

## HOUSE BILL NO. 543

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; and  
16 (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; and  
30 (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 (C) IF THE MODEL CODE, RULE, OR OTHER PUBLICATION IS MADE AVAILABLE ON THE AGENCY'S WEBSITE, THE  
8 WEBSITE MAY PROVIDE EITHER THE FULL TEXT OF THE MODEL CODE, RULE, OR OTHER PUBLICATION OR A LINK TO THE  
9 SOURCE OF THE OFFICIAL ELECTRONIC TEXT OF THE MODEL CODE, RULE, OR OTHER PUBLICATION.

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

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

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

30 ~~(6)~~(7) If a hearing is requested under subsection ~~(5)~~ (6), the petition for hearing must contain a request

1 for an amendment and may contain suggested language, reasons for an amendment, and any other information  
2 pertinent to the subject of the rule."

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4 NEW SECTION. Section 2. Applicability. [This act] applies to rules proposed by an agency, as defined  
5 in 2-4-102, on or after October 1, 2011.

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