

Report for Congress

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Federal Sunset Proposals: Developments in the 94th to 107th Congresses

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Summary

Under sunset, programs and agencies automatically terminate on a periodic basis unless explicitly renewed by law. Sunset measures typically contain two basic components: an action-forcing mechanism, carrying the ultimate threat of elimination, and a framework or guidelines for the systematic review and evaluation of past performance. In 1976, Colorado enacted the first sunset law, and by 1982, 36 states had some version of sunset. However, state experiences with the sunset review process have proved mixed, with some states having formally repealed sunset laws and others having substantially modified the original framework.

Over 70 sunset bills were introduced in the 94th Congress proposing various sorts of sunset frameworks. Hearings were held both in the House and in the Senate, and S. 2925 was reported. Over 50 sunset measures were introduced in the 95th Congress, including S. 2, which passed the Senate 87-1 and would have required all federal programs except those specifically exempted to be reviewed by Congress at least once every 10 years according to an explicit schedule that grouped functionally related activities together. In the House, the “sunrise” approach, which emphasized clear statements of program goals in new authorizing legislation and detailed reporting requirements containing performance measures to facilitate congressional review of programs, developed as a complement to sunset. In the 96th Congress, S. 2, as passed by the Senate in 1978, was reintroduced and again reported. Among 70 other sunset bills introduced was H.R. 5858, which incorporated elements both from S. 2 and from sunrise proposals and thus was said to represent a “combined approach” to improved oversight.

Sunset measures continued to be introduced in each Congress, but interest declined in the 1980s when growing federal budget deficits led to preoccupation in Congress with appropriations decisions. However, recently sunset has received renewed attention. In the 1990s, the enactment of various reform laws, such as the Government Performance and Results Act of 1993 (107 Stat. 285, which reflected aspects of the “sunrise” perspective), evidenced resurgent concern with oversight of federal programs. In 1998, for the first time since 1982, there was a hearing on a comprehensive sunset review bill, H.R. 2939, and on April 23, 2002, a House subcommittee held a hearing on a similar bill, H.R. 2373. Modeled on the Texas sunset law, it would establish a 12-member bipartisan commission to conduct systematic reviews of all federal agencies and programs on a 12-year cycle; once the sunset commission completed review and sent its report to Congress, an agency would be eliminated within a year or two, unless a reauthorization measure were enacted. At the 2002 hearing, the witness from the Office of Management and Budget (OMB) testified in support of a sunset review process for the federal government. While acknowledging possible constitutional issues to be resolved, subsequently detailed in a letter from the Justice Department, the OMB representative noted that the sunset commission as outlined in the legislation was similar to the proposal for a Sunset Review Board endorsed by President Bush during the 2000 campaign.

This report will be updated as events warrant.

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The following discussion begins with a brief consideration of the sunset concept and its initiation at the state level.¹ Attention then turns to the evolution of federal sunset legislation, with special attention to developments during 1975-1980, which are reviewed in the context of each Congress (94th, 95th, and 96th). The final section provides a summary of activity from 1981 to the present (97th into 107th Congresses). A bibliography on sunset legislation, with citations for related hearings, reports, and other congressional documents, also is included.²

Background

According to one definition, sunset is “the popular name for a statute which provides for the periodic termination of government agencies unless they are able to justify their existence.”³ The idea of sunset thus stresses legislative oversight of government agencies, so as to further economy and efficiency and control the growth of government, or “bureaucratic sprawl.”⁴ Sunset measures typically contain two basic components: an action-forcing mechanism, carrying the ultimate threat of elimination, and a framework or guidelines for the systematic review and evaluation of past performance. With sunset, programs and agencies automatically terminate on a periodic basis unless explicitly renewed by law. Termination of budget authority for a program or agency after a specified time is perhaps the most commonly employed mechanism. Other possible action-forcing tools include periodic expiration of the organic statute establishing an agency, or of the rules and regulations issued by an agency. Ideally, the timetable for review places functionally related programs on the same schedule.

¹ For a short fact sheet on the subject of sunset review, see CRS Report RS21210, *Sunset Review: A Brief Introduction*, by Virginia A. McMurtry.

² In conjunction with deliberations on H.R. 2939 (105th Congress), the Federal Sunset Act of 1998, the House Subcommittee on Government Management, Information, and Technology requested that CRS prepare a statement covering the background and history of federal sunset legislation. With the permission of the subcommittee, contents from that previous memorandum have been revised and incorporated into this report.

³ Anthony R. Licata, “Zero Base Sunset Review,” *Harvard Journal on Legislation*, vol. 14 (April 1977), pp. 505-506.

⁴ See: Canada, Library of Parliament, Legislative Research Service, *Sunset: Theory and Practice*, by David Pond, Current Issue Paper no. 114 (Ottawa: March 1991), p. 1.

Perhaps the first example in federal legislation of the nascent sunset concept occurred in the Federal Advisory Committee Act of 1972 (FACA).⁵ The sunset provision in FACA called for the termination of each advisory committee after a two-year period, unless some other duration was provided in statute, or unless it was formally renewed (for another two years).

The sunset idea was refined and popularized by the Colorado chapter of the public interest group Common Cause, as a consequence of the frustrations experienced in efforts to reform Colorado's regulatory structure. Perhaps borrowing from the western imagery of the cowboy riding off into the sunset, agencies subject to sunset provisions were to "fade into the sunset," unless, following oversight review, the legislature acted to extend their existence. Or sunset might be viewed as the inescapable "end of the day" for terminated agencies.

However, the basic rationale underlying the sunset concept was not new. In a 1976 article by Bruce Adams (then with Common Cause), the sunset mechanism was commended as having the potential "to provide the incentive and the discipline necessary to motivate public officials to increase program evaluation," but its roots were traced back at least to the Administration of President Franklin D. Roosevelt:

Former Justice William O. Douglas, then chairman of the Securities and Exchange Commission, proposed to President Roosevelt that every agency should be abolished within ten years of creation. The prophetic Douglas suggested that otherwise the regulatory agencies would be captured by the very industries they were established to regulate. According to Douglas: "Roosevelt would always roar with delight at that and of course never did anything about it."⁶

In 1976, Colorado became the first state to enact a sunset law. By 1982, sunset measures had been considered in all 50 state legislatures, and 36 states had enacted some version of the sunset review process, "representing a remarkably rapid diffusion of a state innovation."⁷ However, state experiences proved to be mixed. By 1990, 12 of the 36 states with sunset laws had "ceased the use of this legislative oversight mechanism because of high monetary and temporal costs of sunset review, intensive lobbying by vested interests, unfulfilled expectations of agency termination, low levels of citizen participation, and other perceived problems." Still, the study stated, "Results indicate that sunset has resulted in some agency terminations and, more importantly, numerous substantive, procedural, and crosscutting modifications aimed at increasing accountability, efficiency, and effectiveness in state agencies."⁸

According to a survey conducted in 1992 by the National Conference of State Legislatures (NCSL), states reporting satisfaction and success with sunset have

⁵ P.L. 92-463; 86 Stat. 770.

