

# Sunset Laws: Why They Aren't Working

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by Barry Mitzman

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Nearly everyone agrees that sunset laws are the best way yet devised for curbing the growth of bureaucracy. The idea is simple and appealing. It's that government agencies, programs, and regulations should be reviewed periodically to determine whether they still (or ever did) serve some useful purpose. A sunset law simply sets deadlines for agencies or programs to go out of business—unless legislators decide they're needed and vote to reestablish them.

In just the past three years, the sunset idea has come from nowhere to win almost universal assent. It was part of both the Democratic and Republican party platforms in 1976. It was endorsed by Jimmy Carter in his campaign and his first "fireside chat." It has been the subject of approving editorials in hundreds of newspapers, including *The Washington Post* and *The Washington Star*. It has found active support among lobbyists for organizations as diverse as the League of Women Voters and the U.S. Chamber of Commerce.

But most of all, sunset is the brainchild of Common Cause, which

claims to have developed the concept. The so-called "citizen's lobby" was largely responsible for passage of the first sunset law, in Colorado in 1976. Since then Common Cause has lobbied successfully for sunset laws in 30 states. The idea has taken hold in state legislatures around the country more quickly than any other legislative innovation in recent memory.

It has taken root even in the halls of Congress. Last year the Senate passed a sunset bill, introduced by Senator Edmund Muskie, which would abolish virtually every federal program every ten years unless Congress specifically provided reauthorization. The bill died in the House, but it's back this session, along with at least five other sunset proposals, all rather similar, and the chance for passage of some kind of sunset law seems bright. Muskie has better than two thirds of the Senate behind his bill, and a nearly identical measure has more than 160 co-sponsors in the House. Meanwhile, the mechanism turns up elsewhere: Jimmy Carter's regulatory reform plan includes a sunset clause requiring agencies to regularly review their regulations.

The reason a federal sunset law is almost certain to pass is that it uniquely appeals to the forces of both

“good government” and “less government.” Liberals regard sunset as a tool for reforming inefficient programs; conservatives, as a tool for abolishing them. Muskie says sunset is “imaginative” and “revolutionary” in that it will “lend a new element of discipline and cohesiveness to the way the federal government handles the American taxpayer’s money.” Senator William V. Roth, a conservative Republican from Delaware, believes sunset is “the most important and significant reform of this decade” because it will “assure that effective programs continue and that ineffective programs be terminated.”

But before Congress rushes to enact its own sunset law, it ought to take a look at what’s happened in some of the states that already have sunset provisions. These states offer a startlingly different picture from the one Muskie and Roth have been painting. In the half-dozen states in which agencies were scheduled to die by the end of last year, the sunset mechanism has not been a potent agent for change at all. Quite the opposite, it turns out: in the places they have been tried, sunset laws have been generally ineffective and a waste of time and money, doing almost nothing to abolish agencies, and not much more to reform them.

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## The Sunset Pioneer

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Colorado, the sunset pioneer, is a good example. Its 1976 law scheduled 39 regulatory agencies and boards to go out of business—13 in 1977, the rest this year and in 1981. The law requires the legislature to hold public hearings on the agencies and to conduct “performance audits.”

The first round of agency reviews can best be described as chaotic. Audits were completed late, and legislators largely ignored them. Hearings were sparsely attended by the public, but the agencies’ staffs and supporters were out in force.

As in most states, Colorado’s regulatory boards are dominated by the industries the boards are supposed to

regulate. So naturally the regulated industries were strongly opposed to abolishing their boards, and turned out in large numbers to campaign against deregulation. Intense lobbying by local undertakers, for example, resulted in passage of a last-minute bill saving their licensing board from extinction.

Ultimately, the legislature did abolish three small boards: the Athletic Commission, the Board of Professional Sanitarians, and the Board of Shorthand Reporters. Shorthand reporters were not deregulated, however; licensing authority merely was transferred to another agency. Two boards, licensing barbers and cosmetologists, were consolidated. But another two—one regulating collection agencies, the other overseeing the safety of ski lifts—were reestablished and given expanded authority.

In reviewing the few sizable and important boards up for sunset, Colorado’s part-time legislature found itself in over its head. It postponed review of the insurance and public utility commissions for a year—leaving them to an uncertain, provisional existence under continuing resolutions. Then, not only were the boards reestablished, with only minor changes, but *another* agency was created to oversee operations of the insurance commission.

Clearly, Colorado’s sunset law has done little to curtail government regulation. And it certainly hasn’t reduced state spending. The combined annual budget of the three agencies abolished was \$6,810. Sunset audits and hearings cost the state an estimated \$212,300.

Colorado’s poor showing might be blamed on start-up problems. After all, no other state had ever tried sunset before. But this explanation will not serve for Alabama, the second state to put sunset into effect. There, things went even worse.

Like the laws in six other states, Alabama’s applies to every state agency. It specifies that on the tenth day of each regular session, both houses of the legislature must begin considering and voting on agencies

scheduled to die. Neither house may take up other business until both have completed action on sunset. Last year nearly 300 agencies were up for review.

Because there were so many, each agency was allotted just 15 minutes of committee hearings. When the time came to vote, the House of Representatives ran through the nearly 300 separate sunset resolutions in quick succession, without serious consideration. Many representatives left the chamber, giving their young pages instructions on how to vote for them on each resolution. In the Senate, however, the sunset resolutions were held hostage as part of a filibuster over an unrelated issue. The Senate spent days stalled by largely irrelevant debate and endless roll-call votes on each resolution. Meanwhile, under the sunset law, the House couldn't take up any other business until the Senate had finished voting on all the sunset resolutions. The result was all too predictable.

