

The State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

201 North, State Capitol
Madison, Wisconsin 53702

Telephone Area Code 608

Reference: 266-0341

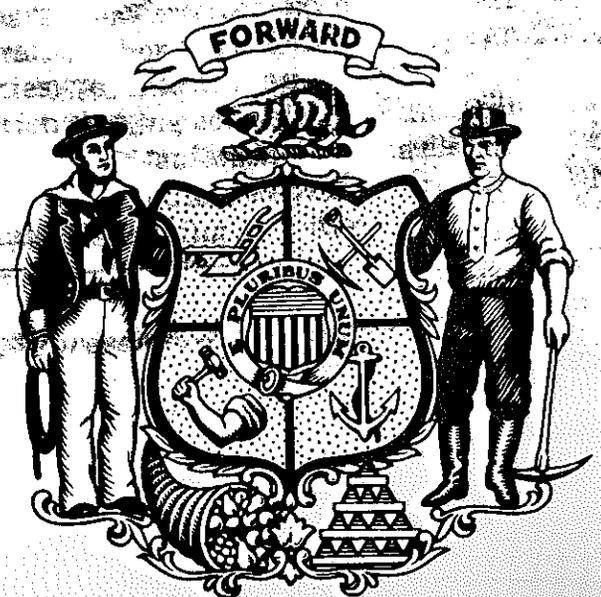
Bill Drafting: 266-3561

Dr. H. Rupert Theobald, Chief

"SUNSET" LEGISLATION

Research Bulletin 77-RB-1

JANUARY 1977



"SUNSET" LEGISLATION

Table of Contents

	<i>Page</i>		<i>Page</i>
I. THE RISE OF SUNSET.....	1	Can the legislature sustain an effective sunset program?.....	7
What is a sunset law?	1	V. SUNSET IN COLORADO.....	8
Are "sunset" and "sunshine" laws the same thing?	1	When did Colorado enact its sunset law?	8
What is the derivation of the "sunset" label?	1	Where did Colorado's sunset law originate?	8
How broadly can the sunset concept be applied?	1	Did Colorado's sunset law include a legislative declaration of intent?	8
Why is sunset legislation said to be needed?.....	2	What does the Colorado sunset law provide?.....	8
Why does the sunset law approach seem to enjoy such wide appeal?	2	Does Colorado's sunset law provide any agency evaluation criteria?.....	10
What makes sunset different from other approaches to periodic agency review?	2	Is the Colorado General Assembly staffed to accomplish the sunset review task?.....	10
Have any guidelines for developing a workable sunset law been advanced? ..	2	Are there any predictions as to the long-range impact of Colorado's sunset law?	10
Has any state legislature adopted a sunset law?	3	VI. SUNSET IN FLORIDA.....	11
Is it reasonable to expect sunset to reduce the number of government agencies?	3	When did Florida enact its sunset law?	11
II. THE ROLE OF EVALUATION IN SUNSET.....	3	Did Florida's sunset law include a statement of legislative intent?.....	11
How essential is the review and evaluation phase of sunset?	3	What does the Florida sunset law provide?.....	11
Who does the evaluating under sunset?.....	3	Does Florida's sunset law provide any agency evaluation criteria?	13
What sort of evaluation criteria should sunset legislation include?	4	VII. SUNSET IN LOUISIANA	13
Does the sunset process provide for public participation in the evaluation process?	4	When did Louisiana enact its sunset law?	13
What conditions might facilitate sunset's evaluation process?	4	Did Louisiana's sunset law include a statement of legislative intent?.....	13
Do evaluation problems affect the selection of initial targets for sunset review?	5	What does the Louisiana sunset law provide?.....	13
Why are regulatory and licensing agencies often the first targets for sunset evaluation?	5	Does Louisiana's sunset law provide any agency evaluation criteria?.....	14
III. SUNSET AND ZERO-BASE BUDGETING	5	Has the Louisiana sunset law exempted any agencies from its provisions?.....	15
What is zero-base budgeting?	5	VIII. SUNSET IN ALABAMA	15
What is the distinction between sunset and zero-base budgeting?.....	6	When did Alabama enact its sunset law?	15
Is zero-base budgeting primarily a tool of the executive branch?.....	6	Did the Alabama sunset law include a legislative statement of purpose?	15
IV. THE LEGISLATURE'S ROLE IN SUNSET.....	6	What does the Alabama sunset law provide?.....	15
Why is sunset of such significance to the legislative branch?.....	6	Does Alabama's sunset law provide any agency evaluation criteria?.....	17
Does sunset legislation place an extra burden on the legislature?	7	How does the Alabama sunset law describe zero-base evaluation and review?	18
Will politics be a factor in legislative sunset deliberations?	7	IX. PROPOSED SUNSET IN TEXAS.....	18
		Did Texas precede Colorado in passing a sunset law?.....	18

What did the proposed revision of the Texas Constitution provide?	18	XII. WISCONSIN AND SUNSET.....	24
How were the proposed sunset provisions in the new Texas Constitution to be implemented?	19	Does Wisconsin have a sunset law?	24
X. PROPOSED SUNSET IN IOWA.....	19	Has the sunset approach been under official study in Wisconsin?.....	25
Was a sunset law passed in Iowa?	19	Have any agency evaluation criteria been suggested in Wisconsin?.....	25
What did Iowa's vetoed sunset bill provide?.....	19	What avenues for periodic agency review currently exist in Wisconsin?	26
Why did the Iowa governor veto the sunset bill?	21	Would sunset legislation fit Wisconsin's existing agency structure?	29
Did Iowa's vetoed sunset bill contain any evaluation criteria?.....	21	What has been Wisconsin's historical experience with government growth?.....	30
XI. PROPOSED FEDERAL SUNSET LEGISLATION	21	XIII. THE ISSUES RAISED BY SUNSET.....	30
Has the U.S. Congress considered sunset legislation?.....	21	What problems produced the sunset response?	30
What is the status of S. 2925?	21	What arguments are opponents and proponents making?	31
If the sponsors thought S. 2925 probably would not pass, why did they introduce it?.....	22	XIV. SOURCES.....	34
What are the main provisions of S. 2925?.....	22		

“SUNSET” LEGISLATION

I. THE RISE OF SUNSET

What Is a Sunset Law?

The “sunset” concept under discussion here is a law which provides that, in the absence of a positive act of the legislature, covered state agencies or programs would automatically expire after a specified period of time.

It is a mechanism that strengthens the role of the legislative branch by mandating a continued program of comprehensive oversight. This objective is obtained by legislating periodic death sentences for government agencies or programs, and then providing a means by which a reprieve can be granted if the legislature can be convinced that it is merited.

A sunset law institutionalizes a formal program for periodic, systematic review of agency operations. It does so by fixing in law a date upon which statutory authorization for an agency or program will terminate. The same law also provides that prior to this expiration date, a thorough review process will be conducted whereby the continued existence of the affected agency or program can be justified to the legislature’s satisfaction. If successful, the agency or program will have its life extended until the next regularly scheduled cycle of automatic termination and review established by the sunset law.

The legislature, however, is not restricted to either killing or continuing. It has several options. Of the alternatives, the simplest, of course, is to do nothing. Without positive legislative action the sunset law’s automatic termination date will take effect. To continue an agency or program in some form the legislature must take affirmative action. A bill must be introduced and passed. Such a bill can continue operations unchanged, which amounts to a legislative vote of confidence, or continue it in some modified form. The latter could include reducing the scope of the agency under review by transferring functions, reducing its powers and responsibilities, or cutting its budget appropriation. Conversely, the legislative review may show that additional powers, staffing, funding or programs for the agency are warranted.

Are “Sunset” And “Sunshine” Laws The Same Thing?

No, but sometimes they are confused. So-called “sunshine” laws relate to legislation providing that government business be conducted openly. A prohibition against secret government meetings and providing for public access to government records are examples of “sunshine” laws.

What Is The Derivation Of The “Sunset” Label?

There is no doubt the picturesque “sunset” label has contributed greatly to the idea’s popularity and interest in its possibilities.

Presumably, it derives from the sunset law principle of automatically terminating governmental activities that are not continued by a positive legislative act. Like a sunset, the terminated agencies or programs would simply fade away and disappear. Because of the confrontation produced whenever a legislature attempts to eliminate a government agency, a member of the Colorado House (writing in the Summer 1976 issue of *State Government*) suggests that “high noon” might be a more fitting way to describe the process.

How Broadly Can The Sunset Concept Be Applied?

It is important to recognize that the potential application of the sunset concept is very broad and adaptable. The idea of a comprehensive review under the threat of automatic termination appears applicable to all levels and branches of government. Agencies or their subunits, programs, statutes and administrative rules all could be made subject to a form of sunset. It can be utilized selectively or applied across-the-board. It has been noted that elected officials already serve under a type of sunset system; that is, their terms of office are fixed by law and are renewable only by their voting constituency based on past performance (although limits on the number of allowable consecutive terms have been proposed). However, it is conceivable that a variation of the sunset approach could be applied to other public officials.

Even though it is recognized that the sunset idea has broad application, the focus of this publication is on its use by the legislative branch as an oversight tool directed towards activities of executive branch agencies.

Why Is Sunset Legislation Said To Be Needed?

One basic theme is reiterated whenever the rationale for sunset is discussed by its advocates, and that is the growing public disenchantment with government. There is said to be a great need to restore public confidence by making government performance more accountable, responsive, effective and efficient. Sunset proponents maintain that this loss of public trust can be attributed to the waste, duplication of efforts, conflicting purposes, inequities, red tape, secrecy and the poor attitude towards public service which pervades government. Sunset is put forward as a new legislative initiative that will provide the "handle" needed to cope with this situation. It is a mechanism that first of all questions the need for a specific government activity to exist at all. Some agencies and programs develop a kind of bureaucratic momentum that carries them on after the initial justification for their existence has passed. New agencies and programs continue to proliferate to the point where — at least on the federal level — it is virtually impossible to catalog them accurately. Because finite tax resources limit what can be accomplished by government, the competition for these funds demands that a cost-effectiveness evaluation determine what is worthwhile in terms of priorities and what can be eliminated, scaled down or consolidated. Activities that are continued must be goal-oriented and provide some assurance to the public that it is getting its moneys worth from the expenditure of tax dollars.

Why Does The Sunset Law Approach Seem To Enjoy Such Wide Appeal?

The sunset idea has very rapidly become a topic of nationwide interest. While its detractors characterize sunset as a passing fad with an attractive catchword name that has temporarily caught the public's fancy, a large body of supporters feel it is an innovative new technique of great potential value. What is more, this support appears to be broadly based from an ideological standpoint, embracing both the liberal and conservative ends of the political spectrum. It is relatively easy to garner support for a general reform idea aimed at eliminating or reorganizing government agencies. Because sunset seems to have struck a responsive chord among voters, and has the backing of diverse interest groups, open political opposition to the idea is often difficult.

Probably, sunset's great popularity lies in its fundamental simplicity. The idea of recycling agencies or programs periodically through the legislature, where they must prove their value and cost-effectiveness, appears to fulfill deeply felt public needs in a straightforward, understandable manner. No matter how simple the sunset concept may look at first glance, however, all indications are that it will be very difficult to actually implement.

What Makes Sunset Different From Other Approaches To Periodic Agency Review?

The sunset approach features two elements, both of which derive from the key ingredient that makes sunset unique: that of the law's presumption that an agency or program will be automatically terminated on a date fixed in law.

First of all, while there are other approaches to evaluating agencies and programs, sunset provides an institutionalized framework which increases the probability that the job actually gets done. It is considered an action-forcing mechanism imposed on a legislature.

Second, review under sunset shifts the burden of proof for continued existence from the legislature to the agency or program under evaluation.

A memorandum published by the Colorado Legislative Council discussing the appeal of sunset over other methods of legislative oversight suggests that prior establishment of an agency's termination date frees legislators from the need to act affirmatively to dissolve an agency during the review process, therefore permitting members to analyze more intensely the public's need for a particular service and to determine how it may best be served ("Colorado's Sunset — A Proposal for Accountable State Government Via the Threat of Agency Extinction", undated).

Have Any Guidelines For Developing A Workable Sunset Law Been Advanced?

In an awareness that states will approach sunset legislation differently and that poor legislation will foredoom the effort, Common Cause has suggested 10 basic principles that ought to be observed in establishing a workable sunset law. These 10 guidelines are responsive to certain special areas of concern in designing and implementing a sunset law. Included among these problem areas are the value and wisdom of a system of automatic termination, frequency of termination and review, scope of application, procedural and mechanical processes, and procedural safeguards.

The following guidelines are adapted from the list prepared by Common Cause.

1. The agencies or programs covered under the law should automatically terminate on a certain date unless affirmatively recreated by law. This is the action-forcing mechanism which is the essence of sunset.

2. Termination should be periodic — every 6 or 8 years — in order to institutionalize the process of reevaluation.

3. It should be phased in gradually, beginning with those programs to which it seems most readily applicable. Like all significant innovations, introduction of the sunset mechanism will be a learning process. Because of this, the first programs reviewed might well be those which appear most doable.

4. All relevant agencies and programs functioning in the same policy area should be reviewed together in order to encourage coordination, consolidation and responsible pruning.

5. Existing entities — budget and planning offices, legislative auditor, etc. — should undertake the preliminary evaluation work prior to consideration by the legislature. The institutional arrangements necessary for competent and thorough evaluation work must be strengthened.

6. In order to facilitate meaningful review, the sunset proposal should establish general criteria to guide the review and evaluation process.

7. Substantive preliminary evaluation work must be packaged in manageable reports for legislators to use in exercising their common sense political judgments.

8. Substantial legislative committee reorganization to cope with problems of jurisdiction and objectivity may be a necessary prerequisite to rational, meaningful sunset oversight.

9. Safeguards must be built into the sunset mechanism to guard against arbitrary termination and to provide for outstanding agency obligations and displaced personnel.

10. Public participation in the form of public access to information and public hearings is an essential part of the sunset process. Since one of the primary goals of sunset is to help restore public confidence in government, public participation and openness are a must.

Has Any State Legislature Adopted A Sunset Law?

In 1976 Colorado became the first state to enact a sunset law. Florida, Louisiana and Alabama followed shortly thereafter with sunset laws of their own design. Sunset proposals were stillborn in Texas, where the voters failed to ratify a proposed constitutional change, and in Iowa, where the bill was vetoed by the Governor. The national organization of Common Cause has adopted sunset as one of its legislative priorities. This assures the idea will be advanced in virtually all state legislatures and in Congress.

Is It Reasonable To Expect Sunset To Reduce The Number Of Government Agencies?

It is possible that sunset has unrealistically heightened public expectations regarding its potential for greatly reducing the number of government agencies. This aspect of sunset may have been oversold. A consensus now seems to be developing that in practice relatively few programs or agencies may, in fact, be eliminated. Sunset's real accomplishment may be genuine, systematic evaluation, coupled with a change for the better in the relationship of the public, the bureaucracy and the legislature.

This circumstance poses a problem. How will the general public react when it becomes clear that the promised "pruning back" and "weeding out" probably will not occur? What will that do to the public's frustration level concerning big government and the role of the legislature?

II. THE ROLE OF EVALUATION IN SUNSET

How Essential Is The Review And Evaluation Phase Of Sunset?

There is no doubt that the evaluation process to which an agency or program is subject is the critical element in the success of any sunset law. It is at one time sunset's greatest promise and greatest problem. Critics of sunset say that effective evaluation is the stumbling block that will cause it to fail, a position its advocates recognize as a distinct possibility.

