

CRS Report for Congress

A Federal Sunset Commission: Review of Proposals and Actions

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A Federal Sunset Commission: Review of Proposals and Current Status

Summary

The sunset concept provides for programs and agencies to terminate automatically on a periodic basis unless explicitly renewed by law. In the last decade bills to create a federal sunset commission, modeled on the sunset review process in Texas, have been introduced in each Congress, including H.R. 5794 in the 110th. President Bush called for creation of a federal sunset commission in his FY2006 budget submission. Bills reflecting an Office of Management and Budget (OMB) draft proposal were introduced in the 109th Congress (S. 1399, H.R. 3276, H.R. 3277). On July 20, 2006, the Committee on Government Reform voted to report H.R. 3282 favorably to the House, along with a related program review bill, H.R. 5766, as amended. Floor action had been scheduled for June 27, 2006, but was postponed, and no further action occurred on the bills.

In the 110th Congress, with the budget submissions for FY2008 and FY2009, President George W. Bush reaffirmed his support for passage of the Administration's proposal to create a federal sunset commission. In addition to the Brady bill (H.R. 5794), a new sunset measure, S. 1731, was introduced on June 28, 2007, by Senator John Cornyn. This report examines the three bills and assesses their similarities and differences with respect to selected factors.

Supporters of sunset commission measures suggest that there are too many overlapping and ineffective federal programs that contribute to the growing federal deficit, and that the existing structure of congressional committees does not encourage systematic review of similar agencies and programs. According to sunset proponents, congressional reviews of many programs are sporadic and inadequate, as evidenced by the number of unauthorized appropriations. An action-forcing mechanism — such as threat of termination — is necessary; a sunset commission would assist Congress in performing its oversight function, thereby reducing fraud, waste, and abuse.

Critics of the sunset commission measures counter that such bills would burden Congress with a tremendous workload for mandatory reauthorization of agencies and programs. Consequently, such measures may prove infeasible to carry out, or alternatively, result in perfunctory reviews. Sunset commissions might increase congressional personnel costs, since additional staff would be needed to assist the commission in its review activities. Opponents further contend that the review and reauthorization process would pose a special threat to certain kinds of programs, such as those which provide a safety net for the most vulnerable in society.

This report will be updated as events warrant.

Contents

Background	1
Sunset Commission Proposals Prior to the 109 th Congress	3
Developments During the 109 th Congress	4
Proposals in the FY2006 Budget	4
Legislative Proposals and Action	5
Developments in the 110 th Congress	7
Summary of Provisions in H.R. 5794	8
Summary of Provisions in S. 1731	9
Comparing Provisions in Sunset Commission Bills	9
Brief Overview of Arguments for and Against Sunset Commissions	11

List of Tables

Table 1. Selected Features in Three Measures to Establish a Federal Sunset Commission	13
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A Federal Sunset Commission: Review of Proposals and Actions

Background

The sunset concept provides for programs and agencies to terminate automatically according to a predetermined schedule unless explicitly renewed by law. Sunset measures usually contain two elements: an action-forcing mechanism, carrying the ultimate threat of elimination, and a framework or guidelines for the systematic review and evaluation of past performance.¹

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.”² 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.”³

Since 1978, most 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.⁴ A careful review of the table included in the 2007 edition, derived from a December 2006 COSG survey, suggests that 24 states have an active sunset

¹ For additional background, see CRS Report RL31455, *Federal Sunset Proposals: Developments in the 94th to 107th Congresses*, by Virginia A. McMurtry.

² Richard C. Kearney, “Sunset: A Survey and Analysis of the State Experience,” *Public Administration Review*, vol. 50 (Jan./Feb. 1990), p. 49.

³ *Ibid.*

⁴ “Discretionary sunset review” might be viewed as an oxymoron, since an action-forcing mechanism is generally considered as a crucial component of the process. There are also 20 footnotes in the scope column of the table, one of which applies to several states; “footnote d” reads, “While they have not enacted sunset legislation in the same sense of the other states with detailed information in this table, the legislatures [in eight states]...have included sunset clauses in selected programs or legislation.” See Council of State Governments, *The Book of the States, 2007 Edition*, vol. 39 (Lexington, KY: 2007), pp. 142-144.

review process.⁵ The COSG table further indicates that seven states have terminated or suspended their sunset procedures, while in two of those states sunset-like reviews continue. Three states have never established a sunset review process.⁶

The record of the sunset process in Texas is of special interest, both because it is generally recognized as one of the more active state efforts and because recent federal legislative proposals borrow from that model. The website of the Texas advisory commission offers a 70-page *Guide to the Texas Sunset Process*, noting that the sunset process in Texas “is guided by a 12-member body appointed by the Lieutenant Governor and the Speaker of the House of Representatives. Assisting the Commission is a staff whose reports provide an assessment of an agency’s programs, giving the Legislature the information needed to draw conclusions about program necessity and workability.”⁷ According to the *Guide*, since the Texas sunset process began in 1978, 54 agencies have been abolished and another 12 agencies have been consolidated, for an estimated savings of nearly \$784.5 million.⁸ When reviewing the accomplishments of sunset in Texas, however, it is well to recall that the Texas Sunset Advisory Commission, while ultimately saved by its supporters in the Texas legislature, was nearly abolished in 1993.⁹

At the federal level, over 70 bills were introduced in the 94th Congress (1975-1976) proposing various sunset arrangements, and sunset measures have continued to be introduced in each subsequent Congress. Many hearings have been held on sunset measures, and several bills have been reported, but the only floor action occurred in the 95th Congress. On October 11, 1978, the Senate passed S. 2, the Program Reauthorization and Evaluation Act, by vote of 87-1.¹⁰

⁵ According to data in the table, nine states have comprehensive sunset review (AL, AK, AZ, DE, FL, LA, OH, TN, UT). Eight states have sunset for regulatory agencies (CO, GA, HI, IL, KY, MD, MO, and PA). There are 11 states listed with scope as selective, but of the 11, three are also coded as D or with “footnote d,” and one (IL) is also coded as R, leaving seven states remaining (CA, CT, IN, ME, NM, TX, and WV).

