

NATIONAL COUNCIL OF LA RAZA
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ON
SUNSET LEGISLATION

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SUNSET LEGISLATION

Introduction

"Sunset" is a concept which was originally instituted in several states as a means of increasing legislative control over state programs. The basic premise behind such legislation is the need for a systematic method for evaluating established government programs and determining the need for continuing them in light of changing priorities. These reviews are usually scheduled on a rotating basis, depending upon the number of programs, agencies, or boards covered by the Sunset legislation in that state. Oftentimes, Sunset laws include a provision for automatic termination of programs if the legislature fails to approve their continuation by a specified date.

The U.S. Senate and House of Representatives are expected to consider bills during the next session of Congress which would institute Sunset legislation at the federal level. Several versions of such legislation have been considered by Congress during the previous two sessions, but in spite of the diversified support, there was disagreement concerning the appropriate scope of the Sunset activities. The 96th Congress failed to pass any version of this legislation prior to its adjournment. However, Sunset legislation will almost certainly be introduced and seriously considered by the 97th Congress.

History of Sunset in the States

The Sunset concept was popularized in 1975 by the Colorado Chapter of Common Cause. Public meetings were held throughout the state of Colorado to publicize the tenets of Sunset, and these succeeded in obtaining strong support for the passage of such innovative legislation which would control the "rampant" spending of tax dollars. The concept

of Sunset quickly attracted interest in other areas of the country, and even before the Colorado Legislature passed its legislation in 1976, similar bills were pending in California, Illinois, Florida and Louisiana. Currently, over 30 states have Sunset laws, and several other states have included Sunset provisions in newly created government programs.

Colorado's Sunset legislation is generally considered to be the model state Sunset law. Under this legislation, 39 of the state's regulatory boards and commissions are subject to legislative review every six years. Following a performance audit conducted by the State Auditor's Office, the legislature holds hearings to determine public sentiment. Incorporating the findings of both the audits and the hearings, the legislators then decide whether to reauthorize, modify, or eliminate the board or commission under consideration. There is no automatic termination deadline should an agency fail to be reauthorized prior to its "Sunset date"; in fact, the Legislators gave themselves an extension in 1977 when they foresaw their inability to evaluate five of the agencies under consideration. This review process resulted in six agencies being terminated and 19 modified from 1977-1979 in the state of Colorado.

Other states have been less successful in implementing their Sunset reviews. The principal deterrent to successful implementation is the factor of time. The burden of conducting several comprehensive reviews each year in addition to the already pressing schedules of most legislators and their staff members has proven a major obstacle in effectively implementing Sunset laws. Many legislators have found that the time required to conduct a thorough evaluation of an agency or program greatly reduces the time they are able to devote to other legislative

business. Some states have found it necessary to hire additional staff to handle the increasing workload, while others have formed special committees to deal solely with Sunset reviews. Without such additional manpower, many states would be unable to thoroughly evaluate the agencies which were designated in the Sunset legislation. This would in fact make the process meaningless, as agencies would fail to be properly reviewed, thereby making it impossible for legislators to make logical and accurate decisions regarding their fate. It is generally felt that the factors of time and energy will be of even greater concern should more extensive and complex programs be subject to Sunset laws in the future.

States have also found it difficult to determine the overall effectiveness of their Sunset laws. Many foresaw that enacting Sunset reviews would decrease wasteful government spending by modifying or eliminating ineffective agencies. However, such was not the case in many states. These states found that it cost them more to conduct the Sunset reviews than it cost to continue to operate the terminated agencies. The Colorado State Auditor had the following observations regarding the Sunset process:

If the criterion to determine if Sunset is cost beneficial is the elimination of regulatory boards with their associated expenditures, compared to the cost of reviews, then it is definitely not cost beneficial to continue the reviews.

This statement, and other similar observations, suggest the difficulty of judging the worth of comprehensive reviews. However, there are several positive nonmonetary effects cited by state lawmakers during discussion of Sunset bills. By institutionalizing the review process, legislatures now feel compelled to critically evaluate agencies'

performance, thereby improving government services, as well as government spending practices. Agencies are motivated to improve their effectiveness and efficiency in the knowledge that their work will be thoroughly analyzed on a regular basis. This thereby creates an internal improvement process within the agencies which encourages them to institute corrective methods independent of the legislative mandates incurred during the review process.

Most state legislators agree that Sunset laws can be successful when applied to relatively "minor" agencies, as has been the case in the states to date. However, when asked to conceptualize the transfer of such Sunset legislation to broader areas of government, some lawmakers think that it would be an unsuccessful move. Many feel that it is unrealistic to think that a termination deadline can force comprehensive reviews of major agencies such as those responsible for education, social services, or corrections. They think that it is impractical to consider terminating these agencies. They also doubt that such major regulatory agencies as banking, insurance, or public utilities could be terminated. However, they do not deny the effectiveness, and need for, proper evaluation and improvement in the operation of these agencies. It is simply doubted that Sunset reviews are the proper vehicle for conducting such evaluations.