Properly done, evaluation is a very difficult undertaking. It raises questions as to just who should do the evaluating and what criteria ought to be used. It requires a serious commitment of time, effort and resources to accomplish even a basic review. There will probably always be a considerable gap between the ideal evaluation and what can be accomplished on a practical level. Great concern has been expressed that "sunset" might end up a kind of "sun dance" where all parties involved go through the motions expected of them under the law in a perfunctory manner without any real attempt to make the effort necessary to a thorough, tough evaluation procedure.

Who Does The Evaluating Under Sunset?

Ultimately, the final judgement is made by the legislature. It must be kept in mind that sunset is a new initiative in the area of legislative oversight designed with a two-fold purpose: 1) to make agencies accountable to the legislature in a continuing fashion; and 2) to provide legislators with an unavoidable opportunity to eliminate or alter operations that no longer serve the public well.

As a practical matter, to a large extent agency review is a process of self-examination. It is obvious the agency under scrutiny will be a primary source of information and therefore responsible for much of

the preliminary work. Knowing the sunset law has already abolished the agency will stimulate the preparation of material to make a convincing case for the legislature to continue its existence.

Such agency introspection can be a healthy and useful thing, but the legislature cannot rely too heavily on data from this source. It is considered essential that material provided by the agency under evaluation be digested by and augmented with information generated by some unit that is responsible solely to the legislative branch. This most likely would be an existing or newly created legislative service agency with strong capabilities in the area of fiscal analysis and performance auditing. Some sunset legislation stipulates that zero-base budgeting be utilized as the basis for agency evaluation. Experts have criticized reliance on ZBB as yielding too narrow a viewpoint and have stressed that comprehensive evaluation must be based on a more multidisciplinary approach. In any case, this legislative staff would assist the legislative committee — whether it be the appropriate standing committee of each house or perhaps a special joint sunset review committee — in arriving at its recommendation. The final determination is made by a vote of the legislature as a whole.

What Sort Of Evaluation Criteria Should Sunset Legislation Include?

The basic operating premise of the sunset approach is that there is no better way to find out about a particular activity of government than to threaten its existence. It stimulates a flow of information as to why an agency or program is needed, what alternatives may be available and who comprises its constituency. The evaluation exercise serves to prove the axiom that it is the simple questions that are the hardest to answer.

Learned discussions of the theory and practice of evaluation have filled many a text book. Generally speaking, evaluation criteria seek to develop answers to the following set of simple questions (as suggested by Roy Ash, former Director, Office of Management and Budget): What are we trying to accomplish? How much does it cost? Is it worth it? Are we actually accomplishing what we intended? Should we change something in order to achieve a better match of objectives and results?

Once having established what an agency or program is trying to accomplish, two basic questions suggest themselves. The first asks if there is any real need for it. The second relates to whether it is an appropriate activity for government to be involved in, and if so, what level of government.

Examples of the language and phrasing of specific criteria will be developed in the sections that follow which describe the provisions of existing sunset legislation.

Does The Sunset Process Provide For Public Participation In The Evaluation Process?

The sunset approach encourages a strong role for public participation in the evaluation. Public hearings are an integral part of the process. It is certain that well organized and financed special interest groups benefited by agencies or programs that are under sunset review will appear at the public hearings with very sophisticated presentations favoring continuation. It is vital to the evaluation that as many diverse and well reasoned viewpoints be heard as possible. If the legislature is serious about sunset, it will actively encourage public contributions and maximum press coverage. While it is important that the legitimate grievances of individual citizens be heard, it is probably more important for organizations that represent large groups of concerned citizens who deal with or are affected by agency actions to get involved (consumer and environmental groups, business, organized labor, "good government" and taxpayer organizations, senior citizens, and so on). Such organizations are better able to counter lobbying efforts made in behalf of the agency under review, thus providing a more balanced hearing.

On a related point, a policy of governmental openness is considered necessary to facilitate a full and rational exchange at the evaluation hearing. This openness includes sufficient public notice, public access to pertinent documents, no secret meetings, and at least minimal record-keeping procedures.

What Conditions Might Facilitate Sunset's Evaluation Process?

While not necessarily prerequisite conditions, certain factors are singled out as contributing to the success of a sunset review process. In fact, sunset is considered a logical extension of these circumstances. One is a legislature committed to self-improvement and a strengthening of the legislative branch. This includes the existence of professional staff and a certain amount of experience in its effective utilization, plus a willingness on the part of members to devote more time to legislative tasks (and the longer sessions sunset may bring).

Another helpful factor is a state budget-making process that is not dominated by the executive branch and which incorporates at least the beginnings of a program budgeting approach. These combine to assure that the legislature has some exposure to working with functional groupings of state activities and making judgements based on program evaluation.

Sunset is often considered a reorganization tool because evaluating the end results of programs could lead back to agency restructuring (as opposed to conventional reorganizing which starts with structural change and hopes for improved results). However, there have been suggestions that chances for a successful evaluation would be enhanced if it were preceded by a recent reorganization of the

executive branch. A structure which reflects a sensible grouping of related functions would simplify the task.

Do Evaluation Problems Affect The Selection Of Initial Targets For Sunset Review?

The assumption in this question is that sunset would be phased in on a gradual basis, which means a starting place must be targeted. Evaluation difficulties appear to play a major role in this selection process.

A number of criteria have been suggested in making the choice. Among these are starting with the oldest agencies first, those with the largest appropriation, those having programs with the greatest geographical impact or affecting the largest number of citizens, agencies with the most employees, those problem areas which generate the most legislative complaints or casework, agencies or programs with related functions, agencies with the most complex structure (which may be ripe for reorganization), and agencies that seem the most doable from the evaluation standpoint.

It seems as though the latter selection criterion is being given the most weight because those who advocate sunset as a reform measure are well aware of two basic factors: 1) that good evaluation is a very tough job, and 2) that attempting too much too soon would surely cause sunset to fail to live up to its promise. Thus, the logical agencies or programs favored to be scrutinized first would certainly include those which appear to present relatively fewer problems to the review process.

Why Are Regulatory And Licensing Agencies Often The First Targets For Sunset Evaluation?

As suggested above, one reason regulation and licensing functions may be the initial targets for sunset review is simply because in many ways these activities are the easiest to evaluate. Agencies in functional areas such as those relating to social services or health operate with generalized objectives and standards that do not lend themselves to easy measurement. The goals of regulation and licensing are relatively more circumscribed and clearly delineated, with fewer overlapping functions. Activities with definable boundaries and which allow more precise quantitative measurement facilitate effective review.

Of course, there are other reasons why regulatory and licensing agencies are inviting prospects for sunset review. An indication of their vulnerability is shown by their being subject to increasing study, criticism and bad press in recent years. While regulation and licensing activities are of comparatively small importance when judged on the basis of state money and employees involved, their impact on the general public is enormous. This is particularly true in terms of the expenditures of individual citizens on goods and services regulated or licensed by these agencies.

Over the years regulation and licensing agencies have proliferated, yet remained relatively independent. There has been a general lack of oversight and accountability because they operate mostly out of public view and information is often hard to obtain. Operations are usually supported by program revenues, rather than state general funds. As a group, they have been accused of not always operating in the public interest because of: 1) monopolistic practices which discourage competition through controlling entry into a particular trade or occupation, and artificially sustaining high prices; and 2) a bias favoring the regulated or licensed activity, rather than a consumer orientation, as reflected in reports of unresponsive or ineffective handling of complaints which reach legislators' desks.

Increasing legislative concern in Wisconsin is demonstrated by the failure rate of legislation introduced in recent sessions to create new licensing and regulatory functions, the enactment of a law to add public members to certain examining boards and councils (Chapter 86, Laws of 1975), and a Legislative Council study of occupational licensing during the 1975-77 biennium.

In sum, as one political writer phrased it, regulation and licensing constitutes the "soft underbelly of state government" — an easy target, said to be long overdue for legislative attention.

III. SUNSET AND ZERO-BASE BUDGETING

What Is Zero-Base Budgeting?

In his book, *Zero-Base Budgeting*, author Peter Phyrre defined ZBB as a system whereby each government program, regardless of whether it is a new or existing program, must be justified in its entirety each time a new budget is formulated.

Most budgeting in government is still incremental in nature. An agency's request for funding in the next budget period generally builds on its present appropriation, with the necessary increment added on to take care of rising operational costs and any new program responsibilities. It is assumed that existing functions will continue at about the same level. The zero-base budget mechanism seeks to put an end to this traditional approach.

In zero-base budgeting, budget analysts examine every dollar allocated by an agency to a particular program or function, continuing expenditures as well as new requests. Taking no appropriation for

granted, the assumption is that agency programs will receive no funding at all. Once the impact of zero funding is assessed, the effect of gradual increases in funding are examined. This kind of cost-benefit analysis, where program effectiveness is judged at various funding levels and where the entire budget must be justified (not just the added increment), is designed to provide the maximum value per dollar expended.

The zero-base budgeting concept has been around for several years in the private sector and is acquiring a growing number of adherents in government and private industry. Because the public and private sectors operate under basically different ground rules, the transition to zero-base budgeting in government is a difficult proposition. Georgia, New Jersey and Texas use ZBB techniques to prepare their state budgets, while a number of other states are experimenting with the technique in various ways. At least 12 states are said to be budgeting some activities from a zero base. Some persons will recall that zero-base budgeting was one of the issues in Wisconsin's 1970 gubernatorial campaign.

What Is The Distinction Between Sunset And Zero-Base Budgeting?

There is confusion about the relationship between sunset and zero-base budgeting. Conceptually, the ultimate aims of a ZBB approach are very similar to the goals of sunset legislation; that is, to compel a periodic and comprehensive evaluation of government agency programs that could result in their elimination, reduction, consolidation or change in emphasis. Both seek to promote greater governmental efficiency and responsiveness through a close scrutiny of agency operations. A zero-base evaluation, if properly executed, includes as a possible end result a decision that an agency or program ought not to be funded. Such a determination would eliminate that agency or program as effectively as sunset.

Unlike a sunset law, however, zero-base budgeting does not necessarily begin the review process anticipating termination. The fixed termination date mandated under a sunset law is seen as the key ingredient which distinguishes it from zero-base budgeting and other methods of review. Establishing known termination dates, and requiring legislative reauthorization of programs that merit continuation, forces the legislature and agencies to take the whole process a good deal more seriously.

It has also been pointed out that sunset would involve a more multidisciplinary approach to evaluation than would be the case under a review that was limited to ZBB considerations. This element is considered essential to thorough and effective evaluation.

Adding to the confusion is the fact that some sunset proposals specifically require the review process to incorporate zero-base budget techniques in evaluating agency performance. Such an evaluation, for instance, was the cornerstone of the primary federal sunset bill in the 94th Congress (S. 2925).

The result of these factors is that the two terms are often used almost interchangeably. Zero-base budgeting, however, is not implicit in sunset.

Is Zero-Base Budgeting Primarily A Tool Of The Executive Branch?

It is more common to think of zero-base budgeting as essentially an executive tool. Sunset laws are often said to be the legislative equivalent to the administration's zero-base budgeting. There is no reason, however, that a legislature which is properly staffed with its own fiscal analysts and has the cooperation of the administrative agencies cannot make good use of a system of zero-base budgeting in evaluating agency programs. Some sunset bills link a zero-base budgeting system to the legislative review process.

On the other hand, sunset obviously includes a role for the governor. A governor could adapt the sunset approach to his own form of agency review within the executive branch. Certainly, if the legislature schedules specific agencies or programs to be reviewed and possibly expire in a given year, the executive branch would take various actions in response. It would surely be taken into account in preparing the executive budget. The governor's veto power would also involve him in the sunset process.

IV. THE LEGISLATURE'S ROLE IN SUNSET

Why Is Sunset Of Such Significance To The Legislative Branch?

There are several aspects to the legislature's stake in sunset legislation. The two most important can be categorized under the general headings of "oversight" and "insight".

Oversight. Sunset is designed to help the legislature increase its stature as a coequal branch of government through a reassertion of the generally neglected oversight function. Existing oversight and evaluation activities in many states are considered inadequate. To accept the responsibility of a meaningful oversight program under sunset will undeniably require a long-term commitment by the legislature as an institution and by its individual members. Members must be ready to make the extra efforts that will be required of them and to provide the supporting services necessary to do the job.

Insight. Sunset would also strengthen the legislative branch in a more subtle way by providing it with an opportunity for greater insight into the operations of the bureaucracy it has created and its own operation as a policy-making body.

In dealing with day-to-day concerns legislators are not often afforded the opportunity to make a long-term assessment of government operations in the absence of a crisis atmosphere. By reinvolving itself in a program created by legislation many years ago, the legislature can consider what has been accomplished, if it should be continued in the same way, and where the program ought to be headed. It might be instructive to attempt a determination as to why programs in actual practice frequently produce results that fall short of the expectations that prevailed when they were enacted.

One weakness the evaluation process is likely to reveal is that improvement is needed in clarifying the legislative intent when legislation is first enacted. The original objectives are often stated in very general terms which become more unclear as time passes, and program changes add to the confusion.

Does Sunset Legislation Place An Extra Burden On The Legislature?

One criticism of sunset is that it will absorb the legislature's time, staff and budget, at the expense of other legislative responsibilities. There is no question that undertaking an effective sunset review program would place additional burdens on the legislative branch. There is a distinct possibility of added interim committee work, longer sessions, more debate, and increased workloads for individual members, committees and staff. The amount of additional workload would depend on how comprehensive the sunset law's provision is and how extensive existing oversight activities are.

Another burden members would probably have to bear would be heightened pressures from various interest groups concerning specific agencies or programs scheduled for review.

Its proponents emphasize that, in order to succeed, sunset will need a continuing, serious effort from the legislature. Simply voting to create a sunset law because it is hard to oppose the feeling that government is getting too big and unmanagable, they say, will not be enough. Oversight is a legitimate legislative responsibility. A determination to make sunset work must be exhibited by legislative leaders. The resources to do a proper job must be provided or the quality of the review process will suffer. A commitment by individual members to work harder at a task that is not glamorous or particularly newsworthy is necessary. It will take courage to abolish or restructure agencies when almost every program has its own constituency both in and out of government to exert pressures.

Advocates have warned that if it is not clear that the legislature is willing to accept the burden, sunset will not be taken seriously by anyone and will become the costly, paper-shuffling fiasco its critics predict.

Will Politics Be A Factor In Legislative Sunset Deliberations?

Sunset will provide a new setting for the rather traditional interplay of the bureaucracy, legislature and special interests. Politics will no doubt be a factor. Some programs appear to be politically sacrosanct, while others are vulnerable to differing degrees. Sunset's potential for political and other abuses has alarmed its critics. Agencies fear politically motivated harassment or threats, and possible "fishing expeditions" under the guise of evaluation.

When the legislature makes its final determination on whether a program will be terminated or continued in some form, there is always the chance for arbitrary actions. Who is to say why legislatures decide as they do? Certainly staff recommendations supported by a mass of supporting documentation will be made available to all members. Legislators, however, are sensitive to a very broad range of influences. Their decisions are based on a mix of factors, some of which are political, while others include social, economic, and personal considerations.

A bill to continue an agency would be open to all the vagaries of the legislative process and, if passed, the possibility of a governor's veto. Getting such a bill caught in a legislative end-of-session rush would serve to magnify greatly the chances for political mischief and less than rational actions.