⁶ Sunset laws are recorded as terminated in KS, MS, NH, NC, RI, SC, and SD, while some activity continues in KS and SD. The three states never having had a sunset review process are IA, MA, and ND.

⁷ State of Texas, Sunset Advisory Commission, *Guide to the Texas Sunset Process*, Jan. 2008, p. 1, available at [<http://www.sunset.state.tx.us/guide.pdf>], visited June 2008.

⁸ *Ibid.*, p. 11.

⁹ See David McNeely, “Is the Sun Setting on the Texas Sunset Law?” *State Legislatures*, vol. 20, May 1994, pp.17-20, for an account of that debate. This journalist/author covered politics in Austin for over 30 years.

¹⁰ For further discussion of federal sunset proposals, see CRS Report RL31455.

Sunset Commission Proposals Prior to the 109th Congress

Unlike some of the earlier frameworks proposed for a federal sunset process, some bills introduced in the last decade have incorporated a commission approach. In 1997, H.R. 2939 (105th Congress) was introduced by Representative Kevin Brady of Texas. Modeled on the Texas sunset process, 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 to be abolished within a year of completion of the commission’s review, unless Congress acted to continue the agency.

In September 1998, the House Subcommittee on Government Management, Information, and Technology held a hearing on the bill. Representative Brady and four other Members provided testimony in favor of the bill.¹¹ Arguably the most serious criticism of the bill raised at the 1998 hearing concerned potential constitutional problems with the commission framework. An advisory opinion from the Department of Justice provided for the record referenced the *INS v. Chada* decision by the Supreme Court in 1983 (462 U.S. 919), and concluded the following:

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.¹²

In 1999, Congressman Brady, along with 92 cosponsors, introduced a revised bill, H.R. 2128 (106th Congress), a modified version of the sunset commission legislation containing two noteworthy additions. 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 (including S. 2 in the 93rd Congress), the section would have directed the

¹¹ U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee 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), pp. 7-37.

¹² Letter from William Michael Treanor, Deputy Assistant Attorney General, dated Sept. 21, 1998. See *ibid.*, pp. 53-54. For further discussion of the hearing, see CRS Report RL31455.

Comptroller General of the General Accounting Office (now designated the Government Accountability 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, Representative Brady reintroduced virtually the same bill, now called the “Abolishment of Obsolete Agencies and Federal Sunset Act,” 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 Texas Representatives Brady and Jim Turner, who had both served in the Texas legislature, testified in favor of the bill. The witness from the Office of Management and Budget (OMB) 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,¹³ 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.

In final days of the 107th Congress, a substitute amendment to H.R. 2373 was circulated for comment, but no formal consideration of it occurred before adjournment. Congressman Brady introduced a measure virtually identical to H.R. 2373, as H.R. 1227 in the 108th Congress, but the bill received no further action.

Developments During the 109th Congress

Proposals in the FY2006 Budget

In the *Analytical Perspectives* volume of the President’s budget submission for FY2006, sent to Congress on February 7, 2005, several budget process reform proposals were endorsed by the President. Among the actions requested, the Administration called for establishment of a federal sunset commission

to provide a process by which programs undergo the regular scrutiny brought about by having to defend their existence. Programs would be reviewed according to a schedule enacted by Congress. The Commission would consider proposals to retain, restructure, or terminate programs. Programs would automatically terminate according to the schedule unless Congress took some action to reauthorize them.¹⁴

¹³ 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.

¹⁴ U.S. Office of Management and Budget, *Fiscal Year 2006 Analytical Perspectives* (Washington: GPO, 2005), p. 242.

Discussion of reform proposals in the FY2006 budget submission also called for creation of results commissions, “to consider and revise Administration proposals to improve the performance of programs or agencies by restructuring or consolidating them.” Congress would establish a results commission to address a particular program or policy area where duplicative or overlapping functions are found. If the President were to approve a commission reform proposal, the measure then would be considered by Congress under expedited procedures.

Legislative Proposals and Action

In March 2005, during House consideration of H.Con.Res. 95, the FY2006 budget resolution, Representative Hensarling offered a substitute amendment on behalf of the Republican Study Committee (RSC). Section 503 of the Hensarling amendment contained a Sense of the House provision that “legislation providing for the orderly abolishment of obsolete Agencies and providing a federal sunset for government programs should be enacted during this Congress.”¹⁵ Although the amendment was opposed by the House leadership and defeated by a vote of 102-320, a Sense of the Senate provision regarding a commission to review the performance of programs was included in H.Con.Res. 95 as reported from conference and agreed to by both chambers.¹⁶ The Senate language appeared to reflect the results commission idea more than sunset, although neither type of commission was explicitly referenced. Provisions for a commission to eliminate waste, fraud, and abuse, a commission arguably similar to that envisaged in the Sense of the Senate language, were included in an omnibus budget reform bill, H.R. 2290, the Family Budget Protection Act of 2005, introduced on May 11, 2005.

