

H.R. 2939, THE FEDERAL SUNSET ACT OF 1998

HEARING
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY
OF THE
COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 2939

TO PROVIDE FOR THE PERIODIC REVIEW OF THE EFFICIENCY AND PUBLIC NEED FOR FEDERAL AGENCIES, TO ESTABLISH A COMMISSION FOR THE PURPOSE OF REVIEWING THE EFFICIENCY AND PUBLIC NEED OF SUCH AGENCIES, AND TO PROVIDE FOR THE ABOLISHMENT OF AGENCIES FOR WHICH A PUBLIC NEED DOES NOT EXIST

SEPTEMBER 14, 1998

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H.R. 2939, THE FEDERAL SUNSET ACT OF 1998

MONDAY, SEPTEMBER 14, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Kucinich and Turner.

Staff present: J. Russell George, staff director and chief counsel; Mark Brasher, senior policy director; Matthew Ebert, clerk; Faith Weiss, minority professional staff member; and Jean Gosa, minority staff assistant.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology, a quorum being present, we will begin this hearing which is a fascinating hearing.

We will examine H.R. 2939, the Federal Sunset Act of 1998. This legislation was proposed by Representative Kevin Brady, a distinguished Member of Congress from the State of Texas. The legislation, which Mr. Brady has proposed, would establish a process to sunset Federal agencies, unless their mandate was continued by an affirmative act of Congress.

We will hear from witnesses today who will describe the experiences of the States with similar mechanisms. We will also hear from the administration with its concerns over this proposal.

In the 1970's, there was a similar effort at sunseting Federal agencies during the Carter administration. A bill sponsored by Senator Edward Muskie of Maine passed the Senate and was being reworked by the House when the session ended in 1980.

This effort was not reinitiated during the next Congress, and the issue has remained relatively quiet in the 20 years since then. I will be requesting a letter from the Congressional Research Service describing the history of the Carter/Muskie proposal, and you might recall Mr. Muskie later became Secretary of State. We will be putting that in the record at the end of the statements of the witnesses.

In this hearing, we need to determine how this proposal works in the State of Texas and how it would work with the current Federal authorization and appropriation processes. One problem of our system of government, which is divided powers, is the difficulty of shifting resources from one program area to another.

One additional problem that is, I believe, closely related to the issue of the sunset is the issue of government reorganization. The last thorough Federal Governmentwide reorganization proposal was made by President Nixon 25 years ago. That proposal was engulfed in the Watergate scandal.

The reorganization prior to that was the Commission on Organization of the executive branch of the Government, the two Hoover commissions, the first in 1949 during the Truman administration, and later, in the early 1950's. President Truman had brought President Hoover out of retirement. Roosevelt had never talked to him, never used him. Truman was a very wise person. You needed somebody that knew what being a President was and is, and, of course, President Carter has done a wonderful job of doing that service just like Herbert Hoover did.

The Federal Government which emerged from the Hoover Commission is the basic structure which we have today with minor additions and even fewer subtractions. Mr. Brady's legislation proposes to accomplish these subtractions through a commission which appears to have both legislative and executive powers, which really wouldn't be proper under the separation of powers.

I look forward to the testimony of our witnesses, and I now yield to the gentleman from Ohio, Mr. Kucinich, the ranking Democrat on the subcommittee.

[The text of H.R. 2939 and the prepared statement of Hon. Stephen Horn follows:]

105TH CONGRESS
1ST SESSION

H. R. 2939

To provide for the periodic review of the efficiency and public need for Federal agencies, to establish a Commission for the purpose of reviewing the efficiency and public need of such agencies, and to provide for the abolishment of agencies for which a public need does not exist.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1997

MR. BRADY (FOR HIMSELF, Mr. KASICH, Mr. TURNER, Mr. DELAY, Mr. SMITH of Oregon, Mr. STENHOLM, Mr. BOEHNER, Mr. PETERSON of Minnesota, Mr. SESSIONS, Mr. PAXON, Mr. BURTON of Indiana, Mr. RODRIGUEZ, Ms. GRANGER, Mr. CONDIT, Mr. PICKERING, Mr. HILL, Mr. GOODE, Ms. DUNN, Mr. SMITH of Texas, Mr. SNOWBARGER, Mr. CANADY of Florida, Mr. SALMON, Mr. REDMOND, Mr. MCINTOSH, Mr. ROGAN, Mr. SCARBOROUGH, Mr. INGLIS of South Carolina, Mr. BOB SCHAFFER of Colorado, Mr. PITTS, Mr. THORNBERRY, Mr. GREEN, Mr. NUSSLE, Mr. DOOLITTLE, Mr. POMBO, Mr. ISTOOK, Mr. HALL of Texas, Mrs. MYRICK, Mr. COOK, Mr. SOUDER, Mr. COOKSEY, Mr. SAM JOHNSON of Texas, Mr. COMBEST, Mr. BONILLA, Mr. BLUNT, Mr. HERGER, Mr. HUTCHINSON, Mr. MINGE, Mr. BARTON of Texas, Mrs. CHENOWETH, Mr. PAUL, Mr. KLUG, Mr. ENGLISH of Pennsylvania, Mr. JOHN, Mr. COBURN, Mr. TIAHRT, Mr. LUCAS of Oklahoma, Mr. PETERSON of Pennsylvania, Mr. SANDLIN, Mr. WELDON of Florida, Mr. TAUZIN, Mr. FOX of Pennsylvania, Mr. SUNUNU, Mr. PAPPAS, Mr. ROMERO-BARCELÓ, Mr. ROYCE, Mr. ORTIZ, Mr. MCINTYRE, and Mr. LAMPSON) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To provide for the periodic review of the efficiency and public need for Federal agencies, to establish a Commission for the purpose of reviewing the efficiency and public need of such agencies, and to provide for the abolishment of agencies for which a public need does not exist.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Sunset Act of 1998".

SEC. 2. REVIEW AND ABOLISHMENT OF FEDERAL AGENCIES.

(a) SCHEDULE FOR REVIEW.—Not later than one year after the date of the enactment of this Act, the Federal Agency Sunset Commission established under section 3 (in this Act referred to as the "Commission") shall submit to Congress a schedule for review by the Commission, at least once every 12 years (or less, if determined appropriate by Congress), of the abolishment or reorganization of each agency.

(b) REVIEW OF AGENCIES PERFORMING RELATED FUNCTIONS.—In determining the schedule for review of agencies under subsection (a), the Commission shall provide that agencies that perform similar or related functions be reviewed concurrently to promote efficiency and consolidation.

(c) ABOLISHMENT OF AGENCIES.—Each agency shall—

(1) be reviewed according to the schedule created pursuant to this section; and

(2) be abolished not later than one year after the date that the Commission completes its review of the agency pursuant to such schedule, unless the agency is continued by Congress.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the "Federal Agency Sunset Commission".

(b) COMPOSITION.—The Commission shall be composed of 12 members (in this Act referred to as the "members") who shall be appointed as follows:

(1) Six members shall be appointed by the Speaker of the House of Representatives, one of whom may include the Speaker of the House of Representatives, with minority members appointed with consent of the minority leader of the House.

(2) Six members shall be appointed by the majority leader of the Senate, one of whom may include the majority leader of the Senate, with minority members appointed with the consent of the minority leader of the Senate.

(c) QUALIFICATIONS OF MEMBERS.—

(1) IN GENERAL.—(A) Of the members appointed under subsection (b)(1), four shall be members of the House of Representatives (not more than two of whom may be of the same political party), and two shall be an individual described in subparagraph (C).

(B) Of the members appointed under subsection (b)(2), four shall be members of the Senate (not more than two of whom may be of the same political party) and two shall be an individual described in subparagraph (C).

(C) An individual under this subparagraph is an individual—

(i) who is not a member of Congress; and

(ii) with expertise in the operation and administration of Government programs.

(2) CONTINUATION OF MEMBERSHIP.—If a member was appointed to the Commission as a Member of Congress and the member ceases to be a Member of Congress, that member shall cease to be a member of the Commission. The validity of any action of the Commission shall not be affected as a result of a member becoming ineligible to serve as a member for the reasons described in this paragraph.

(d) INITIAL APPOINTMENTS.—All initial appointments to the Commission shall be made not later than 90 days after the date of the enactment of this Act

(e) CHAIRMAN; VICE CHAIRMAN.—(1) An individual shall be designated by the Speaker of the House of Representatives from among the members initially appointed under subsection (b)(1) to serve as chairman of the Commission for a period of 2 years.

(2) An individual shall be designated by the majority leader of the Senate from among the individuals initially appointed under subsection (b)(2) to serve as vice-chairman of the Commission for a period of two years.

(3) Following the termination of the two-year period described in paragraphs (1) and (2), the Speaker and the majority leader shall alternate every two years in appointing the chairman and vice-chairman of the Commission.

(f) TERMS OF MEMBERS.—(1) Each member appointed to the Commission who is a member of Congress shall serve for a term of six years, except that, of the members first appointed under paragraphs (1) and (2) of subsection (b), 2 members shall be appointed to serve a term of three years under each such paragraph.

(2) Each member of the Commission who is not a member of Congress shall serve for a term of three years.

(3)(A) A member of the Commission who is a member of Congress and who serves more than three years of a term may not be appointed to another term as a member.

(B) A member of the Commission who is not a member of Congress and who serves as a member of the Commission for more than 56 months may not be appointed to another term as a member.

(g) POWERS OF COMMISSION.—

(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths to witnesses appearing before it.

(2) OBTAINING INFORMATION.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission in a full and timely manner.

(3) SUBPOENA POWER.—(A) The Commission may issue a subpoena to require the attendance and testimony of witnesses and the production of evidence relating to any matter under investigation by the Commission.

(B) If a person refuses to obey an order or subpoena of the Commission that is issued in connection with a Commission proceeding, the Commission may apply to the United States district court in the judicial district in which the proceeding is held for an order requiring the person to comply with the subpoena or order.

(4) IMMUNITY.—The Commission is an agency of the United States for purposes of part V of title 18, United States Code (relating to immunity of witnesses).

(5) CONTRACT AUTHORITY.—The Commission may contract with and compensate government and private agencies or persons for services without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

(h) COMMISSION PROCEDURES.—

(1) MEETINGS.—The Commission shall meet at the call of the Chairman.

(2) QUORUM.—Seven members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(i) PERSONNEL MATTERS.—

(1) COMPENSATION.—Members shall not be paid by reason of their service as members.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(3) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairman. The Director shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-15 of the General Schedule.

(4) STAFF.—The Director may appoint and fix the pay of additional personnel as the Director considers appropriate.

(5) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(j) OTHER ADMINISTRATIVE MATTERS.—

(1) POSTAL AND PRINTING SERVICES.—The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the United States.

(2) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on

a reimbursable basis, the administrative support services necessary for the Commission to carry out its duties under this Act.

(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(k) SUNSET OF COMMISSION.—The Commission shall terminate on December 31, 2024, unless reauthorized by Congress.

SEC. 4. REVIEW OF EFFICIENCY AND NEED FOR FEDERAL AGENCIES.

(a) IN GENERAL.—The Commission shall review the efficiency and public need for each agency in accordance with the criteria described in section 5.

(b) RECOMMENDATIONS; REPORT TO CONGRESS.—The Commission shall submit to Congress and the President not later than September 1 of each year a report containing—

(1) an analysis of the efficiency of operation and public need for each agency to be reviewed in the year in which the report is submitted pursuant to the schedule submitted to Congress under section 2;

(2) recommendations on whether each such agency should be abolished or reorganized;

(3) recommendations on whether the functions of any other agencies should be consolidated, transferred, or reorganized in an agency to be reviewed in the year in which the report is submitted pursuant to the schedule submitted to Congress under section 2; and

(4) recommendations for administrative and legislative action with respect to each such agency.

(c) DRAFT LEGISLATION.—The Commission shall submit with to Congress and the President not later than September 1 of each year a draft of legislation to carry out the recommendations of the Commission under subsection (b).

(d) INFORMATION GATHERING.—The Commission shall—

(1) conduct public hearings on the abolishment of each agency reviewed under subsection (b);

(2) provide an opportunity for public comment on the abolishment of each such agency;

(3) require the agency to provide information to the Commission as appropriate; and

(4) consult with the General Accounting Office, the Office of Management and Budget, the Comptroller General, and the chairman and ranking minority member of the committees of Congress with oversight responsibility for the agency being reviewed regarding the operation of the agency.

SEC. 5. CRITERIA FOR REVIEW.

The Commission shall evaluate the efficiency and public need for each agency pursuant to section 4(a) using the following criteria:

(1) The effectiveness, and the efficiency of the operation of, the programs carried out by each such agency.

(2) Whether the programs carried out by the agency are cost-effective.

(3) Whether the agency has acted outside the scope of its original authority, and whether the original objectives of the agency have been achieved.

(4) Whether less restrictive or alternative methods exist to carry out the functions of the agency.

(5) The extent to which the jurisdiction of, and the programs administered by, the agency duplicate or conflict with the jurisdiction and programs of other agencies.

(6) The potential benefits of consolidating programs administered by the agency with similar or duplicative programs of other agencies, and the potential for consolidating such programs.

(7) The number and types of beneficiaries or persons served by programs carried out by the agency.

(8) The extent to which any trends, developments, and emerging conditions that are likely to affect the future nature and extent of the problems or needs that the programs carried out by the agency are intended to address.

