

HOUSE BILL NO. 38

INTRODUCED BY STOBIE

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on State Administration.
January 14, 1981	Committee recommend bill do pass as amended. Report adopted.
January 15, 1981	Bill printed and placed on members' desks.
January 16, 1981	Second reading, do pass.
January 17, 1981	Correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 19, 1981	Introduced and referred to Committee on State Administration.
March 13, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1981	Second reading, concurred in as amended.
March 18, 1981	Third reading, concurred in as amended. Ayes, 45; Noes, 3.

IN THE HOUSE

March 19, 1981	Returned from Senate with amendments.
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April 7, 1981

Second reading, amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in. Ayes, 85; Noes, 9. Sent to enrolling.

April 10, 1981

Correctly enrolled.

Signed by Speaker.

April 11, 1981

Signed by President.

Delivered to Governor.

April 17, 1981

Returned from Governor with recommended amendments.

April 21, 1981

Second reading, Governor's amendments concurred in.

On motion rules suspended and Governor's amendments placed on third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 76; Noes, 19. Transmitted to Senate.

IN THE SENATE

April 22, 1981

Second reading, Governor's amendments concurred in.

On motion rules suspended. Governor's amendments placed on calendar for third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 45; Noes, 1.

IN THE HOUSE

April 23, 1981

Returned from Senate.
Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 38

2 INTRODUCTION BY STOBIE

3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION

6 2-4-307, MCA, RELATING TO OMISSIONS FROM THE ADMINISTRATIVE

7 RULES OF MONTANA OR THE MONTANA ADMINISTRATIVE REGISTER."

8

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

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

11 "2-4-307. Omissions from ARM or register. ~~The secretary~~

12 ~~of state, with the consent of the adopting agency, may omit~~

13 ~~from ARM or the register any rule, either proposed or~~

14 ~~adopted, the publication of which (1) An agency may adopt by~~

15 ~~reference any model code, federal agency rule, rule of any~~

16 ~~agency of this state or other similar publication if the~~

17 ~~publication of the model code, rule, or other publication~~

18 ~~would be unduly cumbersome, expensive, or otherwise~~

19 ~~inexpedient, if the rule merely incorporates by reference a~~

20 ~~model code, federal agency rule, or like publication made~~

21 ~~available on application to the agency and if ARM or the~~

22 ~~register contains~~

23 (2) The model code, rule, or other publication must be

24 adopted by reference in a rule adopted under the rulemaking

25 procedure required by this chapter. The rule must contain a

1 ~~notice stating the citation and to the material adopted by~~

2 ~~reference, and a statement of the general subject matter of~~

3 ~~the omitted rule and stating how must state where a copy of~~

4 ~~the omitted material may be obtained. A copy of the omitted~~

5 ~~matter shall material must be filed with the secretary of~~

6 ~~state.~~

7 (3) No rule originally adopting by reference any model

8 code or rule provided for in subsection (1) of this section

9 may adopt any later amendments or editions of the material

10 adopted. Each later amendment or edition may be adopted by

11 reference only by following the rulemaking procedure

12 required by this chapter.

13 (4) If requested by the administrative code committee,

14 an agency must immediately publish the full text of any

15 material adopted by reference under this section.

16 Publication of the text of a rule previously adopted does

17 not affect the date of adoption of the rule, but publication

18 of the text of a rule before publication of the notice of

19 final adoption must be in the form of, and is considered to

20 be, a new notice of proposed rulemaking.

21 (5) Whenever later amendments of federal regulations

22 must be adopted to comply with federal law or to qualify for

23 federal funding, or whenever the legislature has expressly

24 authorized or directed the agency to adopt federal

25 standards, only a notice of intent to incorporate by

1 reference such later amendments shall be filed in the
2 Montana Administrative Register. This notice shall contain
3 the information required by subsection (2) of this section,
4 and shall state the effective date of such incorporation.
5 Unless a hearing is requested, no further notice of adoption
6 or preparation of a replacement page for the administrative
7 code is required."

