

Background Paper 79-4

SUNSET LEGISLATION

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I

INTRODUCTION

Government at all levels is held in low esteem by the governed. The factors contributing to this public disenchantment are widely recognized. Certain essential services are not delivered, while others are provided in an inefficient and wasteful manner. Taxes continue to climb. Accountability is often undermined by secrecy and special interest domination. Public administrators are overwhelmed by the white plague of paperwork. And, legislative bodies do not effectively perform their oversight function. In this atmosphere, Sunset legislation has emerged as one of the most significant public management issues of the 1970's.*

The so-called "sunset mechanism" whereby programs and agencies are periodically and comprehensively reviewed under threat of termination, is believed by many to provide the incentive and discipline necessary to increase government's accountability to the people and adherence to public policy. "Sunset" is a popular term used to characterize legislation which calls for the automatic termination of government agencies or programs unless they are extended by specific legislation. Interest in sunset-type laws has been fostered by efforts to improve legislative oversight, including program evaluation and

*Adams, Bruce and Betsy Sherman. "Sunset Implementation: A Positive Partnership to Make Government Work." Public Administration Review, (January, February 1978), 78.

improved budget analysis techniques, which have intensified over the past decade. Recently, this interest has been fueled by tax and expenditure initiatives being proffered in many states.

The sunset concept is not new. Former Supreme Court Justice William O. Douglas, when he was chairman of the Securities and Exchange Commission, proposed to President Franklin Delano Roosevelt that every federal agency should be abolished within 10 years of creation. In Go East Young Man, he says:

The great creative work of a federal agency must be done in the first decade of its existence if it is to be done at all. After that it is likely to become a prisoner of bureaucracy and of the inertia demanded by the establishment of any respected agency. This is why I told F.D.R. over and over again that every agency he created should be abolished in 10 years. And since he might not be around to dissolve it, he should insert in the basic charter of the agency a provision for its termination. Roosevelt would always roar with delight at that suggestion, and of course never did do anything about it.

Since Justice Douglas made this statement to President Roosevelt, many well-documented efforts have been made at the federal and state levels to improve program evaluation in an attempt to insure the continuing viability and usefulness of various, mostly executive branch, governmental agencies. Some say, however, that sunset is the most effective comprehensive legislative oversight, control and program evaluation tool which an oversight body can use because of the potential of finality it offers to outmoded, unnecessary or undesirable governmental agencies or programs.

Common Cause, whose Colorado Chapter is credited with initiating the sunset concept, has suggested ten basic principles for a "workable" sunset law. They are:

Sunset Principles

1. The programs or agencies covered under the law should automatically terminate on a date certain, unless affirmatively recreated by law.
2. Termination should be periodic in order to institutionalize the process of reevaluation.
3. Introduction of the Sunset mechanism should be phased in gradually, beginning with those programs to which it seems most applicable.
4. Programs and agencies in the same policy area should be reviewed simultaneously in order to encourage consolidation and responsible pruning.
5. Consideration by the relevant legislative committees must be preceded by competent and thorough preliminary studies.
6. Existing bodies should undertake the preliminary evaluation work, but their evaluation capacities must be strengthened.
7. Substantial committee reorganization, including adoption of a system of rotation of committee members, is a prerequisite to effective Sunset oversight.
8. In order to facilitate review, the Sunset proposal should establish general criteria to guide the review and evaluation process.
9. Safeguards must be built into the Sunset mechanism to guard against arbitrary termination and to provide for outstanding agency obligations and displaced personnel.
10. Public participation in the form of public access to information and public hearings is an essential part of the Sunset process.

II

STATE AND FEDERAL SUNSET LEGISLATION

In 1976, Colorado became the first state in the nation to enact a sunset law. Since then every state has considered such legislation and, according to The Council of State Governments, 27 states have enacted sunset laws.*

A majority of the sunset laws (such as those of Alaska, Connecticut, Florida, Georgia, Hawaii, Kansas, Maine, Maryland, Montana, Nebraska, New Mexico, North Carolina and Utah), are similar to Colorado's and focus primarily on regulatory agencies or specific programs. Others (such as those of Alabama, Arkansas, Louisiana, Tennessee and Texas) are comprehensive and apply to most state agencies. Certain states, including South Dakota and Washington, have enacted sunset laws which established pilot programs to test the sunset concept. And, some states (Alabama, Louisiana, Oklahoma and Rhode Island) have included a zero base budget review as

*Alabama (Act No. 512 of 1976), Alaska (Chapter 149 of 1977), Arkansas (Act 100 and Act 392 of 1977), Colorado (H.B. 1088 of 1976 and S.B. 6 of 1977), Connecticut (Chapter 614 of 1977), Florida (Chapter 76-168 of 1976 and S.B. 1238 of 1977), Georgia (S.B. 4 of 1977), Hawaii (S.B. 460 of 1977), Indiana (H.B. 2181 and H.B. 1763 of 1977 and S. Enr. Act No. 43 of 1978), Kansas (H.B. 2976 of 1978), Louisiana (Act. No. 277 of 1976), Maine (L.D. 1206 of 1977), Maryland (S.B. 405 of 1978), Montana (Chapter 562 of 1977), Nebraska (L.B. 257 of 1977), New Hampshire (Chapter 436 of 1977), New Mexico (H.B. 133 of 1977), North Carolina (Chapter 712 of 1977), Oklahoma (S.B. 138 of 1977), Oregon (H.B. 2323 of 1977), Rhode Island (Chapter 260 of 1977), South Dakota (S.B. 1 of 1977), Tennessee (Chapter 452 of 1977), Texas (S.B. 54 of 1977), Utah (S.B. 63 of 1977), Vermont (Act No. 183 of 1978), and Washington (Chapter 289 of 1977).

