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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ADMINISTRATIVE
PROCEDURES

Introduced By: Representatives Shekarchi, Kennedy, Phillips, Ackerman, and Solomon

Date Introduced: January 28, 2016

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-35-3.1, 42-35-3.4, 42-35-4.1, 42-35-4.2 and 42-35-9.1 of the
2 General Laws in Chapter 42-35 entitled "Administrative Procedures" are hereby repealed.

3 ~~**42-35-3.1. Form for filing -- Failure to properly file.** --- (a) All administrative rules and~~
4 ~~regulations are to be filed in duplicate (one copy to be returned to the adopting agency, after~~
5 ~~proper stamping of date filed), pursuant to a form prepared by the secretary of state; all agencies~~
6 ~~must adhere to the form when submitting rules and regulations to the secretary of state pursuant~~
7 ~~to § 42-35-4.~~

8 ~~(b) The secretary of state is authorized to determine a standardized format for documents~~
9 ~~to be filed. Should an agency fail to use the adopted format, the secretary of state shall reject the~~
10 ~~rule and/or regulation. The secretary of state shall reject the improper rule and/or regulation by~~
11 ~~returning the improperly drafted rule and/or regulation to the director of the agency which~~
12 ~~submitted the improper form within ten (10) days of receipt of the form.~~

13 ~~(c) The secretary of state may authorize the filing of rules and regulations by or through~~
14 ~~electronic data or machine readable equipment in such form and manner as may be determined by~~
15 ~~the secretary of state.~~

16 ~~**42-35-3.4. Periodic review of rules.** --- (a) Each agency shall review all agency rules~~
17 ~~existing at the time of enactment to determine whether such rules should be continued without~~
18 ~~change, or should be amended or rescinded, by examining whether the rules are consistent with~~

1 ~~the stated objectives of applicable statutes and are authorized by, and conform with, those~~
2 ~~statutes. The review must include, but need not be limited to, minimizing the economic impact of~~
3 ~~the rules on small businesses in a manner consistent with the objectives of applicable statutes and~~
4 ~~ensuring consistency with and conformance with those statutes.~~

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

6 ~~(1) The continued need for the rules;~~

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

8 ~~(3) The complexity of the rule;~~

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

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

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

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

15 ~~(c) All rules reviewed in accordance with this section shall be reviewed every five (5)~~
16 ~~years.~~

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

26 ~~The office of regulatory reform shall assist and coordinate with all agencies during the~~
27 ~~periodic review of rules.~~

28 ~~(e) Beginning January 1, 2017, this periodic review timeline will align with the required~~
29 ~~refiling of rules and regulations process with the Rhode Island secretary of state's office pursuant~~
30 ~~to § 42-35-4.1.~~

31 ~~**42-35-4.1. Refiling of rules and regulations.** (a) Each agency shall, on or before~~
32 ~~January 2, 2002, according to a schedule specified by the secretary of state, file with the secretary~~
33 ~~of state a certified copy of all its lawfully adopted rules which are in force on the date of the~~
34 ~~filing.~~

1 ~~(b) All filed rules shall be submitted in a format specified by the secretary of state as~~
2 ~~directed by § 42-35-3.1.~~

3 ~~(c) Each agency shall give notice thirty (30) days prior to refiling any rule or regulation~~
4 ~~in order to comply with this section. Each agency shall also give notice thirty (30) days prior to~~
5 ~~that agency's due date for refiling of which rules and regulations it shall not be refiling. The~~
6 ~~notices shall include a statement of the intended action and a description of the subjects and~~
7 ~~issues involved. The notice shall be mailed to all persons who have made timely request of the~~
8 ~~agency for advance notice of its rule making proceedings, and published in a newspaper or~~
9 ~~newspapers having aggregate general circulation throughout the state. Copies of rules which are~~
10 ~~not to be refiled shall be available at the agency and by mail to any member of the public upon~~
11 ~~request. In addition, notice of that action shall be submitted to the governor.~~

12 ~~(d) The rules and regulations listed for non-refiling under subsection (c) of this section~~
13 ~~shall be repealed pursuant to this section only in accordance with the provisions of § 42-35-3(a).~~

14 ~~(e) Agency compliance with this section shall be coordinated in accordance with a~~
15 ~~schedule established by the secretary of state for agency refiling of rules.~~

16 ~~(f) When refiling rules and regulations, agencies may change the format of existing rules~~
17 ~~without any rule making action by the agency in order to comply with the format for filing~~
18 ~~specified by the secretary of state so long as there is no substantive change to the rule.~~

19 ~~(g) Any rule lawfully promulgated prior to July 3, 2001 shall remain in full force and~~
20 ~~effect until:~~

21 ~~(1) The rule should expire before July 3, 2001 pursuant to its own terms and provisions;~~

22 ~~or~~

23 ~~(2) The rule is repealed by the lawful act of the agency, in conformity with this chapter;~~

24 ~~or~~

25 ~~(3) The rule is invalidated by an act of the legislature or the force and effect of another~~
26 ~~law.~~

27 ~~(h) Commencing in September 2002, and every five (5) years in September thereafter,~~
28 ~~the secretary of state shall prepare a public list of all adopted rules and regulations which have not~~
29 ~~been refiled or repealed in accordance with this section or § 42-35-4.2. The secretary of state shall~~
30 ~~forward copies of the list to the various state departments and agencies responsible for the rules~~
31 ~~and regulations. Each agency or department shall review the list and repeal, in accordance with §~~
32 ~~42-35-3(a), all rules and regulations that are no longer operative. If the agency takes no action on~~
33 ~~a rule contained in the secretary of state's list, the rule shall remain lawfully promulgated.~~

34 ~~**42-35-4.2. Periodic refiling of rules and regulations.** --- All rules on file with the~~

1 secretary of state pursuant to ~~§ 42-35-4.1~~ shall be refiled on the first Tuesday in January 2007 and
2 on the first Tuesday in January of every successive fifth year.

3 ~~**42-35-9.1. Administrative hearing assessment and study.**~~ (a) In order to assess,
4 standardize and create efficiency and fairness in the administrative hearing process in state
5 agencies, the department of administration, with the assistance from the state office of
6 management and budget and the personnel administrator, shall conduct an assessment and study
7 of the administrative hearing practices across state government performed by individuals
8 employed by the state. The study shall not include administrative hearings conducted by boards,
9 committees, or commissions which are unpaid by the state for their time.

10 (b) All state agencies on or before September 30, 2013, shall each provide the following
11 information and records to the director of the department of administration:

12 (1) A complete list of the types of administrative hearings performed on behalf of the
13 agency including a description of the type of hearing, expertise that may be required and statutory
14 authority for conducting such a hearing;

15 (2) The number of hearings listed by each type of hearing as described in subdivision (1)
16 performed by each agency in each fiscal year for the past three (3) fiscal years ending June 30,
17 2013, along with the average time frame for each type of matter to be adjudicated;

18 (3) The agency rules or regulations governing any such administrative hearings;

19 (4) A complete list of personnel by name, title, grade, division of agency, and total rate
20 of salary, who conduct agency administrative hearings including the type of hearing performed by
21 each individual, along with the percentage of the person's time spent on administrative hearing
22 duties as a full-time equivalent;

23 (5) A complete list of all agency positions with name, title, division, and total rate of
24 salary of each position, that include administrative hearing duties in either the job title or job
25 description;

26 (6) A complete list of vacancies that have administrative hearing duties in the job title
27 job description; and

28 (7) The total number, as a full-time equivalent, performing all administrative hearings
29 for the agency.

