

PRESENTED AT

2017 Advanced Texas Administrative Law Seminar

August 24-25, 2017

Austin, TX

**Administrative Regulation and Sunset Review:
Railroad Commission of Texas**

Glenn E. Johnson

Author Contact Information:

Glenn E. Johnson

Kelly Hart & Hallman LLP

303 Colorado Street, Suite 2000

Austin, Texas 78701

Glenn E. Johnson
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, TX 78701

phone: (512) 495-6423
glenn.johnson@kellyhart.com

Glenn E. Johnson's practice primarily encompasses oil and gas development and pipeline regulatory work before the Railroad Commission of Texas and the General Land Office for several oil, gas and pipeline operators, and associated litigation and appellate work before all Texas courts.

The scope of Mr. Johnson's work typically includes advice regarding appropriate development plans and prosecution of well permitting cases, field rule cases, gas proration and other allowable adjustment cases, Mineral Interest Pooling Act applications, field-wide unitization hearings, rulemaking proceedings, cases involving the ratable purchase and transportation of natural gas, curtailment cases involving pipeline and producer disputes, and environmental regulation cases under the jurisdiction of the Railroad Commission. Associated with this practice is the providing of advice regarding lease, unit and other oil and gas development negotiations and advising clients regarding regulatory and legislative actions by state government and lobbying organizations.

Mr. Johnson is board certified in Administrative Law and appears before several state agencies.

Mr. Johnson's professional accomplishments have been recognized and honored by his inclusion in Best Lawyers in America since 1995. He also has been identified as a "Super Lawyer" in Administrative Law in 2004 and thereafter, as published in Texas Monthly magazine.

ADMINISTRATIVE REGULATION AND SUNSET REVIEW:

RAILROAD COMMISSION OF TEXAS

Outline

I. Sunset Advisory Commission Review

A. Brief history of past Railroad Commission reviews

1. 82nd Legislature (2011)
2. 83rd Legislature (2013)
3. 84th Legislature (2015) (H.B. 1818 attached as Exhibit 1)

B. Sunset Commission recommendations and results of 84th Legislature

1. Final Sunset Advisory Commission Staff Report with Final Results (Excerpts of Final Results and Sunset Commission Decisions issued June 2017 attached as Exhibit 2)
2. **Issue 1:** Continue the Railroad Commission of Texas for 12 years with a name that reflects the agency's important functions.

Key recommendation:

- (a) **1.1** Change the name of the Railroad Commission of Texas to the Energy Resources Commission and continue the agency for 12 years.

Result: The Sunset Commission recommended retaining the agency's name and the Railroad Commission of Texas was continued for 12 years.

3. **Issue 2:** Contested hearings and gas utility oversight are not core Commission functions and should be transferred to other agencies to promote efficiency, effectiveness, transparency and fairness.

Key recommendations:

- (a) **2.1** Require use of the State Office of Administrative Hearings for contested gas utility cases.

Result: Not adopted.

- (b) **2.2** Require the Railroad Commission to use the State Office of Administrative Hearings for all other contested case hearings.

Result: Not adopted.

- (c) **2.3** Transfer gas utility regulations from the Railroad Commission to the Public Utility Commission.

Result: Not adopted.

- 4. **Issue 3:** Oil and gas monitoring and enforcement needs improvements to effectively ensure public safety and environmental protections.

Key recommendations.

- (a) **3.1** Require Railroad Commission to develop a strategic plan for the Oil and Gas Division that tracks and measures the effectiveness of monitoring and enforcement.

Result: Adopted. (See Natural Resources Code §81.066)

- (b) **3.2** Require the Railroad Commission to develop in rule a process for issuing expedited penalties for minor violations.

Result: Not adopted.

- (c) **3.3** Direct the Railroad Commission to accurately track and report the number of oil and gas violations annually.

Result: Adopted with management action required, but nonstatutory
(See Natural Resources Code §81.066(d))

- (d) **3.4** Direct Railroad Commission to systemically track major violations.

Result: Adopted with management action required, but nonstatutory
(See Natural Resources Code §81.066(d)(3))

- (e) **3.5** Direct the Railroad Commission to develop a definition of repeat violations in rule and report the number of repeat violations on its website.

Result: Adopted with management action required, but nonstatutory
(See Natural Resources Code §81.066(d)(3))

- (f) **3.6** Direct the Railroad Commission to audit a sample of oil and gas natural gas production reports and transportation reports.