-End-

Approved by Committee
on State Administration

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2 INTRODUCED BY STOBIE
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12 secretary of state, with the consent of the adopting agency,
13 may omit from ARM or the register any rule, either proposed
14 or adopted, the publication of which (1) An agency may adopt
15 by reference any model code, federal agency rule, rule of
16 any agency of this state or other similar publication if the
17 publication of the model code, rule, or other publication
18 would be unduly cumbersome, expensive, or otherwise
19 inexpedient, if the rule merely incorporates by reference a
20 model code, federal agency rule, or like publication made
21 available on application to the agency and if ARM or the
22 register contains
23 (2) The model code, rule, or other publication must be
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25 procedure required by this chapter. The rule must contain a

1 notice stating the citation and to the material adopted by
2 reference, and a statement of the general subject matter of
3 the omitted rule and stating how must state where a copy of
4 the omitted material may be obtained. A copy of the omitted
5 matter shall material must be filed with the secretary of
6 state.
7 (3) No EXCEPT AS PROVIDED IN SUBSECTION (5), NO rule
8 originally adopting by reference any model code or rule
9 provided for in subsection (1) of this section may adopt any
10 later amendments or editions of the material adopted. Each
11 later amendment or edition may be adopted by reference only
12 by following the rulemaking procedure required by this
13 chapter.
14 (4) If requested by A THREE-FOURTHS VOICE OF the
15 administrative code committee, an agency must immediately
16 publish the full OR PARTIAL text of any PERTINENT material
17 adopted by reference under this section. Publication of the
18 text of a rule previously adopted does not affect the date
19 of adoption of the rule, but publication of the text of a
20 rule before publication of the notice of final adoption must
21 be in the form of, and is considered to be, a new notice of
22 proposed rulemaking.
23 (5) Whenever later amendments of federal regulations
24 must be adopted to comply with federal law or to qualify for
25 federal funding, or whenever the legislature has expressly

1 authorized or directed the agency to adopt federal
2 standards, only a notice of intent--to--incorporate
3 INCORPORATION by reference of such later amendments shall be
4 filed in the Montana Administrative Register. This notice
5 shall contain the information required by subsection (2) of
6 this section, and shall state the effective date of such
7 incorporation. Unless--a A hearing is requested, NOI
8 REQUIRED, AND no further notice of adoption or preparation
9 of a replacement page for the administrative code is
10 required."

-End-

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24 adopted by reference in a rule adopted under the rulemaking
25 procedure required by this chapter. The rule must contain a

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3 ~~the omitted rule and stating how must state where a copy of~~
4 ~~the omitted material may be obtained. A copy of the omitted~~
5 ~~matter shall material must be filed with the secretary of~~
6 ~~state.~~

7 (3) ~~No EXCEPT AS PROVIDED IN SUBSECTION (5), NO rule~~
8 ~~originally adopting by reference any model code or rule~~
9 ~~provided for in subsection (1) of this section may adopt any~~
10 ~~later amendments or editions of the material adopted. Each~~
11 ~~later amendment or edition may be adopted by reference only~~
12 ~~by following the rulemaking procedure required by this~~
13 ~~chapter.~~

14 (4) ~~If requested by A THREE-FOURTHS VOTE OF the~~
15 ~~administrative code committee, an agency must immediately~~
16 ~~publish the full OR PARTIAL text of any PERTINENT material~~
17 ~~adopted by reference under this section. Publication of the~~
18 ~~text of a rule previously adopted does not affect the date~~
19 ~~of adoption of the rule, but publication of the text of a~~
20 ~~rule before publication of the notice of final adoption must~~
21 ~~be in the form of, and is considered to be, a new notice of~~
22 ~~proposed rulemaking.~~

23 (5) ~~Whenever later amendments of federal regulations~~
24 ~~must be adopted to comply with federal law or to qualify for~~
25 ~~federal funding, or whenever the legislature has expressly~~

1 authorized or directed the agency to adopt federal
2 standards, only a notice of intent~~-----to-----incorporate~~
3 INCORPORATION by reference of such ~~later~~ amendments shall be
4 filed in the Montana Administrative Register. This notice
5 shall contain the information required by subsection (2) of
6 this section, and shall state the effective date of such
7 incorporation. ~~Unless--a~~ A hearing is requested, NOI
8 REQUIRED. AND no further notice of adoption or preparation
9 of a replacement page for the administrative code is
10 required."

