

JOINT LEGISLATIVE
AUDIT & REVIEW
COMMISSION

THE
VIRGINIA
GENERAL
ASSEMBLY

THE
SUNSET
PHENOMENON

Papers of a Forum on Legislative Oversight

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The Sunset Phenomenon

Papers of a Forum on Legislative Oversight
July 25, 1977

Joint Legislative Audit and Review Commission

Preface

The Joint Legislative Audit and Review Commission and an advisory task force have spent nearly a year in a study of Sunset and related concepts of legislative oversight. The study committee reviewed a great deal of literature and heard first hand testimony from Sunset proponents and opponents.

Two reports have been published based on the testimony of the many experts who assisted in the study. The first publication, "Sunset, Zero-Base Budgeting, Evaluation", was based on a JLARC conference held in Roanoke in May, 1977. The second, "Zero-Base Budgeting?", is the record of a forum on legislative oversight held in August, 1977.

This publication contains the report adopted by the study committee as well as transcripts of testimony about Sunset. "Directions for Legislative Oversight in Virginia--The Sunset Phenomenon" is the final report of the HJR 178 study and it contains legislation recommended to the General Assembly. The report is the final version of a document which was developed and used throughout the study to record analytical findings, member concerns, and study committee conclusions.

The first five articles are transcripts from the Sunset forum and include three different perspectives on the implementation of Colorado's Sunset law.

These proceedings were prepared using a combination of taped comments and prepared remarks. Some editing has been done by the participants and some by the JLARC staff for format and readability.

Kirk Jonas, Associate Analyst, was assigned principal responsibility for editing and producing these papers. He, Philip A. Leone, Chief Analyst, and L. Douglas Bush, Jr., Associate Analyst, have shared with me in project planning, publication review, and general conduct of the study called for by HJR 178.


Ray D. Pethtel
Director

December 13, 1977

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A Member's Perspective Colorado's Sunset Experience

Senator William J. Comer

Mr. Chairman and members of the committee: I hear frequently that Colorado is setting both the example and direction of Sunset. One must be somewhat cautious in saying this, I think. Colorado's law is unique and is applicable only inside borders of the State of Colorado. Colorado's law is not transportable. Our experiences may be of some benefit to others but it is an impossibility to take the law--written to the unique and strange conditions in Colorado--and transfer it to another state which has its own unique and strange problems.

Sunset--A Limited Success

I find as I travel around the country, the first problem we run into regarding Sunset is one of terminology. What we refer to as regulatory agencies in Colorado may be referred to as professional licensing boards somewhere else. So we have to clarify what it is we are talking about, then begin trying to resolve specific problems. Colorado's law was designed for simplicity but has been executed in complexity. It has been difficult. It has been arduous. And it has been successful--in limited degree.

Colorado's success, I think, is somewhat like beauty. It is in the eye of the beholder. You may hear this morning some things about Colorado's Sunset law with which you may not totally agree--but it will only be because the viewpoint is different.

I got the title of "Sunset's Moving Force" in a very strange way. On the desk in front of you is a series of reports concerning 13 licensing or regulatory agencies. There are 2 reports for each of them, a total of 26 reports. Thirteen of these were provided to the legislature by our Legislative Audit

Senator William J. Comer (D., El Paso County) has been referred to as a moving force in Colorado's implementation of Sunset legislation. He has participated in numerous panels on the Sunset process as a result of his active participation in Project TRAIN for the National Conference of State Legislatures. Senator Comer is a member of the Colorado Senate Committees on Appropriations, Education, and Business Affairs and Labor.

By profession a school teacher (government studies), he is a past president of the Colorado Education Association. He was educated at LaSalle College (B.A.) and the University of Northern Colorado (M.A.).



Committee. The other 13 were provided to us by the Department of Regulatory Agencies. My fame rests in the fact that I have read that stack of reports. So by virtue of the fact that I have read them, I became the expert. I think you will find the information needed to make Sunset succeed is sometimes overwhelming and always complex.

Looking back on it, I would have hoped that someone might have given a title other than "Sunset" to the bill. Madison Avenue titles are catchy and certainly help propel an idea. But we are not really involved in "Sunset" in Colorado. Sunset seems to have the connotation of an ending. Colorado's law was not signed for the immediate or total elimination of anything. Termination is but one option.

Our bill provides that once designated under Sunset, an agency or a licensing authority goes into a seven-year cycle. At the end of that seventh year, it is reviewed. The law states that without a review, without a renewing piece of legislation, the agency or licensing authority ceases to exist.

The original law also provides us with the option of modifying that agency or licensing authority, of giving it a new legislative direction, of eliminating part of it, transferring it to another area of government, or eliminating it. This past session, we were supposed to have dealt with 13 various agencies or licensing authorities. The two main ones, the Public Utilities Commission, and the Insurance Division, were not dealt with. They are now being studied by a summer interim committee. That they were not dealt with is one of the greatest weaknesses of our law--or at least the implementation of our law--which I will refer to in a few moments.

There Were Terminations

Some of the agencies reviewed did not survive. The Athletic Commission was not only abolished under Sunset, but the law was modified to eliminate the year of wind down. Usually, if legislation is not passed to continue an agency, the agency has 12 months or more--at least through the next calendar year--to finish its work.

The Athletic Commission met a strange fate, a fate which is the prerogative of those of us who serve the legislature. The law may say one thing, but from time to time we take it into our hands to make it read slightly differently. One of my colleagues in the Senate did not like the Athletic Commission which functioned to regulate wrestling and boxing and had not done a very good job of either. He merely amended the law to say that the Athletic Commission went out of existence immediately.

Professional sanitarians were eliminated and will go out of existence July 1, 1978. The Board of Mortuary Science met the same fate and will go out of existence July 1, 1978.

We eliminated both the Board of Barbers and the Board of Cosmetologists; however, they were later recombined under a single Board of Barbary and Cosmetology, for which I must take blame. (No matter where I go, barbers and cosmetologists are in the process of meeting. I walked into the John Marshall last night and looked at the Call Board, and the first item on the Call Board was a notice that the barbers and cosmetologists are holding a meeting. I do not know if it's a national conspiracy, but I'm beginning to believe it.)

It is possible to overprepare for Sunset. As we started through our Sunset hearings, it appeared to me that those barbers' and cosmetologists' boards would be very difficult to eliminate. They have a huge constituency that is both vocal and omnipresent. So I had prepared a separate bill that would combine the two in case I was unable to get rid of them. Unfortunately, the committee eliminated the two boards, and then passed my bill--which I could not kill, no matter how I tried. So we lost two and gained one.

Weaknesses in the Process

So went the idea. The idea for the bill was one thing; the way in which we in the legislature chose to implement it was another. And, if I were to point out the greatest weakness in the Colorado bill, I think that is it. It is the treatment that we in the legislature chose to give it.

We knew when we went into session in January that we had 13 agencies to deal with. We know that in 1979 we have almost the entire health field to look at. We know that in 1981, we have all the banking and building boards to look at. And yet we made no attempt to set up the kinds of time frames that are needed to do this.

Sunset is, in fact, a legislative oversight responsibility. Those of us who serve in legislatures know how easy it is to create a board to put together a new licensing authority and then to let it go on forever.

In Colorado, we had a group known as the Shorthand Reporters Board. They had the authority to license court reporters; and without the license, you could not serve in the courts of Colorado. The Shorthand Reporters Board had been in existence for 53 years, without anyone looking to see what it was doing. It had no written rules or regulations. It had an examination system that was haphazard at best, and a very questionable scoring system--the passing grade varied from meeting to meeting.

It no longer exists. It was not only abolished, but the one function of licensing or certifying people to serve in Colorado courts has been given up to court administrators.

We, in the legislature, must, first of all, decide what it is we choose to do and then make sure we give ourselves the tools to do it. Our legislative audit reports that you have had a chance to look through were very good. They were well prepared, but they had one great flaw. They were prepared by a number of different auditors.

While the format was similar, the attack was not. It appeared that as one group of auditors got down to their third or fourth report, compassion overtook reason, and the reports began to soften up considerably.

“Looking back on it, I would have hoped that someone might have given a title other than ‘Sunset’ to the bill. Madison Avenue titles are catchy and certainly help propel an idea. But, we are not really involved in Sunset in Colorado. Sunset seems to have the connotation of an ending. . . . Termination is but one option.”

The better set of reports received were from the Department of Regulatory Agencies themselves. Mr. Brooks, I am sure, will cover the way in which these reports were developed. They not only gave us a good history and current status of the agency, but also provided us with a series of four or five alternate recommendations. And each of the alternatives was followed by a set of possible consequences if we chose any one of them.

Recommendations from Experience

If, in fact, the Commonwealth of Virginia should choose to proceed with some kind of Sunset legislation to expand its legislative oversight, I would suggest the following to you:

1. That you proceed with great caution. That you do not commit the error of thinking the legislature can review everybody all the time. It cannot be done.

2. I would suggest that you write into your law exactly what it is you are going to use as review criteria. Do not allow that to be a function of the staff or any individual committee. It

is unfair to the agencies which you are going to review and will put you under a strain when you add or subtract from a common list. If, in fact, criteria are already established, you can give greater weight and less weight to one or the other should you so choose, but do not fall into the trap of setting criteria each time you decide to review a particular agency.

3. Prepare your time periods well. There are many who believe that you can review an agency or department of government within the normal committee time frame. You cannot. Even the smallest agencies that we dealt with, the professional sanitarians, who were licensing about 120 people in that category in the State of Colorado, took us nearly four hours of committee time. And the decision, I think, was made before the first word of testimony was heard. That happens quite often.

4. I think the last caution that I may give you is to look at what happens in lobbying. We were very fortunate in Colorado the first several months of our operation. No one really believed the legislature was going to terminate anybody. That was something that just could not happen, they thought. No legislator would dare vote the elimination of a Board of Mortuary Science. It was unheard of.

Luckily, we did. We did, in fact, eliminate several, modified some others, and are still working on four.

The Public Response and Lobbying Effort

Once it was clear to the public, and particularly to the agencies involved, that they were, in fact, subject to possible elimination, the lobbying process began. To my colleagues who had not read those reports, lobbying was heavy and effective. For those who, in fact, had read those reports, the lobbying effort was never effective because the reports were clear, concise, and well documented. It is a tremendous staff job but an invaluable tool to those of you who must make the decision. So I would suggest that as you look at the possibility of Sunset, you do three things:

1. Decide who is going to do it;
2. Decide how it is going to be done; and
3. Decide what time frame you are going to operate in.

With those decisions made, I think you could proceed very well. Whether or not Colorado has been successful, I am not sure. Colorado's efforts have been pleasing to me personally. I find that we went far beyond my wildest expectations--with the exception of not being able to build in the proper time frames. I lay that blame on the leadership of the Senate where all the hearings began.

The leadership did not, in fact, understand the time frames, or chose not to understand them for some reason. Even when

it was pointed out to them the problems we were facing, they still thought we could do it all in a matter of hours.

Also, I was somewhat disappointed in the public response. All of you have been faced as I have, I'm sure, with people saying: "Get government off my back; get them out of my life; cut down the size; do away with the red tape; cut back on the pay."

If you want to find out the real commitment in that statement, take your directory, run your fingers down until you want to stop, pick an agency, and tell them you are going to give them the Sunset review, and you suddenly find out there are an awful lot of people who want government involved in their life, who want the paper work, who want the protection, and "Please, don't do anything to our agency."

Agencies tend to support the people and the professionals who are regulated. The public itself did not respond greatly to our Sunset experience in Colorado. It may have been the time frame in which we were operating. We had meetings at 10:00 in the morning and 2:00 in the afternoon on any number of days, and most of them on very short notice. This is another problem that goes back to the leadership's failure to work out a good time frame.

"Sunset is, in fact, a legislative oversight responsibility. Those of us who serve in legislatures know how easy it is to create a board to put together a new licensing authority and then to let it go on forever."

I do think that you need to make sure that the public at least has the opportunity to participate. If they choose not to, there is nothing you can do about it. But be sure that they do get good advance notice of the hearing and the opportunity to testify if they should so choose.

The Next Round

I think that you will see in Colorado in 1979 a much different picture. The Medical Society, the Nurses Association, the Chiropractic Association, Dental Association, the optometrists and ophthalmologists are on the schedule. All of these people not only have a very strong lobby, but also very heavy clout. I do not think we will be able to move as rapidly nor be as successful.

Because the lobbying will be much heavier, we will probably have to deal primarily with adjustment rather than elimination.

No one in Colorado thinks that we should eliminate the Board of Medical Examiners--even though nothing would happen if we did. The sick would still get sick. Some would recover and some would not, and medical prices would probably remain somewhat the same.

There is, however, a mystique about that particular board. There were some people who thought that if we eliminated the Board of Mortuary Science, that we would find the streets littered with bodies. I have not noticed that, at least not any more than normal in the parks around my house, and most of those occasionally move. If it gets too hot or too cold, they go somewhere else.

But you do have a problem in front of you, a problem which I think you can resolve. I think the process is excellent. I think the prospects are fantastic. It does give the legislature the opportunity to look at, seriously, what we and our predecessors have accomplished. To look at and evaluate, and say to ourselves, yes, we do, in fact, need that particular segment of government, or to say we do not need it. The third alternative is to say we need it, but it needs to be changed some way.

Question

Who makes the studies that lead into your analysis?

Senator Comer

The law requires that the Legislative Audit Committee make the study. The Department of Regulatory Agencies is also called upon to make certain kinds of testimonies. Its director, Mr. Rodriguez, on his own volition, decided that he would have studies made of each of the agencies. He did make them and his reports, I think, are much more effective than those prepared by our own auditors.

Question

Is your audit committee a financial audit committee or is it a program audit committee?

Senator Comer

It is both. It has been a financial audit committee for several years, and two years ago, we began moving into a program audit function. Also, some of the studies that were completed were done by outside agencies under contract.

Question

Do these studies then go to your standing committees?

Senator Comer

That is correct.

Question

And then do the standing committees meet jointly in making a decision?

Senator Comer

No, that is one of the things that perhaps you would want to look at. Ours did not. We met separately. All of our Sunset legislation was introduced in the Senate and that contributed to the time problems we have. I would suggest to anyone who is looking at this that you may want to have the initial hearings in a joint committee situation so that you do not have to repeat the testimony and recall witnesses. It also reduces a lot of byplay--if I, as a member of the regulatory board, did poorly in front of the House, I might be able to give a better performance in front of the Senate and overcome some of the arguments. I would suggest that you meet jointly. We do not in Colorado.

Question

Do you have any analyses of the average time it takes to take an agency all the way through the process?

Senator Comer

I do not have the average time, and I think the reason I cannot give you that answer is that our two largest hearings are still being conducted. The ones that we did take to completion took about four to five hours of meeting time for the smaller agencies that were less controversial. I would say none of them went beyond seven hours.

Question

That's legislative time?

Senator Comer

That's committee time.

Question

Do you have any idea of the cost?

Senator Comer

Initially, I heard somewhere around \$50,000. I now understand they are seeking additional money to pay for some things that have come up since then. I think the Department of Regulatory Agencies was about \$25,000. We use a different type of labor. They used graduate students.

Question

Is that a total cost or is that the cost per agency?

Senator Comer

That is total cost.

Question

Do you have any figures or any reports that can tell us how much money we can save by using Sunset.

Senator Comer

The amount of money we will save in Colorado will be rather small. While we licensed and regulated a tremendous number of people, the actual number of people employed by the regulatory agencies is very small. I would say that with the agencies we have eliminated, we have probably reduced the number of personnel by less than one dozen. We are beginning to save the people some money because they do not have to apply for yearly licenses and that sort of thing. The cost to the state government itself is extremely small in the way of reduced personnel, however.

Question

The thrust of all this legislation was to deal with the regulatory licensing board and no other agencies?

Senator Comer

That is correct.

Question

So you are not talking about any big operations, big agencies, or big departments. You are only talking about licensing and regulatory agencies in the State of Colorado?

Senator Comer

That is correct.

Question

Is there a move in Colorado to expand the Sunset law to cover other agencies?

Senator Comer

I do not see a move at the present time to expand our law. I did see, however, a Sunset philosophy which existed throughout the session. First, we did not create any new licensing requirements for the first time in five or six years; and secondly, Sunset provisions were inserted into many of the laws we did pass. The termination periods ranged from two years to six. So we conditionally took action on some things, but said that at the end of a period of time, these actions must be reviewed and reenacted.

So the Sunset idea or concept was very prevalent throughout the session and the idea was inserted into many laws that go far beyond what our Sunset law was designed for.

Question

How long are your sessions?

Senator Comer

We do not have constitutional limits. We have a self-imposed set of deadlines which are ignored for the most part. I think we call them extended rather than ignored. The 1977 session went from 5 January to about mid-June; then we have a 10 to 15 day break and come back to deal with vetoes and that sort of thing. The session was shorter in days than the 1976 session. The 1976 session went some 150 days, legislative days; so the work load is definitely increased.

I think that one of the things we must look at is budgeting. If we continue to pursue, as I think we should, oversight functions, we are going to have to look at the time limits in which we perform. Those states that do have constitutional limits, they have some serious problems in trying to deal with the normal burden of law plus oversight matters. I understand the Commonwealth of Virginia is about to engage in program budgeting. If you pursue program budgeting in an orderly fashion, and a fashion to really make decisions about appropriating money, I think you will find that is going to extend the amount of time that committees and the Assembly must meet. You add to that the oversight of rules and regulations and you have added additional hours. Put on top of that a Sunset review, and you have more time. It is a time consuming process.

How much time you want to give it I think is one of the determining factors in whom it is you are going to review and how many agencies or departments you can review at any one point in

time. That decision was made rather haphazardly in Colorado. When we decided to do regulatory agencies, we decided to divide it into three groups and do about 13 at a time. I think if we were back in the planning stages again we might look at that a little bit differently, at least I hope that we would. Thirteen were too many. Even though some of the 13 up this year were smaller agencies. In 1979 when we look at the medical profession, we are going to have a long, long set of hearings to go through unless we change our procedures somehow. So these processes are time consuming.

