REFORMING GOVERNMENT: THE FEDERAL SUNSET ACT OF 2001

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Hearing held on April 23, 2002	1
Statement of:	
Brady, Hon. Kevin, a Representative in Congress from the State of Texas; and Hon. Jim Turner, a Representative in Congress from the State of Texas	7
Everson, Mark W., Controller, Office of Federal Financial Management, Office of Management and Budget	23
Schatz, Thomas A., president, Citizens Against Government Waste; John Berthoud, president of the National Taxpayers Union; and Chris Edwards, director of fiscal policy, CATO Institute	35
Letters, statements, etc., submitted for the record by:	
Berthoud, John, president of the National Taxpayers Union, prepared statement of	51
Brady, Hon. Kevin, a Representative in Congress from the State of Texas, prepared statement of	9
Edwards, Chris, director of fiscal policy, CATO Institute, prepared statement of	59
Everson, Mark W., Controller, Office of Federal Financial Management, Office of Management and Budget, prepared statement of	26
Schatz, Thomas A., president, Citizens Against Government Waste, prepared statement of	38
Turner, Hon. Jim, a Representative in Congress from the State of Texas, prepared statement of	15
Weldon, Hon. Dave, a Representative in Congress from the State of Florida, prepared statement of	3

REFORMING GOVERNMENT: THE FEDERAL SUNSET ACT OF 2001

TUESDAY, APRIL 23, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3 p.m. in room 2247, Rayburn House Office Building, Hon. Dave Weldon (chairman of the subcommittee) presiding.

Present: Representatives Weldon, Davis of Illinois, Morella, and Norton.

Staff present: Garry Ewing, staff director; Chip Walker, deputy staff director; Melissa Krzeswicki, professional staff member; Jim Lester, counsel; Scott Sadler, clerk; and Tania Shand, minority professional staff member.

Mr. WELDON. Good afternoon. It is a pleasure to have our two first witnesses in the first panel. Kevin Brady is the author of this bipartisan bill. As a member of the Texas State Legislature, he has had experience with the sunset process in Texas and we're very pleased to be able to have him. Additionally, we are quite pleased for him to be joined by Congressman Jim Turner. He is the ranking member of the Government Reform Subcommittee on Government Management. He has worked very closely with Mr. Brady in developing this important legislation and is one of the key co-sponsors. He, too, has had experience with the Texas process as a member of the Texas State Legislature. I want to commend both gentlemen for their hard work on this bill.

I call this hearing to examine H.R. 2373, the Federal Sunset Act of 2001. The Sunset Act would establish a bipartisan Commission to conduct systematic and periodic reviews of all Federal agencies and programs. Once the Sunset Commission has reviewed an agency and issued its report to Congress, the agency would be eliminated unless Congress affirmatively reauthorizes it within a year or two.

This bill recognizes that bad programs, not bad employees, cause Government to be inefficient or ineffective, so it requires reasonable efforts to retain employees who might be effective if an agency is eliminated or programs reorganized.

The Sunset Act offers a promising approach to a problem that has been vexing the Federal Government. As long ago as 1947, a distinguished statesman, former Secretary of State and former Democratic Senator from South Carolina, James F. Byrnes, said,

"The nearest approach to immortality on earth is a Government bureau."

Traditional congressional oversight has not proved effective in dealing with the problems of agencies that have outlived their usefulness or unnecessary duplication of programs. For example, 70 different Federal programs and 57 different departments and offices fight our war on drugs at a cost of $16 billion a year, and 788 Federal education programs in 40 agencies cost $100 billion annually. In fact, the Federal Government often appears to be on autopilot. The Congressional Budget Office recently reported that in fiscal year 2002 Congress spent some $91 billion on 131 programs with expired authorizations.

The Sunset Act will take the Government off autopilot. The Sunset Act will bring universal accountability to the Government. The Sunset Commission will shine a spotlight on obsolete agencies and duplicative programs. Both Congress and the executive branch will be forced to confront these problems publicly and make decisions in that spotlight.

All of us in the Federal Government recognize that, especially in this time of uncertainty and war, we have a moral obligation to end the funding of poorly performing agencies and programs. A dollar spent on a program that does not help people is a dollar we cannot spend on programs that do help people. Every dollar spent on an agency that has outlived its usefulness is a dollar we cannot use to fight the war on terrorism or strengthen homeland security.

