



A Federal Sunset Commission: Review of Proposals and Actions

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Summary

The sunset concept provides for programs and agencies to terminate automatically on a periodic basis unless explicitly renewed by law. Beginning in the 107th Congress, Representative Kevin Brady introduced a series of bills to create a federal sunset commission, modeled on the sunset review process in Texas (including most recently H.R. 393 in the 111th Congress).

Former President George W. 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, and the Government Reform Committee voted to report H.R. 3282 favorably, but no further action occurred.

In the 110th Congress, with the budget submissions for FY2008 and FY2009, President 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.

In the 111th Congress, Representative Brady reintroduced his sunset commission bill as H.R. 393, the Federal Sunset Act of 2009. Senator Cornyn likewise reintroduced his measure as S. 926, the United States Authorization and Sunset Commission Act of 2009. Provisions very similar to those in H.R. 393 also were found as a separate title in at least three budget reform bills in the 111th Congress, including H.R. 311 (Title II), H.R. 534 (Title I), and H.R. 3964 (Title IV, Subtitle A). In the second session, two sunset-related measures, absent action-forcing provisions, were introduced as H.R. 5407 and H.R. 2142, with the latter, as amended, eventually enacted as P.L. 111-352. H.R. 5568, the Stop Waste by Eliminating Excessive Programs (SWEEP) Act, was introduced by Representative Glenn Nye.

In the 112th Congress, a newly formulated sunset commission bill, H.R. 606, the Federal Program Sunset Commission Act, was introduced on February 10, 2011, by Representative Aaron Schock and cosponsors. Representative Brady introduced a bill with sunset-like provisions but no commission (H.R. 235 §11). On March 16, 2011, Senator Cornyn proposed provisions previously seen in his sunset commission measure as an amendment (S.Amdt. 186 to S. 493).

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.

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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 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.”²

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.

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.³ 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.

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.”⁴ 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.”⁵

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

¹ For additional background, see CRS Report RL31455, *Federal Sunset Proposals: Developments in the 94th to 107th Congresses*, by (name redacted).

² 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.

³ Professor Theodore Lowi first suggested a “Tenure of Statutes” act in his book, *The End of Liberalism* (New York: Norton, 1969) and arguably might appropriately be credited as the “father” of sunset. As Professor Lowi stated in a letter appearing in the *Ripon Forum* (vol. 43, No. 2, Spring 2009), his idea “received a good bit of attention in the 1970’s, due particularly to Common Cause, a prominent reform group. They improved on it and, innocently, stole the idea from me by giving it a new and more quotable name: ‘Sunset legislation.’ ”

⁴ Richard C. Kearney, “Sunset: A Survey and Analysis of the State Experience,” *Public Administration Review*, vol. 50 (January/February 1990), p. 49.

⁵ *Ibid.*

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.⁶ A careful review of the table included in the 2010 edition, derived from 2009 COSG surveys, suggests that 24 states have an active sunset review process.⁷ The COSG table further indicates that nine states have terminated or suspended their sunset procedures, while in two of those states sunset-like reviews continue. Three states have never had a sunset review process.⁸

A second source of data on state sunset laws comes from the Council on Licensure, Enforcement, and Regulation (hereafter referred to as CLEAR).⁹ While the CLEAR chart uses categories that are differently conceived from those used by COSG, one category appears of special interest for historical evolution of state sunset laws, namely, where the sunset law has been repealed, terminated, or suspended. A tabulation of the CLEAR chart indicates 13 states in this category. In addition to the nine identified in the COSG table, in at least three states sunset laws apparently were terminated or repealed and subsequently reinstated, and another termination is coded as “discretionary” by COSG.¹⁰

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.”¹¹ According to the *Guide*, since the Texas sunset process began in 1978, 58 agencies have been abolished and another 12 agencies have been consolidated, for an estimated savings of nearly \$783.7 million.¹² 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 1993.¹³

⁶ “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 many footnotes in the scope column of the table, one of which applies to several states; “footnote e” 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 ten states]...have included sunset clauses in selected programs or legislation.” See Council of State Governments, *The Book of the States, 2010 Edition*, vol. 42 (Lexington, KY: 2010), pp. 170-174.

⁷ According to data in the table, eight states have comprehensive sunset review (AL, AK, AZ, DE, FL, LA, OH, and TN). Eight states have sunset for regulatory agencies (CO, GA, HI, IL, KY, MD, MO, and PA). There are 12 states listed with scope as selective, but of the 12, one is also coded as D, two with “footnote e,” and one (IL) is also coded as R, leaving eight states remaining (CA, CT, IN, ME, NM, TX, and WV).