Question

Senator, you say that this year you met for a hundred and how many days?

Senator Comer

Just shy of 150, I believe, 147 or so.

Question

Are you on an annual or biennial budget?

Senator Comer

An annual budget.

Question

Do you meet the same length of time every year?

Senator Comer

It appears we do. The three years I have been there, we have run into June each of those three years. It had been the practice in the past--at least every other session which is controlled by the governor with his call, his determining the agenda, with the exception of the budget, and other financial matters--that around the middle part of April you were out of session. We have not been that fortunate since I arrived. I hope that my arrival was not the direct cause of that extensive time.

Question

Looking at the health agencies next year, which I believe you said you were going to do in 1979. Well, the year that you look at health agencies, isn't it likely that you are going to have to meet quite a bit longer for that? That is going to be time consuming, isn't it?

Senator Comer

That will be time consuming. We have made a series of recommendations to our procedures committee, which is a joint committee of the legislature, that instead of holding those hearings during our regular session, that they be assigned to an interim committee and done during the summer of 78. How successful we will be at that I am not sure, since the summer of 78 is a campaigning summer. I would hope that we might be able to do many of those hearings in the interim in order to make up the time that is not available in the normal session.

Question

Isn't the objective of focusing in on regulatory agencies first part of the learning process in this Sunset legislation? Isn't that the idea, initially, rather than take on something big? After all, you took on thirteen agencies and had to delay action on two.

Senator Comer

I think the individuals who wrote the initial law in Colorado had that in mind. Former Representative Kople has indicated many times that because Sunset is an adversary process, that the regulatory agencies are a good place to start.

Perhaps sometime later in the year I will be able to communicate with you by mail what happened to the two large agencies we are dealing with, the Insurance Division, which brings in about 30 million dollars a year to the State of Colorado through fees, and the Public Utilities Commission which most certainly is on the minds of most everybody in the State right now because of the increase in rates. What will happen to those two agencies? Neither of those agencies is going to be disbanded.

I think we may see some modification in the Division of Insurance. I am not sure what is going to happen to the Utilities Commission. I think they are going to be regulated by what I consider to be one of the worst possible procedures. The immediate answer when somebody says you are not doing your job is to say "Well, if you give us more staff, more money, and more law, we could do a better job." I am not sure how you get a reduction in regulation by additional money, staff, and law. It seems to me that you are going in the opposite direction. If you want to deal with major agencies of government, the highway department, whatever the case might be, a technique for getting the information that you want may be Zero-Base budgeting, program budgeting, whatever budgeting device you choose to use. I think what you would get from that would be the same kinds of reports that we had stacked on your desk there.

The process began by asking the question "What do you want to do? Is there, in fact, an agency or part of an agency that the legislature thinks could be reduced, modified, improved, or whatever? The mere fact that you go through this process will not guarantee you the saving of any money. It will not guarantee you the reduction of any staff. The opposite results may come out of it.

What you should have when you finish the process is a better understanding of what it is that makes that department function well or not so well.

Our legislature tends to introduce pieces of legislation helter skelter from year to year, session to session. Somebody says over in my part of the state we are not getting what we need; therefore, I am going to put in this bill to ensure we get it. The bill passes. It is put into the statutes and nobody really knows what effect that has on the rest of the statutes already in the book. And that is the thing I think we need to look at. Are all our statutes balanced? Are we, in fact, making it possible for people to continue?

In our own department of education, which deals with the K-12 system in Colorado, we have about five areas on the books having to do with exceptional children, specialized kinds of programs, categorical programs. They are there; every year the commissioner submits in his budget request for funds for those programs; every year we strike the request out. For all practical purposes those particular programs do not exist in Colorado except in the law book. They have not been used; they have not been implemented nor funded. My contention is that they ought to be taken out of the law book. Let's not try to fool people that we are doing good kinds of things by increasing the size of the law book. If it is not needed, we should take it out.

There are two ways you can get these laws off the books. One, somebody who has got enough gumption or is contrary enough can get up and battle to take it out on his own. Two, you can do it through a process. If you do it through a process, you relieve yourselves of the responsibility of being a nasty individual. You have got the process. It makes it orderly. And I think that is necessary in legislation.

Question

Senator, the thing that bothers me, all of our budgetary process is tied into federal rules and regulations. How are you going to make any substantial reductions anywhere when the regulations from Washington tell you how you are going to appropriate this money and what you have to do. And this is the thing that bothers me about it--these little regulatory agencies you are talking about do not amount to much. The major part of our finances is tied into federal appropriations, welfare, education, highway

construction, etc. But you name it, and its tied into matching funds and regulations. Now what can Sunset do about that?

Senator Comer

If I had the solution to that question, I would not tell it to you. It would be in a book which I'd be only too glad to sell at a very high price. I think one of the most disheartening things about serving in a legislature is the fact that you suddenly find out that as a legislator, your impact is somewhat less than fantastic. Home-ruled cities, county governments, the federal government--all seem to have the power and you get to make a few great decisions like whether or not a holiday will be on Monday or Friday--and the federal government probably takes that out of your hands, too.

However, in the areas in which we can have impact, and I find success to be as sweet no matter the size, I would just as soon have a small bit of success as I would a great deal of success. I think that each one of us needs to begin in each of our state legislatures to do what we can do to control our own government and use that influence at the federal level.

It is my contention, and I am a great supporter of this process, that the federal government cannot accomplish everything. The mammoth size of the federal government makes it virtually impossible for them to prune themselves. But I think that if each of the states began whittling away, we might be able to get it.

One of the things I think you can determine in this process is what federal regulations are, in fact, preventing your departments, agencies, or whatever from accomplishing the goals that the Commonwealth of Virginia wants accomplished. And then, you might be able to deal with that through the federal counterpart.

Many times we do not really know where the obstruction is coming from. Administrators--and I am not totally critical of administrators because they have a job to do--but they are not totally beyond saying "Well, we can't do it because of federal regulations." They sometimes play us off, one against the other. I am sure Virginia is no less complicated than Colorado, and trying to track down what happened to a constituent and why in some of those agencies is like going through a maze. So I would say, any place that we can improve our own state, we ought to do it, no matter how small that particular chunk might be.

Question

Does the legislature develop its own budget?

Senator Comer

Yes sir, we do. We have a joint budget committee that develops the legislative budget. The governor develops his budget

which we then ignore and we develop our own. It is developed by a six man joint committee. Each of the standing committees has the responsibility of reviewing an agency budget and I am afraid the joint budget committee then also ignores our recommendations.

Question

How much time do the standing committees get to work on the budget?

Senator Comer

Very little. It is worked into early committee sessions. There is not nearly enough time to do an honest job of it.

Thank you very much.

A Critique by "LEGIS 50" The Implementation of the Colorado Sunset Law

Tim Knaus

Mr. Chairman and members of the committee:

The opening of the Colorado General Assembly's 1977 session was accompanied by considerable skepticism that the new Sunset law would work. Editorials in the press asking "Is the Sunset Law a Fraud, Only Your State Legislator Knows" were commonplace. At the conclusion of the five month long session, however, cynicism had faded and observers as well as participants were calling Sunset a "limited success".

An Initial Exposure to Legislative Oversight

With little precedent to guide them and considerable national attention to inspire them, Colorado legislators made a conscientious and genuine effort to scrutinize the regulatory bureaucracy. In spite of logistical problems and considering its novelty, the Colorado General Assembly did an adequate job on the first round of Sunset reviews. For many legislators, it was an initial exposure to legislative oversight and most found it beneficial. One legislator commented "We are finding it highly useful to engage in periodic rethinking." Most legislators also agree that without the automatic termination provision, the legislature would not have been disciplined into experimenting with this oversight mechanism.

Considering the time limitations, scheduling constraints and often mundane subject matter, the process must be credited for its achievements. Administrative shortcomings, outdated rules, and an occasional conflict of interest were exposed by the evaluation reports for investigation in legislative hearings. In addition to abolishing four boards, the other agencies were analyzed and

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refined to better serve the public need. Although opinion was divided on the quality of the evaluation reports from the State Auditor's office and the Department of Regulatory Agencies (DORA), considerable work under intense pressure went into their preparation. The job was quite difficult given the lack of experience in performance evaluation.

Though Colorado legislators defend the Sunset concept, few are satisfied with the way the bill was passed and implemented. It was adopted with little consideration of work load burden, time constraints, staffing shortages, and fiscal implications. Because it was "politically irresistible" and conceptually simplistic, its passage was not characterized by cautious deliberation.

Procedures and Problems

As a consequence, the implementation phase suffered. The lack of time was the major hindrance to a successful oversight process. A consensus exists that the reviews should have started earlier in the session. It was two months into the five month session before the first Sunset bill was introduced and nearly another month before the first hearing took place. This delay initiated considerable skepticism and it appeared that there was a lack of commitment, time, organization, and priority to the effort. Implementation procedures had not been formally discussed or planned, leaving rank and file members as well as leadership unsure what would happen to Sunset.

A major question was to which committees bills would be referred, thus delaying the process and severely limiting individual legislator preparation. Originally, the bills were to be referred to the House and Senate Business Affairs and Labor Committees for joint hearings. This proposal later was abandoned in favor of distributing the oversight responsibility throughout the committee structure. Legislative leaders argue the delayed process was due to late evaluation reports from DORA. The legislature, however, went ahead on two occasions without the reports and did not proceed on several which were available. Expressing annoyance with inconsistent deadlines, one legislative auditor described the condition as "hurry up and wait".

Some critics accused the leadership of not making Sunset a legislative priority. Others asserted that the leadership had not given ample consideration to public interest and subsequently was undermining the intent of the law. The legislative leadership now agrees that improved planning and communication between houses could have averted many of the problems encountered during the first set of reviews.

Legislators expressed concern that they were being asked to vote on measures without time for appropriate preparation or deliberation. Various committee referrals and legislator

assignments were made just days before the Sunset reviews were to take place. Several of the Sunset review bills were presented for hearings a week before the bill deadline, further discouraging competent and extensive review. Senate President Fred Anderson stated, "It turned out to be too much added work load for the session...the best place for this review task is in the interim."

Sunset has a potential for 'mushrooming', both in evaluative work and legislative consideration. One legislator stated, "There is no time to study alternatives and reforms so we'll keep the boards the way they are for lack of better alternatives or dispose of them for lack of reform." This dilemma found the Colorado General Assembly considering only the merits of continuation or termination and at times not much in between. Time restrictions prohibited committees from reviewing all the findings and recommendations individually and in-depth.

"Though Colorado legislators defend the Sunset concept, few are satisfied with the way the bill was passed and implemented. It was adopted with little consideration of work load burden, time constraints, staffing shortages, and fiscal implications. Because it was 'politically irresistible' and conceptually simplistic, its passage was not characterized by cautious deliberation."

Separate review hearings in the House and Senate were repetitive and a hindrance to legislative accountability. Some senators said "When we passed that bill, we just hoped that the House would have time to deal with it more thoroughly." Unfortunately, House members, also under time constraints, maintained similar sentiments: "Well, if the Senate passed it, they must have given it adequate scrutiny first."

Separate review also allows a single committee in one house to terminate an agency by postponing indefinitely a bill. Two agencies were terminated by one committee's decision.

Because the hearing schedules were delayed, a chaotic, unfair, and incomplete process often resulted. Agency and board personnel saw the DORA evaluations only days and sometimes never before the hearings, significantly weakening their defense presentations.

Generally, the 13 agencies facing termination did not have a clear perspective on the Sunset legislation and the

legislative process. Many of the boards and agencies did not possess the legislative experience or legalistic background to competently address criticisms of their procedures.

An alternative is to schedule a Sunset orientation meeting for probable participants before the actual review hearings begin. Legislators, auditors, agency staff, and department personnel would gain an improved understanding of Sunset's objectives and components.

The entire process was arduous for participants. Some hearings were not announced in the legislative calendar or the press. Hearings were rescheduled or cancelled at the last minute and some were held without regulatory officials or auditors in attendance.

The schedule also limited public participation. One observer commented "The process as implemented here in Colorado is contrary to public input, legislative input and agency input...the only beneficiary is the interest group or industry who has the time to take up the slack and fill in the void with self-serving, preprepared bills, amendments, and advice." Lobbying was heavy in some cases and according to various legislators, had a major impact on final decisions.

In general, and regardless of partisan standing, legislators considered the cost of the process a good investment. One senator stated, "We may only have saved \$5,000 by terminating those agencies but we have gained the first concrete and permanent reduction of bureaucracy in this state." The cost of implementing the Colorado Sunset law was approximately \$160,000. The compilation of 13 performance audits by the State Auditor's Office was estimated at \$135,000 and a \$25,000 HEW grant was utilized to fund the University of Colorado internship project to assist the DORA in completing the evaluation reports. The auditors logged 8,000 man hours and spent 8 percent of their yearly budget on Sunset.

The Colorado implementation illustrates the definite fiscal impact of Sunset legislation. Cost estimates which also include participation of the executive director of DORA, the agencies under review, and board and commission members total almost \$200,000. This figure differs substantially from the "no impact" fiscal note that accompanied the Sunset bill through the 1976 session.

It is important to note that the DORA budget constitutes only 1-1/2 percent of the total state budget. Fiscal impact and evaluation demands must be considered when determining the scope of a Sunset law and probably argue against initially evaluating numerous executive agencies.

The Evaluation Process

Although some participants were satisfied with the performance audits and their recommendations, they were subjected generally to criticism. "The audits don't ask critical questions".. "Auditors have tunnel vision".. "Auditors should stick to fiscal reviews." Most participants agree that the major weakness of the performance audits was their concentration on operational performance and a brief consideration of the more important question of "public need".

The evaluations completed by the University of Colorado interns for the DORA were criticized on several points. The reports were faulted because of their presumed lack of independence from the DORA. It was also argued that the evaluations were rarely utilized because of their excessive length and lateness. The studies attempted to deal with too much in too little time and were not reviewed in-depth by most legislators.

A comment prevalent among House democrats was that the reports and the entire Sunset process were misdirected. They felt that the Sunset process and both sets of reports were inadequate because of a concentration on the performance of the agency rather than on the form of regulation and its public need.

It was also argued that the nine evaluation criteria contained in the Sunset law were too general and vague--precluding the evaluation reports from addressing substantive policy issues. Both the audit and DORA reports were based on detailed preliminary outlines which were written with insufficient guidance from the original law. The nine evaluation factors lack substantive direction and must be expanded and refined.

The tendency to concentrate on the agency rather than the form of regulation allows the legislature to discontinue an agency while leaving the regulatory laws on the statute books. Sunset evaluations must concentrate first on the form of regulation and the general policy question of public need. If the legislature Sunsets regulatory rules, the enforcing agency would automatically be terminated. If the form of regulation is approved by the legislature, background administrative material on the agency would be used to initiate organizational reforms.

The two largest agencies facing review, the Public Utilities Commission and the Division of Insurance, were inappropriate candidates for the first year's review. The evaluation work load for these agencies generated immense data for consideration which was subsequently delayed until the interim. This incident supports a limited approach to Sunset and oversight activity.

It is amazing to note that the evaluation function was almost a second thought during the design of Sunset. The original

Common Cause proposal was revised by the sponsors of Sunset audits. The DORA reports resulted from a requirement that the executive director give testimony at each hearing. Minimal consideration was given to the form of analysis and information required and subsequent disaffection with the evaluation materials may be linked to this error. A legislature adopting Sunset must determine what kind of information is required to pursue the oversight function, who will do it, where it will be housed, and build this into Sunset legislation with adequate funding.

Refining Sunset

The procedural problems experienced by the Colorado General Assembly in implementing Sunset will inevitably result in major revisions of the process. One should expect an earlier completion of more concise evaluation reports, advanced committee scheduling, earlier bill reference, timely public notification, policy oriented evaluation reports, and improved agency hearing preparation.

“In general and regardless of partisan standing, legislators considered the cost of the process a good investment. One senator stated, ‘We may only have saved \$5,000 by terminating those agencies but we have gained the first concrete and permanent reduction of bureaucracy in this state.’ ”

The use of legislative staff may also play an important role in improving the Sunset process. Committee staff would coordinate evaluative material and assist members in preparing for review hearings. Many problems would have been avoided during the 1977 session if staff had been available to provide legislators with digests of the evaluation reports, coordinate hearings, and ensure public announcements.

The form of committee staffing will be dependent on whether the Sunset process is continued within the standing committee system. Because Sunset is an important oversight function, it should be shared among as many legislators as possible, dispersing the work among the entire committee structure.

This proposal is in opposition to a bill which will be introduced during the 1978 session of the Colorado General Assembly. The bill proposes a Sunset Evaluation Committee which will operate

as a statutory joint committee conducting agency reviews during the interim. The evaluations would be based on audit reports, studies by DORA or another executive branch agency, and evaluations conducted by full-time professional committee staff.

Although this proposal is gaining support, there is a possibility of creating an oversight committee which might become too powerful. Bill sponsors argue that numerous legislators will be involved since the final bills produced by the committee will be referred to standing legislative committees. This system, however, will remove the majority of legislators from an active oversight role and make the committee an accessible target for lobbyists.

A strong argument can be made for placing the Sunset process in the interim. Legislators must have the opportunity to pursue the oversight function without the threat of bill deadlines.

The effect of conducting oversight during Colorado's legislative sessions is evidenced by the chaotic consideration of the Barbers and Cosmetology Boards. The Barbers Board was sharply criticized by both the audit and DORA reports. Under heavy lobbying, the board was reinstated after being killed by a Senate committee. On the Senate floor, it was approved then terminated three weeks before the deadline for voting bills out of committee. Minimal debate occurred in committee or on the Senate floor. The DORA report had a limited impact since it was available only three days before the committee began its deliberations. The process was further complicated when the bill deadline was waived for the Cosmetology Board which was later considered in tandem with the Barbers Board because of recommendations to combine the two bodies. The boards were eventually combined by a bill introduced earlier in the session as a precaution if the two boards were continued by the legislature. The confusion of a concluding legislative session certainly did not contribute to a comprehensive evaluation of these two agencies.