"The House of Representatives did little more than play checkers and listen to a sermon as it waited for the

Senate to catch up on consideration of sunset resolutions," the *Montgomery Advertiser* reported. "For those not interested in checkers, Rep. Joe Carothers of Dotham offered to give domino lessons in the lounge, but his new box of dominoes was missing the blank-two."

In the end, even Common Cause admits, "very few detailed evaluations were prepared and the information that was assembled was not used to change statutes or adjust budgets." A few agencies were axed, but all were "paper" boards that had ceased functioning long ago. Any active agency had "enough supporters lobbying to prevent it from being terminated," explained Rep. James R. Solomon, Jr. The sunset farce disillusioned some legislators. One rounded up 24 co-sponsors for a bill to repeal the law. "I don't relish the thought of going back to my constituents and explaining to them why we wasted the session," said Senator Bingham Edwards. Sunset, he said, is a "monster."

Common Cause has tried to characterize Alabama's experience as unique-

## Full Disclosure

Despite the dismal track record of sunset legislation thus far, Common Cause continues to promote it in the state legislatures and in Congress. In these forums, Common Cause spokesmen say they're unsurprised that state laws have brought only miniscule cutbacks of agencies or programs, because terminating agencies isn't the point.

"I know that for some, sunset can mean a means of paring government down, of perhaps trying to reduce it in large amounts," Common Cause President David Cohen told the Senate Rules Committee last year. "But for us, it is a question of how to get evaluation into the system." Cohen said sunset deadlines are merely "a procedural discipline to get the job done." Common Cause's sunset lobbyist, Bruce Adams, told a meeting of the National Conference of State Legislatures,

"Sunset is more of a 'yes, but' than a 'yes or no' process. Through sunset, the legislature says to most agencies: 'Yes, you will continue, but you are going to shape up.'"

But Common Cause is not above exploiting the anti-Big Government feeling that gives sunset its popularity. In a direct-mail fund-raising appeal sent out this year, Common Cause boasts of its sunset efforts, and states that abolishing agencies is indeed the point. "Yes," reads the red, white, and blue brochure, "only when the sun sets on inflation-causing regulations, tax-money wasting agencies, and strangling bureaucratic duplication, will you and all taxpayers find relief from the intense heat of inflation and taxation. Common Cause is fighting hard to hasten the hour of that sunset."

ly awful—an example of backward Southern foolishness, perhaps. But in other states where sunset laws have had time to show results, the results—while not as bad as in Alabama or Colorado—show that the laws have not had much impact, either.

In South Dakota, nine agencies were scheduled for sunset last year. The legislature abolished just one, the state athletic commission.

In Nebraska, the sunset law scheduled six regulatory agencies for termination in 1978. The legislature reestablished them all with few changes.

In Oklahoma last year, 12 of the 21 agencies up for review were eliminated, but the 12 were “very minor, very insignificant agencies,” according to James H. Johnson, director of the legislative staff.

In Louisiana, four of the state’s 20 departments were scheduled to die this year, but the legislature reestablished all of them.

The sunset provisions in Georgia were “torpedoed” by special interests, according to the *Atlanta Journal*. The legislature reestablished all ten licensing boards scheduled for termination in 1978, despite critical reports by the state auditor’s office, which had spent about \$90,000 reviewing the boards. “I think, for the most part, we’ve wasted our time,” one auditor told reporters.

Finally, in Oregon, sunset hasn’t yet gone through a full cycle of agency reviews—but so far the costs are outweighing the supposed benefits. To evaluate the nine occupational licensing boards up for termination in 1980, for example, the legislature has hired five new full-time researchers and spent \$200,000. Sunset hearings have been attended almost solely by board members and their licensees, who have used the occasion to introduce bills that would not only reestablish the boards, but also expand their power to restrict business competition.

In sum, state sunset laws have not brought about the demise of one agency or program of any significant size. Only a few tiny, mostly moribund boards—some of which existed only

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on paper—have been abolished. Some agencies have been reestablished with expanded regulatory powers and enlarged budgets to match. Meanwhile, a new and expensive bureaucracy of accountants and management “experts” has sprung up to audit and evaluate the agencies. Their evaluations generally have been ignored and often have cost the taxpayers more than the agencies themselves.

The evidence suggests that legislators vote for sunset laws to show they’re doing *something* to curb Big Government. But when the time comes for the sun to set, they reestablish agencies without much thought, or find a few tiny boards whose authority can be reassigned or abolished without arousing much opposition. Perhaps it is because legislators are unprepared and ill equipped for the tiresome, time-consuming work of evaluating large and complex programs, or perhaps it is because they are unwilling. Whatever the reason, one thing is clear: sunset hasn’t worked. ■

# The Hottest Issue in Washington

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by Joseph Nocera

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"This is the most sensitive subject in government right now," said Edwin Sullivan with only a trace of a smile, and he leaned back in his soft yellow chair. We were sitting by a sofa and coffee table at the far end of his large, comfortable office, the kind of office the government bestows only upon its most powerful people. His desk, at the other end of the room, was cluttered with papers, indicating he was also a very busy man, so busy that it was close to 6:00 p.m., well after most of the other people in the building had gone home, when he was finally able to squeeze me in for an interview. Formally, Edwin Sullivan is Director of the Office of Management Services at the Department of Health, Education and Welfare. But to the people at HEW, he is known mostly as the man in charge of parking—which was the subject of our interview.

There are 10,000 federal employees

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*Joseph Nocera is an editor of The Washington Monthly. He was assisted in the research for this article by Howie Kurtz, a reporter for The Washington Star.*

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