Can The Legislature Sustain An Effective Sunset Program?

That remains to be seen. There is definite concern as to the long-term prognosis.

Sunset is not a one-shot deal, but a continual process. It would take years to complete the first cycle of review. After that, depending on the program's success, the cycle would begin again and perhaps even be expanded. The point is that sunset is a long-term commitment by the legislature which it must continue to take seriously. After the initial excitement has died down, there would more than likely be attempts in later sessions to erode the sunset concept. Doubt has been voiced as to the legislature's willingness or ability to sustain an effective program of regular confrontations with agencies over a long period of time.

After completing the initial cycle of review the second go-around should be a bit easier for everyone involved. The first cycle would also provide a data base for making judgements. But a new problem may arise. The legislature, by continuing an agency following its first review, has given an implied

endorsement of its operations. This precedent may tend to make subsequent reviews less rigorous. On a related point, the legislature may have continued a particular agency or program on the contingency that certain shortcomings or objectional practices were to be corrected. There must be some feedback mechanism to act as an institutional memory to verify if the promised changes were carried out.

V. SUNSET IN COLORADO

When Did Colorado Enact Its Sunset Law?

Colorado House Bill 1088 was introduced in the 1976 session of the General Assembly with the title, "An act concerning regulatory agencies, and establishing a system for the periodic review and for the termination, continuation, or reestablishment thereof." It was popularly dubbed the "sunset" law. The bill, which had bipartisan support, was sponsored by 49 representatives and 19 senators and had the Governor's backing. Although HB 1088 met some heavy opposition from the agencies it would terminate (especially the health care occupations), it passed both houses of the Colorado General Assembly with overwhelming votes — 51 to 11 in the House and 31 to 1 in the Senate.

The Governor signed HB 1088 into law as Chapter 115, 1976 Regular Session, on April 22, 1976. Effective July 1, 1976, it added a new section to Part 1 of Article 34 of Title 24 of the 1973 Colorado Revised Statutes: Section 24-34-104, "General Assembly review of regulatory agencies for termination, continuation, or reestablishment." The first group of agencies is scheduled for expiration July 1, 1977.

Colorado is generally credited as the first state with a sunset law. Although Florida's sunset law became effective immediately upon enactment at a date earlier than Colorado's (June 17, 1976), the Colorado law was actually enacted first, but with a delayed effective date. Actual agency review and termination will commence a year earlier in Colorado than in Florida.

Where Did Colorado's Sunset Law Originate?

The basic sunset concept has apparently been around for many years. Former U.S. Supreme Court Justice William O. Douglas claims to have suggested to President Roosevelt in the 1930's that a limited life-span of about 10 years be allotted to newly created government agencies.

The idea of a sunset law for Colorado reportedly originated with Common Cause of Colorado in mid-1975. It grew out of a study which Common Cause was conducting of the operations of units within the state Department of Regulatory Agencies. The sunset approach that was contained in the proposed revision of the Texas Constitution, which the voters rejected, was known (see Section IX - Proposed Sunset In Texas). Apparently the idea appealed to the organization's board of directors as a possible solution to certain problems in the area of regulation and licensing. Colorado Common Cause made a considerable effort to get a sunset law passed in that state. Circumstances soon combined to make attainment of this objective a reality. Within a year the General Assembly enacted and the Governor signed a sunset law.

Colorado Common Cause is still heavily involved in how the law is being implemented. Since sunset has been adopted by the national organization of Common Cause as one of its legislative goals, there is a great deal of interest in making the Colorado experiment a success.

Did Colorado's Sunset Law Include A Legislative Declaration Of Intent?

Yes. The policy declaration is frequently reprinted because this unique preamble amounts to a virtual confession on the part of the legislative branch that it has allowed at least one aspect of government — in this case the regulatory agencies — to get out of control. The text of the legislative declaration on House Bill 1088 is as follows:

"The general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The general assembly further finds that by establishing a system for the termination, continuation, or reestablishment of such agencies, it will be in a better position to evaluate the need for the continued existence of existing and future regulatory bodies."

What Does The Colorado Sunset Law Provide?

Colorado's sunset law applies only to the regulatory boards, commissions and agencies under the state Department of Regulatory Agencies. Comprising over 40 separate entities, these agencies include a number of boards which license various trades and occupations, as well as regulatory agencies such as the Public Utilities Commission and the divisions of Banking, Civil Rights, Insurance, Securities and Savings and Loan. A complete listing follows below.

July 1, 1977, begins a continuing 6-year cycle of periodic review, with the first group of approximately one-third of the affected agencies scheduled for termination on that date. Prior to

termination the General Assembly must comprehensively evaluate each agency to determine if it should be allowed to expire, be continued, or reestablished in some altered form. The remaining agencies are scheduled to end on July 1 of 1979 and 1981. For review purposes, an attempt was made to cluster the agencies into rough functional groupings.

It is important to note that in some instances the sunset law terminates only the board or commission which is the policy-making head of that agency, leaving the statutory "body" of functional responsibilities in existence. In other instances, the agency superstructure and its functions terminate in toto on the prescribed date. The presumption is that in the former circumstance, the legislature would either tie up loose ends by also repealing the body or continue the function by providing a new head to go with the body (perhaps by continuing it under the Executive Director of the Department of Regulatory Agencies).

Colorado's sunset law provides that the following agencies in the Department of Regulatory Agencies shall terminate on the specified dates:

July 1, 1977 Termination

Public Utilities Commission	Board of Mortuary Science
Division of Insurance	Passenger Tramway Safety Board
Division of Racing Events and Colorado Racing Commission	Board of Shorthand Reporters
Athletic Commission	Board of Examiners of Nursing Home Administrators
Board of Barber Examiners	Board of Examiners of Institutions for Aged Persons
Collection Agency Board	Board of Registration for Professional Sanitarians
Board of Cosmetology	

July 1, 1979 Termination

Division of Civil Rights and Civil Rights Commission	Board of Nursing
Commission on the Status of Women	Board of Practical Nursing
Real Estate Commission	Board of Optometric Examiners
Board of Chiropractic Examiners	Board of Pharmacy
Board of Dental Examiners	Board of Physical Therapy
Board of Medical Examiners	Board of Veterinary Medicine

July 1, 1981 Termination

Division of Banking	Board of Psychologist Examiners
Division of Savings and Loan	Examining Board of Plumbers
Division of Securities	Electrical Board
Board of Examiners of Landscape Architects	Board of Hearing Aid Dealers
Board of Examiners of Architects	Board of Social Worker Examiners
Abstractors' Board of Examiners	Mobile Home Licensing Board
Board of Accountancy	
Board of Registration for Professional Engineers and Land Surveyors	

Under Colorado's law the Legislative Audit Committee shall conduct a performance audit of each agency scheduled for termination, to be completed at least three months prior to the termination date. Upon completion, the committee shall hold a public hearing for the purpose of reviewing its report. A copy of the report shall be made available to each member of the General Assembly.

Prior to termination, continuation or reestablishment of any agency, the appropriate committee of reference in each house of the General Assembly shall hold a public hearing, receiving testimony from the Executive Director of the Department of Regulatory Agencies, the affected agency, and the public.

In such hearings, the agency involved shall have the burden of demonstrating a public need for its continued existence and the extent to which a change may increase the efficiency of its operations or administration.

Any agency scheduled for termination may be continued or reestablished by the General Assembly for a period not to exceed six years, at which time the review process will be repeated. The life-span of any new agency created in the Department of Regulatory Agencies shall not exceed six years, at which time it will be subject to review.

No more than one agency shall be continued or reestablished in any single bill enacted. If terminated, an agency shall continue in existence until July 1 of the next succeeding year for the purpose

of concluding its affairs, after which it shall cease all activities. During the windup period the agency shall exercise all of its full powers and authority, without reduction. It should be noted that, among other reasons, the year of grace with no reduction in authority allowed an abolished agency is designed to provide time to build a case for its resurrection.

Termination of an agency shall not cause the dismissal of any claim or right of a citizen against that agency or any claim or right of the agency which is subject to litigation. Such claims and rights shall be assumed by the Department of Regulatory Agencies.

Does Colorado's Sunset Law Provide Any Agency Evaluation Criteria?

Yes, Colorado's sunset law specifies nine factors that must be taken into consideration when an agency is being reviewed by the Legislative Audit Committee and at the public hearing before the appropriate standing committee of each house. The evaluation, however, is not limited to these nine factors. They are as follows:

1. The extent to which the agency has permitted qualified applicants to serve the public;
2. The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates;
3. The extent to which the agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of the Department of Regulatory Agencies, and any other circumstances, including budgetary, resource, and personnel matters;
4. The extent to which the agency has recommended statutory changes to the General Assembly which would benefit the public as opposed to the persons it regulates;
5. The extent to which the agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency on the public regarding improved service, economy of service, and availability of service;
6. The extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public;
7. The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;
8. The efficiency with which formal public complaints filed with the agency or with the Executive Director of the Department of Regulatory Agencies concerning persons subject to regulation have been processed to completion by the agency, by the Executive Director of the Department of Regulatory Agencies, by the Department of Law, and by any other applicable department of state government; and
9. The extent to which changes are necessary in the enabling laws of the agency to adequately comply with the factors listed above.

Is The Colorado General Assembly Staffed To Accomplish The Sunset Review Task?

The performance audit is expected to be the basic document in the review process. Post auditing of agency performance is not a new experience to the legislature. This function has been performed for many years by the Legislative Audit Committee. Now this activity will be directed by the sunset law provisions. It is anticipated that existing staff can get the job done if more routine auditing work is contracted out to private firms. Colorado's sunset law does not specify a zero-base budget approach (some sunset legislation emphasizes ZBB) primarily because budgeting problems are slight with regulatory agencies. The Executive Director of the Department of Regulatory Agencies has general budgetary control of the agencies within the department. For the most part program revenues, rather than general funds, are involved.

Incidentally, the Department of Regulatory Agencies has utilized a \$25,000 federal grant to draw upon the resources of the University of Colorado by hiring ten student interns on a half-time basis to provide support for agencies under sunset review. These interns, who are graduate students from the university's Graduate School of Public Affairs, work under the part-time direction of a professor of public affairs from the graduate school. Two additional full-time student interns were employed with department funds.

Are There Any Predictions As To The Long-Range Impact Of Colorado's Sunset Law?

Colorado's sunset law has already had an effect. Although not the direct result of the new law, the legislative debate which led up to its enactment prompted a review that has already eliminated four licensing boards.

As a practical matter, the long-range expectation is that few existing agencies will be allowed to expire. The pressures for renewal will be great. Most agencies do have a necessary job to do and will probably be able to justify it without too much difficulty. It seems likely that these agencies will be continued, perhaps in some modified form reflecting a reorganized structure or a new emphasis in the direction of services. The benefit of sunset is seen as not so much the elimination of agencies, but

attitude changes brought about by close, periodic scrutiny of agency operations. Better public service in terms of improved efficiency and accountability is the hoped for result — better government, not less.

It is Colorado's intention to extend the application of sunset to other agencies and programs if the experiment with the Department of Regulatory Agencies is a success. On a broader scale, the Colorado law has already served as model legislation for sunset bills being drafted elsewhere. Its success or failure will have a significant impact on what other state legislatures and Congress may do regarding sunset.

VI. SUNSET IN FLORIDA

When Did Florida Enact Its Sunset Law?

The legislature passed Florida's sunset law in the 1976 regular session. It took immediate effect when the Governor signed the bill into law on June 17, 1976, as Florida Chapter 76-168. The act is entitled the "Regulatory Reform Act of 1976". It added a new provision to the Florida Statutes, Section 11.61, "Legislative review of regulatory functions". The first group of agencies to be reviewed under its provisions are scheduled for termination on July 1, 1978. Florida followed Colorado as the second state to enact a sunset law.

Did Florida's Sunset Law Include a Statement of Legislative Intent?

Yes. The law provides that it is the intent of the legislature:

"That no profession, occupation, business, industry or other endeavor shall be subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

That the state shall not regulate a profession, occupation, industry, business or other endeavor in a manner which will unreasonably adversely affect the competitive market.

To provide systematic legislative review of the need for, and public benefits derived from a program or function which licenses or otherwise regulates the initial entry into a profession, occupation, business, industry or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions."

What does the Florida Sunset Law Provide?

The Florida law applies the sunset review mechanism to a variety of programs and functions which regulate a profession, occupation, business, industry or other endeavor. It provides for the complete repeal of specified bodies of law affecting 94 different regulatory activities.

July 1, 1978, begins a continuing 6-year cycle of periodic review, with the first group scheduled for termination on that date. Prior to termination the Florida Legislature must comprehensively review each activity to determine if it should be allowed to expire or be reestablished, perhaps in some modified form. The remaining programs and functions are scheduled to end on July 1 of 1980 and 1982.

Unlike Colorado, the Florida sunset law repeals the entire statutory provision — all powers, duties and functions — pertaining to the particular program or function under review. On the specified dates, Florida's law provides for the repeal of enumerated statute sections of regulatory programs and functions relating to:

July 1, 1978 Termination

Accountancy	Optometry
Architecture	Osteopathic physicians
Barbers	Pharmacists
Chiropractic	Podiatry
Construction industry	Pilots, piloting and pilotage
Cosmotology	Psychological practice
Dentistry, dental hygiene and dental laboratories	Real estate licensing
Electrical contractors	Sanitarians
Professional engineers and land surveyors	Veterinarians
Forestry practice	Watchmakers
Funeral directors and embalmers	Dealers in agricultural products
Landscape architects	Land sales
Masseurs and masseuses	Hotels and restaurants
Medical practice	Cigarette distributing agents
Naturopathy	Yacht and shipbrokers
Nursing	Shorthand court reporting
Nursing home administrators	Electronic repair
Dispensing opticians	Fire extinguishers and systems

July 1, 1980 Termination

Private employment agencies	Private wire services
Investigation agencies and deception detectors	Public utilities
Mobile home dealers	Water and sewer systems
Motor vehicle dealers	Home improvement sales and finance
Motor vehicle branches, factory representatives, distributors and importers	Retail installment sales
Mobile home and recreational vehicle manufacturers	Industrial savings banks
Motor carriers and freight forwarding	Credit unions
Air carriers	Savings banks
Common carriers	Banking
Telegraph and telephone companies and radio common carriers	Cemeteries
	Sale of money orders
	Sale of securities

July 1, 1982 Termination

Nonpublic educational and training institutions	Hospitals
Personnel of school systems	Drug abuse treatment and education centers
Speech pathology and audiology	Operators of water purification and waste-water treatment plants
Operators of motion picture projectors	Care of dependent children
Plumbers	Solicitation of funds for the blind
Fitting and selling of hearing aids	Clinical laboratories
Nursing homes and related health care facilities	Nuclear Code
Emergency medical systems	Airports
Pest control	Health care service programs
Migrant labor camps	Automobile clubs
Tourist camps	Bail bondsmen and runners
Food manufacturers, processors and packers	Automobile inspection and warranty associations
Public bath houses and swimming or bathing places	Sale of liquified petroleum gas
Drug wholesalers and manufacturers	Insurance, field representatives and operations
Sale of milk and milk products	Fraternal benefit societies
Frozen desserts	Outdoor advertisers
Child care facilities	Factory-built housing

Additional provisions in Florida's sunset law include the following:

No later than January 1, 1977, the Speaker of the House and the President of the Senate shall appoint a special joint legislative committee charged with the duty of establishing procedures necessary to implement the law. (Thus, the administrative details are not yet available.)