(9) The extent to which the agency has complied with the provisions contained in the Government Performance and Results Act of 1993 (Pub. Law 103–62; 107 Stat. 285).

(10) The promptness and effectiveness with which the agency seeks public input and input from State and local governments on the efficiency and effectiveness of the performance of the functions of the agency.

(11) Whether the agency has worked to enact changes in the law that are intended to benefit the public as a whole rather than the specific business, institution, or individuals that the agency regulates.

(12) The extent to which the agency has encouraged participation by the public as a whole in making its rules and decisions rather than encouraging participation solely by those it regulates.

(13) The extent to which the public participation in rulemaking and decisionmaking of the agency has resulted in rules and decisions compatible with the objectives of the agency.

(14) The extent to which the agency complies with section 552 of title 5, United States Code (commonly known as the "Freedom of Information Act").

(15) The extent of the regulatory, privacy, and paperwork impacts of the programs carried out by the agency.

(16) The extent to which the agency has coordinated with State and local governments in performing the functions of the agency.

(17) The potential effects of abolishing the agency on State and local governments.

(18) The extent to which changes are necessary in the authorizing statutes of the agency in order that the functions of the agency can be performed in the most efficient and effective manner.

SEC. 6. COMMISSION OVERSIGHT.

(a) **MONITORING OF IMPLEMENTATION OF RECOMMENDATIONS.**—The Commission shall monitor implementation of laws enacting provisions that incorporate recommendations of the Commission with respect to abolishment or reorganization of agencies.

(b) **MONITORING OF OTHER RELEVANT LEGISLATION.**—

(1) **IN GENERAL.**—The Commission shall review and report to Congress on all legislation introduced in either house of Congress that would establish—

(A) a new agency;

(B) a new program to be carried out by an existing agency.

(2) **REPORT TO CONGRESS.**—The Commission shall include in each report submitted to Congress under paragraph (1) an analysis of whether—

(A) the functions of the proposed agency or program could be carried out by one or more existing agencies;

(B) the functions of the proposed agency or program could be carried out in a less restrictive manner than the manner proposed in the legislation; and

(C) the legislation provides for public input regarding the performance of functions by the proposed agency or program.

SEC. 7. RULEMAKING AUTHORITY.

The Commission may promulgate such rules as necessary to carry out this Act.

SEC. 8. RELOCATION OF FEDERAL EMPLOYEES.

If the position of an employee of an agency is eliminated as a result of the abolishment of an agency in accordance with this Act, there shall be a reasonable effort to relocate such employee to a position within another agency.

SEC. 9. DEFINITION OF AGENCY.

As used in this Act, the term "agency" has the meaning given that term by section 105 of title 5, United States Code, except that such term includes an advisory committee as that term is defined in section 3(2) of the Federal Advisory Committee Act.

SEC. 10. OFFSET OF AMOUNTS APPROPRIATED.

Amounts appropriated to carry out this Act shall be offset by a reduction in amounts appropriated to carry out programs of other Federal agencies.

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House of Representatives

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INDEPENDENT

**Legislative Hearing on H.R. 2939,
the Federal Sunset Act of 1998**

September 14, 1998

**OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)**

Chairman, Subcommittee on Government Management,
Information, and Technology

Our hearing today will examine H.R. 2939, the Federal Sunset Act of 1998. This legislation was proposed by Representative Kevin Brady, a distinguished member of Congress from the State of Texas. The legislation which Mr. Brady has proposed would establish a process to sunset Federal agencies unless their mandate was continued by an affirmative act of Congress. We will hear from witnesses today who will describe the experiences of the States with similar mechanisms. We will also hear from the Administration with their concerns over this proposal.

In the 1970s, there was a similar effort at sunseting Federal agencies during the Carter Administration. A bill sponsored by Senator Muskie passed the Senate, and was being reworked by the House when the session ended in 1980. This effort was not reinitiated during the next Congress, and the issue has remained relatively quiet in the 20 years since then. I will be requesting a letter from the Congressional Research Service describing the history of the Carter/Muskie proposal, and we will be putting that in the record at the end of the statements of the witnesses.

In this hearing, we need to determine how this proposal works in the State of Texas, and how it would work with the current Federal authorization and appropriation processes. One problem of our system of government, with its divided powers, is the difficulty of shifting resources from one program area to another.

One additional problem that is, I believe, closely related to the issue of sunset, is the issue of government reorganization. The last thorough Federal governmentwide reorganization proposal was made by President Nixon 25 years ago. That proposal was engulfed in the Watergate scandal. The reorganization prior to that was the Commission on Organization of the Executive Branch of the Government (the Hoover Commission), which made its report in 1949 during the Truman Administration. The Federal Government which emerged from the Hoover Commission is the basic structure which we have today, with minor additions, and even fewer subtractions. Mr. Brady's legislation proposes to accomplish these subtractions through a commission which appears to have both legislative and executive powers. I look forward to the testimony of our witnesses.

Mr. KUCINICH. Thank you, Mr. Horn, and my colleague, Mr. Turner.

I would like to thank the chairman for holding this hearing on H.R. 2939. This bill proposes to establish a Federal Sunset Commission to review the efficiency and public need for Federal agencies with an eye toward abolishing or reorganizing them. This bill is far-reaching in scope and, as a result, we should consider its effect and consequences carefully.

Today, we will discuss the experience of the great State of Texas with its sunset law. There is much we can learn from the State. We should bear in mind, however, that there are a number of significant differences between the Texas Sunset Act and H.R. 2939.

It is appropriate and necessary that Congress continually consider whether Federal agencies are functioning efficiently and serving the public well. Of this, there is no question. Congress has a process for reviewing agencies and agency programs and reauthorizing them or terminating them or abolishing them. Since 1977, the Federal Government has abolished 29 Federal executive agencies.

Given the process we already have in place, including the authorization and appropriation process and the requirements of the Government Performance and Results Act, I am at this time not convinced, fully convinced, that there is a compelling need for such dramatic sunset legislation.

What concerns me the most about this legislation is that it would automatically abolish Federal agencies within 1 year of the date that this commission completes its review of that agency, and the schedule for abolition will be decided by a commission of 12 people, a commission that can be stacked with individuals sympathetic to the majority party at the time.

This creates a potential constitutional problem by replacing Congress with a Federal commission—in the judgment of Congress with a Federal commission appointed by the majority party and by creating a “veto-proof” mechanism to abolish agencies that the majority party dislikes.

We cannot afford to terminate automatically agencies such as Social Security Administration or the IRS or any politically unpopular agency without considering fully what that will mean to the American people. Will Americans continue to receive important public benefits and services without interruption? What effect could this have on our constituents’ lives, health and safety?

I know in the testimony today, certainly the words that we will be receiving from my distinguished colleague from the State of Texas, Mr. Turner, we will be getting a broader perspective on this and Mr. Brady, as well, our colleague, we will be getting a broader perspective on this and be able to improve the quality of our deliberations.

Thank you very much, Mr. Chairman.

Mr. HORN. Thank you.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Opening Statement of the Honorable Dennis J. Kucinich
Government Management, Information and Technology Subcommittee
H.R. 2939, "Federal Sunset Act of 1998"

September 14, 1998

I would like to thank the Chairman for holding this hearing on H.R. 2939. This bill proposes to establish a federal sunset commission to review the efficiency and public need for federal agencies with an eye towards abolishing or reorganizing them. This bill is far-reaching in scope and as a result we should consider its effect and consequences carefully.

Today, we will discuss the experience of the great State of Texas with its sunset law. There is much we can learn from the State. We should bear in mind, however, that there are a number of significant differences between the Texas Sunset Act and H.R. 2939.

It is appropriate and necessary that Congress continually consider whether federal agencies are functioning efficiently and serving the public well. Of this, there is no question. Congress has a process for reviewing agencies and agency programs and reauthorizing them -- or terminating and abolishing them. Since 1977, the federal government has abolished 29 federal executive agencies.

Given the process we already have in place, including the authorization and appropriation process and the requirements of the Government Performance and Results Act, I am not convinced that there is a compelling need for such dramatic sunset legislation.

What concerns me the most about this legislation is that it would automatically abolish federal agencies within one year of the date that this commission completes its review of that agency -- and the schedule for abolition will be decided by a commission of 12 people -- a commission that can be stacked with individuals sympathetic to the majority party at the time. This creates a potential constitutional problem by replacing Congress with a federal commission appointed by the majority party and by creating a "veto-proof" mechanism to abolish agencies that the majority party dislikes.

We cannot afford to terminate automatically agencies such as the Social Security Administration or the IRS, or any politically "unpopular" agency, without considering fully what that will mean to Americans. Will Americans continue to receive important public benefits and services without interruption? What effect could this have on our constituents' lives, health and safety?

Mr. HORN. The gentleman from Texas, Mr. Turner?

Mr. TURNER. Thank you, Mr. Chairman.

I'd like to take this opportunity to express my support for this legislation. I was one of the first, if not the first, Democratic cosponsors of Congressman Brady's bill. I suppose, being from Texas and having had personal experience with the sunset process, the two of us became convinced that this has not worked well in the Federal Government.

We live in an age when people are trying to make government more efficient and more accountable. I think one of the most important things that I learned as a new Member of Congress is that this Congress seems to not have quite the control over the administrative agencies of government as I was accustomed to as a member of the Texas Legislature.

We owe it to the American taxpayers to ensure that their money is not being wasted or misspent, and the sunset process is one of those tools that can be used to accomplish that goal. It's for that reason that I was very pleased to be a cosponsor of the bill, along with 80 other Members of the Congress, of this bipartisan piece of legislation that clearly has deep roots in Texas and I believe over 20 other States.

The idea of a performance review in Texas, spearheaded by our Lieutenant Governor Bob Bullock and our comptroller John Sharp, led to the ideas that created the National Performance Review, which was a project of the Vice President and of the administration designed to improve efficiency and to save taxpayer money.

We believe that a sunset review process can produce similar results. The Federal Sunset Act which is modeled after the Texas Sunset Commission will place an elimination date on every Federal agency, forcing each agency to justify its existence as well as its need for future tax dollar funding.

The normal sunset process is expected to be 12 years for most agencies or a shorter length deemed appropriate by the Congress. As customers of each agency, American taxpayers would be encouraged to voice their opinions on whether the agency is needed, how effective it is, and the quality of service it provides. Frankly, having experienced this process in Texas, I can assure you that this process gets the attention of the administrative agency involved. In fact, for a period of months, if not years, prior to their sunset date, the commissions become very in tune to trying to improve or seek ideas for improvements of the operations of their agency that they can present to the Sunset Commission prior to their review process.

Like the Texas Sunset Commission, this Federal Sunset Commission is bipartisan. Republicans and Democrats alike recognize that we must make government more efficient and more accountable. The Commission would consist of a 12-member bipartisan committee, composed of eight Members of Congress and four private sector individuals, appointed in equal numbers by the Speaker of the House and the Senate Majority Leader. Of the four Members of Congress appointed from this Chamber, two represent the majority party, two the minority party.

Each Member of Congress would serve 6 years, and the private sector individuals would serve 3 years. We believe this to be a meaningful composition of a commission to carry out this task.

This commission will be cost-effective. As a member of the Texas Senate and the Texas House, I had the opportunity to witness the savings that can flow from this type of sunset review. In Texas, we saved over \$630 million in taxpayer money, abolished 42 agencies, and consolidated and streamlined 8 agencies, avoiding needless duplication.

The Federal Sunset Act will ensure that our Federal agencies perform functions that best serve the public need and will justify every tax dollar that is appropriated each year.

Mr. Chairman, I believe we have the historic opportunity to return some meaningful oversight to this Congress over the operations of the Federal Government by adopting the Federal sunset review process proposed in Congressman Brady's bill. I want to commend my friend from Texas, Congressman Brady, for his leadership on this issue and for his foresight in pushing this idea in the Congress.

Thank you, Mr. Chairman.

Mr. HORN. Well, we thank you. Because of your faithful attendance and your wise words, you've been immediately promoted to ranking minority Democrat. So feel free to move over one if you would like—

Mr. TURNER. Thanks.

Mr. HORN [continuing]. Since I don't think he's coming back.

[The prepared statements of Hon. Jim Turner and Hon. Pete Sessions follow:]

**STATEMENT OF CONGRESSMAN JIM TURNER
(TEXAS, 2ND DISTRICT)**

Subcommittee on Government Management, Information, and Technology
of the
Committee on Government Reform and Oversight

September 14, 1998

H.R. 2939, The Federal Sunset Act of 1998

Mr. Chairman, I would like to thank you for holding this important hearing on government accountability and for giving me the opportunity to testify on behalf of H.R. 2939, the Federal Sunset Act of 1998. It is no secret that we have a large Federal government that many Americans believe has run amok. Making our government efficient and accountable is one of the most important things we can do as a Congress. We owe it to the taxpayer to make sure that his or her money is not wasted.

It is for this reason that I am pleased to be an original cosponsors of this legislation which already has more than 80 bipartisan cosponsors. The Federal Sunset Act has deep roots in my home state of Texas, and I want to thank my friend and former colleague from the Texas Legislature, Representative Kevin Brady, for the outstanding work he has done to bring this bill to the forefront. Along with timber, oil and cattle, one of Texas' most important exports is ideas for improving government. The idea of performance review in Texas, which was spearheaded by Texas Lieutenant Governor Bob Bullock and Texas Comptroller John Sharp, led to the National Performance Review, which has improved efficiency and saved taxpayer money throughout the federal government. Sunset review can produce similar results.

