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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 Serpa, Morgan, Trillo, Ferri, and Keable

Date Introduced: March 29, 2012

Referred To: House Small Business

It is enacted by the General Assembly as follows:

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

4 **42-35.1-3. Economic Impact statements.** -- (a) Prior to the adoption of any proposed
5 regulation that may have an adverse impact on small businesses, with the exception of emergency
6 regulations adopted in accordance with subsection 42-35-3(b) and excluding those businesses
7 defined in subsection ~~42-35-3.3(d)~~ (c) of this section, each agency shall prepare, in conjunction
8 with assistance and oversight from the office of regulatory reform and in congruence with the
9 analysis required in ~~section 42-35-3.3~~ subsection (b) of this section, an economic impact
10 ~~statements~~ statement that includes the following:

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

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

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

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

1 (b) The economic impact statement required herein shall be published in guide form as
2 well as posted on the department of administration and the ~~of economic development corporation~~
3 office of management and budget websites. The guide should be published and/or posted on or
4 around the same date as the regulation change and shall include a description of actions need by
5 the small business to meet the requirement of the regulation. The office of regulatory reform shall
6 develop criteria for the economic impact statement.

7 (c) The following professional and business activities shall not be considered a small
8 business for purposes of this section:

9 (1) Financial institutions including banks, trusts, savings and loan associations, thrift
10 institutions, consumer and industrial finance companies, credit unions, mortgage and investment
11 bankers and stock and bond brokers;

12 (2) Insurance companies, both stock and mutual;

13 (3) Mineral, oil and gas brokers;

14 (4) Subdividers and developers;

15 (5) Landscape architects, architects and building designers;

16 (6) Entities organized as nonprofit institutions;

17 (7) Entertainment activities and productions including motion pictures, stage
18 performances, television and radio stations and production companies;

19 (8) All utilities, water companies and power transmission companies, except electrical
20 power generating transmission companies providing less than four and one-half (4.5) kilowatts;
21 and

22 (9) All petroleum and natural gas producers, refiners and pipelines.

23 **42-35.1-4. Regulatory flexibility -- Flexibility analysis required. --** (a)

24 Notwithstanding any general or public law to the contrary, prior to the adoption of any proposed
25 regulation on and after January 1, 2010, each agency shall prepare a regulatory flexibility analysis
26 in which the agency shall, where consistent with health, safety, environmental, and economic
27 welfare consider utilizing regulatory methods that will accomplish the objectives of applicable
28 statutes while minimizing adverse impact on small businesses. The agency shall consider, without
29 limitation, each of the following methods of reducing the impact of the proposed regulation on
30 small businesses:

31 (1) The establishment of less stringent compliance or reporting requirements for small
32 businesses;

33 (2) The establishment of less stringent schedules or deadlines for compliance or
34 reporting requirements for small businesses;

1 (3) The consolidation or simplification of compliance or reporting requirements for small
2 businesses;

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

5 (5) The exemption of small businesses from all or any part of the requirements contained
6 in the proposed regulation.

7 (b) Prior to the adoption of any proposed regulation that may have an adverse impact on
8 small businesses each agency shall notify the ~~economic development corporation~~ [office of](#)
9 [regulatory reform](#) of its intent to adopt the proposed regulation. The ~~economic development~~
10 ~~corporation~~ [office of regulatory reform](#) shall advise and assist agencies in complying with the
11 provisions of this section.

12 SECTION 2. Section 42-35-3.4 of the General Laws in Chapter 42-35 entitled
13 "Administrative Procedures" is hereby amended to read as follows:

14 **42-35-3.4. Periodic review of rules.** -- (a) Within two (2) years after December 31,
15 2008, each agency shall review all agency rules existing at the time of enactment to determine
16 whether such rules should be continued without change, or should be amended or rescinded, by
17 examining whether the rules are consistent with the stated objectives of applicable statutes and
18 are authorized by, and conform with those statutes. The review must include, but need not be
19 limited to, minimizing the economic impact of the rules on small businesses in a manner
20 consistent with the objectives of applicable statutes and ensuring consistency with and
21 conformance with those statutes. If the head of the agency determines that completion of the
22 review of existing rules is not feasible by the established date, the agency shall publish a
23 statement certifying that determination and shall provide a copy of that statement and
24 determination to the speaker of the house, the senate president, the house fiscal advisor, and the
25 senate fiscal advisor. The statement shall include the number of rules that have thus far been
26 reviewed by the agency in accordance with this section, and the number still to be reviewed. The
27 agency may extend the completion date by one year at a time for a total of not more than five (5)
28 years.

