

*Austin American-Statesman*

March 27, 2016

## **STATESMAN INVESTIGATES GOVERNMENT OVERSIGHT**

**Texas oil regulator's industry ties many  
Railroad Commission's connections often mirrored  
in policy.**

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### **THE TEXAS RAILROAD COMMISSION**

- Originally established in 1891 to regulate the rail industry, making it the state's oldest regulatory agency.
- Regulates oil and gas drilling, pipelines and mining. (The Texas Department of Transportation now oversees rail planning and safety.)
- Annual budget: >87 million.
- Full-time employees: 725.

### **STATE REVOLVING DOOR LAW**

- Any state employee who participated in contract negotiations on behalf of the state involving any person may not accept employment from that person for two years after he or she leaves the agency. That rule applies only to a state officer or employee whose service or employment ceases on or after September 1, 2015.
- For two years after a board member or executive head leaves a regulatory agency, he or she may not appear before or communicate with officers or employees of the agency with the intent to influence the board on behalf of any person in connection with any matter on which the person seeks official action.
- Board members and high-ranking officials — ones making at least >36,976 for fiscal years 2016 and 2017 — may never represent a person or receive compensation for services rendered on behalf of any person regarding any particular matter on which he or she worked while in state government. Violation of the second or third revolving door provisions is a Class A misdemeanor;

the Texas Ethics Commission may assess a civil penalty for a violation of any of the three revolving door laws.



**Members of the commission appear sympathetic to key industry regulatory principles. After voters in Denton voted in 2014 to ban hydraulic fracturing, also known as fracking, the oil and gas association successfully pressed state lawmakers to overturn the ban. RALPH K.M. HAURWITZ / AMERICAN-STATESMAN 2014**



**Texas Railroad Commission Chairman David Porter says the industries the agency regulates are “the backbone” of the Texas economy.**

**JAYJANNER / AMERICAN-STATESMAN**



**Texas Railroad Commission Executive Director Kim Corley and general counsel Alex Schoch, seen here at an agency meeting in February, are the latest examples of officials moving to the agency from the oil and gas industry. JAYJANNER / AMERICAN-STATESMAN**

When the three officials who oversee the Texas Railroad Commission were searching for a new executive director late last year, they turned to a former oil and gas executive. And when they needed a new chief lawyer, they selected a former coal company legal counsel.

The commissioners said they wanted to rely on experts with long experience in the oil, gas and mining fields. But the moves typify the cozy relationship between the commission and the industries that it regulates.

A review of employment, business and lobbying records by the American-Statesman, some of them obtained through open records requests, illuminates a well-worn path from the oil and gas industry to the highest levels of the Railroad Commission. The analysis also found that many former agency employees are now advocating for companies they once regulated.

The ties between Railroad Commission employees and the oil and gas industry have been mirrored in policy: The agency has sought to shield the industry from further federal regulation and has beaten back criticism from environmentalists on everything from seismic activity to fracking.

It's a record of protection that makes the commissioners proud: The industries the agency regulates are "the backbone" of the Texas economy, says Railroad Commission Chairman David Porter.

Top officials at the commission have long had ties to industry: Commissioner Christi Craddick was an oil-and-gas lawyer; Commissioner Ryan Sitton served on the board of several energy trade associations; and Porter was a Midland accountant for oil and gas companies. In addition, the commissioners, who are elected, receive much of their campaign money from the industries they regulate.

In July 2012, then-Commissioner Barry Smitherman instituted a revolving door policy meant to "safeguard agency independence and to avoid the appearance of impropriety." The policy, which essentially restated state law, barred a former commissioner or executive director from lobbying the agency and barred former agency staffers from lobbying on any matter in which they had participated while employed by the agency.

But the rule did nothing to stem back-and-forth worker moves between the state agency and industry.

Soon after Smitherman left the agency — his term expired in January 2015 — he registered as a lobbyist. By last April he had signed up two energy clients, including a pipeline company, earning as much as \$75,000, while also working as an attorney at Vinson and Elkins, where he represents energy clients.

The firm's "robust energy practice provides the perfect opportunity for me to leverage the insights I gained with the Railroad Commission and Public Utility Commission," Smitherman said in a statement after his hiring in March 2015.

Smitherman didn't return a message seeking comment.

His former Railroad Commission colleague Buddy Garcia, who co-signed that revolving door policy, made as much as \$200,000 in 2015 representing energy companies at the Capitol.

### **Revolving door**

Former officials at regulatory agencies who have examined the state revolving door rules differed about their effectiveness.

“It’s been effective, it’s been well implemented,” said Larry Soward, who worked for a Houston environmental group after stepping down as commissioner at the Texas Commission on Environmental Quality in 2009.

A blanket rule that would bar employees from working for regulated companies would have a chilling effect on people signing up for state work, Soward said.

“It’s an unreasonable restriction on employees who want to move on to something more challenging or more rewarding,” he said. A lot of high-level employees “sign up to get a couple of years’ experience, get general knowledge about the field they’re in, and then move on to make more money and do something more challenging.”