The Federal Sunset Act of 1998, which is modeled after the Texas Sunset Commission, will place an elimination date on every federal agency, forcing each agency to justify its current

existence as well as its need for future tax dollar funding, or face elimination. The normal sunset length is expected to be 12 years for most agencies, a shorter length when deemed appropriate by Congress. As customers of each agency, American taxpayers would be encouraged to voice their opinions on whether the agency is needed, how effective it is and the quality of service it provides.

Like the Texas Sunset Commission, the federal sunset commission is nonpartisan. It is a 12-member bipartisan commission composed of eight members of Congress and four individuals from the private sector, appointed in equal numbers by the Speaker of the House and the Majority Leader of the Senate. Of the four members of Congress appointed from each chamber, two will be of the majority party and two of the minority. The terms are six years for Members of Congress, three years for private-sector individuals. Members of Congress cannot serve beyond their term in elected office.

This legislation is cost effective. As a former State Senator in Texas, I had an opportunity to witness this program work in my home state. And work it does: the "sunsetting" process saved \$630 million in taxpayer money, abolished 42 agencies and consolidated and streamlined eight agencies, avoiding costly duplication. I also want to thank another colleague from the Texas Legislature, Texas State Representative and Vice Chairman of the Texas Sunset Commission, Patricia Gray, for coming to Washington to explain in greater detail the many benefits the Sunset process has provided to the taxpayers of Texas.

Mr. Chairman, the Sunset review has been well tested in Texas and proved to be an effective and useful part of our state government. The Federal Sunset Act will ensure that our federal agencies perform functions that best serve the public need and justify every tax dollar that we appropriate from each year. We have an opportunity to initiate a thorough review of all

federal agencies and fulfill our oversight responsibility in a proven and systematic way. We should work to make government more accountable, and I strongly urge that we establish a Federal Sunset Commission. Thank you.



CONGRESSMAN
PETE SESSIONS
 News

TEXAS, FIFTH DISTRICT

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Contact: Pam Arruda, 202.226.8427
 E-mail: pam.arruda@mail.house.gov

**Statement of the Honorable Pete Sessions
 regarding H.R. 2939, the Federal Sunset Act of 1998
 September 14, 1998**

Mr. Chairman, as a point of personal privilege, let me first welcome my good friend from Texas, Mr. Brady, to this hearing. As one of the most respected members of the 105th Congress' freshman class, Mr. Brady has made incredible contributions on behalf of his constituents, the state of Texas, and the country.

Having said that, let me begin my statement by saying that what's good for Texas must be good for the United States of America. In Texas, policies similar to those embodied in H.R. 2939 have resulted in the extermination of 42 agencies, ensuring to the citizens of Texas savings of over \$630 million. The Federal Agency Sunset Act of 1998 will bring discipline to federal agency management and, eventually, tremendous savings to the American taxpayer.

As Chairman of the Results Caucus, a bipartisan group of members of Congress dedicated to solving government's major management problems, of which Mr. Brady is an active member, I have learned a great deal about mismanagement and duplication in the federal government. The justification for this bill, which requires agencies to justify their existence or face extinction, is clear. The federal government has:

- > 500 urban aid programs;
- > 300 economic development programs;
- > 240 education programs;
- > 64 welfare programs,

and the list goes on and on and on

The Government Performance and Results Act is a legislative phenomenon today because it requires agencies to define missions, set goals, and plan for performance. These are things that have never been done by the federal government before. The Federal Sunset Act of 1998 is more basic, but perfectly in sync with Results Act principals. It requires agencies to justify why they should remain at work. For many agencies, and the programs they administer, that may be a difficult question to answer.

Mr. Chairman, I heartily support H.R. 2939, the Federal Sunset Act of 1998. I urge the Subcommittee to pass the bill at its earliest convenience so we can introduce this management incentive to agencies and programs so poorly managed today. Thank you, Mr. Chairman.

Mr. HORN. We now have our colleague from Texas, Mr. Brady, who has given us a marvelous bit of background on this piece of legislation. And, without objection, following your testimony, this will be automatically put in the record.

Mr. BRADY. Thank you.

Mr. HORN. So please proceed.

**STATEMENT OF HON. KEVIN BRADY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS**

Mr. BRADY. Thank you, Mr. Chairman.

And I would like permission to submit for the record a number of letters of support from organizations like Citizens for a Sound Economy, Citizens Against Government Waste, Congressman Lloyd Doggett, another Texan who wrote a sunset bill, and John Kasich and others who are supporters. With your permission, I would like to submit this for the record.

Mr. HORN. Without objection.

Mr. BRADY. I would like to take this opportunity to thank Chairman Horn and the members of the subcommittee staff for holding a hearing on this bill, H.R. 2939. I would also like to thank my co-worker—former coworker—from the Texas Legislature where I served and a friend of mine, Texas State Representative Patricia Gray, who is former chairman of the Texas Sunset Commission, currently vice chairman, because it alternates from the House to the Senate, for attending this hearing and testifying on the sunset process and its success at the State level.

I also want to thank Congressman Turner, who is the leading cosponsor for this bipartisan measure which now has 81 cosponsors, many of them from both sides of the aisle. I appreciate Congressman Turner's leadership in this effort as well.

Texas is 1 of more than 23 States that have employed the sunset process as a proven tool to cut wasteful spending, to eliminate duplication, to streamline agencies and increase accountability, all of which this subcommittee is dedicated to. This bill, the Federal Sunset Act of 1998, seeks to bring these sorts of principles of efficiency and continual evaluation to our Federal Government.

The battle to abolish obsolete agencies and make better use of our tax dollars has been fought throughout our Nation's history. Our third President, Thomas Jefferson, wrote to friends of his continual effort to abolish agencies and programs that at that time had outlived their usefulness. I hate to think that perhaps many of them may still be around today.

But, more recently, former President Jimmy Carter, as Chairman Horn said, pushed for a vote on sunset in the late 1970's; and, in fact, a version passed the Senate 87 to 1 at that time. Today, 81 of my House colleagues on both sides of the aisle have embraced this notion that the time has come for agencies to justify their tax dollars or face elimination.

As you know, big government seems to have a life of its own. All you need to do is ask those in Congress last session who struggled to abolish the 100-year-old Federal Board of Tea Examiners. As former President Ronald Reagan observed, "the nearest thing to eternal life we'll ever see on this Earth is a government program."

In order to reach an honest balanced budget, without having to borrow from Federal trust funds, simply slowing the growth of Federal agencies is not enough. Enacting the Federal sunset law, like more than half our States have, creates a tool to cut wasteful spending by completing and complementing the Results Act and traditional legislative oversight.

It's a simple concept with powerful results. Each and every Federal agency must justify its existence, not its value when it was created 100 years or 40 or even 20 years ago. They must prove that they deserve our precious limited tax dollars today.

Here is how it works: Every Federal agency is given an expiration date, a date certain when they will go out of existence unless Congress reestablishes them. This bill suggests a 12-year cycle for most agencies, shorter for troubled agencies. A bipartisan, 12-member Sunset Commission, composed of Members of Congress—eight members from Congress and four from the public, examines each agency's need, its value, its cost-effectiveness, and level of customer service.

Then citizens, taxpayers and State and local government leaders are given a chance to speak their mind. Is the agency still needed? Is it responding to its customers? Is it spending our tax dollars wisely? And after a thorough evaluation, the commission recommends to Congress that an agency be reauthorized, streamlined, consolidated or eliminated. If the agency is reestablished, it's assigned a future sunset date to make certain it remains accountable.

Accountability has saved money. In Texas, you will hear in a few moments, where I served as a State legislator, sunseting has eliminated 42 agencies and saved taxpayers more than \$630 million and it's growing. With results like this at the State level, where government is smaller and by nature more efficient, imagine the cost savings when applied to the Washington bureaucracy.

There's very little cost associated with this bill. The sunset process uses existing mechanisms to implement the provisions of the bill. The members of the commission are appointed by the Speaker and Senate Majority Leader, and hearings are held in conjunction with the existing authorizing committees. Most work will be conducted in the legislative framework already established, and any cost that is written in the bill, any costs that the commission does incur, must be offset in the budget for each fiscal year.

There are additional benefits under sunset. I've noticed at the State level, and we have with the piecemeal agencies we sunset in Washington, for the 2 years or so before an agency is sunsetted, it is amazing how responsive they become. The phone calls are returned quickly. They start to have introduced the concept of customer service. Now, at times, they think it is just Congress who are their customers; but, in fact, it's the taxpayers to which they are responding to. You see a real change in how they operate.

They also tend to write regulations closer to the intent of the bills we pass, because they know they're coming back around to us for reauthorization. Under sunset, there are no more sacred cows, no existence until infinity.

Well, many of you may ask, don't we already have sunseting or a mechanism like it in place? The answer is no. Currently, the Federal Government has no consistent or comprehensive mechanism to

evaluate the need of every agency and to examine duplication of programs with other agencies.

Certainly, the Government Performance and Results Act was a strong step in the right direction, and I am a founding member of the Results Caucus. I believe in what it is doing. The Federal Sunset Act is the next logical step from there; and, in fact, in this bill the agency's response to the Results Act is part of the criteria for their examination of need and effectiveness.

The sunset process will fully utilize each agency's 5-year strategic plan, its annual performance plan and annual performance report. It will also go one step further, Chairman Horn, by serving as an enforcement mechanism for an agency's own review or failure to produce tangible results.

I think in a time of tough financial choices, which we are always in, our hard-earned dollars can't be wasted on duplicative and outdated programs in our Federal agencies.

On average, more than five agencies perform the same or related function. There are 163 programs with job training or employment function, 64 welfare programs of a similar nature, and more than 500 urban aid programs. Certainly, many of these are meritorious. However, not only could we afford to streamline and save tax dollars, but we could also make it easier for folks to understand and know where to seek this aid.

Sunsetting is not only a tool for elimination, Mr. Chairman, because we know these services are very important. Whether it is environmental services, delivering Social Security, Health and Human Services, it's important through sunset that we find the most effective way of delivering these services.

In conclusion, this bill shares the support of Citizens Against Government Waste, Citizens for a Sound Economy, Texas Association of Business and Chambers of Commerce, the Texas Restaurant Association, the Associated Builders and Contractors and a number of other individuals.

Thomas Schatz, the president of Citizens Against Government Waste, which came about after the Grace Commission, has said, "for those in Congress who are committed to cutting wasteful spending, a Federal sunset law is a powerful tool. No longer will Federal agencies, once created, assume immortality."

What is important here is that sunset shifts the burden of proof, forcing agencies to regularly justify their existence to American taxpayers who have a real say in whether they strengthen our precious tax dollars.

Again, Chairman Horn, members of the subcommittee, thank you for inviting me here to testify and for allowing the hearing on H.R. 2939 to take place. And, again, I greatly appreciate the appearance of Representative Patty Gray and the representative from the administration. I'm eager to hear their testimony and look forward to an open dialog.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Kevin Brady and the information referred to follow:]

**Statement of Congressman Kevin Brady
before the House Subcommittee on Government Management,
Information and Technology**

September 14, 1998

I would like to take this opportunity to thank Chairman Horn and members of the Subcommittee staff for holding a hearing on H.R. 2939, the Federal Sunset Act of 1998. I would also like to thank a former co-worker from the Texas Legislature and friend of mine, Texas State Representative and Vice Chairman (and former Chairman) of the Texas Sunset Advisory Commission, Patricia Gray, for attending this hearing and testifying on the sunset process and it's success in Texas.

Texas is one of more than 23 states that have employed the sunset process as a proven tool to cut wasteful spending, eliminate duplication, streamline agencies and increase accountability. This bill, the Federal Sunset Act of 1998, seeks to bring these sort of principles of efficiency and continual evaluation to our federal government.

The battle to abolish obsolete agencies and make better use of our tax dollars has been fought throughout our nation's history. Thomas Jefferson, our nation's third president, wrote to friends of his constant effort to abolish agencies and programs that have outlived their usefulness. More recently, former President Jimmy Carter pushed for a vote on Sunset in the late 1970's. Today, 80 of my House colleagues on both sides of the aisle have embraced the notion that the time has come for agencies to justify their tax dollars or face elimination.

Big government has a life of its own. Just ask those in Congress who last session struggled to abolish the 100-year-old federal Board of Tea Examiners. As former president Ronald Reagan observed, "the nearest thing to eternal life we'll ever see on the earth is a government program."

In order to reach an honest balanced budget - without borrowing from federal trust funds - simply slowing the growth of federal agencies is not

enough. Enacting a federal Sunset Law, like more than half of our states have, creates a tool to cut wasteful spending by completing the Results Act and traditional legislative oversight.

It's a simple concept. Each and every federal government agency must justify its existence---not its value when it was created 100 years ago...or 40 years ago...or even 20 years ago. They must prove that they deserve our precious, limited tax dollars *today*.

