

2010 -- S 2847

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO MAKING IT EASIER TO DO BUSINESS IN RHODE ISLAND PART 5:
STATE AFFAIRS AND GOVERNMENT - ADMINISTRATIVE PROCEDURES

Introduced By: Senators Metts, Blais, Lynch, Crowley, and Walaska

Date Introduced: May 04, 2010

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-35-1, 42-35-2, 42-35-2.1, 42-35-2.2, 42-35-3, 42-35-4, 42-35-
2 6, 42-35-7, 42-35-9, 42-35-10, 42-35-11, 42-35-12, 42-35-13, 42-35-14 and 42-35-15 of the
3 General Laws in Chapter 42-35 entitled "Administrative Procedures" are hereby amended to read
4 as follows:

5 **42-35-1. Definitions.** -- As used in this chapter:

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

9 (2) "Authorities" includes the following: the Rhode Island industrial building authority,
10 the Rhode Island recreational building authority, the Rhode Island economic development
11 corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond
12 authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island solid
13 waste management corporation, the Rhode Island public transit authority, the Rhode Island
14 student loan authority, the Howard development corporation, the water resources board, the
15 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 [or collaborative](#) after an opportunity for hearing;

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

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

11 (6) "Party" means each person ~~or~~, agency [or collaborative](#) named or admitted as a party,
12 or properly 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 [or](#)
15 [collaborative](#);

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

23 (9) "Small business" shall ~~shall~~ have the same meanings that are provided for under title
24 13, volume 1, part 121 of the Code of Federal Regulations (13 CFR 121, as may be amended
25 from time to time);

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

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

30 [\(12\) "Collaborative" means more than one agency with responsibilities defined in](#)
31 [subdivision 42-35-1\(1\), working simultaneously and together in rule making, decision making,](#)
32 [procedures or practices.](#)

33 **42-35-2. Public information -- Adoption of rules -- Availability of rules and orders. -**

34 - (a) In addition to other rule making requirements imposed by law, each agency [or collaborative](#)

1 shall:

2 (1) Adopt as a rule a description of its organization, stating the general course and
3 method of its operations and the methods whereby the public may obtain information or make
4 submissions or requests;

5 (2) Adopt rules of practice, setting forth the nature and requirements of all formal and
6 informal procedures available, and including a description of all forms and instructions used by
7 the agency [or collaborative](#);

8 (3) Make available for public inspection all rules and all other written statements of
9 policy or interpretations formulated, adopted, or used by the agency [or collaborative](#) in the
10 discharge of its functions;

11 (4) Make available for public inspection all final orders, decisions, and opinions.

12 (b) No agency [or collaborative](#) rule, order, or decision is valid or effective against any
13 person or party, nor may it be invoked by the agency [or collaborative](#) for any purpose, until it has
14 been made available for public inspection as herein required, except that this provision is not
15 applicable in favor of any person or party who has actual knowledge thereof.

16 **42-35-2.1. Rules coordinator.** -- Each agency [or collaborative](#) shall, by January 2, 2002,
17 designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed,
18 maintain the records of any rules action including the rule-making file required by section 42-35-
19 2.2, and respond to public inquiries about proposed rules and the identity of agency [or](#)
20 [collaborative](#) personnel working, reviewing, or commenting on them. The office and mailing
21 address of the rules coordinator shall be published in the state register at the time of designation
22 and in the first issue of each calendar year thereafter for the duration of the designation. The rules
23 coordinator may be an employee of another agency [or collaborative](#). Nothing in this section shall
24 be construed to explicitly or implicitly permit the hiring of any additional personnel to perform
25 the duties and responsibilities of the rules coordinator designated in this section.

26 **42-35-2.2. Rule-making file.** -- (a) Each agency [or collaborative](#) shall maintain an
27 official rule-making file for each rule proposed or adopted after January 2, 2002. The file and
28 materials incorporated by reference shall be available for public inspection.

