

Senate Bill 1155 (2017) - Changes to the Administrative Procedure Act

<u>Code Section Affected</u>	<u>Action Taken</u>	<u>Changes to Existing APA</u>
67-5201	Revises and adds definitions	“Contested case” definition revised as a case arising out of agency action in which an opportunity for an evidentiary hearing is required under state law. Certain agencies are excluded from this definition. “Presiding officer” is defined as an individual appointed by an agency head. “Record” is defined as information on certain mediums.
67-5240	Repealed	This section defined a “contested case” which is now defined in 67-5201
67-5241	Revised	Removes a provision on evidence used for an informal disposition in a contested case.
67-5242 through 67-5254, 67-5270, 67-5271, and 67-5273 through 67-5279	Repealed	Replaced by new language described below
67-5242 (new)	New section	SB1155: Lists the qualifications for a presiding officer as being admitted to practice law in Idaho for at least 3 years and not being an agency head or member of an agency governing board. Existing APA: Only disqualifications for a presiding officer are listed and an agency head or member of an agency governing board may be a presiding officer.
67-5243 (new)	New section	SB1155: Contested case procedures include notice given, timely opportunity for filings, opportunity to respond, open public hearings, representation by counsel if desired, and a decision based on the hearing record and containing legal and factual basis of the decision. Existing APA: Requires notice be given to the parties, requires full disclosure of relevant information, allows opportunity to respond and present evidence and argument, allows nonparties an opportunity to present a statement, and requires the hearing to be recorded.
67-5244 (new)	New section	SB1155: Adds new provisions on evidence that allow an offering party to make an offer of proof for evidence that is excluded by the presiding officer, provides that

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		testimony must be made under oath and provides that evidence must be part of the hearing record.
67-5245 (new)	New section	SB1155: New notice requirements include a 7 day deadline from filing to give notice, contact information for the agency and any attorneys, names and addresses of any parties. When a case is initiated by an agency, the agency shall give notice that includes the file number, the name and address of the presiding officer, agency representative and any other parties, a statement that failure to attend could result in a default judgment, and info on how to request a hearing Existing APA: Notice must state time, place and nature of the hearing, authority for the hearing, and a statement of the matters asserted or the issues involved
67-5246 (new)	New section	SB1155: Adds new provisions regarding what must be contained in a hearing record. These new requirements include a recording of each proceeding, any prehearing orders, any filings made by a party, any intermediate rulings made during the case, any transcript prepared by the agency and any ex parte communications placed on the record. SB1155 also states that the hearing record is the sole basis for agency action.
67-5247 (new)	New section	SB1155: Provides new time frames regarding notice and hearing in an emergency adjudication procedure. The Existing APA contains a provision that an agency shall take only such actions as are necessary to prevent or avoid immediate danger. SB1155 contains no such provision.
67-5248 (new)	New section	SB1155: Allows ex parte communication when authorized by statute or concerns an undisputed issue and when it provides legal advice to the presiding officer. SB1155 also states the actions that must be taken by the presiding officer if he participates in ex parte communication, that he must give notice to the parties of the communication and provides for removal of the presiding officer in certain

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		instances and relief that may be granted. Existing APA: States only that a presiding officer shall not have communications except upon notice and opportunity for all parties to participate.
67-5249 (new)	New section	SB1155: Allows certain parties to intervene in a contested case if they have a legal basis or may be affected by the outcome and if notice is given to all parties. The presiding officer may impose certain conditions on the intervening party. Existing APA: No provisions on intervention.
67-5250 (new)	New section	SB1155: A presiding officer, or other officer authorized by law, may subpoena witnesses and for production of evidence. Existing APA: No provisions on subpoenas.
67-5251 (new)	New section	SB1155: Provisions on discovery include allowing a party to obtain names of witnesses and a right to inspect and copy materials used as evidence. A party must also supplement discovery requests when new information arises. Parties may also petition for a protective order for certain materials. Existing APA: No provisions on discovery.
Section 67-5252	New Section	Provides for default orders. Authorizes the presiding officer to conduct further proceedings to complete the adjudication without the defaulting party. Provides that orders issued against a defaulting party may be based on defaulting party's admissions without notice to the defaulting party and that if the burden of proof is on the defaulting party, the presiding officer may issue an initial or final order without taking evidence. Within fifteen days after notice to the defaulting party that an initial or final order has been issued, the party may petition to vacate the order. If good cause for failure to appear, the presiding officer shall vacate the decision and conduct another evidentiary hearing. If good cause is not shown the motion to vacate shall be

