

THE NATIONAL SUNSET MOVEMENT

by Mark B. Blickle*

I. Introduction

The passage of sunset laws marks an attempt by state legislatures to confront the unfettered growth of governmental agencies. The legislation compels state agencies to justify their continued existence or else they are terminated after a defined period.¹ Sunset descended upon American politics in 1976 when the State of Colorado enacted the first sunset law.² Hailed as a method of reducing governmental growth and public spending, sunset laws captured the imagination and the support of the American electorate. Within two years sunset bills had been introduced into every state legislature and almost half of the states had enacted sunset legislation.³ A dynamic sunset movement became a part of the political landscape resulting in sunset laws in nearly three-quarters of the states.⁴

Nearly a decade has elapsed since the inception of sunset. The movement is no longer dynamic, and the original promises of the sunset proponents seem largely unkept. Sunset now appears more of a dated trend than a serious threat to big government.

This article discusses the sunset movement. Was it a political fad or are there enduring benefits to be realized from the enactment of these laws? Was sunset a response to problems pe-

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¹ SAFIRE'S POLITICAL DICTIONARY 705 (3d. ed. 1978) [hereinafter cited as SAFIRE]. Craig Barnes, a member of the Common Cause Board of Directors, originated the term "sunset" at an Issues Committee meeting in May 1975. *Id.* Without sunset there exists an assumption that a program remains operative unless there is a termination vote. The objective of sunset is to replace this assumption with the automatic termination of a program "unless there is a vote to continue it." Behn, *The False Dawn of the Sunset Laws*, PUB. INTEREST, Fall 1977, at 103, 104.

² COLO. REV. STAT. § 24-34-104 (Supp. 1977).

³ Drury, *Sunset Laws—A New Type of Legislative Oversight?*, STATE AND LOCAL GOV'T. REV., Sept. 1982, at 107. Four states adopted sunset laws in 1976, with nineteen additional states following by the end of 1977. *Id.*

⁴ *Id.* Thirty-five states had adopted sunset laws by January 1981. *Id.*

culiar to the 1970's or is it a legitimate oversight method applicable today? If it is the right tool for curtailing government growth and trimming budgets, why has Congress failed to enact a sunset provision while many states have passed such laws? The issues which propelled sunset laws through state legislatures still exist. In the ten years since the commencement of the sunset movement, however, the optimistic reliance upon sunset as panacea seems to have dissipated. Have sunset laws failed, or were the expectations placed upon them unrealistic?

II. *The National Sunset Experience*

The sunset movement can be regarded as a response to Watergate and the ensuing disillusionment of the American people to their government.⁵ The electorate of the 1970's was inundated with examples of disgraces involving politicians. In 1973 pollster Louis Harris revealed a "full-blown crisis of confidence" toward government.⁶ Administrative agencies bore the brunt of the public dissatisfaction with government.⁷ Criticism arose from the popular belief that regulatory agencies inevitably succumbed to the influence of special interest groups.⁸ Public dissatisfaction was compounded by the perception that Americans were no longer receiving their tax dollars' worth from government.⁹ In the aftermath of Watergate, a reform trend gained momentum unprecedented since the Populist movement of the turn of the century.¹⁰

The electorate recognized with dismay the growth of gov-

⁵ *Id.*

⁶ Adams, *Sunset: A Proposal for Accountable Government*, 28 AD. L. REV. 511 (1976), citing, *Hearing on a Survey of Public Attitudes Before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations*, 93rd Cong., 1st Sess. 7 (1973) (statement of Louis Harris) [hereinafter cited as *Harris Survey*]. Harris found that seventy-four percent of the individuals polled stated that "special interests get more from government than the people do" and fifty-five percent believed that "people running the government do not really care what happens to you." *Id.*

⁷ Price, *Sunset Legislation in the United States*, 30 BAYLOR L. REV. 401, 408 (1978). Louis Harris reported in 1973 that seventy-six percent of the citizens surveyed attributed their displeasure with government to the feeling that "elected officials have lost control over bureaucrats who really run things." *Id.* citing *Harris Survey*, *supra* note 6, at 7.

⁸ Price, *supra* note 7, at 409.

⁹ Muskie, *Sunset: New Sunlight on Government*, TRIAL MAG., Feb. 1977, at 47.

¹⁰ Adams, *supra* note 6, at 512.

ernment. The results of a Brookings Institute study revealed that 148 or eighty-five percent of the federal agencies instituted in 1923 remained in existence 50 years later; and an additional 246 new agencies had been added.¹¹ In 1940 governmental expenditures totaled \$20 billion at local, state and federal levels. By fiscal year 1973 the total cost had grown to \$600 billion.¹² Public pressure demanded the curtailment of these government operations.¹³ This pressure was evidenced in a January 1977 Gallup poll which reported that thirty-nine percent of the American people perceived big government as the "biggest threat to the country in the future."¹⁴

The conception of sunset laws reflected discontentment with the political process.¹⁵ Political scandals and budget deficits destroyed public confidence in the political process.¹⁶ While government officials acknowledge that this is still a problem, elected officials have been unable to devote their time to a rigorous review of the budgetary processes which have created and perpetuated big government. Government agencies' demands for appropriations are almost incomprehensible and state legislators, with ever increasing budgets, often must complete their official duties in a three or four month session.¹⁷ There are additional problems in the evaluation of expenditures. Balance sheets provide a gauge of success or failure in the business world, however, no equivalent method exists for analyzing governmental effi-

¹¹ Pierce & Hagstrom, *Is It Time for the Sun to Set on Some State Sunset Proposals?*, 9 NAT'L J. 937 (1977).

¹² March, *Sunset Review—The Colorado Program: The Statutes, Organization, Methodology, Evaluation Criteria, and Results*, 1977 UNIV. OF COLO. GRAD. SCHOOL OF PUB. AFFAIRS, at 9.

¹³ Drury, *supra* note 3, at 107.

¹⁴ *Sunset Act of 1977: Hearings on S.2 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Governmental Affairs*, 95th Cong., 1st Sess. 269 (1977) (statement of David Cohen, President, Common Cause).

¹⁵ Drury, *supra* note 3, at 108.

¹⁶ Critics often refer to the proliferation of regulatory agencies as a "fourth branch" of government. "Too often, regulatory agencies acquire a combination of autonomy and authority inconsistent with democratic principles as well as a capacity for self-perpetuation incompatible with principles of accountability. The function of the Sunset law is to break this cycle." Federation of Rocky Mountain States, Inc., *The Nation's First "Sunset Law": Automatic Termination of Regulatory Agencies*, BRIEFING PAPER FOR THE GOVERNORS (Series #5, June, 1976) [hereinafter cited as BRIEFING].