⁸ Sunset laws are recorded as terminated in KS, MS, NH, NC, OR, RI, SC, SD, and WY while some review activity continues in KS and SD. The three states never having had a sunset review process include IA, MA, and ND.

⁹ Council on Licensure, Enforcement, and Regulation, “Sunset, Sunrise, and State Agency Audits,” available at <http://www.clearhq.org/sunset.htm>. Visited January 29, 2008. Article was added September 4, 2006.

¹⁰ States where sunset has been reinstated include CT, FL, and MO. In AR, sunset was repealed, but is listed as discretionary.

¹¹ State of Texas, Sunset Advisory Commission, *Guide to the Texas Sunset Process*, December 2009, p. 1, available at <http://www.sunset.state.tx.us/guide.pdf>.

¹² *Ibid.*, p. 11.

¹³ 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.

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 87-1.¹⁴

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 15 years 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.¹⁵ 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.¹⁶

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

¹⁴ For further discussion of federal sunset proposals, see CRS Report RL31455, *Federal Sunset Proposals: Developments in the 94th to 107th Congresses*, by (name redacted).

¹⁵ U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology, <http://www.congress.gov/cgi-lis/bdquery/z?d105:H.R.2939>; *Federal Sunset Act of 1998*, hearing before subcommittee, 105th Cong., 2nd sess., September 14, 1998 (Washington: GPO, 1998), pp. 7-37.

¹⁶ Letter from William Michael Treanor, Deputy Assistant Attorney General, dated September 21, 1998. See *ibid.*, pp. 53-54. For further discussion of the hearing, see CRS Report RL31455, *Federal Sunset Proposals: Developments in the 94th to 107th Congresses*, by (name redacted).

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 95th Congress), the section would have directed the 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,¹⁷ 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.¹⁸

¹⁷ 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, April 23, 2002. Copy provided to author by subcommittee staff.

¹⁸ 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.”¹⁹ 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.²⁰ 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 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.

¹⁹ See *Congressional Record*, vol. 151, March 17, 2005, daily ed., p. H1639.

²⁰ For further background on the budget resolution, see CRS Report RL32791, *Congressional Budget Actions in 2005*, by (name redacted) §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.

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.²¹

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 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 Tiarht, 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.²² 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.

²¹ 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., September 27, 2005 (Washington: GPO, 2006).

²² 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 (name redacted); and CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by (name redacted).

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.²³ 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.²⁴ 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.²⁵

Support for results commissions was also reiterated: "Results Commissions would consider and revise Administration proposals to restructure or consolidate programs or agencies to improve their performance."²⁶

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.²⁷

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.

²³ 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).

²⁴ 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.

²⁵ U.S. Office of Management and Budget, *Fiscal Year 2008 Analytical Perspectives* (Washington: GPO, 2007), p. 220.

²⁶ *Ibid.*

²⁷ U.S. Office of Management and Budget, *Fiscal Year 2009 Analytical Perspectives* (Washington: GPO, 2008), p. 225.

Developments in the 111th Congress

In the 111th Congress, Representative Brady and Senator Cornyn reintroduced their respective sunset commission bills. The Federal Sunset Act of 2009 (H.R. 393) was introduced by Representative Brady and 16 original cosponsors on January 9, 2009, and referred to the House Committee on Oversight and Government Reform.

The provisions of H.R. 393 also were included as a separate title in three budget reform bills. The Spending Reform Act of 2009 (H.R. 311, Title II), to cap discretionary spending, eliminate wasteful and duplicative agencies, reform entitlement programs, and reform the congressional earmark process, was introduced by Representative Brady and 16 original cosponsors on January 8, 2009. The bill was referred to the Committee on the Budget, and, in addition, to the Committees on Rules, and Oversight and Government Reform, for consideration of those provisions falling within their respective jurisdictions, and for a period to be determined by the Speaker.

The Responsible Government Empowerment Act of 2009 (H.R. 534, Title I), to improve the ability of Congress to set spending priorities and enforce spending limits, was introduced by Representative Randy Neugebauer on January 14, 2009. The bill was referred jointly to the Committees on House Budget, House Rules, and House Oversight and Government Reform, and subsequently to the Subcommittee on Government Management, Organization, and Procurement.