The review and evaluation required by the law will be the responsibility of the appropriate substantive committees of both the House and Senate, meeting jointly, as assigned by the Speaker and President, respectively.

Legislative committee review begins one year prior to the termination date and must conclude with a recommendation for continuation, modification or repeal on or before February 15 prior to the date of repeal. Presumably, a public hearing will be a part of this evaluation process. A report of committee recommendations and any proposed legislation is submitted to the offices of the Speaker and President for distribution to legislators prior to the ensuing legislative session.

Any agency or program scheduled for termination may be reestablished for any period of time, not to exceed six years. At the end of that period, the legislature must conduct another review and may again reestablish, modify or allow its termination.

If the statute sections enumerated are allowed to terminate, the unit or subunit of government and the personnel positions responsible for carrying out the powers, duties and functions created by the statutory provisions repealed are abolished one year from the date of repeal. (It appears the agency is abolished one year after its statutory regulatory programs and functions.) All unexpended funds revert to the fund from which they were appropriated, or if that fund is abolished, to the general revenue fund.

Any new regulatory program or function created shall be reviewed by the legislature beginning not later than 60 months (5 years) after the law authorizing the regulation becomes effective, and such review shall be completed not later than 69 months after the effective date.

The law shall not affect the right to institute or prosecute any cause of action by or against a terminated unit or subunit if the cause of action accrued prior to termination. Any causes of action pending on the date of termination, or instituted thereafter, shall be prosecuted or defended in the name of the state by the Department of Legal Affairs.

Does Florida's Sunset Law Provide Any Agency Evaluation Criteria?

Yes. Florida's sunset law specifies six criteria which the legislature shall consider in determining whether to terminate, reestablish or modify a regulatory program or function. Note the Florida law seems to place more direct emphasis on the "need" factor than does the Colorado law. The six criteria are:

1. Would the absence of regulation significantly harm or endanger the public health, safety or welfare?
2. Is there a reasonable relationship between the exercise of the State's police power and the protection of the public health, safety, or welfare?
3. Is there another less restrictive method of regulation available which could adequately protect the public?
4. Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and if so, to what degree?
5. Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
6. Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

VII. SUNSET IN LOUISIANA

When Did Louisiana Enact Its Sunset Law?

Louisiana became the third state to enact a sunset law when the Legislature passed and the Governor approved, on July 30, 1976, Act No. 277 of the 1976 regular session. Its effective date was October 1, 1976. The first group of agencies to be reviewed under its provisions are scheduled for termination on July 1, 1979.

Concurrent with its passage of sunset, Louisiana enacted several other legislative initiatives aimed at getting control of state government growth. Since it was mandated by the 1974 state constitution, a complete reorganization of the executive branch has been in progress (the deadline is December 31, 1977). Another session law (Acts 1976, No. 146) provides for the phasing in of zero-base budgeting, to be implemented under legislative oversight. Finally, a law pertaining to agency evaluation was enacted (Acts 1976, No. 296) establishing a Program Review Committee under the Legislative Audit Advisory Council.

Did Louisiana's Sunset Law Include a Statement of Legislative Intent?

No.

What Does The Louisiana Sunset Law Provide?

Of the state sunset laws described thus far, Louisiana's has by far the broadest application. It applies to virtually all agencies in the executive branch of state government. The law provides that all legislative authority for the existence of such agencies shall cease (be repealed) as of the given termination date for 20 specified departments as well as any other statutory entity. "Statutory entity" is defined as any office, department, agency, board, commission, institution, division, officer, or other person or functional group created or continued by statute or legislative resolution to which state funds are appropriated.

July 1, 1979, begins a continuing 4-year cycle of periodic review, with the first group of five departments scheduled for termination on that date. Prior to termination the Louisiana Legislature must complete a comprehensive zero-base budget review and evaluation of each agency to determine if it merits support for its continuation, and a recommended budget level, based upon a justification by that agency from a zero-base.

The remaining agencies are scheduled for review and possible termination on July 1 of each of the following years — 1980, 1981 and 1982. Unlike the more measured approaches of Colorado and Florida, Louisiana has undertaken the ambitious task of reviewing all departments in the executive branch, and has elected to do it on a 4-year cycle, with a new group of agencies being reviewed every year.

Louisiana's sunset law also differs somewhat from the others in that termination of a given agency results in the immediate repeal of the entire statutory authority for that agency and its functions. There is no time delay or period of grace provided.

On the specified dates, all legislative authority for the existence of the following departments (and their statutory entities) shall cease:

July 1, 1979 Termination

Commerce	Natural Resources
Urban and Community Affairs	State
Corrections	

July 1, 1980 Termination

Labor	Justice
Transportation and Development	State Civil Service
Elections and Registration	

July 1, 1981 Termination

Revenue and Taxation	Wildlife and Fisheries
Culture, Recreation and Tourism	Insurance
Public Protection	Treasury

July 1, 1982 Termination

Health and Human Resources	Public Service
Agriculture	Any other statutory entity not previously terminated
Education	

Additional provisions in Louisiana's sunset law include the following:

The Commissioner of Administration must file a complete list of all statutory entities which are affected by the sunset law by July 1, 1977.

The standing committee or committees of the legislature having appropriate jurisdiction — or a joint legislative committee specially created for this purpose — conducts a zero-base budget review and analysis two years prior to the year of an agency's scheduled termination date. Upon completion of the ZBB evaluation, an appropriate budget level will be recommended by the committee. It reports its budget recommendation and other findings to both houses of the Legislature.

In the regular legislative session one year prior to the year in which an agency is scheduled to terminate, a bill may be introduced authorizing its recreation. The bill shall be referred to the same committee which conducted the initial review. Such a bill can recreate only one agency, and must contain a new termination date not more than four years from its effective date.

Upon receiving the bill, the reviewing committee may conduct further evaluation hearings. In all hearings under the law, the agency shall have the burden of proving a public need for its recreation. However the committee reports the bill, it must also recommend a budget level based on its ZBB review and evaluation.

If the bill becomes law, it shall be presented to the Legislative Budget Committee, along with the recommended budget level, for its deliberations on the budget.

If the bill authorizing recreation does not become law, the statutes creating and continuing the agency shall be construed as repealed on the applicable termination date fixed in law. No funds shall be appropriated or otherwise made available from any source to any agency after its termination date.

The legislature may not consider for final passage any legislation which creates or recreates a statutory entity unless the required review and evaluation report has been submitted by the appropriate committee.

Any law enacted creating or recreating a statutory entity must contain a termination date no more than four years from its date of creation. Such an entity may only be recreated according to the procedures provided by the sunset law.

The law shall not affect any claim or right of a citizen against a terminated agency or any claim or right of the agency. Such claims or rights shall be assumed by the State of Louisiana.

The law shall not be construed to prohibit the legislature from terminating any statutory entity at any time, or from considering any other legislation relating to it.

Does Louisiana's Sunset Law Provide Any Agency Evaluation Criteria?

While Louisiana's sunset law does not specifically list a set of evaluation criteria such as those found in the laws of Colorado and Florida, it does provide certain objectives and standards to guide the review process.

One section pertaining to zero-base budget review and evaluation stipulates 3 objectives for that exercise:

1. the elimination of inactive statutory entities;
2. the elimination of entities which duplicate other government programs and activities, or an appropriate consolidation of them; and
3. the elimination of inefficient, unnecessary or ineffective entities.

Another section provides that the report of the legislative committee executing the sunset review shall include, but not be limited to, the following 3 items:

1. an identification of other entities, programs or activities of state government having the same or similar objectives, along with a comparison of the cost, effectiveness and any duplication of efforts;
2. an examination of the extent to which the objectives of the entity under review have been achieved when compared to the objectives initially established and an analysis of any significant variance between projected and actual performance; and
3. a statement of the objectives of the entity for the coming four years with the establishment of measurements of performance where feasible.

Has the Louisiana Sunset Law Exempted Any Agencies from Its Provisions?

Yes. The Louisiana sunset law specifically provides that it does not apply to retirement systems.

Another section states that no statutory entity which has bonds outstanding shall be abolished until provisions are made for the payment of the principal and interest of this debt at or before maturity, or for its assumption by the state or any agency or subdivision thereof.

VIII. SUNSET IN ALABAMA

When Did Alabama Enact Its Sunset Law?

The Alabama Legislature passed a sunset law in its 1976 regular session. It took immediate effect when the Governor signed the measure into law on August 24, 1976, as Alabama Act No. 512. The act is entitled the "Alabama Sunset Law of 1976". Alabama is the fourth state to enact such a law.

This session law provides that the first group of state agencies to be reviewed are scheduled for termination October 1, 1977.

Two related laws were enacted in the same session and approved by the Governor in August of 1976. Act No. 389 prescribes a penalty for any person in state government (including an elective or appointed official) who knowingly prepares or presents false fiscal information for the legislature's use. Act No. 494, "The Budget Management Act", establishes a comprehensive system for budgeting and management, including an orderly and continuous review of programs via performance auditing. It details the responsibilities of the legislature, governor and the agencies.

Did the Alabama Sunset Law Include a Legislative Statement of Purpose?

No.

What does the Alabama Sunset Law Provide?

Like the Louisiana law, the Alabama sunset law is also broad in scope and ambitious in its timetable. It specifies termination dates for 98 state agencies. "Agency" is defined in the act to include all departments, divisions, bureaus, commissions, councils and boards, or other similar state governmental units or subunits, regulatory in nature or otherwise. "Termination" is complete abolishment and ceasing to exist.

October 1, 1977 is the start of a continuing 4-year cycle of review, with a portion of the 98 agencies scheduled to terminate on October 1 of each successive year: 1977 — 18 agencies; 1978 — 34 agencies; 1979 — 18 agencies; 1980 — 28 agencies. Before termination the legislature must thoroughly evaluate each agency, including a zero-base budget review.

Unless the legislature takes affirmative action to extend their life, the agencies listed below will be terminated on the following dates:

October 1, 1977 Termination

Board of Agriculture and Industries	Securities Commission
Farmer's Market Authority	Continuing Interim Committee on Finance and Taxation
Department of Labor	Liquefied Petroleum Gas Board
Department of Industrial Relations	Board of Cosmetology
Advisory Council (Industrial Relations)	Board to Examine Entomologists, Horticulturists, Floriculturists and Tree Surgeons
Department of Examiners of Public Accounts	
Board of Appeals	

Boxing and Wrestling Commission
 Board of Veterinary Medical Examiners
 Board of Examiners of Speech Pathology and
 Audiology

Ethics Commission
 Air Pollution Control Commission
 Commission on Intergovernmental Cooperation

October 1, 1978 Termination

Board of Examiner in Psychology
 Board of Medical Examiners
 Board of Funeral Service
 Fire Fighters Personnel and Education Com-
 mission
 Peace Officers Standards and Training Com-
 mission
 Polygraph Examiners Board
 Real Estate Commission
 Board of Certification of Water and Waste Water
 Systems Personnel
 State Bar
 Board of Bar Examiners
 Board of Barber Examiners
 Board of Hearing Aid Dealers
 Board of Dental Examiners
 Board of Physical Therapy
 Board of Examiners of Nursing Home Ad-
 ministrators

Board of Registration for Sanitarians
 Board of Examiners of Mine Personnel
 Board of Medical Technicians Examiners
 Board of Nursing
 Advisory Councils for Nursing
 Board for Registration of Architects
 Board of Examiners of Landscape Architects
 Board of Chiropractic Examiners
 Board of Embalming
 Board of Optometry
 Board of Pharmacy
 Board of Public Accountancy
 Board of Registration for Foresters
 Board for Registration of Professional Engineers
 and Land Surveyors
 Licensing Board for General Contractors
 Licensing Board for the Healing Arts
 Pilotage Commission
 Judicial Commission

October 1, 1979 Termination

Department of Public Safety
 Law Enforcement Planning Agency
 Supervisory Board of Alabama Law Enforcement
 Planning Agency
 Regional Planning Boards
 Department of Civil Defense
 Civil Defense Advisory Council
 Criminal Justice Information Systems Center
 Office of Toxicologist
 Safety Coordinating Committee

Board of Corrections
 Board of Pardons and Paroles
 Department of Conservation and Natural
 Resources
 Surface Mining Reclamation Commission
 Alabama State Guard
 Department of Veteran's Affairs
 Board of Veteran's Affairs
 Armory Commission of Alabama
 State Docks Department

October 1, 1980 Termination

Board of Health
 Health Planning and Development Agency
 Health Coordinating Council
 Committee of Public Health
 Department of Public Health
 Mental Health Board
 Department of Pensions and Security
 Board of Pensions and Security
 Water Wells Standards Board
 Board for Distribution and Delivery of Dead
 Bodies
 Governor's Committee on Employment of the
 Handicapped
 Radiation Control Agency
 Radiation Advisory Board

Forestry Commission
 Water Improvement Commission
 Highway Department
 Highway Finance Corporations (6)
 Oil and Gas Board
 Toll Bridge Authority
 Department of Aeronautics
 Dairy Commission
 Banking Department
 Banking Board
 Savings and Loan Board
 Credit Union Board
 Public Service Commission
 Alcoholic Beverage Control Board
 Department of Insurance

Any existing state agency not specifically listed shall be terminated on October 1, 1978. Any existing entity which receives state funds of whatever nature and not specifically listed shall be subject to evaluation and termination at such times and in such manner as the legislature's select joint committee created by this act deems appropriate.

Additional provisions in Alabama's sunset law include the following:

The act provides for the creation of a select joint legislative committee of 11 members charged with the duty of implementing the law and for establishing administrative procedures to facilitate its evaluation and review requirements.

Legislative committee agency review begins at least 4 months prior to the regular session in which the agency is scheduled to terminate and reports its recommendation on or before the first legislative day of the session immediately following the review. The reviewing committee holds public hearings to receive testimony from all interested parties. There is no limit on the number of days the committee meets.

The committee recommendation for continuation or termination with respect to each agency reviewed must include data to support its findings. Its recommendation to the legislature are made in the form of a resolution.

On the tenth legislative day of the regular session voting in the respective houses of the legislature on the joint committee's recommendations shall commence as the first order of business and shall continue thereafter from day to day until voting to accept or reject the recommendations with respect to each agency reviewed is completed. Debate on the recommendation for any agency is limited to 2 hours. The decision to terminate or continue an agency requires a simple majority roll-call vote in both houses. Only one agency may be continued, terminated or reestablished in any one resolution.

Any terminated agency has a period of 180 days from its date of termination to wind up its affairs. During that period its powers, duties and functions remain unchanged. Upon expiration the agency and its personnel positions are abolished. All unexpended funds revert back to state fund from which the appropriation was made.

Termination of any agency shall not cause the dismissal of any claim or right of a citizen who is subject to administrative hearing or litigation.

Any newly created agency shall have stated in its enabling legislation a life-span not to exceed 4 years, and be subject to the provisions of the sunset law.

Does Alabama's Sunset Law Provide Any Agency Evaluation Criteria?

The Alabama sunset law approaches the problem of agency review criteria from two directions. First, it requires the agencies to provide 6 specific items of information to the review committee. Second, the law stipulates 9 factors to be taken into consideration in guiding the evaluating committee's determination.