We can all agree with OMB director Mitch Daniels that it would be unconscionable to fund a poorly performing program at a time when the physical safety of Americans requires that the Federal Government take on many additional expensive tasks.

Working in the Federal Government means working on behalf of all Americans. It is a privilege for us to do so. With that privilege comes the responsibility to use hard-earned taxpayer dollars wisely and effectively.

We may want to revise the bill before us to address various concerns, including Constitutional questions, but these are not insurmountable obstacles, and the Sunset Act appears to give us an important tool to carry out fundamental responsibility to the American people.

I look forward to benefiting from the views and insights of our distinguished witnesses.

I would now like to turn to my ranking member, Mr. Davis, for his opening statement.

[The prepared statement of Hon. Dave Weldon follows:]

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INDEPENDENT

OPENING STATEMENT

The Honorable Dave Weldon, Chairman
Subcommittee on Civil Service, Census, and Agency Organization
"Reforming Government: Federal Sunset Act of 2001"
April 23, 2002

Good Afternoon. I want to welcome our witnesses and everyone in our audience to this important hearing.

I called this hearing to examine H.R. 2373, "The Federal Sunset Act of 2001." The Sunset Act would establish a bipartisan commission to conduct systematic and periodic reviews of all federal agencies and programs. Once the Sunset Commission has reviewed an agency and issued its report to Congress, the agency would be eliminated unless Congress affirmatively reauthorizes it within a year or two.

This bill recognizes that bad programs, not bad employees, cause government to be inefficient or ineffective. So it requires reasonable efforts to retain employees who might be affected if an agency is eliminated or programs reorganized.

The Sunset Act offers a promising approach to a problem that has long vexed the federal government. As long ago as 1947, a distinguished statesman, former Secretary of State and

Senator, James F. Byrnes, said, "The nearest approach to immortality on earth is a government bureau."

Traditional congressional oversight has not proved effective in dealing with the problems of agencies that have outlived their usefulness or unnecessary duplication of programs.

For example, 70 different federal programs in 57 different departments and offices fight our "war on drugs" at a cost of $16 billion a year.1 788 federal education programs in 40 agencies cost $100 billion annually.2

In fact, the federal government often appears to be on autopilot. The Congressional Budget Office recently reported that in FY 2002 Congress spent some $91 billion on 131 programs with expired authorizations.3 The Sunset Act will take the government off autopilot.

The Sunset Act will bring universal accountability to the government. The Sunset commission will shine a spotlight on obsolete agencies and duplicative programs.

Both Congress and the Executive Branch will be forced to confront these problems publicly and make decisions in that spotlight.

All of us in the federal government must recognize that, especially in this time of economic uncertainty and war, we have a moral obligation to end the funding of poorly performing agencies and programs.

A dollar spent on a program that does not help people is a dollar we cannot spend on a program that does. Every dollar spent on an agency that has outlived its usefulness is a dollar we

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1 Thomas, Virginia L., "Restoring Integrity to Government with Performance, Results, and Accountability", Written testimony before the Rules and Organization of the House Subcommittee on Rules, 22 March 2000.
2 Ibid.
3 U.S. Congressional Budget Office, "Table 2. Fiscal Year 2002 Appropriations with expired Authorizations, By House Authorizing Committee (In Millions of Dollars)", *Unauthorized Appropriations and Expiring Authorizations*, (January 2002), Sec. 2.

cannot use to fight the war on terrorism or strengthen homeland security.

We can all agree with OMB Director Mitch Daniels that it would be "unconscionable to fund poorly performing programs" at a time "when the physical safety of Americans requires that the federal government take on many additional, expensive tasks."4

Working in the federal government means working on behalf of all Americans. It is a privilege for us to do so. With that privilege comes the responsibility to use hard-earned taxpayer dollars wisely and effectively.

We may want to revise the bill before us to address various concerns, including constitutional questions. But these are not insurmountable obstacles. And the Sunset Act appears to give us an important tool to carry our fundamental responsibility to the American people.

I look forward to benefiting from the views and insights of our distinguished witnesses.