⁶ Cited by Bruce Adams in "Sunset: A Proposal for Accountable Government," *Administrative Law Review*, vol. 28 (Summer 1976), p. 520.

⁷ Richard C. Kearney, "Sunset: A Survey and Analysis of the State Experience," *Public Administration Review*, vol. 50 (Jan./Feb.1990), p. 49.

⁸ *Ibid.*

tended to adapt the process so as to “[s]hift the emphasis away from occupational licensing and regulatory boards to major state agencies, downplay the goal of terminating agencies, use sunset to conduct program evaluation, and commit sufficient staff resources to conduct the thorough reviews of agency operations.”⁹ “Unintended consequences” of sunset have proved significant, as legislatures expand and sharpen oversight capabilities when the lawmakers come to realize that eliminating agencies need not be the only measure of sunset’s effectiveness. In addition, for some states, sunset provides the primary mechanism for conducting program evaluation. However, the ultimate threat of termination, even if infrequently employed, continues to give the sunset review process special clout.

Since 1978, biennial editions of *The Book of the States*, compiled by the Council of State Governments (COSG), have included a table titled “Summary of Sunset Legislation.” States having a sunset review process are identified by scope of the framework: C for comprehensive, R for regulatory, S for selective, and D for discretionary. A careful assessment of the table found in the latest edition, for 2000-2001 and based on a January 2000 COSG survey, would suggest 23 states with an active sunset review process still in force.¹⁰

The most recent data available on the status of sunset review in the states derive from a “mini survey” of states, and were presented at the annual meeting of the NCSL in August 2001.¹¹ According to that compilation, based on 45 responses, 16 states reported a sunset process still operational, while 16 reported previously having a sunset law, but added that it had been repealed or suspended, or had become inactive. Of the 16 reporting a terminated or inactive status for the state sunset process, 8 responded that it had been replaced by some other type of legislative oversight review. The “replacements” for sunset create difficulty in arriving at an

⁹ David McNeely, “Is the Sun Setting on the Texas Sunset Law?” *State Legislatures*, May 1994, p. 19; comments attributed to Nancy Rhyme, NCSL.

¹⁰ Council of State Governments, *The Book of the States, 2000-01 Edition*, vol. 33, (Lexington, KY: 2000), pp. 123-125. The 23 include: Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, New Mexico, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Washington, and West Virginia. A quick reading of the column called “coverage” suggests 26 states with sunset provisions. However, Kentucky, coded as having sunset for regulatory agencies but with no provision for automatic termination, is not counted. Likewise, Vermont, coded as selective but without apparent automatic termination, is not counted, nor is Virginia, for which conflicting codes are entered in the table. The entry for South Carolina was incorrect, however; see footnote 12 below.

¹¹ *The Sunset Process: Still Effective After All These Years?*, NCSL Annual Meeting, San Antonio, TX, Aug. 2001, “Introduction,” by moderator Rob Krell. Slides of the presentation are available online at [<http://www.ncsl.org/programs/nlpes/training/annmeet/annmt01/krell/sld001.htm>]. Site visited Apr. 23, 2002. The mini survey was conducted via e-mail and telephone by Robert Krell, research analyst on the staff of the Joint Legislative Audit and Review Committee in Washington state, during July-Aug. 2001.

Mr. Krell provided the author with electronic files of the handout from the 2001 presentation and also with a spreadsheet of the responses to the survey. The latter allowed identification of responses from the respective states. The slides and handout from the annual meeting session provide only summary figures.

accurate count of states that have a sunset-type process in place, since it may no longer be called sunset. For example, one state indicated that “while the formal sunset process was terminated, ‘repealer dates’ are often included in legislation, with a formal review sometimes preceding termination.” Another state reported that while the formal sunset process was terminated, “sunset-like evaluations are still done.”

In attempting to arrive at the most appropriate tabulation of state sunset laws, absent a new comprehensive survey, one can compare the data in 2000-2001 COSG table with that in the spreadsheet underlying the 2001 NCSL study, with reference to the more detailed Kearney study, published in 1990, for additional background. Such an approach arrives at the following distribution in 2002: at least 18 states have active sunset laws, at least 13 states have repealed, suspended, or inactive sunset laws, while 13 states never enacted sunset laws.¹² This leaves six states in a residual group of “maybes.”¹³ Five of the six “maybes” are states that repealed or substantially modified their original sunset law, but replaced it with some other framework for relatively systematic oversight review.¹⁴

The record of the sunset process in Texas is of special interest, both because it is generally recognized as one of the more successful state efforts and because recent federal legislative proposals borrow from that model. When reviewing the accomplishments of sunset in Texas, it is well to recall that the Texas Sunset

¹² States with active sunset laws include: Alabama, Alaska, Arizona, California, Colorado, Delaware, Hawaii, Louisiana, Maine, Maryland, New Mexico, Ohio, Oklahoma, Tennessee, Texas, Utah, Washington, and West Virginia. States that never enacted sunset laws include: Idaho, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Dakota, Virginia, and Wisconsin. States with terminated or inactive sunset laws include: Arkansas, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, and Wyoming. South Carolina requires special mention; while it was entered as having an active sunset law in the 2000 COSG table, the data for South Carolina are identified as coming not from the January 2000 survey, but from the prior one in 1998. The response for South Carolina in the 2001 NCSL survey falls in the “terminated less than five years ago” category; further research confirmed that the SC sunset law was recently repealed (in 1998).