part of their sunset laws. Attachments A, B, C and D, taken from a report entitled Sunset: The Concept and Its Experience prepared by the Hawaii Legislative Reference Bureau, illustrate the significant aspects of 21 states' sunset laws.

At the Federal level, one attempt at sunset legislation has been the Federal Advisory Committee Act of 1972, Public Law No. 92-463, 88 Stat. 770. This statute provides for termination of all federal advisory committees 2 years after creation unless renewed by order of the appointing authority or by congressional action.

More recent congressional efforts at sunset legislation have included S 2, S 600 and HR 9533, all of the 95th Congress. The heart of the sunset proposals contained in S 2 and HR 9533 is the requirement that congress periodically reauthorize programs after a comprehensive review. Both these bills would have ended funding after a date set by law unless congress evaluated the specified programs and took positive action to renew them. A termination schedule of 10 years was set in S 2. None of the recent Federal sunset measures have been enacted into law.

Perhaps most interest to date has been generated by Colorado's sunset law, which limits the life of each agency and commission in Colorado's Department of Regulatory Agencies to 6 years.

The law establishes a schedule for legislative review with one-third of the department's boards and commissions designated for termination every other year. Agencies with similar functions are grouped together. The sunset law requires the Legislative Audit Committee to have a performance audit report prepared on each agency at least 6 months prior to the termination date. A public hearing is required before termination, continuation, or reestablishment of any agency.

The Colorado sunset law lists several factors which, among others, must be considered in determining whether there is a public need for an agency's continued existence. Factors which must be considered include the extent to which:

1. The agency has permitted qualified applicants to serve the public;

2. Affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates;
3. The agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of the Department of Regulatory Agencies, and any other circumstances, including budgetary, resource and personnel matters;
4. The agency has recommended statutory changes to the general assembly which would benefit the public as opposed to the persons it regulates;
5. The agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency on the public regarding improved service, economy of service and availability of service;
6. Persons regulated by the agency have been required to assess problems in their industry which affect the public;
7. The agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;
8. The efficiency with which formal public complaints filed with the agency concerning persons subject to its regulation have been processed to completion.

Florida's sunset law, which was the second state sunset law in the nation, contains certain different criteria which must be considered during the sunset review of an agency. Questions which must be asked in reviewing a regulatory agency in Florida are:

1. Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?
2. Is there a reasonable relationship between the exercise of the State's police power and the protection of the public health, safety or welfare?

3. Is there another, less restrictive, method of regulation that could adequately protect the public?
4. Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
5. Is the increase in cost more harmful to the public than the harm that could result from the absence of regulation?
6. Are all facets of the regulatory process designed solely for the purpose of, and do they have as their primary effect, the protection of the public?

Dr. Benjamin Shimberg, Associate Director, Center for Occupational and Professional Assessment, Educational Testing Service, has criticized Colorado's sunset criteria in comparison with Florida's because they emphasize effectiveness and efficiency without, he believes, addressing the more important factor of whether agencies or functions are needed. He says: "If need cannot be demonstrated, there is no point in applying the criteria relating to performance." He also advises that Florida's criteria, "* * * are precisely the questions which should be asked regarding need." Some believe, however, that Florida's criteria do not address performance. Following this train of criticism, it appears that both sets of criteria contain attributes and deficiencies possessed or possibly lacking in the other.

Other review criteria embodied in the states' sunset laws include:

1. The degree to which an agency has accomplished its statutory goals and objectives and whether the agency has complied with the statutes defining its powers and duties;
2. The extent to which an agency's operations have been efficient and responsive to public needs; and
3. Whether the functions of the agency being reviewed overlap or duplicate the functions of any other state agency.

III

INITIAL EVALUATIONS OF SUNSET

The initial evaluations of the states' sunset laws have been mixed and some of the euphoria which greeted the sunset concept is dissipating. In discussing the states' experiences with sunset in an April 1978 "State-By-State Summary of Sunset Legislation" Common Cause says:

In 1977, Colorado and Alabama were the first two states to implement Sunset laws. In Colorado, the experience was good, with 13 agencies subject to two outside evaluations each. Three boards were terminated and others consolidated or re-established with modifications designed to improve their performance. Action on several boards was delayed until 1978. The 1977 Alabama experience was a case study in how a Sunset process should not work. The part time legislature acted on over 200 agencies. Because of the crushing workload, few detailed evaluations were prepared and the information that was assembled was not used to change statutes or adjust budgets.