30 (c) On or before December 30, 2013, the department of administration, with assistance
31 from the state office of management and budget and the personnel administrator, shall provide to
32 the governor, speaker of the house of representatives, senate president, and chairpersons of the
33 house and senate finance committees a report regarding the assessment and study of
34 administrative hearing practices in the state agencies. The report shall include:

- ~~(1) An executive summary of administrative hearing practices across state government;~~
- ~~(2) A recommendation and/or a plan on how to standardize, consolidate and make more efficient the administrative hearing process across state agencies;~~
- ~~(3) A recommendation regarding the potential need for certain hearing officers to be qualified subject matter experts;~~
- ~~(4) Legislative or regulatory recommendations for a standardized administrative hearing process across state agencies;~~
- ~~(5) Recommendations regarding the number of full-time equivalents needed to perform administrative hearing duties;~~
- ~~(6) A copy of the information and records supplied by each of the agencies listed in subsection (b); and~~
- ~~(7) Any other information deemed to be appropriate.~~

~~(d) Each agency shall fully cooperate with the department of administration regarding the assessment and study and shall dedicate appropriate resources as needed to complete this assessment. Additionally, the state office of management and budget and the personnel administrator shall dedicate appropriate resources and assist the department of administration in compiling and analyzing the information and completing the report for the general assembly~~

SECTION 2. Sections 42-35-1, 42-35-1.1, 42-35-2, 42-35-2.1, 42-35-2.2, 42-35-2.3, 42-35-2.5, 42-35-3, 42-35-3.5, 42-35-4, 42-35-5, 42-35-5.1, 42-35-6 and 42-35-8 of the General Laws in Chapter 42-35 entitled "Administrative Procedures" are hereby amended to read as follows:

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

(1) "Agency" includes each state board, commission, department, institution, ~~or~~ division office, officer, or other state entity, other than the legislature or the ~~courts~~ judiciary, authorized by law of this state to make rules or to determine contested cases, and all "authorities", as that term is defined below; :

(2) "Agency action" means:

(i) The whole or part of an order or rule;

(ii) The failure to issue an order or rule; or

(iii) An agency's performing or failing to perform a duty, function, or activity or to make a determination required by law.

(3) "Agency head" means the individual in whom, or one or more members of the body of individuals in which, the ultimate legal authority of an agency is vested.

(4) "Agency record" means the agency rulemaking record required by §42-35-2.3.

1 ~~(2)~~(5) "Authorities" includes the following: the Rhode Island industrial building
2 authority, the Rhode Island recreational building authority, the Rhode Island economic
3 development corporation, the Rhode Island industrial facilities corporation, the Rhode Island
4 refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode
5 Island solid waste management corporation, the Rhode Island public transit authority, the Rhode
6 Island student loan authority, the Howard development corporation, the water resources board,
7 the Rhode Island health and educational building corporation, the Rhode Island turnpike and
8 bridge authority, the Blackstone Valley district commission, the Narragansett Bay water quality
9 management district commission, their successors and assigns, and any body corporate and politic
10 with the power to issue bonds and notes, which are direct, guaranteed, contingent, or moral
11 obligations of the state, which is hereinafter created or established in this state.

12 ~~(3)~~(6) "Contested case" means a proceeding, including but not restricted to ratemaking,
13 price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are
14 required by law to be determined by an agency after an opportunity for hearing; .

15 (7) "Electronic" means relating to technology having electrical, digital, magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

17 (8) "Electronic record" means a record created, generated, sent, communicated, received,
18 or stored by electronic means.

19 (9) "Final rule" means a rule promulgated under §§42-35-2.6 through 42-35-2.9, an
20 emergency rule promulgated under §42-35-2.10, or a direct final rule promulgated under §42-35-
21 2.11.

22 (10) "Guidance document" means a record of general applicability developed by an
23 agency which lacks the force of law but states the agency's current approach to, or interpretation
24 of, law, or describes how and when the agency will exercise discretionary functions. The term
25 does not include records described in §42-35-1(18)(i), (ii), (iii), or (iv).

26 (11) "Index" means a searchable list in a record of subjects and titles with page numbers,
27 hyperlinks, or other connectors that link each index entry to the text to which it refers.

28 ~~(4)~~(12) "License" includes the whole or part of any agency permit, certificate, approval,
29 registration, charter, or similar form of permission required by law, but it does not include a
30 license required solely for revenue purposes; .

31 ~~(5)~~(13) "Licensing" includes the agency process respecting the grant, denial, renewal,
32 revocation, suspension, annulment, withdrawal, or amendment of a license; .

33 ~~(6)~~(14) "Party" means each person or agency named or admitted as a party, or properly
34 seeking and entitled as of right to be admitted as a party; .

1 ~~(7)~~(15) "Person" means any individual, partnership, corporation, association, the
2 department of environmental management, governmental subdivision, or public or private
3 organization of any character other than an agency; .

4 (16) "Promulgate" with respect to a rule, means the process of writing a new rule, or
5 amending or repealing an existing rule. "Promulgation" has a corresponding meaning. The
6 process of "promulgation" begins with the filing of the notice of proposed rulemaking under §42-
7 35-2.6 and ends upon the effective date of the rule. "Promulgate" also includes the completion of
8 the rulemaking process for emergency rules (see §42-35-2.10) or direct final rules (see §42-35-
9 2.11), if applicable.

10 (17) "Record" means information that is inscribed on a tangible medium or that is stored
11 in an electronic or other medium and is retrievable in perceivable form.

12 ~~(8)~~(18) "Rule" ~~means each agency statement of general applicability that implements,~~
13 ~~interprets, or prescribes law or policy or describes the organization, procedure, or practice~~
14 ~~requirements of any agency. The term includes the amendment or repeal of a prior rule, but does~~
15 ~~not include: (1) statements concerning only the internal management of an agency and not~~
16 ~~affecting private rights or procedures available to the public, or (2) declaratory rulings issued~~
17 ~~pursuant to § 42-35-8, (3) intra-agency memoranda, or (4) an order; means the whole or a part of~~
18 an agency statement of general applicability that implements, interprets, or prescribes law or
19 policy or the organization, procedure, or practice requirements of an agency and has the force of
20 law. The term includes the amendment or repeal of an existing rule. The term is used
21 interchangeably in this chapter with the term "regulation". The term does not include:

22 (i) A statement that concerns only the internal management of an agency and which does
23 not affect private rights or procedures available to the public;

24 (ii) An intergovernmental or interagency memorandum, directive, or communication that
25 does not affect private rights or procedures available to the public;

26 (iii) An opinion of the attorney general;

27 (iv) A statement that establishes criteria or guidelines to be used by the staff of an agency
28 in performing audits, investigations, or inspections, settling commercial disputes, negotiating
29 commercial arrangements, or defending, prosecuting, or settling cases, if disclosure of the criteria
30 or guidelines would enable persons violating the law to avoid detection, facilitate disregard of
31 requirements imposed by law, or give an improper advantage to persons that are in an adverse
32 position to the state;

33 (v) A form developed by an agency to implement or interpret agency law or policy; or

34 (vi) A guidance document.