The Spending, Deficit, and Debt Control Act of 2009 (H.R. 3964, Title IV, Subsection A), to reform federal budget procedures, to impose spending and deficit limits, to provide for sustainable fiscal future, and for other purposes, was introduced on October 29, 2009, by Representative Hensarling along with 20 cosponsors. The bill was referred to the Committee on the Budget, and, in addition, to the Committees on Rules, Appropriations, Oversight and Government Reform, and Ways and Means, for consideration of those provisions falling within their respective jurisdictions, and for a period to be determined by the Speaker.

Senator Cornyn and four cosponsors introduced S. 926, the United States Authorization and Sunset Commission Act of 2009, on April 29, 2009; the bill was referred to the Senate Committee on Homeland Security and Governmental Reform. In remarks accompanying the introduction of the bill, Senator Cornyn stated that the bill represented an important step

to making sure that Congress gets back to the hard work of oversight to determine if programs actually fulfill their stated purposes or yield some unintended or counterproductive results. Periodic assessments are essential to good government and this is what the Commission will provide to Congress and to taxpayers across the country.²⁸

In the first session of the 111th Congress, the Congressional Budget Resolution for FY2010, S.Con.Res. 13, as passed by the Senate²⁹ provided for the establishment of a deficit-reduction reserve fund for the bipartisan congressional sunset commission. Such a reserve fund was not

²⁸ Vote on S.Con.Res. 13, April 2, 2009.

²⁹ Vote in the Senate on S.Con.Res. 13, *Congressional Record*, daily edition, April 2, 2009, pp. S4233-S4293. See bill text at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:sc13es.txt.pdf.

among those included in the House-passed version, however, nor was it retained in the conference version of S.Con.Res. 13, as approved by both chambers.³⁰

Summary of Provisions in H.R. 393

H.R. 393 would have created a Federal Agency Sunset Commission (FASC) to review the efficiency of and public need for federal agencies and would have provided for the abolishment of agencies for which a public need did not exist. The FASC would have consisted 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 have been Members of Congress, with not more than two from the same political party. Within one year after its establishment, the commission would have submitted 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 have been scheduled for review at the same time. Then the commission would have commenced 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 have reported to the President and Congress, and recommended 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 also would have submitted draft legislation to carry out the recommendations.

Under the sunset provisions in the bill, an agency would have been abolished within one year of the commission's review, unless the agency received statutory extension. The bill would have allowed 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 have reported 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. 393 would have directed 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. 926

S. 926 would have created 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.

³⁰ The Senate-passed version provided for 53 reserve funds, whereas the conference version retained a total of 34 reserve funds, 20 for the Senate and 14 for the House. See U.S. Congress, Joint Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2010*, Conference Report to accompany S.Con.Res. 13, 111th Cong., 1st sess., April 27, 2009, H.Rept. 111-89.

The bill would have required 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 have included a schedule of review and abolishment of agencies and programs. The bill would have required 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 a review program similar to the Program Assessment Rating Tool (PART, created and used during the Administration of George W. Bush), as ineffective or results not demonstrated. The bill would have required that agencies performing similar or related functions be reviewed concurrently.

S. 926 set forth criteria that would have been used by the USASC in conducting its reviews. The bill would have required the USASC to submit to Congress and the President every two years a report that analyzed and included, 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 have been subject to expedited procedures during their consideration by Congress.

Related Measures Without Action Forcing Provisions

Another bill, H.R. 5407, the Program Reform Commission Act, was introduced by Representative Adam Smith on May 26, 2010, and referred to the Oversight and Government Reform Committee. The bill would have established a Program Review Commission within the legislative branch

- to review and identify unnecessary federal programs;
- to make recommendations for termination, modification, or retention of such programs; and
- to express the sense of the Congress that the House and Senate should promptly consider legislation to make the statutory changes needed to implement the recommendations.

Since the only action-forcing mechanism consisted of sense of the Congress provisions, H.R. 5407 was not strictly speaking a sunset bill.