But employees just below the highest rank can leave an agency one day and lobby virtually the next.

Several top officials at the Railroad Commission have found lucrative work as lobbyists for the industry:

- Five days after Amy Maxwell, Porter’s chief of staff, left her job on July 31, 2013, she was registered as a lobbyist, with contracts worth as much as \$100,000 to represent Marathon Oil and Center-Point Energy; by that September, she had lassoed three more energy clients, for another \$125,000 in billing. In 2015 she lobbied on behalf of eight energy clients, paying her as much as \$585,000. The work ranges from regulatory advice to her clients to helping them navigate the rule process at the agency, she said.
- Within six weeks of leaving the agency in 2014, Christian Alvarado, chief of staff for Smitherman, was registered as a lobbyist. Last year, he earned as much as \$200,000 lobbying for two energy-related companies. Alvarado hasn’t registered as a lobbyist this year and has gone into real estate in the West Texas oil patch.
- Chris Hosek, chief of staff for former Railroad Commissioner Elizabeth Jones, left the agency in August 2010; by the end of that year he was representing energy companies. He earned as much as \$750,000 in 2015 lobbying for energy companies.
- Executive Director John Tintera left the agency in 2012 and soon took a job with the Texas Alliance of Energy Producers, a trade group that seeks to ease regulation. As a lobbyist, he represented at least four energy clients in 2015, earning as much as \$225,000.

Tintera, a petroleum and environmental geologist, served 22 years at the agency and had qualified for retirement. “You played the game as best you can, shot all the shots and made them, and you’re ready for new challenges,” he said. The revolving door requirements are “significant,” he said, limiting contact with decision-makers.

Maxwell, the former chief of staff for Porter, said ex parte rules insulate commissioners — the final decision-makers — from companies that have contested business before the agency.

“I can’t talk to Porter (or the other commissioners) about any of my clients’ cases that are contested,” she said.

She can talk to commissioners about nonspecific matters, helping to arrange meetings between officials at the companies she represents and commissioners on broader issues — she says she’s arranged meetings on field rules, enhanced oil recovery projects, and general drilling and production operations.

While the relationships she forged at the commission help with her work, she said, “I don’t feel like I benefit as a lobbyist because I was a chief of staff. I do well because I can give advice that’s legal in nature but also because I work hard.”

Some high-ranking officials join the companies.

Victor Carrillo, who led the commission when Porter defeated him in the 2010 Republican primary, is now an oil and gas executive. His chief of staff, Justin Furnace, got a job as president of the Texas Independent Producers & Royalty Owners Association. Furnace now works at Carrillo’s company.

The door also swings the other way.

The two newest hires at the top of the commission — Kim Corley, an executive who headed business development at Shell, and Alex Schoch, a lawyer at Peabody Energy, the world’s largest private-sector coal company — are just the latest examples of officials moving to the agency from the industry.

As general counsel, Schoch is the commission’s principal legal adviser and manages the day-to-day activities of the agency’s attorneys. Corley, the executive director, manages the agency in accordance with the direction and policies established by the commissioners.

“I had retired and wanted to give back, to use my experience and leadership skills in a meaningful way,” said Corley, who had retired from Shell in 2015 when she was recruited by the Railroad Commission.

“It’s important that the agency understands the industry it regulates,” she said.

On paper, she brings more know-how than her predecessor, Milt Rister, who retired in 2015. Rister was a political operative and close associate of former Gov. Rick Perry’s, while Corley is an industry veteran. Known as a smart operator, she takes over as the oil business finds itself more than a year into a bad slump, one that has wounded the budget of the Railroad Commission.

“Texans expect and deserve the highest level of expertise and experience of its regulators... to meet our mission of protecting public safety and our natural resources, while maintaining a fair, stable operating environment for the energy industry,” agency spokeswoman Ramona Nye told the Statesman.

### **Agency sympathetic**

When lawmakers mull new oil and gas regulation, industry representatives prefer that authority go to the Railroad Commission, which has shown itself to be sympathetic to business interests.

Consider the politics of Texas drilling activity and earthquakes: With mounting evidence that fracking-related activities have contributed to an uptick in seismic activity in the Dallas-Fort Worth area in recent years, lawmakers were under constituent pressure to investigate the matter.

One proposal last year directed the University of Texas' Bureau of Economic Geology to study the earthquakes.

Energy companies pushed back, with an energy lobbyist asking for more involvement by the Railroad Commission.

"We would like to see the Railroad Commission included in the language (of the bill) to see them more of a focal point in the process," Bill Stevens, a lobbyist for the Texas Alliance of Energy Producers, told the state House Energy Resources Committee in 2015.

UT eventually won the charge to direct the study, but the Railroad Commission seismologist, who has said he sees no evidence of industrial activity playing a role in Texas quakes, will sit on a board that oversees UT's work.

