

2010 -- S 2958

LC02555

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ADMINISTRATIVE
PROCEDURES

Introduced By: Senators Blais, Crowley, Lynch, Miller, and Maher

Date Introduced: June 02, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-35-15 of the General Laws in Chapter 42-35 entitled
2 "Administrative Procedures" is hereby amended to read as follows:

3 **42-35-15. Judicial review of contested cases.** -- (a) Any person, including any small
4 business, who has exhausted all administrative remedies available to him or her within the
5 agency, and who is aggrieved by a final order in a contested case is entitled to judicial review
6 under this chapter. This section does not limit utilization of or the scope of judicial review
7 available under other means of review, redress, relief, or trial de novo provided by law. Any
8 preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any
9 case in which review of the final agency order would not provide an adequate remedy.

10 (b) Proceedings for review are instituted by filing a complaint in the superior court of
11 Providence County or in the superior court in the county in which the cause of action arose, or
12 where expressly provided by the general laws in the sixth division of the district court or family
13 court of Providence County, within ~~thirty (30) days~~ one year after mailing notice of the final
14 decision of the agency or, if a rehearing is requested, within ~~thirty (30) days~~ one year after the
15 decision thereon; provided, however, that any person who is aggrieved by a final order
16 concerning the assessment or determination of any tax, interest, or penalty made by the tax
17 administrator must pay the amount of the tax, interest, or penalty to the administrator as a
18 prerequisite to the filing of such complaint. Copies of the complaint shall be served upon the

1 agency and all other parties of record in the manner prescribed by applicable procedural rules
2 within ten (10) days after it is filed in court; provided, however, that the time for service may be
3 extended for good cause by order of the court.

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

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

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

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

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

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

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

30 (3) Made upon unlawful procedure;

31 (4) Affected by other error or law;

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

34 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted

1 exercise of discretion.

2 SECTION 2. Sections 42-35.1-1 and 42-35.1-2 of the General Laws in Chapter 42-35.1
3 entitled "Small Business Regulatory Fairness in Administrative Procedures" are hereby amended
4 to read as follows:

5 **42-35.1-1. Legislative findings.** -- The general assembly finds and declares that:

6 (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic
7 economy;

8 (2) Small businesses bear a disproportionate share of regulatory costs and burdens;

9 (3) Fundamental changes that are needed in the regulatory and enforcement culture of
10 state agencies to make them more responsive to small business can be made without
11 compromising the statutory missions of the agencies;

12 (4) When adopting regulations to protect the health, safety, and economic welfare of
13 Rhode Island state agencies should seek to achieve statutory goals as effectively and efficiently as
14 possible without imposing unnecessary burdens on small employers;

15 (5) Uniform regulatory and reporting requirements can impose unnecessary and
16 disproportionately burdensome demands including legal, accounting and consulting costs upon
17 small businesses with limited resources;

18 (6) The failure to recognize differences in the scale and resources of regulated businesses
19 can adversely affect competition in the marketplace, discourage innovation, and restrict
20 improvements in productivity;

21 (7) Unnecessary regulations create entry barriers in many industries and discourage
22 potential entrepreneurs from introducing beneficial products and processes;

23 (8) The practice of treating all regulated businesses as equivalent may lead to inefficient
24 use of regulatory agency resources, enforcement problems, and in some cases, to actions
25 inconsistent with the legislative intent of health, safety, environmental, and economic welfare
26 legislation;

27 (9) Alternative regulatory approaches which do not conflict with the stated objective of
28 applicable statutes may be available to minimize the significant economic impact of rules on
29 small businesses;

30 (10) The process by which state regulations are developed and adopted should be
31 reformed to require agencies to solicit the ideas and comments of small businesses, to examine
32 the impact of proposed and existing rules on such businesses, and to review the continued need
33 for existing rules.

34 [\(11\) "Small businesses should be given the opportunity to seek judicial review of any](#)

1 [agency action they feel adversely impacts them.](#)

2 **42-35.1-2. Definitions.** -- As used in this section:

3 (1) "Agency" means each state board, commission, department, or officer authorized by
4 law to make regulations or to determine contested cases;

5 (2) "Proposed regulation" means a proposal by an agency for a new regulation or for a
6 change in, addition to, or repeal of an existing regulation;

7 (3) "Regulation" means each agency statement of general applicability, without regard to
8 its designation, that implements, interprets, or prescribes law or policy, or describes the
9 organization, procedure, or practice requirements of agency. The term includes the amendment or
10 repeal of a prior regulation but does not include; (i) Statements concerning only the internal
11 management of any agency and not affecting private rights of procedures available to the public,
12 (ii) Declaratory ruling; (iii) Intra-agency or interagency memoranda; (iv) An order;

13 (4) "Small business" shall have the same meaning as in section 42-35-1.

14 [\(5\) "Small business advocate" means the attorney appointed by the director as provided](#)
15 [in section 42-64-34.](#)

16 SECTION 3. Chapter 42-35.1 of the General Laws entitled "Small Business Regulatory
17 Fairness in Administrative Procedures" is hereby amended by adding thereto the following
18 section:

19 **42-35.1-5.1. Report and intervention rights.** -- [\(a\) The small business advocate shall](#)
20 [monitor agency compliance with this chapter and shall report at least annually thereon to the](#)
21 [president of the senate and the speaker of the house.](#)

22 [\(b\) The small business advocate is authorized to appear as amicus curiae in any action](#)
23 [brought in superior court to review a rule. In any such action, the small business advocate is](#)
24 [authorized to present his or her views with respect to compliance with this chapter, the adequacy](#)
25 [of the rulemaking record with respect to small entities and the effect of the rule on small entities.](#)

26 [\(c\) The superior court shall grant the application of the small business advocate to appear](#)
27 [in any such action for the purposes described in subsection \(b\).](#)

28 SECTION 4. This act shall take effect upon passage.

=====
LC02555
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT - ADMINISTRATIVE
PROCEDURES

- 1 This act would make several definitional changes to the administrative procedures act.
- 2 This act would take effect upon passage.

=====
LC02555
=====