Similarly, H.R. 2142, the Government Efficiency, Effectiveness, and Performance Improvement Act, as amended and enacted as P.L. 111-352, lacked automatic termination provisions absent congressional action, but contained more binding program review and assessment requirements. The new law strengthened the Government Performance and Results Act of 1993 (GPRA)³¹ by requiring agencies to identify high-priority goals cutting across agency programs and to perform frequent evaluations of progress toward achieving those goals. P.L. 111-352 required a review of government programs at least once every five years to assess their performance and improve their operations. A preliminary and final list of programs to be assessed each year was to be prepared

³¹ P.L. 103-62; 107 Stat. 285. The bill would also codify elements of Executive Order 13450, issued by President George W. Bush on November 13, 2007, such as designation of agency Performance Improvement Officers and establishment of a Performance Improvement Council.

by the OMB Director. On June 14, 2010, H.R. 2142, as amended, was reported favorably by the Committee on Oversight and Government Reform,³² and approved by the House by voice vote under suspension of the rules on June 16, 2010.

During committee markup of H.R. 2142 on May 20, 2010, Representative Schock offered an amendment. His amendment proposed to add a new section at the end of the substitute version, to establish a Federal Program Sunset Commission, consisting of eight Members of Congress, along with four members not serving in Congress. The commission would prepare and submit to Congress a schedule for reviewing federal programs, and prepare and submit to Congress and the President an annual report due by September 1. The report would contain an analysis of the efficiency and need of each federal program subject to review that year; recommendations on whether each federal program should be abolished or reorganized; and recommendations for consolidation, transfer, or reorganization of similar functions from other federal programs. The commission would submit to Congress and the President draft legislation to carry out the recommendations included in the annual report. Each federal program would then be abolished within one year of its review by the commission unless reauthorized by Congress.³³ The amendment was defeated by vote of 17 nays to 11 yeas.³⁴

Introduction of H.R. 5568

Another bill with an action-forcing mechanism was introduced in the second session. On June 22, 2010, Representative Nye, with 29 original cosponsors, introduced H.R. 5568, the Stop Waste by Eliminating Excessive Programs (SWEEP) Act, “to create a means to review and abolish Federal programs that are inefficient, duplicative, or in other ways wasteful of taxpayer funds.” Key provisions of the SWEEP Act included the following:

- the creation of a Federal Programs Sunset Commission (FPSC) as a bipartisan legislative body, with all members appointed by the congressional leadership and excluding any officer or employee of the executive branch and with powers to hold hearings, obtain official data from executive agencies, and issue subpoenas;
- the Comptroller General of the Government Accountability Office (GAO) to prepare a preliminary and then a final program inventory organized by program areas reflective of national needs and agency missions, and with assistance from the Director of the Congressional Research Service and compilation of required budgetary information from the Director of the Congressional Budget Office;

³² U.S. Congress, House Committee on Oversight and Government Reform, *Government Efficiency, Effectiveness, and Performance Improvement Act of 2010*, report together with minority views to accompany H.R. 2142, 111th Cong., 2nd sess., June 14, 2010, H.Rept. 111-504 (Washington: GPO, 2010).

³³ Copy of Schock amendment available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr504.111.pdf. H.R. 2142, the GPRA Modernization Act of 2010, as further amended but sans any sunset provisions, subsequently was enacted as P.L. 111-352 (124 Stat. 3866), available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ352/pdf/PLAW-111publ352.pdf>.

³⁴ H.Rept. 111-504, p. 19. The vote split mainly along party lines, with Representatives Cooper and Quigley joining with the Republicans on the committee to vote against the amendment.

- the commission to establish the schedule for review of each program, arranged by functional category, at least once every 10 fiscal years;
- the commission to review all government-funded programs to determine their merit in proven outcomes, cost-effective record, scope of interest, and whether there exist programs receiving funding for duplicative purposes;
- the commission to report to Congress annually on programs that should be abolished, consolidated, transferred, reorganized, or remain untouched, and include in the report implementation bills to bring about any recommended actions (such as abolishment); and
- the bill provided expedited procedures to facilitate prompt congressional consideration and action, including an up or down vote, on legislation combining, reorganizing, or abolishing wasteful programs as recommended by the commission, thereby reducing unnecessary government spending.