¹⁷ Drury, *supra* note 3, at 108.

ciency.¹⁸ In the latter half of the 1970's, sunset laws were conceived as an oversight technique with which to measure the effectiveness of bureaucratic activity and to curtail government waste.¹⁹

A. *The Original Sunset Laws*

The alarming rate of growth in Colorado's state government motivated its legislators to enact the first sunset law.²⁰ The impetus for this law came when Colorado Common Cause was formed to find a mechanism that would "give public officials and citizens a handle on big government."²¹ Denver attorney Craig Barnes, a member of the Board of Directors of Colorado Common Cause, created the term "sunset law."²² The term described a "process whereby agencies would terminate periodically unless they could justify their continued existence."²³ Thus, with the implementation of this first sunset law, a method to phase-out an unnecessary or inefficient agency was realized.

Colorado Common Cause acted as an overseer during the enactment of the first sunset law. It recommended that the scope of sunset legislation include solely regulatory agencies.²⁴ The organization fought to ensure that the law be enacted. It held public hearings in major cities and towns in Colorado prior to the introduction of the sunset bill into the Colorado General Assembly²⁵ and lobbied for the bill in the Colorado Legislature.²⁶ The

¹⁸ Licata, *Zero-Base Sunset Review*, 14 HARV. J. ON LEGIS. 505, 508-509 (1977).

¹⁹ Herrin, *Legislative Oversight and South Carolina Experience*, 34 S. C. L. REV. 595,595 (1982).

²⁰ COLO. REV. STAT. § 24-34-104 *et seq.* (Supp. 1977).

²¹ Adams, *Guidelines for Sunset*, 49 ST. GOV'T. 139 (1976).

²² SAFIRE, *supra* note 1, at 705; Price, *supra* note 7, at 415-416.

²³ SAFIRE, *supra* note 1, at 705.

²⁴ Licata, *supra* note 18, at 515. The rationale for this recommendation was a fear that an overambitious law might reduce the legislature to superficial evaluation. This fear comports with Common Cause's ten guidelines for sunset which advocate a gradual phase-in of sunset reviews. The ten guidelines are, in an abbreviated form: (1) automatic termination; (2) periodic termination; (3) gradual phase-in of sunset; (4) simultaneous review of agencies in the same policy area; (5) undertaking of preliminary program evaluation by existing entities; (6) establishment of general sunset criteria; (7) preliminary evaluations packaged in manageable reports for decision-makers; (8) substantial committee reorganization; (9) mechanisms to guard against arbitrary termination and to provide for obligations to displaced personnel; and (10) public participation. Adams, *supra* note 21, at 139.

²⁵ BRIEFING, *supra* note 16, at 6-7.

result of this lobbying blitz was that legislators who for years had given speeches about the growth of bureaucracy were "hoisted on their own petard" to vote in favor of sunset.²⁷ The Colorado General Assembly enacted the first sunset law in 1976.²⁸ It contained in its preamble the first legislative acknowledgement that the system of regulatory agencies and programs was out of control.²⁹

The Colorado sunset statute applied to thirty-eight state regulatory boards and agencies.³⁰ The law divided the boards and agencies into three groups and unless the entities could justify their continued existence, scheduled terminations for the years 1977, 1978 and 1981.³¹ Thirteen agencies were scheduled for termination on July 1, 1977.³² These terminations were to be directed by the Colorado Department of Regulatory Agencies (DORA) which unfortunately had limited staff resources to evaluate the agencies.³³ It therefore obtained a \$25,000 public administration training grant from the U.S. Office of Education for the employment of ten administrative interns.³⁴ Led by Professor Michael March, this group evaluated the first thirteen agencies.³⁵ In addition, the state auditor conducted financial reviews of the agencies.³⁶

²⁶ Price, *supra* note 7, at 416.

²⁷ Kopel, *Sunset in the West*, 49 ST. GOV'T 135 (1976). "Sunset laws have broad philosophical appeal. Efficient government, one of the articulated goals of sunset legislation, is difficult to oppose. Liberal support, especially at the federal level, is a result of the fiscal strait jacket of uncontrollable or previously committed spending. Conservatives see sunset legislation as a way of controlling big government." Quitmeyer, *Sunset Legislation: Spotlighting Bureaucracy*, 11 U. MICH. J. L. REFORM 269, 270-271 (1978).

²⁸ COLO. REV. STAT. § 24-34-104 (Supp. 1977).

²⁹ *Briefing*, *supra* note 16, at 6; Kopel, *supra* note 27, at 136. The preamble of the statute states, "[t]he general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances." COLO. REV. STAT. § 24-34-104 (Supp. 1977).

³⁰ March, *supra* note 12, at 2; COLO. REV. STAT. § 24-34-104 (Supp. 1977).

³¹ COLO. REV. STAT. § 24-34-104 (Supp. 1977).

³² *Id.* at (2)(a)(b).

³³ March, *Sunset Review in Colorado: Lessons From the First Round*, 67 NAT'L. CIVIC REV. 130, 130 (1978) [hereinafter cited as *Lessons*].

³⁴ *Id.* at 131.

³⁵ *Id.*

³⁶ *Id.*

There were diverse responses to the initial review. Some observers of the Colorado experience termed it a "success story."³⁷ Others characterized it as "chaotic"³⁸ and a "lobbyists' relief bill."³⁹ As a result of the initial review three boards were abolished, two were combined into DORA,⁴⁰ and the study of two agencies was deferred.⁴¹ The first sunset review, however, was laden with costs for the time and paperwork incurred.⁴² The price tag varies with the source, but all agree that it was monumental. A conservative source places the total cost at \$175,315, or an average of \$13,332 spent for every agency which was reviewed.⁴³ This compares with a combined annual budget of \$6,810 for the three agencies which were abolished.⁴⁴

Professor March, while acknowledging sunset's weaknesses, generally assessed it to be a tool with substantial potential.⁴⁵ In order to improve sunset's implementation, he created a list of eight lessons to be learned from the first year of review.⁴⁶ Im-

³⁷ March, *supra* note 12, at 1.

³⁸ Mitzman, *Sunset Laws: Why They Aren't Working?*, WASH. MONTHLY, June, 1979, 48, 49.

³⁹ Gregson, *Sunset in Colorado: The Second Round*, 53 ST. GOV'T. 58, 61 (1980). Before the reviews began, there was some evidence of agency "housecleanings." Licata, *supra* note 18, at 514.

⁴⁰ March, *supra* note 12, at 4. The three boards abolished were the Colorado State Athletic Commission, the Board of Registration for Professional Sanitarians and the Shorthand Reporters Board. The two boards combined were the State Barber Board and the Board of Cosmetologists. *Id. Contra* Mitzman, *supra* note 38. The author states that the Shorthand Reporter's "licensing authority was merely transferred to another agency," and "two other agencies, one regulating collection agencies, and the other overseeing the safety of ski-lifts—were reestablished and given expanded authority." *Id.* at 49.