Here is how it works: Every federal agency is given an expiration date - a date certain when they will go out of existence unless Congress reestablishes them. (This bill suggests a 12-year cycle for most agencies, shorter for troubled agencies.) A bi-partisan, 12-member Sunset Commission, composed of members of Congress and the public, examines each agency's need, value, cost-effectiveness and level of customer service. Then citizens, taxpayers, and state and local government leaders are given a chance to speak their mind: Is the agency still needed? Is it

responding to its customers? Is it spending our tax dollars wisely? After a thorough evaluation, the Commission recommends to Congress that an agency be reauthorized, streamlined, consolidated or eliminated. If the agency is re-established it's assigned a future sunset date to make sure it remains accountable.

Accountability has saved money. In Texas, where I served as a state legislator, "sunsetting" has *eliminated 42 agencies* and saved the taxpayers *more than \$630 million*. I am sure that Vice Chairman Gray will elaborate on its success as well. With results like this at the state level - where government is smaller and more efficient - imagine the cost savings when applied to the Washington bureaucracy.

There is very little cost associated with this bill. The sunset process uses existing mechanisms to implement the provisions of the bill. The members of the commission are appointed by the Speaker and the Senate Majority Leader and hearings will be held in conjunction with

the existing authorizing committees. Most work will be conducted in the legislative framework already established. Any costs that the Commission does incur will be offset in the budget for each fiscal year.

There are additional benefits under Sunset: agencies become very responsive to the American taxpayers, more oriented to customer service, and write regulations much closer to the original intent of congressional legislation. They must, because under Sunset there are no more sacred cows...no existence to infinity.

Many of you may ask, "Don't we already have sunseting or a mechanism like it in place?" The answer is no. Currently, the federal government has no consistent mechanism to evaluate the need of every agency and to examine duplication of programs with other agencies. Certainly, the Government Performance and Results Act, passed in 1993, was a strong step in the right direction, and I am an active member of the Results Caucus. The Federal Sunset Act is the next

logical step from there.

The Sunset process will fully utilize each agency's five-year strategic plan, annual performance plan and annual performance report. It will go one step further by serving as an enforcement mechanism for an agency's own review and facilitator of tangible results.

In a time of tough financial choices, our hard-earned tax-dollars can no longer be wasted on duplicative and out-dated programs in our federal agencies.

On average, more than five agencies perform the same or related function. There are 163 programs with a job training or employment function, 64 welfare programs of a similar nature, and more than 500 urban aid programs. Certainly, many of these are meritorious programs; however, not only could we afford to streamline and save tax dollars, but we could also make it easier for folks to understand and know where

to seek this aid. Agencies could ultimately spend money serving more people in need of assistance rather than administrative paperwork.

H.R. 2939 shares the support of the Texas Association of Business and Chambers of Commerce, Texas Restaurant Association, Citizens for a Sound Economy, the Greater Houston Chapter of Associated Builders and Contractors, Citizens Against Government Waste and others.

In fact, Thomas Schatz, President of Citizens Against Government Waste, has said, "For those in Congress who are committed to cutting wasteful spending, a federal Sunset Law is a powerful tool. No longer will federal agencies, once created, assume immortality. Sunsetting shifts the burden of proof, forcing agencies to regularly justify their existence to American taxpayers who will have a real say in whether they deserve our precious tax dollars.

We support the Federal Sunset Act of 1998 and encourage members of

Congress to join Representative Brady in bringing accountability to our massive federal bureaucracy.”

Again, thank you Chairman Horn, members of the Subcommittee on Government Management, Information and Technology for inviting me here to testify and for allowing a hearing on H.R. 2939 to take place. I greatly appreciate the appearance of Rep. Patricia Gray and those here from the Administration. I am eager to hear their testimony and look forward to an open dialogue on the sunset process here today.



September 3, 1998

Congressman Kevin Brady
1531 Longworth Bldg.
Washington, DC 20515

Dear Congressman Brady:

I have noted with great interest your filing of H.R. 2939, the Federal Sunset Act of 1998. On behalf of the members of the Texas Restaurant Association, I applaud your efforts.

Our experience with the Texas Sunset Act has been very positive. By way of an example, the Texas Alcoholic Beverage Commission went through Sunset in 1993. Our relationship with that agency was poor at the time because of the methods used by the commission in collecting the mixed beverage tax.

After undergoing Sunset review, the tax collection function, over the objections of the commission, was moved to the state Comptroller's office where revenue collections have remained as high as when collected by the commission, but are collected using 90 fewer state employees and with no complaints from our members.

I'm sure a federal act modeled on the Texas example will result in a more responsive bureaucracy and save federal tax dollars.

If there is anything we can do to assist in the passage of this legislation, please call me.

Respectfully yours,

Glen Garey
General Counsel

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*The Voice
of Consumers
for Free
Enterprise*

July 7, 1998

The Honorable Kevin Brady
U.S. House of Representatives
1331 Longworth House Office Building
Washington, DC 20515

Dear Representative Brady:

On behalf of Citizens for a Sound Economy's (CSE) 250,000 members, I would like to express our strong support for H.R. 2939, the Federal Sunset Act of 1998, and to congratulate the 80 cosponsors who have joined you in taking an active lead on this important piece of legislation.

H.R. 2939 will reduce the size and scope of the federal government because it forces all federal agencies to justify their existence. Under this plan, every agency is given an expiration date; a date certain when they will go out of existence unless Congress recreates them.

The bill also establishes a Sunset Commission, composed of members of Congress and the public, which will examine each agency's need, value, cost-effectiveness and level of customer service. If the Commission finds that an agency is no longer needed or wastes taxpayer dollars, it can recommend to Congress that an agency be streamlined, consolidated, or eliminated altogether.

Furthermore, because it gives taxpayers a voice in the process of evaluating an agency's operations, responsiveness and need for existence, this bill will promote accountability and customer service as well. It will also return power to the American people because it shifts the burden of proof to all federal agencies and programs to demonstrate to taxpayers that they deserve our precious tax dollars.

By insuring that federal agencies, once created, can no longer automatically assume eternal life, and by providing for a bi-partisan commission to evaluate the need for all federal agencies and recommend their abolition if necessary, this bill will significantly reduce wasteful spending and promote efficiency. As history has shown, the American people do not look kindly on the government wasting their money. If given the chance, they will surely not hesitate to rid Washington of its wasteful spending habits.

Since our inception in 1984, CSE's mission has been to rein in the size and scope of the federal government. Specifically, we support lower tax burdens for all Americans, balancing the budget through spending restraint, and moving power and influence out of Washington, D.C. H.R. 2939 is consistent with this mission because it represents an excellent opportunity to reduce the massive federal bureaucracy that



August 27, 1998

The Honorable Kevin Brady
 U. S. House of Representatives
 1531 Longworth House Office Building
 Washington, D.C. 20515

Dear Congressman Brady:

Texas Association of Business & Chambers of Commerce (TABCC) is aware of, applauds, and endorses the leadership that you are supplying to the effort to bring about a common-sense approach to government. H.R. 2939, the Federal Sunset Act of 1998, is the kind of legislation that businesses, large and small, support. TABCC wholeheartedly supports the many goals of H.R. 2939.

The notions of abolishing duplication, eliminating outdated agencies and requiring justification of existence are fundamental realities and principles of profitable businesses today. Just as various departments within a business are evaluated for their usefulness and efficiency, so, too, should the keepers of taxpayer dollars concern themselves with a look at the proverbial bottom line. Abuse of power and heavy regulations are often the products of a bureaucracy unchecked. Business frequently experiences the frustration of dealing with myriad agencies and bureaucracies and we eagerly endorse your efforts to return to the people of this country a smaller and more efficient government.

We in Texas are the beneficiaries of a Sunset process that works! It has produced tangible reductions and slowed the level of increases in taxes paid by our citizens and businesses. I would encourage all members of Congress, and especially the Texas delegation, to support your measure. We at TABCC feel that H.R. 2939 will greatly contribute to the effort to restore common sense, efficiency and accountability to government and the bureaucracies they sometimes create.

Please let us know how we can better support you and your efforts to bring about this much-needed change to the federal bureaucracy that currently exists.

Sincerely,

Bill Hammond
 President

TEXAS ASSOCIATION OF BUSINESS & CHAMBERS OF COMMERCE

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**Rep. Lloyd Doggett
Statement**

Before the
Subcommittee on Government Management, Information, and Technology
of the
Committee on Government Reform and Oversight

September 14, 1998

H.R. 2939, The Federal Sunset Act of 1998

Mr. Chairman, I would like to thank you for holding this hearing to address one of the most pressing issues on the minds of our constituents today: government working for the people.

I introduced the Sunset Act of 1997, H.R. 1913, to address the very issue which brings us all here today. As a long-time supporter of the concept of sunset legislation, I applaud Congressman Brady's efforts on behalf of his bill, H.R. 2939, the Federal Sunset Act of 1998, to advance and promote Congressional consideration of the cause of sunset reviews for programs and agencies at the federal level. Both Congressman Brady and I have had positive reports about the effectiveness of sunset legislation currently in place at the state level in Texas. I believe the Texas Sunset concept can be adapted to promote efficiency, responsiveness, and responsibility within our federal government.

Congress we know is great at creating Federal programs because we have hundreds of them to prove it. But too often after creating a program to address some real need, Congress subsequently fails to conduct proper oversight of its handiwork. It has been said that the nearest thing to immortality in this world is a government bureau, and certainly that is true of too many of the programs that were created in this particular institution. We find the sun coming up on these programs, but seldom seeming to go down.

In my home state of Texas, we found an answer for the perpetual motion machine of government. We forced periodic review of each new governmental initiative through a systematic sunset process. This procedure is authorized by the Texas Sunset Act, which I authored as a Texas State Senator. Through that process we have completed over 200 sunset reviews, performance audits of various State agencies. We have repealed statutes, we have consolidated and abolished governmental agencies, and the Texas Treasury is about \$600 million the better for it.

In Texas, we believe that a thorough bottom-to-top review of each of these new laws and programs is healthy. It is good for the programs, it is good for those that are administering the programs, but most importantly, it is good for the people that have to foot the bill, the taxpayers.

I have found that when it comes to solving problems here in Washington, we could do with a little more Texas thinking of this type. In my judgment, Congress has an affirmative duty to oversee every program that it creates to ensure accountability, to ensure that over time the program is being retained only if it is necessary and only if it is being run in an efficient way that protects the taxpayer.

A sunset law would fulfill this duty by requiring Congress to review and reauthorize most programs. There are Federal programs that are not being reviewed today that have not been formally reauthorized for many years. This is not any way to conduct the Nation's business, for it undoubtedly results in the outright waste of resources that could be better used to reduce the deficit and address our real needs in education, the environment, and health care.

Sunset is another way of accomplishing responsible government that addresses real needs within the restraint of a budget that is balanced and stays balanced. I urge my colleagues to bring more needed oversight to this government and assure that unnecessary programs are terminated and that all parts of our government are operated with true accountability and efficiency.

JOHN R. KASICH
12TH DISTRICT OHIO

MEMBER
COMMITTEE ON NATIONAL SECURITY
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Congress of the United States
House of Representatives
Washington, DC 20515-3512

September 11, 1998

Congressman Stephen Horn
Chairman, Subcommittee on Government Management, Information, and Technology
Committee on Government Reform and Oversight
B-373 Rayburn Building
Washington, DC 20515

Dear Mr. Chairman,

I am writing in strong support of the Federal Sunset Act of 1998, introduced by Congressman Kevin Brady of Texas. Since coming to Congress, I have endeavored to shape a more responsive, effective, and efficient federal government. I believe government should work to give American workers the best value possible for their tax dollars. The way things currently stand, American taxpayers are getting a poor return on their investment.

Our federal government is too large, costs too much, and works too inefficiently. There are more than 760 federal education programs, yet the state of American education is not what it should be. These 760 programs require more than 20,000 sheets of paper to administer, the grant process alone has 216 steps and takes 20 weeks to complete. At the same time, American 8th graders rank below Chinese, Slovenian, and Hungarian students in math and science skills. There are 150 federal job training programs, yet there is little evidence these programs are providing workers with the skills they need. There are so many programs employers don't know where to turn for properly trained workers. Moreover, the General Accounting Office has found most federal agencies don't even know if their job training programs are working effectively. There are 340 federal housing programs, yet the housing needs of our most vulnerable citizens are not being met. The Department of Housing and Urban Development wasted nearly one billion dollars on rent over-payments in 1997, while serving only one-quarter of those eligible for rent assistance. Clearly, there is strong need for a systematic review of the functions and activities of these and all other federal departments and agencies.

During the next five years, taxpayers will spend more than nine trillion dollars on the federal government. Despite this massive commitment of resources, fourteen federal departments and agencies received "D's" or "F's" on the financial management status report scorecard. The Environmental Protection Agency, the Department of Justice, and the Veterans Administration were among the departments and agencies unable to demonstrate effective internal controls and compliance with all applicable laws and regulations. Your Committee has taken the lead in addressing these problems and I

believe Mr. Brady's bill will provide a valuable tool for streamlining and reforming the federal government. The Federal Agency Sunset Act of 1998 is based on a simple principle-accountability. Making federal agencies accountable to the taxpayers who fund them and the legislators who created them will help put an end to out-of-control bureaucracies and runaway spending.

Congress recently passed the IRS Restructuring and Reform Act in response to a year-long study IRS, led by Senator John Kerry and Congressman Rob Portman. The review found an agency in desperate need of comprehensive reform, greater Congressional oversight, and greater protections for taxpayers. The reforms Congress enacted as a result of this study were long overdue and there is no doubt similar reforms are needed elsewhere within our federal government. Congressman Brady's Federal Agency Sunset Act will set up the process for regular, formal review of all aspects of our government. I fully support this is much needed, common sense legislation and I urge your Committee to give the bill thorough consideration.