As a part of placing the burden of justifying their continued existence on the agencies, each agency must supply the following information:

1. The identity of all agencies under the direct or advisory control of the agency under review;
2. All powers, duties and functions currently performed by the agency under review;
3. All constitutional, statutory, or other authority under which said powers, duties and functions of the agency are carried out;
4. Any powers, duties or functions which, in the opinion of the agency under review, are being performed and duplicated by another agency within the state including the manner in which, and the extent to which, this duplication of efforts is occurring and any recommendations as to eliminating the duplication;
5. Any powers, duties or functions which, in the opinion of the agency under review, are inconsistent with current and projected public needs and which should be terminated or altered; and
6. Any other information which the reviewing committees, in their discretion, feel is necessary and proper in carrying out their review and evaluative duties.

In determining whether sufficient public need exists to continue an agency the review committee shall take into account the following factors:

1. The extent to which any information required to be furnished to the reviewing committees has been omitted, misstated, or refused, and the extent to which conclusions reasonably drawn from said information is adverse to the legislative intent inherent in the powers, duties, and functions as established in the enabling legislation creating said agency, or is inconsistent with present or projected public demands or needs;
2. The extent to which statutory changes have been recommended which would benefit the public in general as opposed to benefitting the agency;
3. The extent to which operation has been efficient and responsive to public needs;
4. The extent to which it has been encouraged that persons regulated report to the agency concerning the impact of rules and decisions regarding improved service, economy of service, or availability of service to the public;
5. The extent to which the public has been encouraged to participate in rule- and decision-making as opposed to participation solely by persons regulated;

6. The extent to which complaints have been expeditiously processed to completion in the public interest; and

7. The extent to which the division, agency or board has permitted qualified applicants to serve the public;

8. The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates;

9. Any other relevant criteria which the reviewing committees, in their discretion, deem necessary and proper in reviewing and evaluating the sufficient public need for continuance of the respective agency.

In addition to these review criteria, the law specifies that zero-base review and evaluation be used in determining sufficient public need.

How Does the Alabama Sunset Law Describe Zero-Base Evaluation and Review?

Alabama's sunset law provides that a comprehensive zero-base evaluation and review shall be one criterion in determining the merits of continuing an agency. The procedure necessitates a review of all powers, duties and functions currently exercised by the agency as well as any requested additions. It includes reaching a finding as to what amount of funding (if any) shall be authorized to produce correspondingly greater or lesser levels of responsibility and service output.

Said zero-base review and evaluation shall include, but not be limited to, the following 5 factors:

1. An identification of other agencies having the same or similar objective, along with a comparison of the cost and effectiveness of said agencies, and any duplication of the agency under review;

2. Any identification of any agency which has not received and expended state tax dollar revenues within a period of two years prior to said hearings;

3. An examination of the extent to which the objectives of the agency have been achieved in comparison with the objectives as initially set forth in the enabling legislation and an analysis of any significant variance between projected and actual performance;

4. A specification, to the extent feasible, in quantitative terms, of the objectives of said agency for the next four years; and

5. An examination of the impact of said agency on the economy of the state.

Furthermore, the act urges the governor to utilize the zero-base principles for each agency in the annual budget preparation process, and to include the analysis and recommendations in the transmission of the budget to the legislature.

IX. PROPOSED SUNSET IN TEXAS

Did Texas Precede Colorado in Passing a Sunset Law?

Yes and no! The Texas Legislature adopted a proposed constitutional revision that was submitted to the voters at the election held in November 1975 in the form of 8 separate propositions. Each proposition sought to amend a particular part of the Texas Constitution and could be individually ratified or defeated. Proposition No. 1 included a proposed revision of Article IV ("The Executive"), Sections 16 and 24, to provide a sunset approach to reviewing and continuing executive branch agencies. No similar provision existed in the previous constitution. The sunset idea failed, however, when the Texas voters rejected all 8 proposals for a new state constitution. However, it appears the sunset proposal was not itself controversial and thus did not play a significant role in the defeat of Proposition No. 1.

What Did the Proposed Revision to the Texas Constitution Provide?

The related Sections 16 and 24 of Article IV of the proposed state constitutional revision adopted by the Texas Legislature required all state agencies, with certain exceptions, to be subjected to periodic review by the governor and to have a life of not more than 10 years unless extended by the legislature. State agencies subject to sunset were those statutory agencies with statewide jurisdiction having appointive members, except institutions related to higher education. Apparently, this would have included most boards, commissions, departments, institutions and other administrative agencies in the executive branch. An interesting feature was the role provided the governor regarding administrative reorganization in conjunction with the 10-year review cycle. Another important aspect was the protection afforded an agency's outstanding debt.

The text of the proposed constitutional revisions of Article IV, Sections 16 and 24, of the Texas Constitution follows:

Article IV. The Executive

"Sec. 16. Administrative Reorganization. (a) At the regular session held in odd-numbered years, the governor shall submit to the legislature a report on the organization and efficiency of the executive branch.

"(b) In recommending plans for reorganization of the executive branch, the governor may submit to the legislature one or more reorganization bills limited to consolidating, abolishing, or transferring functions among statutory state agencies in the executive branch. The legislature must consider those bills but may amend them. A submitted reorganization bill, whether amended or not, must be brought to a vote of each house during the session at which the bill is submitted.

"Sec. 24. State Agencies. (a) State agencies include all boards, commissions, departments, institutions, and other executive or administrative agencies of state government. State agencies are part of the executive branch unless otherwise provided by law.

"(b) Statutory state agencies with statewide jurisdiction having appointed officers, except institutions related to higher education, have a life of not more than 10 years unless renewed by law for not more than 10 years at a time. Unless otherwise provided by law, appointed officers serving on the effective date of a renewal continue to hold office for the terms for which they were appointed. A bill to renew an agency or agencies, the life of any one of which expires in less than two years from the beginning of the session in which the bill was introduced, must be reported from committee in the house and senate and brought to a vote in each house not less than 20 days before adjournment.

"(c) Subsection (b) of this section does not end the life of a state agency with outstanding bonds unless the legislature by law first provides for the administration of property under the control of the agency and makes adequate provision for servicing the outstanding debt to ensure that the bond obligations are not impaired."

How Were the Proposed Sunset Provisions in the New Texas Constitution to be Implemented?

Had Proposition No. 1 been ratified by the voters the revised constitutional sections relating to sunset would have become effective January 1, 1976. The legislature was scheduled to meet that month to implement the provisions that were adopted with appropriate legislation. Since the ballot proposition was defeated, we cannot know the mechanics of the sunset system the legislature would have devised.

X. PROPOSED SUNSET IN IOWA

Was a Sunset Law Passed in Iowa?

In the 1976 session of the Iowa General Assembly a bill was passed which included sunset provisions, but the Governor vetoed the measure.

The original thrust of Iowa House File 1573 was to provide the legislature with a special performance auditing capacity. It has been described as a response to a public demand for more economy, efficiency, responsiveness and accountability in Iowa's state government. As introduced, the bill (among other things) created a Performance Audit Division within the Legislative Fiscal Bureau. Prior to its passage, however, a successful amendment added a very broad sunset provision which did not exist in the original bill (see Section 14 of House File 1573).

On June 28, 1976, the Iowa Governor vetoed the entire proposal.

What Did Iowa's Vetoed Sunset Bill Provide?

The sunset provisions of Iowa House File 1573 mandated periodic review and termination, unless reenacted by affirmative legislative action, of nearly all state agencies. Seventy-six different agencies were specified in the bill, each to be reviewed and subject to termination in a continuous 6-year cycle. The first group of 13 agencies were scheduled for review in the 1977 legislative session, with mandatory termination on July 1, 1978. Approximately the same number of agencies were to be subjected to the process in each subsequent year through July 1, 1983.

"State agency" was defined in the bill as any state office, department, board, bureau, commission or other public or private agency supported in whole or in part by state appropriations. Included among the agencies exposed to the sunset provisions were agencies in the judicial and legislative branches, as well as the executive branch of state government. A complete listing follows at the end of this section.

The appropriation subcommittee in each house of the Iowa General Assembly which is responsible for the appropriation of the agency scheduled for examination would jointly hold a public hearing on the continued existence of that agency. Prior to this hearing, the newly created Performance Audit Division was directed to submit a report on its audit and evaluation of the agency under review to the committee. The committee, in turn, reported its recommendations to the General Assembly.

If not reenacted, the authorizing statutes for the reviewed agency would automatically be repealed on July 1 of the following year.

The following is a complete listing of the agencies that were scheduled for review and termination:

Review in 1977 — July 1, 1978 Termination

Legislative Fiscal Bureau	Board of Psychology Examiners
Department of Public Defense	Mental Health Authority
Campaign Finance Disclosure Commission	Commission on Aging
Occupational Safety and Health Review Commission	Board of Regents
Board of Physical Therapy Examiners	State Historical Department
Board of Nursing Examiners	Natural Resources Council
	Department of Environmental Quality

Review in 1978 — July 1, 1979 Termination

Office of Planning and Programming	State Fair Board
Capitol Planning Commission	Board of Parole
Public Employment Relations Board	Iowa Library Department
Department of Public Safety	Department of Soil Conservation
Board of Engineering Examiners	Iowa Civil Rights Commission
Board of Examiners of Shorthand Reporters	Iowa Housing Finance Authority
Board of Chiropractic Examiners	

Review in 1979 — July 1, 1980 Termination

Code Editor	Drug Abuse Authority
Executive Council	Geological Board
Board of Accountancy	Commerce Commission
Board of Optometry Examiners	Commission for the Blind
Board of Pharmacy Examiners	Board of Bar Examiners
Department of Agriculture	

Review in 1980 — July 1, 1981 Termination

Board of Examiners for Nursing Home Administrators	Board of Architectural Examiners
Supreme Court Clerk	Board of Podiatry Examiners
State Comptroller	Board of Funeral Directors and Embalmer Examiners
Department of General Services	Department of Social Services
Development Commission	Department of Transportation
Bonus Board	Committee on Employment of the Handicapped
Real Estate Commission	Citizens' Aide

Review in 1981 — July 1, 1982 Termination

Department of Banking	Board of Watchmaking Examiners
Court Administrator of the Judicial Department	Department of Health
Commission on Uniform State Laws	Board of Dentistry
Midwest Nuclear Compact	Commission of Veteran Affairs
Iowa Crime Commission	Higher Education Facilities Commission
Industrial Commission	Department of Revenue
Conservation Commission	

Review in 1982 — July 1, 1983 Termination

Legislative Service Bureau	Beer and Liquor Control Department
Upper Mississippi Riverway Compact	Board of Medical Examiners
Law Enforcement Academy Council	Board of Examiners for Hearing Aid Dealers
Bureau of Labor	Department of Public Instruction
Energy Policy Council	Arts Council
Board of Landscape Architectural Examiners	Commission on the Status of Women

Why Did the Iowa Governor Veto the Sunset Bill?

In his 5-page veto message the Governor stated a number of objections to the bill. While these objections involved a wide variety of factors, the sunset provisions incorporated in the bill were singled out for special attention. In summary, this "notable provision" (as the Governor termed it) was not only considered undesirable from a public policy standpoint, but also unnecessary and unworkable (as written). At least the latter point is apparently shared by the chief sponsors of the amendment which added the sunset provisions to the bill, because they helped write the veto message. It is their stated intention to introduce a new sunset proposal in the 1977 legislative session.

Specifically, the Governor felt the sunset provisions presented the legislature with a monumental undertaking that simply could not be adequately accomplished in view of the staff and budget provided for the task — \$50,000 was appropriated for the first fiscal year to carry out all the provisions of House File 1573. It was pointed out that other states and Common Cause were advocating that sunset be phased in on a much more gradual basis.

Another prime consideration the Governor stressed was that sunset legislation would contribute to the loss of the citizen legislature concept in Iowa by prolonging the already too long legislative sessions and causing resignations of incumbent members due to the increasing burden of legislative service.

Did Iowa's Vetoes Sunset Bill Contain Any Evaluation Criteria?

The sunset provisions in House File 1573 did not specify a set of evaluation criteria; however, other sections of the bill relating to performance auditing stated certain legislative concerns, including:

1. To ascertain that sums appropriated have been, or are being expended for the purposes for which such appropriations were made.
2. To evaluate the effectiveness of programs in accomplishing legislative intent.
3. To determine if efficient use is being made of space, personnel, equipment and facilities.

It stipulated that formal reports must relate to ways in which state agencies may operate more economically and efficiently, how they could provide better services to the state and the public, and cite any areas in which functions are overlapping or for any other reason should be redefined or redistributed.

XI. PROPOSED FEDERAL SUNSET LEGISLATION

Has The U.S. Congress Considered Sunset Legislation?

Yes. Over the years there have been a variety of proposals that called for some kind of periodic review and evaluation of federal programs. Some were targeted on a particular agency or activity of government, while others were much broader in scope. It was not until the 94th Congress, however, that the key sunset ingredient of automatic termination was tied to the review process in legislation that received serious consideration. The bill that received the most attention in the 94th Congress was S. 2925, introduced in February 1976 by Senator Edmund Muskie and over 50 other senators. It was entitled the "Government Economy and Spending Reform Act of 1976." A companion bill (H.R. 11734) was introduced in the House by Representatives James Blanchard and Norman Mineta with over 100 sponsors.

What Is the Status of S. 2925?

The 94th Congress (2nd session) adjourned in October 1976. Prior to adjournment, the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations held public hearings on S. 2925 that lasted 7 days (in March and April 1976). The full committee unanimously reported an amended version of the bill in August 1976 (Report No. 94-1137). S. 2925 and the various other sunset-type bills that had been introduced died when the 94th Congress adjourned. It seems certain that similar proposals will be reintroduced when the 95th Congress convenes in January 1977.

It should be noted that even the chief sponsors of S. 2925 did not harbor any illusions that it would be enacted by the 94th Congress.

If The Sponsors Thought S. 2925 Probably Would Not Pass, Why Did They Introduce It?

The chief sponsors of S. 2925 are reported to feel that eventual enactment of a federal law embodying the sunset approach is virtually inevitable. It is viewed as a logical extension of the congressional budget reforms enacted in 1974, complementing and building on these new procedures that are now fully in effect. They recognize, however, the great difficulties in evolving workable legislation to implement the sunset reform concept. S. 2925 was introduced as a first draft starting point in order to stimulate discussion, elicit criticism or ideas that would improve the bill, and build support for its passage. It is a common practice in both Congress and the state legislatures for members to introduce legislation primarily for such "informational" purposes. Committee action following the public hearings did, in fact, considerably modify the original proposal.

It has been predicted that sunset will be the subject of a major congressional policy debate of great significance during the next few years. The composition of the 95th Congress, the support given sunset in the Democratic Party Platform, and the position of President-elect Carter on this issue lends support to this belief.

What Are the Main Provisions of S. 2925?

The amended version of S. 2925 reported out of the committee provided for a 5-year cycle of periodic review and reauthorization of most federal government programs and activities, grouped by interrelated functions, by appropriate congressional committees. Expenditures would be subject to a "zero-base budget" type of evaluation. Any program or activity not reauthorized would automatically terminate. The bill was intended to affect only those provisions of law authorizing the expenditure of funds, not substantive provisions of law. Interest payments on federal debt and programs funded by individual contributions (such as social security and retirement programs) were specifically exempted from the threat of termination, but were scheduled for review along with other expenditure programs.