⁴¹ The Insurance and Public Utility Commissions evaluation was deferred for one year. Both were reestablished, and another agency was created to oversee operations of the Insurance Commission. Mitzman, *supra* note 38, at 49.

⁴² The review of thirteen agencies took nine thousand hours or an average of 692 hours per agency. This generated state auditor reports totalling "587 pages containing 379 pages of commentary, 280 specific recommendations, 52 appendices and 18 tables A total of 1,866 copies of the various reports were distributed to the General Assembly and other officials." Price, *supra* note 7, at 438-439.

⁴³ *Id.* at 439.

⁴⁴ Mitzman, *supra* note 38, at 49.

⁴⁵ Lessons, *supra* note 33, at 133.

⁴⁶ These lessons are "(1) sunset review can produce results; (2) sunset review was needed; (3) economic regulation has been weak; (4) the regulatory agencies in Colorado are not really accountable; (5) inadequate budgets and staffs undercut ability to regulate; (6) poor or illusory regulation causes consumer waste; (7) self-

provements in 1979, the second year of sunset's existence in Colorado reflect the benefits of these lessons. Again, a number of agencies were abolished⁴⁷ and substantial statutory revision was achieved.⁴⁸

The second sunset law was enacted also in 1976 by the Florida Legislature.⁴⁹ The statute assigned review dates to more than one hundred regulatory agencies.⁵⁰ The Florida law divided equally the twelve statutes authorizing these agencies between the House and Senate Government Operations Committees.⁵¹ The House Committee, laboring without formal written evaluations, voted to terminate three statutes and modify another three.⁵² The Senate Committee produced formal written reports, and recommended two terminations and four modifications.⁵³ Ultimately, the Legislature terminated four statutes,⁵⁴ reauthorized eight with modifications, and increased the control of the Department of Professional and Occupations Regulation (DPOR) over independent regulatory boards.⁵⁵

In the second review cycle, the review committees of both houses of the Florida Legislature questioned the utility of DPOR. Although it was not on the sunset law's agenda for review, reorganization of DPOR had to be completed before examination of the twenty-four statutes could be commenced.⁵⁶ The result was that time grew short and the Legislature reenacted the full

regulation by occupations gives public interest second priority; and (8) stronger and better regulation is needed but barriers are formidable." *Id.* at 131-133.

⁴⁷ The agencies terminated were the Commission on Women, the Board of Nursing, and the Board of Practical Nursing. Gregson, *supra* note 39, at 62.

⁴⁸ *Id.* at 60. Colorado made several changes in its sunset procedure in the second round: (1) alternative recommendations were to be included in the State Auditor's reports; (2) either house, not only the Senate, could accept bills to reenact an agency; and (3) reports would be produced by DORA rather than by graduate students. NATIONAL CONFERENCE OF STATE LEGISLATORS, SUNSET REVISITED 2 (1980) [hereinafter cited as REVISITED].

⁴⁹ FLA. STAT. § 11.61 *et seq.* (1976).

⁵⁰ *Id.*

⁵¹ REVISITED, *supra* note 48, at 4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ The four statutes regulated shorthand reporters, yacht and shipbrokers, sanitarians and watchmakers. *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

twenty-four statutes in "the last minute."⁵⁷ In the third year of Florida's sunset law, a controversial termination occurred. The Legislature refused to reenact statutes granting the Public Service Commission the power to regulate motor carriers.⁵⁸ This deregulated intra-state trucking despite vigorous lobbying of pro-regulation groups.⁵⁹ Such enforcement of Florida's sunset law demonstrated that under a proper application of sunset laws, statutes which are not justified are not reenacted in spite of political pressures.

The time and cost expenditures of Florida were similar to those experienced by Colorado.⁶⁰ The estimated price tag for the 1979 review was \$120,000.⁶¹ The two additional reviews of 1978 and 1980 brought the total cost to \$610,000.⁶² The result of the three cycles was a review of sixty-two statutes in which thirteen were abolished, twelve were altered slightly and thirty-seven were changed substantially.⁶³ Although most legislators and staff concluded that the results were mixed, most have agreed that positive benefits could be identified.⁶⁴ The question remains, however: does the value of efficient execution of sunset review outweigh the time expended and the prohibitive costs incurred?

⁵⁷ *Id.* at 5. Florida Governor, Robert Brown, however, did not authorize the reenactment of the Forestry Practice Act and the Electronic Repair Act, and the Senate did not approve the reenactment of the House Psychological Practice Act, thereby terminating these boards. *Id.*

⁵⁸ COMMON CAUSE, THE STATUS OF SUNSET IN THE STATES: A COMMON CAUSE REPORT 79 (1982) [hereinafter cited as STATUS].

⁵⁹ The Florida Trucking Association, Associated Industries of Florida, and many large and small trucking companies lobbied strenuously. In order to counter the fact that most sunset hearing witnesses were members of the regulated professions, legislative leaders hired two ombudspersons to advocate the public interest. The deregulation of trucking was accomplished after one of the most intensive reviews ever conducted by the Florida House and Senate. Legislative leaders were credited for having taken a "tough stand". *Id.* at 78-79.

⁶⁰ REVISITED, *supra* note 48, at 5.

⁶¹ *Id.*

⁶² STATUS, *supra* note 58, at 74.

⁶³ *Id.*

⁶⁴ Florida Representative George Sheldon identified some of these benefits as the termination of unnecessary agencies and the forced self-evaluation of what the Legislature has created. REVISITED, *supra* note 48, at 5. Ninety percent of the individuals surveyed by the Florida Chamber of Commerce regarding the truck deregulation responded that the act did not result in a negative effect. STATUS, *supra* note 58, at 84.

An examination of the national application may provide an answer.

