

BILL ANALYSIS

Senate Research Center
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S.B. 2354
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Natural Resources & Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2017 the legislature passed H.B. 3177, relating to the delegation of matters to the executive director of the Texas Commission on Environmental Quality (TCEQ), to address a problem encountered by persons seeking judicial review of TCEQ actions on matters delegated to the executive director. Prior to enactment of this legislation, persons appealing many decisions delegated to the executive director were required to file two separate petitions for judicial review in district court. Then-current law required the first petition to be filed within 30 days of the effective date of the decision, while the person simultaneously exhausted administrative remedies through the motion to overturn process. A second petition then would be filed after any motion to overturn had either been denied by the commission or overruled by operation of law. H.B. 3177 sought to remedy this confusing and duplicative set of circumstances by delaying the requirement for petition filing until after TCEQ had acted on any timely filed motion to overturn.

While H.B. 3177 sought to create a more efficient and fair process, it inadvertently resulted in confusion as to which judicial appeals processes were governed by the new procedure. S.B. 2354 thus would clarify that the judicial review timeline established by Section 5.351 of the Water Code applies to permitting matters under Chapters 361 and 382, Texas Health and Safety Code (the Solid Waste Disposal Act and Clean Air Act, respectively).

As proposed, S.B. 2354 amends current law relating to judicial review of acts by the Texas Commission on Environmental Quality.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 361.321(a) and (c), Health and Safety Code, as follows:

(a) Authorizes a person affected by a ruling, order, decision or other act of the Texas Commission on Environmental Quality (TCEQ) to appeal the action by filing a petition in a district court of Travis County in the time required by Section 5.351 (Judicial Review of Commission Acts), Water Code.

(c) Requires a petition described by Subsection (b) (relating to certain conditions authorizing an appeal) to be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed, rather than requiring the petition, except as provided by Section 361.322(a), to be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Requires service of citation of the petition, rather than service of citation, to be accomplished not later than the 30th day after the date on which the petition is filed.

SECTION 2. Amends Sections 361.322(a) and (f), Health and Safety Code, as follows:

(a) Authorizes any person subject to an administrative order under Section 361.272 (Administrative Orders Concerning Imminent and Substantial Endangerment) to appeal the order by filing a petition in the time required by Section 5.351, Water Code, rather than by filing a petition before the 46th day after the date of receipt, hand delivery, or publication service of the order.

(f) Provides that the administrative order is final as to a nonappealing party on the date by which the person is required to file a petition under Section 5.351, Water Code, rather than on the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

SECTION 3. Amends Section 382.032(b), Health and Safety Code, as follows:

(b) Requires the petition to be filed in the time required by Section 5.351, Water Code, unless the appeal relates to TCEQ's failure to take final action on the application for certain permits, in which case the petition is authorized to be filed at any time before TCEQ or the executive director of TCEQ (executive director) takes final action, rather than requiring the petition to be filed within 30 days after the date of TCEQ's or the executive director's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order or decision and providing that if the appeal relates to TCEQ's failure to take final action on the application for certain permits, petition is authorized to be filed at any time before TCEQ or the executive director of TCEQ (executive director) takes final action.

SECTION 4. Amends Sections 5.351(b) and (c), Water Code, as follows:

(b) Makes nonsubstantive changes throughout this subsection.

(c) Authorizes a person affected by a ruling, order, or decision on a matter delegated to the executive director under Section 5.122 (Delegation of Uncontested Matters to Executive Director), notwithstanding Subsection (b) or another provision of law to the contrary, rather than notwithstanding Subsection (b), to, after exhausting any administrative remedies, file a petition to review, set aside, modify, or suspend the ruling, order, or decision not later than the 30th day after:

(1)–(2) makes no changes to these subdivision.

SECTION 5. Effective date: September 1, 2019.