The 1978 Sunset implementation experience has been positive. In the seven states implementing Sunset laws for the first time--Florida, Georgia, Hawaii, Nebraska, New Mexico, Oklahoma, and South Dakota--legislative action has been responsible, based on evaluation and deliberation. The results to date generally resemble the 1977 Colorado experience. Some agencies have been terminated but most have been recreated with modifications designed to improve their performance. Internal improvements not requiring statutory change have been made by many boards in anticipation of their Sunset reviews.

Certain of the perceived problems with sunset legislation were listed by Governor Robert D. Ray of Iowa who vetoed his state's sunset bill in June 1976. In his veto message, Governor Ray noted his concerns and views about sunset:

1. The cost of proper * * * (Sunset)* * * review. The Iowa Legislature appropriated \$50,000 to a newly created Performance Audit Division to conduct the performance audits. Governor Ray implied that the amount was insufficient;*
2. The legislative session would be prolonged if the legislature were to conduct its mandated functions under the bill;
3. Actions of agencies may shift from the emphasis on providing quality service to how they would appear to the legislature;
4. Agencies with the ability to sell bonds may have this function impaired if faced with termination;
5. Academic freedom of the Board of Regents of the state universities may be violated by legislative intrusion;
6. The legislature already has the oversight powers, but fails to exercise them; and
7. The "vagaries" of the legislative process could kill legitimate agencies.

Despite mixed reports on sunset, proponents contend that if the concept is put into operation with care, it will improve government agencies:

*Early reports on the cost of sunset appear to indicate that initial attempts at sunset may not be cost effective. According to the California Legislative Analyst in his report entitled A Review of the "Sunset" Concept and Possible Alternatives For California:

In terms of budget impact alone, Colorado's experience during the first year of sunset was not cost effective. Approximately \$195,000 was spent to eliminate four boards with a combined budget of about \$11,000.

We never said that sunset would cut the costs or size of government, says Rosalie Schiff, Common Cause Director in Colorado. "All we ever said was that sunset could make government more accountable and efficient."

In the words of Alabama State Senator George McMillan, sponsor of that state's sunset law: "Agencies have never been forced to undergo this kind of scrutiny, and it will take a while to see the law's potential realized. I don't expect Camelot overnight."*

Common Cause is currently surveying the states to ascertain the states' experiences in implementing sunset legislation. A report on the survey should be available during the early part of the 1979 legislative session.

IV

RECENT SUNSET LEGISLATION IN NEVADA

Two bills (A.B. 465 and S.B. 219) and one resolution (S.C.R. 5) were introduced during the Nevada Legislature's 1977 Session, which dealt with the sunset mechanism or performance auditing. None of these measures became law. In addition to these "general" measures, the Legislature considered and passed (1) A.B. 152 (Chapter 600, Statutes of Nevada 1977) which revises the laws pertaining to the Nevada State Dairy Commission and provides for the automatic termination of the commission on July 1, 1981, and (2) S.B. 523 (Chapter 575, Statutes of Nevada 1977) which provides that, "On March 1, 1979, the office of the state fire marshall is abolished and its duties are transferred to the commissioner of insurance."

*"Sunset Laws: One More Brave Idea That's Gone Awry?" U. S. News and World Report, (May 29, 1978), 46.

S.B. 219

Senate Bill 219, the only "true" sunset measure considered by the 1977 Nevada Legislature, died in the Assembly Committee on Government Affairs.

The first version of S.B. 219 provided for the automatic termination of 141 boards and commissions over a 4 year period (37 in 1979, 74 in 1981 and 30 in 1983). Basically, the 3 different groups of boards and commissions scheduled for termination in the first version of S.B. 219 were taken from the report entitled Nevada Executive Branch Boards and Commissions Recommended for Change, which had been done by the governor's office of planning coordination prior to the 1977 Legislative Session. The first group (1979 terminations) were those boards and commissions which the planning coordinator had recommended for repeal. The second group (1981 terminations) were those boards and commissions which the planning coordinator had recommended be changed and the third group (1983 terminations) were those agencies which the planning coordinator had recommended be retained.

The Senate amended S.B. 219 by making it, in effect, a "test" sunset bill. The 37 agencies scheduled for termination for July 1, 1979, were left in the revised bill. Also, a so-called zero base budgeting provision was added as a requirement for the budgets of the state department of education and the department of economic development.

A.B. 465

A.B. 465 provided for the Legislative Commission, with the aid of the Interim Finance Committee, to conduct performance reviews of executive agencies (not just boards and commissions) at least once every six years. The measure was not a "true" sunset measure because it did not provide for automatic termination of agencies. The bill required both the fiscal division and the legislative auditor to conduct audits on the affected agencies and also required that specified findings be made, by the commission, on the (a) Quality of agency management; (b)

Efficiency of each program conducted by the agency; (c) Effects of the agency on private business and industry, both positive and negative; (d) New programs which should be undertaken by the agency, and existing programs which should be discontinued, curtailed or transferred to another agency; (e) Duplication of effort with other agencies and actions to be taken to eliminate duplication; and (f) Whether the agency should continue, be abolished, be extensively reorganized or be merged with or into another agency.

S.C.R. 5

S.C.R. 5, which did not come out of the Senate Committee on Legislative Functions, directed the Legislative Commission to study the feasibility of establishing a program of comprehensive performance auditing of state agencies, which would complement the usual financial and compliance auditing, and would include examinations of the management of the agencies' resources and the achievement of their established objectives with economy and efficiency.