B. *The National Response*⁶⁵

In the late 1970's, the movement for sunset legislation dispersed from Colorado both east and west. Within two years, twenty-four states had passed sunset legislation and every state legislature had considered sunset bills.⁶⁶ More than sixty percent of the review criteria listed in all sunset statutes were identical to Florida's and Colorado's, and virtually all sunset legislation was based primarily, if not exclusively, on the sunset laws of Colorado or Florida, or both.⁶⁷ The laws were also supported by a nationwide lobbying effort on the part of Common Cause.⁶⁸

Sunset received national attention when both the Democratic and Republican Parties included it in their 1976 election platforms. Former President Jimmy Carter endorsed the concept in his campaign and in his first presidential "fireside chat."⁶⁹ Lobbyists from organizations as divergent as the League of Women Voters and the United States Chamber of Commerce actively supported it, and national figures such as Republican Senator William Roth of Delaware extolled sunset as "the most important and significant reform of this decade. . . ."⁷⁰ The rhetoric proclaiming sunset's potential for program terminations and cost savings helped assure it a safe passage through at least one house of the legislature in almost three-quarters of the states.⁷¹ Sunset's notoriety led to the proposal of several federal sunset bills. A debate raged over the number of sunset proposals; over seventy-seven sunset bills were introduced in the 94th Congress, over fifty in the 95th and over seventy in the 96th.⁷²

⁶⁵ New Jersey has not legislated a sunset law. However, statutes have been passed which incorporate into their wording an expiration period. An example of this is the "Child Placement Review Act", N.J. STAT. ANN. §§ 30:4C-50 to -65 (West 1964 & Supp. 1984-85).

⁶⁶ Adams & Sherman, *Sunset Implementation: A Positive Partnership to Make Government Work*, PUB. AD. REV., Jan.-Feb. 1978, at 79.

⁶⁷ Davis, *Review Procedures and Public Accountability in Sunset Legislation: An Analysis and Proposal for Reform*, 33 AD. L. REV. 393, 397 and n.19 (1981).

⁶⁸ Mitzman, *supra* note 38, at 48.

⁶⁹ *Id.*

⁷⁰ *Id.* at 49.

⁷¹ Adams & Sherman, *supra* note 66, at 79.

⁷² CONGRESSIONAL RESEARCH SERVICE, THE LIBRARY OF CONGRESS, ISSUE BRIEF

The first federal presentation of sunset legislation was to the 94th Congress on February 3, 1976. Senator Edmund Muskie introduced S.2925 with Senators Roth, Glenn and Bellmon as co-sponsors.⁷³ The bill was an ambitious sunset proposal which applied to all programs,⁷⁴ including tax expenditures.⁷⁵ It also contained a comprehensive zero-based budgeting plan as part of its review.⁷⁶ Muskie's reasons for introducing the federal sunset proposal included factors integral to the sunset movement, opinion polls indicating a loss of faith in government and a public dissatisfaction with an unresponsive government.⁷⁷ As the federal sunset debate ensued, it became apparent that if Congress was to pass a sunset law it would be based upon the Muskie bill.

The Sunset Government Operations Committee reported

No. LB76049, *Sunset Laws: Establishing Systematic Oversight Procedure* (1982) at 2 [hereinafter cited as CRS].

⁷³ The Government Economy and Spending Reform Act, S.2925 and H.R. 11734, 94th Cong., 2d Sess. (1976).

⁷⁴ The only exceptions to the bill were the payment of interest on the national debt and programs under which individuals make payments to the federal government in expectation of later compensation, such as social security.

⁷⁵ "Tax expenditure" is defined in the Muskie legislation as essentially any special exclusion, credit, preferential rate or deferral of a tax. S.2, 95th Cong., 1st Sess. § 401(a)(1) (1977). Tax expenditures have grown from \$36 billion in 1968 to \$170 billion in 1980. *Sunset Act of 1979: Hearings on S.2 and S.1304 Before Senate Comm. on Governmental Affairs*, 96th Cong., 1st Sess. 35 (1979) (statement of Senator Edmund Muskie) [hereinafter cited as *Hearings* 1979].

⁷⁶ Zero-base budgeting requires that "each agency or department justify every budget dollar it seeks, rather than merely request[ing] an increase over the previous year's funding." Licata, *supra* note 18, at 506. Zero-base budgeting is a management technique, intended to improve efficiency, which challenges assumptions of allocations and starts a budget from zero, or some figure less than one hundred percent, periodically. The phrase was coined by Peter Pyhrr, manager, Staff Control, of Texas Instruments. Pyhrr, *Zero-Based Budgeting*, HARV. BUS. REV., Nov.-Dec. 1970, at 111. Mr. Pyhrr was hired by Governor Jimmy Carter to implement the technique in Georgia and President Carter later espoused its utilization at the federal level. Twelve states had implemented zero-base budgeting in their budget process by 1976. Gardner, *Doubts Over "Sunset" Bill Fail to Deter Backers of Concept*, 34 CONG. Q. 3255, 3257 (1976).

⁷⁷ Muskie, *supra* note 9, at 48. Another reason listed by Senator Muskie was that sunset offered Congress a framework through which it could reassert control over the federal budget. "I have come to see sunset as offering us one of the few chances we may have to locate scarce resources that are not now used effectively—and to redirect those resources where they are needed most." *Id.* at 49. The federal budget is increasingly comprised of uncontrollable spending. In fiscal year 1977, uncontrollable spending accounted for seventy-seven percent of the budget. Gardner, *supra* note 76, at 3256.

S.2925 on August 4, 1976 and the Senate Rules Committee held a hearing to discuss it early in September, 1976.⁷⁸ A concern of the Rules Committee was the workload to be imposed by S.2925. The bill required reviews of "programs" every five years, but it provided no exact estimate of the number of programs affected.⁷⁹ While the Government Operations Committee estimated that approximately one thousand programs would be subject to the bill, the Rules Committee suggested there could be "as many as 40,000, 50,000 or 100,000."⁸⁰ The projected costs of the reviews were speculative; however, estimates regarding a program for zero-based reviews ranged in the millions.⁸¹

A major criticism of the bill was directed therefore at the guidelines for zero-base review. They were faulted as being too detailed and burdensome for the authorizing committees to implement.⁸² Even Common Cause discredited the bill as being overly ambitious, predicting that an evaluation of the full federal government in five years "just wouldn't work," and that the result would be to "choke the process with paperwork."⁸³ On September 24, 1976, Chairman Ribicoff of the Committee on Government Operations announced that there was no time to consider S.2925 on the Senate floor in the 94th Congress.⁸⁴

A similar bill, S.2, was introduced in the following first session of the 95th Congress by Senator Muskie.⁸⁵ All references to

⁷⁸ CRS, *supra* note 72, at 9.

⁷⁹ Gardner, *supra* note 76, at 3257.

⁸⁰ *Id.* But see Muskie, *supra* note 9, at 49. "[T]he fact that no one knows [the number of federal programs] is in itself a compelling reason to pursue a sunset-type reform."

⁸¹ An estimate by a Health, Education and Welfare (HEW) official was that a zero-based evaluation of each HEW program would amount to \$1,000,000. An evaluation of all 370 HEW programs over a five year period would therefore cost \$370 million. Randall, *What's Wrong With Sunset Laws?*, 224 NATION 331, 332 (1977). In a memorandum of the Senate Committee on Labor and Public Welfare it was concluded that S.2925 would require the addition of forty-four staff members over a five year period at an annual additional budget of \$50,000. Licata, *supra* note 18, at 535.