¹³ States placed in the group of “maybes,” with terminated or substantially modified sunset laws replaced by some framework for evaluation reviews, include: Connecticut, Florida, Georgia, Illinois, Indiana, and Kansas.

¹⁴ The “maybes” also tended to be viewed differently in the COSG and NCSL compilations; they were often labeled as having an “active” sunset law by the COSG table (which did not always differentiate between classification of states with original sunset law active as compared with terminated/replaced framework in use), while the Krell survey generally identified such instances more accurately, as sunset terminated but then replaced. States identified as “terminated/inactive” in the COSG survey, but “terminated/replaced” in the Krell survey, were not included here (Mississippi and New Hampshire). In some instances one source or the other notes that the evaluation component continues as before, but without the automatic termination provision, thereby lacking a key element of a “true” sunset law (Georgia, Indiana, Kansas). Finally, Illinois is placed with the “maybes” because of discrepancies between the NCSL data (respondent answered state never had a sunset law, while the more thorough 1990 study listed Illinois as then inactive); the 2000-2001 COSG table lists Illinois as having an active sunset law.

Advisory Commission, while ultimately saved by its friends in the Texas legislature, was nearly abolished in 1993.¹⁵ The web site of the Texas advisory commission offers a 70-page *Guide to the Texas Sunset Process* and reports that since the sunset process began in 1978, “44 agencies have been abolished and another 11 agencies have been consolidated.”¹⁶ Data are also presented on the fiscal impact of sunset in Texas:

Estimates from reviews conducted between 1982 and 2001 indicate a potential 19-year revenue generation savings of \$719.9 million, compared with expenditures of \$16.94 million for the Sunset Commission. Based on these estimates, every dollar spent on the Sunset process earns the State \$42.50 in return.¹⁷

94th Congress (1975-1976)

Interest in federal sunset legislation emerged and grew quickly during the 94th Congress, when many bills were introduced, proposing various types of sunset arrangements.¹⁸ The first federal sunset bill, S. 2067, limiting the period of authorization of new budget authority and requiring comprehensive review and study of existing programs for which continued budget authority was proposed to be authorized by committees of Congress, was introduced by Senator Joseph Biden (D-DE) on July 9, 1975. In the Senate, attention came to focus on S. 2925, the Government Economy and Spending Reform Act, a bill “to provide for the elimination of inactive and overlapping federal programs, to require authorizations of new budget authority for government programs and activities at least every four years, to establish a procedure for zero-based review and evaluation of government programs and activities every four years and for other purposes.” Senator Edmund Muskie (D-ME) introduced S. 2925 on February 3, 1976, with a bipartisan group of six cosponsors, including Senators William Roth (R-DE), John Glenn (D-OH), Henry Bellmon (R-OK), Walter Huddleston (D-KY), Sam Nunn (D-GA), and Barry Goldwater (R-AZ).

There were seven days of hearings on S. 2925 and S. 2067 by the Subcommittee on Intergovernmental Relations of the Senate Government Operations Committee in March and April of 1976. In an opening statement, Subcommittee Chairman Muskie

¹⁵ See McNeely, “Is the Sun Setting on the Texas Sunset Law?” for an account of that debate. This journalist/author covered politics in Austin for over 30 years.

¹⁶ State of Texas, Sunset Advisory Commission, *Guide to the Texas Sunset Process*, Oct. 2001, p. 11, available online at [<http://www.sunset.state.tx.us>], visited April 15, 2002.

¹⁷ *Ibid.* Additional insight on the Texas experience was provided by a commission staffer at the NCSL 2001 annual meeting, referenced above. See “Talking Points of Ken Levine,” Assistant Director, Texas Sunset Advisory Commission, available at [<http://www.ncsl.org/programs/nlpes/training/annmeet/annmt01/levine-sunset01.htm>], visited April 23, 2002.

¹⁸ This discussion of legislative history borrows heavily from the author’s previous CRS work. Data for the original research were derived from searches in the computerized databases for the respective Congresses, available through the former SCORPIO system at the Library of Congress, and from tracking of bills in the *Congressional Record*.

noted that his support for sunset tied in with his brief, but intense, experience on the newly created Budget Committee, which brought him to the realization that budget reform must not be viewed as an end in itself, but as part of a broader effort. He continued:

I have come to believe that no matter how successful the new budget process is, the statement of national priorities which is the Federal budget will not be complete until Congress improves control over the services which the budget is intended to buy. S. 2925 has been offered as a framework through which Congress can begin to exert such control.¹⁹

Senator Roth, the ranking minority member on the subcommittee, voiced a concern, also mentioned by others, as a reason to support sunset — the proliferation of federal programs:

During the past decade Congress in its desire to address national legislative priorities has enacted hundreds of new programs aimed at specific social or economic problems. Each program has added new legislative objectives, more spending and an administrative apparatus in the executive branch to achieve the legislative purpose set forth. While each of these programs may have considerable merit, and while much of our spending for national needs is well spent, the practical effect of this proliferation of programs has been chaos.²⁰

As the lead-off witness for the Senate hearings in 1976, Roy Ash, former director of the Office of Management and Budget (OMB), also considered it noteworthy that S. 2925 “follows hard on the heels of the highly desirable reforms made in the congressional budget processes.” He testified further:

Authorizing programs and appropriating money is not enough....

For each program the simple questions to be kept in front of us are: What are we trying to accomplish? How much will it cost? Is it worth it? Are we actually accomplishing what we intended? Should we change something in order to achieve a better match of objectives and results?

This is the closed circle model of program management in its essence.²¹

After acknowledging his full agreement with the principles and philosophy underlying S. 2925, Ash offered some suggestions for improving the mechanisms involved. In so doing, his testimony provided a preview of the 33 witnesses who followed; almost everyone supported sunset principles, but had some problem with details of the procedural framework, i.e., sunset mechanics. For example, Comptroller General Elmer Staats and others from the General Accounting Office (GAO) supported the purposes of sunset, but then provided detailed comments on possible technical problems and raised concerns with workload issues, for tasks assigned in the bill to GAO, as well as for congressional committees.

¹⁹ U.S. Congress, Senate Committee on Government Operations, *Government Economy and Spending Reform Act of 1976*, hearings on S. 2925 and S. 2067, 94th Cong., 2nd sess., Mar. 1, 18-19, 24-25; Apr. 6-7, 1976 (Washington: GPO, 1976), p. 2.