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		denied.
Section 67-5253	New Section	<p>The presiding officer shall issue final orders if delegated by an agency head. If the presiding officer doesn't have final decisional authority they shall issue an initial order that becomes final 30 days after issuance unless reviewed by an agency head or on petition of a party. Orders have to be served on parties not later than 90 days after the hearing, the record closes or memoranda, briefs of proposed findings are submitted. This time period can be extended. Proof of service is required. Orders have to state findings of fact and conclusions of law. The presiding officer may allow a party to submit proposed findings and conclusions. Initial orders have to state any circumstances under which the order will become final. Findings of fact have to be based on evidence and matters officially noticed in the hearing. Hearsay evidence may be used to supplement or explain other evidence but is not sufficient by itself unless it would be admissible over objection in a civil action. Orders are considered issued when signed by the agency head, presiding officer or other individual authorized to sign the order. Final orders are effective 30 days after service unless reconsideration is granted. Agencies shall attach available procedures and time limits regarding reconsideration or other administrative relief to orders and state the time limits for seeking judicial review.</p>
Section 67-5254	New Section	<p>Agency heads may review initial orders. Parties may petition agency heads to review initial orders. Petitions for review must be filed not later than 15 days after the service date of the order. If the agency head decides to review the initial order it shall give notice to the parties not later than 15 days after service of the order. If a petition for review is not filed or the agency head does not elect to review the</p>

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		order within the time limit the initial order becomes final. The time periods may be tolled by the submission of a timely petition for reconsideration. A new 15 day period begins on disposition of a petition for reconsideration. Agency heads have decision-making power that they would have had if conducting the hearing when reviewing an initial order. Agency heads reviewing initial orders shall issue final orders disposing of the proceeding not later than 120 days after the decision to review the initial order or remand the matter for further proceedings. The agency head may order a review of the conclusions of law but not the findings of fact and may order temporary relief. Final orders have to indicate any differences between such orders and initial orders and state the law that supports any difference.
Section 67-5256	New Section	Parties may file petitions for reconsideration not later than 15 days after service of the final order. If the petition is filed according to procedure then the time for filing a petition for judicial review does not begin until the petition for judicial review is disposed of. The petition shall be acted on not later than 20 days after it is filed. If the decision maker hasn't responded within 30 days of the filing the petition is deemed denied. If granted, the decision maker has to state findings of fact, conclusions of law and reasons for granting the petition.
Section 67-5257	New Section	Provides that not later than 7 days after the service date of a final order a party may request the agency to stay the order pending judicial review and the agency may grant or deny the stay.
Section 67-5258	New Section	Agencies shall index all final orders in contested cases and make the same available for public inspection and copying at cost. However, any final orders that are made confidential and not subject to

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		disclosure are exempt from indexing. Such orders may be disclosed only by order of the presiding officer or the presiding officer may allow the confidential provisions of the order to be redacted and indexed. Agencies may not rely on final orders as precedent unless an agency designates an order as such, indexes the order and makes it available for public inspection. Agencies shall index public guidance documents and make the same available for inspection and copying at cost. Defines "agency guidance." Provides that indexing of guidance documents do not give them the force and effect of law or precedential authority.
Section 67-5259	New Section	If licensees make timely application for renewal or issuance of a new license for an activity of a continuing nature, the existing license won't expire until the agency takes final action on the application, or if the application is denied or new license is limited, until the last day for seeking review of the agency order or a later date as may be set by a reviewing court. Revocations, suspensions, annulments or withdrawals of licenses shall not be lawful unless the agency first notifies the licensee of facts or conduct that warrants the action and the licensee is given an opportunity to show compliance. If an agency determines there is peril to public health or safety, emergency action and summary suspension may be taken pending prompt proceedings for revocation or other action. Any revocation, suspension, annulment or withdrawal that is in conflict with these provisions is null and void.
Section 67-5260	New Section	Defines "final agency action." Unless limited or precluded by other law a person who meets requirements of this section is entitled to judicial review of a final agency action. Under certain circumstances a person may be entitled to judicial review of an agency action that is not final. Courts

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		may compel agencies to take action if action is unlawfully withheld or unreasonably delayed.
Section 67-5262	New Section	Petitions to review agency rules may be filed any time except as limited by specified law. Petitions for review of final orders must be filed within 28 days of specified actions. Cross-petitions for judicial review may be filed within 14 days after service of the notice of petition for judicial review. Petitions for judicial review of other agency actions must be filed within 28 days of the action. Times may be extended during pendency of attempts to exhaust administrative remedies. Times are tolled during any time a party pursues administrative remedy before the agency which must be exhausted as a condition of judicial review. Parties may not petition for judicial review while seeking reconsideration.
Section 67-5263	New Section	Petitions for judicial review do not automatically stay agency decisions. Parties may ask a court to stay the agency decision.
Section 67-5265	New Section	A court may relieve a petitioner of the requirement of exhausting administrative remedies if such remedies are inadequate or irreparable harm would result. Otherwise, petitioners must exhaust administrative remedies. Filing a petition for reconsideration or a stay of proceedings is not a prerequisite for seeking judicial review.
Section 67-5266	New Section	If an agency was required to maintain an agency record during proceedings, the court review is confined to that record. If the agency was not required to maintain a record, the record for review consists of the unprivileged materials that agency decision makers directly or indirectly considered or that were submitted for consideration. If the agency action was