The U.S. Senate Committee on Government Operations stated (94th Cong., Sen. Com. Report 1137):

Explanation of Committee Action

"The Committee would like to state at the outset that S. 2925, as amended, does not require the reenactment of the entire U.S. Code. Rather, it only affects those provisions of law authorizing the expenditure of funds. Accordingly, substantive provisions of law—antitrust, civil rights, occupational safety laws, etc.—are not affected by the termination provision. If, however, an authorization is allowed to terminate, authority to enforce or issue new regulations would be suspended until a new authorization is enacted or new budget authority is provided.

"While the Committee does not believe that such substantive provisions of law should be terminated during the five year period, the Committee does believe that the Congress should review, on a regular basis, the ways in which such laws, and the policies they reflect, are implemented by the Federal Government. And it believes that the best way for Congress to undertake that review is by forcing a regular reauthorization of the programs operated by those agencies.

"Hence, the focal point of the termination and review process proposed in S. 2925, as amended, is intended to be those provisions of law which authorize or provide budget authority for the delivery of services or goods by the Federal Government."

Tax expenditures were to be reviewed as are other expenditures. A "tax expenditure" was defined as any provision in the Internal Revenue Code or any other law, regulation or ruling which allows a special exclusion, exemption, or deduction from gross income or which provides a special credit, preferential tax rate, or deferred tax liability. The investment tax credit and deductions for home mortgage payments are two examples.

The scheduled termination order was said to be structured according to group-related functions and to proceed from the "easier" functions to the more difficult, based on the degree of fragmentation of functions among programs, agencies and congressional committees. Generally speaking, unless reauthorized, all provisions of law which provided budget authority for a program for the fiscal year beginning after the first review date would terminate on such date, according to the following schedule:

Programs Included Within Functional Or Subfunctional Category

First Review Date

- National defense
- International affairs
- General sciences, space, and technology
- Recreational resources
- Farm income stabilization

September 30, 1979

Federal judicial activities	September 30, 1980
Conservation and land management	
Mortgage credit and thrift insurance	
Community and regional development	
Higher education	
Research and general education aids	
Federal law enforcement and prosecution	September 30, 1981
Ground transportation	
Air transportation	
Water transportation	
Other transportation	
Health	
Income security (except public housing)	
Federal correctional and rehabilitation activities	September 30, 1982
Natural resources, environment, and energy (except for subfunctional categories specifically provided for)	
Water resources and power	
Agricultural research and services	
Postal service	
Other advancement and regulation of commerce	
Education, training, employment, and social services (except for subfunctional categories specifically provided for)	
Elementary, secondary, and vocational education	
Training and employment	
Other labor services	
Veterans' benefits and services	September 30, 1983
Pollution control and abatement	
Energy	
Other natural resources	
Social services	
Public assistance and other income supplements public housing only)	
Law enforcement assistance	
General government	
Revenue sharing and general purpose fiscal assistance	
Interest	

The 95th Congress would have been required to establish a similar 5-year schedule — extending from 1979 to 1983 — to subject tax expenditures to the same sort of evaluation required of direct expenditure programs.

S. 2925 was a very complex bill. What follows is a summary of some of its other major provisions.

By April 1, 1977, the Comptroller General of the General Accounting Office, in cooperation with the Director of the Congressional Budget Office and the Director of the Office of Management and Budget, must report to the Budget and Appropriations Committees of the Senate and House identifying all authorized expenditures and regulatory activities falling under the scope of the law. Certain other information regarding programs and activities is also required.

By July 1, 1977, the Budget and Appropriations Committees of the Senate and House must review the GAO report and submit it to their respective houses along with an additional report which identifies the functional category into which each program falls and the review date which applies to each program. The Congressional Research Service will identify provisions of the law scheduled to terminate each year for each committee of Congress in a timely manner.

A zero-base review by the appropriate congressional committees — with the assistance of executive branch agencies and congressional support staff — is required in the evaluation process. The committees of jurisdiction have full responsibility for initiating, guiding and preparing the ZBB reports submitted to Congress on all programs scheduled for termination.

An 18-month timetable setting deadlines for conducting a zero-base review of a program scheduled to terminate on September 30 of a given year is established as follows:

On or before...

"March 1 of the preceding year: Legislative committees submit tentative zero base review plans to their houses and transmit copies to the appropriate executive departments or agencies.

"April 1 of the preceding year: Committees adopt final zero base review plans.

"October 1 of the preceding year: General Accounting Office reports results of prior audits, reviews, reports and analyses to legislative committees.

"December 1 of the preceding year: Executive agencies submit reports of their program review in accord with the zero base review plan.

"May 15 of the review year: Legislative committees report results of their zero base review of programs to their respective houses."

A series of review criteria to be used as broad guidelines were suggested for legislative committees to consider. No single, rigid evaluation model was provided; substantial flexibility in evaluation procedure was allowed. The extent of the review, the choice of specific elements and priorities was to a large degree left up to the committees of jurisdiction. The type of information on programs to be included in the committee reports was outlined. Agencies of the executive branch, as well as the GAO, the Congressional Budget Office, the Office of Technology Assessment, and the Congressional Research Service were to provide information and technical assistance to legislative committees conducting reviews.

The bill provided general limitations that restrict reauthorizations to 5 years or less, to correspond with scheduled review dates.

After a program has gone through its first review date, any subsequent appropriation for that program (except in emergencies) would require a specific authorization in law.

If a regulatory program's funding authority is terminated, the agency administering that program would automatically have its regulatory authority suspended. Rules, regulations, licenses and so on already issued by the agency would continue in effect.

S. 2925 also provided for the creation of a temporary 18-member advisory commission, modeled after the previous "Hoover Commissions", to provide information and recommendations to Congress and the executive branch for the reorganization and improved efficiency of the government. The commission, which would have had a \$12 million operating budget, was to submit its final report by September 30, 1979.

Another provision in S. 2925 directed the Congress to evaluate the termination and review process itself prior to the completion of the first 5-year cycle, and determine its future course on the basis of actual experience. In other words, the sunset process would be made subject to sunset.

XII. WISCONSIN AND SUNSET

Does Wisconsin Have A Sunset Law?

Wisconsin does not now have a sunset law. Perhaps the closest approximation of sunset currently found in Wisconsin law is a statute section created in 1969 which provides that nonstatutory committees created by the governor by executive order automatically terminate in January of the year a new gubernatorial term of office begins, unless the new governor provides for their continued existence (Section 14.019, Wisconsin Statutes). This provision is only vaguely related to sunset, since most nonstatutory committees are created for a temporary purpose. But, like sunset, the Wisconsin provision does force a governor to review advisory committees which, prior to the law, had tended to continue indefinitely.

Although no sunset legislation has been introduced in the Wisconsin Legislature, such legislation will probably be considered in the 1977 session. At least one member in each house has publicly indicated that he will introduce a sunset bill in the 1977 Legislature when it convenes in January.

Senator Timothy Cullen, in fact, arranged a series of pre-session public hearings to be held in different parts of the state for informational purposes and to build support for his sunset proposal. This initial draft (which is subject to change) would require the automatic termination of 45 separate regulatory agencies over a 7-year period, unless the legislature acted to extend their life. It also proposes that every administrative rule be similarly reviewed.

Incidentally, 93% of those responding to a questionnaire Common Cause sent to all legislative candidates in the November 1976 election indicated they would support enactment of a sunset law in Wisconsin (Note: nearly one-quarter of the candidates did not reply).

Has The Sunset Approach Been Under Official Study In Wisconsin?

Wisconsin does not have any official study group devoted exclusively to the sunset concept. (The Michigan Legislature, for instance, has established such a special study committee.) As has been suggested, some individual members of the Wisconsin Legislature have initiated their own information-gathering processes. There are, however, examples of investigations with broader charges that have dealt with the subject of applying sunset in this state.

In April 1976 the Legislative Council established a Special Committee on Occupational Licensing and directed it to conduct an interim study of present occupational licensing laws, the powers and duties of licensing boards, the purposes served by licensing boards and related issues. The sunset law concept is one of several alternative approaches to reforming occupational licensing laws that have been closely examined by the committee. Council recommendations in this area will be incorporated in legislation introduced in the 1977 Legislature.

Among the preliminary recommendations of the committee that were released in December 1976 was the following:

“Continuation of the present system of *legislative overview* which involves a review of proposals relating to licensing by appropriate standing committees and, in certain instances, by the Joint Committee for Review of Administrative Rules. Additionally, that the Legislative Audit Bureau utilize the criteria adopted by the Special Committee on Occupational Licensing in their future *performance audits* of the various licensing boards. The Committee retained the option to consider the selective application of the 'Sunset' concept to certain licensing boards; this overview mechanism requires the establishment of a termination date beyond which a board could exist only if extended by affirmative action of the Legislature.”

The Commission on State-Local Relations and Financing Policy — the so-called Wallace Commission — has considered specific applications of the sunset concept on at least two occasions. Created in 1975, the commission reported its conclusions and recommendations December 31, 1976. In August 1976 it rejected a motion to recommend a proposal whereby state mandated programs for local units of government would expire 5 years after their enactment unless reenacted by the legislature. In November 1976 the commission tentatively adopted a proposed recommendation that all property tax exemptions should automatically expire in 1980 unless extended. The latter proposal was included as one of the official commission recommendations to the Governor and the Legislature in its FINAL REPORT (page 260):

“The Commission recommends that the Legislature adopt a 'sunset' provision which would require review and positive legislative action to reenact property tax exemptions. All present exemptions should expire by 1980 unless the Legislature takes positive action to retain them. Thereafter, the manner in which legislative review occurs should ensure that each exemption is reviewed at least once every 10 years.”

The Subcommittee on Small Business of the Senate Commerce Committee was created in November 1975 to study the problems of small business in Wisconsin. Following a series of statewide public hearings the subcommittee reported its recommendations in November 1976. Among its conclusions was official subcommittee support for the enactment of sunset legislation because it would provide for the periodic review of administrative agencies. The subcommittee noted that some agency programs and procedures could be discarded or improved, with a corresponding reduction in the burdens of compliance on small business.

Have Any Agency Evaluation Criteria Been Suggested In Wisconsin?

The idea of incorporating a list of agency evaluation criteria in legislation is not new to Wisconsin. For instance, an interim study by the Legislative Council resulted in the introduction of a bill in the 1971 session to create a Joint Survey Committee on Licensing and Certification to determine whether it is in the public interest for the state to license or certify a profession, trade or occupation (1971 Senate Bill 55). The bill enumerated a set of 10 guidelines to aid the committee in its task. These criteria resemble those found in current sunset proposals. 1971 SB 55 failed in its house of origin.

Substantially the same bill, introduced in the 1975 session by request of the Lieutenant Governor, also failed in its house of origin (1975 Assembly Bill 1390).

The following guidelines are provided in 1975 AB 1390 by which the joint committee was to determine if the public would be endangered if there was no regulation:

1. That the practitioner performs a service for individuals involving a hazard to the public health, safety or welfare, if unregulated.
2. The view of a substantial portion of the people who do not practice the particular profession, trade or occupation.

3. The number of states which have regulatory provisions similar to those proposed.
4. That there is sufficient demand for the service for which there is no substitute not likewise regulated and this service is required by a substantial portion of the population.
5. That the profession, trade or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession, trade or occupation, as evidenced by established and published codes of ethics.
6. That the profession, trade or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that the practitioner has met minimum qualifications.
7. That professional, trade or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession, trade or occupation.
8. That current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. That the characteristics of the profession, trade or occupation make it impractical or impossible to prohibit those practices of the profession, trade or occupation which are detrimental to the public health, safety or welfare.
10. That the practitioner performs a service for the individual which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Currently, the Legislative Council's Special Committee on Occupational Licensing has adopted the following so-called New Jersey criteria as the basic legislative oversight criteria for the assessment of licensing boards: A group should be regulated by the state when:

1. Their unregulated practice can clearly harm or endanger the health, safety and welfare of the public and when the potential for such harm is easily recognizable and not remote or dependent upon tenuous argument;
2. The public needs, and will benefit by, an assurance of initial and continuing professional and occupational ability;
3. The public is not effectively protected by other means; and
4. It can be demonstrated that licensing would be the most appropriate form of regulation.

What Avenues For Periodic Agency Review Currently Exist in Wisconsin?

One of the arguments against adopting sunset legislation is that there are other ways to achieve the same ends. Critics of sunset in this state question the need for such an approach when Wisconsin law already provides several avenues for periodic agency review by the legislature. Paramount among these is the biennial budget process, which utilizes a program budget approach, and includes a strong role for the legislature's Joint Committee on Finance, as staffed by the Legislative Fiscal Bureau. During its budget deliberations, the legislature periodically has an opportunity to evaluate agency achievements, modify or terminate programs, impose limits on expenditures, and so on.

Performance auditing on a continual basis is provided by the Legislative Audit Bureau with the advice of the Joint Legislative Audit Committee. The legislature's Joint Committee for Review of Administrative Rules has primary responsibility for overseeing agency rule making. Specific governmental problem areas can be studied by special committees set up for that purpose by the governor or legislature, or by the Legislative Council.

Clearly, the institutional potential for review already exists; therefore the issue becomes whether or not existing practices are effectively coping with the evaluation challenge. Sunset advocates feel that it is not or there would be no demand for this type of reform. They feel that the sunset approach, as an extension of what Wisconsin is now doing, is the next logical step to take. Having the experience and prerequisite tools for effective, periodic review already in place would facilitate transition to sunset and greatly enhance its chances for success.

Those who oppose sunset legislation in Wisconsin argue that even if the present system is not getting the job done, there is no need for such drastic action as sunset contemplates. Existing legislative institutions can handle the task if more resources are committed, proper staffing provided and better communication and coordination of efforts encouraged.

1. The Budget Process

The Wisconsin biennial budget constitutes the most detailed review that public policy is regularly subjected to. Budgeting can be summarized as the process of translating program operating plans into financial language and the evaluation of these program plans in relation to stated objectives. It is a broad process, involving a great deal of documentation, long hearings and public input. Theoretically, each agency must justify its activities every two years when it requests an appropriation to support its operations.

In reaching its budget decisions, the Legislature seeks answers to the following kinds of questions: Is the budget too big or too small? Are the right programs included in the budget and at the proper level

of funding? Could some programs included in the budget actually be discontinued altogether with no real loss to the citizens of the state? Are the programs included in the budget using the proper mix of personnel and are the program efforts placed in the best departments for the purpose? Do programs overlap? Is state government really efficient? Are the needs of the citizens of this state being met? The budget is a basic tool for arriving at answers to these questions.

Wisconsin employs a budget method called program budgeting. Instead of allocating so much for personnel, so much for supplies, and so much for capital equipment, program budgeting tries to determine how much is being spent for the various programs of state government and how effectively each is administered.

Each biennium the departments of state government submit to the Department of Administration estimates of how much it will cost in the next 2 years to continue their existing programs. That department also compiles information to show how existing programs could be improved. The department's Division of Executive Services compiles this data for the state budget report and gives it to the governor or to the governor-elect. Following a gubernatorial election and also in the fall of any other even-numbered year, the governor or governor-elect reviews these estimates and he may hold hearings on each department's request, at which department heads and interested citizens may be heard. The division assists him in this process. The new legislature convenes the following January. On or before the last Tuesday in January, the governor delivers his budget message to the legislature, together with the state budget report and the executive budget bill, which is introduced by the Joint Committee on Finance at the request of the governor.

The bill is then referred to the Joint Committee on Finance, which holds its own hearings on each department's request. When its hearings are completed, the committee reports the bill out in the form of a substitute amendment, and from then on the bill follows the normal legislative procedure through both houses of the legislature. The budget bill may be further amended in its course through the two houses before passage. When passed, it is submitted to the governor for his approval. He may either sign the measure, veto it (this would be rare in the case of a budget bill), or — since this is an appropriation bill — veto it in part.

