

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3177  
By: Lucio III (Estes)  
Natural Resources & Economic Development  
5/17/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of H.B. 3177 is to clarify and streamline certain aspects of the procedural process at the Texas Commission on Environmental Quality (TCEQ). The bill amends two areas of the Water Code that govern actions that can be taken by the executive director of TCEQ (executive director).

First, H.B. 3177 amends Section 5.122, Water Code, related to the delegation of uncontested matters to the executive director of TCEQ. Pursuant to that section, the commissioners may delegate authority to act on permit applications or other matters to the executive director if: (1) the matter is uncontested and does not require an evidentiary hearing; or (2) the matter has become uncontested because all parties have agreed in writing to the action to be taken by the executive director. These provisions leave a question on how to address situations in which a matter is initially contested, but all protestants withdraw their protests or otherwise settle with an applicant before parties are formally named. H.B. 3177 adds language to Section 5.122 that authorizes the commissioners to delegate authority to the executive director in these limited situations that do not currently fit within the statutory language as currently drafted.

Second, H.B. 3177 amends Section 5.351 of the Water Code, relating to judicial review of TCEQ acts. Currently, to provide that to appeal an action made by the executive director before it becomes a final agency action, a person must: (1) file a motion to overturn the executive director's decision with the commissioners within 25 days of the decision; and (2) file an appeal of the agency's action in Travis County District Court within 30 days of the same decision. Thus, a person wanting to challenge the executive director's decision with the commissioners must file an appeal in district court before the commissioners have had a chance to consider the motion to overturn. To compound the problem, if the motion is affirmatively denied or denied by operation of law, appellants must file another separate appeal to Travis County District Court within 30 days of that final TCEQ action. This duplicative process results in the filing of two separate district court lawsuits that must ultimately be joined.

H.B. 3177 remedies this procedural problem by delaying the requirement to file for judicial appeal of the executive director's decision until after the commissioners have had the chance to consider the motion to overturn. Stopping the 30-days-to-appeal clock while the motion to overturn is pending improves judicial efficiency, eliminates the possibility of multiple appeals, and addresses a potential procedural trap for those who do not routinely appear before the agency. TCEQ commissioners should be given an opportunity to consider the executive director's decision before it is sued in district court on that decision. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 3177 amends current law relating to the delegation of matters to the executive director of the Texas Commission on Environmental Quality.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 1 (Section 5.122, Water Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 5.122(a), Water Code, as follows:

(a) Authorizes the Texas Commission on Environmental Quality (TCEQ), by rule or order, to delegate to the executive director of TCEQ (executive director) TCEQ's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if:

(1) and (2) makes no changes to these subdivisions; and

(3) the application or request:

(A) is uncontested and does not require an evidentiary hearing;

(B) has become uncontested before parties are named because each person who requested a contested case hearing within the time allowed by law has:

(i) withdrawn the request for a contested case hearing without condition;

(ii) withdrawn the request for a contested case hearing conditioned only on the withdrawal of all other hearing requests; or

(iii) agreed in writing to allow the executive director to make a final decision on the matter; or

(C) creates this paragraph from existing text and makes no further changes to this paragraph.

SECTION 2. Amends Section 5.351, Water Code, by adding Subsection (c), as follows:

(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) or other law, notwithstanding Subsection (b) (relating to petition filing deadlines for a person affected by a ruling, order, or decision of TCEQ), 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) the effective date of the ruling, order, or decision; or

(2) if the executive director's ruling, order, or decision is appealed to TCEQ as authorized by Section 5.122(b) (relating to authorizing a person affected by a certain action to appeal the executive director's action to TCEQ) or other law, the earlier of the date TCEQ denies the appeal or the date the appeal is overruled by operation of law in accordance with TCEQ rules.

SECTION 3. Makes application of this Act, regarding a final decision made by the executive director under Section 5.122, Water Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2017.