1 (19) "Sign" means, with present intent to authenticate a record:

2 (i) To execute a tangible symbol; or

3 (ii) To attach to or logically associate with the record an electronic symbol, sound, or
4 process.

5 ~~(9)(20)~~ "Small business" shall have the same meanings that are provided for under
6 title 13, volume 1, part 121 of the Code of Federal Regulations (13 CFR 121, as may be amended
7 from time to time); .

8 ~~(10)(21)~~ "Order" means the whole or a part of a final disposition, whether affirmative,
9 negative, injunctive or declaratory in form, of a contested case; .

10 ~~(11)(22)~~ "Small business advocate" means the person appointed by the director of the
11 economic development corporation as provided in § 42-64-34; .

12 (23) "Website" means a website on the Internet or other appropriate technology or
13 successor technology that permits the public to search a database that archives materials required
14 to be published or exhibited by the secretary of state or an agency under this chapter.

15 (24) "Writing" means a record inscribed on a tangible medium. "Written" has a
16 corresponding meaning.

17 ~~**42-35-1.1. Bodies subject to chapter Applicability. -- Notwithstanding any other**~~
18 ~~provision of the general laws or any public law or special act to the contrary, all agencies as~~
19 ~~defined in § 42-35-1(a) and all agencies, boards, commissions, departments, and officers~~
20 ~~authorized by law to make rules or to determine contested cases, and all authorities as defined in~~
21 ~~§ 42-35-1(b) are subject to the provisions of this chapter.~~

22 (a) This chapter applies to an agency unless the agency is exempted by statute.

23 (b) This chapter applies to all agency proceedings and all proceedings for judicial review
24 or civil enforcement of agency action commenced after the effective date of this chapter. This
25 chapter does not apply to any contested case for which notice was given before that date and
26 rulemaking for which notice was given or a petition was filed before that date.

27 ~~**42-35-2. Public information -- Adoption of rules -- Availability of rules and orders**~~
28 ~~**Required agency publication and recordkeeping. --**~~ (a) ~~In addition to other rule-making~~
29 ~~requirements imposed by law, each agency shall:~~ An agency shall:

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

33 ~~(2) Adopt rules of practice, setting forth the nature and requirements of all formal and~~
34 ~~informal procedures available, and including a description of all forms and instructions used by~~

1 ~~the agency;~~

2 ~~(3) Make available for public inspection all rules and all other written statements of~~
3 ~~policy or interpretations formulated, adopted, or used by the agency in the discharge of its~~
4 ~~functions;~~

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

6 ~~(b) No agency rule, order, or decision is valid or effective against any person or party, nor~~
7 ~~may it be invoked by the agency for any purpose, until it has been made available for public~~
8 ~~inspection as herein required, except that this provision is not applicable in favor of any person or~~
9 ~~party who has actual knowledge thereof.~~

10 (1) Publish and make available for public inspection a description of its organization,
11 stating the general course and method of its operations and the methods by which the public may
12 obtain information or make submissions or requests;

13 (2) Publish and make available for public inspection a description of all procedures,
14 including a description of all forms and instructions used by the agency;

15 (3) Publish and make available for public inspection a description of the process for
16 application for a license, available benefits, or other matters for which an application is
17 appropriate on its agency website, unless the process is prescribed by law other than this chapter;

18 (4) Promulgate rules for the conduct of public hearings, and the agency must publish and
19 make available these rules for public inspection;

20 (5) Maintain and make available for public inspection the agency's current rulemaking
21 agenda required by §42-35-5.1; and

22 (6) Maintain and publish a separate, current, and dated index and compilation of all final
23 rules filed with the secretary of state, make the index and compilation available for public
24 inspection and, for a reasonable charge, copying at the principal office of the agency; update the
25 index and compilation at least monthly; and file the index and the compilation and all changes to
26 both with the secretary of state.

27 (b) All documents in this section must be published on the agency's website by December
28 31, 2017 and maintained on the website thereafter.

29 **42-35-2.1. Rules coordinator.** -- Each agency shall, by January 2, 2002, designate a
30 rules coordinator, who shall have knowledge of the subjects of rules being proposed, maintain the
31 records of any rules action including the rule-making file required by ~~§42-35-2.2~~ §42-35-2.3, and
32 respond to public inquiries about proposed rules and the identity of agency personnel working,
33 reviewing, or commenting on them. The office and mailing address of the rules coordinator shall
34 be published in the state register at the time of designation and in the first issue of each calendar

1 year thereafter for the duration of the designation. The rules coordinator may be an employee of
2 another agency. Nothing in this section shall be construed to explicitly or implicitly permit the
3 hiring of any additional personnel to perform the duties and responsibilities of the rules
4 coordinator designated in this section.

5 ~~**42-35-2.2. Rule-making file Publication; Agency duties. -- (a) Each agency shall**~~
6 ~~maintain an official rule-making file for each rule proposed or adopted after January 2, 2002. The~~
7 ~~file and materials incorporated by reference shall be available for public inspection.~~

8 ~~(b) The agency rule-making file shall contain all of the following:~~

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

11 ~~(2) Copies of any portions of the agency's regulatory agenda containing entries relating to~~
12 ~~the rule or the proceeding on which the rule is based;~~

13 ~~(3) All written petitions, requests, submissions, and comments received by the agency~~
14 ~~and all other written material regarded by the agency as important to adoption of the rule or the~~
15 ~~proceeding on which the rule is based;~~

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

19 ~~(5) The concise explanatory statement required by § 42-35-2.3;~~

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

21 ~~(7) Citations to data, factual information, studies, or reports in which the agency relies in~~
22 ~~the adoption of the rule, indicating where such data, factual information, studies, or reports are~~
23 ~~available for review by the public;~~

24 ~~(8) Any other material placed in the file by the agency.~~

25 ~~(c) Internal agency documents are exempt from inclusion in the rule-making file to the~~
26 ~~extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda~~
27 ~~in which opinions are expressed or policies formulated or recommended, except that a specific~~
28 ~~document is not exempt from inclusion when it is publicly cited by an agency in connection with~~
29 ~~its decision.~~

30 ~~(d) Upon judicial review, the file required by this section constitutes the official agency~~
31 ~~rule-making file with respect to that rule. Unless otherwise required by law, the official agency~~
32 ~~rule-making file need not be the exclusive basis for agency action on that rule.~~

33 (a) Unless the record is exempt from disclosure under law of this state other than this
34 chapter, an agency shall publish and make available for public inspection, and on request and for

1 a reasonable charge, make available through the regular mail:

2 (1) Each notice of a proposed rulemaking under §42-35-2.7;

3 (2) Each rule filed under this chapter;

4 (3) Each summary of regulatory analysis required by §42-35-2.9;

5 (4) Each declaratory order issued under §42-35-8;

6 (5) The index of declaratory orders prepared under §42-35-8;

7 (6) Each guidance document issued under §42-35-2.12;

8 (7) The index of currently effective guidance documents prepared under §42-35-2.12;

9 (8) Each final order in a contested case issued under §42-35-12.

10 (b) All documents in this section must be published on the agency website by December
11 31, 2017 and maintained on the website thereafter.

