

2021 -- H 5430

=====
LC000346
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

—————
A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ADMINISTRATIVE
PROCEDURES

Introduced By: Representatives Place, Chippendale, and Quattrocchi

Date Introduced: February 08, 2021

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 42-35 of the General Laws entitled "Administrative Procedures" is
2 hereby amended by adding thereto the following sections:

3 **42-35-8.1. License and permit issuance.**

4 Notwithstanding any other law, in any case in which a license or permit is required prior
5 to a person engaging in any constitutionally protected activity, the criteria for the granting or denial
6 of that license or permit shall be specified in clear and unambiguous language, and the applicant
7 shall be entitled to a review and determination of that permit or license application within thirty
8 (30) days or such other time as the legislature shall by law prescribe. The determination of what
9 constitutes clear and unambiguous language shall be a judicial question, without deference to the
10 legislature or the agency.

11 **42-35-8.2. Burden of proof.**

12 The burden of proof in agency hearings shall be the preponderance of the evidence.
13 Notwithstanding any other law, at a hearing on an agency's denial of a license or permit or a denial
14 of an application or request for modification of a license or permit, the agency has the burden of
15 persuasion. At a hearing on an agency action to suspend, revoke, terminate, or modify on its own
16 initiative material conditions of a license or permit, the agency has the burden of persuasion. At a
17 hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency
18 has the burden of persuasion.

1 **42-35-8.3. Deposition testimony.**

2 On application of a party or the agency and for use as evidence, the hearing officer, referee
3 or administrative law judge may permit a deposition to be taken, in the manner and on the terms
4 designated by the hearing officer, referee or administrative law judge, of a witness who cannot be
5 subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents
6 may be ordered by the hearing officer, referee or administrative law judge if the party seeking the
7 discovery demonstrates that the party has reasonable need of the materials being sought. All
8 provisions of law compelling a person under subpoena to testify are applicable.

9 **42-35-8.4. Motion to disqualify.**

10 A party may file a motion with the director of the agency to disqualify the hearing officer,
11 referee or an administrative law judge from conducting a hearing for bias, prejudice, personal
12 interest, or lack of technical expertise necessary for a hearing.

13 **42-35-8.5. Issuance of subpoenas and administration of oaths.**

14 The hearing officer, referee or administrative law judge may issue subpoenas to compel
15 the attendance of witnesses and the production of documents. The subpoenas shall be served and,
16 on application to the superior court, enforced in the manner provided by law for the service and
17 enforcement of subpoenas in civil matters. The hearing officer, referee or administrative law judge
18 may administer oaths and affirmations to witnesses.

19 SECTION 2. Sections 42-35-9, 42-35-10 and 42-35-15 of the General Laws in Chapter 42-
20 35 entitled "Administrative Procedures" are hereby amended to read as follows:

21 **42-35-9. Contested cases -- Notice -- Hearing -- Records.**

22 (a) In any contested case, all parties shall be afforded an opportunity for a hearing after
23 reasonable notice.

24 (b) The notice shall include:

- 25 (1) A statement of the time, place, and nature of the hearing;
- 26 (2) A statement of the legal authority and jurisdiction under which the hearing is to be 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 or other party is unable
- 29 to state the matters in detail at the time the notice is served, the initial notice may be limited to a
- 30 statement of the issues involved and detailed statement shall be furnished.

31 (c) Opportunity shall be afforded all parties to be represented by counsel or to proceed
32 without counsel and to respond and present evidence and 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 and a verbatim transcript of any contested
3 hearing;

4 (2) Evidence received or considered;

5 (3) A statement of matters officially noticed;

6 (4) Questions and offers of proof and rulings thereon;

7 (5) Proposed findings and exceptions;

8 (6) Any decision, opinion, or report by the officer presiding at the hearing;

9 (7) All staff memoranda or data submitted to the hearing officer or members of the agency
10 in connection with their consideration of the case.

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

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

20 ~~**42-35-10. Rules of evidence --- Official notice**~~ **Rules of evidence and procedure --**
21 **Official notice.**

22 In contested cases:

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

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

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

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

9 **42-35-15. Judicial review of contested cases.**

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

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

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

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

1 corrections or additions to the record.

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

9 (f) The review shall be conducted by the court without a jury and shall be confined to the
10 record. The court shall decide de novo all relevant questions of law, including the interpretation of
11 constitutional, statutory, and regulatory provisions, unless the parties stipulate otherwise. In cases
12 of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may
13 be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

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

- 18 (1) In violation of constitutional or statutory provisions;
- 19 (2) In excess of the statutory authority of the agency;
- 20 (3) Made upon unlawful procedure;
- 21 (4) Affected by other error of law;
- 22 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the
23 whole record; or
- 24 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
25 exercise of discretion.

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

=====
LC000346
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ADMINISTRATIVE
PROCEDURES

1 This act would provide that the burden of proof in an administrative hearing is by a
2 preponderance of the evidence. The act would allow hearing officers to issue subpoenas; authorize
3 the use of deposition testimony; and mandate that superior court rules of evidence and procedure
4 be utilized. On appeal, issues of law would be decided de novo.

5 This act would take effect upon passage.

=====
LC000346
=====