Reluctance to submit four other agency reviews to last minute legislative consideration is cited as the reason for voting agency extensions and delaying review. Controversy over Governor Richard Lamm's veto of these bills has taken on a decidedly partisan tone. Republicans argue it is inappropriate for the chief executive to regulate the legislature's oversight function. They contend that the legislature must not make decisions for the sake of making decisions and more time is needed to analyze the four remaining agencies.

Democrats argue that the legislature must remain on schedule. If the four agencies had been continued until the next review session it would have only increased the legislature's oversight tasks and set an unfortunate precedent.

Sunset's Viability

The purposes of Sunset as articulated by Common Cause include forcing an agency to bear the burden of proof of its public need, encouraging the legislature to consistently pursue its oversight function, and designing an open system of oversight to ensure public participation. Colorado agencies certainly did not bear the burden of proof due to lack of resources to pursue the function, a complicated time schedule to follow, and a misunderstanding of the process.

Sunset did force the Colorado General Assembly to conduct its oversight function although only a handful of legislators played an active role in the process. Public participation is often disappointing in any legislative endeavor and Common Cause believes legislative leadership must reverse this trend through improved public notice, night hearings, and a simplified hearing schedule.

Most participants in the Colorado Sunset process believe it should not be immediately expanded to other areas of state government. Participants and observers are asking:

- Does the Colorado General Assembly lack the resources to comprehensively review additional areas of state government at this time?
- Will the legislature become locked into a regimented system of oversight, unable to evaluate agencies at will?
- Will a major Sunset process come to dominate the policy-making role of the legislature?

These questions are generally being answered in the affirmative. Most importantly, the procedural problems demonstrated by the Colorado process are evidence that Sunset is an easy law to adopt but a difficult one to implement, encouraging a definite go-slow approach.

The feasibility of Sunset legislation in Virginia and other states is dependent on several factors:

- The sophistication of legislative oversight activity;
- Particular objectives for legislative oversight under Sunset;
- The availability of alternative oversight mechanisms;

- Degree of legislative commitment toward exercising oversight scrutiny;
- Framework for evaluation review (i.e., adequate staffing, committee framework, fiscal resources, investigatory capacity);
- Direction or goal that Sunset could address (i.e., regulatory functions, licensing practices, consumer protection, budgetary examination, department investigation, program evaluation, rules and regulation overview).

An objective decision must be made based on the above criteria to determine if Sunset will facilitate competent legislative oversight. Elements such as need, commitment, time, cost, resources, and objectives must be weighed and evaluated to determine if Sunset is a viable mechanism, applicable to a particular state. Sunset should not be viewed or embraced as the ultimate legislative oversight mechanism. The feasibility of Sunset will determine its utilization as a vehicle toward expanding and upgrading the oversight function.

Legis 50/The Center for Legislative Improvement congratulates the Virginia General Assembly for directing the Joint Legislative Audit and Review Commission to make this study and to comprehensively research this complicated procedure. I appreciate the opportunity to share these observations with you.

An Agency Response to Sunset Coping and Cooperating with the Colorado Sunset Law

Robert E. Brooks

Mr. Chairman, distinguished guests, and members of the Joint Legislative Audit and Review Commission and Sunset Task Force, it is an honor and a pleasure to be here today to review and evaluate with you Colorado's experience with the first complete cycle of its Sunset law. In so doing, I hope to impress upon you, as members of the legislature, the important role that you can play in making Sunset a very worthwhile piece of legislation.

As Mr. Pethel stated, I am the Deputy Director of the Colorado Department of Regulatory Agencies. The department is an umbrella-type agency comprised of some 35 diverse boards and commissions, ranging from the Public Utilities Commission and the Insurance Commission to the Board of Hearing Aid Dealers. For many reasons, I have considered my current position to be the most interesting and challenging one that I have held in my 20 plus years of government service. In the majority of my assignments in public service, I have dealt with the need for, as well as the efficiency and effectiveness of, government agencies.

My main reason for feeling that this job is the most satisfying stems from the fact that this is the first time that I have had the opportunity, as a member of the executive branch of government, to work closely with the legislative branch. With Sunset, both branches have had to consider, in a meaningful and systematic manner, the need for the continued existence of particular government functions and agencies. Indeed, in Colorado we not only considered, but in fact, eliminated certain state government agencies. The executive branch of Colorado state government recommended the discontinuance of certain boards and commissions, and the legislative branch saw fit to follow our recommendations, in several cases. It is always gratifying to a consultant to have his recommendations implemented.

Robert E. Brooks is Deputy Director of the Colorado Department of State Regulatory Agencies, an umbrella department housing professional and occupational boards and commissions. Mr. Brooks previously served with the Division of Management Services of the Colorado Department of Administration. Mr. Brooks has a B.S. degree from Denver University and a M.A. from George Washington University.



Because of my exposure to government as both a citizen and an employee, I have developed questions and concerns about certain government functions. I am sure that many of these same questions and concerns are held by most members of government in the Commonwealth of Virginia. They are:

- Is government too involved in the lives of the citizen?
- Is government too involved in business, education, health, etc.?
- Is government wasteful, nonproductive, and inefficient?
- Is government getting too big?
- Once government gets involved by creating an agency to protect the health, safety, and welfare of the people, should that agency continue forever, or should its life be limited to a certain period of time?

Sunset legislation provides a unique opportunity to address these important questions and concerns. But, before examining Colorado's Sunset experience, I think it is necessary to touch upon some of the problems which prompted the enactment of this important piece of legislation. As you know, Colorado's Sunset law initially extended only to the Department of Regulatory Agencies, the agency whose boards and commissions perform professional and/or trade occupational licensing, as well as regulation of certain institutions such as banks and savings and loan associations.

The Cost of Regulation

The basis of the problem regarding professional and/or trade occupational licensing stems from the fact that this type of regulation can impose severe costs upon the consuming public. Our society was founded on the principle that free competition in the market place is the best protection available to consumers. Occupational licensing is an exception to this principle. It is theoretically justified by its stated purposes:

- to protect the consumer better than the free market system can;
- to ensure better economic outcomes; and
- to be responsive to the public need for competent, ethical, and effective service by the various occupations being regulated.

The effects of occupational licensing, however, frequently have been increased prices, restricted entry into the various occupations, an enhanced rate of return for occupation members, and the failure of the licensing device to assure competency.

These effects are direct costs to the consuming public which must be justified by the benefits the public receives by such regulation. While there is no clear way to measure costs against benefits in this area, justification for occupational licensing requires proof that in its absence, the public would suffer harm. The Colorado Sunset law makes such proof a mandatory duty of each regulatory body.

In order to better understand the necessity for requiring a regulatory agency to justify its existence, the detrimental costs of an agency's existence will be examined briefly.

Restricting entry into an occupation, and controlling behavior of those already in the occupation, both of which are necessary concomitants of occupational licensing, have strong economic implications. Licensed members of the occupation are protected from competition, and consequently enjoy a higher profit margin, which is frequently coupled with less efficient utilization of resources, and less consumer choice. The costs of this protection for members of the occupation are increased prices paid by consumers, and restricted access of prospective entrants into the occupation.

Restricted entry takes various forms, and can be more detrimental to society than at first appears. For example, unnecessarily difficult exams have often prevented minorities, and people of lower income levels, from performing jobs they are otherwise qualified to do. This is particularly true when a lack of academic training has no relevance to the competency of the practitioner or the protection of the public. Also, an agency's refusal to grant reciprocity to licensees from other states is often unduly restrictive. Some of these denials of reciprocity result in an impingement on the individual's constitutional right to travel, and cannot be justified as an exercise of the state's police power to protect the health, safety, and welfare of the people.

Justification for Occupational Licensing

Although restricted entry enhances the income of occupation members, irrespective of whether the public is protected, indeed, there are many instances in which occupational licensing is justifiable.

The protection of the public welfare from a specific harm may outweigh the costs associated with restricting entry. Where bad results are not easily curable, or where competence is difficult

or impossible for the consumer to judge, governmental licensing may be a reasonable--or even the only--way to protect against personal and public harm.

Another severely criticized aspect of restricted entry is the fact that administrators often appear to be controlled by those they are supposed to regulate. It is often suggested that these administrators are systematically controlled, sometimes corruptly, by members of the occupation within their scope of responsibility. While this might be true in isolated instances, I submit that the structure of the system better explains the problem and, at the same time, indicates patterns of conduct which members of the profession must be constantly aware of, both as members of a regulated profession and as members of the public.

Regulatory agencies have a tendency to become "regulation minded". They often elaborate and perfect controls and examinations where there is no real need for revision. The effect of this tendency in an occupation with limited entry is to eliminate actual and potential competition and entrench the position of established members. This results in public injury and, when not justifiable by the facts of the particular situation, should be condemned as an unreasonable restraint of trade.

"Regarding what major successes were achieved through the Sunset process, in my view, the most significant achievement involved regulatory reform. . . . This represented a totally new concept in state regulation, one that met the problems of a runaway bureaucracy head-on and, as such, ultimately benefited the agencies, the members of the regulated occupations, and the general public."

The effect of these various characteristics of the regulatory system, if gone unchecked, is often the enhancement of the position of the licensed members of the occupation at the expense of the public at large.

By pointing out some of the patterns and tendencies of regulatory agencies which have led to abuses in the past, I do not mean to suggest that regulation is necessarily bad. On the contrary, regulation is often the only way that the public can be protected from the incompetency of some occupational members. The Sunset law recognized the benefits as well as the problems with occupational licensing by government. This law was the signal of a new approach to regulation by the state, one that will result in maximizing the benefits of governmental regulation while keeping the detrimental costs of regulation at a minimum.

The Colorado Approach

It is my understanding that commission members have already been briefed on the basic Sunset actions taken in Colorado, and that background information on why and how individual decisions were made would be of interest. As you know, the legislative branch of Colorado state government made the final decision as to whether an agency would continue, cease to exist, or be modified, reorganized or significantly redirected. However, the Colorado Sunset law did provide for significant input into the decision-making process by the executive branch by requiring the presentation of testimony before legislative committees, by the executive director of the Department of Regulatory Agencies, an appointee of the Governor.

The executive director prepared for his testimony by conducting in-depth studies of each board and commission. These studies were published and presented to the legislative committees prior to testimony being presented. I have copies of the 13 studies and will leave them with this commission for your perusal. Also, I will provide you with a handbook used by the study teams which outlines the criteria for measurement of the regulatory effectiveness of occupational licensing agencies.

Summarized, we examined the following criteria, among others:

- (1) The extent to which the agency has acted in the public interest.
- (2) The extent to which agency operations have been impeded by existing statutes and procedures.
- (3) The extent to which the agency has permitted qualified applicants to serve the public and has not unreasonably restricted entry.
- (4) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied by the agency or industry it regulates.
- (5) The extent to which the agency has recommended statutory changes to the legislature which would benefit the public--as opposed to the persons it regulates.
- (6) The extent to which the agency has encouraged public participation in making its rules and regulations.

- (7) The efficiency with which formal complaints filed with the division, board or agency, or with the executive director of the Department of Regulatory Agencies have been processed to completion by the division, board, or agency.
- (8) The extent to which changes are necessary in the enabling laws of the agency to adequately comply with the factors aforementioned.

In addition to these criteria required by the Sunset law, the executive director asked the following questions:

- (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's health, safety, or welfare?
- (3) Is there another less restrictive method of regulation available which could adequately protect the public?

Senator Comer addressed the issues raised in the process which had the most impact on the decision makers. In my opinion, our reports, coupled with the performance audits conducted by the state auditor, provided adequate information to support decisions on those issues.

Sunset--A Success, with Limitations

In my view, for the State of Colorado, the implementation of Sunset was a success. However, it was not without several limitations. Neither the Department of Regulatory Agencies, nor the individual boards and commissions under review, received additional funding, above that for current operations, to be used for conducting their review in preparation for testimony. I hope I am not infringing upon Bill Comer's area, but I feel I must indicate certain problems created by the legislature that affected the executive branch.

As I view the legislature, the General Assembly was not very well organized to deal with Sunset in terms of understanding the concept and how it was to be implemented. It was the opinion of the president of the Senate that the Sunset bills should not be given special consideration or handled differently from any other bill. These instructions were imparted to each committee chairman at the beginning of each committee hearing. This direction was somewhat unfortunate in that it did not afford the kind of due

process that the people of the state anticipated or contemplated. While there were special instances where a particular committee chairman allowed adequate time for the taking of sufficient testimony from the state auditor, the executive director of the Department of Regulatory Agencies, the board or commission members, and from the people at large, there were many instances where hearings were held in a perfunctory manner without sufficient participation by anyone.

Another area where, in my view, the process could have been improved was that, at an early date, the leadership of the General Assembly should have designated a joint committee to take testimony rather than a committee of each house. This could have reduced considerable redundancy and time on everyone's part. Instead, it ended up imposing an additional hardship to citizens who had to come to Denver from the outstate area. As a matter of course, the hearings should have been conducted during hours convenient for citizen participation. In fairness, it should be noted that testimony on the Public Utilities Commission, Division of Insurance, Board of Registration for Professional Sanitarians and, to a limited extent, Mortuary Science was taken during evening hours which generated considerable citizen attendance.

“Question—‘You indicated that these boards were intended to protect the public and consumers. Were any consumers protected by your Athletic Commission, which was terminated?’

Mr. Brooks—‘No, they were not, sir. Our Athletic Commission has been almost totally inactive for the last 15 years. We have had two professional fights in Denver in the last 13 years. They both involved Ron Lyle. Now he has been beaten a couple of times so we will not have any more professional fights.’ ”

There was also a procedural problem that resulted when the Sunset bills were introduced in a specific committee of one legislative body (Senate). If the committee chose to postpone the bill indefinitely, the other house, in fact the committee of the whole, was preempted from the opportunity of considering the abolition, termination, or continuation of the board, on its own merits. This in fact happened in the case of the Board of Registration for Professional Sanitarians and the Mortuary Science Board.

Regarding what major successes were achieved through the Sunset process, in my view, the most significant achievement

involved regulatory reform. Sunset provided the first formalized state mechanism for review of the performance of the agencies for the consideration of regulatory reform. By requiring a showing that an agency's existence met a continued need, that it conducted its affairs efficiently and served the public interest, Sunset shifted the burden of proof for continuing a regulatory agency from its detractors to the agency itself. This represented a totally new concept in state regulation, one that met the problems of a runaway bureaucracy head-on and, as such, ultimately benefited the agencies, the members of the regulated occupations, and the general public.

The Major Problem--Inertia

By shifting the burden of justification to the agencies themselves, Sunset directly addressed the major problem with regulatory agencies--inertia. The agencies were placed in a position where positive action was required. This gave the members of the regulated professions a unique opportunity to address deficiencies in the state licensing procedure and in the organic statutes of their respective agencies. Sunset forced licensees to reexamine long entrenched policies which had come to be accepted almost as law. The questions that were asked were whether these policies were necessary in order to protect the public or, indeed, whether they protected anyone, even the members of the profession, in the long run. The rigid scrutiny that agencies were subjected to under the Sunset law was a healthy experience for all concerned.

In conclusion, I wish to present my view of whether Sunset should be expanded to cover other, more comprehensive areas of government. My answer must be a most emphatic yes!

The people of our state, indeed the people of this country, are demanding an answer to a basic question...they are asking themselves whether the type of government which has evolved corresponds to the original concepts of our forefathers. The focus of much of this public attention has been directed at the bureaucracy. In the absence of meaningful change in the bureaucratic system, such pressure will continue to mount. The State of Colorado took steps to meet this demand for innovation in government by enacting and implementing the Sunset law which seeks to establish a meaningful mechanism for necessary change in the bureaucratic structure. The fact that Sunset actively involves the legislature in a review of agency action also provides a unique opportunity to address deficiencies in statutes which may prevent an agency from meeting its statutory mandates. I recommend similar legislation, expanded to all agencies of government, to both other state governments, as well as the federal government.

Question

Did I understand you to say that the legislation was handled in a routine manner and was mixed up with all other legislation?

Mr. Brooks

Yes sir, it was. The way our law was written it required in our legislature the creation of a new bill to revive each agency. These bills, rather than going to a joint committee as we thought they might, were parceled out by the President of the Senate to four separate committees and there was really no relationship between the function of the board and the jurisdiction of that committee. For example, our Board of Cosmetology was heard by the Senate Transportation Committee. Now there is not too much relationship, in my opinion, in transportation and cosmetology. The President of the Senate also indicated to the committees that these were to be handled as routine bills without any special consideration. I think that was wrong.

Question

Did I understand you to say that you think Sunset has rules and regulations pretty well controlled in Colorado?

Mr. Brooks

No sir, I am sorry if I misled you. We do not have them under control. We were quite shocked at what we saw. We already had an administrative act which was supposed to control them. It in fact does not. It stipulates that regulations and rules have to be reviewed within 90 days by the legislature. Simply the fact that we have a part-time legislature does not allow for a review in 90 days, however, so they become automatically effective at the end of 90 days. No sir, we do not have them under control.

Question

Do you have any periodic review of rules and regulations?

Mr. Brooks

No sir, we have not.

Question

Kentucky invalidated all the rules and regulations of all the agencies and required that they only become validated when the General Assembly meets and validates them. I was wondering if you do anything like that?

Mr. Brooks

No, but that might not be a bad idea. We would have a Sunset on our rules and regulations.

Question

You indicated that these boards were intended to protect the public and consumers. Were any consumers protected by your Athletic Commission, which was terminated?

Mr. Brooks

No, they were not, sir. Our Athletic Commission has been almost totally inactive for the last 15 years. We have had two professional fights in Denver in the last 13 years. They both involved Ron Lyle. Now he has been beaten a couple of times so we will not have any more professional fights.

Thank you for your attention.

The Federal Response to the Sunset Phenomenon

Alvin From

I am pleased to appear before this distinguished commission this afternoon to discuss federal Sunset legislation.

Last night Representative Jim Blanchard brought you up to date about the prospects for Sunset legislation in the House of Representatives. I am pleased to report today that in the Senate, Sunset is making far faster progress. S. 2, the Sunset bill, introduced by Senator Muskie and 59 others, was reported unanimously last month by the Senate Governmental Affairs Committee.

