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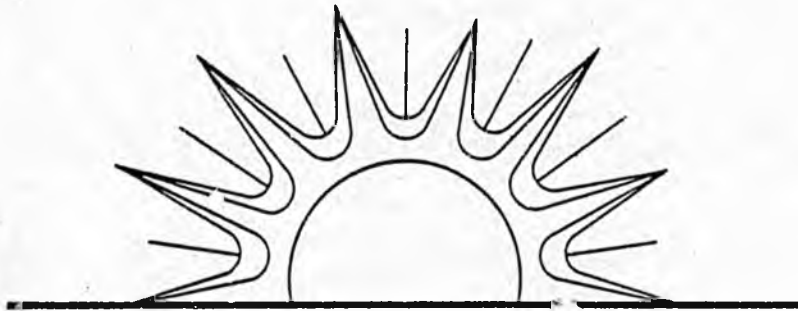

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**THE STATUS OF SUNSET
IN THE STATES:
A COMMON CAUSE REPORT**



MARCH 1982



COMMON CAUSE

THE STATUS OF SUNSET IN THE STATES: A COMMON CAUSE REPORT

This report was prepared by Marcy Stephens of the Issue Development Staff with the assistance of Bruce Adams, Ronald Greenwald, Janet Kaufmann, Cara LaRoche, Phyllis Sickels, and Joseph Zwerdling. Assistance was also provided by William Stevens, Office of Government Services, Price Waterhouse & Co., on a pro bono basis.

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For further information, contact:

Common Cause
Issue Development Office
2030 M Street, N.W.
Washington, D.C. 20036
202/833-1200

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THE STATUS OF SUNSET IN THE STATES

SUMMARY

Sunset legislation -- which requires the periodic review of state agencies under the threat of automatic termination unless affirmatively recreated by law -- has triggered state governments' interest in legislative oversight and enhanced their ability to conduct it.

Since the enactment of the first Sunset law in Colorado in 1976, 35 states have passed Sunset laws. One-third of these states have taken action to expand their Sunset laws to apply to additional agencies and programs. As recently as December, 1981 Pennsylvania passed a Sunset law for the first time. Only one state, North Carolina, has formally abandoned the automatic termination provision which distinguishes Sunset from other forms of legislative oversight.

Most state Sunset laws embrace the principles suggested by Common Cause in 1976; however, current Sunset laws differ in the type and number of agencies they cover and in their approach to organizing and implementing Sunset reviews. (The Common Cause Sunset Principles are listed on page 2.)

The following conclusions are based on the results of a questionnaire completed by all 35 states with Sunset laws, on in-depth case studies of the Florida and Texas Sunset laws, and on research of individual state Sunset statutes and reports prepared by the Sunset evaluation staff. Our review has determined that Sunset is largely achieving its goal of helping to make government work better. However, problems with Sunset laws do exist and will require skillful handling by those involved with the implementation of Sunset laws in the states.

THE BENEFITS OF SUNSET

1. Improvements in Government Performance - The results of the Common Cause survey indicate that two-thirds of the respondents from states with Sunset laws believe that increased agency efficiency and public accountability have been principle benefits of Sunset. Improvements have taken the form of major across-the-board reforms and specific recommendations applied to individual agencies.

2. Financial Savings - The purpose of Sunset is not to slash state budgets, but rather to improve agency perform-

ance and to free citizens from excessive regulation. Saving money and conducting Sunset are not mutually exclusive, however. In at least one-sixth of the states conducting Sunset reviews, legislators have been able to document savings.

3. Increased Legislative Experience In Conducting Oversight - Over half of the states with Sunset laws stated in the Common Cause questionnaire that increased legislative experience and interest in legislative oversight have been important benefits of Sunset. A positive outcome of this experience is the emergence of state government officials who are competent and often innovative leaders in the emerging area of oversight.

PROBLEMS WITH SUNSET

1. False Expectations About What Sunset Can Do - States continue to look for an instant reduction in the size of state government. The number of agency terminations is the wrong yardstick of success for Sunset. Further, state legislatures expect to see instant dollar savings from Sunset. Since most states began Sunset reviews with the examination of regulatory agencies, massive savings were never possible. However, a number of states are beginning to achieve significant savings, particularly when they have begun reviews of large regulatory agencies or service delivery agencies or programs.

2. The Time-Consuming and Costly Nature of Oversight - The leading complaint about Sunset is that Sunset reviews are too time consuming. However, states are tackling the problems of managing the Sunset workload and costs creatively. They are reducing the number of agencies reviewed in each cycle, lengthening the review cycle itself, creating priority review, and streamlining auditing and reporting requirements.

3. Low Public Participation and the Disproportionate Influence of Regulated Professions - Seventy percent of the states surveyed reported that the average turnout for a public hearing has been 25 persons or fewer. That licensees attend public hearings is commendable, but industry involvement often extends beyond public testimony to include intense lobbying of state legislators. One-third of the survey respondents indicated that they only hear from licensed professionals about Sunset issues.

4. Inadequate Measurement Information on Agency Performance and Agency Value. Many states are struggling with

appropriate evaluation criteria for examining an agency's performance in achieving its goals. Almost half of the states indicated that the lack of measurement information on agency performance and agency value has been a major problem. This issue is especially critical when examining non-regulatory agencies which are unlikely candidates for termination and which have a large impact on the state budget.

RECOMMENDATIONS

The following recommendations are discussed in detail on page 35. The recommendations were developed with the knowledge that states are at various stages of Sunset implementation. States which are looking ahead to an expanded role for Sunset frequently have an interest in the dual goals of establishing a manageable workload and in broadening the scope of their review schedules to include non-regulatory agencies (e.g., service delivery agencies and programs).

1. States involved in expanding the scope of their Sunset reviews beyond regulatory agencies should develop a timely, systematic procedure for establishing a manageable schedule of agency terminations.
2. States involved in broadening the scope of their Sunset laws should consider lengthening the termination schedules they have adopted to 8 or 10 years.
3. States may want to modify the evaluation criteria in their Sunset laws if they are adding non-regulatory agencies or programs to their review schedules.
4. To create a more manageable workload for Sunset reviews, states might consider establishing priorities for conducting their program evaluation process.
5. States should attempt to achieve a close integration of Sunset with the budget process.
6. Sunset findings should be presented in an organized, digestible format.
7. Public participation in the Sunset process should be encouraged.
8. Executive branch participation in the Sunset process should be increased.

I. INTRODUCTION

The consequences of the New Federalism will be spreading rapidly. If the states feel they will have to assume the burdens that are now Federal, we are bound to see renewed interest in the techniques of monitoring program delivery at all levels of government.

-- Hon. Gillis W. Long (D-La.)
Congressional Record, Feb. 8, 1982

Whether or not dramatic reorganization of government responsibilities occurs, Sunset legislation -- the periodic review of state agencies under the threat of automatic termination unless affirmatively recreated by law -- is already firmly established as an important oversight technique for state program activities. Common Cause has found from its survey of the 35 states with Sunset laws, that many state legislatures have not only used Sunset effectively but have also sought an expanded role for this oversight procedure. Sunset Legislation has clearly triggered state governments' interest in and enhanced their ability to conduct legislative oversight.

Helping to make government work better is a major goal of Common Cause. We have advocated Sunset legislation at both the state and federal level since 1976. Common Cause undertook this study to take a serious look at the Sunset concept now that implementation of Sunset laws is in progress in many of our state governments.

The Concept of Sunset

Thirty-five states have enacted Sunset laws and a number of other states have selective projects or review procedures that embrace many of the important concepts of Sunset review. The Colorado legislature passed the first state Sunset law in 1976. In the same year, in testimony before a U.S. Senate subcommittee, Common Cause Founding Chairman John Gardner suggested ten principles essential to any workable Sunset law and meaningful Sunset oversight process:

COMMON CAUSE SUNSET PRINCIPLES

First: The programs or agencies covered under the law should automatically terminate on a date certain, unless affirmatively recreated by law.

Second: Termination should be periodic (e.g., every six or eight years) in order to institutionalize the process of reevaluation.

Third: Like all significant innovations, introduction of the Sunset mechanism will be a learning process, and should be phased in gradually, beginning with those programs to which it seems most applicable.

Fourth: Programs and agencies in the same policy area should be reviewed simultaneously in order to encourage consolidation and responsible pruning.

Fifth: Consideration by the relevant committees must be preceded by competent and thorough preliminary studies.

Sixth: Existing bodies (e.g., the executive agencies, evaluation units) should undertake the preliminary evaluation work, but their evaluation capacities must be strengthened.

*Seventh: Substantial committee reorganization, including adoption of a system of rotation of committee members, is a prerequisite to effective Sunset oversight.**

Eighth: In order to facilitate review, the Sunset proposal should establish general criteria to guide the review and evaluation process.

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

Tenth: Public participation in the form of public access to information and public hearings is an essential part of the Sunset process.

* This principle is of primary concern at the federal level.

All state Sunset laws have evaluation criteria and all but a few include public participation provisions in the Sunset process. Most Sunset laws incorporate many of the other Common Cause original principles; however, there are two key differences in the design of current Sunset statutes.

First, the scope of the existing Sunset laws varies. Ten state laws cover regulatory agencies only, fifteen state laws cover regulatory plus other selected agencies, and ten state laws provide for comprehensive review of all agencies created by the legislature. The number of agencies reviewed in a given year also varies, of course.

Second, state Sunset laws differ in their approach to organizing and implementing Sunset reviews. Preliminary evaluations and legislative review are handled by standing committees, joint legislative committees, or, in a few cases, by independent Sunset commissions. Similarly, staff and budget allocations vary widely. The timetable for conducting this evaluation work is different from state to state, reflecting the various legislative session calendars.

Objectives of Sunset

Sunset legislation is designed to improve agency efficiency and accountability. The automatic termination provision is an action-forcing mechanism to require state legislators to conduct serious program evaluation. Sunset forces program evaluation onto the legislative agenda, and as a management tool, Sunset review complements current

state efforts to cope with increased management responsibilities.

Sunset is not the answer to the financial problems which beset all government today. Those who suggest that it is have oversold the concept. Better government performance, not spectacular dollar savings, is the major objective of Sunset. A strict cost-benefit approach contrasting dollars spent on evaluations and budget dollars saved is an inadequate measure of the success or failure of Sunset because savings to taxpayers in the cost of goods or services are often indirect. For example, when anti-competitive practices by regulatory agencies are prohibited, specific dollar savings may or may not be immediately apparent. Also, improved government performance cannot be calculated easily in dollar terms.

Sunset establishes a systematic method for conducting oversight of selected agencies or programs and facilitates the implementation of much-needed oversight activity. Sunset review has not been a traditional part of state government's agenda, in part because legislators would rather make new laws than make existing laws work. Sunset has helped to change the tradition in state legislatures of ignoring oversight.

Methodology

This report takes a close look at Sunset implementation around the country. Common Cause sent a questionnaire to

the state government officials responsible for conducting Sunset reviews in the states with Sunset laws. The questionnaire requested basic information about the laws. The questionnaires were sent out in April 1981. All thirty-five states with Sunset laws returned their questionnaires to Common Cause.

A computer program was developed to interpret the questionnaire data and to obtain statistical correlations of the responses. A synopsis of the findings is found in Section II. A list of respondents, questionnaire results, and a narrative description of the questionnaire findings are in Appendix A.