-End-

HOUSE BILL NO. 38

INTRODUCED BY STOBIE

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 2-4-307, MCA, RELATING TO OMISSIONS FROM THE ADMINISTRATIVE RULES OF MONTANA OR THE MONTANA ADMINISTRATIVE REGISTER."

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. The secretary of state, with the consent of the adopting agency, may omit from ARM or the register any rule, either proposed or adopted, the publication of which (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 the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and (2) if the ARM or the register contains

(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

notice stating the citation and to the material adopted by reference, and a statement of the general subject matter of the omitted rule and stating how must state where a copy of the omitted material may be obtained. A UPON REQUEST OF THE SECRETARY OF STATE, A copy of the omitted matter shall material must be filed with the secretary of state.

(3) No EXCEPT AS PROVIDED IN SUBSECTION (5), NO rule originally adopted by reference any model code or rule provided for in subsection (1) of this section may adopt any later amendments or editions of the material adopted. Each EXCEPT AS PROVIDED IN SUBSECTION (5), EACH later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(4) If requested by A THREE-FOURTHS VOTE OF the administrative code committee, an agency must immediately publish the full OR PARTIAL text of any PERTINENT material adopted by reference under this section. THE COMMITTEE MAY NOT REQUIRE THE PUBLICATION OF COPYRIGHTED MATERIAL. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of, and is considered to be, a new notice of proposed rulemaking.

(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for

1 ~~federal funding, or whenever the legislature has expressly~~
2 ~~authorized or directed the agency to adopt federal~~
3 ~~standards, only a notice of intent to incorporate~~
4 ~~INCORPORATION by reference of such later LATER amendments~~
5 ~~shall be filed in the Montana Administrative Register. This~~
6 ~~notice shall contain the information required by subsection~~
7 ~~(2) of this section, and shall state the effective date of~~
8 ~~such incorporation, WHICH EFFECTIVE DATE MAY BE NO SOONER~~
9 ~~THAN 30 DAYS AFTER THE DATE UPON WHICH THE NOTICE IS ISSUED.~~
10 ~~Unless a hearing is requested, NOT REQUIRED UNLESS~~
11 ~~REQUESTED UNDER 2-4-302(4) PRIOR TO THE EFFECTIVE DATE OF~~
12 ~~THE RULE, AND no further notice of adoption or preparation~~
13 ~~of a replacement page for the administrative code RULES OF~~
14 ~~MONTANA is required.~~
15 (6) IF A HEARING IS REQUESTED UNDER SUBSECTION (5),
16 THE AGENCY SHALL COMPLY WITH THE REQUIREMENTS FOR A HEARING
17 CONTAINED IN 2-4-302(4) AND (5) AND MAY ADOPT THE RULE ONLY
18 IN ACCORDANCE WITH 2-4-305."

-End-

March 16, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 38, as follows:

THAT THE FOLLOWING AMENDMENT OF THE SENATE
STANDING COMMITTEE ON STATE ADMINISTRATION
BE AMENDED AS FOLLOWS:

1. Page 3, line 8.
Following: "REQUIRED"
Insert: "unless requested under 2-4-302(4)
prior to the effective date of the rule"

AND, FURTHER, THAT THE FOLLOWING AMENDMENTS
BE MADE TO THE BILL:

1. Page 3, line 7.
Following: "incorporation"
Insert: ", which effective date may be no
sooner that 30 days after the date upon
which the notice is issued"
2. Page 3.
Following: line 10.
Insert: "(6) If a hearing is requested under
subsection (5), the agency shall comply with
the requirements for a hearing contained in
2-4-302(4) and (5) and may adopt the rule
only in accordance with 2-4-305."

March 13, 1981

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 38 be amended as follows:

1. Page 2, line 4.

Following: "obtained."