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4 Congress, House, Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, "The Federal Government's Consolidated Financial Statements: Are They Reliable?" 107th Cong, 2nd sess., 9 April 2002. Statement of Mitch Daniels Controller, Office of Federal Financial Management

Mr. DAVIS. Thank you very much, Mr. Chairman. You know, I've always been told that Texans oftentimes come in pairs, and so I want to welcome Representative Brady and Representative Turner and look forward to their testimony.

I also want to thank you, Mr. Chairman, for calling this hearing. I've looked forward to the opportunity to interact and work with you as you've been appointed the new chairman, and we just look forward to some interesting and exciting times.

Mr. Chairman, though often difficult to achieve, the efficient and cost-effective operation of government programs and agencies is a reasonable and necessary goal. H.R. 2373, the Abolishment of Obsolete Agencies and Federal Sunset Act of 2001, seeks to achieve this by establishing a 12-member Commission composed largely of Members of Congress to review periodically and systematically the activities and operations of all Federal Executive departments and agencies, including advisory committees, with a view to their efficiency and public need. The Commission would be authorized to recommend the abolition of Executive departments, agencies, and advisory committees in whole or in part by means of draft legislation. The agency would be abolished no later than 1 year after the date of the Commission's review unless Congress reauthorizes the agency.

Though I agree with the elimination of duplicative and ineffective programs, there seem to be divergent opinions regarding the Constitutionality of this proposal. A legal opinion issued by the Department of Justice on September 21, 1998, concluded that the creation of a Federal Sunset Commission, as prescribed in H.R. 2373, was unconstitutional. Specifically, the Department determined that this legislation would violate the Separation of Powers Doctrine by allowing the abolishment of a statutorily created Executive agency not through legislation passed in conformity with Article I, but at the discretion of a 12-member Commission.

The House Committee on Government Reform and the Senate Committee on Governmental Affairs currently have investigative and oversight authority to review allegations of waste, fraud, and abuse, and mismanagement across the Federal Government. Under this legislation, would these committees be abdicating their role to a Sunset Commission?

These are two critical issues that must be addressed by the witnesses at today's hearing. I look forward to the testimony of not only our distinguished colleagues, but the other witnesses who have come.

Again, Mr. Chairman, I thank you for the hearing. I look forward to an interesting afternoon.

Mr. WELDON. Thank you, Mr. Davis.

I think you've put your finger right on the issue that we want to try to get into here today, and I'm looking forward to hearing from both our witnesses.

We would now ask Mr. Brady to make his opening statement and ask that you try your best to confine your comments to 5 minutes, and then we'll hear from Mr. Turner.

You may proceed.

STATEMENTS OF HON. KEVIN BRADY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; AND HON. JIM TURNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BRADY. Thank you, Mr. Chairman.

Chairman Weldon, Ranking Member Davis, I'd like to thank you and member of the subcommittee staff for holding the hearing on H.R. 2373, the Federal Sunset Act of 2001. Congressman Turner and I offered this legislation together, based on our experience in the Texas Legislature. Texas is one of more than 23 other States that have employed the sunset process as a proven tool to cut wasteful spending, to eliminate duplication, to streamline agencies, and, most importantly, just increase accountability. This bill, the Federal Sunset Act, seeks to bring those same sorts of principles of efficiency and continual regular evaluation to our Federal Government.

The battle to eliminate obsolete agencies and make better us of our tax dollars has been fought throughout our Nation's history. Going back through our third President's letters, Thomas Jefferson, you will find a letter he wrote to friends expressing his frustration. He wasn't able to abolish agencies that had already outlived their usefulness, even at that early point in our history. Most recently, former President Jimmy Carter pushed for a vote on the sunset in the late 1970's.

Big Government seems to have a life of its own. Just ask those in Congress who, a few years ago, struggled to abolish the 100-year-old Federal Board of Tea Examiners. The timing for this measure couldn't be better. A Federal sunset law ensures that programs are held accountable. The successful ones continue, and, indeed, our experience is they thrive under sunset, while the ones that fail are eliminated. This would allow us to invest more in the programs that work, provide more resources to the people who truly need that help.

Additionally, enacting the bill would help us ensure we have enough resources to fight our war on terrorism, to ensure our children get a good education, continue our path of doubling medical research funds, and preserve and enhance Social Security and Medicare once and for all.