Proposal for a Federal Sunset Commission by Representative Issa

On October 13, 2010, Representative Issa, then serving as ranking minority Member on the House Oversight and Government Reform Committee (who became chair in the 112th Congress), called for the establishment of a federal program sunset commission in an op-ed piece appearing in *Investor's Business Daily*.³⁵ The proposed sunset commission would have been bipartisan, consisting of experts from outside the federal government. According to Representative Issa, such “an independent commission would foster objectivity without playing favorites among political constituencies. Within one year of a commission review, a failing program would have been abolished automatically unless reauthorized by Congress.”³⁶

The proposal did not include endorsement of any specific sunset bill pending in the 111th Congress. The article was largely silent regarding significant features, such as appointment of members, criteria for evaluating programs, and commission powers and structure. In the view of journalist Robert Brodsky, one clue about operations of the sunset commission as envisaged by Representative Issa “can be found in the failed amendment” to H.R. 2142.³⁷ As discussed already, the amendment offered during markup by Representative Schock also would have established a federal program sunset commission. One significant difference between the Shock amendment and a sunset commission as outlined by Representative Issa concerned membership. In the amendment version, 8 of the 12 members of the sunset commission would have been Members of Congress, whereas under Representative Issa’s proposal all commission members would have been independent nongovernmental experts.

³⁵ Representative Darrell Issa, “A Plan to End Failed Federal Programs, October 13, 2010, available online at <http://www.investors.com/NewsAndAnalysis/Article/550274/201010131830/A-Plan-To-End-Failed-Federal-Programs.aspx>.

³⁶ Ibid.

³⁷ Robert Brodsky, “Issa calls for federal program sunset commission,” *Government Executive*, October 14, 2010, available online at http://www.govexec.com/story_page.cfm?articleid=46321&dcn=e_gvet.

Comparing Provisions in Sunset Commission Bills

The following discussion highlights some similarities and differences between three bills introduced in the 111th Congress to establish a sunset commission, H.R. 393(Brady bill), S. 926 (Cornyn bill), and H.R. 5568 (SWEEP bill).

With respect to scope of coverage, both H.R. 393 and S. 926 referred to the definition of federal agency in 5 U.S.C. 105. The actual coverage, however, would have depended upon decisions taken subsequent to enactment. H.R. 5568 did not include a definition of agency, but instead focused on programs, as defined in 31 U.S.C. 1115(g)(6). In all three bills the sunset commission would have drafted and submitted to Congress the schedule for review.

With respect to membership, all three bills called for a 12-member bipartisan commission, consisting of eight Members of Congress and four others. Under H.R. 393 six members of the commission would have been named, respectively, by the Speaker of the House and the Senate majority leader. S. 926 and H.R. 5568 both would have consisted of the following: two Democrats would be appointed from the House of Representatives by the Speaker, and from the Senate by the majority leader, and, likewise, two Republicans would be appointed from each chamber with the consent of the respective minority leaders. In addition, under S. 926 the Director of the Congressional Budget Office and the Comptroller of the Government Accountability Office would have served as non-voting ex officio members of the commission.

All three bills would called for the commission chair to appoint a staff director. S. 926 would have had the chair appoint other personnel as needed, whereas H.R. 393 and H.R. 5568 would have delegated appointment of other staff to the director. With regard to administrative support, H.R. 393 would have had the General Services Administration (GSA) provide such services to the commission on a reimbursable basis. In contrast, S. 926 would have authorized the commission to receive administrative support services from GSA or GAO on a nonreimbursable basis. H.R. 5568, however, did not address the matter of administrative support for the commission.

H.R. 393 and S. 926 contained action-forcing mechanisms that would have terminated programs and agencies following the sunset reviews, unless reauthorized in law. Provisions in H.R. 393 would have abolished an agency within one year of the commission's review, absent statutory extension, and would have allowed for enactment of legislation extending the deadline for abolishing an agency for an additional two years. S. 926 would have abolished any agency or program two years after the commission had completed its review absent reauthorization. H.R. 5568 would have established a sunset review process that "should ensure that Congress considers the reports and recommendations of the commission in a timely fashion."³⁸ H.R. 5568 also contained a sense of Congress provision "that no funds should be appropriated for programs abolished by Congressional action taken as a result of this Act" (§105).

The bills each specified criteria to be utilized in carrying out the program reviews. H.R. 393 contained the stronger provisions for transparency and public involvement in the sunset reviews. With respect to information gathering, the House bill would have required that the FASC conduct public hearings and provide an opportunity for public comment on the abolishment of the agency.

³⁸ H.R. 5568, 111th Congress, §101(4). The action-forcing feature would use expedited procedures in Congress to facilitate an up or down vote on abolishment of programs as recommended by the commission.

The FASC also would have consulted with the chairman and ranking minority Member of the congressional oversight committees, as well as GAO and OMB. There was no reference to public hearings or public comment in S. 926 and H.R. 5568; the bills simply provided that the respective commissions, in carrying out the provisions of the act, might hold hearings, take testimony, and receive evidence.