12 (c) An agency shall file with the secretary of state in a format acceptable to the secretary
13 of state:

14 (1) Notice of a proposed rulemaking;

15 (2) A summary of the regulatory analysis required by §42-35-2.9 for each proposed rule;

16 (3) Each final rule;

17 (4) An index of currently effective guidance documents under §42-35-2.12; and

18 (5) Any other notice or matter that an agency is required to publish under this chapter.

19 ~~**42-35-2.3. Concise explanatory statement Rulemaking record. -- At the time it files an**~~
20 ~~adopted rule with the secretary of state, or within thirty (30) days thereafter, an agency shall place~~
21 ~~into the rule-making file maintained under § 42-35-2.2 and shall submit to the secretary of state a~~
22 ~~concise explanatory statement about the rule, identifying:~~

23 ~~(1) The agency's reasons for adopting the rule; and~~

24 ~~(2) A description of any difference between the text of the proposed rule as published in~~
25 ~~the register and the text of the rule as adopted, other than editing changes, stating the reasons for~~
26 ~~change.~~

27 (a) An agency shall maintain the rulemaking record for each proposed rule, which will be
28 the official rulemaking record. Unless the record and any materials incorporated by reference are
29 privileged or exempt from disclosure under law of this state other than this chapter, the record
30 and materials must be readily available for public inspection in the principal office of the agency.

31 (1) Beginning on January 1, 2018, and thereafter, the agency shall publish on its agency
32 website the rulemaking record for a rule upon commencement of the public comment period; the
33 agency may remove the rulemaking record upon the effective date of the rule.

34 (2) Beginning on January 1, 2018, agencies shall submit rulemaking records to the

1 secretary of state in a format and process determined by the secretary of state. Thereafter,
2 rulemaking records shall be available for public display on the website maintained by the
3 secretary of state in a manner prescribed by the secretary of state.

4 (3) If an agency or the secretary of state determines that the rulemaking record or any part
5 of the rulemaking record cannot be displayed practicably or is inappropriate for public display on
6 the website, the agency or secretary of state shall describe the part and note that the record or part
7 is not displayed.

8 (b) A rulemaking record must contain:

9 (1) A copy of all publications in the state register relating to the rule and the proceeding
10 on which the rule is based;

11 (2) A copy of any part of the rulemaking agenda containing entries relating to the rule
12 and the proceeding on which the rule is based;

13 (3) A copy and, if prepared, an index, of all factual material, studies, and reports agency
14 personnel submitted as part of formulating the proposed or final rule;

15 (4) Any information considered under §42-35-2.7(b);

16 (5) Any official transcript of oral presentations made in the proceeding on which the rule
17 is based or, if not transcribed, any audio recording or verbatim transcript of the presentations, and
18 any memorandum summarizing the contents of the presentations prepared by the agency official
19 who presided over the hearing;

20 (6) A copy of all comments received by the agency under §42-35-2.8 in response to the
21 notice of proposed rulemaking;

22 (7) A copy of the rule and explanatory statement filed with the secretary of state; and

23 (8) Any petition for agency action on the rule, except a petition governed by §42-35-8.

24 (9) Internal agency documents are exempt from inclusion in the rulemaking record to the
25 extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda
26 in which opinions are expressed or policies formulated or recommended, except that a specific
27 document is not exempt from inclusion when it is publicly cited by an agency in connection with
28 its decision.

29 (10) Upon judicial review, the file required by this section constitutes the official agency
30 rulemaking record with respect to that rule. Unless otherwise required by law, the official agency
31 rulemaking record need not be the exclusive basis for agency action on that rule.

32 **42-35-2.5. Electronic posting of advance notice of proposed rulemaking Advance**
33 **notice of proposed rulemaking. -- (a) In order to afford all interested persons reasonable**
34 **opportunity to submit data, views or arguments, any website maintained by the office of the**

1 ~~secretary of state in accordance with subdivision 42-35-3(a)(1) shall be formatted so as to allow~~
2 ~~members of the public to view advanced notices of proposed rulemaking by the date of posting~~
3 ~~and by the agency that posted them. In addition, such website shall contain an up-to-date list of~~
4 ~~all agencies using the website as their primary source for proposed rulemaking notices.~~

5 ~~(b) Any agency submitting advance notice of proposed rulemaking via electronic media~~
6 ~~on the website maintained by the secretary of state shall do so in accordance with procedures~~
7 ~~established by the secretary of state. The agency shall also post such notice on the agency's own~~
8 ~~website. Unless and until an agency formally withdraws from submitting proposed rulemaking~~
9 ~~via electronic media, the agency shall submit all advance notices of proposed rulemaking in this~~
10 ~~fashion; provided, however, nothing contained herein shall prohibit the agency from also posting~~
11 ~~notices in a newspaper publication.~~

12 ~~(c) If an agency utilizing electronic posting as its primary source for advanced proposed~~
13 ~~rulemaking notices is required to make available a summary of all non-technical differences~~
14 ~~between the existing and proposed rules pursuant to subdivisions 42-35-3(a)(1) and 42-35-~~
15 ~~3(a)(5), that summary shall also be available on the website maintained by the secretary of state.~~

16 ~~(d) The office of the secretary of state shall establish a process to provide timely~~
17 ~~notification via electronic mail, to any person so requesting, any agency advance notices of~~
18 ~~proposed rulemaking submitted via electronic media pursuant to subdivision 42-35-3(a)(1).~~

19 (a) An agency may gather information relevant to the subject matter of a potential
20 rulemaking proceeding and may solicit comments and recommendations from the public by
21 publishing an advance notice of proposed rulemaking in the state register and on its agency
22 website, and indicating where, when, and how persons may comment before the rulemaking
23 process begins.

24 (b) An agency may create a committee or workshop to comment or make
25 recommendations on the subject matter of a proposed rulemaking under active consideration
26 within the agency. In making appointments to the committee, the agency shall make reasonable
27 efforts to establish a balance in representation among members of the public known to have an
28 interest in the subject matter of the proposed rulemaking. At least annually, the agency shall
29 publish in the state register a list of all committees with their membership. Notice of a meeting of
30 the committee must be published in the state register and on its agency website at least fifteen
31 (15) days before the meeting. A meeting of the committee is open to the public.

32 (c) If a committee is appointed under subsection (b) of this section, it shall attempt to
33 reach a consensus on the terms or substance of a proposed rule in consultation with one or more
34 agency representatives. The committee shall present the consensus recommendation, if any, to the

1 agency. The agency shall consider whether to use it as the basis for a proposed rule under this
2 chapter, but the agency is not required to use the recommendation.

3 (d) This section does not prohibit an agency from obtaining information and opinions
4 from members of the public on the subject of a proposed rule by any other method or procedure.