⁸² Dworak, *Zero-Base Budgeting and Sunset Laws: Do They Go Together?*, 67 NAT'L. CIVIC REV. 118, 121 (1978).

⁸³ Gardner, *supra* note 76, at 3258. S.2925 ran afoul of Common Cause's principle of gradual phase-in of sunset in order to ensure meaningful evaluations without routine reauthorizations. See note 24, *supra* and accompanying text.

⁸⁴ CRS, *supra* note 72, at 9.

⁸⁵ The Sunset Act of 1977, S.2, 95th Cong., 1st Sess. (1977).

zero-base budgeting were absent from this bill.⁸⁶ The Senate Committee on Governmental Affairs voted on June 28, 1977 to report this new initiative as amended.⁸⁷ Deleted from it was the title on tax expenditures.⁸⁸ A revised draft excluded twenty-one regulatory agencies from review until January 1, 1987⁸⁹ and extended the reauthorization period from five to six years.⁹⁰ On June 21, 1978 the Senate Rules Committee reported the bill as further amended,⁹¹ and in September a substitute was introduced by Senator Muskie and forty-nine co-sponsors.⁹² On October 11, 1978, the Senate passed S.2, as amended, by a vote of eighty-seven to one.⁹³

C. *The Effect of Criticism — The Federal Failure*

In October, 1978 the Muskie bill was introduced into the 96th Congress with solid support, in that it was identical to the bill passed by the 95th Congress.⁹⁴ Concessions, however, were granted by its proponents and criticism increased exponentially with each change. Liberal critics alleged that conservative support was a subterfuge to enable the gutting of welfare legislation. They argued that social programs could not be subjected to the same cost-benefit analysis as defense programs.⁹⁵ Other critics challenged the bill's rigid review of all programs as unfeasible and wasteful.⁹⁶ Commentators on S.2 faulted the bill's provisions for a less structured review to be accomplished by eliminating zero-base budgeting, exempting many programs, introducing a two-level review,⁹⁷ and providing the standing committee discre-

⁸⁶ Licata, *supra* note 18, at 533. According to the counsel for the Intergovernmental Relations Subcommittee of the Senate Committee on Government Operations, the zero-base terminology was dropped because it was thought to be distracting attention from the sunset proposal itself. *Id.* at 526 n.137.

⁸⁷ CRS, *supra* note 72, at 9.

⁸⁸ AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, ZERO-BASE BUDGETING AND SUNSET LEGISLATION 15 (1978).

⁸⁹ *Id.* at 16.

⁹⁰ *Id.* at 15.

⁹¹ CRS, *supra* note 72, at 9.

⁹² *Id.* at 8.

⁹³ *Id.*

⁹⁴ *Controversy Over Proposed "Sunset" Legislation, Pro and Con*, 59 CONG. DIG. 3, 67 (1980) [hereinafter cited as *Controversy*].

⁹⁵ Randall, *supra* note 81, at 333.

⁹⁶ *Id.*

⁹⁷ The bill required committees to conduct a "sunset reauthorization review" in

tion regarding the type of review required.⁹⁸ They further criticized the failure of the bill to mandate in-depth reviews by the committee⁹⁹ and an absence of any language stating that evaluative data should have a preferred position over secondary data appearing in newspaper articles.¹⁰⁰ In his defense of S.2, Senator Muskie was forced to play the role of the boy at the dike, every time one flaw was patched in the bill, critics exposed several more.

The critics of S.2 argued in two veins, stating either that the bill would not work or that it would work but with deleterious effects. Critics who were convinced the bill would not perform, argued that its passage would create unrealistic expectations and exacerbate public dissatisfaction with the bureaucracy.¹⁰¹ Most critics focused upon the workload problem,¹⁰² expressing concern that the ambitious inclusion of most government programs could cause Congress to become a reauthorization "rubber stamp."¹⁰³

Opponents who found an effective bill with pernicious effects warned of the indiscriminate destruction of agencies and employee morale problems.¹⁰⁴ They alleged that the comprehensive legislation failed to allow exemptions for programs on the basis of "social, cultural and life-enriching purposes."¹⁰⁵ They further charged that, contrary to the avowals of its sponsors, the bill in actuality represented a "thinly disguised means

which they would rely primarily upon executive branch evaluations, or an "in-depth evaluation" which is a more detailed evaluation likely to result in the termination of programs. The choice between the two types of review was subject to the committee's discretion. S.2, 95th Cong., 1st Sess. §§ 101-105 and §§ 301-305 (1977).

⁹⁸ Randall, *supra* note 81.

⁹⁹ Note, *The Sun Also Sets: A Model for Sunset Implementation*, 26 AM. U. L. REV. 1169, 1177-78 n.54 (1977).

¹⁰⁰ Davis, *supra* note 67, at 407.

¹⁰¹ *Hearings* 1979, *supra* note 75, at 50-54 (testimony of Sen. Dale Bumpers).

¹⁰² One commentator termed testimony before a subcommittee hearing on sunset "a parade of experts politely stating that such reviews of all government programs are impossible." Randall, *supra* note 81, at 332.

¹⁰³ Lifland, *Sunset Review—Effective Oversight Tool or New Political Football?*, 32 AD. L. REV. 209, 213 (1980).

¹⁰⁴ *Hearings* 1979, *supra* note 75, at 385 (statement of Commissioner Philip Loomis, Jr., U.S. Securities and Exchange Commission).

¹⁰⁵ *Id.* at 241 (statement of Kenneth Young, Director, Department of Legislation, AFL-CIO).

. . . to eliminate vital health and safety programs."¹⁰⁶

Proponents of S.2 cited opinion polls indicating that a majority of Americans considered federal spending to be a primary cause of inflation.¹⁰⁷ They pointed to Proposition 13 in California and movements to pass a constitutional amendment requiring a balanced budget as a public statement that if leaders could not or would not control government spending the people would.¹⁰⁸ Proponents warned that such initiatives invite "meat-ax cuts in appropriations" and "desperate referenda."¹⁰⁹ They rallied against governmental waste, duplication, inefficiency, and uncontrollable spending,¹¹⁰ and defended S.2's projected workload as "manageable"¹¹¹ and its costs as "reasonable."¹¹²

The outcome of all the criticism was that Congress never passed a sunset law. Some commentators felt that S.2 was probably the best chance for sunset reform.¹¹³ The federal failure had certain characteristics unique in the sunset movement. The *first* was size. While the magnitude of the federal bureaucracy made sunset implementation essential for its proponents, sunset's critics feared that the size and complexity of the government would make implementation of federal sunset impossible.¹¹⁴ A *second* factor was visibility. Special interest groups alarmed by a state sunset proposal might lobby against it in their state's capital, but a national sunset bill invites the wrath of some of the most powerful lobby groups with their national resources pledged to the fight.¹¹⁵ A *third* factor was the public expectation of government. People have come to view state government as responsible for an expanded yet definable list of services. The federal bureaucratic

¹⁰⁶ *Id.* at 401 (statement of M. Green and F. Zwenig, Public Citizens Congress Watch).