The legislation is now before the Senate Rules Committee where Chairman Cannon has pledged to work on it soon after Congress returns from its August recess.

So we hope the Sunset bill will be considered on the Senate floor this fall--or at the very latest--right after we return next January.

In the Senate, the Sunset bill has gone through considerable legislative debate. It has been the subject of 14 days of hearings by two committees over the last 18 months. And the bill's sponsors feel the version approved by the Governmental Affairs Committee is a much refined product.

But despite those refinements and despite the long debate, there is still considerable confusion in the Congress and around the country as to what Sunset is and what it is not, whether it is needed, and what it can accomplish. So this afternoon, I would like to discuss those questions--from the perspective of one who has worked on the Sunset bill from the very beginning.

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What Sunset Is

First, let me discuss what Sunset is--at least in terms of the federal legislation. Sunset, in its simplest terms, is an action forcing mechanism. It forces the Congress to reconsider its past program enactments in a systematic and orderly way.

It assumes that there is no federal program so important that it is above regular and systematic review--to see if it works, to see if it is still needed, to see if its funding level is justified by its contribution to society.

Sunset is uniquely a congressional procedure. It is intended to allow Congress to have increased options available for allocating federal resources and establishing federal policies to meet changing national needs--and to allow Congress to exercise greater responsibility for the results of its past legislative work.

What Sunset Is Not

Having defined what Sunset is, let me now tell you what it is not. First, Sunset is not Zero-Base budgeting. And second, it is not program evaluation.

Zero-Base budgeting in government relates primarily to executive branch budgeting practices. It is a procedure by which agencies prepare their budgets for review by the chief executive and his budget staff. ZBB is as uniquely an executive branch function as Sunset is a legislative function. Early versions of the Muskie bill confused the two concepts. But it soon became clear to us that Zero-Base budgeting--while a useful executive branch complement to Sunset--was not suited for a legislative body. As a result, the current Sunset bill contains no reference at all to Zero-Base budgeting.

Similarly, though Sunset and evaluation are complementary, they, too, are distinctly different processes. And the Governmental Affairs Committee bill distinguishes between them.

Because there probably has been more confusion over the relationship between Sunset and evaluation than over any other question concerning Sunset legislation, I would like to dwell for a moment on that subject.

The basic purpose of Sunset is to compel Congress to reconsider its past program enactments, not to evaluate all programs. All that Sunset requires is that Congress take positive action to reauthorize the programs which it wishes to continue. The thrust in Sunset is reconsideration, not reevaluation. Nothing in the Sunset concept would require Congress to embark on a whole-sale evaluation of all programs scheduled for termination.

Flexibility for Congressional Reconsideration

When it reconsiders an expiring program, Congress can decide on the most appropriate course of action. Sometimes it will decide to extend a program without any change whatsoever. Sometimes, however, Congress will want to consider major changes in an existing program. In its search for program improvements, Congress will take its cues and clues from a variety of sources.

It might look to the ballot box and its constituency for political guidance--or to budgetary data for information on the cost of the program--or to hearings at which those affected by the program tell their side of the story--or even to a large scale evaluation by its own staff or by outside experts. But Congress alone will decide on the scope and the type of review to be undertaken. Sunset thus opens to Congress a full range of options, only one of which is the formal evaluation of programs.

“For all the remaining programs which are not selected for in-depth evaluation, but which are scheduled for termination, each committee considers whether to reauthorize them in such scope and detail as it deems appropriate. In taking this approach, the bill acknowledges important characteristics of Congressional committee life--that some programs require more in-depth evaluation than others, and that the authorizing committees must play a pivotal role in selecting which programs those are.”

For this reason, S. 2 defines Sunset solely in terms of a determination by Congress concerning the future status of existing programs. The bill does not spell out elaborate criteria for program review, nor does it even require Congress to evaluate at all. Sunset is rooted in the role of Congress as the legislative branch of the national government. As the national legislature, Congress is required by Sunset to make a positive decision with regard to the programs and policies of the government.

In my view, evaluation is only one of a number of methods available to Congress when it reconsiders programs. Letters from back home, newspaper editorials, testimony at hearings, on-site visits, and cost benefit analyses--are all grist of the legislative mill.

Even when it applies evaluative findings to programs under review, Congress is much more the consumer than the doer of

evaluations. Congress simply cannot evaluate everything before it makes a legislative decision concerning an expiring program. In the division of labor between the legislative and executive branches, most program evaluations are conducted by the executive. Evaluation has become an enormous industry in the United States with thousands of evaluations completed each year by government agencies, think tanks, and private organizations.

Discretionary Use of Evaluations

When it reconsiders programs, Congress often can dip into the pool of available evaluations and apply the findings to authorization decisions it must make. Sometimes, however, Congress will take a fresh look, either because other evaluations are not available or because it wants to apply different criteria to the decision at hand. In such circumstances, the Sunset bill provides for Congress to formally select a small number of programs for formal in-depth evaluation.

As a general rule, however, Congress is the legislative, not the evaluative branch of the government. Evaluation must be in service of legislation, not as an activity conducted for its own sake.

I have dwelt on the relationship between Sunset and evaluation because understanding the difference between the two is essential to understanding the federal Sunset bill. And it is also essential to understanding why Senator Muskie has pushed so hard for the enactment of Sunset.

Reasons for Sunset

There are, of course, a lot of reasons that three-fifths of the Senate has joined in sponsoring S. 2.

There is concern about the low esteem in which Congress and the federal government are held by the American people.

There is concern about the vast number of conflicting, duplicative and overlapping federal programs.

But, most important, there is concern that Congress is rapidly foreclosing its options to develop federal policies to meet changing problems.

In the fiscal year 1977 budget, so called uncontrollable spending--funds spent with little or no regular Congressional review--is taking up 77% of the entire budget.

In the past ten years, the fastest growing part of the federal budget has been permanent programs.

Congress began to deal with this problem when it enacted the Budget Reform Act of 1974 that altered dramatically the way Congress writes each year's federal budget.

Yet, even with this new budget process, Congress found itself constricted severely by the huge uncontrollable portion of the budget and the number of permanent programs.

The real spending decisions covered less than one-quarter of the budget.

And, at that rate, the new budget process could in the not too distant future, become little more than the simple arithmetic sum of predetermined spending levels.

It is a sad irony that as our federal budget and our involvement in human problems have grown so tremendously--with so many good results--our options and flexibility have been cut so much.

Precisely because we need to increase our options and flexibility, Senator Muskie and the others have arrived at the Sunset concept.

Basic Elements of Federal Sunset Legislation

As approved by the Senate Governmental Affairs Committee, the Sunset legislation contained three basic elements.

First, it sets out a three-Congress, six year schedule for the termination and reauthorization of nearly all federal programs. The only exceptions are interest payments on the national debt, the independent federal judiciary, expenditures for the legal enforcement of civil rights guaranteed by the Constitution, and contributory programs such as Social Security, Civil Service Retirement, and Medicare.

Second, the bill forces the reconsideration of all programs of similar purpose at the same time. Instead of reconsidering programs one by one, as is too often the case today, Congress will be required to review the federal effort in an entire program area at once.

These first two elements are the heart of the Sunset procedure. While the termination provision is aimed at forcing a Congressional decision, termination by broad program area is aimed at promoting the most rational and informed decision possible.

These two fundamental principles are inseparable, and their complementary roles are essential to the integrity of the Sunset process as developed in S. 2. Termination without a schedule of orderly groupings of programs will require Congress to make a

decision, but offers no guarantee that such a decision will be made with a view of the forest as a whole. Without termination, there is no guarantee that the decision will be made at all.

The third major element of the Sunset bill is the establishment of a procedure for selecting a few programs each Congress to be the subject of in-depth evaluation. Those programs will be selected by the appropriate authorizing committees in each body with ratification in each house by simple resolution. The purpose of this process is to give each house of the Congress an opportunity to discuss and go on record as to which programs it intends to examine in detail.

For all the remaining programs which are not selected for in-depth evaluation, but which are scheduled for termination, each committee considers whether to reauthorize them in such scope and detail as it deems appropriate. In taking this approach, the bill acknowledges important characteristics of Congressional committee life--that some programs require more in-depth evaluation than others and that the authorizing committees must play a pivotal role in selecting which programs those are.

Concerns about Potential Impact--Work Load

As is the case with any legislation which proposes sweeping change, major questions have been raised about various aspects of the Sunset bill and the impact it could have on the way Congress and the government operate.

No question has come up more often, however, than the work load question. Virtually every comment on the legislation has included some reference to the potential increased work load under the Sunset process.

The Governmental Affairs Committee recognized that the work load question has been a major concern to many of the experts who testified on the Sunset bill--and it made a serious effort to respond.

The most significant change the committee made was including the procedures for selecting a few programs for in-depth evaluation. That change responded to the criticism most often leveled at the bill--that it would require a committee to undertake an in-depth evaluation of all of its programs scheduled for reauthorization. With the new selection procedures, that criticism is no longer valid. Now clearly, only the selected programs need undergo extensive evaluation, thus permitting a much more manageable work load.

A second change was the establishment of a period prior to the first Sunset cycle during which privileged status would be given to committee proposals for changing the Sunset termination

schedule. In that way, the authorizing committees can have direct input toward easing the work load posed by the schedule set out in the bill.

A final committee change was to lengthen the review cycle from four years in the original Sunset bill to six years in the bill as reported. In addition to extending the length of the cycle, the committee also developed a schedule on the basis of congresses rather than individual years. That change increases the flexibility of Congress and its committees to manage their work load.

Concerns--Protection of Civil Rights

The second major issue the committee confronted involved the potentially harmful impact of the termination mechanism on programs which protect and guarantee basic civil rights. Because of the frequency with which this particular issue was raised, the Governmental Affairs Committee made a serious effort to respond.

In the first place, the committee drafted the bill carefully to ensure that no substantive provisions of law are terminated, even if funding for a particular program is not continued.

"No question has come up more often, however, than the work load question. Virtually every comment on the legislation has included some reference to the potential increased work load under the Sunset process."

Second, the bill now includes a procedure for privileged consideration of a "Sunset Reauthorization Bill"--as a way of ensuring a vote on any program which a committee wishes to reauthorize when the reauthorization is being held up by a filibuster or other delaying tactic.

Most important, the Governmental Affairs Committee amended the bill to include a specific exemption from the termination provisions for the legal enforcement of basic civil rights guaranteed by the Constitution.

A third major issue the committee considered was whether or not to include tax expenditure provisions. S. 2, as introduced,

included a separate title calling for the periodic termination and reenactment of tax expenditures.

This title was deleted by the committee following the adoption of an amendment to require review, but not termination, of tax expenditures. The committee voted unanimously to delete the title because, in the view of Senators Glenn and Muskie, the principal sponsors of the title, the review requirement would be meaningless without the action forcing mechanism of termination.

Having discussed the provisions of the bill in such detail this afternoon, let me close by telling you why I feel Sunset is so important.

Anticipated Benefits

I believe the benefits to be realized from Sunset are both immediate and long range.

First, I feel that an orderly procedure for Congressional consideration of its past legislative work is, in and of itself, a desirable end.

I also believe that such a procedure will have a positive, long term impact on the Congress and the way it conducts its business. By providing an opportunity for Congress to rationalize the present array of government activities, Sunset offers the prospect of a more effective and responsible federal government.

Finally, I believe most emphatically that until Congress begins to exercise greater responsibility for all it has created in the past, it may not have the reserves--either in the budget or in the public trust--to pursue a legislative agenda that is changing with the nation.

Congress and executive agencies must be forced to make tough choices--to make government more responsible for its performance--and to ensure that public dollars are spent effectively and fairly.

In other words, we have to make the system work. That, in essence, is what democracy is all about--and that is what Sunset is all about.

Question

Mr. From, you mentioned something under present law and you said that the lack of enforcement prevented it from working. Now what type of enforcement would you put on Congress if they hadn't already got the authority to do anything they want to? Why

would the lack of enforcement in an existing code section prevent them from doing anything about it if they want?

Mr. From

Well, the current law simply states that all permanent programs should be evaluated every four or five years. The evaluation is left to the initiative of the committees and the committees decide they have better things to do. The difference with Sunset is that Sunset says, "You have to reauthorize. And if you do not reauthorize, the program ends." So what Sunset does is terminate, with the few exceptions that I have discussed, permanent programs. And so even if the committees decide not to evaluate, even if they decide they are going to rubber stamp, just because the reauthorization process in the Congress is an open process, there will be a lot of opportunity to have input into the redirection of programs. The other important point, I think, is that every time we take a look at the federal catalog there are always more and more programs added. The numbers are overwhelming: over 300 health programs, 180 or 190 community development programs, more and more. Well, it just seems to me, forcing them all to come up for reauthorization at the same time is going to have a positive impact.

Question

Did the new Congressional budget process have an impact?

Mr. From

In 1974, Congress passed the Budget Reform Act. That set out two budget resolutions. The first one, which is in the spring, May 15, sets out targets for the year; both a revenue floor and expenditure target. In the interim, all the appropriations bills, spending bills, and revenue bills are passed. By September 15, the Congress must pass a second resolution. This resolution is binding, and it reconciles the actions on the appropriations bills and revenue measures with latest economic forecasts. It sets out functional limits, ceilings, and a revenue floor. If it is necessary then to make any modifications in recently passed appropriations bills, a reconciliation bill is immediately in order to make those changes. Then, after October 1, Congress will have to pass another budget resolution if it is going to exceed those ceilings. There was considerable debate over whether the budget process should be enforced by the rules of the Senate, or whether it should be enforced politically. Political enforcement won, but that political enforcement has been so tight that, in the two years that the budget process has been in effect, the second budget resolution has held the same deficit as the first. And Congress has lived within those ceilings.

Question

Mr. From, you mentioned public trust. Do you not risk disillusioning the public by saying this bill will reconsider or

reevaluate all the programs every five years, knowing that in fact everything is not going to be reviewed? It sounds a bit like business as usual.

Mr. From

Well, there are a lot of people who thought the same thing with the Budget Act. These procedures and a bill like this really depend on the will of Congress to carry them out. The past five years have been a period of extraordinary reform on the Hill. All the committee meetings that were closed are now open on both sides. We have a new budget process and that is one of the reasons we backed off talking about evaluating all programs and defined Sunset in S. 2 as a reconsideration. Congress can reauthorize every program on the books within a six year period. We have the resources to do that. What we are really doing is opening up decisions rather than forcing evaluations. We recognize in the bill that you can only evaluate in-depth a few programs. But you should certainly consider and make modifications in ongoing programs.

We probably do not need enormous evaluations of programs like food stamps to know how to tighten up the law. All you have to do is read the Washington Post and the New York Times. When the New York Times carries pictures of the school lunch programs in New York with the lunches thrown into a field, you do not really need to have an in-depth evaluation to know that you have got to modify the program. The point is that there are a lot of things that come into the legislative process, and evaluation is one of them. We are not promising evaluation of all programs, but we are saying that the Congress--on a systematic basis, according to a schedule--will reconsider most every program on the books.

Question

But if you do not reconsider one program or evaluate the program in-depth during one year's cycle, there is no assurance that you will ever go into in-depth evaluation. Is that correct? If it gets through its one time cycle, there is no necessity to go back to that program. Consequently, you might be focusing on perhaps one or two programs within a group.

Mr. From

I think there are a couple of things to prevent that. One is that the bill will include the program inventory. In that inventory, they will try to group the programs into larger entities. We had a great debate during the hearings as to what a program is--one man's program is another's program element. In any event, the cycle is recurrent.

My own view is that the toughest time is going to be the first cycle. Whenever you try to rationalize what is really an

irrational system, you are going to push things and squeeze things and do a lot of things that are not going to fit very well. But the second year of the budget process has moved more smoothly than the first; and I assume that in succeeding cycles, if we really adhere to the schedule, the Sunset process will improve. I cannot emphasize too much how important that schedule is in the bill. We came to the realization that you cannot require in-depth evaluation of every program and have a comprehensive Sunset. So Congress has the option to evaluate every program. We have comprehensive Sunset and selective evaluation.

Question

The last phrase there might have caught me up-to-date; but it seems that if you have ten programs that are scheduled to cease, then it is up to the proponents of their continuation to come forth with the burden of proof. Perhaps only two get continued, and the other eight will die. Is not that basically what it is all about? I do not see the need for all this evaluation. Either the proponents have the burden of proof or they do not.

Mr. From

You have to remember the political forces that come to bear. The authorizing committees that recommend the program probably created it in the first place. So they have some interest in continuing it. And many times when you get a program that might get through one time only under particular circumstances, they will make that program permanent. That is one of the things Sunset dispatches with. A lot of programs now come up for reauthorization, but they do not come up under any rational scheme. But you are right; the programs not reenacted would get no money.

Question

Is there any Sunset concept attached to legislation now creating a new program?

Mr. From

About half of all federal programs are on short term authorizations. In other words, they have to be reenacted or they will not continue after a period of time. The other half are permanent authorizations.

Question

Do they carry any Sunset provisions?

Mr. From

No, even though the House recently put a Sunset provision on the new Department of Energy; and its bill will carry an annual

authorization. We go through many trends, and for awhile Congress was going away from annual authorizations. Now they are coming back because they see the authorization process as the one way they get a handle on what the government is doing, what the agencies are doing. That is really what Sunset addresses.

A Survey of Sunset Legislation

Kirk Jonas

Since the passage of the Colorado Sunset law in 1976, 25 states have approved acts which embrace the concept in one form or another. And, because of the momentum behind the concept, surveys such as contained in this analysis are usually outdated as soon as they are published. Nevertheless, patterns of development are already evident and suggest that the concept has matured to the point that its future development will occur within already established parameters.

Still, when one talks about Sunset, one must continue to be careful whose Sunset is being talked about. Each Sunset law seems to have unique local characteristics.