Strike: "A"

Insert: "Upon request of the secretary of state, a"

2. Page 2, line 7.

Following: "Ne"

Strike: "EXCEPT AS PROVIDED IN SUBSECTION (5), NO"

Insert: "No"

3. Page 2, line 10.

Following: "adopted."

Strike: "Each"

Insert: "Except as provided in subsection (5), each"

4. Page 2, line 17.

Following: "section."

Insert: "The committee may not require the publication of
copyrighted material."

5. Page 2, line 25 through page 3, line 2.

Following: "funding,"

Strike: remainder of line 25, page 2, through "standards,"
on page 3, line 2.

6. Page 3, line 3.

Following: "later"

Insert: "later"

7. Page 3, line 8.

Following: "REQUIRED"

Insert: "unless requested under 2-4-302 (4)"

8. Page 3, line 9.

Following: "administrative"

Strike: "code"

Insert: "rules of Montana"

April 16, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO HOUSE BILL 38;
REFERENCE COPY, AS FOLLOWS:

1. Page 3, Line 8
Following: "incorporation"
Strike: , "which"
Insert: ". The"
2. Page 3, Line 9
Following: "IS"
Strike: ISSUED
Insert: "published unless the 30 days causes a delay -
that jeopardizes compliance with federal law or
qualification for federal funding in which event
the effective date may be no sooner than the date
of publication."
3. Page 3, Line 11
Following: UNDER
Strike: "2-4-302(4) PRIOR TO THE EFFECTIVE DATE OF
THE RULE, AND"
Insert: "2-4-315 by either 10% or 25, whichever is
less, of the persons who will be directly affected
by the incorporation, by a governmental sub-
division or agency, or by an association having
not less than 25 members who will be directly
affected."
4. Page 3, line 12
Following: "AND"
Strike: "no"
Insert: "NO"
5. Page 3, line 16 - 18
Following: Line 15
Delete: Lines 16 through 18
Insert: "the petition for hearing shall contain a
request for an amendment, and may contain
suggested language, reasons for an amendment,
and any other information pertinent to the sub-
ject of the rule."

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13 ~~may omit from ARM or the register any rule, either proposed~~
14 ~~or adopted, the publication of which (1) An agency may adopt~~
15 ~~by reference any model code, federal agency rule, rule of~~
16 ~~any agency of this state or other similar publication if the~~
17 ~~publication of the model code, rule, or other publication~~
18 ~~would be unduly cumbersome, expensive, or otherwise~~
19 ~~inexpedient, if the rule merely incorporates by reference a~~
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21 ~~available on application to the agency and if ARM or the~~
22 ~~register contains~~

23 (1) The model code, rule, or other publication must be
24 adopted by reference in a rule adopted under the rulemaking
25 procedure required by this chapter. The rule must contain a

1 notice stating the citation and to the material adopted by
2 reference, and a statement of the general subject matter of
3 the omitted rule and stating how must state where a copy of
4 the omitted material may be obtained. A UPON REQUEST OF THE
5 SECRETARY OF STATE, A copy of the omitted matter shall
6 material must be filed with the secretary of state.

7 (3) No EXCEPT-AS-PROVIDED-IN-SUBSECTION (5)-NO NO
8 rule originally adopting by reference any model code or rule
9 provided for in subsection (1) of this section may adopt any
10 later amendments or editions of the material adopted. Each
11 EXCEPT AS PROVIDED IN SUBSECTION (5), EACH later amendment
12 or edition may be adopted by reference only by following the
13 rulemaking procedure required by this chapter.

14 (4) If requested by A THREE-FOURTHS VOTE OF the
15 administrative code committee, an agency must immediately
16 publish the full OR PARTIAL text of any PERTINENT material
17 adopted by reference under this section. THE COMMITTEE MAY
18 NOT REQUIRE THE PUBLICATION OF COPYRIGHTED MATERIAL.
19 Publication of the text of a rule previously adopted does
20 not affect the date of adoption of the rule, but publication
21 of the text of a rule before publication of the notice of
22 final adoption must be in the form of, and is considered to
23 be, a new notice of proposed rulemaking.