¹⁰⁷ *Id.* at 25 (statement of Sen. Edmund Muskie).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 120 (statement of Rep. James Blanchard).

¹¹⁰ *Id.* at 109.

¹¹¹ *Id.* at 27 (statement of Sen. Edmund Muskie).

¹¹² *Id.* at 607 (statement of Rep. Norman Mineta).

¹¹³ A 1978 Louis Harris poll requested by Senate Committee on Governmental Affairs found that nearly sixty-nine percent of the American people desired the enactment of a sunset law. *Id.* at 2 (opening statment of Sen. James Sasser).

¹¹⁴ Drury, *supra* note 3, at 107.

¹¹⁵ The AFL-CIO was opposed to the enactment of S.2. *Hearings* 1979, *supra* note 75, at 242 (statement of Kenneth Young, Director, Department of Legislation AFL & CIO).

growth was in response to a need to perform infinite services. Although a majority of Americans may have at one time favored a federal sunset bill, the federal sunset experience shows that any threat to the federal cornucopia is a threat to someone's sacred ox.¹¹⁶

In addition, the same factors argued at the state level were also disputed federally. Workload, cost effectiveness and problems with implementation of sunset were all issues which state legislatures debated. These problems could have been resolved; however, a fatal error was committed by sunset's federal proponents. The proponents of S.2925 and S.2 proposed a bill which applied to all programs outright.¹¹⁷ Common Cause criticized this comprehensive approach as "ruining a good concept by loving it to death."¹¹⁸ The comprehensive approach had passed in at least six state-houses but those sunset programs realized dismal results.¹¹⁹ If federal lawmakers had not adopted this approach sunset's federal failure may have been diverted.

The problems which prompted introduction of federal sunset bills thus remain unaddressed.¹²⁰ The nation, in addition, has

¹¹⁶ One commentator writes, "[t]he testimony on the Muskie Bill is striking in this respect, although everyone applauded the neutrality of the sunset concept and praised the virtues of terminating useless programs, no one suggested a single program that might just possibly be a candidate for termination." Behn, *supra* note 1, at 116.

¹¹⁷ Gardner, *supra* note 76, at 3258.

¹¹⁸ Pierce & Hagstrom, *supra* note 11, at 937.

¹¹⁹ One of the states which applied sunset to every agency was Alabama. The initial law provided that neither house could take up other business until both completed actions on sunset. In 1978, nearly three hundred agencies were scheduled for review, with the result that only fifteen minutes were allotted to each agency in committee hearings. Then a filibuster over an unrelated issue stalled sunset debate in the Senate for several days, proscribing the House from taking up other business. The House therefore remained at a standstill and waited for the Senate. Mitzman, *supra* note 38, at 50. See ALA. CODE § 41-20-1 *et seq.* (1976, amended 1979, 1981). A Common Cause spokesman likened the Alabama legislators to the citizens of Ancient Rome, "who decided the fate of defeated gladiators with a simple thumbs up or down," and he added "[t]hat isn't Common Cause's idea of a good sunset process." Pierce & Hagstrom, *supra* note 11, at 1939.

¹²⁰ For example, President Reagan's much-publicized budget cuts have been ineffective in arresting budget deficits, which his administration predicts will approach \$100 billion a year. As the Reagan administration drew its proposals for the 1983 budget, it decided not to reduce social security and only proposed minor cuts in Medicare and federal pension plans. This decision set one-third of the budget off-limits for spending cuts. Another quarter of the budget was military, which was to be increased to one-third in the next few years. Fifteen percent more of the

seen the rejection by the federal government of sunset legislation. With this failure of federal sunset bills, there exists the possibility of the sunset concept drifting into oblivion.¹²¹

III. *The Decline of Sunset*

The immense popularity of the sunset concept during the late 1970's has abated.¹²² Sunset bills were vetoed in Mississippi, West Virginia, Iowa¹²³ and Michigan.¹²⁴ Rhode Island removed the automatic termination provision from its law.¹²⁵ Arkansas, Nevada, and North Carolina have abandoned sunset reviews, and sunset may be eliminated in Nebraska and Vermont.¹²⁶ Resources that were once devoted to sunset in Connecticut, Montana and Kansas are now designated for performance audits or program evaluations of larger agencies.¹²⁷ Nine states which passed sunset laws have repealed, amended, or are seriously considering the elimination of the laws.¹²⁸

Some of the disillusionment with sunset can be traced to poorly drafted legislation or faulty implementation. Early proponents of sunset implored that the technique be well-executed, so that feeble efforts would not discredit the movement.¹²⁹ A spokesman for Common Cause stated "we are prepared to lobby as hard against a bad or overambitious sunset law as for a good one."¹³⁰ Common Cause successfully urged the governor of Iowa to veto a government-wide sunset law, and lobbied against overly ambitious proposals in Florida, Oklahoma, Utah, and Ne-

budget was designated for the repayment of interest on the national debt. Therefore, three-quarters of the budget was exempt from cuts before the slashing could even be begun. Fallows, *Entitlements*, ATL., Nov. 1982, at 51, 55-56.

¹²¹ Dworak, *supra* note 82, at 118.

¹²² 24 COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES*, 1982-83, 118 (1982) [hereinafter cited as BOOK].

¹²³ Price, *supra* note 7, at 421.

¹²⁴ BOOK, *supra* note 122, at 147.

¹²⁵ NATIONAL CONFERENCE OF STATE LEGISLATURES, *MAKING SUNSET WORK: OPTIONS FOR THE DELAWARE LEGISLATURE* 6 (1982) [hereinafter cited as OPTIONS].

¹²⁶ P. Francis, Remarks at the National Clearinghouse on Licensure, Enforcement, and Regulation (Chicago, August 23-26, 1983).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ March, *supra* note 12, at 9.

¹³⁰ Pierce & Hagstrom, *supra* note 11, at 939.

braska.¹³¹ It cautioned against a New York bill which would have established a "super sunset" committee in violation of a group principle, and lobbied for the lengthened ten-year cycle in the Muskie bill.¹³² In spite of the efforts of Common Cause, the movement has dissipated.

