

2012 -- S 2355

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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: Senators Lynch, Perry, Tassoni, Miller, and Gallo

Date Introduced: February 14, 2012

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 42-35-3.3 of the General Laws in Chapter 42-35 entitled  
2 "Administrative Procedures" is hereby repealed.

3           ~~**42-35-3.3. Regulations affecting small business.** --- (a) Prior to the adoption of any~~  
4 ~~proposed regulation each agency shall notify the governor's office and the economic development~~  
5 ~~corporation of its intent to adopt the proposed regulation. The agency shall submit the proposed~~  
6 ~~regulation to both the governor's office and the economic development corporation at a time~~  
7 ~~reasonably in advance of the commencement of the formal rule-making process, but in any case~~  
8 ~~no later than the date of public notice. If the governor's office or the economic development~~  
9 ~~corporation shall, within fifteen (15) days of receipt of such notice, identify a proposed regulation~~  
10 ~~as one that may have a significant adverse economic impact on small businesses, the proposing~~  
11 ~~agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent~~  
12 ~~with health, safety and environmental and economic welfare, consider utilizing regulatory~~  
13 ~~methods that will accomplish the objectives of applicable laws while minimizing adverse impact~~  
14 ~~on small business. The small business advocate shall identify and convey specific concerns raised~~  
15 ~~by small business in providing notice to the agency proposing the regulation, and shall, when~~  
16 ~~appropriate, act as advocate for a small business raising concerns hereunder. To the extent that a~~  
17 ~~proposed regulation is required to be promulgated by a state agency in order to comply with a~~  
18 ~~requirement for the establishment of specific standards under federal law, such regulations or~~

1 ~~nondiscretionary portions thereof shall not be subject to the requirements of this section. The~~  
2 ~~analysis shall, to the extent ascertainable, include the following:~~

3 ~~(1) An identification and estimate of the number of small businesses subject to the~~  
4 ~~proposed regulation;~~

5 ~~(2) The projected reporting, record keeping and other administrative costs required for~~  
6 ~~compliance with the proposed regulation, including the type of professional skills necessary for~~  
7 ~~preparation of the report or record;~~

8 ~~(3) A statement of the probable effect on impacted small businesses; and~~

9 ~~(4) A description of any less intrusive or less costly alternative methods of achieving the~~  
10 ~~purpose of the proposed regulation.~~

11 ~~(b) The agency shall consider, without limitation, each of the following methods of~~  
12 ~~reducing the impact of the proposed regulation on small businesses:~~

13 ~~(1) The establishment of less stringent compliance or reporting requirements for small~~  
14 ~~businesses;~~

15 ~~(2) The establishment of less stringent schedules or deadlines for compliance or~~  
16 ~~reporting requirements for small businesses;~~

17 ~~(3) The consolidation or simplification of compliance or reporting requirements for small~~  
18 ~~businesses;~~

19 ~~(4) The establishment of performance standards for small businesses to replace design or~~  
20 ~~operational standards required in the proposed regulation; and~~

21 ~~(5) The exemption of small businesses from all or any part of the requirement contained~~  
22 ~~in the proposed regulation.~~

23 ~~(c) The economic development corporation shall advise and assist agencies in complying~~  
24 ~~with the provisions of this section and provide such data as is available to the corporation in order~~  
25 ~~to support the intent of this section and develop alternatives for consideration by the proposing~~  
26 ~~agency. The economic development corporation shall provide written comment specifically~~  
27 ~~detailing any information that relates to the components of analysis in subdivisions (a)(1) — (a)(4)~~  
28 ~~above and, such alternatives as they may have identified pursuant to subdivisions (b)(1) — (b)(5)~~  
29 ~~above. Such review and advice shall be completed within the notice and review periods required~~  
30 ~~by this chapter and shall not serve to delay the promulgation of rules.~~

31 ~~(d) The following professional and business activities shall not be considered a small~~  
32 ~~business for purposes of this section:~~

33 ~~(1) Financial institutions including banks, trusts, savings and loan associations, thrift~~  
34 ~~institutions, consumer and industrial finance companies, credit unions, mortgage and investment~~

- 1 ~~bankers, and stock and bond brokers;~~
- 2 ~~(2) Insurance companies, both stock and mutual;~~
- 3 ~~(3) Mineral, oil and gas brokers; subdividers and developers;~~
- 4 ~~(4) Landscape architects, architects and building designers;~~
- 5 ~~(5) Entities organized as nonprofit institutions;~~
- 6 ~~(6) Entertainment activities and productions including motion pictures, stage~~
- 7 ~~performances, television and radio stations, and production companies;~~
- 8 ~~(7) All utilities, water companies, and power transmission companies, except electrical~~
- 9 ~~power generating transmission companies providing less than four and one half (4.5) kilowatts;~~
- 10 ~~(8) All petroleum and natural gas producers, refiners and pipelines.~~

11 SECTION 2. Section 42-35.1-3 of the General Laws in Chapter 42-35.1 entitled "Small  
12 Business Regulatory Fairness in Administrative Procedures" is hereby amended to read as  
13 follows:

14 **42-35.1-3. Economic Impact statements.** -- (a) Prior to the adoption of any proposed  
15 regulation that may have an adverse impact on small businesses, excluding those businesses  
16 defined in subsection ~~42-35-3.3(d)~~, [\(c\) of this section](#) each agency shall prepare, ~~in congruence~~  
17 ~~with the analysis required in section 42-35-3.3~~, an economic impact statements that includes the  
18 following:

19 (1) An identification and estimate of the number of the small businesses subject to the  
20 proposed regulation;

21 (2) The projected reporting, recordkeeping, and other administrative costs required for  
22 compliance with the proposed regulation, including the type of professional skills necessary for  
23 preparation of the report or record;

24 (3) A statement of the probable effect on impacted small businesses;

25 (4) A description of any less intrusive or less costly alternative methods of achieving the  
26 purpose of the proposed regulation.

27 (b) The economic impact statement required herein shall be published in guide form as  
28 well as posted on the department of administration and the of economic development corporation  
29 websites. The guide should be published and/or posted on or around the same date as the  
30 regulation change and shall include a description of actions need by the small business to meet  
31 the requirement of the regulation.

32 [\(c\) The following professional and business activities shall not be considered a small](#)  
33 [business for purposes of this section:](#)

34 [\(1\) Financial institutions including banks, trusts, savings and loan associations, thrift](#)

- 1 institutions, consumer and industrial finance companies, credit unions, mortgage and investment  
2 bankers, and stock and bond brokers;
- 3 (2) Insurance companies, both stock and mutual;  
4 (3) Mineral, oil and gas brokers;  
5 (4) Subdividers and developers;  
6 (5) Landscape architects, architects and building designers;  
7 (6) Entities organized as nonprofit institutions;  
8 (7) Entertainment activities and productions including motion pictures, stage  
9 performances, television and radio stations, and production companies;  
10 (8) All utilities, water companies, and power transmission companies, except electrical  
11 power generating transmission companies providing less than four and one-half (4.5) kilowatts;  
12 (9) All petroleum and natural gas producers, refiners and pipelines.
- 13 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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1           This act would make technical amendments to the general laws by deleting duplicative  
2 language in the section concerning regulation of small businesses under the administrative  
3 procedures act and inserting similar language in chapter 42-35.1 which addresses small business  
4 regulatory fairness under said act.

5           This act would take effect upon passage.

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