V

ISSUES TO CONSIDER

The issues involved in considering a sunset measure are complex and require thorough policy analysis. Questions which might be asked in reviewing a sunset proposal might include:

1. What agencies or programs should be included in the scope of the legislation? Despite many ways to limit the scope of sunset legislation, most measures cover either all agencies or limit themselves to specified regulatory agencies. A more selective approach could be taken which provides for review of selected agencies or selected programs within agencies.
2. What is the appropriate termination schedule, if any, for the agencies or programs covered in the sunset legislation? The sunset proposals identified earlier call for a staggered system of agency or program termination. The length of time between agency review and termination varies from 4-12 years.

Proponents of the sunset concept believe that review periods should not be so short as to prompt the agencies to spend most of their time on public relations efforts directed at the next review period nor should the review period be so long that the agencies develop entrenched bureaucracies or powerful special interest groups depending upon them for continued livelihood. Some believe that no specific termination date should be established in sunset measures because all that such dates do is create intensive lobbying efforts by agencies to have themselves amended out of the sunset legislation. An alternative to mandatory termination dates is to provide thorough agency performance and budget review with the option of termination by the legislature as it sees fit. Of course, all statutory agencies live at the discretion of the legislature with or without sunset legislation. It is argued, however, that sunset legislation, with mandatory termination dates, provides the incentive and "teeth" necessary to accomplish the purpose of the sunset concept, removal of unnecessary or outmoded government agencies.

3. What is the appropriate mechanism for legislative review which should be embodied in sunset legislation? In Nevada, an approach might be interim review of specified agencies or programs by the Legislative Commission, with staff support provided by the Legislative Counsel Bureau. This approach would permit various legislative staff disciplines and abilities to be involved in the initial review and reporting process. After the interim, specified standing committees of the legislature could consider the reports and recommendations of the Legislative Commission for the agencies it had evaluated. One important consideration involved in the adoption of sunset legislation is the potential substantial increase in the workload of the legislature and its staff and the implications that this could have on future legislative staffing patterns and budget requirements.
4. What evaluation tools should be specified in sunset legislation? Spokesmen for sunset legislation say that the review

process should be clearly mandated by the legislature. Such process should include both general and specific program evaluation standards. Also mentioned is the use of so-called zero-base budgeting. Other budgetary reforms designed to improve legislative oversight might also be considered for inclusion in sunset-type legislation.

5. What should happen to the statutory law relating to an agency if the agency is abolished through the sunset process? It has been stated that one problem with the sunset legislation in several states (such as Alaska, Colorado, Connecticut, Montana, Nebraska, New Mexico, North Carolina, Oklahoma and Washington) is that the legislation provides for the termination of agencies without repealing the underlying statutes relating to such agencies. According to Dan R. Price of the State Bar of Texas:

A major problem occurs when the agency or program is abolished, but the statute creating that entity remains on the books. For example, in Colorado, if the Board of Cosmetology was terminated, the law creating licensing for cosmetologists would remain. Thus, there would be a requirement for licensing, but no entity to issue the license or otherwise regulate the licensees. * * * Of course, this problem is not insurmountable, for other agencies could assume the abolished agency's duties, but it is much cleaner to abolish the agency and the statutes.*

This paper has only attempted to highlight issues. It has made no attempt to assess the situation in Nevada concerning the need, or lack of it, for sunset legislation. Rather it has tried to make the subject comprehensible. Finally, it has made no attempt to recommend action.

*Price, Dan R. "Sunset Legislation in The United States." State Bar of Texas. September 1977.

SUGGESTED READING*

(Available in the Research Library)

A Review of the "Sunset" Concept and Possible Alternatives for California. Legislative Analyst of the State of California Report 77-30, December, 1977.

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Adams, Bruce and Betsy Sherman. "Sunset Implementation: A Positive Partnership to Make Government Work." Public Administration Review (January, February 1978), 78-81.

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Brooks, Sidney B. "The First Measure of Sunset." The Colorado Lawyer, (January 1978), 14-20.

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March, Michael S. and Others. Sunset Review, The Colorado Program: Statutes, Organization, Methodology, Evaluation Criteria, and Results. University of Colorado, November 15, 1977.

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The Sunset Phenomenon, Report of the Joint Legislative Audit and Review Commission and Advisory Task Force on Sunset Legislation to the Governor and the General Assembly of Virginia. House Document No. 12. Commonwealth of Virginia. 1978.

Triplett, Thomas J. "Sunset Legislation: Background and Issues." Letter to members of the Minnesota Senate from Assistant Senate Counsel, June 28, 1976.

*A comprehensive bibliography on publications pertaining to the sunset concept is available for review in the research library. Also available are copies of relevant state and federal legislation.