On June 30, 2005, OMB released a legislative proposal titled “The Government Reorganization and Program Performance Improvement Act of 2005,” to create the framework for the two types of commissions — sunset and results — mentioned in the FY2006 budget submission. Bills incorporating the draft language were introduced in both chambers on July 14, 2005. Senator Craig Thomas introduced S. 1399, in most respects mirroring the language in the OMB proposal. In the House, two bills were introduced. The Government Reorganization and Improvement of Performance Act, H.R. 3276, introduced by Representative Jon Porter with Representative Tom Davis and Representative Kevin Brady as cosponsors, would have authorized the establishment of results commissions. The Federal Agency Performance Review and Sunset Act, H.R. 3277, introduced by Representative Brady for himself and Representatives Davis and Porter, would have established a Sunset

¹⁵ See *Congressional Record*, vol. 151, Mar. 17, 2005, daily ed., p. H1639.

¹⁶ For further background on the budget resolution, see CRS Report RL32791, *Congressional Budget Actions in 2005*, by Bill Heniff Jr. Sec. 502 reads:

It is the sense of the Senate that a commission should be established to review Federal agencies, and programs within such agencies, including an assessment of programs on an accrual basis, and legislation to implement those recommendations, with the express purpose of providing Congress with recommendations to realign or eliminate Government agencies and programs that are wasteful, duplicative, inefficient, outdated, irrelevant, or have failed to accomplish their intended purpose.

Commission (SC) and review process for the federal government. On July 14, Representative Brady also reintroduced his sunset commission bill as H.R. 3282. H.R. 3277, unlike H.R. 3282, would have required that the schedule for review and termination of agencies and programs be enacted into statute, arguably a key factor in concerns of constitutionality.

Provisions relating to the establishment and functioning of the sunset commission in H.R. 3277 and in Section 4 of S. 1399 were very similar, but the structure and language in the two bills were not identical. Both would have established a federal sunset commission, consisting of seven members, to be appointed by the President in consultation with congressional leaders. Programs and agencies were to be reviewed by the commission at least once every 10 years, according to the schedule for review proposed by the President and enacted into law. The commission was to be empowered to obtain information from federal agencies, to hold hearings, and to consider any publicly available evaluations and assessments, including those by OMB. The bills would have required the commission to use six stipulated criteria in conducting the reviews, including cost effectiveness and extent of duplication or conflict with other agencies and programs. The commission would have provided the President with an annual report containing its assessment of each agency and program reviewed during the preceding year, along with its recommendations on how to improve the results achieved and whether to abolish any agency or program. The President would have then submitted his recommendations to Congress on the respective agencies and programs, along with the report of the sunset commission and any draft legislation needed to implement the recommendations. A program or agency was to be abolished two years after the date of submission of the President's recommendation regarding its future unless the agency or program was reauthorized or received up to a two-year deadline extension pursuant to law.

The Senate bill differed from the OMB draft and H.R. 3277 with respect to at least one significant feature. Both the OMB draft and H.R. 3277 contained a noteworthy exemption with regard to certain regulations and their enforcement: "No regulations to protect the environment, health, safety, or civil rights shall sunset under this Act," nor shall any program relating to enforcing said regulations "sunset unless provision is made for the continued enforcement of those regulations." Provisions for exemptions from sunset termination were not found in S. 1399.

On September 27, 2005, the House Subcommittee on Federal Workforce and Agency Organization held a hearing on H.R. 3276 and H.R. 3277. Testimony was received from an OMB official and from five witnesses from the private sector.¹⁷

In May 2006, the House leadership announced plans to bring sunset legislation quickly to the House floor, along with other budget process reforms favored by the Republican Study Committee, in return for RSC backing of the FY2007 budget

¹⁷ U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on the Workforce and Agency Organization, *It's Time to React — Reauthorizing Executive Authority to Consolidate Task: Establishing Results and Sunset Commissions*, hearing on H.R. 3276 and H.R. 3277, 109th Cong., 1st sess., Sept. 27, 2005 (Washington: GPO, 2006).

resolution. In the effort to craft a consensus bill, attention came to focus on H.R. 3282 (Brady bill), and on H.R. 2470, sponsored by Representative Todd Tiahrt, which was to create a “Commission on the Accountability and Review of Federal Agencies (CARFA),” modeled on the Base Realignment and Closure Commission (BRAC) approach.¹⁸ Although it addressed similar concerns to those of a sunset measure, the CARFA approach did not contain an action-forcing mechanism whereby agencies and programs would terminate absent congressional action, whereas H.R. 3282 (and H.R. 3277) did have such provisions.

On July 14, 2006, Representative Tiahrt introduced a revised version of H.R. 2470 as H.R. 5766. On July 19, the House Government Reform Committee held a hearing on H.R. 3282 and H.R. 5766, receiving testimony in support from Representatives Brady and Tiahrt, and from two private sector witnesses who opposed the bills.¹⁹ Markup of both bills followed the next day. On July 20, 2006, H.R. 5766, as amended, was reported favorably by a vote of 15-12, and H.R. 3282, by a vote of 15-14, both largely along straight party lines.²⁰ Floor action on both bills had been scheduled for June 27, but House leaders, apparently concerned with growing opposition, decided to postpone action. No further action occurred in the 109th Congress.

Developments in the 110th Congress

On February 5, 2007, President Bush, in his budget submission for FY2008, again endorsed creation of a federal sunset commission and called for enactment of a bill incorporating provisions of the Administration’s proposal sent to Congress in 2005:

The Sunset Commission would consider Presidential proposals to retain, restructure, or terminate agencies and programs according to a schedule set by Congress. Agencies and programs would automatically terminate according to the schedule unless reauthorized by the Congress.²¹

¹⁸ For discussion of CARFA bills, see CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass; and CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

¹⁹ Witnesses included James Horney from the Center on Budget and Policy Priorities and Charles Loveless from AFSCME. See U.S. Congress, House Committee on Government Reform, *Cutting Out the Waste: An Overview of H.R. 5766, the Government Efficiency Act; and H.R. 3282, the Abolishment of Obsolete Agencies and Federal Sunset Act of 2005*, 109th Cong., 2nd sess., July 16, 2006 (Washington: GPO, 2006).