Case studies were conducted on Sunset implementation in Florida and Texas, two states which have had positive experiences with Sunset. The studies were developed through interviews with the principal participants in the Sunset process and through an examination of the published information on the subject. The case studies throw light on review procedures in general, and on specific agency reviews (e.g., the review of Texas State Board of Pharmacy). A copy of the Florida and Texas Sunset laws is included (Appendices B and C).

Utilizing the questionnaire results, the case studies, and other research on Sunset implementation in the states, an analysis and a series of eight recommendations for conducting Sunset review in the states were developed. The

analysis is found in Section III of the report. Recommendations follow in Section IV of the report.

Finally, Appendix D provides a state-by-state summary of Sunset laws and recent implementation experience. Appendix E is a bibliography of recent Sunset publications.

II. FINDINGS

The findings developed from the questionnaire responses to the Common Cause survey are described in detail in Appendix A on page 39. The following is a synopsis of the questionnaire responses, focusing on (1) the extent of the Sunset effort in the different states; (2) the Sunset review process; (3) legislators' responses to Sunset; (4) the results of Sunset; and (5) the problems with Sunset.

(1) The Extent of the Sunset Effort

- ° The scope of state Sunset laws varies: ten states review regulatory agencies only, 15 review regulatory and other selected agencies, and another 10 undertake comprehensive reviews of all agencies.
- ° The median number of agencies reviewed each year by the states is ten. The number is larger for states with comprehensive scope (17).
- ° An average of 13 states furnished budget information for each of the years 1978-1980. The average budget allocations were between \$153,000 and \$164,000.
- ° Of the 21 states which indicated they have full-time staff working on Sunset reviews, the average staff size was seven.
- ° Seventeen states were able to estimate costs per average Sunset review. Excluding one extremely high and one extremely low figure, the average review cost was nearly \$12,000.

- ° Seventeen states also listed staff hours per review, resulting in a median number of hours per review of 500 hours.

(2) The Sunset Review Process

- ° In half of the states, the Committee with jurisdiction for Sunset reviews is a joint legislative committee. For the majority of other states, the standing committees have this responsibility. Other states use a legislative oversight committee or agency or a Sunset commission.
- ° Performance evaluation reports are prepared by the legislative auditor general in 13 states and by committee staff in nine states. In other states, the reports are prepared by a Sunset commission, legislative service bureau or other unit of government.
- ° The leading professional category involved in preparing performance evaluations was policy analysts.
- ° Agencies undergoing Sunset review are often themselves involved in the Sunset process; for example, in seven states the agency plays a major role in preparing performance evaluation reports.
- ° Governors are involved in the Sunset process in 13 states, most commonly by submitting recommendations on agencies under review.
- ° In all but three states, public hearings have been held for all agencies reviewed under Sunset.

- ° In the majority of states, the average turnout for a public hearing has been 25 or fewer persons.
- ° Three-quarters of the states having Sunset provisions require a performance evaluation for all agencies under review.
- ° Twenty two states reported clear lead times regarding their timetables for review. On the average, review planning began 18 months in advance of the agency termination date.
- ° Legislative committees use the interim between sessions for some aspect of the review process in seven of every eight states.

(3) Legislative Voting on Sunset

- ° About six of every ten states stated that the recommendations of Sunset evaluators are accepted by the legislature 76-100 percent of the time.
- ° The major reason for legislators voting against recommendations of Sunset evaluators was professional association pressure.*
- ° Legislators have taken action to broaden the scope of the original Sunset law in one-third of the states, principally to include certain non-regulatory agencies.
- ° Legislation to repeal Sunset laws has been introduced

* These answers reflect the interpretation of Sunset questionnaire respondents as to how the legislators have responded to Sunset. (In a few cases, questionnaire respondents are legislators.)

in seven states. Repeal of the automatic termination provisions did occur in North Carolina in 1981.

- ° Twenty three of 35 states cited increased agency efficiency and public accountability as a principal benefit of Sunset.*
- ° One-half of the states complained that Sunset reviews were too time consuming.*

(4) The Results of Sunset

- ° Since 1976, nearly 1,500 agencies have been reviewed under the Sunset process, starting with 15 agencies in 1976, and increasing to 500 agencies in 1981. Almost one in every five agencies reviewed has been terminated; one in every three modified, and less than half recreated with little or no change. If we disregard an extreme case of a state in which very large numbers of agencies were reviewed and recreated without change, the number of terminations is the same, but the proportion of agencies modified jumps to almost half, and the number of agencies recreated without change drops to a little over one-third.
- ° Of the across-the-board reforms resulting from Sunset, almost half the states indicated a requirement for public membership on boards and commissions. Almost as many states indicated a requirement for improved administrative practices and disciplinary procedures.

* See note on page 9.

III. ANALYSIS

"Sunrise, Sunset"

Is this the little bill I carried?
Just wanted a license for a friend.
I don't recall the regulations,
Don't they ever end?

Sunrise, Sunset,
Sunrise, Sunset,
Swiftly come the Boards,
Each one grander than the other,
Free competition they will smother.

-Martha Ezzard is a Republican senator from
Englewood, Colorado and an out-of-the-closet poet.*

The Benefits of Sunset

Sunset has had its growing pains, but it is largely achieving its goal -- making government work better. Since 1976, only one of 35 states has formally abandoned the automatic termination provision which distinguishes Sunset from other forms of legislative oversight. One-third of the states with Sunset laws have taken action to expand their Sunset laws to apply to additional agencies or programs. And as recently as December 22, 1981, Pennsylvania passed a state Sunset law for the first time.

The Advisory Commission on Intergovernmental Relations (ACIR), a leading authority on state governments, has noted the value of Sunset and has urged states to apply Sunset to a "full range of state programs."

The benefits of Sunset fall into three categories:

°first, Sunset has resulted in significant improvements in government performance in many states;

* Appeared in The Colorado Statesman on February 21, 1981. Reprinted with permission.

- °second, financial savings can be realized through Sunset -- particularly when states move to a more comprehensive review of state agencies; and
- °third, state legislators are gaining experience in conducting legislative oversight.

(1). Improvements in Government Performance

The results of a questionnaire survey conducted by Common Cause indicate that two-thirds of the respondents from states with Sunset laws believe that increased agency efficiency and public accountability have been principle benefits of Sunset. Improvements have taken the form of major across-the-board reforms and specific recommendations applied to individual agencies.

Of the across-the-board reforms, almost half of the respondents indicated a requirement for public membership on boards and commissions. About forty percent of the states also listed the improvement of administrative practices and disciplinary procedures.

In Texas, for example, following the first review cycle in 1979, a series of eleven major reforms were enacted across-the-board. The Texas Sunset Advisory Commission has determined that "slightly more than seventy percent of the eleven recommendations had been incorporated in applicable cases overall." These reforms include revising restrictive rules to allow advertising and competitive bidding practices which are not deceptive or misleading (See Appendix C for a detailed report on Texas Sunset implementation).

Improvement of disciplinary procedures occurred in Florida. In 1979, The Miami Herald uncovered evidence that irresponsible medical professionals were not being disciplined by the state Medical Practice Board. A subsequent Sunset review confirmed the existence of serious problems and legislators went on to tighten disciplinary procedures to be used by the Board.

Voluntary improvements by agencies anticipating review have also been positive achievements of Sunset. One-third of the states indicated that they have observed agencies "cleaning shop" prior to Sunset reviews. The threat of termination apparently has a sobering effect on government agencies, many of which have never been subject to any form of serious review prior to Sunset.

The Advisory Commission on Intergovernmental Relations notes that states, like the federal government, are "in the regulatory business, so it is essential that they too examine the impact of their regulatory activities and take steps to assure that those activities make a maximum contribution to the economy as well as to equity." Sunset serves to accomplish this end. Most states initiated their Sunset process with review of regulatory agencies -- from horse-shoers in Illinois to the Public Utility Commission (PUC) in Mississippi.

In most state Sunset laws, the framework for evaluating regulatory agencies first addresses the need for regulation and second, the performance of the agency itself.

The Council of State Governments, in its publication "Sunset Expectation and Experience" (June 1981) provides a description of the basic criteria for agency evaluation which address the need for regulation:

The first has to do with the need for regulatory bodies or the need for regulation of the profession, industry or activity. Criteria in this category might include:

- ° whether the absence of regulation would harm the public;
- ° whether a less restrictive form of regulation would offer adequate protection;
- ° whether the benefits of regulation outweigh burdens imposed;
- ° whether certain aspects of the regulatory scheme might be eliminated.

Assessing the effectiveness of an agency's performance is not a simple task. Our survey indicates that almost half the states find the lack of adequate measurement information on agency performance and the value of an agency to be a significant problem. It is the latter issue which is addressed when an agency or program which is certain not to be terminated (e.g., a public utility commission) is reviewed.

The evaluation criteria which have been established to measure the performance of regulatory agencies often serve as a framework for determining the extent to which an agency is meeting its goals, the extent to which it is encouraging public participation, and how it is allocating its resources.

A specific example of the objectives of an evaluation of the performance of a non-regulatory agency is described in the March 1981 Program Evaluation Report of the Tennessee

Department of General Services. Objectives of the Tennessee evaluation were:

1. To ascertain the authority and responsibility mandated to the department by the legislature;
2. To determine the extent to which the department has centralized services and the degree to which state costs have consequently been reduced and/or services improved;
3. To determine the extent to which departmental policies and procedures promote economy and efficiency in the provision of services; and
4. To develop possible alternatives for departmental or legislative action which might result in more efficient or effective operation of the department.

Of the 35 states with Sunset laws, one in five agencies -- largely regulatory -- has been terminated. In a number of states, agencies were determined to be inactive at the time of Sunset review. This development reached surprising proportions in 1980 in Mississippi, where the legislature scheduled sixteen agencies for review and found that only one of the sixteen agencies was functioning at the time of review.

Termination does not mean the irresponsible axing of vulnerable social programs in states which have chosen to review whole or parts of these programs. Where termination is unthinkable, the question becomes one of performance:

should this agency be administering this program in this way? Sunset evaluators, in these cases, look at competence factors, duplication of effort and the resources of an agency. In some cases, regulatory and other agencies are provided with additional resources if it is discovered that they have been forced to operate at inadequate funding levels.

(2). Financial Savings Through Sunset

Sunset is not a tool to slash state budgets -- that is not its primary objective. Improvement of government performance and efficiency and freedom from excessive regulation are Sunset's major goals. Saving money and implementing Sunset are not mutually exclusive, however. In at least one-sixth of the states conducting Sunset reviews, legislators have been able to document sizable savings. Other states are expanding their Sunset laws beyond minor regulatory agencies with the anticipation that savings can be achieved through Sunset.

There has been an obvious misconception about the potential for budget cutting from Sunset that dates from the time of passage of Sunset laws in the mid 1970's. Taking the advice of Common Cause and legislative oversight experts, most states choose to begin Sunset reviews by looking at regulatory agencies. The major reasons for initially focusing attention on regulatory agencies is that they are generally small enough to provide a manageable training ground for conducting legislative oversight. Three

additional reasons are: 1) regulatory agencies are the source of much citizen dissatisfaction; 2) regulatory agencies receive minimal review in the normal budget process; and 3) regulatory agencies frequently function in a vacuum, escaping surveillance of the governor or management staff.

