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## Observations on the First Draft Revision of the Administrative Reconsideration Law

BY JHORSLEY ON 2023/01/23

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The National People's Congress Standing Committee (NPCSC) is substantially revising the [Administrative Reconsideration Law \(ARL\)](#), which provides an underutilized procedure to challenge government actions through administrative reconsideration. Reconsideration decisions can in turn be appealed to the courts, under China's [Administrative Litigation Law](#), which aggrieved parties can generally and often do turn to resolve disputes with the government,

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With courts feeling overwhelmed by large caseloads and emerging new [\[1\]](#) a [first draft for public comment](#) on October 27, 2022 ([the Draft](#)) of a new reconsideration the preferred channel for resolving administrative (1) enhancing the credibility of the reconsideration process to *encourage* the carrot), and (2) expanding the situations under which reconsideration stick).

Initially quicker option, its disadvantage is the apparent bias inherent in the initial agency decisions within the vertical administrative hierarchy of, or, as, the agency that made the original decision. The reported rate at which corrected through reconsideration [has averaged only 14.3 percent](#).

A few existing situations under which reconsideration is a condition precedent. The ARL currently stipulates that disputes over ownership and rights of consideration before appeals to the courts, and that reconsideration at the final level are final. It also refers to situations where other laws or regulations go reconsideration, which [currently include disputes](#) over taxes, customs, immigration, film screenings, religious affairs, and demonstration permits. In some cases, management of foreigners, the reconsideration decision is final. The Draft requires the agency to perform its statutory duties and where administrative punishments are more than going through normal procedures to the list of issues that must

undergo reconsideration.

To encourage greater *voluntary* selection of reconsideration to resolve disputes for which reconsideration is not mandatory, the Draft proposes to, among other suggested changes:

- Expand and clarify the scope of cases that can be handled through reconsideration, including disputes over administrative agreements with the government, government information disclosure, and abuse of authority that restricts competition, but also excluding acts that do not actually impact rights and obligations;
- Centralize reconsideration authority, removing it from local government *departments* to place it in specialized offices of *people's governments* at the city, county and provincial levels; State Council departments will handle reconsideration cases involving them in some way; disputes involving vertically-integrated departments such as customs, tax, foreign exchange and national security will continue to be handled by the next-higher level departments;
- Hear directly from the parties rather than rely on the traditional “paper hearing,” except in some cases subject to new summary procedures, and provide for more formal hearings for major, difficult, and/or complex cases;
- Authorize the use of mediation, as had been permitted under 2007 implementing regulations, although only in cases where the administrative action in dispute involved the exercise of discretion; and
- Stipulate evidence rules.

The period for public comment ended in late November, and a second, further revised draft may be published for public comment this year, before the revision is finalized.

[\[1\]](#) The Ministry of Justice, on behalf of the State Council, published an [earlier, longer proposed ARL revision](#) for public comment in November 2020, and the [State Council approved a draft in September 2022](#) to submit to the NPCSC for consideration.

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