²⁰ All Democrats voted against both bills. One Republican voted with the minority on each bill: Rep. Chris Shays on H.R. 5766, and Rep. Todd Platts on H.R. 3282. For further discussion of the bills and markup, see Ralph Lindeman, “Sunset Bills Move Through Committee With Floor Vote in the House Set for July 27,” *Daily Report for Executives*, July 21, 2006, p. A-22.

²¹ U.S. Office of Management and Budget, *Fiscal Year 2008 Analytical Perspectives* (continued...)

Support for results commissions (RC) was also reiterated: “Results Commissions would consider and revise Administration proposals to restructure or consolidate programs or agencies to improve their performance.”²²

In the budget submission for FY2009 transmitted on February 4, 2008, President Bush reaffirmed his support for a federal sunset commission. In reviewing the need for such a structure, the discussion in one of the budget documents stated the following:

The Federal Government’s ability to serve the American people is often hampered by poorly designed programs or uncoordinated, overlapping programs trying to achieve the same objective. Today, almost 25 percent of assessed programs on which the Government spends almost \$150 billion a year have been determined to be either ineffective or unable to demonstrate results.²³

In the 110th Congress, Senator John Cornyn introduced a new sunset measure, S. 1731, the United States Authorization and Sunset Commission Act, on June 28, 2007. Congressman Brady introduced H.R. 5794, a bill virtually identical to H.R. 3282 (109th Congress), renamed the Federal Sunset Review Act of 2008, on April 15, 2008.

Summary of Provisions in H.R. 5794

H.R. 5794 would create a Federal Agency Sunset Commission (FASC) to review the efficiency of and public need for federal agencies and would provide for the abolishment of agencies for which a public need does not exist. The FASC would consist of 12 members appointed by the Speaker of the House and the Senate majority leader. Of the six members appointed by the leaders of the respective chambers, four would be Members of Congress, with not more than two from the same political party. Within one year after its establishment, the commission would submit to Congress a schedule for the review of all federal agencies and advisory committees by the commission, at least once every 12 years, and for the abolishment of each agency following the review absent congressional reauthorization. Agencies performing similar or related functions would be scheduled for review at the same time. Then the commission would commence its annual reviews, utilizing the 19 criteria specified in the bill in reviewing and evaluating the efficiency and public need for each agency.

By September 1 of each subsequent year, the commission would report to the President and Congress, and recommend whether each agency reviewed that year should be abolished or reorganized and whether functions of other agencies should be consolidated, transferred, or reorganized. The FASC would also submit draft legislation to carry out the recommendations.

²¹ (...continued)
(Washington: GPO, 2007), p. 220.

²² Ibid.

²³ U.S. Office of Management and Budget, *Fiscal Year 2009 Analytical Perspectives* (Washington: GPO, 2008), p. 225.

Under the sunset provisions in the bill, an agency would be abolished within one year of the commission's review, unless the agency received statutory extension. The bill would allow the deadline for abolishing an agency to be extended for an additional two years by legislation enacted by a super majority of the House of Representatives and the Senate. The commission also would report to Congress on all legislation introduced that would establish a new agency or a new program to be carried out by an existing agency.

H.R. 5794 would direct the Comptroller General of the Government Accountability 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.

Summary of Provisions in S. 1731

S. 1731 would create the United States Authorization and Sunset Commission (USASC), with membership consisting of four Representatives and four Senators, appointed by the Speaker of the House and the Senate majority leader, respectively, with no more than two from each chamber of the same political party.

The bill would require the USASC to submit to Congress, not later than 18 months after this act's enactment and at least once every 10 years thereafter, a legislative proposal (referred to as the Commission Schedule and Review bill) that would include a schedule of review and abolishment of agencies and programs. The bill would require that the schedule contain a time line for review by the USASC and proposed abolishment of (1) at least 25% (as measured in dollars) of unauthorized agencies or programs; and (2) if applicable, at least 25% of the programs identified by the Office of Management and Budget (OMB) through its Program Assessment Rating Tool program (or similar review program) as ineffective or results not demonstrated. The bill would require that agencies performing similar or related functions be reviewed concurrently.

S. 1731 sets forth criteria that would be used by the USASC in conducting its reviews. The bill would require the USASC to submit to Congress and the President every two years a report that analyzes and includes, as appropriate, proposals and legislative provisions to reauthorize, reorganize, consolidate, expand, or transfer any agency or program having undergone its scheduled review. Both the schedule and review bill and legislative proposals accompanying reports from the USASC would be subject to expedited procedures during their consideration by Congress.

Comparing Provisions in Sunset Commission Bills

Table 1 provides an overview of selected features in the two sunset commission bills which have been introduced in the 110th Congress, S. 1731 and H.R. 5794, and in the legislative proposal in 2005 from the Bush Administration for federal sunset commissions, introduced as H.R. 3277 in the 109th Congress. The following discussion highlights some similarities and differences among the measures.

The bills are similar with respect to scope of coverage. The two bills in the 110th Congress refer to the definition of federal agency in 5 U.S.C. 105. In all three bills, however, the actual coverage would be dependent upon decisions taken subsequent to enactment. H.R. 3277 (109th Congress) provides that all programs and agencies would be reviewed at least once every 10 years, but the President would propose the coverage, contingent on approval by Congress. In H.R. 5794 and S. 1731, the sunset commission would submit to Congress the schedule for review.