29 (b) In reviewing rules, the agency shall consider the following factors:

30 (1) The continued need for the rules;

31 (2) The nature of complaints or comments received concerning the rule from the public;

32 (3) The complexity of the rule;

33 (4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state
34 and local government rules;

1 (5) The length of time since the rule has been evaluated or the degree to which
2 technology, economic conditions or other factors have changed in the area affected by the rule.

3 (6) Whether the rules are consistent with current agency practices and procedures; and

4 (7) Whether the rules are consistent with and authorized by applicable statutes.

5 (c) All rules reviewed in accordance with this section, shall be reviewed every five (5)
6 years thereafter.

7 (d) In addition to the review required in this section, within four (4) years of enactment of
8 this act, each agency shall review all agency rules existing at the time of enactment to determine
9 whether such rules should be continued without change, or should be amended or rescinded, to
10 minimize economic impact of the rules on small businesses in a manner consistent with the state
11 objective of applicable statutes pursuant to this section. Beginning on July 1, 2012, each agency
12 shall review twenty-five percent (25%) of its regulations each year for four (4) years until all
13 existing regulations have been evaluated for any adverse impacts on small businesses and
14 economic impact statements have been prepared, with the exception of emergency regulations
15 adopted in accordance with subsection 42-35-3 (b);

16 The office of regulatory reform shall assist and coordinate with all agencies during the
17 periodic review of rules.

18 SECTION 3. Sections 42-64.13-3, 42-64.13-5, 42-64.13-6, 42-64.13-7 and 42-64.13-8 of
19 the General Laws in Chapter 42-64.13 entitled "Rhode Island Regulatory Reform Act" are hereby
20 amended to read as follows:

21 **42-64.13-3. Purposes of chapter.** -- The purposes of this chapter are to create within the
22 ~~Rhode Island economic development corporation~~ office of management and budget the office of
23 regulatory reform that will facilitate the regular review of Rhode Island's regulatory processes and
24 permitting procedures, report thereon in an effort to improve them and assist and facilitate
25 economic development opportunities within the regulatory and permitting processes and
26 procedures that exist within Rhode Island state and municipal government.

27 **42-64.13-5. Creation of the office of regulatory reform.** -- The ~~Rhode Island economic~~
28 ~~development corporation~~ office of management and budget shall create an office of regulatory
29 reform that shall be adequately staffed and supervised in order to fulfill its functions as set forth
30 in this chapter.

31 **42-64.13-6. Director of office of regulatory reform.** -- The office of regulatory reform
32 shall be managed by a director of office of regulatory reform who shall report to the ~~executive~~
33 ~~director of the Rhode Island economic development corporation~~ director of the office of
34 management and budget.

1 **42-64.13-7. Powers of the office of regulatory reform.** -- The office of regulatory
2 reform shall have the following powers:

3 (1) The director of the office of regulatory reform is authorized to intervene or otherwise
4 participate in any regulatory or permitting matter pending before any executive branch agency or
5 department or before any municipal board, commission, agency or subdivision thereof at which a
6 regulatory or permitting matter is pending for the expressed net benefit of a business. The director
7 of the office of regulatory reform may so intervene or otherwise participate in such pending
8 regulatory and permitting matters by providing written notice to the director of any department or
9 state agency in the executive branch, or the chairman or presiding officer over any municipal
10 department or subdivision thereof at which a regulatory or permitting matter is pending, that the
11 director of the office of regulatory reform is so intervening or otherwise participating in such
12 regulatory or permitting matter pending before such department, agency, board or commission.
13 The director of the office of regulatory reform shall be considered a party to the action and shall
14 be provided reasonable notice of any and all administrative hearings or meetings involving the
15 parties in such matter and shall be the opportunity to participate in such meetings, hearings or
16 other administrative procedures of such entity, of which such opportunity may be waived only by
17 writing from the director of the office of regulatory reform, for the purpose of assuring the
18 efficient and consistent implementation of rules and regulations in order to foster the creation and
19 retention of jobs in Rhode Island or otherwise foster economic development in Rhode Island
20 consistent with the purposes of this act. Any intervention or participation by the director of the
21 office of regulatory reform, other than in contested cases, shall not be deemed to violate the
22 provisions of the Rhode Island administrative procedures act at Title 42, Chapter 35 of the
23 general laws. Provided, however, all contested cases shall be conducted in accordance with the
24 provisions for hearings of contested cases in the administrative procedures act, Title 42, Chapter
25 35, of the general laws. As used in this section, the term "contested case" means a proceeding in
26 which conflicting rights between adverse parties are required by law to be determined in an
27 adversary proceeding that is judicial or quasi-judicial in nature, and not purely administrative in
28 character, before and/or by an agency.