Sincerely,



John J. Pick
Representative to Congress

JRK:bjj

cc: Hon. Kevin Brady

Mr. HORN. If I might, I'd like to ask you a few questions at this point and—

Mr. BRADY. Yes, sir.

Mr. HORN [continuing]. Is it possible for you to stay through the next two witnesses?

Mr. BRADY. Yes, I intend to be here for the hearing.

Mr. HORN. Let me ask in terms of the makeup of the commission. As I read your bill, it has six members selected by the Majority Leader of the Senate and six members selected by the Speaker of the House of Representatives. Is that correct?

Mr. BRADY. Yes, sir.

Mr. HORN. Has this been checked with the American Law Division of the Congressional Research Service in terms of any separation of powers questions?

Mr. BRADY. It has not specifically been done. In working with legislative counsel in drafting it, we were sure that it did meet constitutional grounds, but I will be glad to double-check that for you.

Mr. HORN. Yes. See, the Hoover Commission and many other commissions were appointed by so many, Congress and the President appointed the chair and this kind of thing. So you need to, it seems to me, look into those aspects and the precedent.

Now, I just have three short questions. For the record, how long has the Texas sunset process been in existence? How many years?

Mr. BRADY. It has been in existence—do you recall, Chairman Gray?

Ms. GRAY. Since the mid-'70's.

Mr. HORN. OK. So you're saying about 2 decades it's been?

Mr. BRADY. Yes.

Mr. HORN. Do you know, I can always ask later, but what's the largest agency you've eliminated in Texas, in terms of personnel?

Mr. BRADY. I would have trouble—I will be glad to go through the 43 agencies and identify that.

Mr. HORN. Yes. Good. And let's put that one in the report.

And did any of them sneak back into another agency after the legislature thought they had eliminated them?

Mr. BRADY. At this point having served in the legislature, I would think that would be difficult to do. Sunsetting takes—is a very high priority in our budgeting process and accountability process. You know every agency that's up, their programs. And one of the things that I think mitigates the constitutional issues of accountability is that the Sunset Commission is required to draft legislation for Congress on each agency after its review is done.

And each Member of Congress obviously has the authority and the ability to introduce a bill that reauthorizes a—a simple bill to reauthorize any agency as much as we do with OPIC and EXIM and, on a piecemeal basis, our higher education program. It meets those constitutional tests, and I will have it reviewed by the American Law Division.

Mr. HORN. OK. I yield 5 minutes to the gentleman from Texas for questioning the witness.

Mr. TURNER. Mr. Brady, in terms of trying to clarify what may likely be some of the objections to this approach, I think it's important to note and you correct me if I'm wrong, that this bill creates an advisory commission? I mean, this commission doesn't have the

authority to supersede any legislative act. It's the nature of the bill to automatically sunset an agency, but it's reauthorization still requires an act of the Congress?

Mr. BRADY. That's correct. And, in fact, even setting the dates to sunset freeze each agency, the commission must recommend those dates to Congress. And in the bill, we urge them to group them in a way that we can look at duplicating agencies and programs at the same time. Because, as you know, it's easy to see the trees here, it's hard to see the forest at times.

And the commission then recommends those dates to us as Congress before they begin the evaluation. They're required to submit legislation to us, and, of course, it is an act of Congress which reauthorizes the agencies themselves.

Mr. TURNER. I'm anticipating the testimony from the administration on this bill, which seems to express some concern about input by the executive branch. I think it's important for us to explain to the committee how the input from the executive branch occurs in this process.

My recollection in Texas is that the Sunset Commission through its hearing process has always been primarily reliant upon the agency and the agency head for testimony and input as well as from the Governor's Office.

Would you envision it would work in a similar fashion here at the Federal level?

Mr. BRADY. Yes. And, in fact, in the bill as it's currently written, the commission is required to seek input from executive branch offices relating to that agency and its programs, plus, of course, just as with the programs, the piecemeal programs that we sunset today, the administration has the ability, of course, to push those as a high-priority item of continual program to introduce legislation or reauthorize OPIC, for example, EXIM, or any of the other programs. So it's very consistent with existing process.

Mr. TURNER. Perhaps it's important here to note that there really is no new power created in the Congress by virtue of this legislation. That is to say, Congress is very familiar with, as you mentioned, the term reauthorization. We do that all the time, reauthorizing various activities that expire.

And it's also, I think, true that in terms of the role of the Congress or the role of the commission here, being that it's only advisory, the Congress could actually, could it not, do the same thing that is, abolish an agency and introduce a bill to reorganize an agency? We can do that right now?

Mr. BRADY. Yes.

Mr. TURNER. I would view this simply just as an additional tool to allow more thorough consideration of the abolition or reconstitution of an agency through this process.

Mr. BRADY. I mean, the answer to all of those is yes. And, as you know, the dynamics in Washington don't work well toward sunseting an agency or even abolishing obsolete agencies. It is just the dynamics are very difficult to do. Although we have that power to do. I know on the three authorizing committees I serve on, it is difficult to get a grasp, because we overlap with other jurisdictions.

It is difficult to get a grasp, even in this discussion, of an agency, of its overall programs and how—those that duplicate other agen-

cies, what the distinction is, how they're delivered, how they work in concert or don't. And that is one of the strongest advances of this, is that it builds upon and works with existing authorizing expertise in the administration as well as customers of those agencies to help provide a continual, comprehensive evaluation process that covers all of the Federal Government, rather than an agency occasionally at a time or a program occasionally at a time where it is difficult to get—to see the forest through that one tree.

Mr. TURNER. I take it that when you look back upon your experience, as I do in the Texas Legislature with the sunset process, what you see is a long-term, more deliberate and more detailed examination of the activities of an agency than I have been able to see as a Member of this Congress serving on an authorizing committee. Would that be a fair assessment from your viewpoint as well?

Mr. BRADY. Yes, sir, and just to tell you how much I believe in the sunset process, an accountability of the bill includes a requirement that the commission itself be sunsetted so that it is held accountable for its own actions on accountability. Because I think it's important that every agency understand that it must be responsive. It is not going to exist to immortality, that it must prove its existence to taxpayers and to this Congress.

Mr. TURNER. Thank you, Mr. Chairman. Thank you, Mr. Brady.

Mr. HORN. Let me just ask one final question on the politics of this. As you know, a little demagogue always recurs at every 2-year election that we're going to abolish Social Security or some stupid statement like that. Are you willing to see Social Security exempted from this so that nonsense doesn't go on?

Mr. BRADY. Possibly. But I will tell you at the State level, and 23 States can probably reiterate this, we have awfully sensitive programs at State levels as well, especially in Health and Human Services, law enforcement and other agencies. We have seen a universal support for sunset process in sensitive agencies as well.

Because using Social Security, for example, the question, we do not sunset the program itself or the benefits, but we do evaluate the agency that delivers that service; and given that we are delivering important services across this country, it's important that that agency deliver it effectively, that benefit check and amount to the senior who has earned it at the right time, when they need it most in their life.

And so I have both experienced at the State level support for insisting that the agencies, in fact, that deliver the most critical service be evaluated the closest to make sure that they're doing it effectively.

Mr. HORN. Well, we thank you.

Then we will now call the next witness, the Honorable Ed DeSeve, the Deputy Director for Management, Office of Management and Budget. And we will also have the Honorable Patricia Gray come to the table—then we can have a dialog after your formal testimony—State Representative and vice chair, Texas Sunset Commission.

As you all know, if you would rise, except for Mr. Brady, raise your right hands.

[Witnesses sworn.]

Mr. HORN. We don't give the oath to Members of Congress because, if they lie to us once, we never listen to them again. So we've got a pretty good rule up here.

Mr. DeSeve, always good to see you.

**STATEMENT OF ED DESEVE, DEPUTY DIRECTOR FOR
MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET**

Mr. DESEVE. Mr. Chairman, thank you. It's good to be here today.

I would like to insert my entire statement into the record and give you an abbreviated—

Mr. HORN. Without objection, all statements go in when we introduce you.

Mr. DESEVE [continuing]. An abbreviated version of it.

The Federal Sunset Act of 1998 proposes to establish a 12-member congressional commission to review each Federal agency. The commission would make a yearly report to the President and to Congress recommending the abolition or reorganization of each agency reviewed. The abolition of an agency would go into effect not later than 1 year after the commission completes its review, absent an act by Congress to continue the agency.

The administration supports the need for both the executive branch and Congress to periodically review the performance of agency operations. It is important to make a careful and considered review of government's organization, program delivery and results achieved. Such a review can facilitate decisions for making a better program or for an agency's continued existence.

The administration's proposals for terminating programs and projects have been part of the overall concerted effort to create government that works better, costs less and gets results that the American people care about. These proposals were carried out within the bipartisan framework of a balanced budget agreement. When President Clinton took office, the deficit for the previous fiscal year, fiscal year 1992, hit a record \$290 billion. The budget that the President submitted to the Congress on February 2nd projected the first balanced budget in 30 years.

Like previous budgets submitted by President Clinton, the fiscal year 1999 budget included program and project terminations. For example, the budget did not include requests to fund local law enforcement grants. As in earlier years, a number of agricultural research grants, Corps of Engineers water projects, and DOD weapon systems procurement projects were proposed for termination or phasing out as they were no longer required.

During the past 5 years, under the leadership of the Vice President, the government has pursued an unprecedented program of review, reinvention and reform. Some of the examples of the results of these efforts are: The smallest work force in over 30 years, down 320,000, full-time equivalents since 1992; and, 16,000 pages of regulations and 640,000 pages of internal rules have been abolished.

Results have been achieved using congressional—governmental processes, working in cooperation with all of the work partners to provide quality service. This administration supports the principles of performance review and reform and has demonstrable results to show for that commitment.

Notwithstanding, we strongly oppose H.R. 2939. Its provisions raise serious constitutional concerns, are counterproductive to many recent improvements Congress and the administration have made to support government reform and accountability, and duplicate existing structures for evaluating agency performance on the part of authorizing and appropriating committees of Congress, as well as by the executive branch.

What would the commission do? The proposed commission would be composed of 12 members. Eight are Members of Congress. The other four members are not Members of Congress. Two of them shall have expertise in the operation of the administration of government programs. The commission would report annually to Congress and the President on its findings and recommendations.

The abolishment of an agency would automatically go into effect, absent an act of Congress to continue the agency. This process would not provide for any formal participation of the executive branch, inappropriately negating the President's prerogatives and authorities. Furthermore, absent an act of Congress to continue an agency, the President is denied the ability to express his policy position through a veto or other action.

We have been advised by the Department of Justice that the bill would violate the Constitution.

Congress, with support from the administration, has in recent years passed numerous laws to strengthen government performance and results, most prominently the Government Performance and Results Act of 1993. The planning and reporting mechanisms required by the Results Act, coupled with requirements in many other statutes that spell out performance for agencies, provide a framework for Congress to review and oversee in their regular order of business.

Congress has relied on the expertise of authorizing and appropriating committees as well as oversight committees such as this one to conduct periodic and regular assessments of performance. Committees perform this work with the support of the GAO, the Offices of Inspectors General and various other staffs. They also consider the views of professional organizations and the public. The committee has used a formal, thorough, deliberative process, supported by the professional expertise available to them in making informed judgments about agency performance and public need. When committees see the need for change, they take action to effect that change using the constitutionally provided mechanisms that call for votes on the part of all of the Members of Congress and provide an opportunity for the President to act on the legislation.

That concludes my testimony, Mr. Chairman. I would be delighted to answer any questions you might have.

Mr. HORN. We thank you.

[The prepared statement of Mr. DeSeve follows:]

Testimony of G. Edward DeSeve
Acting Deputy Director for Management
Office of Management and Budget
Before the Subcommittee on Government Management, Information and Technology
House Committee on Government Reform and Oversight
September 14, 1998

Mr Chairman, I am here to discuss HR 2939, the "Federal Sunset Act of 1998". This bill proposes to establish a 12- member Congressional commission to review each Federal agency. The commission would make a yearly report to the President and to Congress recommending the abolition or reorganization of each agency reviewed. The abolishment of an agency would go into effect not later than one year after the commission completes its review absent an act by Congress to continue the agency.

The Administration supports the need for both the Executive Branch and Congress to periodically review the performance of agency operations. It is important to make a careful and considered review of government agency's organization, program delivery, and results achieved. Such a review can facilitate making decisions about a program's or an agency's continued existence as well as decisions about how to achieve necessary reforms in an agency's operations. The Administration's proposals for terminating programs and projects have been part of the overall concerted effort to create a government that works better, costs less and gets results the American people care about. These proposals have been carried out within the bi-partisan framework of a balanced budget agreement. When President Clinton took office, the deficit for the previous fiscal year, FY 1992, had hit a record \$290 billion. The FY 1999 budget that the President submitted to the Congress on February 2nd. projected the first balanced budget in 30 years.

Like previous budgets submitted by President Clinton, the FY 1999 Budget included program and project terminations. For example, the budget did not include requests to fund local law enforcement grants. As in earlier years, a number of agricultural research grants, Corps of Engineers water projects, and Department of Defense weapons system procurement programs are proposed for termination or phasing out as the projects are completed or no longer required.