With respect to membership, under the Administration proposal, the President would appoint the seven members, four in consultation with congressional leaders. H.R. 5794 provides for a 12-member bipartisan commission, with six named, respectively, by the Speaker of the House and the Senate majority leader; eight members concurrently would be serving in Congress, to be joined by four from outside. Eight Members of Congress would make up the entire membership of the bipartisan commission to be established pursuant to S. 1731.

All three bills call for the commission chair to appoint a staff director. S. 1731 would have the chair appoint other personnel as needed, whereas the other two bills would delegate appointment of other staff to the director. With regard to administrative support, the two House bills would have the General Services Administration (GSA) provide such services to the commission on a reimbursable basis. In contrast, S. 1731 would authorize the commission to receive administrative support services from GSA or GAO on a nonreimbursable basis.

All three bills contain action-forcing mechanisms to terminate programs and agencies following the sunset reviews, unless reauthorized in law. H.R. 3277 would terminate programs and agencies two years after the date of submission to Congress by the President of recommendations, along with the report of the commission, while provisions in H.R. 5794 would abolish an agency within one year of the commission's review, absent statutory extension. Both House bills would allow for enactment of legislation extending the deadline for abolishing an agency for an additional two years. S. 1731 would abolish any agency or program two years after the commission completes its review absent reauthorization.

The three bills each specify criteria to utilize in carrying out the program reviews. H.R. 5794 arguably contains the strongest provisions for transparency and public involvement in the sunset reviews. With respect to information gathering H.R. 5794 requires that the FASC shall conduct public hearings and provide an opportunity for public comment on the abolishment of the agency. The FASC also shall also consult with the chairman and ranking minority member of the congressional oversight committees, as well as GAO and OMB. The Administration bill provides that the Sunset Commission (SC) should hold public hearings and meetings "to the extent appropriate, " and consult with GAO, relevant Inspectors General, and the relevant committees in Congress. There is no reference to public hearings or public comment in S. 1731; the bill simply provides that the USASC, in carrying out the provisions of the act, may hold hearings, take testimony, and receive evidence.

Table 1 shows two other instances where certain features are found in two of the bills, but not the third. H.R. 3277 (109th Congress) and S. 1731 provide

expedited procedures for congressional action on the review schedule, and in S. 1731 the expedited procedures would apply as well to the Commission Schedule and Review bill and other legislative proposals submitted to Congress by the USASC. No expedited procedures are included in H.R. 5794. On the other hand, H.R. 3277 and H.R. 5794 both contain provisions for compilation of a program inventory by the legislative support agencies, whereas S. 1731 does not call for a program inventory.

All of the bills authorize appropriation of funds to carry out the duties of the respective commissions. H.R. 3277 (109th Congress) and S. 1731 contain typical “such sums as may be necessary” language for authorizations, while H.R. 5794 would require that amounts appropriated for commission operations be offset by reductions in spending for other programs. Finally, all three bills include sunset provisions for the commission itself. Under H.R. 3277 (109th Congress), the commission would terminate on December 31, 2026; under H.R. 5794, on December 31, 2033; and under S. 1731, on December 31, 2037.

Brief Overview of Arguments for and Against Sunset Commissions

Supporters of sunset commission measures suggest that there are too many overlapping and ineffective federal programs that contribute to the growing federal deficit, and that the existing structure of congressional committees does not encourage systematic review of similar agencies and programs. According to sunset proponents, congressional reviews of many programs are sporadic and inadequate, as evidenced by the number of unauthorized appropriations. An action-forcing mechanism — such as threat of termination — is necessary; a sunset commission would assist Congress in performing its oversight function, thereby reducing fraud, waste, and abuse. President Bush has alluded to some of these factors in support of a sunset commission in his recent budget submissions.

Advocates of a federal sunset commission sometimes contend that the viability and usefulness of sunset commissions has been demonstrated in states such as Texas. In his remarks accompanying the introduction of S. 1731, Senator Cornyn stated the following:

The bill is modeled after the sunset process that the State of Texas instituted in 1977 to identify and eliminate waste, duplication, and inefficiency in government agencies. This process has led to the elimination of dozens of agencies that have outlived their usefulness and has saved Texas taxpayers hundreds of millions of dollars.²⁴

Some figures regarding the outcome of sunset reviews in Texas have already been noted. With respect to the fiscal impact of commission recommendations, the Texas Sunset Advisory Commission has reported, “Estimates from reviews conducted between 1982 and 2007 indicate a potential 25-year savings of

²⁴ Sen. John Cornyn, remarks accompanying the introduction of S. 1731, *Congressional Record*, daily edition, vol. 154 (June 28, 2007), p. S8703.

approximately \$784.5 million, compared with expenditures of \$24.9 million for the Sunset Commission.” From these estimates one may infer that Texas has earned more than \$31 in return for each dollar spent on the sunset process.²⁵

Critics of the sunset commission measures counter that such bills would burden Congress with a tremendous workload for mandatory reauthorization of agencies and programs and might prove infeasible to carry out, or alternatively, result in perfunctory reviews. A sunset commission might increase congressional personnel costs, since additional staff would be needed to assist the commission in its review activities. Opponents of sunset commissions also contend that the review and reauthorization process would pose a special threat to programs serving diffuse and unorganized constituencies; federal programs providing a safety net for the most vulnerable in society might be especially endangered.