The majority of these agencies are semi-independent. In some cases, their entire budgets come from licensing fees. Even abolishing the agencies would not yield immediate, visible savings in the state budget. This does not mean, however, that there are no savings to be realized; rather, the savings are frequently indirect.

Sunset legislation is not designed to discredit regulation which is fulfilling a legitimate public policy purpose. Sunset is designed to weed out regulation which is outdated or which benefits a narrow interest rather than the public interest.

Savings can be realized when programs which fall under the legislative appropriations process are reviewed. Of the six states reporting sizable documented savings through Sunset (Alabama, Indiana, Maine, Maryland, Tennessee, and Washington), only one of these states reviews regulatory agencies exclusively.

A final point regarding savings and Sunset concerns perspective. Many states have conducted only one or two cycles of Sunset.

(3). Legislators are Gaining Experience in Conducting Oversight

More than half of the respondents in states with Sunset laws stated in the Common Cause questionnaire that one of the important benefits of Sunset is that legislators have gained experience and interest in conducting legislative oversight. This experience consistently focuses on three subjects: first, creating a manageable workload; second, streamlining review and reporting procedures; and third, linking oversight to the normal legislative process. A positive outcome of this experience is the emergence of state government officials who are competent and often innovative leaders in the emerging area of oversight.

On the first point, creating a manageable workload for legislators and Sunset staff was largely careful guesswork on the part of Sunset's founding fathers. "Don't bite off more than you can chew" was the maxim. A few states totally disregarded this warning in their eagerness to get a "quick fix" on state government problems. For example, Alabama's first experience with Sunset caused observers to label the law a "High Noon" law. The legislature had to vote "yes" or "no" on whether to continue approximately 100 agencies and all other "units of government" over a four year period. Confusion over the appropriate time to review the unspecified agencies caused the Alabama House to vote on over 200

agencies in only three hours in 1977, only to repeat the process again in 1978.

In most cases, however, the scheduling of agencies for review is far more responsible. Our survey indicates that the 35 states with Sunset laws review a median of ten agencies per year. The average figure for states which have comprehensive review of all or most of state agencies of government is 17 agencies per year.

A number of states have devised a method for handling large numbers of reviews. Tennessee, for example, has an ambitious Sunset law; it schedules from 14 to 25 agencies per year for review. Legislators in Tennessee passed a comprehensive Sunset law covering both regulatory and non-regulatory agencies of state government. W. Jeff Reynolds, Chief of Program Evaluation, in an article on the Tennessee Sunset law,* explained that Tennessee began program evaluation in 1973 and added Sunset evaluation to an agency experienced and interested in the goals of Sunset.

The key to Tennessee's success with Sunset is linked, in part, to the use of a "limited program audit," a strategy

*W. Jeff Reynolds, Evaluating the Performance of State Agencies: Sunset Review in Tennessee," Governmental Finance, December 1980).

which is highly selective in allocating time for evaluating agencies (e.g., evaluation of the Department of Mental Health and Mental Retardation was allocated 6,000 hours while review of four agriculture-related boards was allocated less than 50 hours).

Tennessee Program Evaluation staff use a preliminary survey to determine the best areas for review based on the following factors:

1. The size of the agency (staff expenditures, revenues, clients);
2. Prior legislative interest;
3. Prior audit work in the agency; and
4. Potential benefits from the review.

Texas is able successfully to conduct a larger than average number of reviews because they have a well financed and highly professional Sunset commission. Allocation of sufficient resources -- so often overlooked by states -- can often make the difference between Sunset's success and failure in terms of achieving the goal of improved government performance.

In addition to establishing priority review, some states are taking action to lengthen the review cycle if they find that review is taking too much time. In Colorado -- a state which faced repeal of Sunset legislation last year but voted against repeal -- legislators chose to

extend their Sunset cycle to ten years. (Texas, which has the longest review cycle -- twelve years -- gives Sunset very high marks.)

A number of states have developed methods for streamlining review and reporting procedures. The Montana Legislative Audit Committee reviewed 14 agencies in 1979 and 22 agencies in 1981. They found that extensive background material was informative, but not essential to Sunset review reporting. They were able to devise an effective abbreviated cost-analysis approach to reduce some of the costly and laborious research and analysis. Finally, the Committee developed a standardized "alternative methods of regulation" report and a simplified decision-making chart.

In 1981, Colorado legislators interested in cutting costs and streamlining the Sunset process voted to abandon the long drawn-out performance audits done by the state auditor's office, and to utilize only performance audits which have been successfully conducted by the State Department of Regulatory Agencies. The review cycle was also extended from six to ten years. (In 1981, a repeal bill was also introduced, but legislators voted -- by a two-to-one margin -- to improve rather than repeal the state Sunset law in Colorado.)

States may also want to consider the use of outside contractors to develop a more efficient review procedure.

Almost one-quarter of the states are using contractors to supplement the permanent staff resources.

With regard to preparation of performance evaluation reports for the legislature, John W. Turcotte, Director of Mississippi's highly regarded Legislative Audit Committee, has offered some useful suggestions:*

1. Using meaningful side captions and subheadings to permit quick scan of reports without reading each line; (For example, instead of a subheading "Authority Problems," use "Program Managers Lack Authority to Spend Funds Where Needed.")
2. Providing a color-contrasting summary cross-referenced to the report body;
3. Using the active rather than the passive voice;
4. Employing self-explanatory tables, maps, charts and other graphic aids in lieu of narrative;
5. Avoiding acronyms and technical jargon altogether or at least providing a glossary of terms;
6. Providing a free-standing press release carefully prepared since many legislators will be more likely to read a news account of a report than the report itself; (Also, accurate press coverage tends to promote interest in the report among policy makers and the public.)

*Presented to National Conference of State Legislatures.
Legislative Program Evaluation Section, July 23, 1979.

7. Enclosing suggested legislation, cost or savings estimates, revised rules or regulations, reorganization proposals, new process flow-charts, and other "turnkey" enclosures to minimize "how, where, when, and how much" questions; and
8. Timing release of the report for maximum effect, usually immediately prior to the session.

Like Tennessee's Sunset evaluation staff, Mr. Turcotte emphasized the importance of staff follow-up once reports reach legislators' crowded desks to ensure that legislators pay attention to the key issues.

In summary, states have taken action to improve their review procedures in a variety of ways. At a minimum, states have refined their evaluation criteria to meet their needs.

Common Cause has encouraged states to integrate oversight into the normal legislative process. Developing a joint committee with exclusive control for oversight will not help give a large number of legislators experience in conducting oversight. It is preferable to spread the work among standing committees. (Or, at the very least, to rotate members off a joint committee periodically, as is done in the Budget Committee of the House of Representatives.

It also seems more likely, if standing committees handle Sunset reviews, that wider participation in the appropriations process will be achieved. Legislators, at a

minimum, will have to consider the level of appropriations for programs that are reviewed under Sunset.

Our survey indicates that states are almost evenly divided between the use of joint committees and standing committees. Florida, in 1981, abandoned the use of a joint legislative committee for conducting Sunset reviews. Standing committees -- traditionally high-powered and effective in Florida's legislature -- now have complete responsibility for Sunset.

Many legislators have traditionally resisted undertaking legislative oversight, because there has not been much political mileage to be gained by reviewing old laws -- creating new ones provides many more rewards.

Where Sunset has had some of its best success, legislative leaders have worked diligently to make it what it is. George Sheldon, Chairman of the House Governmental Operations Committee, nurtured Sunset in Florida. Before the process even began, he met with the state's newspaper editorial boards to explain the importance of Sunset.

Questionnaire survey results, case studies and research of state Sunset implementation reveal that Sunset is far more than a fad and hardly a static concept. In many states, legislatures have taken action to expand and, in fact, improve their Sunset laws. Sunset is moving forward, but, as we acknowledge, not without some problems. The next section is devoted to analysis of these problems.

Problems with Sunset

It is not difficult to find legislators who are quick to denigrate Sunset. "Takes too much time" ... "costs too much and doesn't show savings" ... "we didn't really kill anything" are popular comments. These comments generally reflect a mixture of legitimate procedural problems with Sunset and unrealistic expectations of what Sunset would do.

Legislators are beginning to understand the communications problem which has led to confusion of Sunset's goals. Maryland's Speaker of the House, Benjamin J. Cardin, commented recently to the Baltimore Sun:

Sunset was oversold. [The Legislature] was looking for an easy solution. Sunset was something we could understand, and there were expectations that were too high.

But it became a valuable tool. I look at it more as an oversight function than a tax-savings function. From that standpoint, the results are getting better each year. I think it's worked.

Faced with potential repeal of Maryland's Sunset law, Delegate Cardin and other key Maryland legislators supported changes to lengthen the review cycle as a way of creating a more manageable workload.

(1). False Expectations of Sunset

Criticisms of Sunset will continue to surface unless there is a recognition of what sunset can do -- make government perform better -- and what it will not do. Some of the false expectations of Sunset are listed as follows:

(a) Instant reduction in the size of state government. The body count mentality is the wrong yardstick of Sunset success and has been from the start. The goal of improving government performance has been distorted by the preoccupation with termination. Simply put, the concept of automatic termination is intended as an "action-forcing" mechanism to initiate review of an agency on a certain date. If it is determined that a regulatory agency's function is not necessary for the public interest or activities of government agencies are duplicated elsewhere, termination may be appropriate. (To date, our survey has indicated that this has been the case with one in five agencies reviewed.)

(b) Instant dollar savings from Sunset. Regulatory agencies seldom have a large direct impact on the state budget, so savings to taxpayers are difficult to document. The value of reviewing regulatory agencies has been in a more responsive, consumer-oriented state government. Savings to consumers are, for example, manifested in reduced tour bus rates for Florida residents as a result of trucking de-regulation.

The encouraging news is that our survey reveals that states are beginning to achieve significant savings, particularly when they have begun reviews of agencies of government which are governed by the state budget. Further, these savings should grow relative to the cost of conducting reviews as this cost is reduced as the review process is refined.

(2). Facing Sunset's Problems

Beyond the issue of false expectations lie problems which are difficult, but not insurmountable. These problems fall into four areas: (1) legislative oversight is a time-consuming and costly endeavor; (2) limited public participation in the Sunset process; (3) the disproportionate influence of professional associations which lobby for continuance of regulations which benefit them; and (4) many states lack adequate measurement information on agency performance and agency value.

(a) Conducting legislative oversight takes time, adding to an already heavy workload. Our questionnaire survey indicates that the leading complaint regarding Sunset is that Sunset reviews are too time-consuming. In some cases, the scheduling of very large numbers of agencies has directly contributed to the problem. For example, in Arkansas, where the legislature considered 136 agencies in 1979 and 89 agencies in 1981, complaints about the time-consuming nature of Sunset contributed to the near repeal of the Sunset statute.

It is clear, however, that states are creatively tackling the problems of management of the Sunset workload and the expense of conducting reviews. Solutions such as reducing the number of agencies scheduled for review, lengthening the review cycle, creating priority review, streamlining audit and reporting requirements, and adding additional staff are being implemented in many states.

(b) Public participation in the Sunset process has been limited. When asked about the extent of public participation in the Sunset process as measured by attendance at public hearings, seventy percent of the states reported that the average turnout for a public hearing has been 25 persons or fewer. This statistic is not surprising, because legislators have bemoaned -- and legitimately so -- the lack of public participation in the Sunset process since the inception of Sunset laws.