To understand the decline of sunset, an examination of one state may be instructive. North Carolina's sunset experience can be viewed as a microcosm of the national sunset experience. The concept was enthusiastically embraced in North Carolina and an ambitious sunset review cycle was legislated.¹³³ When review results were produced, however, disillusionment mounted and sunset critics became more vocal.

The 1977 North Carolina sunset law had termination dates for the enabling statutes of approximately one-hundred agencies.¹³⁴ The law also provided for a new sunset commission to conduct preliminary evaluations.¹³⁵ It additionally mandated its own sunset to be effective in 1983.¹³⁶ The reviews in North Carolina, however, were criticized widely.

Censure of the commission began with the receipt of results from the first review. Five agencies, of which only two were active at the time, were terminated. The cost was over \$200,000 for the first review.¹³⁷ The commission was faulted for failing to reduce the size of government, for consuming too much of the legislators' time, and for concentrating its efforts on occupational licensing boards.¹³⁸ These boards were supported by licensing

¹³¹ *Id.*

¹³² *Id.*

¹³³ N.C. GEN. STAT. §§ 143-34.10 *et seq.* (1978 Repl. Volume and 1979 Supp.). Termination dates were to take effect in July 1979, 1981 and 1983.

¹³⁴ *Id.*

¹³⁵ N.C. GEN. STAT. § 143-34.15 (1978 Repl. Volume and 1979 Supp.).

¹³⁶ N.C. GEN. STAT. § 143.34.15(F) (1978 Repl. Volume and 1979 Supp.).

¹³⁷ THE INSTITUTE OF GOVERNMENT OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, NORTH CAROLINA LEGISLATION 1981, at 311 (1981) [hereinafter cited as NORTH CAROLINA].

¹³⁸ This last criticism seems particularly unwarranted as it was the 1977 General Assembly, not the Commission, which selected the schedule of agencies for review. *Id.* at 312. The criticism does raise a valid question of the wisdom of scheduling licensing boards for review. They make manageable small agencies ideal for phase-in of a sunset program. Adams, *supra* note 21, at 139. Also, the fact that the boards operate on license fees results in the boards doing "pretty much as they wish." Shimberg, *The Sunset Approach: The Key to Regulatory Reform?*, 49 St. Gov't., Summer 1976, at 146.

fees, and therefore could not yield a tax savings even if terminated.¹³⁹ The first review thus was not acclaimed as successful. In February 1981, at a crucial stage in the second review, the Legislative Services Commission exercised its budget authority over the commission and voted to terminate its funding, effective March 1, 1981.¹⁴⁰ A bill ratified in the closing days of the session abolished the commission and created the Legislative Committee on Agency Review (LCAR) to review the sixty-seven remaining statutes.¹⁴¹

LCAR differed from the commission in three key aspects. It was composed entirely of legislators rather than a mixture of legislators and citizens. Instead of its own staff it utilized staff from the Legislative Services Commission and was allocated a budget of less than one-tenth of the commission's budget. Finally, it was not pressured by an automatic termination date of the agencies remaining for review.¹⁴² This change in the authorized review of sunset indicated an uncertainty in its implementation which weakened its effectiveness.

Common Cause faulted the doctors and lawyers for the demise of the North Carolina sunset law.¹⁴³ In 1980, both groups expressed dissatisfaction with the commission's recommendations for a July 1, 1981 repeal of laws affecting the Board of Medical Examiners and the State Bar. Yielding to intense lobbying pressure from the two professions, the Legislature stripped the commission of its staff and repealed the automatic termination provision in the law.¹⁴⁴ This measure had a great impact on a legislature already showing signs of disillusionment over the time and financial costs of sunset.

The result of this fluctuation in implementation is demonstrated in the LCAR final report to the General Assembly in 1983. It characterized its work as a "partially successful experiment in legislative-executive cooperation."¹⁴⁵ LCAR recom-

¹³⁹ NORTH CAROLINA, *supra* note 137, at 312.

¹⁴⁰ *Id.* at 311.

¹⁴¹ *Id.* at 327.

¹⁴² NORTH CAROLINA COMM'N. ON AGENCY REV., FINAL REPORT AND RECOMMENDATIONS, at 1 [hereinafter cited as FINAL REPORT].

¹⁴³ STATUS, *supra* note 58, at 29.

¹⁴⁴ *Id.*

¹⁴⁵ FINAL REPORT, *supra* note 142, at 5.

mended the repeal of two statutes, the amendment of twenty-five others¹⁴⁶ and its own continuation as an independent commission.¹⁴⁷

Although North Carolina carried a sunset law on the books until 1983, in practical terms its demise came in 1981, when the legislature slashed appropriations for sunset review and instituted LCAR. As one commission member stated of the event, "[y]ou take away the staff before the reports are in and you might as well watch our work go down the drain."¹⁴⁸ Ironically, the same factors which brought sunset into being, an interest in reducing government's size and cost, led to its demise in North Carolina.

IV. *The Status of Sunset*

In its most recent comprehensive publication on sunset, Common Cause argues that the number of agencies terminated by sunset is the wrong "yardstick" by which to measure the reform's success.¹⁴⁹ This admonishment is the result of the popular misconception that the goal of sunset is to terminate agencies. Under such a faulty criteria an assessment of sunset's success would have to be characterized as limited.¹⁵⁰ The director of Colorado Common Cause has stated, "[w]e never said that sunset would cut the costs or size of government, all we ever said was that sunset could make government more accountable and efficient."¹⁵¹ It is difficult, however, to accept such statements because in the Common Cause fundraising appeal of 1979, the distinct impression was conveyed that the termination of agencies was an objective of both sunset and of Common Cause.¹⁵²

Regardless of the intended objectives, sunset has not been

¹⁴⁶ *Id.* at 4.

¹⁴⁷ *Id.* at 61.

¹⁴⁸ STATUS, *supra* note 58, at 29.

¹⁴⁹ *Id.* at 26.

¹⁵⁰ BOOK, *supra* note 122, at 541.

¹⁵¹ *Sunset Laws: One More Brave Idea That's Gone Away?*, U.S. NEWS & WORLD REP., May 29, 1978, at 46.

¹⁵² A red, white, and blue Common Cause brochure read, "[y]es, only when the sun sets on inflation-causing regulations, tax-money wasting agencies, and strangling bureaucratic duplication, will you and all taxpayers find relief from the intense heat of inflation and taxation. Common Cause is fighting hard to hasten the hour of that sunset." Mitzman, *supra* note 38, at 50.

the failure depicted by its detractors. In 1982, Common Cause published the results of a questionnaire on the status of sunset.¹⁵³ Thirty-five states responded to the inquiry.¹⁵⁴ Among the findings produced was that since 1976 nearly fifteen hundred agencies had been reviewed. Of these fifteen hundred agencies, almost one in five had been terminated, one in three modified, and fewer than half recreated with little or no change.¹⁵⁵ These statistics are particularly encouraging as they do not account for the number of legislative reforms made preceding the review, the number of special interest requests for agency status denied due to sunset awareness and the number of agency enabling statutes now drafted with automatic termination provisions.¹⁵⁶ Nor do the statistics reflect the increasingly sophisticated steps taken by professional associations and agencies to thwart sunset reform.¹⁵⁷ Supporters of sunset affirm that termination is no threat except to the weak,¹⁵⁸ nevertheless, one has to wonder what the results of the second cycle of reviews will be.