²⁰ *Ibid.*, pp. 7- 8.

²¹ *Ibid.*, pp. 15-16.

In May of 1976, the subcommittee considered the sunset bills and voted favorably to refer S. 2925 to the full committee. The Senate Government Operations Committee then voted unanimously to report S. 2925 favorably, with additional amendments, on August 4, 1976. The bill, as reported, retained its two key sunset components: termination of federal programs unless periodically reauthorized, coupled with mandatory review of programs, grouped functionally, by congressional committees. Specifically, the measure directed the compilation of an inventory of all federal programs, established a multiyear schedule for review of programs grouped by functional budget categories, and prohibited the obligation or expenditure of new budget authority for any program not specifically reauthorized under the sunset rubric. However, significant changes occurred as a result of full committee amendments, including extending the review and termination cycle from four to five years; extending the coverage of the sunset review process to tax expenditure provisions; and adding a new title to create a temporary, Hoover-type commission to study the organization of the government and recommend program changes, consolidations, and eliminations.

On the day it was reported from the Senate Government Operations Committee, S. 2925 was re-referred to the Committee on Rules and Administration and to the Committee on Finance. Following a hearing on September 8, 1976, the Rules Committee voted unanimously to report the bill without recommendation on September 20. As explained at the beginning of the report, “the Committee is reporting S. 2925 without prejudice, but is strongly advising the Senate that much more time than is available in this Congress should be devoted to the consideration of this apparently desirable, but most far-reaching proposal.”²²

At the beginning of September 1976, Senate Majority Leader Mike Mansfield (D-MT) announced the leadership’s intention to consider S. 2925 on the floor later in the month. The bill, by this time, had 55 cosponsors. However, given the numerous reservations on procedural grounds outlined in the report of the Senate Rules Committee and other concerns expressed by the Finance Committee, along with the shortness of time remaining in the session, it was ultimately decided not to schedule floor action on the bill.

In the House, during the 94th Congress, H.R. 12055, a companion bill to S. 2925, was introduced by Representative Stephen Neal (D-NC) on February 24, 1976, and referred to the Rules Committee, but no further action occurred on it. The House Rules Committee did hold a hearing on a related bill, H.R. 11734, dealing with zero-base budgeting. The Task Force on the Budget Process of the House Budget Committee also held three days of hearings during the summer of 1976 on zero-base budget legislation.

²² U.S. Congress, Senate Committee on Rules and Administration, *Government Economy and Spending Reform Act of 1976*, report to accompany S. 2925, 94th Cong., 2nd sess., S.Rept. 94-1263 (Washington: GPO, 1976), p. 1.

95th Congress (1977-1978)

Over 50 sunset bills were introduced in the 95th Congress. In the Senate, attention centered on S. 2, a bill similar to S. 2925, as reported in the 94th Congress. Senator Muskie again introduced the bill, but this time there were 41 cosponsors at the outset, and eventually 62 Senators signed on as cosponsors, spanning a wide ideological spectrum. The short title of S. 2, as introduced, was “Sunset Act of 1977,” but it was changed more than once during subsequent consideration in the Senate. The Senate Subcommittee on Intergovernmental Relations held six days of hearings on S. 2 in March 1977, and on April 28, 1977, voted favorably to refer the bill, as amended, to the full committee. Action by the Governmental Affairs Committee occurred on June 28, 1977, and concluded with a unanimous vote to report the bill favorably, with additional amendments, including renaming it as the “Program Evaluation Act of 1977.” One amendment relating to the review and evaluation provisions reflected compromise between those who contended that sunset must be comprehensive and those who argued that, to be effective, sunset must be selective:

Under Title I, all programs which are to be reauthorized must first be reconsidered by the authorizing committees with an eye toward answering certain basic questions about the program. Under Title III, the Senate and House committees can select from among these programs a few which they believe ought to receive special attention. Thus, the bill guarantees that the application of the sunset process can be both comprehensive in its requirement for reauthorization and selective in the program areas subject to intensive evaluation.²³

Other amendments to S. 2 adopted by Governmental Affairs lengthened the sunset review cycle to six years, deleted the title covering tax expenditure provisions, exempted regulatory functions and the federal judiciary from sunset review, and added language protecting civil rights enforcement.

By unanimous consent, the Senate then re-referred S. 2 to the Committee on Rules and Administration on July 20, 1977. The committee commenced hearings on September 28, 1977, and established a working group consisting of staff from the various Senate committees to consider S. 2 and S. 1244 (the reintroduced Biden bill, which limited all authorizations to a duration of four fiscal years, except in special circumstances, and required comprehensive review and extensive reports by committees before they authorized new budget authority). The staff working group met regularly over a period of several months, and their recommendations were published as a committee print. Key features in their draft measure, titled “Senate Program Review Reforms of 1978,” included requirements for Senate committees to study all programs falling under their jurisdiction and draw up 10-year plans to review all significant programs, and to publish review schedules for each session. In addition, for each new or reauthorized program, committees were to specify the program objectives, review criteria and techniques, and review necessary

²³ U.S. Congress, Senate Committee on Governmental Affairs, *Program Evaluation Act of 1977*, report to accompany S. 2, 95th Cong., 1st sess., S.Rept. 95-326 (Washington: GPO, 1977), p. 7.

performance data. These latter review requirements reflected the influence of H.R. 10421, as well as S. 2 and S. 1244. Introduced by Representative Butler Derrick (D-SC), this “sunrise” approach emphasized clear statements of program goals in new authorizing legislation and detailed reporting requirements containing performance measures to facilitate congressional review of programs.²⁴ (Since many bills came to incorporate features of both sunrise and sunset, the sunset label is generally used in discussions to encompass all such related legislative measures.)

On April 19, 1978, the Senate Rules and Administration Committee resumed hearings and turned to the recommendations of the staff working group. At this point, the committee also requested another study, by the Comptroller General, to review the various alternative proposals for sunset and program review. At a hearing on June 8, with the GAO report now in hand,²⁵ the Rules and Administration Committee requested that GAO staff, along with representatives of Senator Muskie and of Senator Biden, meet and draft a compromise sunset bill agreeable to all of them. On June 21, 1978, the Rules Committee met to mark up S. 2 and, by a vote of 5-2, reported favorably “S. 2, as amended by the committee substitute which had been previously amended by the committee.”²⁶ Among many significant changes in S. 2, as reported by the Rules Committee, the reauthorization schedule was lengthened to 10 years (five Congresses). A contemporaneous article appearing in *Congressional Quarterly* provided this perspective on the Rules Committee’s consideration of sunset legislation in the 95th Congress:

In 1977 S. 2 had little trouble winning approval from the Governmental Affairs Committee....