The commissioners, for their part, appear sympathetic to key industry regulatory principles. After voters in Denton voted in 2014 to ban hydraulic fracturing, a method of gas extraction also known as fracking, the oil and gas association successfully pressed state lawmakers to overturn the ban.

At the time, Commissioner Craddick called for limiting cities to "clearly defined regulatory roles" — otherwise, she warned, "oil and gas development — and its ability to anchor the Texas economy — is in jeopardy."

The Railroad Commission has also served as a dependable industry ally on beating back the specter of federal regulation.

Last year, the Railroad Commission joined a multiagency, multistate lawsuit against the U.S. Environmental Protection Agency, arguing it was interfering with Texas' sovereignty by expanding the definition of which waterways it can regulate.

"This lawsuit draws a line in the sand that will push back on this outrageous effort by President Obama's EPA to further his radical war against fossil fuels," Porter, the agency chairman, said at the time.

And in December, commissioners criticized the EPA's proposed rules on methane emissions for oil and gas operators, calling them an overreach. (The EPA wants to regulate methane as part of its effort to tamp down greenhouse gases, which scientists say contribute to global warming.)

"These regulations are unnecessary and over-burdensome and will only impede industry, damage our economy and kill the jobs Texans rely on to support their families," Porter said.

State lawmakers have regularly shot down efforts to make the agency's relationship with industry more transparent.

Every session, for example, the Republican-led Legislature kills efforts to change the name of the agency — which has had nothing to do with railroad regulation for generations — to something like the Texas Energy Commission or Texas Oil and Gas Commission.

The resistance by the industry to a name change is “partly because there’s a desire to keep it in the dark,” Gary Gates, a Houston-area businessman and largely self-financed Republican candidate for the commission, told the Statesman.

And the Railroad Commission is facing whistleblower allegations, filed in 2013, from a former state inspector who claims he was fired because he complained about the lax enforcement of rules meant to protect the environment.

The inspector, an engineering specialist with the state agency, “complained repeatedly about the pressure he felt he was under to make exceptions” to state rules designed to protect the water supply from pollution related to oil and gas exploration before he was fired in June 2013, according to a federal filing.

A Railroad Commission spokeswoman said the agency is prohibited from commenting on personnel issues. She said litigation on the matter is ongoing.

In a sense, the Railroad Commission is a cousin of the Texas Commission on Environmental Quality, another environmental regulatory agency that has a reputation of being chummy with industry. To give one example: Companies seeking pollution permits are referred to as customers.

In June 2015, Zak Covar, who had been appointed to the environmental commission by Gov. Perry and had previously served as its executive director, left the agency to take a job with Summit Midstream Partners, an oil and gas infrastructure company, as vice president in charge of health, safety, environmental and regulatory affairs.

For companies, the former state officials provide know-how and entrée as they seek to navigate rules to their benefit.

Covar’s experience, according to a company news release announcing his hiring, “coupled with his service in the legislative arena focused on energy and environmental policy, gives him particular insight into regulatory developments involving air quality, water quality and waste management.”

Former executive directors at the environmental commission have long capitalized on their public service for lucrative lobbying jobs.

Of the five executive directors that preceded Covar, one became a lawyer for Chevron, and the other four earned as much as \$2.5 million in 2015 alone in lobbying for companies that might appear before their former employer.

In some ways, the regulatory agencies face a bifurcated mission.

The state environmental agency “strives to protect our state’s public health and natural resources consistent with sustainable economic development.”



The Railroad Commission, is charged not only with “stewardship of natural resources and the environment” but also with the “support of enhanced development and economic vitality for the benefit of Texans.”

### **Lobby rules rejected**

Efforts to beef up lobbying rules have gained little traction in recent years.

A 2011 amendment to a bill reauthorizing the environmental commission would have prevented the agency’s officials from lobbying for the companies they once regulated for four years. That amendment failed.

“Every single executive director and all but one commissioner over the last 10 years has left the agency to become a well-paid lobbyist,” then-state Rep. Lon Burnam, D-Fort Worth, said in support of the amendment. “That clearly undermines decision-making authority at the agency.” (Burnam failed in his run this year for Railroad Commissioner.)

State Rep. Wayne Smith, R-Baytown, the author of the reauthorization bill, countered, “What this really does is prohibit people from making a good honest living when they leave the agency.”

The latest Railroad Commission appointments “make me more skeptical the agency has the ability to be independent,” Luke Metzger, director of the nonprofit Environment Texas, told the Statesman in December.

But Soward said such appointments might be a “real benefit” to the state.

“If the general counsel of an oil company wants to go into government service, he or she might bring expertise useful to the agency,” he said.

Soward said the appointee should be prohibited, for some cooling-off period, from making any decision regarding the company from which he or she came.

At the time of her appointment as executive director last year, Corley cited her industry experience.

“Having spent my entire professional career in the energy industry, I am deeply grateful for the opportunity to use my experience and expertise in service to the people of Texas,” said Corley, who has served on the board of the Texas Oil and Gas Association, which lobbies for legislation supportive of the industry.

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