During the past 5 years, under the leadership of the Vice President, the government has pursued an unprecedented program of review, reinvention and reform. Just last week the Brookings Institution favorably reviewed the results of the National Partnership for Reinventing Government. Some examples of the results of these efforts are:

- The smallest civilian workforce in over 30 years, down 320,500 FEES since 1992.
- Reductions in red tape and government bureaucracy.
- 16,000 pages of Federal Regulations have been abolished, and 640,000 pages of internal rules have been eliminated.

- Easier access to government agencies using information technology.
- A marked change in the philosophy of regulatory agencies from an adversarial approach to a more cooperative - and effective --method.

These results have been achieved using established governmental processes, working in cooperation with all our partners to provide quality service to taxpayers and a legacy for our future. This Administration supports the principles of performance review and reform, and has demonstrable results to show for that commitment. Notwithstanding, we strongly oppose HR 2939. Its provisions raise serious Constitutional concerns; are counterproductive to the many recent improvements Congress and the Administration have made to support government reform and accountability; and, duplicate existing structures for evaluating agency performance on the part of authorizing and appropriating Committees of Congress as well as by the Executive Branch.

I. The commission would act instead of Congress and the Executive Branch.

The proposed commission would be composed of 12 members, 8 of them members of Congress, the other 4 persons not members of Congress, two of whom shall have expertise in the operation and administration of government programs. The commission would report annually to Congress and the President on its findings regarding agencies reviewed. The abolishment of an agency would automatically go into effect absent an act by Congress to continue the agency. This process would not provide for any formal participation or role for the Executive Branch, inappropriately negating the President's prerogatives and authorities. Furthermore, absent an act of Congress to continue an agency, the President is denied the ability to express his policy position, be it thru a veto or other action.

The administration cannot support the establishment of a set of procedures that would supersede the authorities of the President and Congress by establishing a substitute body to pass judgement on activities that are delegated to the Executive Branch to administer, and to authorizing and appropriating Committees to oversee. We cannot support a proposal that would authorize a commission to act in the place of Congress. Furthermore, we've been advised by the Department of Justice that the bill would violate the Constitution.

II. The bill conflicts with the existing structural framework for government reform.

Congress, with support from the Administration, has, in recent years, passed numerous laws to strengthen government performance and results, most prominently the Government Performance and Results Act of 1993. The General Accounting Office has called the Results Act the "centerpiece of a statutory framework to strengthen Federal decision making and accountability." The planning and reporting mechanisms required by the Results Act, coupled with requirements in many other statutes that spell out performance requirements for agencies, provide a framework for Congressional review conducted by oversight and appropriations Committees in their regular order of business.

Congress has relied on the expertise of authorizing and appropriating Committees to

conduct periodic and regular assessments of agency performance. Committees perform this work with the support of the Government Accounting Office, the Offices of Inspector Generals, and various other staff offices. They also consider the views of professional organizations and the public. The Committees use a formal, thorough, deliberative process supported by the professional expertise available to them in making informed judgments about agency performance and public need. When Committees see the need for change, they take action to effect that change using the Constitutionally provided mechanisms that call for votes on the part of all Members of Congress, and also provide an opportunity for the President to act on the legislation.

HR 2939 would conflict with that process, and the work that supports it, by establishing a separate and competing process for agency review. Given the automatic nature of the proposed commission's actions, we can expect that the commission's inquiries will diminish the public's and agencies response to Congressional Committees, undermining their authority and the effectiveness of Federal management reform programs enacted by Congress.

III. The commission's work would be duplicative and costly.

The bill lists 18 criteria for the commission to consider in reviewing Federal agencies. Some of those will be subject to broad interpretation and to diverging views on policy. For example, making determinations as to whether "the original objectives of the agency have been achieved", or whether "less restrictive or alternative methods exist to carry out the functions", or on "the extent to which any trends, developments, and emerging conditions ... are likely to effect the future nature and the extent of the problems or needs that the programs carried out by the agency are intended to address" are all such broad statements as to ensure divergence of opinion. At a minimum, they imply rigorous work in legal research, data collection, evaluation, and assessment.

Clearly, the commission would need significant staff and support to conduct its business. Even if the commission relied on the basic work of agents such as the GAO, the Congressional Research Service, and Offices of Inspector Generals, among others, it will still need its own staff to independently review the work of these third parties and to consider any Administration and public input it may collect. The work of these staffs, and of the commission will duplicate the purposes and work of Congressional Committees established and staffed to perform similar purposes.

III. The Administration strongly opposes this bill.

The Constitution provides a deliberate structure, establishing among elected officials in Congress and the President powers and authorities to review and administer the affairs of the Federal Government. This structure provides for the comprehensive representation of all the people of the United States by allowing for all their representatives to have voice and vote in the actions of their government. It has served us well.

The proposed structure and process in HR 2939 would substitute the conclusions of a 12-

member commission for the judgment of Congressional Committees, the full House and Senate, and the President. It would effectively put 8 Members of Congress in a preeminent role over all other duly elected Members and provide no role for the President. On this basis, we strongly object to this bill and ask the Committee to recognize its own role, and that of its peers, in considering this bill. Elimination of statutory agencies and programs should be accomplished only by an act of Congress, which first established the agency, followed by a Presidential opportunity to act on the legislation. Thank you.

Mr. HORN. We will proceed now with the vice chair of the Texas Sunset Commission, Patricia Gray.

**STATEMENT OF PATRICIA GRAY, STATE REPRESENTATIVE
AND VICE CHAIR, TEXAS SUNSET COMMISSION**

Ms. GRAY. Thank you, Mr. Chairman; and I also appreciate the opportunity to be here.

For many people, government efficiency is an oxymoron. The legislation you're considering will not magically transform agencies into paragons of efficiency, but it will, if done properly, allow all of us who are privileged to serve in government better deliver on the promises we make.

I believe that every piece of legislation does, in fact, begin as a promise to solve a problem. It may have been a suggestion from one of our neighbors or constituents concerning someone he knows and cares about. But, over time, what begins as a simple idea becomes a complex bureaucracy, complete with one-size-fits-all rules that help some of the people some of the time, all of the people none of the time, and the person whose problem spawned the original idea cannot get help because he no longer qualifies under section 4, subsection C.

Not only that, sometimes more than one of us offers legislation touching on the same issue, duplicating efforts but still not solving the problem we promised to solve.

In my State, we're currently reviewing Health and Human Service agencies. We've learned there are a number of programs affecting long-term care. In fact, there are 24 in the Department of Aging, 19 in the Department of Human Services, 6 in the Department of Mental Health and Mental Retardation, 5 in the Rehabilitation Commission and 1 in the Department of Health. Much of that has been mandated at the Federal level.

The sad part is that, in spite of sincere efforts to provide the solutions we earnestly promise our constituents, the lack of coordination between programs often makes that promise a hollow one.

There are three questions that have to be answered in any sunset review: Is there a continuing need to provide the service or functions under review? Are these functions duplicated or provided in any other agency? And, finally, do the benefits of keeping the program under review outweigh the advantages of eliminating the program functions or transferring the functions to another agency?

Mr. Chairman, I'm known in Texas as a psalm-singing, total immersion Democrat. I believe in sunset. I've seen it work.

Having said that, let me offer a few caveats. Sunset is not an event. It is a process. It does not necessarily mean that a program or an agency is abolished. After all, if we've done our jobs properly, we shouldn't have created something that wasn't needed. It does mean that nothing we create is perfect, and reexamining it allows us to find and fix places where our problem has become frayed or broken.

The success of effort at the Federal level will depend in part on the quality of the appointments to the commission. This is not an easy job. The commission must be able to withstand the descent of groups vested in particular programs and the suspicions of agency staff who will see these as a threat to their turf. The commission's

recommendation must, at the least, be seen as bipartisan. Otherwise, interest groups and agencies will rule the process by preying on fears of partisan advantage.

There will be genuine philosophical differences among members of the commission, and they must listen to each other in order to achieve recommendations that they can defend. The commission staff must be unquestionably nonpartisan, focused only on the policy issues of the program review. Their loyalty must be to the process and to the commission. Because if the Federal commission becomes a partisan battleground, it will confirm the belief that government efficiency is indeed an oxymoron.

I'm confident, however, that a well-done sunset process is one that can find support across political philosophies. For whether the program is building highways or regulating air quality or subsidizing daycare for working parents, if we promise it and we take money from our constituents to pay for it, we want it to be exactly what was promised.

I will be happy to try to answer any questions. And I also submitted some written testimony, Mr. Chairman, that expands on some particular points.

Mr. HORN. Without objection, that testimony will be put at this point in the record.

[The prepared statement of Ms. Gray follows:]



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COMMITTEES:
CIVIL PRACTICES, CHAIR
CORRECTIONS
GENERAL INVESTIGATING
SUNSET COMMISSION, VICE CHAIR

September 14, 1998

To: *House Committee on Government Reform and Oversight*
Subcommittee on Government Management, Information and Technology

From: Patricia Gray, State Representative, Texas House of Representatives

Re: H. R. 2939, the Federal Sunset Act of 1998

Thank you for the opportunity to submit these comments on behalf of Rep. Brady's proposed federal sunset legislation. As the past chair, and current vice-chair of the Texas Sunset Commission, I believe that the comprehensive periodic review of agency function created by a sunset process is one of the most useful tools available to us to control the growth of government programs.

1. Sunset is a process, not an event.

The most important thing to remember about "Sunset" is that it is a process, and not an event. It requires us to question what we ourselves have created. It allows us to challenge the policies that agencies are charged with administering. By focusing the discussion on whether or not the program or function under review will be re-authorized, the dynamics of the discussion change from "how do we fix it" to "what do we need".

The sunset process gathers information from every entity that has any information about an agency in order to make a decision about whether a particular agency's mission is still valid, and, if so, whether the services promised are being delivered in the most effective and cost efficient manner possible. The review focuses on the policies, programs, and service delivery in agencies. It cannot amend appropriations, but it can make management suggestions that may be adopted in an appropriations process. For that reason, in my state, we seek information from our finance committees and our legislative budget office, our auditor's office, legislative study committees, and the standing committee with oversight authority of the agency under review. The Sunset Commission then conducts the investigation and proposes recommendations. The legislation itself is developed through the usual legislative mechanisms and handled in the standing committee with oversight responsibility for that particular agency.

2. Agency self-evaluation is not sufficient by itself to improve agency functioning.

One vital aspect of a sunset review is the requirement that agencies submit a self-evaluation to the Commission. This allows us an opportunity to see what the agency thinks it should be doing. The interesting thing about these self-evaluations is how often they have nothing to do with what the legislative issues are with the agency. It is my understanding that you currently require agencies to submit strategic plans, annual performance plans, and annual performance reports under the recently enacted "Results Act." These are useful tools in a sunset process, but it is not clear to me how the existing federal statute allows you to modify and enforce changes in an agency's strategic plan if you think it is not responsive to your legislative mandate.

3. Differences between the state and federal legislative processes may impact the sunset process.

There are two critical differences between state and federal legislative processes that could impact the effectiveness of a sunset process. The first is that states more strictly enforce a "one subject" rule for legislation. It is not possible for me to add regulation of boat dealer franchise agreements to boating safety legislation. (I tried that once.) I believe that such amendments are allowable at the federal level. In addition, a bill is assigned to a single committee at the state level, but I believe you have the power to divide a bill into parts and assign it to various committees. You may need to adopt specific rules for "sunset" legislation prohibiting division of the bills and requiring that they be assigned to the committee with specific oversight responsibility for that agency.

4. The sunset process is an efficient way to respond to increased public demand for accountability from elected officials

Sunset can be a useful tool for finding waste, fraud, and abuse. There is no question that such reviews evoke mighty turf battles—even hints that civilization as we know it today may end if the status quo is challenged. The quality of a sunset review is directly proportional to the ability of the commission to challenge the status quo, and defend its recommendations. In the 1995 review of the Texas Teacher Retirement System, the agency's resistance to the process was so great that the appropriations committees offered to use general revenue funds to pay the administrative costs of the agency—about \$55,000,000. The agency refused, prompting one of our members to inquire about what they thought was worth \$55,000,000 to hide. A lot, it turned out. Before the review was over, functions of the agency had been consolidated from two buildings into one, with the rental income from the second building paying almost all of the operating costs of both buildings. The executive gym and greenhouses were closed. State airplanes were no longer used to fly between the state's major cities. Board members and staff learned to use taxis, and they quit renting luxury cars for travel the ten minute car ride from the airport to the system's office building. Private office space for board members to conduct their private business was no longer provided in their hometowns. Retired public education employees got the largest cost of living increases in the history of the fund, and the agency has begun improving the insurance coverage for those retirees. The results of such reviews may not always be so dramatic. What mattered most was not just that we saved money that could be more properly spent on those who had earned it, we also improved delivery of the services they were promised.

The real value of a sunset review is in locating duplicated services. Reviewing agencies with a similar focus helps that process. Currently we are primarily reviewing health and human service programs. The review has already produced a dramatic turnaround in one agency, the Center for Rural Health Initiatives, which we believe will allow us to recover a few more of the Texas dollars sent to Washington for appropriation for such programs. We are getting a much needed analysis of long term care needs in our state for our aging populations and for our disabled citizens. We have found significant overlap in programs in five state agencies, some of them mandated at the federal level. If we are successful in streamlining these services, we will not only save money, we will serve more people.