But Muskie could not persuade Rules Committee Chairman Howard W. Cannon, D-Nev., to set a deadline for committee action. Cannon opposed automatic termination of federal programs, which Muskie considered the heart of the bill.

When Cannon moved over to chair the Senate Commerce Committee in 1978, Muskie found a more sympathetic leader on Rules. But the new chairman, Claiborne Pell, D-R.I., still took several months to move S. 2 through committee.²⁷

Supporters of sunset in the Senate faced additional challenges once the Rules Committee had reported S. 2, as amended. Apparently, both Majority Leader Robert Byrd (D-WV) and Majority Whip Alan Cranston (D-CA), among others, still had reservations about sunset, and wanted to see some further changes in S. 2. According to the same *Congressional Quarterly* article, they

²⁴ CRS Report 79-152, *Sunset and Program Review Legislation: Some Congressional Options*, by Judith H. Parris, pp. 7-8.

²⁵ U.S. General Accounting Office, *Congressional Oversight Reform Proposals*, GAO Report PAD-78-73 (Washington: June 8, 1978).

²⁶ U.S. Congress, Senate Committee on Rules and Administration, *The Program Reauthorization and Evaluation Act of 1978*, report to accompany S. 2, 95th Cong., 2nd sess., S.Rept. 95-981 (Washington: GPO, 1978), p. 36.

²⁷ “Muskie’s Sunset Odyssey: How He Finally Got a Vote,” *CQ Weekly Report*, vol. 36, Oct. 14, 1978, p. 2951.

were concerned that procedures established by the committee bill would make some federal spending programs highly vulnerable to presidential vetoes or filibusters.

To calm these fears — and get his bill scheduled — Muskie devised a procedural safety valve that would allow Congress to vote for continued funding of a program one year past its sunset date if the program’s reauthorization bill ran up against a veto or a filibuster.²⁸

Following further negotiations, Senator Muskie introduced an amendment in the nature of a substitute for S. 2, on September 26, 1978. However, by this time, supporters of S. 2 found themselves in the same position as Senate sunset proponents in the 94th Congress: fierce competition to bring a bill to the floor in the final days of the session, especially for a measure on which the House had yet to act. Three days before a scheduled adjournment, on October 11, 1978, opportunity came for Senate floor action; with an agreement in place for limited debate and more than half the Senators as cosponsors, the Senate passed S. 2 by a vote of 87-1.

As passed by the Senate, S. 2 would have required that all federal programs, except those specifically exempted, be reviewed by Congress at least once every 10 years, on an explicit schedule. To that end, the bill would have:

- made it out of order to consider authorizations longer than 10 years;
- linked reauthorizations to the schedule by making it out of order to consider authorizations beyond a program’s next scheduled reauthorization date;
- established a new “required authorization,” enacted at least once every decade under sunset procedures;
- required that a program’s authorization be enacted before its appropriation was in order;
- required permanent appropriations to cease if their programs were not reauthorized under sunset procedures;
- made any appropriation out of order whose bill or report did not cite the required authorization;
- required congressional committees to include a “reauthorization review,” answering basic questions about the bill, in any report filed under sunset procedures;
- required the Comptroller General and the director of the Congressional Budget Office, in cooperation with the director of the Congressional Research Service, to prepare, under direction from congressional committees, an inventory of specified information regarding federal programs (as background for sunset reviews);
- provided that proposed changes in the sunset schedule would be referred sequentially to the authorizing committees and rules committees;
- established detailed procedures for committees to select programs and conduct comprehensive reexaminations;
- required agencies to submit reports on programs at least six months before sunset review deadlines;

²⁸ Ibid.

- exempted from sunset review: interest on the federal debt, Social Security and federal retirement and disability programs, Medicare, civil rights programs and enforcement, judicial administration, veterans' benefits, and income tax refunds;
- established an expedited and privileged "required reauthorization waiver resolution" to prevent termination of a program by veto of, or extended debate on reauthorization;
- provided for submission of agency budget requests and supporting materials at the request of any congressional committee;
- authorized (but not required) establishment of a Citizens' Commission on the Organization and Operation of Government.

The Senate also approved five floor amendments to S. 2 that would have required: (1) presidential regulatory duplication and conflicts reports concerning programs scheduled for sunset review; (2) committee reports on cost effectiveness of programs undergoing sunset reauthorization; (3) a foresight reporting provision in committee review; (4) inclusion of 16 major regulatory agencies in sunset review; and (5) a presidential management report at the beginning of each Congress rating programs as excellent, adequate, or unsatisfactory.²⁹

There were over 140 cosponsors of the various versions of sunset bills in the House during the 95th Congress, and two subcommittees had hearings. The House Subcommittee on Legislation of the Government Operations Committee held a one-day hearing on sunset legislation on October 17, 1977. Then, in 1978, the Rules Subcommittee on the Rules and Organization of the House held several days of hearings on bills relating to congressional procedures, including some sunset bills. On October 12, 1978, following Senate passage, S. 2 was referred in the House jointly to the committees on Government Operations and on Rules, but no further action occurred.

96th Congress (1979-1980)

Congressional interest in sunset and sunrise measures continued in the 96th Congress. In the Senate, S. 2 was reintroduced with the same bill number; the only change was an updating of the program review schedule. A similar bill was introduced in the House, as H.R. 2. The House version of sunset, however, included tax expenditures along with spending programs in the review process. The sunrise bill, known as the Legislative Oversight Act of 1979, was reintroduced by Representative Derrick as H.R. 65; and a companion bill in the Senate, S. 1304, was introduced by Senator Max Baucus (D-MT).

