOR A VENDING FACILITY ON STATE PROPERTY
 11 IN EFFECT ON [THE EFFECTIVE DATE OF THIS ACT] IF THE
 12 CONTRACT CONTAINS A PROVISION PERMITTING THE RENEWAL OF THE
 13 CONTRACT FOR A SPECIFIC TERM AT THE OPTION OF THE VENDOR OR
 14 THE STATE OR BOTH. IN ANY CASE WHERE THE DEPARTMENT
 15 DETERMINES THAT A PRIVATE VENDOR OPERATING A VENDING
 16 FACILITY ON STATE PROPERTY ON [THE EFFECTIVE DATE OF THIS
 17 ACT] WHO, BUT FOR THIS [ACT], COULD REASONABLY BE EXPECTED
 18 TO RENEW HIS CONTRACT FOR THE VENDING FACILITY WOULD BE
 19 SUBJECTED TO ECONOMIC HARDSHIP SHOULD THE CONTRACT BE
 20 ALLOWED TO EXPIRE AT THE END OF ITS TERM, THE DEPARTMENT MAY
 21 AGREE TO A ONE-TIME RENEWAL OF THAT VENDOR'S CONTRACT FOR
 22 THE VENDING FACILITY FOR A PERIOD NOT TO EXCEED 4 YEARS.

23 (2) The department of administration or any other
 24 department of state government that administers state
 25 property subject to this [act] shall give reasonable notice

1 to the department of the expiration or termination of any
 2 lease or contract in effect for a vending facility.

3 (3) Upon receipt of the notice, the department shall
 4 give reasonable notice to the department of administration
 5 or other department of state government that sent the notice
 6 required in subsection (2) stating that the department has
 7 determined that the vending facility is either appropriate
 8 and needed for the purposes of this [act] or that it is not.

9 (4) A state agency administering state property shall
 10 consult with the department when planning for a new state
 11 building, planning for remodeling of or addition to an
 12 existing state building, or negotiating the lease of a
 13 building for state use, to determine what vending facilities
 14 might be appropriate for the site and plan for such vending
 15 facilities.

16 (5) The department shall administer those vending
 17 facilities which are determined to be appropriate and
 18 necessary.

19 (6) The department is not subject to any requirements
 20 for competitive bidding on state leases or services to the
 21 state on vending facilities that are to be made available to
 22 certified blind persons or when purchasing initial supplies
 23 for the purpose of assisting a blind vendor.

24 (7) The department may temporarily operate a vending
 25 facility administered by the department if there is no

1 certified blind person qualified to operate that facility.
 2 (8) The department may, EXCEPT ON STATE PROPERTY,
 3 directly or through contractual arrangements, operate a
 4 facility consisting solely of vending machines if it has
 5 determined that operation by a blind vendor would be
 6 inappropriate. THE DEPARTMENT SHALL NOT DIRECTLY OPERATE
 7 VENDING MACHINES ON ANY STATE PROPERTY WHERE THE DEPARTMENT
 8 DOES NOT DIRECTLY OPERATE VENDING MACHINES ON [THE EFFECTIVE
 9 DATE OF THIS ACT], UNLESS, AFTER COMPETITIVE BID, THE
 10 DEPARTMENT IS UNABLE TO OBTAIN A SUITABLE PRIVATE CONTRACTOR
 11 TO OPERATE VENDING MACHINES ON THE STATE PROPERTY. THE
 12 DEPARTMENT SHALL NOT, EXCEPT THROUGH COMPETITIVE BID,
 13 AUTHORIZE A BLIND VENDOR TO OPERATE ON STATE PROPERTY A
 14 VENDING FACILITY WHICH CONSISTS SOLELY OR PRIMARILY OF
 15 VENDING MACHINES AND WHICH DOES NOT REQUIRE THE ACTIVE
 16 PRESENCE OF A VENDOR DURING ITS HOURS OF OPERATION.
 17 (9) Neither a blind vendor nor the department is
 18 required to pay for rent, utilities, janitorial services IN
 19 ACCESSIBLE PUBLIC AREAS, or building maintenance costs for
 20 the space occupied by a vending facility on state property.
 21 THE DEPARTMENT MAY CHARGE A USE FEE IN LIEU OF RENTAL, ON A
 22 BASIS TO BE DETERMINED BY THE DEPARTMENT, IN THE CASE OF ANY
 23 BLIND VENDOR OPERATING A VENDING FACILITY ON STATE PROPERTY
 24 WHOSE NET INCOME FOR AT LEAST 10 OF THE PRECEDING 12 MONTHS
 25 HAS EXCEEDED TWICE THE POVERTY LEVEL INCOME FOR A NON-FARM

1 FAMILY OF FOUR AS DETERMINED BY THE FEDERAL GOVERNMENT.
 2 (10) The department may purchase, sell, lease,
 3 maintain, and manage as necessary the equipment, stocks, and
 4 supplies required for the operation of those vending
 5 facilities administered as provided for in this [act].
 6 (11) THE DEPARTMENT SHALL, BY RULE, PROVIDE FOR
 7 APPROPRIATE ALLOCATION BETWEEN THE DEPARTMENT AND THE BLIND
 8 VENDORS OF LIABILITY FOR THE OPERATION OF VENDING FACILITIES
 9 OPERATED PURSUANT TO THIS [ACT].
 10 Section 6. Health and retirement fund -- services to
 11 vendors. (1) The department may manage a health and
 12 retirement fund for blind vendors.
 13 (2) The department may set aside a reasonable
 14 percentage of the net incomes earned by blind vendors from
 15 the operation of vending facilities on state and other
 16 property administered by the department to fund the
 17 operation of vending facilities and to fund the blind
 18 vendors' health and retirement fund.
 19 (3) The department ~~shall~~ MAY use all net income earned
 20 from facilities operated under the provisions of [section
 21 5(7) and (8)] to fund services to blind vendors and to fund
 22 the blind vendors' health and retirement fund.
 23 Section 7. Assurance of quality of service. After
 24 consultation with departments that are served by vending
 25 facilities subject to this [act], the department may take

1 action as necessary to assure the quality of services being
2 provided by blind vendors.

3 Section 8. Right to fair hearing. A blind vendor is
4 entitled to a fair hearing for any grievance against the
5 department.

6 Section 9. Administration of vending facilities on
7 other property. The department may enter into agreements
8 with private parties or governmental entities not otherwise
9 coming under the provisions of this [act] owning or
10 controlling other property for the establishment and
11 administration of blind vendor operations.

12 Section 10. Implementation of Randolph-Sheppard Act,
13 as amended. (1) The department may enter into agreements
14 with the federal government as provided for in the
15 Randolph-Sheppard Act, as amended, for administering the
16 Randolph-Sheppard Act for all state or federal purposes.

17 (2) The department may adopt rules to implement
18 agreements with the federal government entered into under
19 the Randolph-Sheppard Act, as amended.

20 Section 11. Authority to adopt rules. The department
21 may adopt such rules as are necessary to effectuate this
22 [act].

23 Section 12. Saving clause. This act does not affect
24 rights and duties that matured, penalties that were
25 incurred, or proceedings that were begun before the

1 effective date of this act.

2 Section 13. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

8 Section 14. Repealer. Sections 49-4-401 through
9 49-4-406, MCA, are repealed.

-End-