Some disapproving of a federal sunset commission further note that a key feature of the sunset process is that programs and agencies would terminate after the submission of the commission’s report and recommendations to Congress, unless they receive statutory extensions. This means that following congressional approval of a reauthorization bill, the measure would have to go to the President in order to be signed into law. If the President were to veto the bill, a two-thirds majority in both chambers would be necessary to override the veto and extend the life of the program or agency. The possibility of a popular program or agency being eliminated by a President, with the support of one third of the House and Senate, arguably would represent a significant transfer of power from Congress to the executive branch.

²⁵ Sunset Advisory Commission, *Guide to the Texas Sunset Process*, Jan. 2008, p. 11.

Table 1. Selected Features in Three Measures to Establish a Federal Sunset Commission

Feature	H.R. 3277 (109th)	H.R. 5794 (110th)	S. 1731 (110th)
<i>Title of bill</i>	Federal Agency Performance Review and Sunset Act	Federal Sunset Act of 2008	United States Authorization and Sunset Act of 2007
<i>Introduction</i>	Draft proposal prepared by the Office of Management and Budget and forwarded to Congress. Introduced on July 14, 2005, by Rep. Kevin Brady.	April 15, 2008, by Rep. Kevin Brady.	June 28, 2007, by Sen. John Cornyn.
<i>Stated purpose(s)</i>	Improve performance of executive branch by ascertaining whether programs work or not and addressing deficiencies in existing programs, eliminating duplication of effort, and abolishing agencies and programs that do not work.	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 public need does not exist.	To provide for the continuing review of unauthorized federal programs and agencies and to establish a bipartisan commission for the purpose of improving oversight and eliminating wasteful government spending.
<i>Scope of coverage</i>	All federal agencies and programs as proposed by the President and approved by Congress.	All federal agencies as defined in 5 U.S.C. 105, plus federal advisory committees. Actual coverage dependent upon enactment of review schedule.	Any federal agency as defined in 5 U.S.C. 105 and designated for review by the sunset commission.

CRS-14

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Establishment, leadership, and meetings</i>	Sunset Commission (SC) established, with meetings to be held at call of the chair.	Federal Agency Sunset Commission (FASC) established, with meetings to be held at call of the chairman. Speaker of the House to designate initial chairman to serve for two years; initial vice chairman to be designated by the majority leader of the Senate. Then alternate appointments of chairman and vice chairman. Members of Congress to serve six years, outside commission members to serve for three years.	United States Authorization and Sunset Commission (USASC) established, with meetings to be held at call of the chairperson or a majority of members. Speaker of the House to designate initial chairman to serve for two years; initial vice chairman to be designated by the majority leader of the Senate. Then alternate appointments of chairman and vice chairman. Members usually to serve six years. Provision for an initial organization meeting if after 90 days at least five members have been appointed.
<i>Membership</i>	Seven members appointed by and to serve at pleasure of President, to be appointed within 180 days following enactment of act. Each member's term not to exceed three years unless reappointed. One member each to be named, in consultation, respectively, with the Senate majority leader, Senate minority leader, Speaker of the House, and House minority leader; other three appointments unrestricted. Chair and vice chair to be named by President.	Twelve members, to be appointed not later than 90 days after enactment. Six commission members shall be appointed by the Speaker of the House, four of whom shall be Members and only two of whom may be of the same political party; minority members appointed with consent of minority leader. Six commission members shall be appointed by the majority leader of the Senate, four of whom shall be Members and only two of whom may be of the same political party; minority members appointed with consent of minority leader. Outside members appointed to the commission are to have expertise in the operation and administration of government programs.	Eight members of Congress to be appointed not later than 90 days after enactment. Four commission members shall be appointed by the Speaker of the House, no more than two of whom may be of the same political party; minority members appointed with consent of minority leader. Four commission members shall be appointed by the majority leader of the Senate, no more than two of whom may be of the same political party; minority members appointed with consent of minority leader. The director of the Congressional Budget Office (CBO) and the Comptroller General of the Government Accountability Office (GAO) shall be non-voting ex officio members.

CRS-15

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Powers of commission</i>	SC may hold hearings; obtain directly from executive branch bodies relevant information, suggestions, estimates, and statistics. RC also may contract with government and private agencies or persons for services. Authorizes detail of federal employees to commission.	FASC may hold hearings; obtain information from federal agencies; issue subpoenas for testimony and evidentiary materials. FASC may contract with government and private agencies and persons for services and may promulgate such rules as necessary to carry out this act.	USASC may hold hearings; obtain information from federal agencies; issue subpoenas for testimony and evidentiary materials. FASC may contract with government and private agencies and persons for services. Authorizes detail of federal employees to commission.
<i>Administrative provisions</i>	Commission chair may appoint and terminate a director; director may appoint staff. Provisions for use of postal and printing services and for administrative support services from the Administrator of General Services on a reimbursable basis.	Commission chair to appoint a director; director may appoint staff. Provisions for use of postal and printing services and for administrative support services from the Administrator of General Services on a reimbursable basis.	Commission chair to appoint a staff director and other personnel as needed. Provisions for use of postal services and for administrative support services from the General Services Administration on a nonreimbursable basis. Other administrative support services, including funds, facilities, and staff, authorized on a nonreimbursable basis from GAO.