29 (b) The agency [or collaborative](#) rule-making file shall contain all of the following:

30 (1) Copies of all publications in the state register with respect to the rule or the
31 proceeding upon which the rule is based;

32 (2) Copies of any portions of the agency's [or collaborative's](#) regulatory agenda containing
33 entries relating to the rule or the proceeding on which the rule is based;

34 (3) All written petitions, requests, submissions, and comments received by the agency [or](#)

1 [collaborative](#) and all other written material regarded by the agency [or collaborative](#) as important
2 to adoption of the rule or the proceeding on which the rule is based;

3 (4) Any official transcript of oral presentations made in the proceeding on which the rule
4 is based or, if not transcribed, any tape recording or stenographic record of them and any
5 memorandum prepared by a presiding official summarizing the contents of those presentations;

6 (5) The concise explanatory statement required by section 42-35-2.3;

7 (6) All petitions for exceptions to, amendment of, or repeal or suspension of the rule;

8 (7) Citations to data, factual information, studies, or reports in which the agency [or](#)
9 [collaborative](#) relies in the adoption of the rule, indicating where such data, factual information,
10 studies, or reports are available for review by the public;

11 (8) Any other material placed in the file by the agency [or collaborative](#).

12 (c) Internal agency [or collaborative](#) documents are exempt from inclusion in the rule-
13 making file to the extent they constitute preliminary drafts, notes, recommendations, and intra-
14 agency [or collaborative](#) memoranda in which opinions are expressed or policies formulated or
15 recommended, except that a specific document is not exempt from inclusion when it is publicly
16 cited by an agency [or collaborative](#) in connection with its decision.

17 (d) Upon judicial review, the file required by this section constitutes the official agency
18 [or collaborative](#) rule-making file with respect to that rule. Unless otherwise required by law, the
19 official agency [or collaborative](#) rule-making file need not be the exclusive basis for agency [or](#)
20 [collaborative](#) action on that rule.

21 **42-35-3. Procedures for adoption of rules.** -- (a) Prior to the adoption, amendment, or
22 repeal of any rule the agency [or collaborative](#) shall:

23 (1) Give at least thirty (30) days notice of its intended action. The notice shall include a
24 statement of either the terms or substance of the intended action or a description of the subjects
25 and issues involved, and of the time when, the place where, and the manner in which interested
26 persons may present their views thereon. The notice shall be mailed to all persons who have made
27 timely request of the agency [or collaborative](#) for advance notice of its rule-making proceedings,
28 and published in a newspaper or newspapers having aggregate general circulation throughout the
29 state; provided, however, that if the action is limited in its applicability to a particular area, then
30 the publication may be in a newspaper having general circulation in the area. In lieu of newspaper
31 publication, advance notice of proposed rulemaking by the department of health may be provided
32 via electronic media on a website maintained by the office of the secretary of state. Authorization
33 for such electronic notice shall commence on July 1, 2005. In lieu of newspaper publication,
34 advance notice of proposed rulemaking by all other state departments, agencies, [collaboratives](#)

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

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

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

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

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

31 (b) If an agency or collaborative finds that an imminent peril to the public health, safety,
32 or welfare requires adoption of a rule upon less than thirty (30) days' notice, and states in writing
33 its reasons for that finding, it may proceed without prior notice or hearing or upon any
34 abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule so

1 adopted may be effective for a period of not longer than one hundred twenty (120) days
2 renewable once for a period not exceeding ninety (90) days, but the adoption of an identical rule
3 under subdivisions (a)(1) and (a)(2) is not precluded.

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

9 **42-35-4. Filing and taking effect of rules.** -- (a) No later than thirty (30) days following
10 the adoption of a rule each agency or collaborative shall file forthwith in the office of the
11 secretary of state a certified copy of each such rule, and shall certify its compliance with the
12 procedural requirements of section 42-35-3. The secretary of state shall keep a permanent register
13 of the rules open to public inspection.

14 (b) Each rule hereafter adopted is effective twenty (20) days after filing with the
15 secretary of state, except that:

16 (1) If a later date is required by statute or specified in the rule, the later date is the
17 effective date;

18 (2) Subject to applicable constitutional or statutory provisions, an emergency rule may
19 become effective immediately upon filing with the secretary of state, or at a stated date less than
20 twenty (20) days thereafter, if the agency or collaborative finds that this effective date is
21 necessary because of imminent perils to the public health, safety, or welfare. The agency's or
22 collaborative's finding and a brief statement of the reasons therefor shall be filed with the rule in
23 the office of the secretary of state. The agency or collaborative shall take appropriate measures to
24 make emergency rules known to the persons who may be affected by them.