Result: Adopted with management action required, but nonstatutory

- (g) **3.7** Direct the Railroad Commission to develop a policy to require production reports to be filed electronically.

Result: Modified with management action required, but nonstatutory

(h) **3.8** Direct the Railroad Commission to expand its risk matrix for oil and gas inspections.

Result: Adopted with management action required, but nonstatutory

5. **Issue 4:** Insufficient and inaccurate statutory bonding requirements contribute to the large backlog of abandoned wells.

Key recommendation:

(a) **4.1** Amend blanket bond requirements in statute to better reflect the risk and increase equitability.

Result: Not adopted

6. **Issue 5:** Improve oversight of Texas pipeline infrastructure would help further ensure public safety.

Key recommendations:

(a) **5.1** Authorize the Railroad Commission to enforce damage prevention requirements for interstate pipelines.

Result: Adopted. (See Natural Resources Code §117.012(a)(2), Health and Safety Code §756.126, and Utilities Code §112.201(a))

(b) **5.2** Authorize the Railroad Commission to create a pipeline permit fee.

Result: Adopted

(c) **5.3** Modify language in the General Appropriations act to further ensure that the Railroad Commission collects, and is appropriated back, fee amounts to offset the costs of administering its Pipeline Safety program, including administrative costs.

Result: Adopted (See Natural Resources Code §81.071)

7. **Issue 6:** The Railroad Commission's contracting procedures are improving, but continued attention is needed.

Key recommendations:

(a) **6.1** Direct the Railroad Commission to centralize all contract administration functions by September 1, 2016.

Result: Adopted with management action required, but nonstatutory
(See Natural Resources Code §81.072)

(b) **6.2** Direct the Railroad Commission to implement and keep updated contracting best practices as outlined by recent legislation and the comptroller.

Result: Adopted with management action required, but nonstatutory

- (c) **6.3** Direct the Railroad Commission’s executive director to report quarterly to the commissioners at their open meetings regarding the status of contracting improvements.

Result: Adopted with management action required, but nonstatutory

- 8. **Issue 7:** The Railroad Commission’s statute does not reflect standard elements of Sunset Reviews.

Key recommendations:

- (a) **7.1** Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the Railroad Commission.

Result: Adopted (See Natural Resources Code §81.065)

- (b) **7.2** Allow the Oil and Gas Regulation and Clean-Up Fund Advisory Committee to expire.

Result: Adopted

- (c) **7.3** Continue requiring the Railroad Commission to submit its report on the Oil and Gas Regulation and Clean-Up Fund to the Legislature.

Result: Adopted

II. Conclusion

Exhibits

1. Final Bill, H.B No. 1818
2. Excerpts of Final Results and Sunset Commission Decisions issued June 2017

EXHIBIT 1

AN ACT

relating to the continuation and functions of the Railroad Commission of Texas; providing for the imposition of fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 81.01001(a), Natural Resources Code, is amended to read as follows:

(a) The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2029 [~~2017~~].

SECTION 2. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065 and 81.066 to read as follows:

Sec. 81.065. ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for alternative dispute resolution; and

(3) collect information concerning the effectiveness of those procedures.

Sec. 81.066. OIL AND GAS DIVISION MONITORING AND ENFORCEMENT STRATEGIC PLAN. (a) The oil and gas division of the commission shall develop and publish an annual plan for each state fiscal year to use the oil and gas monitoring and enforcement resources of the commission strategically to ensure public safety and protect the environment.

(b) The commission shall seek input from stakeholders when developing each annual plan.

(c) The commission shall collect and maintain information that accurately shows the commission's oil and gas monitoring and enforcement activities. Each annual plan must include a report of the information collected by the commission that shows the commission's oil and gas monitoring and enforcement activities over time.

(d) The information described by Subsection (c) must include data regarding violations of statutes or commission rules that relate to oil and gas, including:

(1) the number, type, and severity of:

(A) violations the commission found to have occurred;

(B) violations the commission referred for enforcement to the section of the commission responsible for enforcement; and

(C) violations for which the commission imposed a penalty or took other enforcement action;

(2) the number of major violations for which the commission imposed a penalty or took other enforcement action; and

(3) the number of repeat major violations, categorized by individual oil or gas lease, if applicable.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Administrative Regulation and Sunset Review:
Railroad Commission of Texas

Also available as part of the eCourse

[2017 Advanced Texas Administrative Law eConference](#)

First appeared as part of the conference materials for the
12th Annual Advanced Texas Administrative Law Seminar session
"Administrative Regulation and Sunset Review"