In the House, the newly created Subcommittee on the Legislative Process, chaired by Representative Gillis Long (D-LA), began hearings on sunset, sunrise, and related bills, which had been referred to the Rules Committee, in April 1979. In addition to several days of hearings, the subcommittee prepared and circulated an

²⁹ "Program Reauthorization and Evaluation Act of 1978," debate in the Senate, *Congressional Record*, vol. 124, Oct. 11, 1978, pp. 35463-35531.

extensive questionnaire to House committees, soliciting views on the impact of the proposed bills on their work. Representative Long recounted the work of the subcommittee in a statement, accompanying the introduction of H.R. 5858, the Sunset Review Act 1979, which he sponsored, along with Representative Derrick, on November 9, 1979. The bill was characterized as a “combination” approach to improved oversight, borrowing both from sunset (H.R. 2) and sunrise (H.R. 65):

From H.R. 2, we adopted the idea of an oversight agenda, and the role given committees in setting review priorities. From H.R. 65, we included the establishment of performance measures. From both bills, we included the compilation of a program inventory....

Most important, no program or tax expenditure will terminate automatically. Committees will have the opportunity to conduct a thorough review, and the Congress will have the opportunity to vote on committee recommendations. This feature allows us to include all programs and tax expenditures without exemptions.³⁰

The subcommittee referred H.R. 5858, as amended, back to the full Rules Committee on May 6, 1980, but no further action occurred in the House in the 96th Congress.

In the Senate, the Governmental Affairs Committee held seven days of hearings on sunset during June, July, and September 1979. On June 17, 1980, the committee voted favorably to report S. 2, with further amendments. Among the changes approved by the committee were the addition of expedited procedures for consideration of sunset reauthorization bills, simplification of reporting requirements, and addition of the decennial census and patent protection programs to the list of those exempted from sunset review.

Of special interest, in light of legislative developments in the House, the Senate Governmental Affairs Committee added a new title to S. 2, to be called “Sunrise,” and embodying two basic features: “(1) Congress should state specific legislative objectives when enacting new legislation or reauthorizing existing programs”; and “(2) Agencies should report back to Congress on their success in reaching specified program objectives.”³¹ Specifically, the provision made it out of order to consider legislation authorizing new budget authority for a program unless the measure contained the sunrise requirements. In language prescient of a framework eventually refined and enacted in the Government Performance and Results Act of 1993, the report accompanying S. 2 in 1980 further described the new sunrise title:

The Title requires that objectives, planned accomplishments and information reporting requirements shall be stated in such terms as will require the agency or agencies administering the program to provide concise measures of all of the costs and accomplishments of the program. Agencies would also be required to compare the costs and accomplishments of the program to those of other

³⁰ Rep. Gillis Long, “H.R. 5858, Sunset Review Act of 1979,” remarks in the House, *Congressional Record*, vol. 125, Nov. 9, 1979, p. 31813.

³¹ U.S. Congress, Senate Committee on Governmental Affairs, *Sunset Act of 1980*, report to accompany S. 2, 96th Cong., 2nd sess., S.Rept. 96-865 (Washington: GPO, 1980), p. 8.

governmental and non-governmental programs having similar or related objectives.³²

On July 24, 1980, S. 2 was reported from the Senate Governmental Affairs Committee. The following day, July 25, 1980, S. 2 was referred by unanimous consent to the Senate Committee on Rules and Administration, with instructions to report back by September 4, 1980. On August 20, the Rules and Administration Committee held another hearing, and on September 4, 1980, the committee agreed to report S. 2, with further amendments. The substitute version more closely resembled H.R. 5858 than it did the original S. 2, and it never reached the floor. As characterized in the *1980 CQ Almanac*:

“Sunset” legislation, once a great bipartisan hope for reining in the galloping growth of federal bureaucracy in the 96th Congress, faded in the 96th Congress.

The bill’s failure was forecast when the Senate Rules Committee voted Sept. 4 to recommend a substitute for the sunset bill that vitiated most of the strength of the original proposal (S. 2), which mandated review of most government programs every 10 years before they could be continued.

The revised version still carried the name “sunset” but removed the elements which the Senate Governmental Affairs Committee called the key to the bill. No governmental programs would have to be reviewed; no programs would die automatically if not reauthorized. Committees would be free to choose the programs they wished to review, subject to the approval of the appropriate house of Congress

In short, the sun would set only when Congress said it should.³³

Although the action by the Senate in passing S. 2 in 1978 ultimately proved to be the closest Congress ever came to enacting a federal sunset law, sunset measures during this period received continuing support from the Carter Administration. Candidate Jimmy Carter endorsed the idea of sunset laws during the 1976 campaign and reaffirmed this commitment on various occasions. For example, in his 1979 State of the Union address, he stated:

My Administration will again work with the Congress to enact a sound sunset bill. Under such a bill, each Federal program would have to be carefully re-examined on a periodic basis to determine whether its continued existence is justified. Through such a procedure, the American people can be assured that unnecessary government programs and agencies will be ended, rather than continued through the force of inertia; and other programs and agencies will be improved.³⁴

Later, in the spring of 1979, as the House Rules Committee commenced hearings on sunset legislation, President Carter issued a statement in support of sunset review legislation (and H.R. 2 specifically), noting, in part:

³² Ibid.

³³ “Sunset Legislation,” *Congressional Quarterly Almanac*, vol. 36 (1980), p. 530.

³⁴ U.S. President (Carter), “The State of the Union,” *Public Papers of the Presidents*, 1979, vol. I, p. 129.

Too many Federal programs have been allowed to continue indefinitely without examining whether they are accomplishing what they were meant to do. The country's needs and priorities change, and we must assure that Government programs change with them. Along with civil service reform, reorganization, zero-based budgeting, and regulatory reform, sunset will help make the Government more efficient, more economical, and more responsive. That is why I have long supported the sunset approach.³⁵

Subsequent Developments

Sunset measures have continued to be introduced in every Congress from the 97th through the 107th. There were additional hearings by the House Rules Subcommittee on the Legislative Process in 1981-1982. However, interest in sunset measures declined in the 1980s when growing federal budget deficits led to preoccupation in Congress with appropriations decisions. As a result, the authorization phase of the budget process, so central to the sunset framework, received relatively less attention.

In the 1990s, the environment was changing. Enactment of various government reform laws, such the Government Performance and Results Act of 1993,³⁶ evidenced resurgent concern with oversight of federal programs. For the first time in many years, the federal budget showed a surplus for FY1998. Such circumstances, with deficit reduction no longer the overriding preoccupation in the budget process, arguably allowed more time for consideration of authorization bills, along with the annual appropriations measures.