Most Sunset laws provide that an agency or a program terminates on a scheduled basis unless the legislature extends the law which authorized it. Extension is generally for another limited period of time. Termination, however, is merely the legislative "action-forcing mechanism" of Sunset. The purpose of Sunset is the "action forced" and that is thorough legislative evaluation of public functions, programs, and agencies. Because termination is a means to an end, the objectives of Sunset can be accomplished without it. Under these other concepts, the legislature commits itself directly to an evaluation schedule without relying on the threat of termination. The same end may be reached, but from different directions.

An Assumption of Sunset

The action-forcing mechanism of scheduled termination forces a legislature to do something--continue, terminate, modify. Scheduled termination is designed to force legislative evaluation because review and evaluation are the logical prelude to any decisive legislative action. An assumption of Sunset is that a legislature will not allow programs or agencies to die without taking a close look at them. An evaluation schedule does not have the same dynamism as a schedule of termination nor, however, does it have the same risks.

Either the mechanism of scheduled termination or a simple commitment to an evaluation schedule is a means of

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legislative self-discipline. The periodic review required by Sunset provides a forum for legislative evaluation. No new powers are inherent in the Sunset process. Rather, by adopting Sunset, legislatures promise to use powers they already have. Sunset makes oversight a regular part of the legislature's agenda.

Sunset changes the perspective on public programs away from one of automatic continuation. While it is acknowledged that few programs or agencies are likely to be terminated, the legislative review and evaluation which accompanies Sunset will probably result in many changes--and hopefully efficiencies.

The purpose of this presentation is to classify the types of Sunset laws enacted by the states, identify some significant issues related to Sunset, and review and compare the basic features in each of the approved acts.

TYPES OF SUNSET LAWS

There are four basic types of Sunset laws at this time:

- Regulatory
- Comprehensive
- Selective
- Discretionary

Figure 1 identifies the type Sunset procedure of each state as of November, 1977. The basic features of each Sunset law are depicted on the analysis contained at the end of this article.

Regulatory

Regulatory laws apply, as the name states, to regulatory units of government such as occupational and professional licensing and regulatory boards, and rate-setting boards such as those governing utilities and insurance. Regulatory Sunset makes the fundamental assumption that a profession, occupation, business, or industry should not be regulated unless necessary to protect the health, safety, and welfare of the people. A standard feature of regulatory Sunset is that regulatory agencies have the burden of demonstrating a public need for their continued existence. There are corollary assumptions that regulation should not needlessly affect the competitive market and that regulatory powers should be exercised to the minimum extent possible.

Regulatory Sunset reflects the growing concern that it is the regulated occupations and businesses which are being served by regulation, not the public. The first state to pass a Sunset law, Colorado, made regulatory agencies its target. The

rationale behind the selection of regulatory agencies was that they represented a clearly defined and manageable target area which would constitute an initial application of the process. Ten states have regulatory Sunset laws.

Comprehensive

Comprehensive Sunset laws apply to virtually every element of government. Six states have adopted comprehensive Sunset laws. Usually, only constitutionally established units are exempt. All state programs or agencies are terminated according to a fixed schedule. Louisiana's Sunset law, for example, after listing a detailed termination schedule, even provides that "any other statutory entity...not previously terminated by this act" be terminated. Alabama's Sunset law states, in a somewhat similar fashion, that "any state agency existing on the date of the passage of this act and not specifically listed in this act shall be terminated on October 1, 1978. It further forces review of "any entity, which receives state funds of whatever nature". Arkansas, Tennessee, Texas, and New Hampshire also have comprehensive Sunset laws.

Proponents of comprehensive Sunset laws feel that only by applying Sunset to all parts of government will the concept be given a fair test. It has been said that this kind of legislation will establish the concept as a "bias free" good government measure and not one identified with partisan or ideological leanings. Opponents of comprehensive Sunset say that trying to do too much too soon will kill a good idea by overburdening review processes which are not prepared for the volume of analysis and evaluation that Sunset requires. Common Cause, the citizen's lobby which has been credited with originating the concept, has urged a go-slow approach, fearing that overzealous states may "love a good thing to death" by trying to do too much too soon.

Selective

Selective laws focus on a specific part of government, other than or in addition to regulatory agencies. Most pilot Sunset laws are classified as selective in this paper. South Dakota provides a good example. In South Dakota, Sunset is applied to eight selected agencies in the Department of Commerce and Consumer Affairs. Rhode Island and Oklahoma also have selective acts. Although regulatory boards are sometimes included, so are advisory boards and committees, study commissions, and similar units. Indiana and Washington have selective, pilot Sunset programs. Minnesota does not have a Sunset law, *per se*, but has added Sunset clauses to various newly created programs.

Selective Sunset states have decided not to commit themselves to the concept without experimentation and testing.

Selective Sunset laws will be, almost by definition, unique, since they are tailored to the specific needs of each state. A difficulty with selective Sunset is that it presupposes a rationale for selecting the affected agencies. Where a logical selection process does not exist, selective Sunset is open to the charge that its subject selection is based on arbitrary or partisan factors.

Discretionary

Discretionary laws are a recent Sunset innovation. Under this option, a legislature focuses on selected subjects but only after triggering some sort of selection process. This type of legislation has evolved because of problems encountered or anticipated with regulatory or comprehensive coverage. Alaska and the proposed federal Sunset Act are examples of discretionary statutes.

“Sunset changes the perspective on public programs away from one of automatic continuation. While it is acknowledged that few programs or agencies are likely to be terminated, the legislative review and evaluation which accompanies Sunset will probably result in many changes—and hopefully efficiencies.”

Advocates of discretionary provisions claim it best preserves the opportunities of Sunset while responding to its concerns. The U. S. Senate Subcommittee on Intergovernmental Relations, for example, reported that:

“throughout the year and a half of debate on the legislation, there have been those who argued that, to be effective, Sunset must be comprehensive, while others have argued that to be effective, Sunset must be selective. Senate Bill No. 2, as amended, responds to both concerns”.

Proposed federal legislation now provides that all programs come up for periodic review by appropriate Congressional committees, but only select ones are studied in-depth. Those programs which are scheduled for termination but not for in-depth evaluation, are reviewed on a less formal basis. Each committee has the

flexibility to recommend budget reauthorization of programs after evaluations of whatever scope or detail seem appropriate. (It should be noted that the federal act deals in termination of authorization for budget spending, not in termination of appropriations as would be the case in state government.)

The Alaska Sunset Act provides for similar discretionary evaluation. That law sets forth a schedule of program categories in which activities are subject to termination, but none actually terminates unless the legislature acts by bill.

"During the legislative session preceding each of the years set out, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year."

Discretionary Sunset then maintains an emphasis on periodic review, but does not provide for automatic terminations.

SOME IMPORTANT ISSUES

Specific, and often unique, state needs raise two issue areas which are integral to the concept of Sunset and which are noted here:

- Issues concerning the action-forcing mechanism
- Issues of potential fiscal impact

Action-Forcing Mechanism

Is It Necessary? The issues associated with the action-forcing mechanism begin with the question: "Is it necessary?" The power for a legislature to do away with agencies and programs already exists. Why complicate things with Sunset? Why not just do it?

While standard action-forcing mechanisms establish the prospect of scheduled termination, it is widely recognized that few extensive terminations will be effected. The action forced, as we have seen, is comprehensive review. Why then, raise the threat of termination at all? If review and modification are more

likely than termination--then Sunset, like so many government programs, seems to promise more than it can deliver. Sunset proponents offer several defenses of the termination mechanism.

First, the threat of termination alone will force action to be taken they say.

Second, Sunset will allegedly create in the agencies under review an attitude that they must develop a record of performance in the public interest.

Third is the "something has to give argument" - the issue of uncontrollable spending.

Uncontrollable Spending. "Uncontrollable" expenditures are defined as spending mandated by previous laws, by the federal government, by formula spending, special funds requirements, and other authorities.

Uncontrollables--actions and obligations of the past--dictate to a large degree what the budgets of the present and future are and will be. According to testimony received in the federal hearings on Sunset, uncontrollables at the national level now account for more than 77% of total outlays. Since 1967, uncontrollables have zoomed from 59% of the federal budget to 77% of the federal budget. According to Allen Schick, "in terms of inflation, controllable expenditures have not grown during the past decade; and almost all of the increase in the budget has been in uncontrollable programs". The startling growth of uncontrollables has many consequences.

1. The budget goes up, not because of continuing legislative direction but because of dynamics in the budget itself. The budget, instead of legislators or issues, drives priorities.
2. Uncontrollable spending in existing agencies and programs soaks up the great majority of tax dollars, severely limiting new initiatives.

Uncontrollable spending leads to the "something has to give" argument. Because of limited resources, some older programs may well have to be terminated to make way for new ones.

Uncontrollables are also present in the Virginia budget. The following table lists those State expenditures which may be considered uncontrollable. This is a partial breakout of the same kinds of expenditures regarded as uncontrollable on the federal level. For our purposes, the term "limited flexibility" is used instead of uncontrollable, but their characteristics are the same. To change the dollar amounts, the laws authorizing the expenditures must be changed also.

Table 1

EXAMPLES OF LIMITED FLEXIBILITY EXPENDITURES
BASED ON 76-78 BUDGET ACT (UNREVISED)

	<u>Total For Biennium</u>
Debt Service	\$ 11,821,870
Legislative Department	19,428,775
Judicial Department	48,791,855
Retirement	87,853,573
Basic School Aid	857,540,935
Medical Assistance	228,848,020
Aid to Dependent Children	123,037,500
Revenue Distribution to Localities	<u>316,600,000</u>
Subtotal	\$ 1,693,922,530
Special Funds	<u>3,761,128,235</u>
Limited Flexibility Expenditures (Partial)	\$ 5,455,050,765
Total Appropriation	<u>\$ 7,406,679,030</u>
Percentage of Limited Flexibility Items of Total Appropriation	74%

Debt service (the sinking fund), basic school aid, medical assistance, ADC, and distribution of sales tax revenue to localities, along with several other items, account for 23% of the total budget or about 46% of general funds. Expenditures for the legislative and judicial departments (\$68 million) might be included as limited flexibility expenditures because of the separation of powers restraints which impact on the chief executive's budget formulation process. The limited flexibility expenditures and special fund expenditures comprised 74% of the total budget.

Obviously, these funds are not strictly uncontrollable. They are referred to solely to demonstrate a rough State comparability with the frequently cited 77% federal uncontrollables, for it is this 77% which has attracted such interest in budget analysis below the base at the federal level.

A November, 1976 Virginia Division of Budget paper touched on the problem of limited flexibility when it stated referring to the budget: "No one can state categorically that the appropriations are absolutely irreducible. However, the 1976-78 appropriations are not extravagant, they have been reduced, and significant changes are certain to have a significant program effect."

This statement says, in effect, what Sunset does. Significant changes in budgets or laws are certain to have a significant program effect. Sunset addresses itself to one problem that no other review process does--that is, to get at certain expenditures it is necessary to go beyond the budget and into the law. Sunset addresses itself to this reality by acknowledging program termination as a legitimate means of reallocating scarce resources.

Sunset demands periodic review on a systematic and comprehensive basis to distinguish between useful, marginal, and useless programs. To make significant, and sometimes necessary, reallocations of resources, program termination is recognized as a viable budgetary alternative. Under most Sunset laws, consideration of this option is forced by a process of automatic termination. It is the systematic review of past legislative actions, however, that is the purpose of Sunset.

Survey of Sunset - Comparable Data

●GENERAL INFORMATION	ALABAMA	ALASKA	ARKANSAS	COLORADO	CONNECTICUT
TYPE COVERAGE	Comprehensive	Discretionary	Comprehensive	Regulatory	Selective
REVIEW CYCLE (YEARS)	4	4	6 (one time)	6	5
DATE OF 1ST SCHEDULED TERMINATION	Oct. 1, 1977	June 30, 1979	June 30, 1979	July 1, 1977	July 1, 1979

●REVIEW PROCESS

ORGANIZATION RESPONSIBLE FOR REVIEW PROCESS	Select joint committee	Legislative Budget and Audit Committee (LBAC)	Joint Interim Committees	Legislative Audit Committee	Legislative Program Review and Investigations Committee (LPRC)
TYPE OF STUDY	Review and analysis by Dept. of Examiners of Public Accounts	Agency self-study summaries prepared by Legislative Affairs Agency	Performance audit by Division of Legislative Audit	Performance audit by State Auditor's Office	Performance audit by LPRC
SPECIAL FEATURE	Agency to prepare Zero-Base budget	LBAC can designate programs for Sunset termination			

●LEGISLATIVE PROCESS

COMMITTEE RESPONSIBLE FOR PROCESSING LEGISLATION	Select Joint Committee	Committees of reference	Joint Interim Committee on State Agencies and Governmental Affairs (JICSAGA)	Committee of reference	Joint Committee on Government Administration and Policy
REQUIRES SEPARATE BILL TO CONTINUE EACH AGENCY	Yes	Yes		Yes	
PUBLIC HEARINGS REQUIRED	Yes	Yes	Yes	Yes	Yes
SPECIAL FEATURE	Select Committee recommendations go directly to floor vote	One year	All reports and recommendations are reviewed by JICSAGA	Original law amended to allow committee more review time	

OTHER FEATURES

AUTOMATIC COVERAGE OF NEW AGENCIES				Yes	
WIND-DOWN PERIOD	180 days	One year	One year	One year	One year
ALLOWS EARLIER CONSIDERATION OF AGENCY LEGISLATION		Yes			Yes
CLAIMS PROTECTED	Yes	Yes	Yes	Yes	Yes
NOTES	Must vote to continue or terminate. No modification.	Special program identification flexibility. Regulatory boards are terminated according to schedule.	There is no cycle. This is a one time process.	1st Sunset law. Several agencies terminated on July 1, 1977	Part of Executive Reorganization Act of 1977

Survey of Sunset - Comparable Data

●GENERAL INFORMATION	FLORIDA	GEORGIA	HAWAII	INDIANA	LOUISIANA
TYPE COVERAGE	Regulatory	Regulatory	Regulatory	Selective	Comprehensive
REVIEW CYCLE (YEARS)	6	6	6	10	4
DATE OF 1ST SCHEDULED TERMINATION	July 1, 1978	July 1, 1978	Dec. 31, 1978	Dec. 31, 1978*	July 1, 1979

●REVIEW PROCESS

ORGANIZATION RESPONSIBLE FOR REVIEW PROCESS	Select committee is charged with developing process	Legislative Services Committee	Joint committee	Evaluation Committee	Standing committees
TYPE OF STUDY	Not formulated	Performance audit by State Auditor	Agency self-study	Agency self-study	Standing committees to conduct ZBB review and evaluation
SPECIAL FEATURE				Committees may be joint, special, or standing	Study initiated 2 years prior to termination date

●LEGISLATIVE PROCESS

COMMITTEE RESPONSIBLE FOR PROCESSING LEGISLATION	Substantive committees, sitting jointly	Standing committees	Joint committee	Variable - depends on nature of evaluation committee	Standing committees
REQUIRES SEPARATE BILL TO CONTINUE EACH AGENCY		Yes			Yes
PUBLIC HEARINGS REQUIRED		Yes	Yes	Yes	Yes
SPECIAL FEATURE			Procedures are not stated in Sunset law	Special committee established to develop procedures	House/Senate committees may operate jointly or separately

●OTHER FEATURES

AUTOMATIC COVERAGE OF NEW AGENCIES	Yes	Yes			Yes
WIND-DOWN PERIOD	None	One year	No*		No
ALLOWS EARLIER CONSIDERATION OF AGENCY LEGISLATION					Yes
CLAIMS PROTECTED	Yes	Yes			Yes
NOTES	Procedures will be developed by select joint committee.		*Usually six months or more will be available prior to termination. Sunset act is very brief.	*A pilot program begins terminations on this date.	*As defined by the Executive Reorganization Act of 1975. Retirement, bonds unaffected.

Survey of Sunset - Comparable Data

GENERAL INFORMATION	MAINE	MINNESOTA	MONTANA	NEBRASKA	NEW HAMPSHIRE
TYPE COVERAGE	Selective	Selective*	Regulatory	Regulatory	Comprehensive
REVIEW CYCLE (YEARS)	10		6	6 (one time)	6
DATE OF 1ST SCHEDULED TERMINATION	June 30, 1980	June 30, 1985 (Energy Agency)	July 1, 1979	July 1, 1978	Schedule to be established

● REVIEW PROCESS

ORGANIZATION RESPONSIBLE FOR REVIEW PROCESS	Department of Audit		Legislative Audit Committee	Performance Review and Audit Committee	Joint Legislative Committee on Review of Agencies and programs.
TYPE OF STUDY	Agency justification reports		Legislative Audit Committee prepares performance audit	Legislative Fiscal Analyst conducts performance audit	Report by Legislative Budget Assistant
SPECIAL FEATURE	Special grouping of agencies for study purposes.		Special agency responsibilities*		Schedule to be established in 1978

LEGISLATIVE PROCESS

COMMITTEE RESPONSIBLE FOR PROCESSING LEGISLATION	To be established by Legislative Council prior to May 1, 1978.		Standing Committees	Standing Committees	Standing Committees
REQUIRES SEPARATE BILL TO CONTINUE EACH AGENCY	To be established		Yes	Yes	Yes
PUBLIC HEARINGS REQUIRED	To be established		Yes	Yes	Yes
SPECIAL FEATURE	To be established				Use of conference committee to discourage one house action

● OTHER FEATURES

AUTOMATIC COVERAGE OF NEW AGENCIES			Yes		Yes
WIND-DOWN PERIOD	One Year		Six Months	One Year	9 months
ALLOWS EARLIER CONSIDERATION OF AGENCY LEGISLATION				Yes	
CLAIMS PROTECTED	Yes		Yes	Yes	Yes
NOTES	Two laws were enacted. One reviews property and sales tax exemptions. The other is described above.	*No general Sunset statute. Sunset clauses have been added to specific new programs.	*Agency sets forth in a testable fashion the logic of assumptions linking expenditures to goals.	Members of recreated boards need not be reappointed. Sunset Act is Sunset on July 2, 1983.	Committee terminates July 1, 1987.