In order to reach an honest balanced budget, simply slowing the growth of Federal agencies isn't enough, as we all know. Enacting the Federal sunset law creates a tool to cut wasteful spending, and it is 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, or even 20 years ago. They must prove that they deserve our precious limited tax dollars today.

Here's 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. In this bill we suggest a 12-year cycle for most agencies, a shorter period for troubled ones. A bipartisan, 12-member Sunset Commission, composed of Members of Congress and the public, examines each agencies need, its value, its cost-effectiveness, and level of customer service. Importantly, then citizens, taxpayers, and State and local government leaders are given

a chance to speak their mind. Is the agency still needed? Is it responsive to its customers? Is it spending our tax dollars wisely?

Then, after a thorough evaluation, the Commission recommends to Congress that an agency be reauthorized, streamlined, consolidated, or eliminated. If the agency is reestablished, it is assigned a future sunset to make sure it remains accountable.

Accountability saves money. In Texas, where we've both served as State legislators, sunsetting has eliminated 44 State agencies and saved the taxpayers $720 million. Based on these estimates, for every dollar spent on the sunset process, the State has received about $42 in return. With results like this at the State level, where government is smaller and I think usually more efficient, imagine the cost savings when applied to the Washington government, itself.

There is very little cost associated with this bill. The sunset process uses existing mechanisms. Members of the Commission are appointed by the Speaker and the Senate majority leader. Hearings will be held in conjunction with existing authorizing committees. Most work will be conducted within the legislative framework we've already established. Any cost the Commission incurs will be offset in the budget for each fiscal year.

For legislators like us, Chairman Weldon and Ranking Member Davis, there are additional benefits. Agencies become very responsive to the American taxpayers and to you and I during the years preceding their sunset date. They're more oriented to customer service, they write regulations much closer to the original intent of legislation that we have passed. They have to, because under sunset there are no more sacred cows, no existence until infinity. Every agency is treated the same. None is singled out. All are held equally accountable.

Many of us ask: don't we already have sunsetting or a mechanism like it in place? The answer is no. Certainly the Government Performance and Results Act passed in 1993 was a strong step in the right direction, and the President's initiatives on results-oriented, performance-based Government is another step in the right direction, but we need to go a step further by having an enforcement mechanism for an agency's own review and facilitator of tangible results.

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

Mr. Chairman, I'm pleased, in conclusion, this legislation has been endorsed by a number of organizations, some of whom will testify today. I'm also pleased that during this campaign for President, then Governor Bush expressed his support for sunset legislation.

Again, thank you, Chairman Weldon. Now I would like to at this point yield to my cosponsor.

[The prepared statement of Hon. Kevin Brady follows:]

KEVIN BRADY
MEMBER OF CONGRESS
8TH DISTRICT OF TEXAS

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

COMMITTEE ON
WAYS AND MEANS
SELECT REVENUE
SOCIAL SECURITY

Testimony of Congressman Kevin Brady
Hearing on H.R. 2373, The Federal Sunset Act of 2001
Subcommittee on Civil Service. Census, and Agency Reorganization
Committee on Government Reform and Oversight
April 23, 2002

Mr. Chairman, I would like to thank you and members of the Subcommittee staff for holding a hearing on H.R. 2373, the Federal Sunset Act of 2001.

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 2001, seeks to bring these sort of principles of efficiency and continual evaluation to our federal government.

The battle to eliminate 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.

Big government has a life of its own. Just ask those in Congress who a few years ago 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."

A federal Sunset law would ensure that programs are held accountable. The successful ones would continue while the ones that fail are eliminated. This would allow us to invest more in the programs that work and provide more resources to the people that need help. Additionally, enacting H.R. 2723 would help us ensure we have enough resources to fight our war on terrorism, ensure our children get a good

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education, continue our path of doubling medical research funds at NIH, and to preserve and enhance Social Security and Medicare.

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. 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 44 agencies and saved the taxpayers $720 million compared with expenditures of $16.94 million for the Sunset Commission. Based on these estimates, for every dollar spent on the Sunset process, the State has received about $42.50 in return. 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 sunsetting 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. 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.