Our current reviews have also been helpful in highlighting discrepancies and gaps in services. It is the law in Texas that services to children born blind and/or deaf are fully funded by the taxpayers from the time the children are born. Children born with developmental disabilities (such as Downs syndrome) may also receive taxpayer supported services through the early childhood intervention program, but the law allows us to impose

fees on those families. However, developmentally disabled children whose parents try to provide supplemental services through programs paid for by private insurance or other private means cannot be enrolled in the early childhood intervention program. This not only means that parents cannot supplement their child's services, but it also provides an incentive to private insurers to deny claims putting more of those children back into taxpayer supported services, and limiting the extent of service in many cases. Once any of these children reach age three, the public schools are supposed to provide services, but nobody gets services when school is out except those with private means. So, deaf and/or blind children get services from birth at taxpayer expense with no restrictions on parents supplementing those services. Children with developmental disabilities can get services up to age three but must choose public or private, creating an unseemly battle of whose disabled condition is more deserving, and after age three, nobody gets year round service.

Sunset also provides a mechanism to keep agencies accountable, because they can be put into a review process at any time there is a need. The usual review cycle in my state is twelve years. That can be shortened if problems appear. This cycle we added the department of public safety--better known in many states as the highway patrol. In the 1995 budget cycle, they asked for and got funding for more than 100 new trooper positions to handle increased border traffic. The money was not spent on troopers. Instead, the agency purchased land for a new building. The appropriations process cannot compel them to sell that building. The sunset process can unless they can justify the need for it. The agency leadership is not happy, nor is their governing board, but the public scrutiny of this process will help make them remember that money appropriated is not the property of the agency. The taxpayers expected more troopers on the road, not bigger and better administrative offices.

Finally, sunset provides an orderly process to keep delivery of needed functions while eliminating those that are not needed. It helps prevent a single program from growing into a stand alone agency. It is relatively easy to expand an agency's role through rulemaking, thus avoiding specific legislative approval, but it is almost impossible to decrease either an agency's size or its scope of activity without specific legislative intervention.

Mr. HORN. Mr. Sessions, unfortunately, could not be here today. His opening statement would follow the last opening statement we already have. And the material Mr. Brady provided will be put in the record at the end of his testimony. Without objection.

I now call on Mr. Turner to question the witnesses.

Mr. TURNER. Thank you, Mr. Chairman.

First, I want to thank my friend, Representative Patty Gray, for coming to Washington to testify on this bill.

It's good to see you here. You've certainly been a leader in the sunset process both as chairman and vice chairman of the Sunset Commission in Texas.

Ms. GRAY. Thank you.

Mr. TURNER. And you're an able member of the Texas Legislature. So thank you for coming, Patty.

Ms. GRAY. Thank you.

Mr. TURNER. One question I guess I would start out with that may be addressed, Mr. DeSeve, to you. Obviously, it's not the intent of any of us who are coauthors of this bill to propose anything that is unconstitutional. As I envision what this legislation does, it really does no more than what the Congress could do today if we passed a bill putting a sunset date on every Federal agency.

That bill, if signed by the President, seems to me to be clearly constitutional. In fact, there are many things in law today that we don't use the word, but they expire, they have to be reauthorized, or it seems like it's a basic concept that if the legislation were to be passed that eliminated agencies, we could do it. So it must be that there's something else at the heart of this concern about constitutionality.

So if you would address that for me so I could understand that point of view.

Mr. DESEVE. I would be happy to, Mr. Turner. There really isn't anything there that didn't meet the eye.

Let me take an example. Let's say we have an agency—and you can pick one that you happen to like or dislike. My good friend, Harris Wofford, runs the Corporation for National and Community Service. It's an agency that I think does a good job throughout the Nation.

Let's say that the commission evaluated the Corporation for National and Community Service. Let's say they found it to be a good agency and recommended that it be continued. The way the bill is currently written, that agency, unless Congress voted to reauthorize it, would be abolished. That's the way it's currently written.

Section 2(c) says, following review—it doesn't say, following review and a finding that the agency is not doing a good job. It simply says, following review, you've got a year in which you must positively vote to continue the agency.

Let's say that they found it not to be a good agency, and they had gone to the authorizers and appropriators, and the authorizers and appropriators decided they were in the majority, Democrats or Republicans, it doesn't make any difference, that they would simply delay. They knew that the controversy would be so great, they could get rid of it simply by not having a vote, thus negating the ability of the President to talk about the way he felt and marshal

support in the legislative process for the continuation of that agency, which he feels very strongly about.

So a cynic could say that Congress can act without the President. The Justice Department tells me that the Chada decision prevents the Congress in a legislative commission from usurping executive power, that is, the power to formally act.

These are the things that trouble us. We're not opposed to an appropriately constructed sunset. We think that performance evaluation is very important, and we think that this bill could probably be made constitutional if it eliminated section 2(c). We would be happy to work with you on that.

Mr. TURNER. Well, we will certainly be happy to look at that with you. It still escapes me as to why this bill would be unconstitutional.

If I'm correct, and I think I am, that if we simply passed a bill today—forget about a Sunset Commission that reviewed and advised and recommended let's just say we passed a bill today that said that we set a termination date on every Federal agency, and the President signed it.

Mr. DESEVE. That's correct.

Mr. TURNER. It seems to me that would be clearly constitutional.

Mr. DESEVE. That's correct.

Mr. TURNER. And all we're doing here is building upon that by saying that before that agency expires, by the law I just referred to, we're going to have an advisory commission take a look at that agency and make recommendations as to whether or not that commission believes the Congress should continue it or just let it expire.

Mr. DESEVE. And that's where we have to have the lawyers tell us about the constitutionality. Because they say the act—even if the commission found that the agency was good, the act of simply not acting by the Congress based on the commission's finding is itself unconstitutional.

And, again, I would be happy to have the Justice Department talk to whomever on this issue.

Mr. TURNER. I would be glad for you to refer to me anyone who has that opinion. Because I think—frankly, I think it's incorrect, and I think maybe we need to clarify what this bill says.

Mr. DESEVE. And that may be the best way to do it.

Mr. HORN. If I might, if the gentleman would yield just a second. Wouldn't constitutionality need to be met if we pass H.R. 2939 and the Senate passes it, it would have to go to the President? Is that not correct?

Mr. DESEVE. That's correct.

Mr. HORN. And he has the choice at that time to veto it if he wishes?

Mr. DESEVE. Unfortunately, the President's decision in passing or not passing the bill would not enable him. He does not have a constitutional ability to create a commission that can usurp executive powers. His signing the bill would itself, in the Justice Department's opinion, be unconstitutional. He would be forced to veto the bill in this hypothetical that we're talking about, because it would on its face be unconstitutional.

Mr. HORN. Well, I think that's a debatable point.

I agree with you on the fact that the Chada case, which wiped out 200 different laws with one fell swoop, because the presentment to the President of Congress sort of looking at the decisions of the executive agencies and the Congress was mucking around, saying, well, we don't like this situation in immigration and we're going to make sure that person leaves the country or stays in the country. The President didn't have a role in that.

But here you could argue that he's got a role, or if he doesn't like the thing, just veto it. At that point the question is, do they have two-thirds in the Senate and in the House?

Mr. DESEVE. If he signed it, the Justice Department would tell us that it is unconstitutional on its face. I understand your argument.

Mr. HORN. Do we have a document from them?

Mr. DESEVE. I will be happy to get you a document. We ask for advisory opinions first, and then if we need a formal opinion, we ask for that. We would be happy to do that.

Mr. HORN. At this point in the record I would like to have it put. Without objection.

[The information referred to follows:]



U.S. Department of Justice

Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

September 21, 1998

G. Edward DeSeve
Acting Deputy Director for Management
Office of Management and Budget
Old Executive Office Building
17th and Pennsylvania Avenue, N.W.
Washington, DC 20503

Dear Mr. DeSeve:

You have requested the views of the Office of Legal Counsel on the constitutionality of H.R. 2939, the Federal Sunset Act of 1998. Based on the analysis set forth below, our office believes that the proposed bill would violate the constitutionally required separation of powers.

The Federal Sunset Act would establish a twelve-member "Federal Agency Sunset Commission" to review and make recommendations at least every twelve years regarding the reorganization or abolishment of each federal agency, in accordance with a schedule for review to be determined by the Commission. This Commission would consist of eight members of Congress appointed by the Speaker of the House and the majority leader of the Senate, and four persons "with experience in the operation and administration of Government programs" who are not members of Congress. Section 2 of the bill provides that "[e]ach agency shall be abolished not later than one year after the date the Commission completes its review of the agency pursuant to such schedule, unless the agency is continued by Congress."

The bill mandates the abolishment of each agency reviewed by the Commission if Congress does not act to continue the agency within one year after the date that the Commission completes its review of that agency. The schedule for review of the agencies is set by the Commission with no parameters from Congress other than the requirement that each agency be reviewed at least once every twelve years. H.R. 2939, 105th Cong., § 2(a). In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court admonished that the "[e]xplicit and unambiguous provisions" of Article I of the Constitution prescribe a "single, finely wrought and exhaustively considered procedure" for the enactment of legislation. *Id.* at 945, 951. Under that procedure, each House of Congress must pass a bill by majority vote, and the bill must be presented to the President for his signature or veto. This same procedure must be followed with respect to efforts to repeal or amend existing legislation. *Id.* at 954. Because this bill 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

and the majority leader (unless Congress affirmatively decides to adopt legislation preserving the agency), it violates the constitutionally required separation of powers.

Please feel free to contact me if you have any further questions.

Sincerely,



William Michael Treanor
Deputy Assistant Attorney General

cc: L. Anthony Sutin
Acting Assistant Attorney General
Office of Legislative Affairs

Mr. HORN. Go ahead, Mr. Turner.

Mr. TURNER. Patty, tell me a little bit about your experience in serving on the Sunset Commission, particularly the amount of time that you personally, as a member of a legislative body, invested in a review of the agencies that were up for sunset in the particular cycle that you served.

The reason I think it's important to hear that is because one of the reasons that I feel strongly that this Congress needs to pass this legislation is because, in my brief tenure in the Congress, I have not been very impressed with the oversight of the Congress over the administrative agencies.

Now, I recognize that we have a little different division of power at the Federal level. And perhaps in Texas we're noted for having a weak executive and maybe the legislature is a little stronger in its role, but it also seems to be that under the Federal system, this Congress clearly has oversight responsibility and we seem to be able to carry it out in little bits and pieces.

I must say that the chairman of this committee is one of the most diligent Members of this Congress that I have ever known or seen with regard to trying to carry out that oversight responsibility, and yet, as I see him meet very, very frequently on issues that represent efforts at oversight, I see many times fighting a lonely battle.

We are here today, as you can see, on a Monday when not many Members are back dealing with an issue that I think is very important, and yet, oftentimes we're unable to get the members of a committee fully present and to deal with an issue for any extended period of time. So we deal in bits and pieces trying to look at our role of oversight.

So share with us what you did and as any member of that Texas commission would have done during a given review cycle.

Ms. GRAY. Well, it is very time-consuming, Mr. Turner, but part of the value of it is that it gives us one spot where all of the different people who have pieces of information can funnel that information. Now, we also have six other groups who have input into this process, besides the agency itself, the Governor's Office, which always has information that they want us to consider and the public.

Now, just by way of example, when we were considering the Department of Protective and Regulatory Services last session we took over 22 hours of testimony from the public about problems that they had dealing with that particular agency. And one of the things we found was that things that were done within that agency impacted our education agency. Because in foster care of children, we had developed this network of referral services and brokerage services where children were sort of being bundled into groups and sent out into the more isolated areas of our State.

In one community more than half of the children in the school district were children with special education needs. Many of them came in after the school year started. The district was totally unprepared to deal with them, couldn't hire staff after the school year started. So here we had children to whom we had promised services, who were among the most vulnerable in our State in terms

of their needs, and we were just kind of sticking them off in the woods with the idea that we were doing something good for them.

We also learned in that process, because of not only internal audit provisions but information from the State Auditor's Office, that the money that we were appropriating to care for these children was being peeled off at every step of the way. So we start out appropriating \$75 or \$80 a day to take care of these children. By the time we get it down to the level where the children are actually cared for, the people who are providing the 24-hour-a-day supervision are getting somewhere between \$18 and \$25 a day. This is very disturbing and something that we just shouldn't be allowing to happen, and I think that some of the steps we were able to take in that legislation streamlined that.

As you know, we are a citizen legislature in Texas. We all have to work at full-time jobs outside of our legislative service. But I spend—as a member of the Sunset Commission, I spend on average about 8 days a month, and these are workweek days, away from my law practice in Austin, dealing just with this particular subject.

Mr. TURNER. Patty, tell us, from start to completion of the Sunset's Commission recommendation, in what timeframe does that occur? How much time is there between the start of the review process and the sunset date?

Ms. GRAY. OK.

Mr. TURNER. And give us an idea of how many meetings would occur over that period of however many months it is, also share with us a little bit about the nature of that or at least the number of agencies that you have to deal with in Texas during that timeframe. In other words, how many agencies on average are reviewed under the Texas process?

Ms. GRAY. In the present cycle we have 25 agencies that are up. But the process starts with a request for an agency self-evaluation, and this tracks somewhat, Mr. Chairman, what you were requiring in your Results Act: A strategic plan, tell us what you think that your mission is and how you think that you are meeting it.