In 1981, in Texas, legislators voted to add two public members to the Texas Sunset Advisory Commission in order to enhance public participation. A number of states have solicited testimony from individuals who have registered complaints about a particular board under Sunset review. This effort ensures that it is not only the regulated professionals -- who speak on their own behalf -- that are being heard from.

Other, more obvious techniques of generating public interest in Sunset proceedings are: widespread and timely notice of public hearings, convenient time and location of hearings, and press coverage of the issues involved in the reviews of particular boards or agencies.

(c) The disproportionate influence of regulated professionals on the Sunset process is related to and potentially a result of poor participation by the general public.

One-third of survey respondents indicated that they hear only from licensed professionals about Sunset issues.

That licensees attend public hearings is commendable, but industry involvement often extends beyond public testimony. The Texas Medical Association, for example, reportedly spent lavishly in a campaign against changes to the Texas State Board of Medical Examiners.

In an even more dramatic situation, the issue of professional lobbying pressure on the Sunset process is credited, in part, with causing the demise of the North Carolina Sunset law. Review of the North Carolina State Bar and the North Carolina Board of Medical Examiners was scheduled in the 1981 session. Both the lawyers and physicians expressed great dissatisfaction with the North Carolina Sunset Commission's recommendations regarding the boards which oversee these professions. Ultimately, North Carolina's legislators yielded to the intense pressure brought by the state's lawyers and doctors. They stripped the Commission of its staff and repealed the automatic termination provision of Sunset, leaving a mandate requiring committees within the legislature to review certain boards previously listed on the Sunset schedule. As one Commission member described the 1981 action, "You take away the staff before the reports are in and you might as well watch our work go down the drain."

North Carolina legislators also complained that the Commission was too expensive and took too much time.

However, in Colorado and Maryland -- states which also felt lobbying pressure and had time and money problems -- the ultimate decision was to improve rather than repeal their Sunset laws.

In Texas, where many licensees are involved in political action committees, Common Cause has been able to examine the correlation between the amount of campaign contributions to legislators and the rate of implementation of reforms recommended by Sunset review bodies.

In 1979, Common Cause/Texas examined the amount of campaign contributions to legislators by professionals affected by Sunset reviews that year. The research revealed that "the two lowest rates of Sunset implementation [defined as Commission recommendations adopted] correspond to the largest amounts of campaign contributions." In this case, the contributions were from the Texas State Bar and the Texas Real Estate Association.

Texas is an example of a state in which the threat of close scrutiny under Sunset review procedures has galvanized certain licensed professionals to go to great lengths to ensure that regulation which benefits their industry is retained.

It is clear that political in-fighting regarding the future of agencies reviewed under Sunset is more intense in some states than others. Arizona Governor Bruce Babbitt told The Arizona Republic (April 27, 1980); "For every

agency that's 'sunsetting,' you'll find five that are radically revised in a knockdown drag-out fight."

Strong leadership by legislators responsible for carrying legislative proposals for agencies under review is an essential countermeasure for preventing inappropriate politics in Sunset. It becomes critical that the rationale underlying Sunset recommendations is clearly articulated to legislators so that they will know both sides of the story -- not just information provided to them by regulated industry lobbyists.

Governors have taken an important role in maintaining the integrity of the Sunset process. Threatening to veto ill-conceived legislative proposals regarding agencies or boards under Sunset review can be a powerful tool. Further, if thoughtful proposals for action on boards or agencies come from the governor's office, there is a yardstick to distinguish the real issues from the political ones.

(d) Many states lack adequate measurement information on agency performance and agency value. Implementation of program evaluation procedures -- conducting research and preparing a final report of findings -- is generally viewed as the responsibility of professional staff. Our survey indicates that in almost half of the states the legislative auditor general conducts program evaluation. Another one-third of the states use committee staff.

Preceded by objective and independent research, participation by legislators increases the impact of performance

evaluations (e.g., the public hearings process conducted by legislators is often a key element of review). Moreover, the role of the agency in conducting self-evaluation, as required in the Texas Sunset Act, can also further effective program evaluation.

But professional staff, legislators and agency personnel need criteria by which to conduct their reviews. The criteria developed to assess the need for regulation is closely articulated in laws like the Florida Regulatory Sunset Act.

Many states, however, are still struggling with the development of appropriate criteria for examining an agency's performance in achieving its goals. Almost half of the respondent states make clear that the lack of measurement information on agency performance and agency value is a major problem.

This issue is especially critical when examining non-regulatory agencies (e.g., service delivery agencies or programs) which have a large impact on governmental spending. Of necessity, these criteria must be general enough to be consistently applicable, yet specific enough to provide meaningful direction.

In conclusion, improving Sunset implementation requires a careful assessment of the problems. Some states have taken important first steps in this regard. Creating a manageable workload and streamlining review and reporting procedures are impressive efforts at making the process work

better. States will have to apply the same creativity in order to keep the pressures of politics at a minimum. Sunset is a form of legislative oversight which is designed to help legislators make state government more accountable. It is important that the goal continues to be that Sunset should make government accountable to all citizens and not just to a few who are able to make their voices heard.

IV. CONCLUSIONS/RECOMMENDATIONS

Measured by the appropriate standard -- improvement of government performance -- Sunset is a valuable tool for performing legislative oversight. It is clear that states are at various stages of refining their Sunset implementation procedures. A number of states have had four or five years of experience with Sunset, while in Pennsylvania, a Sunset law was passed for the first time in December 1981.

Not all states have had a positive experience with Sunset. But other states look ahead to an expanded role for the oversight procedure. These states frequently have as dual goals the establishment of a manageable workload and broadening of the scope of their review schedule to include non-regulatory agencies (e.g., service delivery agencies or programs).

In order to help states achieve these goals and to assist with problems which have been shared by many states, Common Cause has developed eight recommendations. The first four recommendations address the issues of creating a manageable workload and an effective and accountable procedure for selecting and reviewing a larger number of agencies or programs. The first recommendation outlines a procedure for creating a schedule of agency terminations. The other points concern the length of the termination cycle, the development of appropriate evaluation criteria and the application of a priority review procedure -- providing

an option for conducting either an extensive or a limited program evaluation.

The last four recommendations are general suggestions for improving the implementation of Sunset in such areas as integrating Sunset work with the budget process, preparing reports of program evaluation findings, and increasing public participation and executive branch involvement in Sunset.

Common Cause Recommendations:

1. States involved in expanding the scope of their Sunset reviews beyond regulatory agencies should develop a timely, systematic procedure for establishing a manageable schedule of agency terminations.

Comment: The following scheduling procedure for agencies to be subject to Sunset review is proposed:

- ° Legislative leaders or the Governor provide an inventory of agencies or programs no later than the first day of the legislative session of the year preceding the proposed year of termination.
- ° Substantive legislative committees, with assistance from program evaluation staff, provide recommendations of agencies or programs for review based on the following criteria:
 - (1) Length of time the agency or program has been in existence;
 - (2) The size of the agency or program (based on revenues, staff expenditures, clients, etc.);
 - (3) Level of prior legislative or public interest in the agency or program;
 - (4) Resources of the Sunset review body to conduct a review of the agency or program at this time.
- ° Recommendations favorably reported are sent to the Rules Committee of respective houses within 15 days.

- Recommendations adopted by enactment of a statute no later than the end of the year preceding the year of proposed termination.

2. States involved in broadening the scope of their Sunset laws should consider lengthening termination schedules to 8 or 10 years.

Comment: To establish a realistic workload, states should determine an appropriate termination schedule, recognizing the amount of time needed to conduct meaningful program evaluation. More frequent evaluation can be done as needed on a priority basis.

3. States may want to modify the evaluation criteria in their Sunset laws if they are adding non-regulatory agencies or programs (e.g., service delivery programs) to their review schedules.

Comment: Many states adopted evaluation criteria patterned after the Florida law on the need for regulation and on the Colorado law regarding the performance of an agency in fulfilling its mandate. Evaluating agencies or programs that are not regulatory in nature requires a stronger emphasis on performance, because termination of these programs may be unlikely. A good starting point for assessing performance is offered by the U.S. Comptroller General as follows:

Economy and Efficiency - determines (a) whether the entity is managing and utilizing its resources (such as personnel, property, space) economically and efficiently, (b) the causes of inefficiencies or uneconomical practices, and (c) whether the entity has complied with laws and regulations concerning matters of economy and efficiency.

Program Results - determines (a) whether the desired results or benefits established by the legislature or other authorizing body are being achieved and (b) whether the agency has considered alternatives that might yield desired results at a lower cost.

4. To create a more manageable workload for Sunset reviews, states might consider establishing priorities for conducting their program evaluation procedures.

Comment: A system of priority review would give legislators and Sunset evaluation professionals the option of conducting either an elaborate or a limited program evaluation on agencies or programs. This procedure would enable states to devote more time to reviewing large and complex agencies and less time to agencies that are narrowly focused and that have little impact on government spending.

5. States should seek a close integration of Sunset with the budget process.

Comment: The budget process is a natural tool for legislative oversight. Sunset findings on agencies and programs can be of considerable help in determining requests for legislative appropriations. Sunset findings can add an important perspective in the decisionmaking process.

6. Sunset review findings should be presented in an organized, digestible format.

Comment: Reports should contain an executive summary and a clear explication of the findings and recommendations in the report. Information should be geared to easy interpretation by legislators, agency staff, and the general public. A useful model for preparing reports is the style adopted by the U.S. General Accounting Office. (States may find it helpful to include a copy of a press release with a copy of the report.)

7. Public participation in the Sunset process should be encouraged.

Comment: States should provide timely and widespread notice of public hearings; solicit testimony from individuals who have previously submitted complaints about the agency or program under review; and issue press releases on the findings resulting from review of agencies and programs.

8. Executive branch participation in the Sunset process should be increased.

Comment: Governors can play a critical role in ensuring the integrity of the Sunset process. This can be accomplished by submitting testimony on a proposed action regarding an agency or program; preparing final recommendations on agencies under review; and exercising veto power, where appropriate, concerning Sunset legislative proposals.

APPENDIX A. QUESTIONNAIRE RESULTS
QUESTIONNAIRE RESPONDENTS
NARRATIVE OF QUESTIONNAIRE RESPONSES

State Sunset Questionnaire

This questionnaire will be used in the development of a study on Sunset activity in the states. By examining how Sunset laws are working, Common Cause hopes to provide not only a compilation of facts regarding Sunset, but also specific recommendations for improving Sunset implementation. We would appreciate it if you would fill out and return this questionnaire by August 15.