29 (2) Promptly upon such intervention as set forth in subdivision (1) above, the director of
30 the office of regulatory reform shall publish its rationale for its intervention in such pending
31 regulatory or permitting matter. The director of the office of regulatory reform may so intervene
32 upon findings that:

33 (i) That the pending, regulatory or permitting action, in and of itself or as part of a
34 regulatory process, has significant economic development impact upon the state or any

1 municipality herein; and

2 (ii) The pending regulatory or permitting matter, in and of itself or as part of a regulatory
3 process, has significant impact on any industry, trade, profession or business that provides
4 significant jobs or other significant economic development impact, including municipal and state
5 taxes or other revenues, to the state or its citizens.

6 (iii) The office of regulatory reform shall upon the conclusion of each fiscal quarter
7 promptly provide to the office of the governor and the general assembly through the offices of the
8 president of the senate and the speaker of the house of representatives a written report identifying:

9 (A) All matters in which the director of the office of regulatory reform intervened;

10 (B) The rationale for his or her intervention;

11 (C) The status of the pending regulatory or permitting matter; and

12 (D) Any observations or recommendations from the director of the office of regulatory
13 reform with respect to such regulatory or permitting policies or procedures relating to the subject
14 matter of such pending regulatory or permitting matters in which the director so intervened.

15 (3) The office of regulatory reform is authorized to appear as an amicus curiae in any
16 legal proceeding relating to any matter.

17 [\(5\) The office of regulatory reform is authorized to coordinate, provide technical
18 assistance, and oversee state agency regulatory review and accompanying economic impact
19 statements on small businesses.](#)

20 **42-64.13-8. Regulatory analysis responsibilities.** -- The office of regulatory reform
21 shall have the following regulatory analysis and reporting responsibilities:

22 (1) The office of regulatory reform shall, upon the conclusion of each fiscal year, prepare
23 and publish a report on the regulatory processes of state and municipal agencies and permitting
24 authorities through a review and an analysis of proposed and existing rules and regulations to: (i)
25 Encourage agencies to eliminate, consolidate, simplify, expedite or otherwise improve permits,
26 permitting procedures and paperwork burdens affecting businesses, municipal government
27 undertakings, industries and other matters of economic development impact in the state; (ii)
28 Analyze the impact of proposed and existing rules and regulations on matters such as public
29 health, safety and welfare, including job creation, and make recommendations for simplifying
30 regulations and regulatory processes of state and municipal agencies and permitting authorities;
31 (iii) Propose to any state or municipal agency consideration for amendment or repeal of any
32 existing rules or procedures which may be obsolete, harmful to the economy or job growth in the
33 state, or excessively burdensome with respect to any state or federal statutes or regulations; [and
34 \(iv\) Assist and coordinate with all agencies during the periodic review of rules required by](#)

1 [section 42-35-3.4 of the Administrative Procedures Act.](#)

2 (2) The ombudsman of the office of regulatory reform shall implement the provisions of
3 section 42-35.1-1 of the general laws entitled Small Business Regulatory Fairness and
4 Administrative Procedures, and shall be the small business regulatory enforcement office
5 pursuant to section 42-35.1-5 of the general laws.

6 SECTION 4. 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
PROCEDURES

- 1 This act would require a cost/benefit analysis and periodic review of all regulations
- 2 governing or impacting small businesses.
- 3 This act would take effect upon passage.

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