Renewed Interest in Sunset

Accompanying these developments, there appeared to be a renewed interest in the sunset concept. For example, at the end of 1997, an article appeared in *Insight on the News*, titled "Sunset Bills Rise over Capitol Hill."³⁷ The next year, for the first time since 1982, there was a congressional hearing on a comprehensive sunset bill,³⁸ held toward the end of the 105th Congress, by the House Subcommittee on Government Management, Information, and Technology.³⁹

³⁵ Ibid., pp. 941-942.

³⁶ P.L. 103-62; 107 Stat. 285.

³⁷ Tiffany Danitz, "Sunset Bills Rise over Capitol Hill," *Insight on the News*, vol. 13, issue 48 (Washington: Dec. 29, 1997), p. 16.

³⁸ In the 104th Congress, there were hearings on a selective regulatory sunset measure, however. See U.S. Congress, House Committee on Government Reform and Oversight, *H.R. 994, the Regulatory Sunset and Review Act of 1995*, hearings before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, 104th Cong., 1st sess., Mar. 28 and May 2, 1995 (Washington: GPO, 1997). For further discussion of H.R. 994, see Congressional Quarterly, *CQ Almanac*, vol. 51, 1995, pp. 3-7.

³⁹ U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee (continued...)

The bill that furnished the focus of the hearing in 1998, H.R. 2939, “To provide for the periodic review of the efficiency and public need for federal agencies, to establish a commission for the purpose of reviewing the efficiency and public need of such agencies, and to provide for the abolishment of agencies for which a public need does not exist,” was introduced by Representative Kevin Brady (R-TX), and eventually had more than 80 cosponsors. Modeled on the state sunset process in Texas, the bill called for establishment of a 12-member “Federal Agency Sunset Commission” to review and make recommendations at least every 12 years regarding the reorganization or abolishment of each federal agency, with the schedule for review to be determined by the commission. The Speaker of the House and the majority leader of the Senate were to appoint the members, each naming four congressional members and two private citizens “with experience in the operation and administration of Government programs.” Each agency was then to be abolished no later than a year after completion of the review by the commission, unless Congress acted to continue the agency. Criteria for review by the commission were set forth, including the extent to which the agency was complying with the provisions of the Government Performance and Results Act.

At the hearing on H.R. 2939, held on September 14, 1998, testimony was received from Congressman Brady and other Members in support of the bill, from Patricia Gray, then Vice-Chair of the Texas Sunset Commission, and from Edward DeSeve, OMB’s Acting Deputy Director for Management.

Ms. Gray stressed that sunset is a process rather than an event. Her statement provided examples of how sunset had been used as a tool for uncovering fraud, waste, and abuse. She also noted the value of sunset reviews in locating duplication of services as well as highlighting discrepancies and gaps in services. In sum, according to Ms. Gray, “the sunset process is an efficient way to respond to increased public demand for accountability from elected officials.”⁴⁰

Mr. DeSeve, from OMB, testified that the Clinton Administration opposed the bill. In their view, the provisions of H.R. 2939

raise serious constitutional concerns, are counterproductive to many recent improvements Congress and the administration have made to support government reform and accountability, and duplicate existing structures for evaluating agency performance on the part of authorizing and appropriating committees of Congress, as well as by the executive branch.⁴¹

Arguably the most serious criticism of the bill raised at the 1998 hearing concerned potential constitutional problems with the commission framework. An

³⁹ (...continued)

on Government Management, Information, and Technology, *H.R. 2939, Federal Sunset Act of 1998*, hearing before subcommittee, 105th Cong., 2nd sess., Sept. 14, 1998 (Washington: GPO, 1998).

⁴⁰ *Ibid.*, p. 48.

⁴¹ *Ibid.*, p. 39.

advisory opinion from the Department of Justice provided for the record referenced the *INS v. Chada* decision by the Supreme Court in 1983, and concluded:

Because this bill [H.R. 2939] would allow the abolishment of a statutorily created executive agency, not through legislation passed in conformity with Article I, but at the discretion and in accordance with a timetable imposed by a twelve-member Commission composed of eight members of Congress and four persons selected by the Speaker of the House and the majority leader, unless Congress affirmatively decides to adopt legislation preserving the agency, it violates the constitutionally required separation of powers.⁴²

Similarly, examination of the bill by the American Law Division of the Congressional Research Service ended with this view:

As noted above, the statutory scheme proposed by the Federal Sunset Act [H.R. 2939] is suspect due to the circumvention of the bicameralism and presentment requirements of Article I. In light of the Supreme Court's ruling in *INS v. Chada* and subsequent cases, it seems that the Federal Sunset Act, in its present form, constitutes an impermissible assignment of legislative authority and will not survive constitutional scrutiny.⁴³

In the 106th Congress, Congressman Brady, along with 92 cosponsors, introduced H.R. 2128, a revised version of the sunset commission legislation. This new bill contained provisions not found previously in H.R. 2939. First, a new subsection was added under "Review and abolishment of federal agencies" relating to extensions that would have allowed the deadline for abolishment of the agency, absent congressional action to reauthorize it, to be extended for an additional two years if approved by a super-majority of the House and the Senate. Second, a new section was added providing for compilation by the three congressional support agencies of a "Program Inventory." In language reminiscent of federal sunset measures dating back to the 1970s, the section would have directed the Comptroller General of the General Accounting Office and the Director of the Congressional Budget Office, in cooperation with the Director of the Congressional Research Service, to prepare an inventory of federal programs within each agency for the purpose of advising and assisting Congress and the commission in carrying out the requirements of the act.

On June 28, 2001, Congressman Brady, with 33 cosponsors, reintroduced virtually the same bill, now called the Abolishment of Obsolete Agencies and Federal Sunset Act of 2001, in the 107th Congress as H.R. 2373. On April 23, 2002, the House Government Reform Subcommittee on Civil Service, Census, and Agency Organization held a hearing on H.R. 2373, at which Representative Brady and Representative Jim Turner (D-TX), who had both served in the Texas legislature, testified in favor of the bill. Unlike the OMB representative of the Clinton

⁴² Letter from William Michael Treanor, Deputy Assistant Attorney General, dated Sept. 21, 1998. See *ibid.*, pp. 53-54.

