

SENATE BILL NO. 66

INTRODUCED BY R. ARTHUN

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ADOPTIONS OF MODEL CODES, RULES, OR OTHER PUBLICATIONS BY REFERENCE IN AGENCY ADMINISTRATIVE RULES; CLARIFYING REQUIREMENTS FOR ADOPTIONS OF MATERIAL NOT SUBJECT TO STATE JURISDICTION; AMENDING SECTION 2-4-307, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if:

(a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient; and

(b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of Montana.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection (1):

(i) must be in existence at the time that the agency's notice of proposed rulemaking is published in the register;

(ii) must be available to the public for comment, through either publication in the register or publication in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or other publication is itself subject to public comment; and

1 (iii) except as provided in subsection (3)(b) or if the publication is not subject to state jurisdiction as
2 provided in subsection (3)(d), may not be altered between the time of publication of the notice of proposed
3 rulemaking and the publication of the notice of adoption by the agency proposing the rule unless the alteration
4 is required in order to respond to comments in the rulemaking record of the adopting agency.

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

9 (c) If the model code, rule, or other publication is made available on the agency's website, the website
10 may provide either the full text of the model code, rule, or other publication or a link to the source of the official
11 electronic text of the model code, rule, or other publication.

12 (d) If the model code, rule, or other publication is not subject to change by the agency because the entity
13 that adopted the code, rule, or other publication is not subject to state jurisdiction, no changes in the publication
14 need to be made by the agency in response to comments received by the agency.

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

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

25 (6) Whenever later amendments of federal regulations must be adopted to comply with federal law or
26 to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed
27 in the register. This notice must contain the information required by subsection (2) and must state the effective
28 date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice
29 is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for
30 federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not

1 required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be
2 directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not
3 less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement
4 page for the ARM is not required.

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

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9 NEW SECTION. Section 2. Applicability. [This act] applies to adoptions of model codes, rules, or other
10 publications by reference in administrative rules originally proposed on or after October 1, 2013.

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