5 **42-35-3. Procedures for adoption of rules Electronic filing. --** (a) ~~Prior to the adoption,~~
6 ~~amendment, or repeal of any rule the agency shall:~~

7 ~~(1) Give at least thirty (30) days notice of its intended action. The notice shall include a~~
8 ~~statement of either the terms or substance of the intended action or a description of the subjects~~
9 ~~and issues involved, and of the time when, the place where, and the manner in which interested~~
10 ~~persons may present their views thereon. The notice shall be mailed to all persons who have made~~
11 ~~timely request of the agency for advance notice of its rule making proceedings, and published in a~~
12 ~~newspaper or newspapers having aggregate general circulation throughout the state; provided,~~
13 ~~however, that if the action is limited in its applicability to a particular area, then the publication~~
14 ~~may be in a newspaper having general circulation in the area. In lieu of newspaper publication,~~
15 ~~advance notice of proposed rulemaking by the department of health may be provided via~~
16 ~~electronic media on a website maintained by the office of the secretary of state. Authorization for~~
17 ~~such electronic notice shall commence on July 1, 2005. In lieu of newspaper publication, advance~~
18 ~~notice of proposed rulemaking by all other state departments, agencies and authorities may also~~
19 ~~be provided via electronic media on a website maintained by the office of secretary of state, and~~
20 ~~authorization for such electronic notice shall commence on May 1, 2008. Copies of proposed~~
21 ~~rules shall be available at the agency at the time of the notice required by this subsection, and by~~
22 ~~mail to any member of the public upon request. The agency shall also prepare a concise summary~~
23 ~~of all non-technical amendments being proposed that shall be made available with copies of the~~
24 ~~proposed rules themselves.~~

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

33 ~~(3) Demonstrate the need for the adoption, amendment, or repeal of any rule in the~~
34 ~~record of the rulemaking proceeding. The agency shall demonstrate that there is no alternative~~

1 ~~approach among the alternatives considered during the rulemaking proceeding which would be as~~
2 ~~effective and less burdensome to affected private persons as another regulation. This standard~~
3 ~~requires that an agency proposing to adopt any new regulation must identify any other state~~
4 ~~regulation which is overlapped or duplicated by the proposed regulation and justify any overlap~~
5 ~~or duplication.~~

6 ~~(4) Comply with § 42-35-3.3.~~

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

13 ~~(b) If an agency finds that an imminent peril to the public health, safety, or welfare~~
14 ~~requires adoption of a rule upon less than thirty (30) days' notice, and states in writing its reasons~~
15 ~~for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice~~
16 ~~and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be~~
17 ~~effective for a period of not longer than one hundred twenty (120) days renewable once for a~~
18 ~~period not exceeding ninety (90) days, but the adoption of an identical rule under subdivisions~~
19 ~~(a)(1) and (a)(2) is not precluded.~~

20 ~~(c) No rule hereafter adopted is valid unless adopted in substantial compliance with this~~
21 ~~section, but no contest of any rule on its face on the ground of noncompliance with the procedural~~
22 ~~requirements of this section may be commenced after two (2) years from its effective date, but a~~
23 ~~contest of any rule as applied to the complainant may proceed if the complainant can demonstrate~~
24 ~~prejudice as a result of the agency's noncompliance with this section. In addition to all other~~
25 ~~requirements imposed by law, all agencies and authorities (as defined in this chapter) shall be~~
26 ~~required to electronically submit their annual reports to the general assembly for posting on the~~
27 ~~general assembly website in lieu of a printed copy. However, an agency or authority shall~~
28 ~~produce a printed copy on demand.~~

29 **42-35-3.5. Simultaneous regulatory, licensing, and permitting processes.** -- (a) ~~Any~~
30 ~~state agency with regulatory or permitting authority over a business shall establish a process~~
31 ~~whereby, at the option of the business and, if applicable, upon the presentation by the business of~~
32 ~~a preliminary determination by the municipality that the subject proposal is consistent with the~~
33 ~~applicable municipal zoning ordinances, the agency will conduct a simultaneous review and~~
34 ~~approval process with one or more other state or municipal agencies, and will not require prior~~

1 ~~approval of one or more state or municipal agency before beginning the review and approval~~
2 ~~process.~~ Any state agency with regulatory or permitting authority over a business shall not require
3 prior approval of one or more state or municipal agencies before beginning its review and
4 approval process. Such state agencies shall establish a process whereby the agency will conduct a
5 simultaneous review and approval process with the one or more state or municipal agencies. State
6 agencies may require, if applicable, evidence by the business of a preliminary determination by
7 the municipality that the subject proposal is consistent with the applicable municipal zoning
8 ordinances.

9 (b) Nothing in this section shall entitle a business to recoup or recover any costs or fees
10 associated with the simultaneous regulatory or permitting process. If one or more state or
11 municipal agencies fail to approve a permit, license, or regulatory application, thereby
12 influencing the granting of a contingent approval from another municipal or state entity, the
13 business may not recover any associated costs from the agencies involved in the simultaneous
14 review process; provided, that this section shall not effect the ability of a business to recoup or
15 recover costs associated with the licensing, permitting, or application processes allowed under
16 any other chapter.

17 (c) All state agencies shall inform businesses of the possibility that one or more other
18 state agencies may fail to approve a contingent permit, license, or regulatory application, and that
19 the business may not recoup or recover costs associated with one application due to the denial or
20 disapproval of another.

21 **42-35-4. Filing and taking effect of rules.** ~~-- (a) No later than thirty (30) days following~~
22 ~~the adoption of a rule each agency shall file forthwith in the office of the secretary of state a~~
23 ~~certified copy of each such rule, and shall certify its compliance with the procedural requirements~~
24 ~~of § 42-35-3. The secretary of state shall keep a permanent register of the rules open to public~~
25 ~~inspection.~~

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

28 ~~(1) If a later date is required by statute or specified in the rule, the later date is the~~
29 ~~effective date;~~

30 ~~(2) Subject to applicable constitutional or statutory provisions, an emergency rule may~~
31 ~~become effective immediately upon filing with the secretary of state, or at a stated date less than~~
32 ~~twenty (20) days thereafter, if the agency finds that this effective date is necessary because of~~
33 ~~imminent perils to the public health, safety, or welfare. The agency's finding and a brief statement~~
34 ~~of the reasons therefor shall be filed with the rule in the office of the secretary of state. The~~

1 ~~agency shall take appropriate measures to make emergency rules known to the persons who may~~
2 ~~be affected by them.~~

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

9 ~~(4) Whenever it shall be determined by the governor that the postponement of the~~
10 ~~effective date of rules, regulations or policies of state departments, agencies or quasi state~~
11 ~~departments or agencies, shall cause an emergency situation which imperils the public's safety or~~
12 ~~public health, the governor may by executive order suspend the operation of, in whole or in part,~~
13 ~~§ 42-35-4(3) and such order shall remain in effect until it is rescinded by a subsequent executive~~
14 ~~order.~~

15 ~~(c) The secretary of state shall remove from the files of rules, regulations or policies any~~
16 ~~rules, regulations or policies that are no longer in effect according to the criteria in §§ 42-35-~~
17 ~~4.1(g) and 42-35-4.2 and place them in another file or remove them to the state archives or other~~
18 ~~document storage facility. The secretary of state may also maintain these files on their original~~
19 ~~media or convert them to any other media of his or her choice.~~

20 (a) An agency shall file each final rule with the secretary of state. An agency may not file
21 a final rule until the public comment period has ended. In filing a final rule, an agency shall use a
22 standardized form and process for submission determined by the secretary of state. The secretary
23 of state shall affix to each final rule a certification of the time and date of filing. The secretary of
24 state may reject the final rule if an agency fails to use the standardized format or fails to adhere to
25 the codification requirements or any other publication requirements or rules promulgated by the
26 secretary of state's office pursuant to §42-35-5. The secretary of state shall reject the improper
27 final rule by returning it to the director of the agency which submitted the improper form within
28 fifteen (15) days of receipt.