S. 926 would have provided expedited procedures for congressional action on the review schedule, and the expedited procedures would apply as well to the Commission Schedule and Review bill and other legislative proposals submitted to Congress by the USASC. H.R. 5568 would have provided for expedited procedures in consideration of any draft bills accompanying the annual report of the FPSC to implement recommended abolishment of programs. No expedited procedures were included in H.R. 393. On the other hand, H.R. 393 and H.R. 5568 contained provisions for compilation of a program inventory by the legislative support agencies, whereas S. 926 did not call for a program inventory.

Two of the bills would have authorized the appropriation of funds to carry out the duties of the respective commissions. S. 926 contained commonly used “such sums as may be necessary” language, while H.R. 393 would have required that amounts appropriated for commission operations be offset by reductions in spending for other programs. H.R. 5568 did not authorize any appropriation of funds. Finally, all three bills included sunset provisions for the commission itself. Under H.R. 393, the commission would have terminated on December 31, 2033; and under S. 926, on December 31, 2039. The FPSC would have had the shortest life span, since H.R. 5568 stipulated that the commission would terminate 11 years after the date of enactment of the SWEEP Act, unless reauthorized by Congress.

Developments in the 112th Congress

Representative Kevin Brady, departing from his practice in the last six Congresses, has not reintroduced a sunset commission bill in the 112th Congress. On January 7, 2011, he introduced an arguably more expansive measure, H.R. 235, the Cut Unsustainable and Top-Heavy Spending Act of 2011 or “CUTS Act,” however, which calls for the “Mandatory Elimination of Duplicative Government programs.” As provided in Section 11 of H.R. 235, the OMB director and agency heads “shall work” with the chairs and ranking Members of the relevant authorizing committees and appropriations subcommittees “to consolidate programs with duplicative goals, missions, and initiatives.” Within 120 days following enactment, the OMB director would compile and submit to Congress a listing of federal programs “with duplicative goals, missions, and initiatives with recommendations for consolidation or elimination.” Absent congressional action within 60 days of receipt of the OMB report, the department secretaries and agency heads would be required to carry out the OMB recommendations as submitted to Congress.

On February 10, 2011, Representative Schock, along with three cosponsors, introduced H.R. 606, the Federal Program Sunset Commission Act, which was referred to the Government Oversight and Reform Committee. This sunset measure in the 112th Congress, incorporates some different provisions from those seen in the amendment offered by Representative Schock during mark-up of H.R. 2142 in the 111th Congress (already discussed). For example, departing from the Texas model of a legislative sunset commission, H.R. 606 would provide for a 10-member commission appointed by the President with the advice and consent of the Senate. Half of the commissioners would consist of former Members of Congress (not more than three of the same party), while the other five members would represent non-legislators with “expertise in the operation and

administration of Federal programs.” Congressional leaders would provide the President with a list of recommended nominees.

On March 16, 2011, Senator John Cornyn proposed S.Amdt. 186 to S. 493, a small business reauthorization bill. The amendment would add a new title at the end of S. 493, to be called the United States Authorization and Sunset Commission Act of 2011, which contains some provisions similar to those seen in S. 926 in the 111th Congress.³⁹ On May 2, 2011, Senate Majority Leader Harry Reid filed a cloture motion to close debate on S. 493. In his remarks, Senator Reid spoke of the effort to work out an agreement to have votes on certain amendments to the small business bill in order to get closer to final passage, referring to the example of the Cornyn amendment [to establish a bipartisan sunset commission for the purpose of improving oversight and eliminating wasteful government spending] included in the agreement, “having absolutely nothing—no relevance—nothing being germane to this bill.”⁴⁰ On May 4, the cloture motion was defeated, and no further action has occurred on S. 493 nor on S.Amdt. 186.⁴¹

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. This view arguably is substantiated by data provided in a 2011 report prepared by the Government Accountability Office (GAO), in compliance with a new statutory mandate.⁴² The law requires GAO to “identify federal programs, agencies, offices, and initiatives, either within departments or governmentwide, which have duplicative goals or activities.”⁴³ According to sunset proponents, the perception that congressional reviews of many programs are sporadic and inadequate is also evidenced by the number of unauthorized appropriations.⁴⁴

Therefore, those favoring a federal sunset commission contend, an action-forcing mechanism—such as threat of termination—is necessary; a sunset commission, they continue, would assist Congress in performing its oversight function, thereby reducing fraud, waste, and abuse. President Bush alluded to some of these possible benefits in support of a sunset commission in his budget submissions for FY2006, FY2007, and FY2008. In 2010, President Obama’s deficit

³⁹ For text of S.Amdt. 186, see Sen. John Cornyn, submission of an amendment intended to be proposed to S. 493, *Congressional Record*, daily edition, March 15, 2011, pp. S1687-S1690.