ATTACHMENT A

SUMMARY OF VARIOUS SIGNIFICANT ASPECTS

STATE	SCOPE	WHAT TERMINATES	PERIOD FOR WHICH REVIEWED AGENCIES MAY BE REESTABLISHED	ANNUAL TERMINATION DATE	SCHEDULE OF TERMINATION
Alabama	Comprehensive	Agencies	Not to exceed 4 years	October 1	18 in 1977; 34 in 1978; 18 in 1979; 33 in 1980
Alaska	Regulatory, selected, programs in budget ¹	Agencies and Programs	Agencies--Not to exceed 4 years; Pro- grams subject to termination in 4th reg. session	Agencies--June 30 Programs--July 1	13 in 1979; 13 in 1980; 1 in 1981; and budget programs ²
Arkansas	Comprehensive	Agencies	None specified	June 30	149 in 1979; 89 in 1981; 89 in 1983
Colorado	Regulatory	Agencies	Not to exceed 6 years	July 1	13 in 1977; 10 in 1979; 13 in 1981
Connecticut	Primarily Regulatory	Agencies and Programs	Not to exceed 5 years	July 1	19 in 1980; 17 in 1981; 16 in 1982; 20 in 1983; 22 in 1984
Florida	Regulatory	Statutes	Not to exceed 6 years	July 1	12 in 1978; 25 in 1979; 24 in 1980; 36 in 1982
Georgia	Regulatory	Agencies and Statutes	Not to exceed 6 years	July 1	10 in 1978; 17 in 1980; 17 in 1982
Hawaii	Regulatory	Statutes	None specified ³	December 31	6 in 1978; 6 in 1979; 6 in 1980; 7 in 1981; 7 in 1982; 7 in 1983
Indiana	Selected	Agencies ⁴	5	December 31	21 in 1978
Louisiana	Comprehensive	Agencies and Statutes	Not to exceed 4 years	July 1	6
Montana	Primarily Regulatory	Agencies	Not to exceed 6 years	July 1	14 in 1979; 21 in 1981; 11 in 1983
Nebraska	Regulatory	Agencies	Not to exceed 6 years	July 1	6 in 1978; 5 in 1979; 7 in 1980; 5 in 1981; 5 in 1982; 8 in 1983
New Mexico	Regulatory	Agencies	Not to exceed 6 years	July 1	19 in 1978; 9 in 1979; 16 in 1980
North Carolina	Regulatory	Statutes	None specified	July 1	33 in 1979; 34 in 1981; 33 in 1983
Oklahoma	Comprehensive	Agencies	Not to exceed 5 years	July 1	21 in 1978; 15 in 1979; 18 in 1980; 16 in 1981; 20 in 1982; 21 in 1983 ⁷
Rhode Island	Selective	Statutes	Not to exceed 5 years	January 30	31 in 1979
South Dakota	Selective	Agencies and Statutes	None specified	June 30	8 in 1978
Tennessee	Comprehensive	Agencies	6 years	July 30	35 in 1980; 12 in 1981; 20 in 1982; 66 in 1983; 43 in 1984; 46 in 1985
Texas	Comprehensive	Agencies	Not to exceed 12 years	September 1	26 in 1979; 29 in 1981; 28 in 1983; 35 in 1985; 25 in 1987; 23 in 1989 ⁸
Utah	Regulatory	Statutes	Not to exceed 6 years	July 1	9
Washington	Selective and Discretionary ¹⁰	Agencies and Programs	Not to exceed 6 years	June 30	4 programs in 1978; 5 agencies and programs in 1979

¹Alaska reviews: regulatory agencies; Alcoholic Beverage Control Board; Alaska Transportation Commission; State Board of Parole; Alaska Public Utilities Commission; Alaska Pipeline Commission; and programs of selected budget categories.

²Programs in budget categories of general government, public protection, and administration of justice subject to review in January 1980; programs in budget categories of education and the University of Alaska subject to review in January 1981; programs in budget categories of health and social services subject to review in January 1982; and programs in budget categories of natural resources management, development and transportation subject to review in January 1983. Programs selected for review terminate on July 1 of the following year.

³Hawaii's sunset law does not specify a reestablishment period. Section 26H-5, Hawaii Revised Statutes, however does provide that the impact statement may recommend that the agency be extended for not more than six years.

⁴Indiana provides that agencies and all their powers, duties, and functions terminate.

⁵Indiana provides that: agencies created by resolution expire with the end of the General Assembly which created them; agencies created by executive order expire when the officer who creates them ceases to hold office; and agencies created by Act of the General Assembly after January 1, 1977 expire 10 years after their creation unless otherwise specified.

⁶Louisiana provides that 4 departments and the agencies under them and the agencies of the Department of State terminate on July 1, 1979; 2 departments and the agencies under them and the agencies under 3 departments terminate on July 1, 1980; 3 departments and the agencies under them and the agencies under 3 departments terminate on July 1, 1981; and 1 department and the agencies under it, the agencies under 3 departments, and all other agencies terminate on July 1, 1982.

⁷Oklahoma also provides that 20 agencies created by executive order are to be reviewed at least once every 4 years coterminous with each Governor. At least one-fourth of the review is required to be completed each year. The first review of executive order agencies is required to be completed on or before July 1, 1979.

⁸Texas also provides that 2 agencies do not terminate but are reviewed on September 1, 1985; 3 agencies do not terminate but are reviewed on September 1, 1987; and 7 agencies do not terminate but are reviewed on September 1, 1989.