2. Problems of the Budget Process

Wisconsin's budget process does provide a certain amount of agency and program evaluation on a basis of continued, periodic review. However, a May 1976 audit report by the Legislative Audit Bureau on the state budget process indicates that past budget-making efforts have not been as effective as they might have been in determining whether funded programs are really worth their cost or that they are accomplishing initial goals. Emphasis has not been on requiring agencies to justify the whole of their appropriation request as in the more rigorous zero-base budgeting aspects of some sunset legislation. The report concludes (page 3) that program budgeting is not fully operational in Wisconsin. It states:

"The state actually utilizes an incremental budgeting system as opposed to total program budgeting. Incremental budgeting focuses on fiscal changes, additions to or deductions from a historical appropriation base. This base represents the appropriations shown in the printed statutes for the second fiscal year of the biennium plus any supplemental budget allocations approved for that fiscal year. This system is not conducive to identifying low priority or obsolete programs. As a result, new programs may not be implemented because of limited resources and the use of funds to cover the programs in the historical base."
(emphasis added)

Included in the audit report is a series of recommendations to improve agency fiscal control and accountability, and to provide the kind of management information necessary to match program costs to social benefits.

3. Current Budget Preparation Activities

The agency budget preparation instructions for the 1977-79 biennium, issued by the Department of Administration and the Governor, are a bit different than previous years. It is not, however, a zero-base budget approach.

An effort is being made to break away from the traditional budget-making technique whereby an agency simply asks for the estimated amount necessary to continue existing programs and requested new programs. Rather, in addition to their normal request, agencies are being instructed to also submit a budget request keyed to an appropriation set at 5% less than the 1976-77 base year level (current appropriation as adjusted for inflation, salary increases, fringe benefit changes, etc.), and another request pegged at 5% more than the base year level.

Requiring budget information to be submitted at these 95% - 105% base year levels is designed to document exactly where an agency's program modifications and reductions would be made if it needed

to cut back, and what the agency would do if a slight increase were allowed. The 10% range forces a more precise identification of priorities while providing insight as to long-range objectives.

4. The Legislative Fiscal Bureau

The Legislative Fiscal Bureau (LFB) was created in the 1969 session (Section 13.95, Wisconsin Statutes), although a fiscal staff existed informally from 1963-69. It serves as staff to the legislature's Joint Committee on Finance as well as providing services to other legislative committees and individual members. In addition to supplying basic fiscal information, the LFB performs fiscal and program analysis, reviews existing and proposed programs, makes recommendations and suggests alternatives. The LFB, which has a staff of 25, operates under the jurisdiction of the Joint Committee on Legislative Organization.

5. The Legislative Audit Bureau

The Legislative Audit Bureau (LAB) was created in the 1965 session (Section 13.94, Wisconsin Statutes), although the postauditing function was carried on for many years previously in the executive branch. One of the LAB's principal functions is to conduct fiscal postaudits of the accounts of all departments at least once every 5 years. The performance and program accomplishments of the department audited are reviewed to determine whether agency activities have carried out the intended policy of the legislature and the governor. The bureau may also make special examinations of any state agency or officer as the governor or legislature directs. The LAB, which has a staff of 48, operates under the jurisdiction of the Joint Committee on Legislative Organization.

6. The Joint Legislative Audit Committee

The 8-member Joint Legislative Audit Committee was created in the 1976 session (Section 13.53, Wisconsin Statutes). It has the responsibility of advising the Legislative Audit Bureau and reviewing LAB reports. When a postaudit report cites various deficiencies, the head of the agency must report to the audit committee any remedial action taken. If the information is not forthcoming, the committee may report the matter to the Joint Committee on Legislative Organization and to the appropriate standing committee. The audit committee may also propose corrective action to remedy undesirable practices, but shall first seek advice from the appropriate standing committee concerning the program portion of the audit. The audit committee may hold public hearings on postaudit reports, and may also request the Joint Committee on Legislative Organization to investigate any matter within the scope of a postaudit completed or being conducted by the LAB. The audit committee, which is staffed as are other legislative committees, is subject to the general supervision of the Joint Committee on Legislative Organization.

7. The Joint Committee For Review Of Administrative Rules

The 9-member Joint Committee for Review of Administrative Rules (JCRAR) was created as a special legislative committee in 1955 (Section 13.56, Wisconsin Statutes). It has 2 primary responsibilities: 1) to promote adequate and proper rules, statements of general policy and interpretations of statutes by state agencies; and 2) the encouragement of an understanding of these rules by the public.

The committee may direct an agency to promulgate emergency rules when it determines that a statement of policy or interpretation of a statute is a rule. It may hold public hearings to investigate complaints with respect to rules and may suspend a rule, but must introduce a bill to repeal the rule. If the bill is defeated, the rule stands and may not be suspended again. If enacted, the rule is thereby repealed and cannot be adopted again unless specifically authorized by law. In addition, the committee may require an agency to hold a public hearing on recommendations made as a result of an investigation of a complaint and to report back to the committee within a specified time.

It should be noted that there are indications of a movement away from total reliance on the JCRAR approach to the administrative rule legislative oversight function. In recent sessions a number of laws have been enacted which contain a provision requiring that any administrative rule change promulgated to implement the law shall not become effective until approved by a majority vote of the appropriate standing committee of each house with jurisdiction in that area. A computerized statute search turned up 15 provisions specifying prior legislative approval of proposed rules (and 6 more requiring prior approval of the governor).

8. The Role Of Special Study Committees And The Legislative Council

In addition to the standing committees, special committees may be appointed to study specific problems of government or conduct designated investigations. Beginning in 1971, the work schedule created by joint resolution for each biennial session period (as required by statute Section 13.02 (3)) has provided for the continuation of any studies, investigations and reviews being conducted by special or standing committees during the interim between scheduled legislative floor periods.

Since 1947, when the Legislative Council was created, almost all studies have been referred to the council, which coordinates the study and investigation program (Section 13.81 *et seq.*, Wisconsin Statutes). Council committees submit their reports, together with legislative proposals to carry out their recommendations, to the Legislative Council for approval and subsequent introduction in the legislature. Various standing committees of each house acting jointly, along with the addition of public members appointed by the council, comprise many of the council interim committees. The Legislative Council staff of 27 serves not only the council and all of the interim committees, but in recent sessions has also provided assistance to all of the standing committees, except the Joint Committee on Finance.

9. The Legislative Reference Bureau

The Legislative Reference Bureau (LRB) was originally created in 1901 (Section 13.92, Wisconsin Statutes). Through its legislative bill drafting, library resources and research staff, the bureau's facilities are available to legislative committees and staff reviewing agency functions. The LRB, which has a staff of 37, operates under the jurisdiction of the Joint Committee on Legislative Organization.

Would Sunset Legislation Fit Wisconsin's Existing Agency Structure?

The existing organization of state agencies in Wisconsin would lend itself to a sunset approach. Wisconsin law details the structure of the executive branch (Chapter 15, Wisconsin Statutes), including definitions for such terms as: "department", "division", "bureau", "section", "commission", "board", "examining board", "council", and "committee". Each agency has its program responsibilities specified by law.

As Wisconsin developed its program budget, the practice of grouping the activities of state agencies into broad subject categories for budgetary purposes evolved. These functional categories have been designated as "commerce", "education", "environmental resources", "human relations and resources", and "general executive functions".

What follows is a listing of the executive branch agencies assigned to each functional grouping:

Executive Branch	Justice, department of
Executive office	Military affairs, department of
Lieutenant governor, office of the	Veterans affairs, department of
Executive Branch: Commerce	Executive Branch: General Executive Functions
Agriculture, department of	Administration, department of
Banking, office of the commissioner of	Elections board
Business development, department of	Employee trust funds, department of
Credit unions, office of the commissioner of	Ethics board
Insurance, office of the commissioner of	Investment board
Public service commission	Local affairs and development, department of
Regulation and licensing, department of	Revenue, department of
Savings and loan, office of the commissioner of	Secretary of state, office of the
Securities, office of the commissioner of	State treasurer, office of the
Executive Branch: Education	State authorities
Educational communications board	Health facilities authority
Higher educational aids board	Housing finance authority
Historical society of Wisconsin, state	Solid waste recycling authority.
Medical college of Wisconsin, inc.	Temporary state agencies
Medical education review committee	American revolution bicentennial commission
Public instruction, department of	Bicentennial medal committee
University of Wisconsin system	Malpractice committee.
Vocational, technical and adult education, board of	Interstate agencies
Executive Branch: Environmental Resources	Education compact commission
Natural resources, department of	Great Lakes compact commission
Transportation, department of	Interstate Indian commission
Executive Branch: Human Relations and Resources	Interstate port authority commission
Aging, board on	Minnesota-Wisconsin boundary area commission
Employment relations commission	Mississippi river parkway planning commission
Health and social services, department of	Upper Great Lakes regional commission.
Industry, labor and human relations, department of	

A sunset law similar to the federal proposal considered by the 94th Congress (S. 2925), which utilizes a strictly functional basis for organizing the agency review schedule, would apparently fit Wisconsin's circumstances. The sunset laws that have already been enacted in other states would need modifications to tailor them to the Wisconsin situation.

Colorado's sunset law, for instance, applies to only one state department; the Department of Regulatory Agencies. However, this single Colorado department encompasses a wide variety of responsibilities. It appears to be the rough equivalent of the several Wisconsin agencies that comprise the "commerce" function.

Applying Florida's sunset law to Wisconsin would not only include the Department of Regulation and Licensing and most of the other agencies under the "commerce" function, but would also involve activities scattered among such other state departments as: Health and Social Services; Industry, Labor and Human Relations; Justice; Natural Resources; Public Instruction; and Transportation. The functional groups represented by these departments are: "Human Relations and Resources", "Environmental Resources", and "Education".

Louisiana's sunset law applies to every "statutory entity" in the executive branch to which state funds are appropriated. Its application to Wisconsin would therefore involve virtually all departments and functional groupings comprising the executive branch.

Similarly, Alabama's broad sunset law applies to 98 state government units and subunits. Imposed on Wisconsin, it would certainly run the gamut of executive branch agencies and functional groups, plus a few judicial branch agencies.

What Has Been Wisconsin's Historical Experience With State Government Growth?

Historically, the obvious growth pattern prior to the 1967 executive branch reorganization has been toward a constantly increasing number of state agencies. This growth trend continued in spite of reoccurring consolidations. At various times activities such as those relating to agriculture, conservation, veterans, state institutions of higher education, and administrative "housekeeping" have been merged. Invariably, the combining of smaller agencies grouped along functional lines into one large department was soon followed by continued proliferation.

Wisconsin became a state in 1848. In 1850 the executive branch consisted of little more than the elective officers created by the constitution and their staffs. Between 1850 and 1967 the number of state agencies increased from 8 to 85 (1875 - 28, 1900 - 39, 1925 - 61, 1950 - 72, 1967 - 85).

The comprehensive reorganization enacted by the 1967 Legislature (Chapter 75, Laws of 1967) reduced the number of executive branch agencies to 32; today there are 38 (15 departments, 16 so-called independent agencies, 4 offices of constitutional officers, and 3 authorities).

Simply looking at the number of agencies alone, however, is not a true indication of state government growth. There is no comparison between Wisconsin's 38 agencies today and the 39 existing in 1900 because of increases in the size of state government in terms of expenditures and number of employes.

In contrast to the generally haphazard fashion in which state government grew in the past, the 1967 reorganization act recognized that reorganization is an ongoing process. It attempted to establish a uniform system of nomenclature for state agencies and their subunits, as well as to provide a functional framework to facilitate the integration of inevitable changes in state programs and services into the existing structure. Ultimately, this may be the act's most significant contribution. Perhaps it will alter Wisconsin's historical pattern of state government growth.

The statute chapter pertaining to the structure of the executive branch contains a declaration of policy as to the goals of continuing reorganization (Section 15.001 (3), Wisconsin Statutes). It provides that the organization of state government should: 1) assure its responsiveness to popular control, 2) facilitate communications between citizens and government, and 3) assure efficient and effective administration of policies established by the legislature.

XIII. THE ISSUES RAISED BY SUNSET

What Problems Produced The Sunset Response?

While many of the arguments for and against sunset have already been suggested elsewhere in this study, what follows is a discussion of some of the issues raised by the sunset law approach.

To differing degrees, both the advocates and opponents of sunset legislation are concerned about certain fundamental problems.

The first is the lack of a rigorously applied program of systematic government agency review with established performance standards. Some agencies and programs have never been closely scrutinized. They seem to build up a momentum which makes them harder to eliminate as time passes, with sheer inertia carrying them forward through budget cycles and sporadic reorganization attempts. Virtually

immortal, they seem to be perpetuated beyond their point of most usefulness simply because "they are there", growing bigger and more costly, promulgating rules and designing forms.

A study of the life and death of federal executive branch agencies over a 50-year time span by Herbert Kaufman of The Brookings Institution ("Are Government Organizations Immortal?", 1976) provides some perspective on government growth. An examination of 175 agencies that existed in 1923 revealed that, while 27 of these agencies disappeared, 148 were still active in 1973 (about 85%), and another 246 new agencies had been created during the period. Agency name changes commonly occurred over the years, but the major components of agency programs frequently continued under their 1973 counterparts. Although there may have been more change than some expected, the study serves to highlight the staying power of most agencies. It tends to reinforce the prevailing opinion that government agencies die very reluctantly.

A second problem revolves around the related factors of limited resources and the need to establish priorities. In the competition for scarce resources, beneficial new government programs may be blocked by a lack of funds. Society's needs are not static. Old problems disappear or evolve; new problems arise. Government cannot do all the things it is called upon to do. It becomes a question of matching resources with changing public needs on a priority basis. Historically, it appears as though governments have not been doing that very well.

Another fundamental problem to a large extent grows out of the previous two. Surveys and other indicators of the public mood reveal an evident loss of confidence in the government establishment. New programs and agencies continue to proliferate, seemingly without rational planning or control. Contributing to the feeling of too much government is the prevalent idea that many existing activities are wasteful, unjustified, overlapping or have outlived their usefulness. It is said the public has been alienated by government inefficiency and a lack of accountability from an unresponsive bureaucracy. This disenchantment makes it increasingly difficult to secure support for needed new programs.

What Arguments Are Opponents And Proponents Making?

Sunset advocates feel that traditional approaches to these problems have been inadequate and that sunset offers a much better response. They claim that sunset has the potential to assure systematic review, determine priorities and, by demonstrating an official concern for government efficiency and public service, to help restore public confidence.

The critics of sunset legislation share many of the same concerns cited by its proponents regarding the need to review government programs to combat inefficiency and public distrust. A certain degree of agreement with these allegations, however, carries them only so far.

Their position is that the situation is not as bad as sunset advocates would have us believe, there are other ways to achieve the same ends, and as a general rule, one should be very skeptical of any panacea with a popular catchword name offering a simplistic solution to a very complex set of problems.

More specifically, critics raise several basic objections to the sunset approach. They claim it is simply not needed, not feasible, too inflexible and counterproductive. A discussion of these points from the positions of opposition to sunset and its advocacy follows.