State Sunset Contact: _____

Date: _____

Name _____

Address _____

Title _____

Office Tel. _____

Statutory citation of your Sunset law _____ Year of Enactment _____

Substantive amendments to the law since its enactment (citation and year) in 60% of states

A. Sunset Evaluation Process

I. Is a performance evaluation required for all agencies under review in the Sunset process?

76.5% yes 23.5% no

If no, for approximately what percent of agencies is a performance evaluation conducted?
(3 states answered no)

| | | | |
|--------------|----------|------------|-----------|
| <u>37.5%</u> | 0 - 10% | <u>0</u> | 51 - 75% |
| <u>12.5%</u> | 11 - 25% | <u>25%</u> | 76 - 100% |
| <u>25%</u> | 26 - 50% | | |

II. Who prepares performance evaluation reports for Sunset reviews? (check all that apply)

- 29% committee staff
- 21 legislative service bureau
- 41 legislative auditor general
- 3 Sunset commission
- 21 agency under review
- 9 executive branch evaluation agency
- 18 other, please specify _____

III. What is included in a typical Sunset report prepared on an agency under review?

- 94% performance evaluation findings (e.g., review of management practices, achievement of agency goals, and impact of programs on the public)
- 79 a summary of the major findings of the performance evaluation
- 47 agency response to the performance evaluation findings
- 85 recommendations for changes in enabling legislation
- 29 other, please specify _____

IV. What method(s) of data collection is used most frequently?

- 71% written questionnaires submitted to an agency
- 97 personal interviews with agency representatives or staff
- 82 examination of agency records
- 56 written questionnaires to licensees and regulated industries
- 53 written questionnaires or in-person interviews with clients of the agency
- 35 other, please specify _____

V. Does the agency under review participate in preliminary planning for a Sunset review?

29% yes 71% no

if yes, in what way? (10 states answered "yes")

- 30% meets with legislature to establish a workplan
- 20 prepares a preliminary report
- 50 other, please specify _____

VI. How many months in advance of an agency termination date does a legislative committee generally meet to establish a timetable or plan for review?

18 months ave. (22 states)

VII. How many months in advance of an agency termination date is the final report due?

9 months ave. (22 states)

VIII. Which agencies or committees of the legislature administer Sunset reviews? (check all that apply)

- 41% standing committee
- 50 joint legislative committee
- 12 Sunset commission
- 24 other _____

B. Staffing

I. What type of professionals participate in the preparation of performance evaluations? (Please check appropriate categories)

- 50% lawyers 62 policy analysts
- 59 accountants 41 other, please specify _____
- 32 economists _____

II. Are outside contractors used in any way to assist in the Sunset process?

23.5% yes 76.5% no

if yes, in what way? _____

III. Do you have full-time staff members who devote their time largely to Sunset review activities?

65% yes 35% no

if yes, how many? 4.1 ave. all states

6 ave. 21 states indicating they have full time staff.

C. Costs and Benefits

I. Please list the annual budget allocation for Sunset reviews.

- 1982 \$ 240,600 ave. (8 states) 1978 \$ 161,600 ave. (9 states)
- 1981 \$ 187,200 ave. (13 states) 1977 \$ 215,000 (1 state)
- 1980 \$ 163,600 ave. (16 states) 1976 \$ _____
- 1979 \$ 153,200 ave. (13 states)

II. Can you estimate the staff time and financial costs associated with completing an average Sunset review?

staff time 760 hours (17 states) number of full-time staff 2.7 ave.

average costs \$ 11,600 (15 states)

III. Can you estimate the total savings to date resulting from the Sunset review process?

- 20% yes \$ _____ If an estimate is available, please give a breakdown of the savings:
- 80 no \$ 1,800,000 in state expenditures (ave. of 6 states)
- \$ _____ in costs to consumers for goods and services
- \$ _____ other, please specify _____

D. Legislative Review

I. Approximately what percent of the recommendations of Sunset evaluators have been accepted by the legislature?

| | | | | |
|-----------|--------|------------|---------|----------------------------|
| <u>0%</u> | 0-10% | <u>10%</u> | 51-75% | (ave. acceptance rate=69%) |
| <u>10</u> | 11-25% | <u>61</u> | 76-100% | |
| <u>19</u> | 26-50% | | | |

1977-1981

II. Please list the number of agencies reviewed, recreated as is, modified, or terminated under your Sunset law.

| | | | | | |
|------|---------------------------|---------------------------|---------------------|-----------|-----------------------|
| 1981 | <u>502</u> reviewed × 17% | <u>43</u> recreated as is | <u>40%</u> modified | <u>85</u> | <u>17%</u> terminated |
| 1980 | <u>303</u> reviewed | <u>43</u> recreated as is | <u>39</u> modified | <u>55</u> | <u>18</u> terminated |
| 1979 | <u>402</u> reviewed | <u>54</u> recreated as is | <u>30</u> modified | <u>64</u> | <u>16</u> terminated |
| 1978 | <u>186</u> reviewed | <u>33</u> recreated as is | <u>44</u> modified | <u>43</u> | <u>23</u> terminated |
| 1977 | <u>74</u> reviewed | <u>32</u> recreated as is | <u>43</u> modified | <u>19</u> | <u>25</u> terminated |

Comments 1467 + 209 scheduled in 1982 = 1676 266 + 17 termin 1982 = 283
 The percentages given above are based upon the total number of agencies reviewed for which the actions taken after review are known. These numbers are 383 for 1981, 217 for 1980, 323 for 1979, 162 for 1978, and 44 for 1977

III. Do legislative committees use the interim between sessions for some aspect of the Sunset review process?

86% yes 14% no

if yes, what type of work do they do? (30 states use interim)

57% hold preliminary planning sessions

67% collect data for evaluation reports

83% hold public hearings

37% other, please specify _____

E. Public Participation

I. For what percent of the agencies reviewed have public hearings been conducted?

| | | | | | |
|-----------|--------|-----------|--------|--------------------------------------|------|
| <u>3%</u> | 0-10% | <u>0%</u> | 51-75% | <u>91%</u> | 100% |
| <u>0</u> | 11-25% | <u>6</u> | 76-99% | (ave. % holding public hearings=96%) | |
| <u>0</u> | 26-50% | | | | |

II. Besides legislators and the personnel of agencies under review, who attends public hearings? (please rank 1-5 based on largest to smallest turnout)

1.6 representatives of regulated industries (ave. rank)

2.1 licensees

3.7 consumer groups

2.9 press

4.7 other, please specify _____

III. The average turnout for a public hearing has been (ave. turnout=23)

| | | | |
|------------|-------|-----------|--------|
| <u>70%</u> | 0-25 | <u>6%</u> | 51-100 |
| <u>24%</u> | 26-50 | <u>0</u> | 100+ |

F. Governor

I. Does your Governor play a role in the Sunset process?

38% yes 62% no

if yes, what role does he play? (13 states, not including N.C., answered "yes")

23% appoints members to a Sunset commission

- 23% provides staff that conducts performance evaluations
- 39 submits recommendations on agencies under review
- 31 uses an executive agency to monitor and coordinate the program analyses submitted to the legislature
- 41 other, please specify _____

II. How many agencies have been terminated pursuant to gubernatorial veto?

1 in each of 3 states

G. General

I. What is the scope of coverage of your Sunset law?

- 29% regulatory agencies only
- 43 regulatory and other selected agencies
- 29 comprehensive review of all agencies created by the legislature or by executive order

II. If your Sunset law covers more than regulatory agencies, but not all agencies of your state government, please explain how the programs or agencies were selected for review. Some possible criteria are listed below. (19 states indicated criteria)

- 5% extent to which substantial time has passed since the programs or agencies have been in effect
- 10 extent to which programs or agencies appear to require significant change
- 10 government resources to undertake review of particular programs or agencies
- 74 other, please specify _____

III. Has the legislature taken any action to broaden the scope of your Sunset law?

32% yes 68% no

if yes, please specify (11 states answered "yes")

- 55% law broadened to include certain non-regulatory agencies
- 0 law broadened to include all agencies
- 18 law broadened to include review of proposals for new agencies
- 36 other, please specify _____

IV. Have any bills to repeal your Sunset law been introduced?

20% yes 80% no

if yes, please specify bill number and year introduced

1-1980, 5-1981, 1-unspecified

V. What do you think legislators feel are the principal benefits of Sunset in your state? (please check no more than two benefits)

- 32% voluntary changes in agency procedures
- 6 savings to taxpayers because of agency terminations or modifications
- 68 increased agency efficiency and public accountability (e.g., improved consumer complaint procedures)
- 56 increased legislative experience with and interest in oversight work
- 12 other, please specify _____

15 no clear benefits

VI. What do you think are legislators' principal complaints about Sunset? (please check no more than two complaints)

- 29% the cost of reviews is too high compared to benefits
- 50 Sunset reviews are too time-consuming

- ~~18~~ automatic termination is not necessary for effective legislative oversight
- ~~29~~ Sunset covers only small, low-budget agencies, therefore makes few significant changes
- ~~35~~ the only public response concerning Sunset is from licensed professionals who have organized to lobby for continuing regulation which benefits them
- 21 other, please specify _____

6 no significant complaints

VII. What do you think are the principal reasons legislators have voted against the recommendations of the Sunset review body? (please check no more than two reasons)

- ~~3~~ reports were inadequately documented or confusing
- 63 professional association pressure to preserve an agency was too strong to counter
- 17 other constituent pressure to preserve or terminate an agency was too strong to counter
- 27 legislators did not agree with the recommendations
- 13 other, please specify _____

VIII. What across-the-board recommendations, if any, have been established because of Sunset?

- 29 allowing advertising and competitive bidding
- 45 requiring public membership on boards and commissions
- 19 requiring specific provisions concerning conflicts of interest
- 19 requiring public information be made available on board activities
- 29 adopting fair standards of entry for out-of-state applicants
- 12 improving administrative practices
- 39 improving disciplinary procedures
- 29 other, please specify _____

0 not applicable

IX. Which of the following problems, if any, do you feel create significant difficulties in conducting Sunset reviews (please check no more than two problems)

- 9 inadequate funding
- 52 insufficient staff time
- 12 lack of staff expertise in technical areas
- 0 lack of agency cooperation in providing data
- 3 lack of honesty in agency reporting
- 46 lack of adequate measurement information on agency performance and agency value
- 24 other, please specify _____

15 no significant problems

H. Please use the space below (and on the reverse side) for any comments you have on implementation of your Sunset law).

Questionnaire Respondents

The information used in the report is based on answers to Common Cause's "State Sunset Questionnaire" by the following respondents:

| State | Respondent | Position | Questionnaire Completed on: |
|---------------|-----------------------------------|------------------------------------|-----------------------------|
| Alabama | Ronald L. Jones | Div. of Oper. Audits | 9/30/81 |
| Alaska | Merle R. Jenson | Div. of Leg. Audit | 7/27/81 |
| Arizona | Gerald A. Silva | Perf. Audit Manager | 8/19/81 |
| Arkansas | Fred Van Driesum | Research Dept. | 7/31/81 |
| Colorado | Rosalie Schiff and Bob Smith | Ex.Dir., CC/CO Auditor's Office | 8/13/81 |
| Connecticut | Michael Nauer | Dir., Leg. Prog. Review & Invest. | 8/13/81 |
| Delaware | Harris B. McDowell | Chair, Del. Sunset Comm. | N/A |
| Florida | George Sheldon | Representative | 8/18/81 |
| Georgia | Charles D. Lunsford | Dir., Perf. Audits | 9/8/81 |
| Hawaii | Wilbert Sakamoto | Asst. Leg. Auditor | 8/24/81 |
| Illinois | Gregory K. Busch | Exec. Dir, Sunset Comm. | 7/29/81 |
| Indiana | Steve Grimes | Dir., O'MA | N/A |
| Kansas | Ronald J. Green | Div. Atty., Leg Div. of Post Audit | 8/13/81 |
| Louisiana | E. Anne Dunn and Jerry J. Guillot | Gov. Affairs Div. Research Serv. | 9/8/81 |
| Maine | Barbara Gottschalk | Program Analyst | 8/4/81 |
| Maryland | Warren Deschenaux | Sunset Coord., | 8/13/81 |
| Mississippi | Samuel H. Dawkins | PEER Committee | N/A |
| Montana | Scott A. Seacat | Princ. Audit Manager | 7/27/81 |
| Nebraska | Dale B. Johnson | Leg. Fiscal Analyst | 8/10/81 |
| Nevada | Dan Miles | Deputy Fiscal Analyst | 9/9/81 |
| New Hampshire | Jim Kent | Staff Dir., Sunset Comm. | 8/4/81 |
| New Mexico | Jessica Schar | Research Analyst | 8/3/81 |