Survey of Sunset - Comparable Data

●GENERAL INFORMATION	NEW MEXICO	NORTH CAROLINA	OKLAHOMA	OREGON	RHODE ISLAND
TYPE COVERAGE	Regulatory	Regulatory	Selective	Regulatory	Selective
REVIEW CYCLE (YEARS)	6	6*	6	8	5
DATE OF 1ST SCHEDULED TERMINATION	July 1, 1978	July 1, 1979	July 1, 1978	July 1, 1980	January 30, 1979

●REVIEW PROCESS

ORGANIZATION RESPONSIBLE FOR REVIEW PROCESS	Legislative Finance Committee	Governmental Evaluation Commission	Joint committee of legislative council	Interim committees	Oversight Commission
TYPE OF STUDY	Legislative Finance Committee conducts review	Agency self-study and program performance evaluations	Agency self-study	Review by committee	Auditor General conducts ZBB review and evaluation
SPECIAL FEATURE	Joint legislative committee to recommend schedule by January 1, 1978	Commission specially created to support Sunset*	Some evaluation by legislative council planned		

●LEGISLATIVE PROCESS

COMMITTEE RESPONSIBLE FOR PROCESSING LEGISLATION	Legislative Finance Committee	Committees of reference	Joint committee of legislature	Standing committees	Standing committees
REQUIRES SEPARATE BILL TO CONTINUE EACH AGENCY		Yes		Yes	
PUBLIC HEARINGS REQUIRED	Yes	Yes	Yes	Yes	Yes
SPECIAL FEATURE		Committees develop recommendations	Reviews but does not terminate gubernatorial entities		

●OTHER FEATURES

AUTOMATIC COVERAGE OF NEW AGENCIES	Yes				Yes
WIND-DOWN PERIOD	One year	One year	One year	No	One year
ALLOWS EARLIER CONSIDERATION OF AGENCY LEGISLATION			Yes	Yes	Yes
CLAIMS PROTECTED	Yes	Yes	Yes		Yes
NOTES		*Commission terminates in 1983. One time process.	*Rules and regulations continue.		Retirement systems unaffected.

Survey of Sunset - Comparable Data

●GENERAL INFORMATION	SOUTH DAKOTA	TENNESSEE	TEXAS	UTAH	WASHINGTON
TYPE COVERAGE	Selective	Comprehensive	Comprehensive	Regulatory	Selective
REVIEW CYCLE (YEARS)	No cycle	6	12	6	6
SUBJECT OF TERMINATION	Unit and statute	Entity	Unit and statute	Code title	Agencies, rules, programs

●REVIEW PROCESS

ORGANIZATION RESPONSIBLE FOR REVIEW PROCESS	Interim committee of Legislative Research Council	Evaluation committees	Sunset Advisory Commission	Study committees	Legislative Budget Committee
TYPE OF STUDY	Department of Legislative Audit provides information	Program review audit by comptroller	Sunset Advisory Commission conducts performance evaluation	Study committees conduct review	Program and fiscal review by Legislative Budget Committee
SPECIAL FEATURE			Commission will hire staff. Commission has subpoena power		Executive Office of Financial Management has role

●LEGISLATIVE PROCESS

COMMITTEE RESPONSIBLE FOR PROCESSING LEGISLATION	Interim committee	Standing committees	Standing committees	Standing committees	Standing committees
REQUIRES SEPARATE BILL TO CONTINUE EACH AGENCY		Yes	Yes		Yes
PUBLIC HEARINGS REQUIRED	Yes	Yes	Yes		Yes
SPECIAL FEATURE					

●OTHER FEATURES

AUTOMATIC COVERAGE OF NEW AGENCIES		Yes	Yes		
WIND-DOWN PERIOD		One year	One Year	One year	One year
ALLOWS EARLIER CONSIDERATION OF AGENCY LEGISLATION		Yes	Yes		
CLAIMS PROTECTED	Yes	Yes	Yes		
NOTES		Explicit description of legislative activities.	Texas has legislative budget. Reasonable effort will be made to relocate employees.	Pilot program.	Strong participation by executive branch.

The Sunset Phenomenon

Directions for Legislative Oversight in Virginia

A report on Sunset legislation prepared by the Joint Legislative Audit and Review Commission and advisory task force. Submitted to the Governor and to the General Assembly pursuant to HJR 178.

The growth of systematic legislative oversight of governmental programs through enactment of "Sunset" statutes has been phenomenal. Since passage of the Colorado Sunset Act in 1976, 25 states have adopted Sunset legislation and every state legislature (and the U. S. Congress) has a similar measure under consideration. There is no doubt that Sunset has great popular appeal. There is, however, substantial disagreement about what Sunset is--and what it should be.

The term "Sunset" can be applied to various kinds of legislation, but it has no simple, single definition. Generally, Sunset is viewed as a concept of legislative self-discipline--designed to promote accountability through systematic and periodic legislative evaluation of public functions, programs, and agencies.

Under most existing Sunset laws, a program, agency, function, or law is subject to termination on a scheduled basis unless the legislature initiates action to continue it. In these cases, the requirement for scheduled termination forces the legislature to act. Under other Sunset concepts, the legislature commits itself to an evaluation schedule without relying solely on the threat of termination. Thus, governmental activities may be modified, continued, or terminated depending on the judgment of the legislature. The results of oversight efforts become a part of the political decision-making process.

No new legislative powers are either inherent in or granted by Sunset. Rather, by adopting Sunset, a legislature commits itself to use the power it already has.

Sunset can strengthen the oversight role of state legislatures in two important ways. First, by mandating a continuing program of systematic review, evaluation, and legislative utilization, new or existing oversight procedures can be better institutionalized. Second, with all the study, debate, and consideration which culminates in adoption of a law, legislatures clearly acknowledge and accept an active oversight responsibility.

Improved legislative oversight, however, is not the only reason for Sunset's popularity. The dramatic growth in government spending in recent years; concern for effective, efficient, and economic public programs; and, increasing questions about the wisdom of providing certain services or having particular

regulations--all in the name of public benefit--have contributed to an intensified interest in strengthened accountability. The search for accountability, in turn, has spurred a search for more effective legislative oversight.

Virginia's Consideration of a Sunset Act

The potential benefits to be gained by a Sunset law are commonly recognized. Nevertheless, informed observers urge that a reasoned and cautious determination be made whether Sunset is an appropriate tool for strengthening any particular legislature's oversight function. This is the approach elected by the General Assembly. Several Sunset bills were introduced during the 1977 session, with almost half of the Assembly's legislators as co-patrons, but a Sunset act was not adopted. Instead, House Joint Resolution 178 was passed instructing the Joint Legislative Audit and Review Commission (JLARC) to study Sunset, as well as related concepts such as Zero-Base budgeting. The study was directed to include:

- the scope of coverage of Sunset legislation, required exceptions, and the timeliness and categories of program review;
- criteria that should be used to evaluate agencies or programs;
- the role of and relationship between standing committees, other legislative commissions and service agencies, and the executive;
- the mechanisms of implementation and operation; and
- the costs involved.

A twelve member task force with appointments by the Governor, the Speaker of the House of Delegates, and the Senate Committee on Privileges and Elections, was assembled to serve in an advisory capacity to the JLARC. The task force was intended to ensure broad legislative and executive representation.

Because Sunset is a recent innovation, its accomplishments are not subject to thorough testing or evaluation; consequently, the study committee decided to carry out its mandate through a series of informational subject matter forums. Efforts were made to obtain and review current and balanced information on various types of Sunset laws, methods used to conduct Sunset reviews, and procedures used in legislative implementation.

The first forum was held in May, 1977 in Roanoke, where members of the General Assembly, key executive branch officials,

and invited guests attended an introductory conference on Sunset, Zero-Base budgeting, and evaluation. Published proceedings of this important meeting titled, "Sunset, Zero-Base Budgeting, Legislative Program Evaluation" were distributed to members of the General Assembly in October, 1977.

At forum meetings in June and July, the study committee assessed the purpose and objectives of Sunset laws. First the group reviewed a survey and analysis of 25 individual state Sunset laws. A summary of the data accumulated is contained in this report. Discussion then focused on the experiences of Colorado and other states in implementation of their laws and on a congressional proposal, "The Program Evaluation Act of 1977". A publication which includes much of the testimony received during the study as well as selected staff presentations has been published to accompany this report. It is titled "The Sunset Phenomenon".

The August forum centered on other tools of legislative oversight--review of administrative regulations, and Zero-Base budgeting. A special report on Zero-Base budgeting which includes an overview of Virginia's program budget system has been prepared to serve as a public record of the information gathered, and to respond to legislative interest in this budget innovation. The report is titled "Zero-Base Budgeting?".

Finally, in September, October, and November, a preliminary report, alternative statutory proposals, and proposed legislation were discussed and debated. This report and the draft legislation it contains are the results of that discussion and have been adopted by a majority vote of the study committee.

Conclusions From The Sunset Study

Two conclusions emerged as a result of this study of legislative oversight which are the subject of the balance of this report.

- First, it is the opinion of a majority of study committee members that the General Assembly should not enact standard Sunset legislation which mandates program or agency termination. The benefits to be achieved are considered to be less than the costs involved for the Commonwealth.
- Second, a majority of members believe the General Assembly should adopt legislation which further promotes its existing legislative oversight through: regular and active participation of standing committees in identifying and selecting the programs and agencies of State government that are to be evaluated; ordering on a systematic

and periodic basis a schedule of review and evaluation; and providing a reasonable method for utilization of the results of legislative review and evaluation.

Organization of the Report

This report has been organized along the lines of the process followed for the Sunset study. The first principal section summarizes background information about standard Sunset laws and analyzes their component parts. The second section outlines major concerns raised during the study and includes the sense of the study committee where appropriate. The third section reports on findings and conclusions of particular relevance to the Virginia General Assembly and presents the guidelines used to draft an improved legislative oversight proposal for the Commonwealth.

Finally, the report contains a copy of the legislative proposal and bill prepared in response to study concerns and guidelines.

SUNSET BACKGROUND AND STUDY COMMITTEE ANALYSIS

Sunset legislation consists of several interrelated component parts--any one of which can be used to distinguish one kind of proposal from another. The components generally refer to: the scope of statutory coverage; the frequency of scheduling; the processes of legislative review; and, methods of legislative utilization and action. For this analysis, these components are classified as:

- Agency or Program Coverage
- Termination or Evaluation Schedule
- Evaluation Criteria
- Evaluation and Review Process
- Legislative Utilization Process
- Operational and Safeguard Provisions

The best descriptor of a Sunset law (among these components) is the scope and nature of its coverage.

Agency or Program Coverage

Sunset laws can be categorized into four basic types based on coverage--Regulatory, Comprehensive, Selective, and Discretionary.

Regulatory laws generally apply to occupational and professional licensing agencies and other regulatory units such as

rate-setting boards governing utilities, insurance, or industries. Regulatory Sunset assumes that no profession, occupation, business, or industry should be regulated unless regulation is essential to protect public health, safety, or welfare. A standard feature of this kind of statute is that the regulatory agency has the burden of demonstrating a public need for its continued existence. Corollary assumptions are that: regulation should not needlessly affect the competitive market; and, the public, not occupations or businesses, should be served by regulation.

Colorado, the first state to pass a Sunset law, made regulatory agencies its target. The rationale behind this selection was that regulatory agencies represented a clearly defined and manageable subject area which could also constitute an initial test application for the process. Ten states--North Carolina, Georgia, Florida, Nebraska, Colorado, New Mexico, Utah, Montana, Oregon, and Hawaii--have laws that best fit the regulatory category. Most of the ten laws, however, were the earliest enacted and were based on the example of Colorado. The momentum toward regulatory laws appears to have slowed considerably.

Comprehensive laws are those that apply to all elements of government. Five southern states--Tennessee, Alabama, Louisiana, Arkansas, and Texas--and New Hampshire, have adopted comprehensive laws. In most cases, constitutionally established units of government are exempt. Comprehensive laws terminate all state programs or agencies according to a fixed schedule. In Louisiana, in fact, after the listing of a detailed termination schedule, there is a provision covering "any other statutory entity...not previously terminated". Alabama's law states, in similar fashion, that "any state agency existing on the date of the passage of this act and not specifically listed in this act shall be terminated on October 1, 1978".

Proponents of comprehensive laws feel that application of Sunset to all parts of government is the only way to give the concept a fair test. Senator Edmund S. Muskie (D. Maine), a chief sponsor of the congressional Sunset proposal, has testified that this kind of legislation will establish the concept as a "bias free" good government measure and not one identified with partisan or ideological leanings. Opponents of comprehensive laws state that it can overburden legislative processes which are unprepared for the volume of analysis and evaluation that Sunset requires.

Common Cause, the citizen's lobby which has been credited with originating the concept, has urged a go-slow approach, fearing that overzealous states may "love a good thing to death" by trying to do too much, too soon.

Selective laws focus on specifically identified parts of government, other than or in addition to regulatory agencies. Most experimental Sunset laws are classified as selective in this analysis. South Dakota offers a good example of a selective

approach. In South Dakota, Sunset has been applied to eight agencies in the Department of Commerce and Consumer Affairs. Rhode Island, Connecticut, and Oklahoma also have selective acts. Although in these states regulatory boards are covered, so too are advisory boards and committees, study commissions, and similar units. Maine, Indiana, and Washington have also enacted selective or experimental Sunset programs. Minnesota is unique in that it does not have a Sunset law but regularly includes termination clauses in newly created programs.

Selective Sunset states generally have decided not to commit themselves to the concept without experimentation and testing. Selective Sunset laws will be, almost by definition, unique, since they are tailored to the specific needs of each state.

Discretionary laws are a recent Sunset innovation. Under this option, a legislature focuses on selected subjects but only after triggering some sort of selection process. This type of legislation has evolved because of problems encountered or anticipated with regulatory or comprehensive coverage. Alaska and the proposed federal Sunset Act are examples of discretionary statutes.

Advocates of discretionary provisions claim it best preserves the opportunities of Sunset while responding to its concerns. The U. S. Senate Subcommittee on Intergovernmental Relations, for example, reported that

"throughout the year and a half of debate on the legislation, there have been those who argued that, to be effective, Sunset must be comprehensive, while others have argued that to be effective, Sunset must be selective. Senate Bill No. 2, as amended, responds to both concerns".

Proposed federal legislation now provides that all programs come up for periodic review by appropriate Congressional committees, but only select ones are studied in-depth. Those programs which are scheduled for termination but not for in-depth evaluation, are reviewed on a less formal basis. Each committee has the flexibility to recommend budget reauthorization of programs after evaluation of whatever scope or detail seem appropriate. (It should be noted that the federal act deals in termination of authorization for budget spending, not in termination of appropriations as would be the case in state government.)

The Alaska Sunset Act provides for similar discretionary evaluation. That law sets forth a schedule of program categories in which activities are subject to termination, but none actually terminates unless the legislature acts by bill.

"During the legislative session preceding each of the years set out, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year."

Discretionary Sunset then, maintains an emphasis on periodic review, but without automatic termination.

Termination or Evaluation Schedule

The second Sunset component is the time cycle planned for the review or termination of governmental elements. There are four basic scheduling options:

- Frequent (suggested as a 4-7 year schedule)
- Infrequent (suggested as a 8-12 year schedule)
- Flexible (as with discretionary coverage, a flexible schedule provides a mechanism which can be used to adjust the frequency of review)
- One time (no recurring cycle)

A dominant concern of scheduling is the amount of time the legislature wants to invest. If member time is available, more programs can be looked at thoroughly. However, the more frequent and greater the coverage, the greater the cost.

In an attempt to preserve the benefits of frequent review but to lessen work load and cost, the Alaska legislature adopted a discretionary approach to maintain comprehensive coverage but to give the legislature flexibility in selecting programs for review from broad functional categories. Thus, while the legislature reviews with a broad stroke a whole area of government, it dedicates the bulk of its resources and time to evaluating those programs which appear to need it the most.

The federal government has moved in a somewhat similar manner after calculating the enormous expenditure of resources and time that comprehensive evaluation of all government programs would take.

It has been argued that more frequent review will make programs and agencies more accountable. By subjecting them to frequent review, the legislature might expect agencies to be more attentive to legislative intent and more sensitive to the public they are supposed to serve.

The last frequency option establishes a one-time review schedule. The primary feature of a one-time schedule is that it subjects the Sunset Act itself to the same kind of scrutiny that the Sunset principle applies to other public activities.

Evaluation Criteria

The criteria component establishes the standards by which agencies or programs are judged. Basic criteria usually deal with:

- Justification of existence
- Performance in the public interest
- Efficiency and effectiveness
- Compliance with legislative intent
- Accomplishment of original objectives
- Compliance with equal employment opportunity guidelines
- Federal funding impact
- Restrictiveness of regulation (market impact)

There are several approaches to implementing the criteria component. One is to legislate a detailed listing of evaluative criteria. This approach addresses the behavior, effectiveness, and efficiency of all agencies under review on the same basis. Other laws have less specific criteria that apply mainly to a basic justification of the agency's existence. Such criteria are found most often in states with regulatory Sunset laws.

One basic defect of the criteria of most Sunset laws is that, while they may question the reason for an agency's being, they do not provide uniformly clear measures of performance and productivity. The decision-making process, as a result, becomes dependent on opinion rather than fact.

Evaluation and Review Process

The evaluation component establishes the method of assessing whether or not established criteria are met. The type of review process used will define, to a large extent, the character of the Sunset process. The review process establishes the foundation of information on which legislative decisions will be made. Therefore, the quality of the information base must be high. Significant program modifications are unlikely without a strong base of supporting facts.

Four review processes have been found in existing Sunset laws:

- Agency Self-Study
- Committee Study
- Legislative Program Evaluation Unit
- Combination Systems

Agency self-studies emphasize the use of agency personnel and expertise. The objectivity of an agency faced with termination may be suspect, however, as it reports on its own efficiency and effectiveness. With this option, the legislature also gives up all practical cost control since agencies will likely spend whatever is necessary to establish adequate justification. The evaluation expenditure may also be used to accomplish other agency objectives.

Committee study can take many forms depending on the degree to which each committee performs its selected studies. Cost could be a restraining factor especially if all committees were staffed independently.