CRS-16

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Schedule for review process</i>	All programs and agencies to be reviewed at least once every 10 years. Review schedule to be proposed by the President and approved by Congress, with program inventory compiled by CRS being advisory, not binding.	Not later than one year after date of enactment of this act, FASC shall submit to Congress a schedule for review by the commission, at least once every 12 years (or less, if determined appropriate by Congress), of the abolishment or reorganization of each agency. Review schedule to provide that agencies that perform similar or related functions be reviewed concurrently.	Not later than 18 months after enactment of this act and at least once every 10 years thereafter, USASC shall submit to Congress a legislative proposal (called the Commission Schedule and Review bill) that includes a schedule providing a timeline for review and proposed abolishment of (1) at least 25% (in dollars) of unauthorized agencies or programs; and (2) if applicable, at least 25% (in dollars) of the programs identified by the Office of Management and Budget through its Program Assessment Rating Tool program or other similar OMB review program as ineffective or results not demonstrated. Timeline to provide for concurrent review of agencies that perform similar or related functions.
<i>Agent(s) and process for program review.</i>	Commission to review programs and agencies, according to the schedule for review enacted into law. Commission may consider any publicly available agency or program evaluations and assessments, including those that the Office of Management and Budget (OMB) has undertaken in consultation with the affected agencies.	FASC shall review the efficiency and public need for each agency as scheduled.	USASC shall review each agency and program identified in the schedule and review bill (such proposal described immediately above).

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<p><i>Standards/criteria for reviews</i></p>	<p>Criteria for review:</p> <ul style="list-style-type: none"> (1) Whether the agency or program as carried out by the agency is cost-effective and achieves its stated purpose or goals; (2) Extent to which any trends, developments, or emerging conditions affect the need to change the mission of the agency or program or the way that the commission or program is being carried out by the agency; (3) Extent to which the agency or program duplicates or conflicts with other federal agencies, state and local government, or the private sector; (4) Extent to which the agency coordinates effectively with state and local governments in performing the functions of the program; (5) Extent to which changes in the authorizing statues of the agency or program would improve the performance of the agency or program; (6) Extent to which changes in the management structure of the agency or program or its placement in the executive branch are needed to improve the overall efficiency, effectiveness, or accountability of executive branch operations. 	<p>Criteria for review:</p> <ul style="list-style-type: none"> (1) The effectiveness, and the efficiency of the operation of, the programs carried out by each such agency; (2) Whether the programs carried out by the agency are cost-effective; (3) Whether the agency has acted outside the scope of its original authority, and whether the original objectives of the agency have been achieved; (4) Whether less restrictive or alternative methods exist to carry out the functions of the agency; (5) The extent to which the jurisdiction of, and the programs administered by, the agency duplicate or conflict with the jurisdiction and programs of other agencies; (6) The potential benefits of consolidating programs administered by the agency with similar or duplicative programs of other agencies, and the potential for consolidating such programs; (7) The number and types of beneficiaries or persons served by programs carried out by the agency; (8) The extent to which any trends, developments, and emerging conditions that are likely to affect the future nature and extent of the problems or needs that the programs carried out by the agency are intended to address; 	<p>Criteria for review as applicable:</p> <ul style="list-style-type: none"> (1) The effectiveness and efficiency of the program or agency; (2) The achievement of performance goals (as identified in 31 U.S.C. 1115(g)(4)); (3) The management of the financial and personnel issues of the program or agency; (4) Whether the program or agency has fulfilled the legislative intent surrounding its creation, taking into account any change in legislative intent during its existence; (5) Ways the agency or program could be less burdensome but still efficient in protecting the public; (6) Whether reorganization, consolidation, abolishment, expansion, or transfer of agencies or programs would better enable the federal government to accomplish its missions and goals; (7) Promptness and effectiveness of an agency in handling FOIA complaints and requests; (8) The extent that the agency encourages and uses public participation when making rules and decisions; (9) Agency's record in complying with requirements for equal employment opportunity, rights and privacy of individuals, and purchasing products from historically underutilized businesses;

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<p><i>Standards/criteria for reviews, cont.</i></p>		<p>(9) The extent to which the agency has complied with the provisions contained in the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285);</p> <p>(10) The promptness and effectiveness with which the agency seeks public input and input from state and local governments on the efficiency and effectiveness of the performance of the functions of the agency;</p> <p>(11) Whether the agency has worked to enact changes in the law that are intended to benefit the public as a whole rather than the specific business, institution, or individuals that the agency regulates;</p> <p>(12) The extent to which the agency has encouraged participation by the public as a whole in making its rules and decisions rather than encouraging participation solely by those it regulates;</p> <p>(13) The extent to which the public participation in rulemaking and decisionmaking of the agency has resulted in rules and decisions compatible with the objectives of the agency;</p> <p>(14) The extent to which the agency complies with section 552 of Title 5, <i>United States Code</i> (commonly known as the “Freedom of Information Act”);</p> <p>(15) The extent to which the agency complies with equal employment opportunity requirements regarding equal employment opportunity.</p> <p>(16) The extent of the regulatory, privacy, and</p>	<p>(10) Extent to which the program or agency duplicates or conflicts with other federal agencies, state, or local government, or the private sector and if consolidation or streamlining into a single agency or program.</p>

CRS-19

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Standards/criteria for reviews, cont.</i>		<p>employment opportunity requirements.</p> <p>(16) The extent of the regulatory, privacy, and paperwork impacts of the programs carried out by the agency;</p> <p>(17) The extent to which the agency has coordinated with state and local governments in performing the functions of the agency;</p> <p>(18) The potential effects of abolishing the agency on state and local governments;</p> <p>(19) The extent to which changes are necessary in the authorizing statutes of the agency in order that the functions of the agency can be performed in the most efficient and effective manner.</p>	
<i>Transparency and public participation</i>	<p>SC to hold public hearings and meetings to the extent appropriate, but is not subject to Federal Advisory Committee Act (FACA) provisions. Before recommending the abolishment of any agency or program, SC should, as it considers appropriate:</p> <p>(1) conduct public hearings;</p> <p>(2) provide an opportunity for public comment;</p> <p>(3) offer the affected agency opportunity to comment;</p> <p>(4) review assessments previously used, including those from from OMB; and</p> <p>(5) consult with GAO, the relevant inspectors general, and the relevant congressional committees.</p>	<p>FASC shall conduct public hearings on the abolishment of each agency reviewed, provide an opportunity for public comment, require the agency to provide information to the commission as appropriate. FASC shall consult with GAO, OMB, Comptroller General, and the chairman and ranking minority members of the committees of Congress with oversight responsibility regarding the operation of the agency.</p>	<p>No reference to FACA or requirement for public hearings with respect to the operations of the USASC.</p> <p>Criteria for review, however, include whether the agency encourages and uses public participation when making rules and decisions.</p>