New legislation is not necessary to accomplish the goals of sunset. Legislative bodies already have the power — indeed, the responsibility — to review and possibly reorganize or terminate any questionable aspect of state agency operations. Periodic agency review is now an ongoing process in many states as an integral part of their budget-making procedures, postauditing activities, administrative rule review, the oversight functions of standing committees and the work of special study committees. What is more, under the traditional approaches, detailed agency review can be done selectively, at the legislature's option, targeting on specific problem areas without the waste of looking into agencies that are performing reasonably well. Sunset would be unfair to agencies that are effectively and efficiently administered.

Advocates of sunset recognize that legislatures now have the authority to do what sunset seeks to accomplish, but are they doing it? Apparently not, or there would not be such a favorable response to sunset proposals. The public and political reaction indicates there is a great need for a program to counter the general impression that government is getting out of control. Under the traditional approach, random efforts have produced random results. Sunset provides an institutionalized framework to assure that the job gets done through a formal, systematic review procedure established in law. The automatic termination date feature provides the legislature with an unavoidable responsibility to act to continue, alter or eliminate agencies. Sunset removes the onus of having to initiate legislation directed at a specific agency, usually undertaken only in a crisis atmosphere as a response to complaints or bad publicity. Bills are frequently introduced by individual members in a lone crusade to effect change — almost always unsuccessfully. Such legislation is subject to being stopped any number of ways by some parliamentary maneuver in the legislative process. Sunset shifts the burden of proof from the legislature to the agency under review, which must justify its continued existence. Furthermore, the

more comprehensive sunset approach can reveal that agencies which appear to be operating satisfactorily may be affected by developing problems that a timely review could head off.

Sunset is not feasible. The size and complexity of the bureaucracy argue against the success of sunset. No matter how meritorious its objectives, the sunset approach is a staggering task that is doomed to fail because of evaluation problems and the workload it imposes.

The art of evaluation is in its infancy; yet effective evaluation is the key to sunset. Regulation and licensing activities are difficult enough to review, but what happens when it is mandated that an attempt be made to evaluate essential agencies of long-standing, with long-range programs, intricate operations, detailed statutory authorizations, and a complex mix of funding?

By what measure is effectiveness to be gauged, intangibles quantified, or the impact of changes judged? How are conflicting, overlapping or interrelated programs to be sorted out? What standards will apply with uniformity and equity to all? Who will assure objectivity? Regular cycles of comprehensive review — whether or not the process embraces zero-base budgeting — will greatly increase the workload for all concerned.

Because it is such a drastic approach, sunset could become a paper tiger, degenerating into a costly mechanical exercise which accomplishes very little genuine reform while generating large volumes of paperwork. It is not in itself cost-effective and, if adopted, ought to be subjected to sunset termination.

According to sunset proponents, to say that government is too complex to allow for the rational review process sunset embodies is to admit defeat; to confess the bureaucracy is already out of control, and to concede that the situation can only be expected to deteriorate. This overly pessimistic view is unacceptable to them.

It is true that sunset will generate paperwork and result in some wasted efforts. There is no doubt that evaluation techniques are not yet fully developed — presently more an art than a science. While not minimizing the difficulties, they are far outweighed by the potential benefits of periodic review and evaluation. The goals of sunset are sound; therefore, the practical problems of implementation can be surmounted one way or another. As long as it retains a positive commitment to review, sunset legislation can be drafted with great flexibility regarding such matters as evaluation, methodology, coverage and length of review cycle. The workload can be broken down into manageable proportions. Acceptable evaluation criteria and methods can be devised. A number of sunset proposals already exist to serve as models.

Recognizing the problems inherent in any other approach, sunset advocates recommend that sunset should be phased in gradually in some limited form. As with any innovative new program, a go-slow beginning will build credibility. Otherwise, sunset could very well fall of its own weight. Sunset, if implemented with caution and restraint, will be a learning experience. Everyone involved will get better at it as time goes by, and needed improvements will be incorporated into the system. Each succeeding cycle of review will become both easier and more productive.

The sunset approach is too mechanical and inflexible. It is unwise to impose an arbitrary, rigid schedule of review and termination. There is virtually no dispute as to the worth of some activities. Some agencies and programs need frequent review, others far less often. Some agencies would require a great deal of time and effort to do a proper evaluation, others would be relatively simple. For some programs it takes a long time for results to be known. How would programs of varying maturity and length fit into a rigid schedule? Would a newly created program or agency that obviously failed in its first year be allowed to limp along until the next scheduled sunset review? Conversely, it is possible that a program of great merit might be eliminated before it had a chance to prove its value. The legislature should be allowed to exercise its discretion as to what agencies or programs it will evaluate.

Sunset advocates admit the concept cannot be implemented without risks and great difficulties, but maintain that it is needed. A start has to be made recognizing that adjustments in the program will probably be necessary as experience with its implementation is gained.

One advantage of establishing a set schedule of across-the-board review is that no agency or program can claim it is being singled out for special attention. While the element of timing must be taken into consideration, it ought not halt the process. For instance, even with activities that do not lend themselves to conclusive sunset review because of the time factor, it is still important to make preliminary evaluations of program development if only to keep it "on track" and measure progress toward ultimate goals.

Sunset need not place any constraints on the legislature's ability to review or eliminate any agency or program at any time, independent of the timetable established by the sunset schedule.

The threat of termination in sunset is counterproductive and detrimental to the public good. As agencies approach their scheduled termination date, surviving the review process will become their greatest concern. This new emphasis will be at the expense of their public service functions. Agencies will attempt to convince others of their usefulness through increased lobbying efforts and image-building public relations campaigns. A regulatory agency may be forced into an even closer relationship

with the regulated entity. Sunset may also become a significant generator of legislative campaign contributions. Certainly, having a known termination and review date scheduled far in advance makes it easier to apply well financed and organized pressure. Agencies may also be tempted to save their "best efforts" and time the start of new programs so that it coincides with its period of review.

On the contrary, say its proponents, the threat of agency extinction under sunset will prove most beneficial. Having a termination date fixed in law with such finality will have a salubrious effect in such areas as efficiency and responsiveness. While not to deny the possibility of an agency shift in emphasis or delaying program changes for maximum effect, the overall impact will be to provide a solid incentive for an agency to go through a process of self-examination to find ways to improve its operations. Even vital agencies that clearly are not likely to be eliminated will be sobered by, and respond to, the prospect of a close scrutiny under sunset review.

One would hope the sunset evaluation process is sophisticated enough to distinguish between efforts motivated by self-preservation which are designed to make an agency "look good", and actual performance. A set of properly drawn criteria will set standards that measure performance, not appearances.

Sunset will produce a number of undesirable side effects. For example, the threat of imminent termination will make it harder to hire and keep qualified personnel. Similarly, agencies with authority to incur indebtedness will find their ability to market debt instruments (such as bonds) jeopardized. Sunset review of some agencies may lead to legislative intrusion into sensitive areas, such as matters relating to academic freedom (via the Board of Regents). Political harassment and loss of independence are other possibilities.

Once again, those who support sunset feel that careful drafting of the sunset law can anticipate these and a variety of other objections. Specific protections and limitations can be provided; examples can be found in existing sunset legislation. Once in place, the law can be further amended to take into account problems that were not foreseen.

XIV. SOURCES

- Of the various sources consulted in preparing this bulletin, the following were most helpful.
- Adams, Bruce, "Guidelines for Sunset", *State Government*, Summer 1976 (029/St2a).
- Alabama Act No. 512, 1976 Regular Session ("Sunset" law) (354.11/AL1).
- Colorado Chapter 115, 1976 Regular Session ("Sunset" law) (354.11/C7).
- Colorado Common Cause, *Sunset Law Proposals*, 1975 (354.11/C7b).
- Colorado Department of Regulatory Agencies, *Handbook For The Measurement Of Regulatory Effectiveness Of Occupational Licensing Agencies*, June 1976 (354.11/C7c, pt.1).
- , *Handbook For The Measurement Of Regulatory Effectiveness Of The Public Utilities Commission*, August 1976 (354.11/C7c, pt.2).
- and Colorado University Graduate School of Public Affairs, *Sunrise On Sunset* (conference papers: conference on implementation of Colorado's sunset law), October 1976 (354.11/C7e).
- Colorado Legislative Council, *Colorado's Sunset: A Proposal For Accountable State Government Via The Threat Of Agency Execution*, 1976 (354.11/C7a).
- Congressional Quarterly, Inc., *Congressional Quarterly Weekly Report*, (various issues) 1975-76 (328.12/C761 Ref.).
- Federation of Rocky Mountain States, Inc., *Briefing Paper For The Governors: The Nation's First "Sunset Law" — Automatic Termination Of Regulatory Agencies*, June 1976 (354.11/F31).
- Florida Chapter 76-168, 1976 Regular Session ("Sunset" law) (354.11/F6a).
- Iowa House File 1573, 1976 General Assembly, plus veto message of Iowa Governor Robert Ray, June 1976 ("Sunset" bill).
- Kaufman, Herbert, *Are Government Organizations Immortal?*, The Brookings Institution, 1976 (353.2/K16).
- Kopel, Gerald H., "Sunset in the West", *State Government*, Summer 1976 (029/St2a).
- Louisiana Act No. 277, 1976 Regular Session ("Sunset" law) (354.11/L9).
- Michigan House Fiscal Agency, Legislative Program Effectiveness Review Unit, *A "Sunset Law" In Michigan*, July 1976 (354.11/M5).
- Shimberg, Benjamin, "The Sunset Approach: The Key to Regulatory Reform?", *State Government*, Summer 1976 (029/St2a).
- Texas Secretary of State, *Proposed Constitution For The State Of Texas*, 1975 (342.34/T3g).
- U.S. Congress (94th), Hearings before the Senate Subcommittee on Intergovernmental Relations of the Committee on Government Operations on the Government Economy and Spending Reform Act of 1976 (S. 2925), March-April 1976 (336.02/X108, pt.1).
- , Report of the Senate Committee on Government Operations to Accompany S. 2925, Government Economy and Spending Reform Act of 1976, Report No. 94-1137, August 1976 (336.02/X108, pt.2).
- , Hearings before the Task Force on Budget Process of the Committee on the Budget on Zero Base Budget Legislation, House of Representatives, June-July 1976 (336.02/X116).
- Wisconsin Commission on State-Local Relations and Financing Policy, *Minutes*, 1975-76 (352/W7i).
- , *Final Report*, December 31, 1976 (352/W7e3).
- Wisconsin Department of Industry, Labor and Human Relations, *Wisconsin Directory Of Licensed Occupations*, June 1975 (389.6/W7b).
- Wisconsin Legislative Audit Bureau, *Audit Report: State Budget Process 1973-75 And 1975-77*, May 1976 (336.122/W7a3g Ref.).
- Wisconsin Legislative Council, *The Colorado Sunset Law*, Staff Brief 76-12, September 1976 (354.11/W7b).
- , *Regulation And Licensing: An Overview*, Research Bulletin 76-7, July 1976 (389.6/W7o).
- , Special Committee on Occupational Licensing, *Committee Report For Public Hearing*, December 1976 (389.6/W7p, pt.4).
- , *Minutes*, 1976.
- Wisconsin Legislative Reference Bureau, *Clippings: Administration, State, Reorganization* (354.11/Z and W7z); *Administration, U.S.* (353.2/Z); *Trades and Occupations, Regulation* (389.6/Z).
- , *The Organization Of Wisconsin State Government* (Compiled for the 1977 Wisconsin Blue Book), December 1976 (354.1/W7u).
- , *Patterns Of Development In The Executive Branch Of The Wisconsin State Government*, 1976 (354.1/W7b6).
- Wisconsin Senate Commerce Committee Subcommittee on Small Business, *Report*, November 10, 1976 (389/W7p).
- Wisconsin Taxpayers Alliance, "Sunset Laws: Boon or Boondoggle", *Your Wisconsin Government*, November 16, 1976 (354/W75a).

RECENT LEGISLATIVE REFERENCE BUREAU PUBLICATIONS

Many of the titles are still available for distribution.

Research Bulletins

- RB-72-1 Metropolitan Government: Is Bigger Better? May 1972
- RB-72-3 Privacy: Its Substance, Applications and Legal Status. July 1972
- RB-72-4 Disposition of Constitutional Amendment Proposals - 1961-1971 Wisconsin Legislatures. April 1972
- RB-73-1 State Lotteries. May 1973
- RB-73-2 State Aid to Nonpublic Schools: The Legal Problems. May 1973
- RB-73-3 The Death Penalty: Legal Status Since Furman. September 1973
- RB-74-1 Campaign Finance Reform. January 1974
- RB-75-1 The Wisconsin Presidential Primary: Open or Closed? August 1975
- RB-76-1 The Powers of the Wisconsin Supreme Court. January 1976
- RB-76-2 Summary of Bills Enacted in the 1975 Wisconsin Legislature Through June 17, 1976 (Chapters 1 to 430, Laws of 1975). August 1976
- RB-77-1 "Sunset" Legislation. January 1977

Informational Bulletins

- IB-73-2 The Status of News Shield Legislation. July 1973
- IB-73-3 Open Meetings in Wisconsin Government. September 1973
- IB-73-4 A Cabinet Is Proposed. October 1973
- IB-73-5 Reforming the Property Tax: An Overview of the Assessment Process. October 1973
- IB-73-6 Statewide Land Use Programs. October 1973
- IB-74-1 Obscenity Redefined: The Search for a Workable Standard. January 1974
- IB-74-2 No-Fault Auto Insurance: A Status Report. February 1974
- IB-74-3 Transportation Departments in the Several States. February 1974
- IB-74-4 In Pursuit of Absent Fathers. February 1974
- IB-74-5 Welfare Reform — A Look at Three States. March 1974
- IB-74-6 The Mortgage Interest Controversy. March 1974
- IB-74-7 Recent Developments in Transportation Financing. July 1974
- IB-74-8 Traffic Safety: Six States in Perspective. July 1974
- IB-74-9 Science, Technology and the Legislative Process. October 1974
- IB-74-10 Auto Repair Regulation: A Status Report. October 1974
- IB-75-1 Rape Law Revision: A Brief Summary of State Action. April 1975
- IB-75-2 State Regulation of Nonreturnable Beverage Containers. April 1975
- IB-75-3 Personalized License Plates. July 1975
- IB-75-5 Motor Vehicle Taxes in Wisconsin and Other States. September 1975
- IB-75-6 The Use of the Partial Veto in Wisconsin. September 1975
- IB-75-7 Recent Changes in Voter Registration. November 1975
- IB-75-8 The Ground Rules of a Special Session. November 1975
- IB-75-9 Municipal Borrowing in Wisconsin. December 1975
- IB-76-1 Two Aspects of Drug Pricing: Generic Substitution and Price Advertising. February 1976
- IB-76-2 Verbatim Recording of Legislative Proceedings. March 1976
- IB-76-3 Compensation for Victims of Crime. May 1976
- IB-76-4 Initiative and Referendum: Its Status in Wisconsin and Experiences In Selected States. August 1976
- IB-76-5 The Legislative Response to Divorce: A Survey of No-Fault Divorce May 1976
- IB-76-6 No-Fault Auto Insurance: A Controversial Experience. June 1976
- IB-76-7 Buckley v. Valeo and Wisconsin's Campaign Finance Law. June 1976
- IB-76-8 The Legislative Reference Bureau Can Help You. November 1976
- IB-76-9 Constitutional Amendments Given "First Consideration" Approval By The 1975 Wisconsin Legislature. December 1976
- IB-76-10 The Use Of The Executive Order By Wisconsin Governors. December 1976