

NEVADA LEGISLATIVE COUNSEL BUREAU
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SUNSET LEGISLATION

I

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. Recent interest in sunset-type laws has been fostered by efforts to improve legislative oversight, including program evaluation and improved budget analysis techniques, which have intensified over the past decade; however, 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. Under sunset provisions, supporters of governmental agencies or programs are forced to justify the continued existence of such entities rather than presenting repeatedly proposals for continued or expanding budgets and staffing patterns.

II

One attempt at federal 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. According to a May 1976 Common Cause paper prepared for the American Bar Association's Administrative Law Review, "the act has led to the termination or merger of more than 700 advisory committees in its first 28 months of operation."

More recent congressional efforts at sunset legislation include the Government Economy and Spending Reform Act of 1976, 94th Congress, S. 2925, and the Regulatory Reform Act of 1976, 94th Congress, S. 2812.

The Government Economy and Spending Reform Act, whose principal sponsors are Senators Edmund S. Muskie and William V. Roth, would, if enacted, put the majority of all federal programs on a 4-year termination schedule. The only exceptions are for payment of interest on the national debt and programs under which individuals make payments to the government in expectation of future compensation (i.e., Social Security). This measure provides a mechanism for agency review prior to termination which includes (1) audits and evaluation by the

General Accounting Office and the Congressional Budget Office, and (2) a zero-based budget review, comprised of specified activities, by congressional committees.

The Regulatory Reform Act of 1976, sponsored by Senators Charles H. Percy and Robert C. Byrd among others, would, if enacted, establish a timetable for the review of certain federal regulatory activities and mandate the termination of rules pertaining to those activities unless the President or the Congress adopted comprehensive regulatory plans. The measure requires that the specific regulatory functions to be reviewed are (1) banking and finance, (2) energy and environment, (3) commerce, transportation and communications, (4) food, health and safety and unfair or deceptive trade practices, and (5) labor, housing, government procurement and small businesses.

Several states have recently considered sunset-type legislation. In Texas, a proposed constitutional amendment, if passed, would have required the preparation of a timetable for the termination or review of all statewide agencies except those relating to higher education. This proposed amendment was defeated, however, presumably because of the side effects of voter dissatisfaction with several other constitutional questions on the same ballot. According to the Texas Legislative Council, all constitutional questions on the ballot in November 1975, including the sunset provision, failed. Two states, Florida and Colorado, enacted sunset legislation in 1976 which applies to regulatory agencies. Four others, California, Alaska, Illinois and Minnesota considered such legislation. Alabama and Louisiana have passed sunset legislation which applies to all state agencies and Iowa considered such legislation. Iowa's bill was passed by the legislature but later vetoed by the governor because he felt, among other things, that the "performance auditing provisions of . . . (the bill) . . . accomplish little more than what can be secured under existing (Iowa) law."

Oklahoma recently passed a bill reorganizing its Department of Transportation which includes a sunset provision for the department. A sunset provision is also being considered by the District of Columbia. Maryland authorized, during its

1976 legislative session, a study to determine, among other things, the economic impact that state regulatory boards and commissions have on consumers.

Perhaps most interest to date has been generated by Colorado's House Bill 1088, the 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 beginning on July 1, 1977. 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 3 months prior to the termination date. A public hearing is required before termination, continuation, or reestablishment of any agency. The Sunset Law lists nine 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.

III

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 would 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 4-10 years. Review periods should not be so short as to prompt the agency to spend most of its time on public relations efforts directed at the next review period nor should the review period be so long that the agency develops entrenched bureaucracies or powerful special interest groups depending upon the agency for continued livelihood. Some believe that no specific termination date should be established in sunset measures because all that such dates

would do is to 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 that 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, 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 program standards. Also mentioned is the use of so-called zero-based budgeting.* This is a technique whereby each agency's budget is reviewed from "scratch" for each new or existing program. This is in contrast to the "incremental" approach which merely considers adding or subtracting from an agency's existing

*See Office of Research Background Paper No. 1977-2 for more information on zero-based budgeting.

budgetary allocation and staffing pattern. Other budgetary reforms designed to improve legislative oversight might also be considered for inclusion in sunset-type legislation.

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. Various proposals are represented with the arguments their proponents use and do not reflect any position of the Office of Research.

SUGGESTED READING

(Available in the Research Library)

"A Sunset Law In Michigan, " Michigan Legislative Program Effectiveness Review Unit Memorandum #4, July 1976.

The Nation's First "Sunset Law": Automatic Termination of Regulatory Agencies. Briefing Paper for Governors, Series No. 5, Federation of Rocky Mountain States, Inc., June 1976.

"Sunset: A Proposal for Accountable Government," a Common Cause paper prepared for the American Bar Association's Administrative Law Review, May 1976.

"Western States' Issues--As We See Them," News Report from the Western Office of The Council of State Governments, May 4, 1976.

"Sunset." State Legislative Report, the National Conference of State Legislatures, May 27, 1976.

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

Prepared testimony by Colorado State Representative Gerald Kopel before the U.S. Senate Government Operations Committee, Subcommittee on Intergovernmental Relations, March 18, 1976.

"Licensing in the Public Interest: What Can be Done to Restore Public Confidence?" Presentation by Dr. Benjamin Shimberg to the Eastern Regional Committee on Consumer Protection, The Council of State Governments, February 26, 1976.

Testimony by Rosalee Schiff of Colorado's Common Cause, before the Colorado Joint Judiciary Committee, September 22, 1975.

"Are Sunset Laws the Answer?" The Wall Street Journal, July 9, 1976.

Bills in Congress--S. 2812, S. 2925.

"Sunset Legislation and Zero-Based Budgeting." ACIR Information Bulletin. #76-5, Dec., 1976.

Bills in the States--H.B. 1088, The Sunset Law, Colorado; S.B. 1156, "Regulatory Reform Act of 1976," Florida; S.B. 28, Louisiana; House File 1576, including the Governor's Veto Message, Iowa; A.B. 2866, California; S.B. 738, Alaska; S.F. 295, "Minnesota Sunset Law," Minnesota; 1-276 District of Columbia; H.R. 49, Maryland; S.B. 128, Alabama.

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