(Questionnaire respondents continued)

| State | Respondent | Position | Questionnaire Completed on: |
|----------------|---------------------|-------------------------------|-----------------------------|
| North Carolina | Jack Fleer | Former Sunset Commissioner | 9/29/81 |
| Oklahoma | Jerry W. Canida | Leg. Fiscal Analyst | 8/31/81 |
| Oregon | Allan Green | Dir., Leg. Research | 7/29/81 |
| Rhode Island | Roger N. Begin | Representative | 9/17/81 |
| South Carolina | Les Boles | Principal Auditor | 8/25/81 |
| South Dakota | Terry C. Anderson | Chief Research Analyst | 7/27/81 |
| Tennessee | W. Jeff Reynolds | Chief of Prog. Evaluation | 8/10/81 |
| Texas | Karl Spock | Senior Analyst | 9/21/81 |
| Utah | Mark Paterson | Research Analyst | 9/10/81 |
| Vermont | S. Michael Slater | Leg. Draftsman | 7/27/81 |
| Washington | Fred Tilker | Princ. Mgmt. Auditor | 8/17/81 |
| West Virginia | Theford L. Shanklin | Dir., Leg. Post Audit Div. | 8/13/81 |
| Wyoming | C. James Orr | Asst. Dir. | 8/4/81 |

NARRATIVE OF QUESTIONNAIRE RESPONSES

The following is a narrative summary of the responses to the questionnaire. Much of what is said is directly available from the summary copy of the survey (in this Appendix). The narrative does, however, expand on certain items, by talking about medians and ranges of responses and discussing some of the relationships between questionnaire responses. Finally, it is organized somewhat differently than the questionnaire. The narrative begins by discussing responses that measure or otherwise deal with the extent of the Sunset effort in the different states. It then turns to elements concerning the Sunset review process; then to legislators' responses to Sunset; the results of Sunset; and finally, to problems with Sunset.

I. Extent of the Sunset Effort

We considered a number of the questions to be indicators of the degree of effort going into Sunset in the different states. These were the scope of Sunset law coverage (G.I,II), the number of agencies reviewed per year (D.II), the annual budget for Sunset reviews (C.I), the number of staff devoting their time largely to Sunset reviews (B.III), and the resources devoted to an average Sunset review (C.II).

A. Scope

Ten of the states review regulatory agencies only; 15 review regulatory and other selected agencies, and another

10 undertake comprehensive reviews of all agencies. (See Table 1 below). In about half of the states reviewing "selected agencies," there were no clear, objective criteria indicated for choosing agencies for review. It appears that the legislatures have considerable discretion in making these choices.

Table I.

SCOPE OF COVERAGE
OF STATE SUNSET LAWS

| REGULATORY AGENCIES ONLY | REGULATORY + SELECTED OTHER AGENCIES | COMPREHENSIVE REVIEW |
|--------------------------------|--|-------------------------|
| Florida | Alabama | Arizona |
| Georgia | Alaska | Arkansas |
| Hawaii | Colorado | Indiana |
| Illinois | Connecticut | Louisiana |
| Maryland | Delaware | Maine |
| Montana | Kansas | New Hampshire |
| New Mexico | Mississippi | Rhode Island |
| South Carolina | Nebraska | Tennessee |
| Utah | Nevada | Texas |
| Vermont | North Carolina* | Washington |
| | Oklahoma | |
| | Oregon | |
| | Pennsylvania** | |
| | South Dakota | |
| | West Virginia | |
| | Wyoming | |

*Sunset mechanism repealed in 1981

**Law enacted in December 1981

B. Number of Agencies Reviewed per Year

Virtually all of the states furnished information on the numbers of agencies reviewed. Half of these considered ten or fewer agencies per year.* The median for all states was ten agencies per year. Thirty-five percent of the states reviewed between 11 and 20 agencies per year, and fifteen percent reviewed over 30 agencies per year. We might expect that the broader the scope of a state's Sunset law, the more agencies it would review per year, but this is only partly true. States with comprehensive scope have a higher median (17 reviews per year) than the remaining states, but three of ten "comprehensive scope" states review ten or fewer agencies per year. In addition, states that review regulatory agencies only have a higher median (12 per year) than states that review regulatory plus selected other agencies (median of nine per year). Clearly, whatever the scope of a state's Sunset law, the annual workload can be made lighter or heavier by varying the length of the review cycle.

C. Budget and Staff Allocations

Average annual budget allocations for Sunset reviews were between \$153,000 and \$164,000 for the years 1978, 1979,

*For states that evaluated agencies on a biennial basis, the average number reviewed per year was calculated by dividing the total number reviewed by the number of calendar years that had passed from the first year of review to the last year reviews were made.

and 1980. This figure rose to \$187,000 in 1981.* Many states were not able to respond to this question because Sunset reviews were carried out within existing organizations and not budgeted for separately. An average of 13 states furnished budget information for each of the years 1978-1981.** Budgets varied over a wide range. For example, in 1981 the median budget was \$133,000 with six states having budgets in the range of \$30,000-\$90,000, and five states having budgets over \$200,000. There is some tendency, in general, for Sunset budgets to increase as the scope of Sunset law coverage becomes broader, though there are high and low budget states in each of the three categories of coverage.

Almost two-thirds of the states indicated that they have staff members who devote their time largely to Sunset review activities. For these, the average staff size was seven. The states indicating no such staff generally could not furnish separate Sunset budgets or had rela-

*The average Sunset Budget rose to \$241,000 in 1982, but this was more of a statistical aberration than an indication of significant budget increases. Only eight states furnished 1982 information, and these were generally states with high 1981 budgets. The average 1981 budget of states giving 1982 information was \$234,000, just a bit under the 1982 average.

**The reporting of budgets was dominated by states with comprehensive review scope over this period. Seventy percent of states with comprehensive scope reported annual budgets, while about 40 percent of states that review regulatory plus other selected agencies reported. Thus it appears that the budget averages based on only those states reporting, would be higher than the actual averages across all Sunset states.

tively low budgets. For all 35 states the average number of staff was approximately four. Only 14 percent of the states had more than eight full-time staff members.

D. Cost and Time Per Review

About half of the states furnished information on costs per average Sunset review. The median value was \$10,000 per review, with about two-thirds of the reporting states falling in the range of \$6,000-\$18,000 per review. The average review cost was nearly \$12,000.* Differences in average review costs reflect, in part, differences in the degree of effort going into Sunset reviews of similar agencies. Another important factor however, seems to be differences in the nature of the agencies reviewed. Our data show that as the scope of Sunset law coverage increases, the cost per average review tends to increase. It seems reasonable that as states consider other than regulatory agencies, the average complexity of the agencies, and hence the resources required to review them properly, would increase. We should note, however, that there is a wide range of cost per review figures among states with the same scope of coverage, especially among states reviewing regulatory and other selected agencies.

*This average was calculated excluding one extremely high and one extremely low figure.

About half of the states also furnished information on staff hours per review. Most, though not all of the states supplying review cost information, were in this group. The median number of hours per review was about 500 hours, with 60 percent of the states falling in the range of 250-850 hours per review. Three states averaged less than 100 hours per review, and four states spent more than 1,000 hours per review (Arizona, Indiana, Kansas, and West Virginia). As with review cost, there is a general increase in hours per review with increasing scope of the Sunset law, but also wide ranges of values among states with the same scope of coverage.

The average number of staff working on an agency review was close to three staff members, for all states responding to this question. The average and median cost per hour of staff time was \$18, for 13 states furnishing both review cost and staff hours. About 60 percent of these states fell in the range of \$12-\$23 per hour of staff time. The average staff pay would, of course, be below these figures because of direct non-staff costs (e.g., for supplies and publication) and overhead.

II. The Sunset Review Process

A good many of the items in the questionnaire dealt with the Sunset review process. Many of these explored the participants in the process: which committees have jurisdiction over Sunset reviews (A.VIII), who prepares performance evaluation reports (A.II), what kinds of

professionals participate (B.I), role of the agency being reviewed (A.II,III,IV,V), the governor's role (F.I.,II), public participation (E.I,II,III,A.IV), and the use of contractors (B.II). Other aspects of the review process addressed were: the performance evaluation requirement (A.I.), methods of data collection (A.IV), evaluation report contents (A.III), the lead time for review planning and delivery of reports (A.VI,VII), and the use of the interim period for Sunset reviews (D.III).

A. Committees Which have Jurisdiction Over Sunset Reviews

Half of the states indicated that the entity responsible for overseeing Sunset reviews was a joint legislative committee, 41 percent of the states indicated it was a standing committee. Other responses were: a special legislative oversight committee or agency (15 percent), and a Sunset commission (12 percent). The total percent is greater than 100 because some states have more than one administering agency. (See Table II on page 54).

B. Preparation of Performance Evaluation Reports

The preparation of performance evaluation reports for Sunset review involves primarily agencies of the legislature: the legislative auditor general (41 percent), committee staff (29 percent), the legislative service bureau (21 percent), and other legislative evaluation agencies (12 percent). On the executive side, 21 percent of the states

Table II.

WHICH AGENCIES OR COMMITTEES OF THE LEGISLATURE HAVE JURISDICTION FOR SUNSET REVIEWS?

| Joint Leg. Comm. | Standing Comm. | Sunset Comm. | Other |
|------------------|----------------|---------------|-------------|
| Alabama | Alaska | Illinois | Connecticut |
| Arizona | Colorado | No. Carolina* | Nebraska |
| Arkansas | Florida | Rhode Island | Nevada |
| Delaware | Hawaii | So. Carolina | Utah |
| Georgia | Kansas | Texas | |
| Indiana | Louisiana | | |
| Kansas | Maryland | | |
| Louisiana | Mississippi | | |
| Maine | Montana | | |
| Mississippi | Nevada | | |
| New Mexico | New Hamp. | | |
| Oklahoma | So. Carolina | | |
| Oregon | Vermont | | |
| So. Dakota | Washington | | |
| Tennessee | | | |
| Washington | | | |
| West Virginia | | | |
| Wyoming | | | |

* prior to 1981

indicated participation by the agency under review, and nine percent an executive branch evaluation agency. (See Table III on page 55).

C. Professional Staff

The major kinds of professionals involved in preparing performance evaluations were policy analysts (62 percent),

Table III.

WHO PREPARES PERFORMANCE EVALUATION REPORTS
FOR SUNSET REVIEWS?

| Leg. Auditor General | Committee Staff | Leg. Ser. Bureau | Agency Under Review | Exec. Branch | Sunset Comm. | Other |
|-------------------------|--------------------|---------------------|------------------------|-----------------|-----------------|-------|
| Ala. | Conn. | Ind. | Alaska | Alaska | Ill. | Colo. |
| Alaska | Fla. | La. | Fla. | Colo. | Tex. | Miss. |
| Ariz. | La. | Md. | Ill. | Ill. | | Nev. |
| Ar. | Maine | Oreg. | Maine | N.C.* | | S.C. |
| Colo.* | Nebr. | S. Dak. | N. Mex. | | | Wash. |
| Ga. | N.H. | Wyo. | Okla. | | | |
| Hawaii | Okla. | | Tex. | | | |
| Kans. | Vt. | | | | | |
| Mont. | Wash. | | | | | |
| R.I. | | | | | | |
| Tenn. | | | | | | |
| Utah | | | | | | |
| W. Va. | | | | | | |

*until July 1981

accountants (59 percent), lawyers (50 percent), economists (32 percent), and (listed under "other") staff with masters in business and public administration (15 percent).