⁴⁰ Senator Harry Reid, “SBIR/STTR Reauthorization Act of 2011,” cloture motion during floor consideration of S. 493, *Congressional Record*, daily edition, May 2, 2011, pp. S2572-S2573.

⁴¹ “Rollcall Vote No. 64,” Vote on cloture motion for SBIR/STTR Reauthorization Act of 2011, *Congressional Record*, daily edition, May 4, 2011, p. S2661. Results were 52 yeas and 44 nays, so the motion was rejected, having failed to reach the three-fifths majority necessary for approving cloture.

⁴² P.L. 111-139 §139, 124 Stat. 29.

⁴³ U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP, March 2011, p. 1, available at <http://www.gao.gov/new.items/d11318sp.pdf>

⁴⁴ The Congressional Budget Office is required by statute to prepare an annual report identifying these. See, for example, the CBO report, *Unauthorized Appropriations and Expiring Authorizations*, January 2011, http://www.cbo.gov/ftpdocs/120xx/doc12044/01-14-UAEA_Approps.pdf.

reduction commission⁴⁵ suggested creation of a Cut-and-Invest Committee, similar to a sunset commission, noting that such an entity “has been recommended many times, and has found bipartisan support.” According to a draft document of the commission, such a committee

would review each federal agency, look for outdated, duplicative, under-performing, low-priority, or unnecessary programs, and consider changes to improve each agency’s operation. After its review, the Cut-and-Invest Committee would submit a report to Congress containing an analysis of each agency, and give recommendations as to which programs should be reauthorized, abolished, consolidated, reorganized, or otherwise substantively changed. Congress would be required to draft legislation carrying out the recommendations.⁴⁶

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 remarks in the 112th Congress on March 16, 2011, when calling up his amendment No. 186 to establish a bipartisan sunset commission, Senator Cornyn noted that his proposal has been “modeled after the sunset process that my State [Texas] instituted in 1977, which has been enormously successful. It has eliminated more than 50 different State agencies and saved taxpayers in the hundreds of millions of dollars.”⁴⁷ 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 2009 indicate a potential 27-year savings of approximately \$783.7 million, compared with expenditures of \$28.6 million for the Sunset Commission. Based on these estimates every dollar spend on the Sunset process has earned the State more than \$27 in return.”⁴⁸

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 fast-track and automatic termination provisions would grant substantial power to the new commission and might potentially result in termination of important programs. As suggested in an article critical of Senator Cornyn’s 2011 proposal: “Eight members of Congress would have power usually reserved to whole committees in both houses, and Congress as a whole would be left with just a single set of recommendations in one bill, potentially involving hundreds of programs related to education, the environment, workers, housing, nutrition, transportation, and other vital issues and constituencies.”⁴⁹ Critics of sunset commissions also point to lack of transparency in the activities of some commission

⁴⁵ Its full name is National Commission on Fiscal Responsibility and Reform. For further background, see <http://www.fiscalcommission.gov/>.

⁴⁶ National Commission on Fiscal Responsibility and Reform, Draft Document (11.12.10 update), “\$299 Billion in Illustrative Savings,” #11:Create a Cut-and-Invest Committee charged with trimming waste and targeting investment.” available at http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/Illustrative_List_11.10.2010.pdf

⁴⁷ Sen. Cornyn, “Amendment No. 186,” Senate debate, *Congressional Record*, daily edition, March 16, 2011, p. S1717.

⁴⁸ Texas Sunset Advisory Commission, *Guide to the Sunset Process*, December 2009, p. 11, <http://www.sunset.state.tx.us/guide.pdf>.

⁴⁹ “Cloaked in Good Government Garb, Sunset Commission Would Fast Track Spending Cuts,” *OMB Watch*, March 22, 2011, <http://www.ombwatch.org/print/11563>.

measures. For example, a sunset commission such as that proposed in S.Amdt. 186 may not be required to hold open meetings or hearings or to otherwise provide for public participation in commission deliberations.

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.

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