Sunset at the Federal Level

As stated earlier, several attempts have been made during previous Congressional sessions to enact some form of Sunset legislation at the Federal level. The introduction of this concept in the U.S. House and Senate has sparked widespread discussion regarding the applicability of Sunset reviews to the complex Federal programs authorized by the Congress.

While most Congresspersons feel that legislative oversight should be improved, there is disagreement concerning the extent of this added responsibility. Some feel that it is at the heart of Sunset legislation to include automatic termination deadlines which would force Congresspersons to take some action to assure the improvement and continuation of existing programs. Others feel that automatic termination deadlines are detrimental to the goal of thoroughly evaluating programs in order to assess their strengths and weaknesses and develop changes which would improve their administration. These Congresspersons think that a system in which programs faced the threat of termination every few years might result in the arbitrary "death" of valuable programs if Congress failed to reauthorize them prior to their "Sunset dates". Controversy has also centered on the scope of programs to be reviewed under the Federal Sunset Law. Many lawmakers feel that specific dates should be designated in the legislation for the review of predetermined programs. Others feel that each Congress, and each committee in particular, should be responsible for identifying the programs it wishes to review during the upcoming session of Congress. This would allow the legislators the flexibility to review key programs dependent upon changing national priorities and independent of a preconceived schedule of review. Such a system would also limit the burden on Congress to review innumerable programs during a given session, with little time to devote to thoroughly evaluating any of them.

The varying perspectives described above have resulted in the development of two distinctly different Federal Sunset bills. The first calls for the review of virtually every program authorized by Congress, with between 150 and 200 programs subject to review every two years (See

attachment 1 for a partial listing of these programs). Under this version, programs would be reviewed by the legislative committee with jurisdiction in the area, and recommendations would be made to the full House and Senate. It would then be necessary for the House and Senate to vote to reauthorize the programs and for the President to sign the bills. Any program which failed to be reauthorized by its "Sunset date" would automatically be terminated.

This version, which succeeded in passing the Senate during the 95th Congress, was reintroduced during last year's 96th session by Senator Edmund Muskie (D-Maine). A similar bill was also introduced in the House that session by Representatives James Blanchard (D-Michigan), Norman Mineta (D-California), and Richard Gephardt (D-Missouri). While neither of these bills passed during the 96th session, strong support was gathered and a major move for passage is expected during the up-coming year. This was made apparent in the House when Representative Blanchard reintroduced his version of the law during the initial days of the 97th Congress, calling for the assignment of the same bill number that it had carried during the previous session, H.R. 2.

Senator David Durenberger (R. Minnesota) is expected to introduce a bill in the Senate similar to that introduced previously by Senator Muskie. This version is almost certain to pass quickly out of the Governmental Affairs Committee, which will review it first, as this Committee approved the bill during the previous session of the Senate.

A second version of Sunset would permit each committee to select those programs which it felt needed to be reviewed during a given session. The full Congress would then be able to add to, or subtract from, the committees' lists. This version calls for the review of 30% of the

programs within a committee's jurisdiction every six years. These reviews would have to be completed by the second session of Congress, and while the findings would have to be reported to the full Congress, there would be no requirement that the committee report any legislation continuing, modifying, or terminating the programs under review. Therefore, programs under this version would not automatically be terminated on a specified date.

This version of Sunset actually developed through Committee hearings when the original version was under consideration. While the original version was supported by both the House's Governmental Operations Committee and the Senate's Governmental Affairs Committee, both the House and the Senate's Rules Committees modified the original version and produced bills similar to this second version of Sunset. The Senate Rules Committee modified the original bill through amendments, which actually resulted in the two versions having the same bill number, distinguishable only by the Committee which had reported the bill. However, in the House a separate bill was finally introduced by Congressman Gillis Long (D-Louisiana), Chairman of the House Rules Committee. This bill, which reflected the concepts of the "second version", failed to pass during the 96th Congress, but was reintroduced by Representative Long in January, 1981, and numbered H.R. 58.

Opposition to Original Federal Sunset Law

While a diversified base of support has developed for the passage of a Federal Sunset bill, there are an equally large number of opponents to such legislation. Civil rights groups, unions, education groups, senior citizen organizations, and other nonprofit social change organizations have united to stop passage of the original version of the bill.

Under this version, with its automatic termination deadlines, social advocates fear that vital but controversial social and civil rights programs, which have taken years to develop, will be indiscriminately cut as Congress fails to reauthorize them prior to their Sunset date. Congressional leaders who opposed a particular program would be in a position to expedite its termination simply by doing nothing. The uncomplicated process of termination found in the original Sunset bill could become an easy method of eliminating many programs which benefit the poor, minorities, the aged, and other needy populations.