Under option three, a designated legislative program evaluation unit gathers systematic information about program accomplishments, evaluates the information, and presents it to the legislature. This approach economizes member time and gives the legislature information that is independent of the executive agencies. Committee involvement could be maintained in identification and selection of coverage, scheduling, and in utilization.

Combination systems take advantage of the strengths of each option. The combination of methodologies might produce more thorough and balanced information, but would likely cost more and require rigid coordination, specification, and supervision.

Legislative Utilization Procedures

Utilization procedures refer to the way in which information from the review process is integrated into the legislative decision-making process. These procedures have an important impact on Sunset effectiveness. Unless the utilization component is appropriate to the legislative process, Sunset reviews may be duplicative, superfluous, or ignored.

The decision units of the legislature must have confidence in the findings of the review process. On a practical level, such confidence is often a product of participation--the participation of decision-making committees (or representatives) in key phases of the review process. Utilization procedures involve:

Decisions - statutory requirement for either termination, continuation, modification, or other kinds of legislative decisions.

Actions - statutory provision for participation in identification and selection process if discretionary; requirement for and participation in hearings, ability to report action, and require compliance other than by statutory change.

Participants - procedures use either or all:

- Joint House & Senate Committees
- Special Sunset Committee
- Fiscal Committees
- Regular Standing Committees
- Combination assignments

When participation is broadest, Sunset is probably most effective because more members are involved directly in the process.

Fiscal committees can be the focal point of the Sunset process. Although utilization would be facilitated, the policy orientation and expertise of the standing committees would be lessened. A work load problem is also created by giving fiscal committees additional responsibilities.

A final alternative is to use a combination of participants. Standing committees, either singly or jointly, could participate in various phases such as selection and utilization, and functional committees can carry out review and other staff responsibilities.

Operational and Safeguard Provisions

There are additional, specific elements necessary for the implementation and management of the Sunset process. Some of these items include one or more of the following:

- Provision for a wind-down period
- Automatic Sunset coverage of new agencies, programs
- Provision for earlier legislative action out of schedule
- Protection of citizen claims against the State
- Exemption of Retirement, constitutional programs or agencies
- Requirement of a separate bill to continue, terminate or modify each specific agency or program
- Proper disposition of property and funds of any terminated agency
- Employee rights to reemployment
- Transfer of essential tasks

- Post audit and evaluation for compliance
- Periodic review of Sunset provision

An important element of this final item (periodic review) is the idea that the Sunset process itself be periodically reviewed. Half the states in the nation now have Sunset laws, but almost nothing is known about the success or failure of implementation. Proponents and opponents argue that if Sunset is adopted, there should be periodic evaluation of its success.

Innovations in the field of legislative oversight are constantly developing. Sunset is a perfect example of how a new idea can take hold quickly. A broad-based periodic study of the "State of the Art of Legislative Oversight" could itself bring about improvement and periodic adjustment to Sunset.

Analysis of the components of Sunset legislation provides an understanding of the provisions and intent of the various kinds of laws. But, in terms of implementation experience, there is very little evidence available. Only two states have completed Sunset cycles--Colorado and Alabama, and the results have been mixed. Colorado evaluated 13 regulatory agencies and terminated 2. The program cost approximately \$150,000. Nevertheless, the Sunset idea has been reported to have been considered a moderate success by the Colorado legislature. In Alabama, problems of implementation (without adequate staff or money) resulted in an unsuccessful initial effort.

Thus, while analysis of the various pieces of approved Sunset legislation provides for some theoretical optimism, concerns have been raised about its potential for success on a practical level.

CONCERNS RAISED ABOUT SUNSET IN VIRGINIA And Some Tentative Answers

Sunset is theoretically sound. But, it can neither be implemented independent of Virginia's institutions and traditions, nor adopted without regard to the capacity and capability of the General Assembly.

During study deliberations, a number of concerns emerged regarding the Sunset concept, proposed legislation, and its impact on the General Assembly and programs of the Commonwealth. These key concerns are outlined in the following discussion.

Sunset Purpose and Objectives

Concern has been expressed about Sunset objectives. Will it accomplish what is intended? Is it a necessary or usable oversight tool?

Sunset laws are designed to force a periodic accounting of program accomplishments by the legislature through a threat of termination--yet few people expect much to be accomplished by way of terminations. Opponents argue that the legislature already has the authority to terminate programs and can do so regularly in conjunction with the review carried out in the biennial budget. In addition, in Virginia, statutory authority and responsibility to review agency performance has been previously assigned to JLARC. The JLARC can recommend ways to eliminate or alter programs found to be inefficient or ineffective. Therefore, there is concern that Sunset is unnecessary.

However, as pointed out by much testimony, legislatures generally and Virginia's General Assembly specifically have not had a way to ensure systematic and routine utilization of oversight findings. And, if Sunset does nothing else, it provides the marketplace for oversight information.

Thus Sunset's purpose might best be expressed as accomplishing improved efficiency, effectiveness, and economy in public programs and governmental agencies through systematic legislative review and consideration.

Legislative and Legislator Work Load

The increased work load that could result from Sunset was a major concern to the study committee. Obviously, taking on a new legislative procedure will require time. Do Virginia legislators have the time to do this work?

One criticism of a comprehensive Sunset law, similar to those adopted in Alabama and Tennessee, and originally proposed in the U. S. Congress, is that it could absorb so much of the legislature's time, staff and budget, that other important legislative responsibilities would suffer. Colorado Senator William J. Comer pointed out in testimony to the study committee that, even with the enactment of a Sunset law dealing just with regulatory agencies, additional committee work was necessary and there were increased work loads for legislators and staff alike.

Supporters of the Sunset concept contend that while work load is important, it can be controlled by: (1) providing a realistic coverage provision and schedule and (2) building on the existing capacity of each state to carry out oversight activities.

The sense of the study committee was that work load is such an important issue for the citizen legislator that it must be considered as a prime element in: selecting the scope of any Sunset law; setting any review cycle; and establishing mechanisms that give flexibility to enable adjustments to any Sunset process when necessary.

Staffing

A concern which is closely related to work load is staffing. How should Sunset reviews be carried out, and who should do them?

Most states have elected to make the review of agencies and programs a legislative responsibility--although some states also require executive evaluation reports. Generally, professional legislative audit or evaluation staffs are responsible for conducting program reviews. However, when the evaluation report is completed, it is customary for specific subject matter committees to collect background information, hold hearings, decide on the kind of actions required as a result of reviews, and draft necessary legislation.

Virginia is already equipped to do the comprehensive evaluations that are inherent to Sunset because the Joint Legislative Audit and Review Commission has an existing legislative evaluation capacity. The sense of the study committee has been to build any Sunset review process on that strength.

There are some additional staffing requirements, however. The utilization of reviews in standing committees will likely require staff to arrange logistics for hearings, ensure a record of committee actions, and follow-up in drafting required legislation. Study committee members have expressed concern whether this added staff needs to be assigned directly to standing committees or not. Under current procedures the Division of Legislative Services provides support for committee activities and that staff would likely require some minimum supplementation. Continuation of centralized committee staffing, however, is considered the more efficient option at this time.

A third concern in the staffing area is the extent to which executive agencies can be relied upon to prepare some of their own evaluation reports. The sense of the study committee has been that while agency self-studies are indeed desirable at times--there must be careful legislative specification and opportunity for supervision.

Cost

Knowledgeable experts have testified that Sunset can only be effective if it is properly funded. And, the extent of funding required has been a concern.

There seems to be little doubt that Sunset is expensive. Although Colorado enacted its Sunset law without an appropriation, the eventual cost of evaluating the first 13 of the scheduled regulatory boards exceeded \$150,000. The director of Minnesota's

legislative program evaluation unit testified that each evaluation report prepared by his office cost roughly \$50,000.

Although Sunset will have new costs, they can be controlled to some extent by narrowing the scope of reviews or reducing the level of detail. However, if this approach is taken there are fears that: (1) the number of issues dealt with would be drastically reduced and require excessive time with too little pay off; (2) reports might become superficial; or (3) results may be less reliable.

The approximate new cost of a Sunset law in Virginia can be estimated assuming the cost ranges are based on the law's scope. For example, assuming that Sunset staffing is built on the existing program review processes (including JLARC resources), its cost can be calculated as:

<u>Cost Range</u>	<u>Coverage</u>	<u>New Annual Cost</u>
Low	Discretionary	\$50,000 or less
Median	Selective	\$250,000 - \$500,000
High	Comprehensive	More than \$500,000

Timeliness

Another element of concern about Sunset are questions of timeliness: (1) When is the best time for the legislature to do the work? (2) How can timeliness (relevance) be assured in a selection process? and (3) How can some flexibility be built into a Sunset schedule?

A review of existing responsibilities clearly indicates that the most opportune time for legislators to be involved in Sunset reviews is during the interim. Although legislative action will have to occur during a session, actions recommended in the interim can be treated later as ordinary legislation.

Since committees must play a pivotal role, it is also desirable that they be an integral part of the evaluation selection process. Such an approach is currently being considered by Congress. The U. S. Senate version of Sunset provides for a great deal of committee involvement and flexibility in determining the priorities for evaluation. A conventional Sunset law which takes a mechanistic approach to agency or program review fails to recognize the fluid nature of issues, programs, and policies with which a legislature deals, and ignores the realities of the political process.

The study committee seems to be in general agreement that rigid scheduling serves no useful purpose. On the one hand, some device may be required to make certain that all programs and agencies are subject to oversight but, on the other, some programs may need careful review out of sequence. Some agencies may need to

be exempted from the review process, a termination process, or both.

Agency and Public Impact

The study committee was concerned that the threat of agency termination might damage program continuity and create employee concern and skepticism. Agency personnel would be placed in a position of having to justify their existence; and there was a concern, articulated by some experts, that agency public relation efforts would increase at the expense of real program accomplishments.

Proponents of Sunset believe that review--and at least the possibility of termination, might force a more imaginative competition for scarce public resources among agencies and interest groups.

A second concern is that Sunset may produce a lot of blustery debate but not dollar savings.

Advocates argue that a Sunset proposal that builds in some kind of periodic decremental budget analysis can provide an opportunity for the legislature to consider, at a minimum, the impact of reducing appropriations rather than increasing them. A review process like that available by Zero-Base budgeting techniques might also serve to enhance subject matter committee involvement in the budget process. A standing committee could review the results of a ZBB process and advise the standing fiscal committee regarding their assessment of program priorities and concerns about substantive content in relation to concerns about funding.

It is likely that the threatened termination or modification of agencies will also increase lobbying efforts by affected interest groups. In fact, the committee responsible for conducting Sunset reviews in Connecticut has reported being contacted by representatives of agencies scheduled for review as far in advance as 1981. Colorado Senator William J. Comer indicated that lobbying in his state was most effective on those legislators who were not familiar with the legislative evaluation reports.

Thus, it is just as important for agency and public information, as for legislator use, that Sunset findings be clearly communicated.

Senator Comer also reported that Colorado's initial experience was disappointing in regard to citizen response and participation. However, it was noted by the study committee that Sunset might reasonably be expected to do more to restore public confidence in the legislative review process than to promote general public participation.

Intergovernmental Relations

Many local programs depend on State funds for their continued existence. Moreover, a number of State supported programs are mandated by federal law or court order. The termination of State programs, therefore, could have serious repercussions at the local level of government. For example, it might be difficult for cities and counties to adequately plan knowing that a source of State support was to be evaluated and perhaps terminated in some future fiscal year.

Another challenging problem would be the reaction of the federal government if Virginia decided to end its involvement in certain programs mandated by federal law, such as water pollution control or vocational rehabilitation. Surely, the possible loss of federal funds could become a formidable obstacle to terminating State programs heavily dependent on federal support. The study committee felt these problems were best addressed in an implementation phase.

Legislative/Executive Relationship

Although Sunset is a tool of legislative oversight, the executive branch also has a potentially important role; and the involvement of the executive has been voiced as a concern. For example:

- The Governor can veto Sunset actions.
- The executive agencies will be the primary source of data. And,
- Under certain conditions, agencies could be asked by the legislature to conduct self-studies.

The role expected of the executive needs clear definition as any kind of Sunset process is entered into by the General Assembly.

Adjusting Legislative Oversight and Sunset

Members of the study committee indicated concern that a Sunset statute, once passed, would be difficult to change. Several members asserted that if a Sunset law were adopted in Virginia, it should itself be periodically reviewed by the legislature.

A possible mechanism for monitoring and adjusting the implementation of a Sunset law could be through a regular forum on legislative oversight for members of the General Assembly. For example, periodically during a Sunset cycle, a meeting could be convened under statutory authority to:

- review the appropriateness of review criteria;
- recommend any required fine tuning of the Sunset selection processes;
- assess the accomplishments of Sunset in Virginia (and other states); and
- review and consider other methods and techniques of legislative oversight.

Legislative Utilization

A critical concern of Sunset is the kind of action that is taken following a review. Should the legislature terminate, continue, or modify agencies or programs? What kind of actions can be expected?

A major advantage of Sunset legislation is that it clearly spells out the rules of the game in debating the review findings in the legislative arena. There is no question that study committee members do not support a cosmetic process. That is, if a Sunset proposal is advanced, it must be usable and it must be meaningful.

Legislatures may not have paid sufficient attention to the oversight function. But, oversight will not be substantially improved until there is a full integration of the results of program evaluation with the legislative process. Sunset, members believe, can become a useful triggering device to aid in the utilization of information and evaluations currently available.

STUDY GROUP OBSERVATIONS AND GUIDELINES

Analysis of the components of Sunset led to several observations the study committee felt were particularly relevant in consideration of a Sunset proposal for Virginia. In addition, specific guidelines were adopted to be used in drafting a legislative proposal.

First, the study committee felt that the idea that public programs or agencies could be scheduled for automatic termination is counterproductive to legislative oversight goals. And, the term "Sunset" does not represent the goals of systematic and periodic legislative oversight. "Sunset" is, in fact, a misnomer...Although the Madison Avenue label has helped popularize the idea, Virginia's substantive programs are unlikely candidates for termination; and few programs will ever be abolished. Thus, the title itself sets up an expectation that the legislature simply will not be able to fulfill. It was suggested that oversight was more likely to bring

about a "sunrise" of knowledge and information than "Sunset". Nonetheless, references to "Sunset" were so common, it would not be fruitful to ignore the term.

Furthermore, the legislative and executive branches already possess adequate capability to identify programs that are patently unneeded. A requirement for termination could certainly force the legislature to act, but that action would likely divert time and attention from the real issues of economy, efficiency, and effectiveness to the mechanics of continuation. If such is the case, Sunset will have a negative impact and detract from efforts to address problems on a realistic basis. It will build false hopes of curtailed governmental activity and substantial savings where more modest accomplishments are likely. The purpose of Sunset should be viewed as periodic review, not automatic termination.

A second observation relates to Virginia's existing legislative oversight strength. The General Assembly already routinely does many of the oversight activities which some other states are initiating under their Sunset laws. While much can be done to improve the legislative oversight capability, the study committee found that Sunset was often being used as a starting point for improvements that, in many cases, are well underway in Virginia.

The modernization of the General Assembly has been an ongoing process. Although improvements are possible and desirable, there is no question that effective legislative oversight is already a reality in Virginia. Sunset therefore should not be viewed as a first step in Virginia--many have already been taken.

Nevertheless, the study analysis did suggest that some improvements could be achieved. And, a proposal was developed based on the following guidelines.

Work Load. Concern about legislative work load was a determining factor in the establishment of the first guideline.

Virginia has a citizen legislature. As a result, the General Assembly meets in relatively short session. Study committee members were aware that in Colorado, the legislature meets more than twice as long as does Virginia's legislature and in unlimited session, yet it was unable to handle the work load of its first few Sunset reviews. The two largest studies--representing about half of the total work load--were put off a year.

Many other states with Sunset laws do not have citizen legislatures either. While some of their laws have desirable conceptual components, implementation could require a change in the basic legislative procedures.

Thus, any Sunset or oversight proposal must provide for realistic coverage and appropriate scheduling so that the citizen

legislature can accommodate the work load within its present time frame.

Cost. Another guideline was adopted concerning cost. As pointed out earlier, oversight is not free, though many states, including Colorado, passed their initial Sunset acts without an appropriation.

Many of these states, however, are just starting to develop an oversight role, while Virginia is already doing a great deal. Costs can best be controlled by building on existing capabilities and not creating either new agencies or new staffs. Thus, *any Sunset or oversight proposal should be economical and build to the greatest extent possible on existing capabilities.*

Simplicity. Building on what already exists also addressed another guideline--that oversight should be conceptually simple. One of the problems that legislative oversight of any kind is supposed to address is complicated, and chaotic governmental organization. Obviously, a reasonable oversight law needs to be conceptually simple to be effective.

The third guideline, then, is that *any Sunset or oversight proposal should be simple in its procedures and direct in its approach.*

Practicability. The ultimate guideline adopted was that oversight requirements should be practical and possible. The termination goal of Sunset led to much skepticism about its chance for success. Among the oversight related mechanics that the group felt could make improvements were:

(1) A schedule of review would put agencies on notice that the legislature is, at some time, going to scrutinize them. The certainty of review may improve compliance with legislative intent. The certainty of review was believed to have the benefits of scheduled terminations with few of the potential hazards.

(2) More systematic standing committee participation is also a positive step. There certainly is no dearth of information or studies in Virginia. In fact, more often, there are too many. The problem seems to be, however, there is poor utilization. As Allen Schick noted in his remarks to the Roanoke conference, "the greatest problem is not doing evaluations, but as those who serve in legislative bodies know, the greatest problem is using them". What is lacking is a good system of presenting all the information now available to the General Assembly in a usable, concise, and coherent manner. Because the standing committees do the basic legislative work of the General Assembly, oversight procedures should fit more closely into the committee process, so committees have better information and a more effective voice in setting priorities and policies.

The fourth guideline adopted, then, was that *any Sunset or oversight proposal must be realistic and practical--it must provide usable information on a scale that is consistent with committee capabilities and interests. Requirements for legislative action must be doable.*

Considering Options For Virginia

Application of the guidelines to each category of Sunset law--comprehensive, selective, regulatory, and discretionary, clearly indicated the most favorable option for Virginia would be a discretionary proposal.