29 (b) The secretary of state, with notification to the agency, may make minor non-
30 substantive corrections in spelling, grammar, and format in a proposed or final rule. The secretary
31 of state shall make a record of the corrections.

32 (c) The agency shall file the rule not later than one hundred eighty (180) days after close
33 of the public comment period. If that rule is not filed within one hundred eighty (180) days, the
34 agency must restart the rulemaking process pursuant to this chapter.

1 (d) A final rule filed by an agency with the secretary of state under this section must
2 contain the text of the rule and be accompanied by a record that contains:

3 (1) The date the final rule was signed by the relevant agency head;

4 (2) A reference to the specific statutory or other authority authorizing the rule;

5 (3) Any finding required by law as a prerequisite to the proposed rule or effectiveness of
6 the rule;

7 (4) The effective date of the rule; and

8 (5) A concise explanatory statement as defined by §42-35-2.6.

9 (e) Each rule hereafter is effective twenty (20) days after filing with the secretary of state,
10 except:

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

13 (2) An emergency rule under §42-35-2.10 becomes effective upon signature by the
14 agency head and the governor, or the governor's designee.

15 (3) A direct final rule under §42-35-2.11 to which no objection is made becomes
16 effective thirty (30) days after publication, unless the agency specifies a later effective date.

17 (4) A final rule shall not be effective or enforceable until properly submitted and accepted
18 by the secretary of state.

19 (f) The secretary of state shall maintain a permanent register of all filed rules and concise
20 explanatory statements for the rules. The secretary of state shall provide a copy of each certified
21 final rule to an agency upon request. The secretary of state shall publish the notice of each final
22 rule in the state register.

23 **42-35-5. ~~Compilation and publication of rules~~ Public access to agency law and policy**
24 **publication, compilation, indexing and public inspection of rulemaking documents.** -- (a)

25 The secretary of state may promulgate rules or guidance documents governing the filing,
26 codification and publication of the rules and other rulemaking documents of state agencies
27 submitted to the secretary of state under this chapter. The secretary of state shall be the codifier of
28 the rules of state agencies. The secretary of state may assign numbers to any rule in order to
29 develop and maintain a comprehensive system of codification. The number shall be the official
30 administrative code number of the rule. Any number so assigned shall be published in any
31 publication of the Rhode Island administrative code. Rules of the Rhode Island administrative
32 code shall be cited and referred to by their official numbers.

33 ~~(b) The secretary of state, on or before July 1, 1994, shall publish the full text of all rules~~
34 ~~promulgated by agencies pursuant to this chapter. The secretary of state shall publish by reference~~

1 ~~all orders of state agencies pursuant to this chapter except orders of the human rights commission,~~
2 ~~including in the publication by reference the address and phone number where the orders may be~~
3 ~~obtained by the public.~~

4 ~~(e) In accordance with the provisions of this chapter, the secretary of state will publish~~
5 ~~the Rhode Island administrative code which code shall:~~

6 ~~(1) Contain a compilation of the full text of each rule and a reference to each order;~~

7 ~~(2) Be divided into volumes to permit the sale of separate volumes;~~

8 ~~(3) Contain the full text of each rule adopted after its initial publication and a citation by~~
9 ~~reference to each order adopted after its publication in supplements to the code published not less~~
10 ~~than monthly and compiled for insertion in the code not less than annually;~~

11 ~~(4) Contain an index of the rules and references to rules that are included in the code and~~
12 ~~each supplement using terms easily understood by the general public;~~

13 ~~(5) Be published in loose leaf form and in any other form the secretary of state deems~~
14 ~~appropriate following, to the extent possible, the subject matter arrangement of the Rhode Island~~
15 ~~general laws;~~

16 ~~(6) Be renumbered according to the numbering system devised by the secretary of state.~~

17 ~~(7) The secretary of state is not obligated to publish any rule or regulation which has~~
18 ~~become void.~~

19 (b) The secretary of state shall oversee the publication of an updated code of state
20 regulations. The code of state regulations shall be compiled and published in a format and
21 medium prescribed by the secretary of state. Upon completion of the updated code, it shall be
22 made available on the secretary of state's website. The rules of an agency shall be published and
23 indexed in the code of state regulations. Agencies must refile all rules with the secretary of state
24 for publication into the code of state regulations by December 31, 2018. All refiled rules shall be
25 written in plain language. Any rule that is not refiled by December 31, 2018 and is not published
26 in the code of state regulations shall not be enforceable until the rule appears in the code of state
27 regulations. The secretary of state shall make the code of state regulations available for public
28 inspection and, for a reasonable charge, copying.

29 (c) The secretary of state may display on its website the state register. The secretary of
30 state shall provide the following to the publisher of the state register:

31 (1) Notices of proposed rulemaking prepared so that the text of the proposed rule shows
32 the text of any existing rule proposed to be changed and the change proposed;

33 (2) Newly filed final rules prepared so that the text of a newly filed amended rule shows
34 the text of the existing rule and the change that is made;

1 (d) (1) The secretary of state may approve as acceptable a commercial publication of the
2 code which conforms to all of the provisions of this section. If the secretary of state does not
3 approve of a commercial publication of the code, the secretary of state shall prepare and publish
4 the code, or contract with any person under this section to prepare and publish the code. Any code
5 published by the secretary of state or by any person under a contract let under this section shall
6 include all of the requirements of this section. In addition, the secretary of state shall furnish any
7 volume or issue of the code or supplement to any person who requests the material upon payment
8 of a charge established by the secretary of state, not to exceed the cost of publication and
9 handling.

10 (2) Upon the request of the secretary of state, the director of administration shall
11 advertise and accept competitive bids and let a contract for the compilation and printing of the
12 ~~Rhode Island administrative code~~ [code of state regulations](#) and supplements between the secretary
13 of state and the person able to perform the contract at the lowest cost.

14 **42-35-5.1. Regulatory agenda Rulemaking agenda.** ~~-- (a) On January 15 and June 15 of~~
15 ~~each year, each agency shall prepare and file with the governor, the secretary of state, the~~
16 ~~president of the senate, and the speaker of the house a regulatory agenda which shall contain:~~

17 ~~(1) A listing of all rules and orders promulgated since the preceding regulatory agenda,~~
18 ~~except orders of the human rights commission;~~

19 ~~(2) A brief description of the subject area of any rule which the agency expects to~~
20 ~~prepare or promulgate prior to the filing of the next regulatory agenda including the objectives~~
21 ~~and legal basis for such rules and approximate schedule for completing action on the rules.~~

22 ~~(3) The name and telephone number of an agency official knowledgeable concerning the~~
23 ~~items identified in subdivision (2).~~

24 ~~(b) The secretary of state shall compile the regulatory agendas and provide copies to the~~
25 ~~public upon request at a cost not to exceed the actual cost of publication.~~

26 ~~(c) Each agency shall endeavor to provide copies of its regulatory agenda to parties~~
27 ~~likely to be affected by proposed rules.~~

28 ~~(d) Nothing in this section precludes an agency from considering or acting upon any~~
29 ~~matter not included in the regulatory agenda nor does it require an agency to consider or act upon~~
30 ~~any matter listed in the agenda.~~

31 [\(a\) An agency shall maintain a current rulemaking agenda for all pending rulemaking](#)
32 [proceedings that are indexed. It shall publish on its agency website the current and updated](#)
33 [rulemaking agenda. It shall provide the secretary of state a copy of each current and updated](#)
34 [rulemaking agenda for publication on the secretary of state's website.](#)

1 (b) The agency shall maintain a rulemaking agenda under subsection (a) of this section
2 that must for each pending rulemaking proceeding state or contain:

3 (1) The subject matter of the proposed rule;

4 (2) Notices related to the proposed rule;

5 (3) How comments on the proposed rule may be submitted;

6 (4) The time within which comments may be submitted;

7 (5) Where comments may be inspected;

8 (6) Requests for a public hearing;

9 (7) Appropriate information concerning a public hearing, if any; and

10 (8) The timetable for action on the proposed rule.