Mr. Chairman, I am pleased this legislation has been endorsed by 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. I am also pleased

that during his campaign for President, then Governor Bush expressed his support for Sunset legislation.

In fact, Thomas Schatz, President of Citizens Against Government Waste and one of your later witnesses 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."

Again, thank you Chairman Weldon for inviting me here to testify and for allowing a hearing on H.R. 2373 to take place. I am pleased to answer questions the subcommittee may have.

Mr. WELDON. Mr. Turner, please proceed.

Mr. TURNER. Thank you, Chairman Weldon and Ranking Member Davis. I am pleased to join my colleague, Congressman Brady, on a piece of legislation that I think really represents what our Government Reform Committee is all about, because our charge as a committee has always been to try to make our Government work more efficiently, more effectively, work in the taxpayers' interest, and deliver the services that our people need in the most cost-effective manner.

This legislation, as Kevin has shared with you, is one that both of us have had experience with as members of the Texas Legislature, and another one of our cosponsors, Congressman Lloyd Doggett, was actually the sponsor of the original sunset legislation in Texas several years ago.

Those States that have had this type of sunset law in effect and have had personal experience with it I think, by and large, would share with us that it has been a very effective tool for the taxpayers, and in these very difficult times where we are trying to continue to meet the growing demands of the public for services—we see our entitlement roles growing simply by the growth of population—it seems apparent, I think to all of us, that we've got to learn how to deliver these services in a more cost-effective manner.

The sunset process, by which every agency has established in law a sunset date, does amazing things to cause agencies to operate more efficiently, because when agency heads and agency managers understand that their agency is going to go out of existence at a date certain, and that their continued existence depends upon a positive action by the legislative body, it gives the legislative body a very unique power to enable change, positive change, to occur within a given agency.

In the Congress we do have, you know, many committees who have overlapping responsibilities with regard to various Federal agencies, but we do not do, in my judgment, a very good job of congressional oversight.

I'm very pleased that the Bush administration has expressed their support for sunset legislation. When Kevin and I introduced this in previous Congresses under the Clinton administration we did not have that kind of support. I think I understand why that perhaps was the case, because to have a Federal sunset law which would require a Sunset Commission to review the activities of an agency, which generally would precede the sunset date by at least 2 years, over a 2-year period perhaps you would be looking at an agency with a magnifying glass, and for that agency to have the possibility of going out of existence is certainly strengthening the congressional oversight power vis-a-vis any administration, the executive branch.

So I was very pleased that the Bush administration has looked favorably on this, because you have to be convinced of the purifying effect of this process in order to be supportive of it from the point of view of the executive branch, because it does give the Congress an increased role in determining the future course of our Federal agencies.

The Commission that is envisioned in this legislation is bipartisan. I'm sure the administration may have some ideas or sugges-

tions about composition, but it does include individuals from the private sector, the thought being here that if we can involve people from the private sector with expertise in management and organization, as well as give the public an opportunity to come before this Commission in public hearings to express their point of view regarding the operation and effectiveness of an agency in serving the public, that we bring pressure to bear on the agencies and on the Congress to produce positive change.

So I am very hopeful that this committee and this Congress will look favorably upon this proposal. I have no doubt it will do the same here as it did in our State of Texas, where we had 44 agencies abolished to date and have saved over $700 million in the process. And beyond the cost savings I think the process has made government more responsive to the public and ensured that those limited and hard-earned tax dollars reach the people who need them, rather than be expended in bureaucracy along the way.

Mr. Chairman, thank you for the opportunity to testify in favor of this bill. We hope that you will see fit to favorably recommend this bill to the full committee.

[The prepared statement of Hon. Jim Turner follows:]

Statement of Congressman Jim Turner

regarding

The Abolishment of Obsolete Agencies and Federal Sunset Act of 2001
(H.R. 2373)

before the

House Government Reform Committee
Subcommittee on Civil Service, Census, and Agency Organization

April 23, 2002

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

Mr. Chairman, members of the Subcommittee, thank you for asking me to testify before you this afternoon. I appreciate this opportunity to discuss with you a topic that seeks to make our government more responsive to the taxpayers of this country by avoiding wasteful spending.