⁹Utah provides the following:

- (1) Title 58, Utah Code Annotated 1953 - Department of Registration and laws pertaining to regulated professions, trades, and occupations repealed on July 1, 1979;
- (2) Title 61, Utah Code Annotated 1953 - Utah Uniform Securities Act, State Securities Commission, Board of Real Estate Examiners, and laws pertaining to real estate brokers repealed on July 1, 1981;
- (3) Title 8, chapter 4, Utah Code Annotated 1953 - Cemetery Board within the Department of Business Regulations, its duties and responsibilities repealed on July 1, 1981; and
- (4) Title 13, chapters 1 and 2, Utah Code Annotated 1953 - Department of Business Regulations and Trade Commission of Utah, its duties and responsibilities repealed on July 1, 1983.

¹⁰Washington provides for the termination of certain programs and agencies in its sunset law. The law also provides that a select joint committee consisting of 5 members of the Senate and 5 members of the House identify and devise a termination schedule for other agencies.

ATTACHMENT B

REVIEWING AGENCIES AND PROCEDURES

STATE	PERFORMANCE AUDIT BODY	DEADLINE FOR PERFORMANCE AUDIT	PUBLIC HEARINGS PERFORMANCE AUDIT	LEGISLATIVE REVIEW BODY ¹	PUBLIC HEARINGS LEGISLATIVE REVIEW ²
Alabama	Select joint committee ³	No specific provision	Yes	No specific provision	No specific provision
Alaska	Legislative Audit Division ⁴	First day of reg. session of year of term. date	No	Appropriate committee of each house	Yes
Arkansas	Division of Legislative Audit ⁵	At least 3 mos. prior to term. date	No	Appropriate joint interim committee then Joint Interim Committee on State Agencies and Governmental Affairs ⁶	Yes
Colorado	Legislative Audit Committee ⁷	At least 6 mos. prior to term. date	Yes	Appropriate committee of each house	Yes
Connecticut	Legislative Program Review and Investigations Committee ⁸	January 1 of year of term. date	No	Joint Committee on Governmental Administration and Policy ⁹	Yes
Florida	Appropriate committee of each house, sitting jointly ¹⁰	No specific provision	No	No specific provision	No specific provision
Georgia	State Auditor ¹¹	January 1 of year of term. date	No	Appropriate committee of each house	Yes
Hawaii	Reviewed agency ¹²	October 1 of year prior to term. date	No	Joint committee ¹³	Yes
Indiana	Selected committee ¹⁴	End of year in which assigned	Yes	No specific provision	No specific provision
Louisiana	Appropriate committee in each house or joint committee	No specific provision	Yes	No specific provision	No specific provision
Montana	Legislative Audit Committee ¹⁵	At least 6 mos. prior to term. date	No	Appropriate committee of each house, sitting jointly or singly	Yes
Nebraska	Performance Review and Audit Committee ¹⁶	October 1 of year prior to term. date	No	Appropriate committee	Yes
New Mexico	Legislative Finance Committee ¹⁷	No specific provision	Yes	No specific provision	No specific provision
North Carolina	Governmental Evaluation Commission ¹⁸	No specific provision	Yes	Appropriate committee to each house	Yes
Oklahoma	Appropriate committee of each house or appropriate interim committee of Legislative Council	No specific provision	Yes	No specific provision	No specific provision
Rhode Island	Auditor General ¹⁹	No specific provision	No	Oversight Commission ²⁰	Yes
South Dakota	Interim committee	No specific provision	Yes	No specific provision	Yes
Tennessee	Subcommittee of appropriate committee of each house, sitting jointly	No specific provision	Yes	No specific provision	No specific provision
Texas	Sunset Advisory Commission ²¹	June 1 of even year before term. date	Yes	No specific provision	No specific provision
Utah	Committee assigned by Legislative Management Committee	January 1 of the year of term. date	No	No specific provision	No specific provision
Washington	Legislative Budget Committee ²² and Office of Financial Management ²³	Sept. 30 and December 31 of year prior to term. date	No	Appropriate committee of each house	Yes

¹The sunset laws of some states name only one body in its sunset review procedure. From examination of the law, it is sometimes difficult to ascertain whether that body conducts both the performance audit and legislative review or whether the laws skip either the performance audit or legislative review. The statement "no specific provision" in this column means that only one body is named in the sunset review procedure.

²The statement "no specific provision" in this column mean that:

- (1) The sunset law of the particular state does not explicitly provide for public hearings in the legislative review process; or
- (2) The public hearing requirement for the performance audit may also apply to legislative review when one body does both.

³Consists of the Chairperson of the Senate Finance and Taxation Committee; Chairperson of the House Ways and Means Committee; 2 members of the Senate and 2 members from the House elected in the same manner as members of the Legislative Council; 2 members of the Senate and 2 members of the House appointed by the presiding officer of the respective house; and 1 public member appointed by the Governor.

⁴The staff agency for the Legislative Budget and Review Committee. See sections 24.20.241, et. seq. of the Alaska Statutes.

⁵Staff agency of the General Assembly, generally responsible for the auditing of agencies, officers, or functions receiving state moneys. See title 13, chapter 15 of the Arkansas Statutes.