11 (c) On request, the agency shall provide, for a reasonable charge, a written rulemaking
12 agenda maintained under subsection (b) of this section.

13 ~~**42-35-6. Petition for adoption of rules**~~ **Petition for promulgation of rules.** -- ~~Any~~
14 ~~interested person may petition an agency requesting the promulgation, amendment, or repeal of~~
15 ~~any rule. Each agency shall prescribe by rule the form for petitions and the procedure for their~~
16 ~~submission, consideration, and disposition. Upon submission of a petition, the agency within~~
17 ~~thirty (30) days shall either deny the petition in writing (stating its reasons for the denials) or~~
18 ~~initiate rule-making proceedings in accordance with § 42-35-3. Any person may petition an~~
19 agency to promulgate a rule. An agency shall prescribe by rule the form of the petition and the
20 procedure for its submission, consideration, and disposition. Not later than thirty (30) days after
21 submission of a petition, the agency shall:

22 (1) Deny the petition in a record and state its reasons for the denial; or

23 (2) Initiate rulemaking.

24 ~~**42-35-8. Declaratory rulings by agencies**~~ **Declaratory order.** -- ~~Each agency shall~~
25 ~~provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the~~
26 ~~applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of~~
27 ~~petitions have the same status as agency orders in contested cases.~~

28 (a) A person may petition an agency for a declaratory order that interprets or applies a
29 statute administered by the agency or states whether or in what manner a rule, guidance
30 document, or order issued by the agency applies to the petitioner.

31 (b) An agency shall promulgate rules prescribing the form of a petition under subsection
32 (a) of this section and the procedure for its submission, consideration, and prompt disposition.
33 The provisions of this chapter concerning formal, informal, or other applicable hearing procedure
34 do not apply to an agency proceeding for a declaratory order, except to the extent provided in this

1 section or to the extent the agency provides by rule or order.

2 (c) Not later than sixty (60) days after receipt of a petition under subsection (a) of this
3 section, an agency shall issue a declaratory order in response to the petition, decline to issue the
4 order, or schedule the matter for further consideration.

5 (d) If an agency declines to issue a declaratory order requested under subsection (a) of
6 this section, it shall notify promptly the petitioner of its decision. The decision must be in a record
7 and must include a brief statement of the reasons for declining. An agency's decision to decline to
8 issue a declaratory order is subject to judicial review for abuse of discretion. An agency's failure
9 to act within the applicable time under subsection (c) of this section is subject to judicial action
10 under §42-35-15.

11 (e) If an agency issues a declaratory order, the order must contain the names of all parties
12 to the proceeding, the facts on which it is based, and the reasons for the agency's conclusion. If an
13 agency is authorized not to disclose certain information in its records to protect confidentiality,
14 the agency may redact confidential information in the order. The order has the same status and
15 binding effect as an order issued in a contested case and is subject to judicial review under §42-
16 35-15.

17 (f) An agency shall publish each currently effective declaratory order on its agency
18 website.

19 (g) An agency shall maintain a current and publicly accessible index of all of its currently
20 effective declaratory orders on its website, file the index with the secretary of state, make the
21 index readily available for public inspection, and make available for public inspection and, for a
22 reasonable charge, copying the full text of all declaratory orders to the extent inspection is
23 permitted by law of this state other than this chapter. Declaratory orders are effective only if filed
24 with the secretary of state.

25 SECTION 3. Chapter 42-35 of the General Laws entitled "Administrative Procedures" is
26 hereby amended by adding thereto the following sections:

27 **42-35-2.6. Concise explanatory statement.** -- At the time an agency files the final rule
28 with the secretary of state, the agency shall issue a concise explanatory statement, in a form
29 prescribed by the secretary of state, which contains:

30 (1) The agency's reasons for creation of the rule, including the agency's reasons for not
31 accepting substantive arguments made in testimony and comments;

32 (2) Subject to §42-35-6.1, the reasons for any change between the text of the proposed
33 rule contained in the notice of proposed rulemaking and the text of the final rule; and

34 (3) Any regulatory analysis prepared under §42-35-2.9.

1 **42-35-2.7. Notice of proposed rulemaking.** -- (a) At least thirty (30) days before the
2 filing of a final rule with the secretary of state, an agency shall publish the notice of the proposed
3 rulemaking on the agency's website. The agency shall file notice of the proposed rulemaking with
4 the secretary of state, in accordance with procedures established by the secretary of state, for
5 publication in the state register and for electronic notification to interested parties pursuant to
6 subsection (c) of this section. The notice shall be mailed by the agency to all persons who have
7 made timely request of the agency for notice of its rulemaking proceedings, and published in a
8 newspaper or newspapers having aggregate general circulation throughout the state; provided,
9 however, that if the action is limited in its applicability to a particular area, then the publication
10 may be in a newspaper having general circulation in the area. In lieu of newspaper publication,
11 advance notice of proposed rulemaking by the department of health may be provided via
12 electronic media on a website maintained by the office of the secretary of state. Authorization for
13 such electronic notice shall commence as of July 1, 2005. In lieu of newspaper publication,
14 advance notice of proposed rulemaking by all other state departments, agencies and authorities
15 may also be provided via electronic media on a website maintained by the office of secretary of
16 state, and authorization for such electronic notice shall commence as of May 1, 2008. Copies of
17 proposed rules shall be available at the agency at the time of the notice required by this
18 subsection, and by mail to any member of the public upon request.

19 (b) The notice shall include:

20 (1) A short explanation of the purpose of the proposed rule;

21 (2) A citation or reference to the specific legal authority authorizing the proposed rule;

22 (3) The text of the proposed rule;

23 (4) How a copy of the full text of any regulatory analysis of the proposed rule may be
24 obtained;

25 (5) Where, when, and how a person may comment on the proposed rule and request a
26 hearing, including the beginning and end dates of the public comment period;

27 (6) The date of the filing of the notice of the proposed rulemaking with the secretary of
28 state;

29 (7) A citation to each scientific or statistical study, report, or analysis that served as a
30 basis for the proposed rule, together with an indication of how the full text of the study, report, or
31 analysis may be obtained;

32 (8) Any proposed additions, deletions or other amendments to the rules and regulations.
33 New proposed language must be clearly marked using underline formatting, and strikethrough
34 formatting for proposed deletions. If an agency proposes a new rule which will supersede an

1 existing rule, the agency shall make available a summary of all non-technical differences between
2 the existing and proposed rules. An agency's lawful promulgation of amendments to an existing
3 rule shall be deemed to supersede and repeal the previous enactments of that rule, provided that
4 the public notice required under subsection (a)(1) of this section indicated such an intent;

5 (9) Any regulatory analysis prepared under §42-35-2.9(c).