25 (3) Any rules, regulations or policy adopted by state departments, agencies,
26 collaboratives or quasi-state departments, ~~or~~ agencies or collaboratives which require any new
27 expenditure of money or increased expenditure of money by a city or town shall take effect on
28 July 1 of the calendar year following the year of adoption; provided, however when the rule,
29 regulation or policy does not exceed what may be required by federal statute or regulation or
30 court order, it shall take effect upon its effective date of adoption.

31 (4) Whenever it shall be determined by the governor that the postponement of the
32 effective date of rules, regulations or policies of state departments, agencies, collaboratives or
33 quasi-state departments ~~or~~ agencies, or collaboratives, shall cause an emergency situation which
34 imperils the public's safety or public health, the governor may by executive order suspend the

1 operation of, in whole or in part, section 42-35-4(3) and such order shall remain in effect until it
2 is rescinded by a subsequent executive order.

3 (c) The secretary of state shall remove from the files of rules, regulations or policies any
4 rules, regulations or policies that are no longer in effect according to the criteria in sections 42-
5 35-4.1(g) and 42-35-4.2 and place them in another file or remove them to the state archives or
6 other document storage facility. The secretary of state may also maintain these files on their
7 original media or convert them to any other media of his or her choice.

8 **42-35-6. Petition for adoption of rules.** -- Any interested person may petition an agency
9 [or collaborative](#) requesting the promulgation, amendment, or repeal of any rule. Each agency [or](#)
10 [collaborative](#) shall prescribe by rule the form for petitions and the procedure for their submission,
11 consideration, and disposition. Upon submission of a petition, the agency [or collaborative](#) within
12 thirty (30) days shall either deny the petition in writing (stating its reasons for the denials) or
13 initiate rule-making proceedings in accordance with section 42-35-3.

14 **42-35-7. Declaratory judgment on validity or applicability of rules.** -- The validity or
15 applicability of any rule may be determined in an action for declaratory judgment in the superior
16 court of Providence County, when it is alleged that the rule, or its threatened application,
17 interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of
18 the plaintiff. The agency [or collaborative](#) shall be made a party to the action. A declaratory
19 judgment may be rendered whether or not the plaintiff has requested the agency [or collaborative](#)
20 to pass upon the validity or applicability of the rule in question.

21 **42-35-9. Contested cases -- Notice -- Hearing -- Records.** -- (a) In any contested case,
22 all parties shall be afforded an opportunity for a hearing after reasonable notice.

23 (b) The notice shall include:

24 (1) A statement of the time, place, and nature of the hearing;

25 (2) A statement of the legal authority and jurisdiction under which the hearing is to be
26 held;

27 (3) A reference to the particular sections of the statutes and rules involved;

28 (4) A short and plain statement of the matters inserted. If the agency, [collaborative](#) or
29 other party is unable to state the matters in detail at the time the notice is served, the initial notice
30 may be limited to a statement of the issues involved and detailed statement shall be furnished.

31 (c) Opportunity shall be afforded all parties to respond and present evidence and
32 argument on all issues involved.

33 (d) Unless precluded by law, informal disposition may be made of any contested case by
34 stipulation, agreed settlement, consent order, or default.

1 (e) The record in a contested case shall include:
2 (1) All pleadings, motions, intermediate rulings;
3 (2) Evidence received or considered;
4 (3) A statement of matters officially noticed;
5 (4) Questions and offers of proof and rulings thereon;
6 (5) Proposed findings and exceptions;
7 (6) Any decision, opinion, or report by the officer presiding at the hearing;
8 (7) All staff memoranda or data submitted to the hearing officer or members of the
9 agency [or collaborative](#) in connection with their consideration of the case.

10 (f) Oral proceedings or any part thereof conducted under the provisions of this chapter
11 shall be transcribed on request by any party. Stenotypists occupying positions within the state
12 service as hearing reporters for any state agency [or collaborative](#), who report stenographically the
13 proceedings in administrative hearings and the taking of depositions in their capacity as reporters
14 for a state agency [or collaborative](#), shall be paid at the rate established by section 8-5-5 from the
15 requesting party; provided, however, the state agency [or collaborative](#) shall not be required to
16 compensate the stenotypists for the transcript.

17 (g) Findings of fact shall be based exclusively on the evidence and matters officially
18 noticed.