Popular conception is that the costs of sunset reviews are enormous.¹⁵⁹ Of the thirteen states responding to the budgetary survey, the average sunset budget ranged between \$153,000 and \$164,000 for 1978-1979.¹⁶⁰ In terms of time, the seventeen states responding had a median number of five hundred hours expended per review.¹⁶¹ One-half of the states criticized sunset reviews as being too time-consuming.¹⁶² Balanced against these time costs, however, are the monetary savings. Although only twenty percent of the states determined that savings were derived

¹⁵³ This report compiled responses received in 1981, and did not include a reply from Pennsylvania, which enacted its sunset law in 1981. See STATUS, *supra* note 58.

¹⁵⁴ *Id.* at i.

¹⁵⁵ *Id.* at 10.

¹⁵⁶ Pierce & Hagstrom, *supra* note 11, at 938.

¹⁵⁷ National professional associations have prepared sunset primers. State associations have established sunset committees eighteen months before scheduled deliberation on their regulation and state agencies have formed sunset committees. See STATUS, *supra* note 58, at 9.

¹⁵⁸ Behn, *supra* note 1.

¹⁵⁹ BOOK, *supra* note 122, at 549. The Council of State Governments places the cost of the average review at \$10,000 to \$20,000 per board. *Id.* Common Cause estimates the average at \$12,000 per board. STATUS, *supra* note 58, at 7.

¹⁶⁰ STATUS, *supra* note 58 at 7.

¹⁶¹ *Id.* at 8.

¹⁶² *Id.* at 10.

from sunset,¹⁶³ the results were positive. Four indicated a total savings since enactment in excess of one million dollars, one reported a savings of one-half million, and another indicated a one-quarter million dollar savings.¹⁶⁴

In addition to the cost elements, the implementation of sunset also inflicts pressures upon legislators. By providing termination dates for the existence of agencies, it imposes a deadline upon legislators to expedite their oversight functions.¹⁶⁵ Since most legislators tend to "look ahead rather than behind"¹⁶⁶ and oversight yields few political rewards, it is necessary that sunset mandate a deadline.¹⁶⁷ A survey of legislative attitudes towards sunset in three states reveals that legislators become disillusioned as the "political realities" of the program become apparent.¹⁶⁸ This is viewed as the main impediment to the reform's success.¹⁶⁹ Of all factors needed in sunset reviews, it is most important that legislators remain firmly committed to the oversight process to maximize the benefits of sunset.

It is the sunset record on oversight which is encouraging. The Common Cause survey found that in the majority of states sunset recommendations "were accepted by the legislature seventy-six to one hundred percent of the time."¹⁷⁰ These recommendations were not only to terminate an agency, but also included ideas on the efficiency. The oversight mechanism was an effective tool in the majority of states "[t]wenty-three of the thirty-five states [reviewed] cited increased efficiency and public accountability of agencies as principal sunset benefits."¹⁷¹ This

¹⁶³ *Id.* at 65.

¹⁶⁴ *Id.* at 66. The report points out that since the majority of agencies under sunset review are regulatory, and "these agencies seldom have a large, direct impact on the state budget, [the] savings to taxpayers are difficult to document." *Id.* at 26. There was one state reporting large savings, however, that state reviewed regulatory agencies exclusively. *Id.* at 17.

¹⁶⁵ Lifland, *supra* note 103, at 225.

¹⁶⁶ Adams & Sherman, *supra* note 66, at 78.

¹⁶⁷ One study of 23 Congressmen found that 20 indicated they considered committee review of agency activity "a time-expensive, low-priority concern except when there was likely to be something 'big' in it." Quitmeyer, *supra* note 27, at 276 n.44.

¹⁶⁸ W. Lyons & L. Thomas, *Legislator Attitudes Toward the Feasibility of Sunset Legislation*, UNIV. OF TENN. BUREAU OF PUBLIC ADMIN. ABSTRACT (1978).

¹⁶⁹ *Id.*

¹⁷⁰ STATUS, *supra* note 58, at 9.

¹⁷¹ *Id.* at 10.

benefit alone may justify a future look at sunset legislation.

V. Conclusion

The national sunset movement of the late 1970's resulted in the introduction of sunset laws into most state legislatures. The movement was a response to the growth of government and a burgeoning public mistrust of the bureaucracy. Although sunset has not curtailed the growth of government and trimmed state budgets as promised, the technique has proven to be a successful oversight tool. The concept, though enacted at a state level, has elicited no federal legislation. Opponents of a federal proposal emphasize the time and money expenditures of sunset and thus the technique has failed to gain acceptance at the national level. This lack of federal adoption, in addition to the general disillusionment over limited savings, has resulted in a repeal or limitation of the sunset laws in some states.

Perhaps the failure of the concept of sunset laws can be explained. Sunset has not lived up to expectations of agency terminations and costs savings,¹⁷² partly because agency termination requires a mobilized opposition and yields few political rewards.¹⁷³ Civic interest groups, even when mobilized, have proved no match for private interest groups which can afford the services of lobbyists. In addition, in some states, sunset was abandoned due to faulty execution. Experience has shown, however, that of the ten principles enunciated by Common Cause, the gradual phase-in of the reform through evaluation of selected agencies is by far the most important guideline.¹⁷⁴ This, more than any other factor, has proven effective.

The question today is if the benefits of sunset as an oversight mechanism outweigh the cost of review. If the public believes that sunset addresses the concerns which brought the movement into being, and is satisfied with the mechanism despite its cost, then sunset is likely to endure. Whether or not it is supported by their constituents, legislators may wish to keep the mechanism as a check on the expansion of the executive branch.¹⁷⁵ Wherever

¹⁷² BOOK, *supra* note 122, at 541.

¹⁷³ Behn, *supra* note 1, at 117.

¹⁷⁴ Sherman, *supra* note 66, at 80.

¹⁷⁵ Legislators have taken steps to expand original sunset laws to include non-regulatory agencies in one-third of the states. STATUS, *supra* note 58, at 9.

sunset is retained, it will be with the realization that it contains no magical formula by which to remedy problems, and that sunset—like most issues in democratic politics—involves tradeoffs.