What is amazing is how often the agency report has nothing to do with what the legislature thought that they were supposed to be doing. That is the first step.

The professional staff then starts working from that strategic plan, but also soliciting comment from the people who use the services of that agency. Between those two things a report comes to the Sunset Commission itself with recommendations on which to take public testimony.

There is then a public hearing for public testimony and anyone can have input into that process. There is even a comment period at the close of the verbal testimony for people to submit additional comments. There may be new issues that come up during that process. There may be modifications of the recommendations that come up during that process. Those are then incorporated into what is called a decision document and a second meeting of the commission is held on which to adopt recommendations related to that agency.

Those recommendations are then forwarded to our legislative counsel for drafting the specific legislation related to the agency. That is then introduced in our regular legislative session. The bill

must go through both the Senate and the House, so there are additional public hearings in both Houses on the bill as it shakes out in amendments which are proposed in committee. It must go through floor debate in each House. So there would be at least 2 more public hearings in addition to the floor debate, votes by both Houses.

Sometimes, rarely, these bills come out in a form where they are adopted by both Houses in the same format. Usually there is then a conference committee. Our process does not allow us to amend in conference committee anything that has not—is not already in the bill. We can only take out areas where we disagree between the House and the Senate, and the conference committee report must be adopted in an up or down vote. It cannot be amended on the floor of either House. But there is at least that one last opportunity for Members of both Houses to look at this legislation and adopt it or not adopt it.

I will tell you in our first go around on the reauthorization of the Racing Commission, the bill failed because it had a provision in it which Members of the House simply would not accept. It was my bill, and watching your bill get talked to death on the floor as the clock approaches midnight is not a pleasant experience.

Mr. TURNER. Is that because you didn't provide race boxes during the season?

Ms. GRAY. No, sir, it was because I was about to become known as the mother of off-track betting. In retrospect, I am kind of glad the bill failed because I am one of those people who, if I had my way, the Catholic church wouldn't have bingo.

But my attitude about that bill is if we are going to have gambling let's regulate it, and racing is gambling.

This was a provision that nobody really wanted, and so under our rules they used the parliamentary procedures to effectively kill the bill.

Now, one thing we do have is a safety net bill every year which essentially buys 2 more years for an agency until our next legislative cycle. An agency can go into that safety net. That does not always happen. The Board of Dental Examiners in 1995—1993, I am sorry, challenged the legislature to sunset them, and we did because they wouldn't compromise. They would not agree. They fought the bill tooth and toenail. They persuaded members that civilization as we know it today would end if the bill passed in the form it was given. They were convinced that the Governor would call a special session simply to reauthorize their bill and they would win. The Governor didn't and they went out of existence. We had a 5-month time period where anybody who wanted to be a dentist in Texas could do so because we did not have any mechanism to license them.

Civilization did not end. Nobody hung out a shingle who had not been to dental school, and when they came back in the 1995 session they had a lot more cooperation for dealing with the practical realities of licensing dentists.

Mr. HORN. What is the role of the Governor in this situation?

Ms. GRAY. The bill ultimately goes to the Governor who can veto it. He can sign it or let it become law without his signature. And again, he wasn't very happy with the outcome of the Racing Com-

mission bill this last time, and he let it become law without his signature because there was a provision in there that he still didn't like.

Mr. TURNER. The 25 agencies that you will be reviewing or you are reviewing currently would have a sunset date on them. Would it be September 1999 or December 1999?

Ms. GRAY. The specific day—I know that they have a calendar year. I believe it would actually be September 2000 because our session is in 1999. Most of them are continued until at least September 1999 anyway. So they would then have a year of wind down. Or in many cases what we are doing is consolidating functions or transferring some functions from one agency to another to eliminate the need for a stand-alone agency with its own administrative staff and office rent. The savings may be relatively small in the scheme of things, but \$35,000 puts another trooper on the road or pays for another schoolteacher in Texas, so even that amount of money is worth saving when you think of it in those terms.

Mr. TURNER. So the process for the review of the 25 agencies that you are now looking at actually began shortly after the end of the last regular session of the Texas Legislature?

Ms. GRAY. In June 1997.

Mr. TURNER. So you began a process in mid-1997 that actually under the sunset law wouldn't sunset that agency until the year 2000?

Ms. GRAY. That is correct.

Mr. TURNER. This is quite an extended review of an agency. And as you mentioned, there is a practice in the Texas Legislature to have a bill there which continues the agency for another 2 years if there appears to be some difficulty with recreating it.

Another element here which I think it is important to talk a little bit about, and you acknowledged that there are philosophical differences between the members of the committee about the agency, my experience has always been that the primary goal of the Sunset Commission is to figure out how to make that agency operate more efficiently and effectively and save taxpayer dollars. Even though there is a discussion about what the mission or the policy of that agency is and whether or not the law should be changed in that regard, it is still primarily an effort to say if this is the mission of the agency, then what we are trying to do with the commission is make it work more efficiently, more cost effectively. Is that an accurate portrayal of what that sunset agency does?

Ms. GRAY. That is correct, and also to maintain the legislative oversight. Let me cite you two examples. The normal review process is 12 years. We can shorten that cycle for an agency not responding to its congressional mandate. A good example of that is the Department of Public Safety. This is our Highway Patrol. Obviously we are not going to eliminate our highway patrol because in many of our rural areas, they are virtually the only law enforcement outside the county sheriff; but that agency asked for, fought for and got an appropriation for more than 100 new trooper positions in response to border traffic in regard to NAFTA.

Instead of training those troopers, they went out and bought a building or land for a building, didn't ask anybody, didn't have legislative permission to do so through the appropriations process, just

did it. The only thing that the appropriations process can do in the future to punish them, if you will, is to reduce their appropriation by that amount and that might compel them to sell the building. The sunset process can recommend to the legislature that they be compelled to sell that building unless they can justify a real need for it.

They had a governing commission that approved this purchase. Their leadership approved it. They are not very happy about being in the sunlight, if you will, under the sunset process, but they are going to have to come back and justify why they did what they did. They will get some heat from the appropriations process, and it can be reached partly through that mechanism, but the sunset process is the best way to bring them to task because when the legislature responded to what the agency saw its need being, it was for troopers, not for an office building somewhere.

A second one that was even more dramatic was our teacher retirement system which was really kind of a board that was out of control and an entity that was out of control. There had already been an attorney general's investigation which had exposed some of the problems, but not all of the problems. Their lack of responsiveness was so great that at one point in the appropriations process the appropriations entities in both the Senate and the House offered to use general revenue to pay their administrative costs, about \$55 million. They declined because they didn't want to have to respond on what they were spending that money on, and it was only through the sunset process that we were able to dig through, get physically into the buildings because part of the process is looking at whether or not they meet General Services Administration requirements on what we think is appropriate office space. We were able to make significant savings not only in the operation of the agency, but also give the largest increase in benefits to retired public education employees in the State and to begin making some significant improvements in their health insurance for the first time in several years. So it is—

Mr. HORN. Is that the State retirement system?

Ms. GRAY. That is the teacher.

Mr. HORN. So you got them to broaden their perspective in that process?

Ms. GRAY. Very much so.

Mr. BRADY. In Chairman Gray's testimony she points out that the Sunset Commission's efficiency was such that they were able to consolidate employees from two buildings to one, sell one and actually pay for their operations off that sales, which then allowed them to put even more dollars into the retirement program itself.

Mr. HORN. Interesting.

Ms. GRAY. Some of this builds very much on what you have started, Mr. Chairman, with the Results Act, in looking at that strategic plan for the agency and what steps they are taking to meet that strategic plan, but this really gives a mechanism to enforce what the legislature thinks is that agency's responsibility.

I want to say one other thing about the responsiveness of the agencies in the sunset process. One of the agencies that we are reviewing is the Department of Aging. We have these area agencies on aging with local boards. It is a real kind of bottoms up kind of

program with people at the local level determining what the needs are. My local area agency on aging met with me the other day in my law office and said that this is the first time that they have been able to get the State Board of Aging to respond to what they are saying. Now, I am sure it has nothing to do with the sunset process, I am sure that it is just a sudden interest in government accountability.

Mr. HORN. This town works the same way. They do not take us seriously until you have an ax over their neck. Any other questions?

Mr. TURNER. I want to thank you for testifying and look forward to working with Mr. DeSeve to try to resolve some of these problems.

At the heart of this, it could easily be looked upon by the executive branch as the move by the legislative branch and by the Congress to move into an area that you might say well, that is normally what the President is supposed to be in charge of and it clearly would be a new investment of time and energy on the part of the Congress to have oversight over these agencies, but I think it is consistent with our constitutional duty, Mr. Chairman, and I hope this committee will look favorably upon it. Thank you.

Mr. HORN. We thank you.

Mr. DeSeve, I don't want you to leave here without a few questions tossed in your direction.

Your testimony gives a number of reasons why the legislation should not be enacted. Do you acknowledge Mr. Brady's point that despite the changes during the last 6 years, some have been very dramatic in the executive branch and Congress, many agencies still perform similar or identical functions, and if not by a Sunset Commission how can we do better on this score?

Mr. DESEVE. I think Congress can decide to have a Sunset Commission, and I agree with Mr. Turner that it represents a different level of oversight than we currently have. But at this point we have many excellent examples in authorizing committees and to some extent in appropriations committee, and certainly in this committee of Congress pointing out problems, whether they be problems of duplication or inefficiency that need to be rectified. So the question that Congress has to address is within the Constitution do they want to use a sunset mechanism or the regular order of business within those committees. We are not opposed to a constitutional sunset mechanism at all.

Mr. HORN. You want it to go through the authorizing committee basically?

Mr. DESEVE. What Representative Gray, the process that she outlined from the point of hearings to legislation and consideration of legislation, all of that is perfectly appropriate and could easily be adopted by this Congress. The only issue is the automatic nature of the termination of a program. The process that she outlined is a reasonable process and takes a significant period of time and Congress may wish to adopt such a process. We think that it could be accomplished within the authorizing committees themselves if they chose to do it.

Mr. HORN. I take it you and Mr. Brady both looked at the Army law, one of the great laws put over in this century, and it was by

a freshman, sort of like you, looking around and saying, this place has never closed a base. What can we do to get a process by which we can make that judgment. Mr. Armeý's base closure legislation was effective. We haven't closed a base since the legislation expired. Most of our colleagues don't want to touch that legislation on renewal because they know that they are going to have a base in their district closed. How would you relate the Armeý base closure apparatus to this particular proposal as we have seen carried out in Texas, and would you prefer the base closure apparatus? I would be interested in what your thinking is both in the administration and also Mr. Brady, who has pursued this.

Mr. DESEVE. BRACC is designed to be a consultative process. The President and Congress jointly appoint commissioners. The commission considers DOD recommendations and public responses, including those for Members of Congress. It then prepares a BRACC recommendation. This report is submitted to the President for review. The President may propose changes, but any changes must be accepted by the commission. If the President, Congress and the commission fail to agree on a final report, the round lapses and no action is taken. This is the kind of consultive process that we think meets the standards and tests of the Constitution.

Mr. HORN. So you would buy the base closure process?

Mr. DESEVE. We have and we did. It was one that we were involved in and we felt that it accomplished its end very well.

Mr. HORN. I have a few problems with it, especially the chairman of that body who didn't listen to anybody, but that is OK.

Mr. Brady, any further comments?

Mr. BRADY. I was just going to say that I think it is similar in its goal in trying to stretch our tax dollars as far as we can and using a mechanism to take the whole view rather than a piecemeal approach to issues which I—Mr. Chairman, you may be the only person in the House who actually knows what every program and agency does.

Mr. HORN. I don't make that claim. It is always nice to have somebody else make that claim.

Mr. BRADY. But it is remarkable, and I think that it is a piece of this process that everyone acknowledges that we are missing. Sunset can help in issues like performance reviews, which have produced some results, and even in the elimination of jobs. We have seen a recent article in the Washington Post which pointed out the jobs eliminated; they are in the front line positions. In fact, for the very first time we now have more Federal employees in the top five civil pay grades than the bottom five, so we have become more top heavy. The performance review approach is to encourage agencies to cut the middle management, to provide more services, but it has not worked. A sunset process actually puts more teeth into that.

And to finish Chairman Gray's process, the Sunset Commission often doesn't carry the legislation. It is commonly a chairman of a committee over that agency or issue, a member with considerable expertise in it, and it reinforces the fact that it draws upon existing leadership, existing committees in order to reach its conclusions.

Mr. HORN. Well, I thank all of you for giving your insights. You bring us reality where it really works in Texas. If it works in

Texas, given the size of your State and the number of counties, it should work in the United States. I thank my colleague, the new ranking member, for this purpose and coming with all of this knowledge and expertise.

If there are no further questions, I want to thank the staff that put this together: J. Russell George, staff director and chief counsel; Mark Brasher, senior policy director for the committee; Matthew Ebert, clerk; Mason Alinger, staff assistant; Sandy Fuentes, intern for our committee. Faith Weiss, professional staff member for the minority; Jean Gosa, minority staff administrator; Cindy Sebo and Doreen Dotzler, the court reporters.

We thank you all. We are adjourned.

[Whereupon, at 11:20 a.m., the subcommittee was adjourned.]