A related concern is the possible termination of "costly" social programs as Congress seeks to lower budgetary levels. With the current political sentiment for lowering government spending and balancing the budget, Sunset reauthorizations could prove an easy means for Congress to cut spending levels by simply terminating or modifying programs which are viewed as "wasteful" or "uncontrollable". Many groups believe that the victims of Sunset will inevitably be major social programs which currently lack strong political support due to the recent changes in Federal leadership.

Programs could also be threatened with illogical termination due simply to the lack of time available to reauthorize the immense number of programs concurrently scheduled for review. Implementing the proposed Sunset legislation could result in an overwhelming increase in the Congressional workload. In light of the current overload of work lamented by many Congresspersons, it appears inconceivable that they could be able to effectively review all of the programs set forth in the original Sunset bill, while still maintaining their current workload. Senator Howard Baker (R-Tenn.) estimated, in his testimony before the

Rules Committee, that floor activity on authorizations would increase by at least 20 percent if Sunset were implemented. This means that Congresspersons would most likely be unable to devote the time necessary to accurately review all of the affected programs and make critical decisions regarding their continuation. It is suspected that the current Congressional staff would also be inadequate for meeting the increased workload. This could mean that data collected for the Sunset reviews and reports developed for the use of Congresspersons in making their decisions would be inaccurate, incomplete or biased. This could in turn result in programs being terminated on the basis of such imprecise data, without conscientiously accurate evaluations.

Opponents to Sunset also worry that more "pressing" issues will take precedence over the Sunset reviews, thereby sentencing many ongoing programs to needless deaths, simply because Congress has insufficient time to complete their reauthorization. These concerns seem not unfounded, in light of the continuing budget resolutions hurriedly passed during the final days of the 96th Congress to maintain Federal agencies which would otherwise have been without funds. This type of last-minute legislation reflects the system under which many Sunset reviews might take place. Social advocates feel that such a negative, pressurized environment is not proper for conducting meaningful evaluations which will have lasting impact.

Conclusion

The concept of increasing governmental oversight of programs in order to prevent wasteful spending of tax money is sound. There is little disagreement regarding the need for such a process. However, many organizations doubt that Sunset, particularly in its "original"

version with automatic termination of programs on a specified date, will be capable of providing this review capacity. Of particular concern is the feasibility of implementing such Sunset legislation at the Federal level. It appears that numerous logistical barriers will make it difficult to effectively institute Sunset reviews which will accomplish their intended purpose.

With the imminent reintroduction of several versions of Federal Sunset bills, it appears that there will once again be major debate surrounding the passage of such legislation. Sunset, as outlined in the original version, could have the following positive effects:

1. Compels the Congress to evaluate and exercise its oversight responsibilities;
2. Avoids continuation of an agency or program simply because it currently exists;
3. Institutionalizes the evaluation process; and
4. Creates an incentive for programs to implement corrective administrative changes on their own.

However, the following negative aspects of the original version of Sunset have been noted as well:

1. Relatively simple termination of successful but controversial social programs as opponents fail to reauthorize them by their Sunset date;
2. Over-emphasis on maintaining existing programs rather than developing new ones;
3. Possible termination of social programs as a means of decreasing government spending;
4. Lack of time for Congresspersons to thoroughly evaluate all of the designated programs;
5. Loss of time to devote to other Congressional matters;
6. Need for additional staff persons to carry out Sunset reviews and develop recommendations; and
7. Possible last minute decisions on the fate of major programs.

The National Council of La Raza will closely monitor the introduction and debate surrounding all proposed Sunset laws. The Council will work with other organizations concerned with minority and low-income Americans to develop sound analyses of the implications inherent within the proposed bills. In all likelihood, the National Council of La Raza will oppose any Sunset bill which would allow for:

1. Automatic termination deadlines;
2. Scheduling of an excessive number of reviews during a single session of Congress;
3. No distinction between the review of minor programs and complex programs;
4. Indiscriminate termination of programs based on changes in budget priorities, rather than on the findings of thorough evaluations; or
5. More money being spent to conduct the reviews than is saved by the termination or modification of ineffective programs.

These issues concern many civil rights groups and other social advocacy organizations. It is expected that in the future the concept of Sunset legislation will gain more widespread support as it is linked with other proposals to cut government spending and decrease Federal involvement in social programs. With this in mind, organizations such as the National Council of La Raza will need to create a strong base of opposition to Sunset legislation containing the negative elements described above, in order to counter the growing support for such a law.

The National Council of La Raza could support an alternative version of the Sunset bill, which does not have automatic termination deadlines and allows committees to decide which programs to review. As Sunset legislation is introduced in Congress and bills are made available to

the public, the Council will review the provisions of each and determine which could be supported by the Council, in view of the preceding requirements. It is NCLR's hope that a review process can be developed which will improve the quality of Federal programs, while continuing to guarantee the continuation of necessary services to minority and low-income individuals.