24 (5) Whenever later amendments of federal regulations
25 must be adopted to comply with federal law or to qualify for

1 ~~federal funding, or whenever the legislature has expressly~~
 2 ~~authorized or directed the agency to adopt federal~~
 3 ~~standards only a notice of intent to incorporate~~
 4 INCORPORATION by reference of such later LATER amendments
 5 shall be filed in the Montana Administrative Register. This
 6 notice shall contain the information required by subsection
 7 (2) of this section, and shall state the effective date of
 8 such incorporation. WHEN, THE EFFECTIVE DATE MAY BE NO
 9 SOONER THAN 30 DAYS AFTER THE DATE UPON WHICH THE NOTICE IS
 10 ISSUED PUBLISHED UNLESS THE 30 DAYS CAUSES A DELAY THAT
 11 JEOPARDIZES COMPLIANCE WITH FEDERAL LAW OR QUALIFICATION FOR
 12 FEDERAL FUNDING IN WHICH EVENT THE EFFECTIVE DATE MAY BE NO
 13 SOONER THAN THE DATE OF PUBLICATION. Unless a hearing is
 14 requested, NOT REQUIRED UNLESS REQUESTED UNDER 2-4-302(4)
 15 PRIOR TO THE EFFECTIVE DATE OF THE RULE, AND 2-4-315 BY
 16 EITHER 10% OR 25, WHICHEVER IS LESS, OF THE PERSONS WHO WILL
 17 BE DIRECTLY AFFECTED BY THE INCORPORATION, BY A GOVERNMENTAL
 18 SUBDIVISION OR AGENCY, OR BY AN ASSOCIATION HAVING NOT LESS
 19 THAN 25 MEMBERS WHO WILL BE DIRECTLY AFFECTED, NO FURTHER
 20 notice of adoption or preparation of a replacement page for
 21 the administrative code RULES OF MONTANA is required.
 22 (8) IF A HEARING IS REQUESTED UNDER SUBSECTION (5),
 23 THE AGENCY SHALL COMPLY WITH THE REQUIREMENTS FOR A HEARING
 24 CONTAINED IN 2-4-302(4) AND (5) AND MAY ADOPT THE RULE ONLY
 25 IN ACCORDANCE WITH 2-4-305. THE PETITION FOR HEARING SHALL

1 CONTAIN A REQUEST FOR AN AMENDMENT, AND MAY CONTAIN
 2 SUGGESTED LANGUAGE, REASONS FOR AN AMENDMENT, AND ANY OTHER
 3 INFORMATION PERTINENT TO THE SUBJECT OF THE RULE."

-End-



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

April 16, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 38, "AN ACT TO AMEND SECTION 2-4-307, MCA, RELATING TO OMISSIONS FROM THE ADMINISTRATIVE RULES OF MONTANA OR THE MONTANA ADMINISTRATIVE REGISTER," without my signature and recommend the following amendments.

House Bill No. 38, as passed, may create significant problems for agencies required to conform to federal regulations. Under House Bill No. 38, amendments of federal regulations incorporated by reference are not effective for at least 30 days after publication in the "Montana Administrative Register." If a hearing is requested, the effective date of the rule may be considerably later than the 30 days. The effects of this "gap" period, when ARM does not conform to required federal regulations, may result in losses of federal financial participation and other liabilities to the state general fund.

House Bill 38, also has technical problems regarding how and when a hearing is requested and the impact of that request on the effective date of the federal regulation amendment. The bill as passed envisions that a hearing request be governed by 2-4-302, MCA, which deals with pro-

Senator Turnage and Representative Marks
April 16, 1981
Page Two

spective rulemaking rather than 2-4-315, MCA which deals with petitions for amendments to rules that already have a properly noticed effective date.

The amendments that I am proposing provide solutions to both of these problems while ensuring the public's right to a hearing.

I urge your concurrence in these amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Schwinden".

TED SCHWINDEN
Governor