⁶An interim committee with general jurisdiction over the state government and state agencies. Consists of 20 representatives and 7 senators. See section 4-1001 of the Arkansas Statutes.

⁷Supervises the State Auditor and is concerned with the auditing of the utilization of public funds. Consists of 8 legislators; 4 from each house appointed by the respective leader of that house with the majority approval of their fellow members. See title 2, article 3, part I of the Colorado Revised Statutes.

⁸Consists of 12 legislators, generally responsible for conducting investigations and examination of state government programs and administration. See section 2-53d-2-53j of the General Statutes of Connecticut.

⁹Charged with the general duty of the oversight of government organizations and reorganization. See section 584 of Public Act 77-614.

¹⁰Florida's sunset law also provides that a select joint committee is charged with establishing "...administrative procedures which shall facilitate the review and evaluation required...."

¹¹Executive head of the Department of Audits and Accounts and responsible for the auditing and accounting of state funds. See chapter 40-18 of the Code of Georgia Annotated.

¹²Agency under review conducts a performance audit in the form of an impact statement.

¹³Members appointed by the presiding officer of each house.

¹⁴Committee to be named by the leader of each house. May be a standing committee of either house; joint committee consisting of members of the appropriate standing committee of each house; or a special committee of members from each house.

¹⁵Consists of 8 legislators and supervises the Legislative Auditor. See title 79, chapter 23 of the Revised Code of Montana.

¹⁶Generally responsible for the performance review of state agencies. Composed of members of the Appropriations Committee, Speaker, Chairperson of the Executive Board of the Legislature, and the chairpersons of the standing committee of jurisdiction over the agency reviewed. See chapter 50, article 7 of the Revised Statutes of Nebraska.

¹⁷Composed of 9 legislators. Generally concerned with the finance and operation of the state government. See chapter 2, article 5 of the New Mexico Statutes.

¹⁸Consists of 6 public members and 4 legislative members.

¹⁹An officer appointed by the Legislature with the general duty of performing audits. See title 42, chapter 13 of the General Laws of Rhode Island.

²⁰Consists of 3 members from the House of Representatives appointed by the Speaker, not more than 2 from the same political party; 2 members from the Senate appointed by the Majority Leader, not more than 1 from the same political party; the Director of Administration; Fiscal Advisor to the House Finance Committee; Auditor General; and 3 members of the general public appointed by the Governor.

²¹Consists of 4 members of the Senate appointed by the Lieutenant Governor and 4 members of the House of Representatives appointed by the Speaker. Lieutenant Governor and Speaker designate themselves as appointees.

²²Consists of 8 senators and 8 representatives appointed by the leader of their respective houses. Generally responsible for the oversight of state agencies. See chapter 44.28 of the Revised Code of Washington Annotated.

²³Executive agency providing planning and technical assistance to the Governor and Legislature in the general area of state expenditures and budgeting. See chapter 43.41 of the Revised Code of Washington Annotated.

ATTACHMENT C

CRITERIA FOR REVIEW

The numbered columns correspond to the numbered criteria in the key below. An "x" in the column means that the state's sunset law utilizes that particular criteria.

Washington's sunset law has one criteria for regulatory agencies and another for other agencies. Both criteria presented separately.

In addition, Appendix C lists other criteria which are less used than those presented in this Table.

States	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
ALABAMA						X	X		X	X		X				X	X		
ALASKA						X	X	X	X	X		X					X	X	
ARKANSAS												X			X		X	X	
COLORADO						X	X	X	X	X	X	X	X				X	X	
CONNECTICUT	X		X	X	X	X	X		X			X					X		
FLORIDA	X	X	X	X	X									X					
GEORGIA	X				X	X	X	X	X	X	X	X	X				X	X	
HAWAII ¹		X	X	X	X	X													
INDIANA															X	X	X		
LOUISIANA ²																			
MONTANA	X	X	X	X	X									X					
NEBRASKA	X	X	X	X	X	X		X	X	X	X	X	X	X	X		X	X	
NEW MEXICO						X		X	X	X	X	X	X				X	X	
NORTH CAROLINA						X						X			X	X	X		
OKLAHOMA							X		X			X			X	X	X		X
RHODE ISLAND	X											X			X				X
SOUTH DAKOTA							X		X	X		X				X	X		
TENNESSEE	X		X			X	X	X	X	X	X	X	X		X		X	X	
TEXAS					X		X		X			X	X		X	X	X		X
UTAH	X							X				X			X			X	X
WASHINGTON Reg. Agen.	X		X			X		X	X	X	X	X			X		X		X
Other Agen.	X							X							X	X			X

KEY

FUNCTIONS NEEDED

- (1) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?
- (2) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?
- (3) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and if so, to what degree?

(4) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

BETTER WAY TO EXECUTE FUNCTIONS

(5) Is there another less restrictive method of regulation available which could adequately protect the public effectiveness

(6) What is the extent to which the agency has permitted qualified applicants to serve the public?

(7) What is the extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates?

(8) What is the extent to which the agency has operated in the public interest?

(9) What is the extent to which the agency has recommended statutory changes to the legislative body which benefit the public as opposed to the persons it regulates?

