

# Tax & Budget

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## “Sunsetting” to Reform and Abolish Federal Agencies

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“Sunsetting” is a process of automatically terminating government agencies and programs after a specified period of time unless expressly reauthorized. Legislation has been introduced in the House of Representatives by Rep. Kevin Brady (R-Tex.) to sunset most federal agencies every 12 years (H.R. 2373). The Bush administration strongly supports introducing a federal sunsetting process.<sup>1</sup>

A sunset commission would be established to review federal programs on a rotating basis and make recommendations prior to each program's sunset date. Wasteful, unneeded, and poorly run programs would be slated for overhaul, privatization, or elimination.

### Prior Sunsetting Efforts

Since the 1970s, numerous states have adopted the sunsetting process, and it is currently used in about 20 states with varying degrees of success.<sup>2</sup> Texas has one of the most successful sunset programs due to the broad range of agencies reviewed, the ability of the state's sunset commission to tackle major reforms, and the success in getting reforms enacted.<sup>3</sup>

At the federal level, a seven-year sunset rule for regulations gained some legislative support in 1995, but was not enacted.<sup>4</sup> In the late 1970s, there was strong bipartisan support for a federal sunset law introduced by Sen. Ed Muskie (D-Maine) that would have sunset most federal programs every 10 years.<sup>5</sup> Supporters of that legislation ranged from Jesse Helms (R-N.C.) to Edward Kennedy (D-Mass.). While gaining broad support in the Senate, the legislative effort failed in the House.

Twenty-five years later, the need to review, reform, and abolish federal agencies and programs is much greater. Today, the explosive budget costs of the baby boomers loom on the horizon, the country has two more decades of experience with federal program failures, and a privatization revolution has swept the world.

### Stagnant Government vs. the Dynamic Private Sector

It is illustrative to contrast dynamic private industries with the “government industry.” In the private sector, companies are routinely put out of business, or “sunset,” by new firms that better serve the public. For example, retailer Montgomery Ward was recently sunset by consumers, and it looks like K-Mart may be next. This is good news for the overall economy because it means that more efficient retailers have arrived on the scene, such as Wal-mart and Target. Businesses also get sunset if they follow shoddy financial practices, as Enron did.

Roughly 10 percent of U.S. business establishments go out of business each year, and roughly 10 percent of all private sector jobs disappear due to business contractions and failures.<sup>6</sup> Clearly, businesses and private sector workers are under a constant threat of sunsetting.

By contrast, there is no structured method to sunset federal agencies when they are no longer useful or when more efficient private alternatives become available. In addition, federal agencies are often dreadful financial performers, but face no effective sanction to enforce better results. For example, the Bush administration's fiscal year 2003 budget notes that Amtrak has “utterly failed” to wean itself off subsidies and that it is a “futile system.” Policymakers need a process to sunset Amtrak and the many other failed and futile programs in the \$2 trillion federal empire.

The executive branch of government currently has no mechanism to create the constant renewal that every organization needs in our fast-changing modern society. Government agencies are the only organizations in society that can have immortality without good performance. Government employees are the only workers with near guarantees of lifetime jobs regardless of performance. In the private sector, poor performers are routinely weeded out and resources shifted to more productive activities. A

federal sunset law could help bring that same healthy process of renewal to the government sector.

### **Management Reform and Program Elimination**

There have been numerous attempts to bring private sector management practices into the executive branch of government. The Bush administration has launched an effort to grade federal programs as “effective” or “ineffective” and move funds away from poorly performing programs. That was also one of the goals of the 1993 Government Performance and Results Act. But these initiatives will not work without an enforcement mechanism. A federal sunset process could help ensure that programs lose their funding unless seriously reformed.

More fundamentally, a new federal sunset commission would ask whether agencies and programs being reviewed ought to exist at all. A sunset commission could be a voice within government to push for needed eliminations. Currently, the public cannot rely on the agriculture committees in the House and Senate to eliminate unneeded farm programs, for example, as this year’s farm debate makes clear. A sunset commission should be designed with enough clout and prestige that its recommendations are carried through to enactment.

A successful federal sunset process may require changing numerous procedural rules of Congress. For example, creating enough time for members to consider sunset commission recommendations has been an issue with federal and state sunset proposals and laws in the past. One way to deal with this concern would be to move to a two-year budget cycle with alternate years devoted to sunset commission proposals for reform and termination.

A sunset commission could build on the Bush administration’s new management rating systems to cut wasteful spending. For example, programs that the administration grades as “ineffective” five years in a row could be made to trigger an automatic review by the sunset commission. An alternative would be to implement a congressional procedure that would require a stand-alone vote on terminating a program if the administration, perhaps in conjunction with the General Accounting Office, graded a program as ineffective for five years.

### **Proactive Solutions**

Aside from proposing agency reforms and termination of wasteful spending, a federal sunset commission ought to have a broad capability to study how agencies could be transferred to the private sector. Privatization has transformed economies

around the world, and yet U.S. policymakers have so far been peculiarly resistant to the idea, even for obvious candidates such as Amtrak. A federal sunset commission could examine privatization models that have worked elsewhere, such as Canada’s privatization of air traffic control, Britain’s privatization of some military facilities, or Germany’s privatization of its post office, and figure out how to implement such ideas here.<sup>7</sup>

### **Conclusion**

At a minimum, a new federal sunset process could help uncover serious management lapses at agencies before they explode into crises. An overhaul of the horribly run Immigration and Naturalization Service might have occurred years ago if a federal sunset commission had been in place. Beyond averting federal management disasters, a sunset commission could lay out the facts regarding whether agencies and programs are needed at all. With the coming budget pressures of entitlement programs set to explode with the retirement of the baby boomers, Congress needs to start terminating or privatizing as many government programs as possible so that the next generation is not crushed with taxes. A new federal sunset process with a broad scope could help Congress make those needed reforms.

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1 Mark Everson, Office of Management and Budget, Testimony before the Subcommittee on Civil Service, Census, and Agency Organization, House Committee on Government Reform, April 23, 2002.

2 National Conference of State Legislatures, “The Sunset Process: Still Effective After All These Years,” NCSL annual meeting background materials, August 14, 2001, [www.ncsl.org](http://www.ncsl.org).

3 Ken Levine, Texas Sunset Advisory Commission, NCSL annual meeting presentation, August 14, 2001.

4 Congressional Quarterly, *CQ Almanac*, Vol. LI, 1995, p. 3–7.

5 Senator Muskie (D-Maine) introduced sunset legislation in the 94th, 95th, and 96th Congresses. See Congressional Quarterly, *CQ Almanac*, Vol. XXXVI, 1980, p. 530.

6 Steven Davis and John Haltiwanger, “Gross Job Flows,” in *Handbook of Labor Economics*, 1999. See also Timothy Pivetz, Michael Searson, and James Spletzer, “Measuring Job and Establishment Flows with BLS Longitudinal Microdata,” *Monthly Labor Review*, Department of Labor, April 2001.

7 See Joel Baglole, “How Canada Soared in Air-Traffic Control,” *Wall Street Journal*, March 22, 2001, p. A19; Wess Mitchell, “Privatizing Defense: Britain Leads the Way,” National Center for Policy Analysis, March 29, 2002, [www.ncpa.org/pub/ba/ba391/](http://www.ncpa.org/pub/ba/ba391/); and see the *Deutsche Post* website at [www.postag.de/postagen](http://www.postag.de/postagen).