CRS-20

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Reporting of recommendations</i>	<p>Sunset commission shall submit to the President by August 1 an annual report containing its assessment of each agency and program reviewed during the preceding year, along with its recommendations on how to improve the results that each agency and program achieves and whether to abolish any agency or program. Commission shall submit with report draft of any proposed legislation needed to carry out its recommendations.</p>	<p>FASC to submit to Congress and the President each year by September 1 a report containing:</p> <ul style="list-style-type: none"> (1) analysis of the efficiency of operation and public need for each agency being reviewed that year; (2) recommendations on whether each agency should be abolished or reorganized; (3) recommendations on whether the functions of any other agencies should be consolidated, transferred, or reorganized in an agency being reviewed; (4) recommendations for administrative and legislative action regarding reviewed agency, but not including recommendations for appropriation levels. <p>FASC to review and report to Congress on all legislation introduced in either house of Congress that would establish a new agency or a new program to be carried out by an existing agency.</p>	<p>USASC to submit to the President and Congress no later than two years after enactment:</p> <ul style="list-style-type: none"> (1) a report that reviews and analyzes according to the stipulated criteria each agency and program scheduled for review in the year in which the report is submitted; (2) a proposal, if appropriate, to reauthorize, reorganize, consolidate, expand, or transfer the federal programs and agencies to be reviewed that year; (3) legislative provisions necessary to implement the USASC's proposal and recommendations. <p>The USASC shall submit to Congress and the President additional reports (as prescribed above) by June 30 of every other year. The Commission Schedule and Review bill (establishing the timetable) and all other legislative proposals and reports submitted by the USASC shall require approval by at least five members.</p>
<i>Expedited procedures for congressional action</i>	<p>Expedited procedures apply to congressional review of President's proposed schedule for review of agencies and programs.</p>	<p>None included.</p>	<p>Expedited procedures apply to the Commission Schedule and Review bill and any other legislative proposal with provisions submitted to Congress by the USASC.</p>

CRS-21

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Action forcing mechanism</i>	<p>Programs and agencies to terminate two years after date that the President submits the recommendations to Congress, along with the report of the Sunset Commission, unless the agency or program is reauthorized by law. Enactment of law may extend deadline for abolishment for two additional years.</p> <p>Exemption: No regulations to protect the environment, health, safety, or civil rights shall sunset under this act, nor shall any program related to enforcing said regulations sunset unless provision is made for the continued enforcement of those regulations.</p>	<p>Each agency shall be abolished not later than one year after the date the commission completes its review of the agency, unless the agency is reauthorized by the Congress. Enactment of law by super majority in each chamber may extend deadline for abolishment for two additional years.</p>	<p>The Commission Schedule and Review bill shall provide for the abolishment of any agency or program two years after the date the commission completes its review of the agency or program, unless the agency or program is reauthorized by Congress.</p>
<i>Provisions for implementation</i>	<p>The President may submit to Congress draft legislation needed to accomplish the recommendations of the Sunset Commission with any revisions the President thinks necessary to improve the performance of the assessed agencies or programs.</p>	<p>Along with annual report due by September 1, FASC to submit to Congress and the President draft legislation to carry out its recommendations.</p> <p>The commission shall monitor implementation of laws containing provisions that incorporate prior recommendations with respect to abolishment or reorganization of agencies.</p>	<p>Along with its biennial reports, the USASC shall submit to Congress any legislative provisions necessary to implement the USASC’s proposal and recommendations; and, if appropriate, a proposal to reauthorize, reorganize, consolidate, expand, or transfer the federal programs and agencies scheduled to be reviewed that year.</p>
<i>Sunset provision for commission</i>	<p>Sunset commission to terminate on December 31, 2026, unless reauthorized in law by Congress.</p>	<p>FASC to terminate on December 31, 2033, unless reauthorized by Congress.</p>	<p>USASC to terminate on December 31, 2037.</p>
<i>Authorization of appropriations</i>	<p>Such sums as may be necessary authorized to be appropriated for the purposes of carrying out the duties of USASC. Such funds to remain available until expended.</p>	<p>Amounts appropriated to carry out this act to be offset by a reduction in appropriations for other federal programs.</p>	<p>Such sums as may be necessary are authorized to be appropriated for the purposes of carrying out the duties of USASC.</p>

CRS-22

Feature	H.R. 3277 (109 th)	H.R. 5794 (110 th)	S. 1731 (110 th)
<i>Program inventory</i>	Within six months of enactment of this act, directs the Director of the Congressional Research Service, with the assistance of the Comptroller General, to prepare an inventory of all executive branch agencies and programs to assist the President and Congress in their duties under act. Section pertaining to an agency or program shall be updated six months prior to its scheduled reviews by the commission. Inventory to include, for each agency and program, a list of citations of all authorizing statutes of the agency or program.	Directs the Comptroller General and the Director of the Congressional Budget Office (CBO), 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 this act. Content requirements for the inventory specified, including data to be provided by CBO.	Not included.