Outside contractors are used to assist in the Sunset process in almost one-quarter of the states. Where used, consultants have generally been assigned highly specialized tasks, such as developing an evaluation framework or making a telephone survey.

D. Agency Involvement

An agency undergoing Sunset review may be involved in the process in a number of ways. In 21 percent of the

states, the agency plays a major role in preparing the performance evaluation report. In almost half of the states, an agency response to the performance evaluation findings is included in the report. In all but one of the states there are personal interviews with agency representatives or staff while evaluation reports are in preparation; and in 71 percent of the states, written questionnaires are submitted to the agency. Agencies participate in preliminary planning for a Sunset review in almost a third of the states; the usual form participation has taken in these states is meeting with the legislature to establish a work plan (indicated by 30 percent of these states) and preparing a preliminary report (20 percent).

E. Governor

Governors play a role in the Sunset process in 38 percent of the states. In these states, common forms of participation are: submitting recommendations on agencies under review (39 percent), using an executive agency to monitor and coordinate the program analyses submitted to the legislature (31 percent), appointing members to a Sunset commission (23 percent), providing staff that conducts performance evaluations (23 percent), and having the power to veto Sunset legislation (23 percent). Governors have vetoed decisions to terminate agencies in only three states (and just once in each of these states).

F. Public Hearings

Public hearings have been conducted for all agencies reviewed under Sunset by 91 percent (all but three) of the states. Two of the remaining states have held public hearings for 76-99 percent of agency reviews.

In 70 percent of the states, the average turnout for a public hearing has been 25 or fewer people; and in six percent (Rhode Island and Texas), it has been between 51 and 100 people. The group with the largest turnout at public hearings--besides legislators and the personnel of agencies under review--is representatives of regulated industries. Next in order are licensees, the press, and consumer groups. In addition to attendance at public hearings, the public also participates in the preparation of performance evaluations via written questionnaires to licensees and regulated industries (in 56 percent of the states) and questionnaires or in-person interviews with clients of the agency (53 percent).

G. Performance Evaluation

About three-quarters of the states require a performance evaluation for all agencies under review in the Sunset process. About one in six states require it for one-half or fewer of the agencies reviewed.

Most of the methods of data collection for the performance evaluations have already been mentioned in the discussion of participants in the Sunset review process. To summarize, in order of frequency of use by the states, the

methods are: personal interviews with agency representatives or staff (97 percent), examination of agency records (82 percent), written questionnaires to licensees and regulated industries (56 percent), written questionnaires or in-person interviews with clients of the agency (53 percent) and information about Sunset in other states (included under "other" by about one-fourth of the states).

The contents of a typical Sunset report, in order of frequency of response by the states were: performance evaluation findings (94. percent), recommendations for changes in enabling legislation (85 percent), a summary of the major findings of the performance evaluation (79 percent), and agency response to the performance evaluation findings (almost half of the states).

H. Time Schedule for Review

The questions on lead times, prior to a scheduled agency termination, for review planning and submission of the final evaluation report, seemed to cause some confusion. A number of states indicated that the final report was due before or at the same time as planning for the review. We therefore used information from only those 22 states which indicated both lead times in the expected sequence. We found that, on the average, review planning began 18 months in advance of the agency termination date. The average (and median) time from review planning to due date of the final report was nine months.

I. Use of Interim Between Legislative Sessions

Legislative committees used the interim between sessions for some aspect of the Sunset review process in seven of every eight states. The kinds of work carried out, in order of the frequency they were noted, were: holding public hearings (83 percent), collecting data for evaluation reports (67 percent), holding preliminary planning sessions (57 percent), and preparing legislative recommendations (17 percent).

III. Legislators' Responses to Sunset

The questionnaire elements that reflect legislators' responses to Sunset were: percent of Sunset evaluation recommendations accepted by the legislature (D.I.), legislators' reasons for voting against Sunset review recommendations (G.VII), actions to broaden the scope of the Sunset law (G.III), the introduction of bills to repeal the law (G.IV), legislators' feelings about the principal benefits of Sunset (G.V), and legislators' principal complaints about Sunset (G.VI).

A. Recommendations to the Legislature

About six of every ten states indicated that the recommendations of Sunset evaluators are accepted by the legislature 76-100 percent of the time. In about three of ten states the acceptance percentage was 50 percent or lower. We estimate an average acceptance rate of 69 .

percent.* We looked at a variety of Sunset review characteristics (e.g., scope of law, cost per agency review, reviews per year) to see if some might be good indicators of the recommendation acceptance rate. We found that the acceptance rate tended to be higher for those agencies using written questionnaires submitted to an agency as a method of data collection. Further, the acceptance rate in states with Sunset laws of comprehensive scope was higher than in states with laws of lesser scope.

B. Legislators' Rejection of Recommendations

The major reason cited, by far, for legislators voting against the recommendations of the Sunset committee was professional association pressure (indicated by five out of every eight states). About one in six states cited "other constituent pressure" as a reason. The only other significant reason noted was simply disagreement with the recommendations (one in four states).

C. Broadening the Scope of the Sunset Law

Legislators have taken action to broaden the scope of the original Sunset law in one-third of the states. In a little over one-half of the states taking such action, the law was broadened to include certain non-regulatory agencies; in 18 percent, the law was broadened to include review of proposals for new agencies. Other ways in which

*This was calculated by using the midpoint of each range as the average acceptance rate for that range: e.g., 87.5% was assumed to be the average acceptance rate for the range 76%-100%.

the law was broadened to include more agencies--though each was mentioned by just one state--include: requiring Sunset review of each agency created by executive order as of a certain date, permitting review bodies to look at the programs of other agencies which bear some relation to the programs of the agencies under review. In no case has the Sunset law been broadened to include all agencies. There were also two states in which the scope of the subject matter of the Sunset review was broadened: requiring that the economic impact of Sunset be assessed, and requiring review of how past recommendations have been implemented by the affected agencies.

D. Repealing Sunset

Bills to repeal the Sunset law have been introduced in seven of the states; one in 1980 and five in 1981 and one unspecified. North Carolina repealed its Sunset law, but left a requirement for review (without threat of termination) of agencies listed on the Sunset schedule.

E. Sunset's Benefits

Two-thirds of the states cited increased agency efficiency and public accountability as a principal benefit, more than half (56 percent) noted increased legislative experience with and interest in oversight work, and one-third indicated voluntary changes in agency procedures. A few respondents answered, "I'm not sure what legislators feel, better ask them."

F. Complaints About Sunset

One-half of the states thought that Sunset reviews are too time consuming; just over one-third indicated that the only public response concerning Sunset is from licensed professionals who lobby for continuing regulation which benefits them; a little under one-third noted that sunset covers only small, low-budget agencies and therefore makes few significant changes; the same proportion also complained that the cost of reviews is too high compared to benefits; finally, almost one-fifth of the states thought that automatic termination is not necessary for effective legislative oversight. A few respondents were also hesitant about speaking for legislators with regard to the latter's principal complaints about Sunset.

IV. The Results of Sunset

The results of the Sunset process in the states are reflected in a number of questionnaire items: the volume of agencies reviewed and the numbers and proportions of those recreated without change, modified, and terminated (D.II); the dollar savings resulting from the Sunset review process (C.III),; and the across-the-board recommendations that have been established because of Sunset (G.VIII).

A. Volume of Agencies Reviewed

Since its first use in the states in 1976, about 1,500 agencies have been reviewed under the Sunset process. There has been a clear upward trend in the number of agencies

reviewed, from 1976, when 15 agencies were evaluated, to 1981, when 500 agencies were reviewed (see Table IV on page 64). More than 200 agencies have been terminated and over 400 modified. Almost one in five agencies (18 percent) been terminated, over one in three agencies (38 percent) have been modified, and somewhat less than half of the agencies (44 percent) have been recreated without change.*

These proportions are somewhat misleading, however, because of the exceedingly large number of agencies reviewed and recreated without change by one state (Arkansas) in 1979 and in 1981. These numbers so dominate the results that a relatively inaccurate picture is given of all the other agencies. If we exclude these numbers, the proportion of agencies terminated becomes 21 percent, close to what it was before, but the proportion of agencies modified rises to 44 percent, and that of agencies recreated without change falls to 35 percent. Thus the percentage of agencies modified and recreated without change essentially switches, depending on whether the numbers for one state in 1979 and in 1981 are

*The base number for these proportions is the number of agencies reviewed for which the dispositions after Sunset review (i.e., termination, modification, no change) are known.

Table IV.

NUMBER OF AGENCIES REVIEWED IN THE STATES FROM 1977 TO 1981

| State | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 |
|----------------|------|------|------|------|------|------|
| Alabama | | 46 | 41 | 28 | 30 | |
| Alaska | | | 13 | 21 | 4 | 3 |
| Arizona | | | | 14 | | 16 |
| Arkansas | | | | 136 | | 89 |
| Colorado | 15 | | 12 | | 13 | |
| Connecticut | | | | 21 | 12 | |
| Delaware | | | | | | 11 |
| Florida | | | 12 | 25 | 25 | |
| Georgia | | | 10 | | 17 | |
| Hawaii | | | | | 8 | 8 |
| Illinois | | | | | | 8 |
| Indiana | | | | 33 | 32 | 55 |
| Kansas | | | | 6 | 6 | 7 |
| Louisiana | | | | | | 12 |
| Maine | | | | | 12 | 3 |
| Maryland | | | | | 13 | 16 |
| Mississippi | | | | | 15 | 1 |
| Montana | | | | 14 | | 22 |
| Nebraska | | 6 | 5 | 7 | 5 | 5 |
| Nevada | | | | | 3 | |
| New Hampshire | | | | | | 115 |
| New Mexico | | | 17 | 10 | 25 | |
| North Carolina | | | | 17 | 4 | 20 |
| Oklahoma | | 21 | 15 | 18 | 15 | 20 |
| Oregon | | | | 10 | | 13 |
| Rhode Island | | | | | | |
| South Carolina | | | | 7 | 6 | 7 |
| South Dakota | | 1 | 6 | | | |
| Tennessee | | | 26 | 15 | 14 | 14 |
| Texas | | | 25 | | 28 | |
| Utah | | | | 10 | | 29 |
| Vermont | | | | 5 | 6 | |
| Washington | | | 4 | 5 | | 22 |
| West Virginia | | | | | 3 | 6 |
| Wyoming | | | | 7 | | |
| Total | 15 | 74 | 186 | 409 | 296 | 502 |

used or not. The latter proportions more accurately reflect what has been going on in the bulk of the states.

