

1 HOUSE BILL NO. 543

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO THE ADOPTION OF
5 MATERIAL BY REFERENCE IN ADMINISTRATIVE RULES BY AGENCIES SUBJECT TO THE MONTANA
6 ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-307, MCA; AND PROVIDING AN
7 APPLICABILITY DATE."

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

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11 **Section 1.** Section 2-4-307, MCA, is amended to read:12 **"2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code,
13 federal agency rule, rule of any agency of this state, or other similar publication if:14 (a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive,
15 or otherwise inexpedient; and16 (b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of
17 Montana.18 (2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the
19 rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by
20 reference and a statement of the general subject matter of the omitted rule and must state where a copy of the
21 omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be
22 filed with the secretary of state.23 (3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection
24 (1):25 (i) must be in existence at the time that the agency's notice of proposed rulemaking is published in the
26 register;27 (ii) must be available to the public for comment, through either publication in the register or publication
28 in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or
29 other publication is itself subject to public comment; and30 (iii) except as provided in subsection (3)(b), may not be altered between the time of publication of the

1 notice of proposed rulemaking and the publication of the notice of adoption by the agency proposing the rule
2 unless the alteration is required in order to respond to comments in the rulemaking record of the adopting agency.

3 (b) If the model code, rule, or other publication is altered by the agency between the time of the
4 publication of the notice of proposed rulemaking and the notice of adoption, the part of the model code, rule, or
5 other publication that is altered by the agency is not adopted unless that part is also subject to a separate process
6 of adoption as provided in this section.

7 ~~(3)~~(4) A rule originally adopting by reference any model code or rule provided for in subsection (1) may
8 not adopt any later amendments or editions of the material adopted. Except as provided in subsection ~~(5)~~ (6),
9 each later amendment or edition may be adopted by reference only by following the rulemaking procedure
10 required by this chapter.

11 ~~(4)~~(5) If requested by a three-fourths vote of the appropriate administrative rule review committee, an
12 agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this
13 section. The committee may not require the publication of copyrighted material. Publication of the text of a rule
14 previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before
15 publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed
16 rulemaking.

17 ~~(5)~~(6) Whenever later amendments of federal regulations must be adopted to comply with federal law
18 or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed
19 in the register. This notice must contain the information required by subsection (2) and must state the effective
20 date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice
21 is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for
22 federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not
23 required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be
24 directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not
25 less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement
26 page for the ARM is not required.

27 ~~(6)~~(7) If a hearing is requested under subsection ~~(5)~~ (6), the petition for hearing must contain a request
28 for an amendment and may contain suggested language, reasons for an amendment, and any other information
29 pertinent to the subject of the rule."
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