19 **42-35-10. Rules of evidence -- Official notice. --** In contested cases:

20 (1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of
21 evidence as applied in civil cases in the superior courts of this state shall be followed; but, when
22 necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not
23 admissible under those rules may be submitted (except where precluded by statute) if it is of a
24 type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.
25 Agencies [or collaboratives](#) shall give effect to the rules of privilege recognized by law.
26 Objections to evidentiary offers may be made and shall be noted in the record. Subject to these
27 requirements, when a hearing will be expedited and the interests of the parties will not be
28 prejudiced substantially, any part of the evidence may be received in written form;

29 (2) Documentary evidence may be received in the form of copies or excerpts, if the
30 original is not readily available. Upon request, parties shall be given an opportunity to compare
31 the copy with the original;

32 (3) A party may conduct cross examinations required for a full and true disclosure of the
33 facts;

34 (4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken

1 of generally recognized technical or scientific facts within the agency's [or collaborative's](#)
2 specialized knowledge; but parties shall be notified either before or during the hearing, or by
3 reference in preliminary reports or otherwise, of the material noticed, including any staff
4 memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.
5 The agency's [or collaborative's](#) experience, technical competence, and specialized knowledge
6 may be utilized in the evaluation of the evidence.

7 **42-35-11. Examination of evidence by agency or collaborative.** -- (a) Whenever in a
8 contested case a majority of the officials of the agency [or collaborative](#) who are to render the final
9 decision have not heard the case or read the record, the decision, if adverse to a party to the
10 proceeding other than the agency [or collaborative](#) itself, shall not be made until a proposal for
11 decision is served upon the parties, and an opportunity is afforded to each party adversely
12 affected to file exceptions and present briefs and oral argument to the officials who are to render
13 the decision.

14 (b) The proposal for decision shall contain a statement of reasons and include the
15 determination of each issue of fact or law necessary to the proposed decision, prepared by the
16 person who conducted the hearing or one who has read the record. The parties by written
17 stipulation may waive compliance with this section.

18 **42-35-12. Orders.** -- Any final order adverse to a party in a contested case shall be in
19 writing or stated in the record. Any final order shall include findings of fact and conclusions of
20 law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by
21 a concise and explicit statement of the underlying facts supporting the findings. If a party, in
22 accordance with agency [or collaborative](#) rules, submitted proposed findings of fact, the order
23 shall include a ruling upon each proposed finding. Parties shall be notified either personally or by
24 mail of any order. Included with the final order shall be a separate notice advising the parties of
25 the availability of judicial review, the appeal period and the procedure for filing an appeal, and
26 providing a reference to the statutory authority. If the agency [or collaborative](#) fails to provide
27 such notice, the time for taking an appeal shall be extended for an additional thirty (30) days
28 beyond the time otherwise authorized by law. Upon request, a copy of any final order stated in
29 the record shall be delivered or mailed forthwith to each party and to his or her attorney of record.

30 **42-35-13. Ex parte consultations.** -- Unless required for the disposition of ex parte
31 matters authorized by law, members or employees of an agency [or collaborative](#) assigned to
32 render an order or to make findings of fact and conclusions of law in a contested case shall not,
33 directly or indirectly, in connection with any issue of fact, communicate with any person or party,
34 nor, in connection with any issue of law, with any party or his or her representative, except upon

1 notice and opportunity for all parties to participate; but any agency [or collaborative](#), member:

2 (1) May communicate with other members of the agency [or collaborative](#), and

3 (2) May have the aid and advice of one or more personal assistants.

4 **42-35-14. Licenses.** -- (a) Whenever the grant, denial, or renewal of a license is required
5 to be preceded by notice and opportunity for a hearing, the provisions of this chapter concerning
6 contested cases apply.

7 (b) Whenever a licensee has made timely and sufficient application for the renewal of a
8 license or a new license with reference to any activity of a continuing nature, the existing license
9 does not expire until the application has been finally determined by the agency [or collaborative](#),
10 and, in case the application is denied or the terms of the new license limited, until the last day for
11 seeking review of the agency [or collaborative](#) order or a later date fixed by order of the reviewing
12 court.

13 (c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless,
14 prior to the institution of agency [or collaborative](#) proceedings, the agency [or collaborative](#) sent
15 notice by mail to the licensee of facts or conduct which warrant the intended action, and the
16 licensee was given an opportunity to show compliance with all lawful requirements for the
17 retention of the license. If the agency [or collaborative](#) finds that public health, safety, or welfare
18 imperatively requires emergency action, and incorporates a finding to that effect in its order,
19 summary suspension of license may be ordered pending proceedings for revocation or other
20 action. These proceedings shall be promptly instituted and determined.