If we look at the proportions of each action taken for each year, from 1977-1981--and exclude the very large numbers noted above--there is surprisingly little difference in proportions between years, except for 1980. In the other four years, terminations fall in the range of 16-25 percent, modifications vary from 43-50 percent and agencies unchanged fall in a range of 28.32 percent. For 1980, the proportion of unchanged agencies exceeded that of modified ones by 47 to 38 percent.*

We found that two elements seem to increase the proportion of terminations: having a legislative service bureau prepare performance evaluations, and investing more staff time in each agency review. In contrast, two items positively correlate with the percentage of agency recreations: the introduction of bills to repeal the Sunset law and the legislators' complaint that the cost of reviews is too high compared to benefits.

B. Savings From Sunset

Only 20 percent of the states indicated that they could estimate the total savings from the Sunset review process.

*To some extent, the line between recreating an agency and modifying it is arbitrary. Some states indicated that many agencies they counted in the recreated column had undergone at least minor modifications.

Of these six states (see Table V on page 67), four indicated total savings of over a million dollars. One state noted savings of about one-half million dollars, one indicated savings close to one-quarter million dollars. (A seventh state reported "minimal" savings.) Annual savings for the first six states ranged from \$100,000 to over \$800,000. The four states noting the largest savings all had a Sunset law of comprehensive scope, while those with relatively small savings were either limited to reviewing regulatory agencies only (two cases) or regulatory and other selected agencies (one case). This suggests, tentatively, that the broader the scope of the Sunset law, the likelier that big savings can be found.

C. Sunset Reforms

What across-the-board recommendations have been established because of Sunset? All the choices under this question were indicated by a substantial number of states. The most frequent response, by almost half of the states (45 percent), was requiring public membership on boards and commissions. This was closely followed by improving administrative practices (42 percent), and improving disciplinary procedures (39 percent). The remaining responses were: allowing advertising and competitive bidding (29 percent), adopting fair standards of entry for out-of-state applicants (29 percent), requiring specific provisions

Table V.

REPORTED SAVINGS RESULTING FROM SUNSET

| State | Sunset Enacted | Estimated Total Savings | Source |
|------------|----------------|-------------------------|--------------------|
| Alabama | 1976 | \$ 500,000 | State expenditures |
| Indiana | 1978 | 1,500,000 | State expenditures |
| Maine | 1977 | 2,600,000 | State expenditures |
| Maryland | 1978 | 220,000 | State expenditures |
| Tennessee | 1977 | 4,500,000 | State expenditures |
| Washington | 1977 | 1,400,000 | State expenditures |

concerning conflicts of interest (19 percent), and requiring that public information be made available on board activities (19 percent).

Certain responses to this question tended to cluster together;* i.e., if a state indicated one of the responses in a cluster, it was likely to have indicated the other answer or answers in that group as well. Two major groups were found. One might be labeled "enhancing competition", and consisted of the responses: allowing advertising and competitive bidding, requiring specific provisions concerning conflicts of interest, and adopting fair standards of entry for out-of-state applicants. The other group might be labeled "improving internal procedures", and

*As determined by the statistical technique of factor analysis.

consisted of improving administrative practices and improving disciplinary procedures. The remaining two answers to this question were: requiring public membership on boards and commissions, and requiring that public information be made available on board activities. These might be put in a group labeled "enhancing public participation and oversight", although such a grouping was not found to be statistically significant.

Responses involving "enhancing competition" negatively correlated with attendance at public hearings by licensees. Clearly, the more pressure exerted by licensees, the less we would expect changes that enhanced competition.

Responses related to "improving internal procedures" were positively correlated with: data collection by written questionnaire to licensees and regulated industries; participation in the preparation of performance evaluations by lawyers, economists and policy analysts; a full-time staff devoted largely to Sunset review; and attendance at public hearings by the press. They were negatively correlated with attendance at public hearings by representatives of regulated industries.

Both responses related to "enhancing public participation and oversight" were positively correlated with the amount budgeted for Sunset reviews.

V. Sunset Problems

There were two major responses to the questionnaire item on significant difficulties in conducting Sunset

reviews, both being indicated by about one half of the states: inadequate staff time (52 percent) and lack of measurement information on agency performance and agency value (46 percent). Only 15 percent of the states indicated no significant problems.

APPENDIX B: CASE STUDY I: FLORIDA

Case Study I: Florida

Florida has conducted Sunset reviews since 1978. The Sunset review process has been more difficult than most legislators realized when they passed the Sunset law in Florida. But the rewards have been significant. As George Sheldon, former chairman of the House Committee on Regulatory Reform put it: "Sunset can force the legislature ... to do some self-reflection, can force agencies into doing some evaluation themselves."

According to the state's current statute (the original law was substantially amended in 1981), approximately 113 statutes are scheduled for termination between 1982 and 1991 in a ten-year cycle. Under the original law the termination cycle was six years.

Reviews in 1978, 1979 and 1980 dealt mainly with regulatory legislation, while the 1981 review was limited to scrutiny of advisory commissions.

This case study will review the Florida Sunset law and analyze the Sunset review of trucking regulation in the sunshine state. Information for the study was developed largely from House and Senate documents pertaining to Sunset implementation and interviews with key participants in the Sunset process.

I. Review Procedures

Florida's legislative session typically runs from April to June. A significant amount of work on Sunset is done

during the interim session; for example, legislators hold preliminary planning sessions, collect data for evaluation reports, hold public hearings and prepare recommendations.

By law, substantive committees in the House of Representatives and the Senate begin ~~Suns~~ review fifteen months prior to the October 1 repeal date and make a recommendation on or before February 1 to continue, modify or repeal the program or function. In reality, the timing is much more fluid.

The House has a standing Committee on Regulatory Reform, but certain reviews are conducted by other standing committees -- banking by the Commerce Committee and insurance by the Codes of Insurance Committee. In the Senate, review is done by standing committees.

Review of statutes is by functional area. In the first two years, professional boards were covered; in 1980 regulated industries like trucking, electricity, telephone and banking were scheduled. In 1981-88 advisory commissions were reviewed under a procedure termed Sundown, a concept patterned in large part after the Federal Advisory Committee Act.

In 1978 and 1979, the House and Senate split responsibility for conducting primary research; however, beginning in 1980 each house took on independent review responsibility.

The Cost of Sunset

In March 1981, Jack Overstreet, Staff Director for the Florida Senate Committee on Governmental Operations prepared a memorandum in which he estimated total legislative cost of Sunset from 1978 through 1980 at \$610,140.

The figure represented a salary cost to the Senate of approximately \$354,286. The staff cost to the House was estimated as \$211,914. (The remaining \$13,940 expenditures were for publishing costs for the Senate.)

What Has been Accomplished Through Sunset?

No regulatory statutes have been re-enacted without some changes. Between 1978 and 1980, a total of 62 statutes were reviewed. Of this number, thirteen were abolished, twelve were changed in a minor way, and 37 were changed in more substantive ways.

In the first cycle, the statutes terminated included those regulating shorthand reporters, yacht and shipbrokers, sanitarians and watchmakers. In the second cycle, boards governing forestry, electronic repair and psychologists were terminated.

Sunset resulted in the de-regulation of intrastate trucking and bus transportation in the third cycle. (The process by which trucking de-regulation was accomplished will be examined in subsequent pages.)

Impressive improvements to the regulatory process were put into effect through Sunset. The Legislature, in 1979,

was able to accomplish a major reorganization of the Department of Professional and Occupational Regulation (DPOR).

The bill mandating reorganization of DPOR strengthened the Department's authority to oversee rulemaking, complaint and disciplinary procedures, to name just a few of the reforms.

Similarly, changes to existing legislation have proven to be tangible benefits of Sunset. Some specific across-the-board improvements are as follows:

- °The number of public members on most boards has been increased from one to two.
- °Examination and licensing functions for professions have been standardized and centralized.
- °Prohibitions against advertising were stricken; prices of products such as eyeglasses have decreased substantially.
- °Licensure by endorsement or reciprocity for professionals licensed in states with standards equal to or higher than those in Florida are now provided for.

Through Sunset, the legislature has mandated that the Public Service Commission consider energy conservation and the efficient use of resources as part of the performance standard when determining rate structures for electric utilities and individual requests for rate increases. Previously, the Commission had authority to set rates only on the basis of quality and quantity of service rendered.

Press Involvement with Sunset

The Florida press has focused on Sunset proceedings, but not without some careful up-front lobbying by key

legislators. Representative George Sheldon said that prior to developing the Sunset process, he went around to editorial boards of newspapers to explain the Sunset concept.

Similarly, in preparing for upcoming review of statutes relating to the Insurance Code, legislative Sunset review staff talked with editorial boards around the state about the significance of examining insurance procedures. In November 1981 alone, at least six articles or editorials appeared in newspapers statewide regarding Sunset review of Florida's insurance code.

Early in the Sunset process, the Miami Herald launched its own campaign by publishing a series of articles ~~documenting the failure of the Medical Practices Board to discipline errant professionals?~~ The press expose sparked the legislature's interest in correcting deficiencies in the state's regulation of medical doctors.

Problems with Sunset

Managing the Sunset workload, making criteria for agency review more focused and keeping special influence pressure from licensed professionals in check are problems with the Sunset process in Florida. A discussion of these problems follows.

(1) Managing the Sunset Workload

~~Legislators and Sunset staff learned very quickly that meaningful Sunset review takes considerable time, often to the disadvantage of other legislative tasks.~~ The 1979 Senate Committee on Governmental Operations Report noted:

"the amount of time required to conduct a thorough review of a regulatory agency sharply reduces the time which is available for the committee staff to devote to other areas of responsibility..."

Moreover, in 1979, because Sunset did not reach the House and Senate floors until late in the session, neither house had the opportunity to give detailed consideration to legislative proposals from the other chamber.

Legislative leaders appeared to address workload problems by planning for additional time and conducting Sunset work in 1980. But proposed special sessions for Sunset responsibilities were never called by Governor Robert Graham, and legislators had to readjust their schedules. For example, the House Committee on Regulatory Reform did not report out its trucking de-regulation bill until mid-session.

The successful effort to amend the Sunset law to extend the Sunset ~~cycle from six to ten years~~ helped to address the ~~problem of creating a more manageable workload.~~ The 1981 amendment also set certain broad guidelines for how a certain regulatory scheme should be reviewed. This will help substantive committees determine the scope and focus of the review they should conduct on scheduled agencies.

(2) Evaluation Criteria

Florida's Sunset law--the second state Sunset law to be enacted--has served as a model for subsequent Sunset legislation. One reason is the evaluation criteria set

forth in the law. In The Manual of Instruction for the Implementation of the Regulatory Reform Act of 1976, prepared by the Senate Governmental Operations Committee, the goals of review are stated as follows:

The review of each regulatory law should focus on two basic questions:

- a. Is the regulation needed?
- b. Is the regulation effective?

These broad questions are developed in six specific evaluation criteria listed in the statute. (See page 87).

(3) Special Interest Influence

The legislature has faced considerable pressure from regulated industries subject to Sunset review--the most extreme example being found during trucking de-regulation (discussed in detail on page 79). Lobbyists for the Florida Trucking Association, Associated Industries of Florida and a host of large and small trucking companies launched a vigorous battle for continued regulation.

After the 1978 cycle, legislative leaders hired two ombudspersons to serve as advocates for the public interest in legislative committee meetings--a countermeasure to the problem that ~~witnesses were almost uniformly members of regulated professions?~~ When the ombudspersons resigned after the 1979 cycle, however, replacements were not hired.

In 1980, trucking de-regulation was accomplished despite strong opposition from the industry. Most of the individuals we interviewed felt that it is the legislative