(10) What is the extent to which the agency has required or encouraged the persons it regulates and/or interested persons to report to it concerning the impact of rules and decisions of the agency on the public regarding improvement of service, economy of service, and availability of service?

(11) What is the extent to which persons regulated by the agency have been required to assess problems in the industry which affect the public?

(12) What is the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those persons it regulates?

(13) What is the extent to which changes are necessary in the enabling laws of the agency to adequately complete items (6) to (12)?

(14) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary objective, the protection of the public?

(15) What is the degree to which the agency has accomplished its statutory goals and objectives and/or whether it has complied with laws and statutes defining its powers and duties?

(16) What is the extent to which operation has been efficient and responsive to public needs?

(17) What is the efficiency with which formal public complaints and/or inquiries have been processed to completion?

(18) What is the extent to which or whether its operation has been impeded or enhanced by existing statutes, rules, and practices of the department it is placed under, including budgetary, resource, and personnel matters?

(19) Whether the functions of the agency overlap or duplicate the functions of any other agency?

¹Hawaii's criteria are represented as legislatively declared policy statements. The criteria reads as follows:

- (1) The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;
- (2) Even where regulation of professions and vocations is reasonably necessary to protect consumers, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted;
- (3) Professional and vocational regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who because of a variety of circumstances may be at a disadvantage in choosing or relying on the provider of the service;
- (4) Evidence of abuses by providers of the service shall be accorded great weight in determining whether government supervision is desirable;
- (5) Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided;
- (6) Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers; and
- (7) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

For the purpose of this Table, Hawaii's criteria are assimilated into the criteria of the Table. Hawaii criteria (1) is "x-ed" in column 1. Hawaii criteria (2) is "x-ed" in column 5. Hawaii criteria (3) is "x-ed" in column 3. Hawaii criteria (4) is "x-ed" in column 4. Hawaii criteria (5) is "x-ed" in column 6. Hawaii criteria (6) and (7) are included in Appendix C.

²Louisiana's law mandates a zero-based budget review and evaluation, but mentions no sunset criteria for review. The objectives of the zero-based budget review and evaluation are:

- (1) Elimination of inactive agencies;
- (2) Elimination of agencies which duplicate other agencies or other governmental programs and activities, or an appropriate consolidation of them; and
- (3) Elimination of inefficient, unnecessary, or ineffective agencies.

ATTACHMENT D

PHASE OUT PERIOD AND NEW AGENCIES

STATE	PHASE OUT PERIOD	PERIOD FOR WHICH NEW AGENCIES ARE SUBJECT TO SUNSET MAY BE CREATED BEFORE BEING REVIEWED
Alabama	180 days after termination.	Not to exceed 4 years.
Alaska	Agencies - until June 30 of next year. Programs eliminated from budget.	Nothing specified.
Arkansas	None.	Nothing specified.
Colorado	Until July 1 of the next year.	Not to exceed 6 years.
Connecticut	1 year after termination.	Nothing specified.
Florida	1 year after termination.	1
Georgia	Until July 1 of the next year.	Not to exceed 6 years.
Hawaii	None stated but period is December 31 following the regular session preceding that date.	2
Indiana	None.	3
Louisiana	None.	Not to exceed 4 years.
Montana	Until July 1 of the next year.	Terminates on July 1 of the year of the third regular biennial legislative session following its creation.
Nebraska	Until July 1 of the next year.	Nothing specified.
New Mexico	Until July 1 of the next year.	Nothing specified.
North Carolina	Until July 1 of the next year.	Nothing specified.
Oklahoma	1 year after termination.	Not to exceed 6 years. ⁴
Rhode Island	Up to 1 year after termination.	Terminates on the January 30th which is subsequent to the 60th month from its creation.
South Dakota	180 days after termination.	Nothing specified.
Tennessee	Until June 30 of the next year.	5
Texas	Until September 1 of the next year.	Terminates at the end of the 6th succeeding fiscal biennium after the biennium of its creation.
Utah	Until July 1 of the next year.	Nothing specified.
Washington	Until June 30 of the next year.	Nothing specified.

¹ New programs or functions are required to be reviewed no later than 48 months after becoming effective and the review to be completed not later than January 1 of the next odd-numbered year following the commencement of the review. New programs or functions are repealed on July 1 of each odd-numbered year unless reestablished.

² Any person who advocates the passage of a new regulatory measure which if enacted would subject any unregulated profession and vocation to licensing or other regulatory controls is required to file an impact statement with the clerks of both houses of the Legislature. The impact statement must contain:

- (1) The probable effects of the proposed regulatory law; and
- (2) An assessment of whether the proposed law is consistent with the policies adopted under the Hawaii sunset law.

³ Indiana provides that: agencies created by resolution expire with the end of the General Assembly which created them; agencies created by executive order expire when the officer who creates them ceases to hold office; and agencies created by Act of the General Assembly after January 1, 1977 expire 10 years after their creation unless otherwise specified.

⁴ Prospective agencies are required to be reviewed prior to legislative consideration.

⁵ If a new agency is proposed for enactment, the legislation is referred to the appropriate evaluating committee and standing committee. The evaluating committee reviews the proposed agency and submits its recommendations to the standing committee of referral.