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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
PROCEDURE REVIEW ACT

Introduced By: Representatives Ucci, and Petrarca

Date Introduced: February 09, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 35.2

4 ADMINISTRATIVE PROCEDURES REVIEW ACT

5 **42-35.2-1. Definitions.** – As used in this chapter:

6 (1) "Agency" means and includes each state board, commission, department, or officer,
7 other than the legislature or the courts, authorized by law to make rules or to determine contested
8 cases, and all "authorities", as that term is defined below;

9 (2) "Authorities" means and includes the following: the Rhode Island industrial building
10 authority, the Rhode Island recreational building authority, the Rhode Island economic
11 development corporation, the Rhode Island industrial facilities corporation, the Rhode Island
12 refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode
13 Island solid waste management corporation, the Rhode Island public transit authority, the Rhode
14 Island student loan authority, the Howard development corporation, the water resources board,
15 the Rhode Island health and educational building corporation, the Rhode Island higher education
16 assistance authority, the Rhode Island turnpike and bridge authority, the Blackstone Valley
17 district commission, the Narragansett Bay water quality management district commission, their
18 successors and assigns, and any body corporate and politic with the power to issue bonds and

1 notes, which are direct, guaranteed, contingent, or moral obligations of the state, which is
2 hereinafter created or established in this state.

3 (3) "Contested case" means a proceeding, including but not restricted to ratemaking,
4 price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are
5 required by law to be determined by an agency after an opportunity for hearing;

6 (4) "License" means and includes the whole or part of any agency permit, certificate,
7 approval, registration, charter, or similar form of permission required by law, but it does not
8 include a license required solely for revenue purposes;

9 (5) "Licensing" means and includes the agency process respecting the grant, denial,
10 renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

11 (6) "Party" means each person or agency named or admitted as a party, or properly
12 seeking, and entitled as of right, to be admitted as a party;

13 (7) "Person" means any individual, partnership, corporation, association, governmental
14 subdivision, or public or private organization of any character other than an agency;

15 (8) "Rule" means each agency statement of general applicability that implements,
16 interprets, or prescribes law or policy or describes the organization, procedure, or practice
17 requirements of any agency. The term includes the amendment or repeal of a prior rule, but does
18 not include: (1) Statements concerning only the internal management of an agency and not
19 affecting private rights or procedures available to the public; or (2) Declaratory rulings issued
20 pursuant to section 42-35-8; (3) Intra-agency memoranda, or (4) An order;

21 (9) "Small business" shall have the same meanings that are provided for under title 13,
22 volume 1, part 121 of the Code of Federal Regulations (13 CFR 121, as may be amended from
23 time to time);

24 (10) "Order" means the whole or a part of a final disposition, whether affirmative,
25 negative, injunctive or declaratory in form, of a contested case;

26 (11) "Small business advocate" means the person appointed by the director of the
27 economic development corporation as provided in section 42-64-34.

28 **42-35.2-2. Review of orders.** – Any person, including any small business, aggrieved by a
29 final order in a contested case, shall be entitled to a review of said order issued pursuant to
30 chapter 42-35, the administrative procedures act. Said review shall be conducted in accordance
31 with this chapter and prior to any judicial review as provided in section 42-35-15.

32 **42-35.2-3. Review procedure.** – The director of the department of administration shall
33 establish and is hereby empowered and directed to establish rules and regulations necessary to
34 implement the provisions of this chapter and to appoint hearing officers with appropriate

1 [knowledge of administrative procedures and rules and regulations relative thereto to carry out the](#)
2 [purposes of this chapter. Hearing officers shall function within a separate division and shall](#)
3 [comply with all procedural and evidentiary rules applied to contested cases pursuant to chapter](#)
4 [42-35 and shall render a decision as to whether an order issued pursuant to chapter 42-35 is](#)
5 [appropriate.](#)

6 **42-35.2-4. Severability.** – [If any provision of this chapter or the application thereof to](#)
7 [any person or circumstances is held invalid, the invalidity does not affect other provisions or](#)
8 [applications of the chapter which can be given effect without the invalid provision or application,](#)
9 [and to this end the provisions of this chapter are declared to be severable.](#)

10 SECTION 2. Section 42-35-15 of the General Laws in Chapter 42-35 entitled
11 "Administrative Procedures" is hereby amended to read as follows:

12 **42-35-15. Judicial review of contested cases.** -- (a) Any person, including any small
13 business, who has exhausted all administrative remedies available to him or her within the
14 agency, [including a review of any order pursuant to chapter 42-35.2,](#) and who is aggrieved by a
15 final order in a contested case is entitled to judicial review under this chapter. This section does
16 not limit utilization of or the scope of judicial review available under other means of review,
17 redress, relief, or trial de novo provided by law. Any preliminary, procedural, or intermediate
18 agency act or ruling is immediately reviewable in any case in which review of the final agency
19 order would not provide an adequate remedy.

20 (b) Proceedings for review are instituted by filing a complaint in the superior court of
21 Providence County or in the superior court in the county in which the cause of action arose, or
22 where expressly provided by the general laws in the sixth division of the district court or family
23 court of Providence County, within thirty (30) days after mailing notice of the final decision of
24 the agency or, if a rehearing is requested, within thirty (30) days after the decision thereon;
25 provided, however, that any person who is aggrieved by a final order concerning the assessment
26 or determination of any tax, interest, or penalty made by the tax administrator must pay the
27 amount of the tax, interest, or penalty to the administrator as a prerequisite to the filing of such
28 complaint. Copies of the complaint shall be served upon the agency and all other parties of record
29 in the manner prescribed by applicable procedural rules within ten (10) days after it is filed in
30 court; provided, however, that the time for service may be extended for good cause by order of
31 the court.

32 (c) The filing of the complaint does not itself stay enforcement of the agency order. The
33 agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

34 (d) Within thirty (30) days after the service of the complaint, or within further time

1 allowed by the court, the agency shall transmit to the reviewing court the original or a certified
2 copy of the entire record of the proceeding under review. By stipulation of all parties to the
3 review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to
4 limit the record may be taxed by the court for the additional costs. The court may require or
5 permit subsequent corrections or additions to the record.

6 (e) If, before the date set for the hearing, application is made to the court for leave to
7 present additional evidence, and it is shown to the satisfaction of the court that the additional
8 evidence is material and that there were good reasons for failure to present it in the proceeding
9 before the agency, the court may order that the additional evidence be taken before the agency
10 upon conditions determined by the court. The agency may modify its findings and decision by
11 reason of the additional evidence and shall file that evidence and any modifications, new findings,
12 or decisions with the reviewing court.

13 (f) The review shall be conducted by the court without a jury and shall be confined to the
14 record. In cases of alleged irregularities in procedure before the agency, not shown in the record,
15 proof thereon may be taken in the court. The court, upon request, shall hear oral argument and
16 receive written briefs.

17 (g) The court shall not substitute its judgment for that of the agency as to the weight of
18 the evidence on questions of fact. The court may affirm the decision of the agency or remand the
19 case for further proceedings, or it may reverse or modify the decision if substantial rights of the
20 appellant have been prejudiced because the administrative findings, inferences, conclusions, or
21 decisions are:

22 (1) In violation of constitutional or statutory provisions;

23 (2) In excess of the statutory authority of the agency;

24 (3) Made upon unlawful procedure;

25 (4) Affected by other error or law;

26 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the
27 whole record; or

28 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
29 exercise of discretion.

30 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ADMINISTRATIVE
PROCEDURE REVIEW ACT

- 1 This act would create a review process of any order issued pursuant to the administrative
- 2 procedures act.
- 3 This act would take effect upon passage.

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