A comprehensive Sunset type law does not meet any of the guidelines--it would not be economical; it would be difficult to build on existing procedures; and the capacity does not exist to do the massive number of reviews and evaluations required. Safeguards to prevent the inadvertent termination of essential services and scheduling of legislative time would be very complex. The citizen legislature simply could not accommodate the amount of time a comprehensive Sunset process would take.

A selective Sunset type law might meet most of the guidelines, but selecting which agencies would be subject to intensive review and which would not set up an unnecessary and indeed undesirable process. There might be widespread misunderstanding of the intent of the law. Public and employee perception would probably be that the agency without question was going to be changed after review. Agencies that needed review could also change from year to year necessitating statutory revisions yearly.

A regulatory Sunset law could clearly meet the guidelines, but without much purpose. Many of the goals sought by regulatory Sunset as regulatory reforms have already been achieved in Virginia. Improvements, modifications, and monitoring of the current regulatory system--not the establishment of a competing system, seem to be more rational. The complex reforms sought by Sunset are unlikely to result from the use of arbitrary termination timetables.

A discretionary Sunset proposal was felt to meet all of the guidelines, fulfill the principal objectives of standard Sunset laws, and be consistent with the study group's conclusions regarding oversight improvements. Work load can be controlled because, while all agencies and programs might be subject to review, only a limited number need to be selected for in-depth evaluation. Cost and simplicity guidelines could be achieved since existing capabilities lend themselves to a discretionary approach. Discretionary Sunset is also realistic because it acknowledges by virtue of the selection process that review, not termination, is the objective of legislative oversight.

Based on these considerations, a discretionary Sunset proposal was developed that establishes a way to schedule review, procedures for active involvement of the standing committees, and a simple utilization technique. The proposal is outlined below.

A DISCRETIONARY SUNSET PROPOSAL

The proposal calls for periodic legislative review and evaluation of all State programs, agencies, or functions through a process of discretionary selection by General Assembly standing committees. Each functional area of State government, as defined in the program budget structure, will be scheduled for review between 1979 and 1986 by legislative resolution. Each fiscal year, several programs, agencies, or functional topics will be selected from a specific budget function by JLARC and the appropriate standing committees of each house. A resolution will be introduced listing the topics selected. JLARC, coordinating with the standing committees, will carry out an evaluation and review of each topic. When completed, the findings, conclusions, and recommendations will be reported to the standing committees and to the General Assembly. Within 120 days after each final report has been transmitted to a standing committee, a hearing would be held at which time testimony will be received about program accomplishments according to a series of performance questions specified by law.

A brief summary of each of the proposal's major provisions is described below.

Coverage

Every program and agency of the Commonwealth will be subject to review. Each functional area of government (defined in the program budget) will be used as the basis for topic selection, in a given fiscal year. A limited number of programs and agencies will actually be selected for in-depth review and evaluation. Even though all programs and agencies will be subject to review, the legislature will specifically select those that will receive intensive scrutiny. Confirmation of areas selected for review will be by joint resolution introduced just prior to the year in which an area becomes subject to review.

Schedule

The review schedule will be based on the program budget functions on a seven-year cycle. Flexibility in the schedule will be provided by authority to alter the cycle by resolution. It is expected that the first resolution will establish the functional area sequence for a seven year period.

The budget areas include: Resource and Economic Development; Transportation; Enterprises; General Government; Education; Administration of Justice; Individual and Family Services.

Evaluation Criteria

Two types of evaluation criteria will be established. First, general criteria will be referenced in the legislation to use in constructing the study scope. The various committees may specify which kind of study criteria are deemed to be most appropriate according to the nature of the study involved. Among the basic criteria to be considered during the review and evaluation process are the following:

- Program justification
- Performance in the public interest
- Efficiency, economy, and effectiveness
- Compliance with legislative intent
- Accomplishment of original objectives
- Program outcomes

A second set of performance criteria, stated in the form of questions, will be carried in the legislation, and will serve to establish an agenda for legislative hearings and would guide agency testimony.

Evaluation and Review Process

Evaluation and review will continue to be the responsibility of the JLARC, but with closer coordination with standing committees.

After the standing committees identify programs and agencies from the scheduled functional area for review, JLARC will organize the programs, agencies, and topics into an integrated functional area approach. The number of authorized studies will be made consistent with available funding and manpower. Each study will be structured to make the most efficient and effective use of staff and legislator time. The scope of the study and delineation of tasks will also be established.

Although agency and program performance evaluations will be made by the JLARC, financial audits by the Auditor of Public Accounts, and agency self-studies might also be scheduled as required. Studies will be confirmed by resolution, but a subcommittee, appointed by the standing committee chairman, will be consulted on each study outline and necessary adjustments made. The subcommittee will meet periodically for briefings and to carry out other coordinative activities.

Utilization

When completed, each study will be reported to the standing committees and to the General Assembly and appropriate officials. Within 120 days, the standing committees in each house, acting jointly or singly, will hold a hearing on the subject area covered by the report. Hearings will be based on questions of performance contained in law. To the extent possible, final reports will be grouped so that one hearing may be held to cover an entire functional area. Testimony may be received from members of the legislature, members of study subcommittees, JLARC, executive agencies and the public.

Legislative utilization is a part of the entire process. By involving the standing committees in selecting and constructing study topics, and by periodic reports to and coordination with committees, the process ensures that the specific legislators who are the logical users of oversight information have most direct access to it. Since review and evaluation are the primary purposes of this proposal, the involvement of standing committees in the process serves as the basis of utilization. The formal guarantee of utilization is the provision that the committees will hold hearings on the subject areas and establish a dialogue on program performance in an open, public forum.

Every effort will be made to ensure that reports are geared to committee and legislator utilization. For example, short summaries of facts and recommendations can accompany each report. Where appropriate, committees might also direct that legislation be drafted to accompany a report. Each committee can establish their own convenient briefing and hearing format. Finally, the process can use subcommittees to economize member time.

Operational and Safeguard Provisions

These additional provisions will be written into the proposed legislation.

- The legislation will not preclude in any way the General Assembly's ability to study or act on any matter at any time.
- Any action which terminates or modifies an agency or program will be effective only when a bill is passed by the General Assembly. (There is no automatic termination.)
- The legislation will establish a pilot project using existing and ongoing studies.
- A review of the pilot project and other statutory procedures will be made by the JLARC and an

advisory committee, similar to the one specified by HJR 178, in 1980.

- A conference on legislative oversight will be held during 1985 to reevaluate the legislation. All legislators will be eligible to attend.
- Unless reestablished, the Sunset statute will expire on July 1, 1987.

Work Load and Cost

Implementation of this proposal will require an estimated new budget commitment of \$32,000 in 1978-79 and \$68,500 annually beginning in 1979-80. Annual legislator work load is expected to be about 1/2 day for members of committees affected by the selection schedule and another 4 days for each subcommittee member involved in a functional area.

LEGISLATIVE PROGRAM REVIEW AND
EVALUATION ACT

A BILL

To amend the Code of Virginia by adding in Title 30 a chapter numbered 8, containing sections numbered 30-64 through 30-73, relating to periodic legislative review and evaluation of State programs, agencies or functions by the Joint Legislative Audit and Review Commission in cooperation with the standing committees of the General Assembly; termination of this act.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 30 a chapter numbered 8, containing sections numbered 30-64 through 30-73, as follows:

CHAPTER 8

§30-64. Short title.--This chapter may be referred to as the "Virginia Sunset Act".

§30-65. Definitions.--As used in this chapter, the terms below shall be interpreted as follows:

1. The term "agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth and includes any entity, public or private, with which any of the foregoing has entered into a contractual relationship to accomplish an agency program.

2. The term "functional area" means that grouping of State governmental activities, programs, and agencies which constitute a single budget function as identified and classified in the Virginia State Government Program Structure.

3. The term "discretionary selection" refers to the procedure set forth in §30-67 whereby programs and agencies, contained wholly or in part within functional areas, are selected for legislative review and evaluation under the provisions of this chapter.

§30-66. Functional areas; scheduling of study areas.--
A. The functional areas of State government shall be scheduled for legislative review and evaluation by the Joint Legislative Audit and Review Commission as specified in paragraph (B), on a seven-year cycle, and beginning in the 1979-80 fiscal year.

B. Beginning with the 1979 legislative session, and from time to time as may be required, the Senate and House of Delegates shall by joint resolution establish a schedule for the review of the functional areas of State government. In the absence of a resolution, the Joint Legislative Audit and Review Commission shall select a functional area for review on an annual basis.

§30-67. Discretionary selection procedure; coordination with standing committees; expenses.--A. Except for the pilot review provided for in this act, and prior to the year in which a functional area of government is designated to be scheduled for review, the Joint Legislative Audit and Review Commission shall cause to be introduced a joint resolution which shall identify to the extent feasible the agencies, programs or activities selected for review and evaluation from the functional area.

B. To ensure coordination of the review and evaluation activity with appropriate committees, the resolution specified in paragraph (A) shall identify each House and Senate standing committee to be invited to participate with the Commission in designing such studies as will be carried out from the scheduled functional areas.

C. The compensation and expenses of the members of cooperating committees or subcommittees necessary to accomplish the functions specified in paragraph (B) shall be paid from funds appropriated to the Commission.

§30-68. Evaluation criteria; self-studies.--A. Each study carried out pursuant to this chapter shall consider, as required: that there is a valid public need for the program or agency; that legislative intent is being carried out; that program and agency performance has been in the public interest; that program objectives have been defined; that intended program outcomes are measurable and have been accomplished; that program and agency operations are managed efficiently, economically, and effectively; or such other specific criteria as the Commission or standing committees deem necessary and desirable.

B. Agency self-studies may be required in such form and manner as may be directed under the resolution provided for in §30-67.

§30-69. Access to information.--For the purpose of carrying out its duties under this chapter and notwithstanding any contrary provision of law, the Joint Legislative Audit and Review Commission shall have access to the records and facilities of every agency whose operations are financed in whole or in part by State funds to the extent that such records and facilities are related to the expenditure of such funds. All such agencies shall cooperate with the Commission and, when requested, shall provide specific information in the form requested.

§30-70. Reporting; hearings.--A. The Joint Legislative Audit and Review Commission shall publish and submit its reports

with appropriate findings and recommendations to the Governor and members of the General Assembly, and shall transmit them to the House and Senate standing committees identified by resolution in §30-67.

B. The standing committees shall hold a public hearing on reports prepared pursuant to this chapter within one hundred twenty days after the date of transmittal. Hearings may be held jointly or singly by the committees.

C. The standing committees shall hear testimony from the Commission, agency and program representatives, the public in general, and such others as may be deemed appropriate.

§30-71. Hearing criteria.--At each hearing required by §30-70, the standing committee conducting such hearing and the agencies testifying shall respond to, but not be limited to consideration of, the following questions:

- (1) What are the problems, needs, or missions that the program is intended to address and what has been accomplished?
- (2) What is the effect of the program on the economy including but not limited to: competition, unemployment, economic stability, attraction of new business, productivity, and price inflation to consumers?
- (3) Would the absence of any regulatory activity significantly harm or endanger the public health, safety, or welfare?
- (4) Has the program or agency carried out its mission in an efficient, economic, and effective manner?
- (5) What services could be provided and what level of performance could be achieved if the program were funded at a level less than the existing level?
- (6) What other State programs have similar, duplicate, or conflicting objectives?
- (7) What federal activities have similar, duplicate, or conflicting objectives?
- (8) How does the agency ensure that it responds promptly and effectively to complaints concerning persons affected by the agency?

(9) To what extent have the agency's operations been impeded by existing statutes, procedures, or practices of the Commonwealth of Virginia, or of other State agencies?

(10) What action plans have been or are being proposed to improve agency operations where the need for improvements has been identified in previous executive or legislative oversight studies and reports.

§30-72. Miscellaneous.--A. The operation of this chapter shall not restrict the power of the General Assembly to study or act on any matter at any time.

B. The operation of this chapter shall not imply or require the termination of any State agency or program.

C. Nothing in this chapter shall be construed to restrict the Joint Legislative Audit and Review Commission or the standing committees from holding hearings on any subject as may be required nor shall operation of this chapter limit the Commission or committees from such other activities as may be authorized by law or custom.

D. The standing committees may carry out the functions assigned by this chapter through subcommittees.

§30-73. Termination of chapter.--This chapter shall terminate on July one, nineteen hundred eighty-seven, unless reestablished by prior act of the General Assembly.

* * * * *

The following separate enactments do not amend the Code of Virginia and would be contained in the Session Laws only.

* * * * *

2. That a pilot review and evaluation shall be carried out pursuant to this act selected from the functional area of "Individual and Family Services". The programs and agencies included in this review shall be those generally involved in the delivery of health care services. The pilot review shall consider and encompass to the extent practicable the ongoing studies of the Joint Legislative Audit and Review Commission concerning medical assistance programs and shall address, but not be limited to, medical service delivery programs concerned with long term care, outpatient care, hospital care, and the certificate of public need requirement.

The Commission shall coordinate its pilot review effort with the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health.

3. That an analysis of the pilot review effort, in the functional area "Individual and Family Services", shall be made by the Commission during 1980 with a committee to be empaneled prior to July one, nineteen hundred seventy-nine. The committee shall consist of: (i) the chairman of the House Committee on Health, Welfare and Institutions, or his designee; (ii) the chairman of the Senate Committee on Education and Health, or his designee; (iii) the Commissioner of the Department of Health; (iv) the Secretary of Human Resources; (v) the Secretary of Administration and Finance; (vi) four members appointed by the Speaker of the House of Delegates; (vii) three members appointed by the Senate Committee on Privileges and Elections; and (viii) the members of the Joint Legislative Audit and Review Commission. Vacancies on the committee shall be filled in the same manner as original appointments were made.

The committee shall review the procedures and accomplishments of the pilot program and make any suggestions as may be deemed appropriate to improve operational procedures or potential accomplishments. The report of the committee shall be made in such form and at such time as the Commission shall determine.

The responsibility of the aforementioned committee shall terminate upon completion of its report but no later than January thirty-one, nineteen hundred eighty-one.

4. That in 1985 a conference on legislative oversight will be held by the Joint Legislative Audit and Review Commission to assess and evaluate the accomplishments of this act. The conference membership shall consist of the members of the Commission, the chairman of each House and Senate standing committee, and such other members of the General Assembly as may be appointed by the Speaker of the House of Delegates or by the Senate Committee on Privileges and Elections. Compensation and expenses shall be paid to the conference membership from funds appropriated to the Commission. The conference shall be open to all members of the General Assembly. Proceedings of the conference shall be prepared and made available to each member of the General Assembly and to the public.

HOUSE JOINT RESOLUTION NO. 178

Instructing the Joint Legislative Audit and Review Commission to conduct a study of "Sunset" legislation.

Patrons—Lane, Gunn, Manning, Slayton, White, Pickett, Bagley, R.M., Ball, Dickinson, Cranwell, Scott, Diamonstein, Robinson, Jones, G.W., Sanford, Heilig, Glasscock, Callahan, Teel, Brickley, Fickett, Harris, Geisler, Campbell, McClanan, Creekmore, Parker W.T., McMurtrie, Pendleton, Marshall, Baliles, Allen, Melnick, Rothrock, Thomson, Council, Guest, James, Sisisky, Sheppard, McMurren, Vickery, Morrison, Grayson, and Thomas

Referred to the Committee on Appropriations

WHEREAS, the government of the Commonwealth of Virginia has become exceedingly complex and its cost has outstripped available resources; and

WHEREAS, agencies and programs need to be periodically monitored and evaluated by the General Assembly using the most modern procedures and techniques available; and

WHEREAS, public problems already addressed may change, necessitating periodic reevaluation of legislative programs; and

WHEREAS, the Commonwealth has already taken several steps toward achieving a higher degree of accountability, efficiency and economy in the government including:

- (i) a reorganized executive branch,
- (ii) a program budget structure and presentation for the General Assembly,
- (iii) a strengthened management process, and
- (iv) a competent legislative oversight capability; and,

WHEREAS, the concepts of (1) legislation which requires the General Assembly to reaffirm continuation of programs or agencies after a specified time period, commonly known as "Sunset"; (2) comprehensive legislative program evaluation; and, (3) Zero-Base or other comprehensive forms of budget analysis deserve study and consideration as possible ways to create and coordinate the best aspects of legislative and executive responsibility to achieve more responsive, economic, and effective public programs; and

WHEREAS, making the best use of these new techniques in State government requires careful study of procedures and attendant problems in advance of enactment; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission be instructed to undertake a study of the "Sunset" concept and prepare a report to the Governor and the General Assembly at the nineteen hundred seventy-eight Session of the General Assembly. If deemed appropriate, the report should present draft legislation and a plan for legislative implementation which specifies alternative procedures, costs, and potential benefits to the Commonwealth.

The commission shall ensure full participation by all interested members of the General Assembly, executive officials, and the public through hearing and conferences. The Joint Legislative Audit and Review Commission shall be assisted by a twelve-member advisory task-force appointed in the following manner: (i) two members appointed by the Governor of which one appointee shall not hold elective office; (ii) six members appointed by the Speaker of the House of Delegates of which one appointee shall not hold elective office; (iii) four members appointed by the Senate Committee on Privileges and Elections of which one member shall not hold elective office. The report of the commission shall be approved by a majority of the combined membership of the Joint Legislative Audit and Review Commission and the twelve-member task-force appointed herein.

The study shall include but not be limited to: (1) the scope of coverage of "Sunset" legislation, required exemptions, and the timeliness and categories of program review; (2) criteria that should be used to evaluate agencies or programs; (3) the role of and relationship between standing committees, other legislative commissions and service agencies, and the executive; (4) the mechanics of implementation and operation; and (5) the costs involved.

The expenses incurred in the course of this study, including any per diem and travel allowances of task-force members, shall be paid from the appropriation to the Joint Legislative Audit and Review Commission.

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