⁴³ CRS Memorandum, *Constitutionality of H.R. 2939*, by T. J. Halstead, p. 4 (prepared Oct. 26, 1998, at the request of the House Committee on Government Reform and Oversight; used with permission of the committee).

Administration in 1997, the witness from the Office of Management and Budget, now representing the Bush Administration, testified in general support of a sunset review process for the federal government. While acknowledging possible constitutional issues to be resolved, subsequently detailed in a letter from the Justice Department,⁴⁴ the OMB spokesman noted that the sunset commission as outlined in the legislation was similar to the proposal for a Sunset Review Board that President Bush endorsed during the 2000 campaign. Further, according to the testimony from OMB, a sunset review process could tie in with the President's Management Agenda, particularly in the government-wide initiative for budget and performance integration.⁴⁵ Three witnesses from the private sector also testified in favor of the measure.⁴⁶

Afterword

The initial enthusiasm with which the sunset review process was greeted in the 1970s has been tempered by mixed experiences in the states. From a high of 36 states with some sort of sunset process in the early 1980s, the number has declined to fewer than 20 that have indisputable sunset review provisions still operating in 2002. Of course, from the outset, sunset laws varied greatly among the states in terms of comprehensiveness (types of agencies or programs covered), as well as regularity (reviews on a predictable, fixed schedule versus sporadic evaluations).

The record of the sunset process in Texas is of particular interest, because sunset review there is considered among the most expansive in the nation. According to a presentation at the National Conference of State Legislatures annual meeting in 2001, "Overall, the sunset review process has been very successful in Texas, due to several factors including strong legislative support and the fact that all state agencies are subject to this type of review."⁴⁷ In assessing whether sunset remains an effective and necessary tool, Ken Levine (Assistant Director, Texas Sunset Advisory Commission), suggested looking at whether the sunset review makes government "work better, smarter and faster," saves money, and continues "to challenge the status quo and eliminate bureaucratic inertia."⁴⁸ As noted already, recent federal bills borrow from the Texas model, and President Bush has endorsed sunset review in Texas as a successful approach that should be initiated as well at the federal level.

⁴⁴ Daniel J. Bryant, Assistant Attorney General, Department of Justice, letter to Rep. Dave Weldon, Chairman of the House Subcommittee on Civil Service, Census and Agency Organization, Apr. 23, 2002. Copy provided to author by subcommittee staff.

⁴⁵ Testimony of Mark W. Everson, Controller, Office of Federal Financial Management, and pending nominee for Deputy Director for Management, OMB, before House Subcommittee on Civil Service, Census and Agency Organization, Apr. 23, 2002.

⁴⁶ These included witnesses representing two groups, the National Taxpayers Union and Citizens Against Government Waste, and a researcher from the Cato Institute.

⁴⁷ *The Sunset Process: Still Effective After All These Years?* NCSL Annual Meeting, San Antonio, TX, Aug. 2001. From summary of panel, available at [<http://www.ncsl.org/programs/nlpes/training/annmeet/annmt01/sunset01.htm>], visited Apr. 23, 2002.

⁴⁸ *Ibid.*, "Talking Points," by Ken Levine, slides available at [<http://www.ncsl.org/programs/nlpes/training/annmeet/annmt01/levine-sunset01.htm>], visited Apr. 23, 2002.

Several states have modified their sunset frameworks to remedy initial problems, and experiences with sunset review have led to unanticipated consequences. For example, experience with sunset led Colorado, the state that pioneered the process, to expand its legislative oversight function, as lawmakers came to realize the eliminating agencies was not the only measure of sunset's effectiveness.

Another state that significantly revamped its sunset process is Washington. As originally established in 1977, the process focused mainly on minor or inactive programs, so most sunset studies had little impact. Performance was also often difficult to assess due to lack of measures or data. The sunset process was scheduled to expire in June 2000, but rather than terminating it, the decision was made to streamline and strengthen the process. The new law sought to place greater responsibility on agencies to demonstrate performance results, by requiring them to submit performance measures and data collection plans to the Joint Legislative Audit and Review Committee (JLARC).⁴⁹

A comprehensive sunset law for the federal government has been the subject of continuing interest for nearly three decades. Most recently, there was a hearing by a House subcommittee in April 2002, but such a legislative proposal has progressed no further than passage by one house (the Senate, in 1978). However, as noted above, the 1993 enactment of the Government Performance and Results Act (GPRA) evidenced a renewed concern with oversight of federal programs.

GPRA joined a number of other budget and financial management reform laws designed to upgrade existing procedures or to provide new mechanisms for managing government operations and improving transparency.⁵⁰ In addition to their impact on executive management and accountability, these statutes provide new or enhanced data and information about federal programs and performance. In turn, they establish new mechanisms and means for congressional oversight, or "the review, monitoring, and supervision of the implementation of public policy."⁵¹

At the recent hearing on H.R. 2373, the OMB representative referred to the President's Management Agenda, and the initiative directed to budget and performance integration, with the related aim of improving programs by focusing on results. He noted OMB's ongoing effort to assess program effectiveness and further observed, "The Sunset Review Board or Commission we contemplate would provide additional support, tangible recommendations pertaining to the assessment process,

⁴⁹ Ibid., "Improving the Sunset Process in Washington State," by Val Ogden. Slides available at [<http://www.ncsl.org/programs/nlps/training/annmeet/annmt01/ogdensunset/sld001.htm>], visited Apr. 23, 2002. Since the plans are to be submitted to the JLARC in advance, the revised framework also reflects the sunrise perspective.

⁵⁰ For example, the Chief Financial Officers Act of 1990, the Government Management and Reform Act of 1994, and the Federal Financial Management Improvement Act of 1996. For discussion of these laws, see CRS Report RL30895, *General Management Laws: A Selective Compendium — 107th Congress*, coordinated by Ronald C. Moe.

⁵¹ CRS Report RL30240, *Congressional Oversight Manual*, by the Congressional Research Service, p. 1.

and increase the credibility of this important effort.”⁵² As exemplified in the new Washington state sunset law, a sunset review process at the federal level arguably might be used to complement ongoing efforts to enhance program evaluation through better performance measures and improved data.

⁵² Testimony of Mark W. Everson, before House Subcommittee on Civil Service, Census and Agency Organization, Apr. 23, 2002.

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