6 (c) The secretary of state shall establish a process to provide timely notification via
7 electronic mail to any person that requests information concerning agency notices of proposed
8 rulemaking. Requests under this section may be submitted to the secretary of state through its
9 website.

10 **42-35-2.8. Public participation.** -- (a) An agency proposing a rule shall specify a public
11 comment period of at least thirty (30) days after publication of notice of the proposed rulemaking
12 during which a person may submit information and comment on the proposed rule. The
13 information or comment may be submitted in an electronic or written format. The agency shall
14 consider all information and comments on a proposed rule which is submitted pursuant to this
15 subsection within the comment period.

16 (b) An agency may consider any other information it receives concerning a proposed rule
17 during the public comment period. The information need not be submitted in an electronic or
18 written format. Nothing in this section prohibits an agency from discussing with any person at
19 any time the subject of a proposed rule.

20 (c) Unless a hearing is required by law of this state other than this act, an agency is not
21 required to hold a hearing on a proposed rule but may do so. A hearing must be open to the
22 public, recorded, and held at least five (5) days before the end of the public comment period.

23 (d) A hearing on a proposed rule may not be held earlier than five (5) days after notice of
24 its location, date, and time is published on the secretary of state's website.

25 (e) An agency representative shall preside over a hearing on a proposed rule. If the
26 representative is not the agency head, the representative shall prepare a memorandum
27 summarizing the contents of the presentations made at the hearing for consideration by the
28 agency head.

29 **42-35-2.9. Regulatory analysis.** -- (a) An agency shall prepare a regulatory analysis for a
30 proposed rule. The analysis must be completed before notice of the proposed rulemaking is
31 published.

32 (b) A regulatory analysis must contain:

33 (1) An analysis of the benefits and costs of a reasonable range of regulatory alternatives
34 reflecting the scope of discretion provided by the statute authorizing the proposed rule;

1 (2) Demonstration that there is no alternative approach among the alternatives considered
2 during the rulemaking proceeding which would be as effective and less burdensome to affected
3 private persons as another regulation. This standard requires that an agency proposing to write
4 any new regulation must identify any other state regulation which is overlapped or duplicated by
5 the proposed regulation and justify any overlap or duplication; and

6 (3) A determination whether:

7 (i) The benefits of the proposed rule justify the costs of the proposed rule; and

8 (ii) The proposed rule will achieve the objectives of the authorizing statute in a more
9 cost-effective manner, or with greater net benefits, than other regulatory alternatives.

10 (c) An agency preparing a regulatory analysis under this section shall prepare a concise
11 summary of the analysis.

12 (d) If an agency has made a good faith effort to comply with this section, a rule is not
13 invalid solely if there are errors or paucity of data in the regulatory analysis for the proposed rule.

14 **42-35-2.10. Emergency rule. --** If an agency finds that an imminent peril to the public
15 health, safety, or welfare or the loss of federal funding for an agency program requires the
16 immediate promulgation of an emergency rule and publishes in a record with the secretary of
17 state and on its agency website reasons for that finding, the agency, without prior notice or
18 hearing or on any abbreviated notice and hearing that it finds practicable, may promulgate an
19 emergency rule without complying with §§42-35-2.6 through 42-35-2.9. The agency head and the
20 governor, or the governor's designee, must sign the emergency rule to become effective. The
21 emergency rule may be effective for not longer than one hundred twenty (120) days renewable
22 once for a period not exceeding sixty (60) days. The promulgation of an emergency rule does not
23 preclude the promulgation of a rule under §§42-35-2.6 through 42-35-2.9. The agency shall file
24 with the secretary of state a rule created under this section as soon as practicable given the nature
25 of the emergency and publish the rule on its agency website. The secretary of state shall notify
26 persons that have requested notice of rules related to that subject matter.

27 **42-35-2.11. Direct final rule. --** If an agency proposes to promulgate a rule which is
28 expected to be noncontroversial, it may use direct final rulemaking authorized by this section and
29 must comply with §§ 42-35-2.4 and 42-35-2.6. The proposed rule must be published in the state
30 register and on the agency's website with a statement by the agency that it does not expect the
31 proposed rule to be controversial and that the proposed rule takes effect thirty (30) days after
32 publication if no objection is received. If no objection is received, the rule becomes final. If an
33 objection to the rule is received from any person not later than thirty (30) days after publication of
34 the notice of the proposed rule, the proposed rule does not become final. The agency shall publish

1 on its agency website and file notice of the objection with the secretary of state for publication in
2 the state register and may proceed with rulemaking under § 42-35-2.6 through § 42-35-2.9.

3 **42-35-2.12. Guidance document.** -- (a) An agency may issue a guidance document
4 without following the procedures set forth in §§42-35-2.6 through 42-35-2.9.

5 (b) An agency that proposes to rely on a guidance document to the detriment of a person
6 in any administrative proceeding shall afford the person an adequate opportunity to contest the
7 legality or wisdom of a position taken in the document. The agency may not use a guidance
8 document to foreclose consideration of issues raised in the document.

9 (c) A guidance document may contain binding instructions to agency staff members if, at
10 an appropriate stage in the administrative process, the agency's procedures provide an affected
11 person an adequate opportunity to contest the legality or wisdom of a position taken in the
12 document.

13 (d) If an agency proposes to act in a contested case at variance with a position expressed
14 in a guidance document, it shall provide a reasonable explanation for the variance. If an affected
15 person in a contested case may have relied reasonably on the agency's position, the explanation
16 must include a reasonable justification for the agency's conclusion that the need for the variance
17 outweighs the affected person's reliance interest.

18 (e) An agency shall maintain an index of all of its effective guidance documents, publish
19 the index on its website, make all guidance documents available to the public, and file the index
20 annually with the secretary of state. The agency may not rely on a guidance document, or cite it
21 as precedent against any party to a proceeding, unless the guidance document is published on its
22 agency website.

23 (f) A guidance document may be considered by a presiding officer or final decision
24 maker in an agency contested case, but it does not bind the presiding officer or the final decision
25 maker in the exercise of discretion.

26 (g) A person may petition an agency under §42-35-6 to promulgate a rule in place of a
27 guidance document.

28 (h) A person may petition an agency to revise or repeal a guidance document. Not later
29 than sixty (60) days after submission of the petition, the agency shall:

30 (1) Revise or repeal the guidance document;

31 (2) Initiate a proceeding to consider a revision or repeal; or

32 (3) Deny the petition in a record and state its reasons for the denial.

33 **42-35-6.1. Variance between proposed and final rule.** -- An agency may not file a rule
34 that differs from the rule proposed in the notice of proposed rulemaking unless the final rule is

1 [consistent with and a logical outgrowth of the rule proposed in the notice.](#)

2 **42-35-6.2. Compliance.** -- [An action taken under this chapter is not valid unless taken in](#)
3 [substantial compliance with this chapter.](#)

4 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 make several comprehensive revisions to the administrative procedures
- 2 act requiring all agencies to electronically submit their annual reports.
- 3 This act would take effect upon passage.

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LC003914
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