21 **42-35-15. Judicial review of contested cases.** -- (a) Any person, including any small
22 business, who has exhausted all administrative remedies available to him or her within the agency
23 [or collaborative](#), and who is aggrieved by a final order in a contested case is entitled to judicial
24 review under this chapter. This section does not limit utilization of or the scope of judicial review
25 available under other means of review, redress, relief, or trial de novo provided by law. Any
26 preliminary, procedural, or intermediate agency [or collaborative](#) act or ruling is immediately
27 reviewable in any case in which review of the final agency [or collaborative](#) order would not
28 provide an adequate remedy.

29 (b) Proceedings for review are instituted by filing a complaint in the superior court of
30 Providence County or in the superior court in the county in which the cause of action arose, or
31 where expressly provided by the general laws in the sixth division of the district court or family
32 court of Providence County, within thirty (30) days after mailing notice of the final decision of
33 the agency [or collaborative](#) or, if a rehearing is requested, within thirty (30) days after the
34 decision thereon; provided, however, that any person who is aggrieved by a final order

1 concerning the assessment or determination of any tax, interest, or penalty made by the tax
2 administrator must pay the amount of the tax, interest, or penalty to the administrator as a
3 prerequisite to the filing of such complaint. Copies of the complaint shall be served upon the
4 agency [or collaborative](#) and all other parties of record in the manner prescribed by applicable
5 procedural rules within ten (10) days after it is filed in court; provided, however, that the time for
6 service may be extended for good cause by order of the court.

7 (c) The filing of the complaint does not itself stay enforcement of the agency [or](#)
8 [collaborative](#) order. The agency [or collaborative](#) may grant, or the reviewing court may order, a
9 stay upon the appropriate terms.

10 (d) Within thirty (30) days after the service of the complaint, or within further time
11 allowed by the court, the agency [or collaborative](#) shall transmit to the reviewing court the original
12 or a certified copy of the entire record of the proceeding under review. By stipulation of all
13 parties to the review proceedings, the record may be shortened. Any party unreasonably refusing
14 to stipulate to limit the record may be taxed by the court for the additional costs. The court may
15 require or permit subsequent corrections or additions to the record.

16 (e) If, before the date set for the hearing, application is made to the court for leave to
17 present additional evidence, and it is shown to the satisfaction of the court that the additional
18 evidence is material and that there were good reasons for failure to present it in the proceeding
19 before the agency [or collaborative](#), the court may order that the additional evidence be taken
20 before the agency [or collaborative](#) upon conditions determined by the court. The agency [or](#)
21 [collaborative](#) may modify its findings and decision by reason of the additional evidence and shall
22 file that evidence and any modifications, new findings, or decisions with the reviewing court.

23 (f) The review shall be conducted by the court without a jury and shall be confined to the
24 record. In cases of alleged irregularities in procedure before the agency [or collaborative](#), not
25 shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear
26 oral argument and receive written briefs.

27 (g) The court shall not substitute its judgment for that of the agency [or collaborative](#) as to
28 the weight of the evidence on questions of fact. The court may affirm the decision of the agency
29 [or collaborative](#) or remand the case for further proceedings, or it may reverse or modify the
30 decision if substantial rights of the appellant have been prejudiced because the administrative
31 findings, inferences, conclusions, or decisions are:

- 32 (1) In violation of constitutional or statutory provisions;
- 33 (2) In excess of the statutory authority of the agency [or collaborative](#);
- 34 (3) Made upon unlawful procedure;

1 (4) Affected by other error or law;

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

4 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
5 exercise of discretion.

6 SECTION 2. Chapter 42-35 of the General Laws entitled "Administrative Procedures" is
7 hereby amended by adding thereto the following section:

8 **42-35-1.2. Creation of a collaborative.** -- A "collaborative" is created by a
9 memorandum of agreement which is signed by the directors of each agency involved and
10 thereafter filed with the secretary of state.

11 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 MAKING IT EASIER TO DO BUSINESS IN RHODE ISLAND PART 5:
STATE AFFAIRS AND GOVERNMENT - ADMINISTRATIVE PROCEDURES

- 1 This act would amend the chapter on administrative procedures to include more than one
- 2 agency acting as a collaborative.
- 3 This act would take effect upon passage.

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