

2012 -- H 7458

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LC00547  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ADMINISTRATIVE  
PROCEDURES

Introduced By: Representatives Ucci, and Petrarca

Date Introduced: February 09, 2012

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-35-3 of the General Laws in Chapter 42-35 entitled  
2 "Administrative Procedures" is hereby amended to read as follows:

3 **42-35-3. Procedures for adoption of rules.** -- (a) Prior to the adoption, amendment, or  
4 repeal of any rules and regulations, all state departments and agencies ~~rule the agency~~ shall: have  
5 received general assembly approval. In addition, the department or agency shall:

6 (1) Give at least thirty (30) days notice of its intended action. The notice shall include a  
7 statement of either the terms or substance of the intended action or a description of the subjects  
8 and issues involved, and of the time when, the place where, and the manner in which interested  
9 persons may present their views thereon. The notice shall be mailed to all persons who have made  
10 timely request of the agency for advance notice of its rule-making proceedings, and published in a  
11 newspaper or newspapers having aggregate general circulation throughout the state; provided,  
12 however, that if the action is limited in its applicability to a particular area, then the publication  
13 may be in a newspaper having general circulation in the area. In lieu of newspaper publication,  
14 advance notice of proposed rulemaking by the department of health may be provided via  
15 electronic media on a website maintained by the office of the secretary of state. Authorization for  
16 such electronic notice shall commence on July 1, 2005. In lieu of newspaper publication, advance  
17 notice of proposed rulemaking by all other state departments, agencies and authorities may also  
18 be provided via electronic media on a website maintained by the office of secretary of state, and

1 authorization for such electronic notice shall commence on May 1, 2008. Copies of proposed  
2 rules shall be available at the agency at the time of the notice required by this subsection, and by  
3 mail to any member of the public upon request. The agency shall also prepare a concise summary  
4 of all non-technical amendments being proposed that shall be made available with copies of the  
5 proposed rules themselves.

6 (2) Afford all interested persons reasonable opportunity to submit data, views, or  
7 arguments, orally or in writing. In the case of rules, opportunity for oral hearing must be granted  
8 if requested by twenty-five (25) persons, or by a governmental subdivision or agency, or by an  
9 association having not less than twenty-five (25) members. The agency shall consider fully all  
10 written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if  
11 requested to do so by an interested person, either prior to adoption or within thirty (30) days  
12 thereafter, shall issue a concise statement of the principal reasons for and against its adoption,  
13 incorporating therein its reasons for overruling the considerations urged against its adoption.

14 (3) Demonstrate the need for the adoption, amendment, or repeal of any rule in the  
15 record of the rulemaking proceeding. The agency shall demonstrate that there is no alternative  
16 approach among the alternatives considered during the rulemaking proceeding which would be as  
17 effective and less burdensome to affected private persons as another regulation. This standard  
18 requires that an agency proposing to adopt any new regulation must identify any other state  
19 regulation which is overlapped or duplicated by the proposed regulation and justify any overlap  
20 or duplication.

21 (4) Comply with section 42-35-3.3.

22 (5) Ensure that any proposed additions, deletions or other amendments to the rules and  
23 regulations be clearly marked. If an agency proposes adoption of a new rule to supersede an  
24 existing rule, the agency shall make available a summary of all non-technical differences between  
25 the existing and proposed rules. An agency's lawful promulgation of amendments to an existing  
26 rule shall be deemed to supersede and repeal the previous enactments of that rule, provided that  
27 the public notice required under subdivision (a)(1) of this section indicated such an intent.

28 (b) If an agency finds that an imminent peril to the public health, safety, or welfare  
29 requires adoption of a rule upon less than thirty (30) days' notice, and states in writing its reasons  
30 for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice  
31 and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be  
32 effective for a period of not longer than one hundred twenty (120) days renewable once for a  
33 period not exceeding ninety (90) days, but the adoption of an identical rule under subdivisions  
34 (a)(1) and (a)(2) is not precluded.

1           (c) No rule hereafter adopted is valid unless adopted in substantial compliance with this  
2 section, but no contest of any rule on its face on the ground of noncompliance with the procedural  
3 requirements of this section may be commenced after two (2) years from its effective date, but a  
4 contest of any rule as applied to the complainant may proceed if the complainant can demonstrate  
5 prejudice as a result of the agency's noncompliance with this section.

6           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

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- 1           This act would require that the general assembly approve any adoption, amendment or
- 2 repeal of any state agency or departments proposed rule or requirements.
- 3           This act would take effect upon passage.

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