In my opinion, 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. We should eliminate outdated and unnecessary bureaucracy and we should improve, streamline and consolidate the programs we have in place now, rather than just create new ones. It is for this reason that I am pleased to join with my colleague from Texas, Congressman Kevin Brady, to cosponsor H.R. 2373, the Abolishment of Obsolete Agencies and Federal Sunset Act of 2001. Sunset legislation has deep roots in the State of Texas, and I want to thank my colleague, Congressman Lloyd Doggett, who was the original sponsor of sunset legislation in Texas, for joining us in cosponsoring this bill.

This bill, which is modeled after the Texas Sunset Commission, will require every Federal agency to justify its current existence as well as its need for future tax dollar funding. Under the proposal, every agency will go out of existence or sunset every 12 years or sooner when deemed appropriate by Congress. This sunset act will force vigorous exercise of our congressional oversight responsibility and would allow American taxpayers, the customers of these agencies, to voice their opinions on the agency's effectiveness and quality of service.

Like the Texas Sunset Commission, a Federal Sunset Commission would be 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 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 will result in millions of dollars in savings to American taxpayers. As a former Texas State Senator, I had an opportunity to witness the Sunset process save $630 million of Texas taxpayer money, where abolished 42 agencies and consolidated and streamlined eight agencies.

The Sunset review has been well tested in Texas and shown to be an effective tool for disciplining our state government, and I believe that it can also be used to discipline our ever-expanding Federal government. The Abolishment of Obsolete Agencies and Federal Sunset Act of 2001 will ensure that our federal agencies function in a performance based, cost-effective manner with every tax dollar. This legislation offers the Congress an opportunity to initiate a thorough review of all Federal agencies and fulfill our oversight responsibility in a proven and systematic way.

By doing so, we will ensure greater accountability in our government and increase the public's confidence in our stewardship of their hard earned tax dollars. I strongly urge your support for a Federal Sunset Commission. Thank you.

Mr. WELDON. I thank both of our witnesses. The Chair would like to now recognize himself for 5 minutes of questioning.

Mr. Turner, you segued very nicely into one of the questions I had, and I'd really like both of you to respond to it. At least my understanding is that Texas has had a better experience with this than many of the other States, and all the States of the 23 that have it have benefited from it, but I understand the Texas experience has been particularly good. I was wondering if you could just shed some light on why that might be. Why has Texas had such a great track record in successful use of the Sunset Commission?

Mr. TURNER. Mr. Chairman, there are probably several reasons. Some that, from my experience, come to mind is the fact that when the sunset legislation was originally passed there was a great deal of commitment to making it work, and what we've found there over time is that, as a legislator, to be able to be appointed to the Sunset Commission is considered to be a plumb assignment, and, as you can imagine, to have the power over any given agency to determine their future gives the members of that body a great deal of clout. So it has become one of those bodies in Texas that members of the legislature and members of the public consider to be an important and influential assignment.

Clearly, in most of our legislatures, particularly those who have biennial sessions, you have the Sunset Commission working when the Legislature is not in session. Of course, that would differ here, since we meet pretty much year-round. So it certainly helps in States like Texas that the Sunset Commission is out there working to improve efficiency and effectiveness of government when the Legislature is not around, and they get a lot of favorable coverage as a result of that.

Mr. WELDON. So are you recommending that, perhaps, for this to work well, that we only meet every other year here in Washington, DC? [Laughter.]

Mr. TURNER. Mr. Chairman, that would probably be fine with me, but it seems our tradition——

Mr. WELDON. As long as they don't cut our pay, right?

Mr. TURNER. And, of course, in those States that do that they usually have, of course, the biennial budget process, which we don't have.

The Sunset Commission—I think all State agencies in Texas look to that sunset date with a great deal of trepidation, and they know that there is a very strong possibility that they may be significantly changed, and they get very nervous about it, and they get very responsive to legislators, and I think the same would be true here in the Congress.

Mr. WELDON. Mr. Brady, do you have anything you wanted to add to Mr. Turner's comments?

Mr. BRADY. I think Jim, Mr. Chairman, hit it right on the mark. One of the keys, not just in Texas but other States that have really gotten results from this, has been all agencies are reviewed. They don't pick some and leave the others out. Every one is treated equally.

Second, there is a regular review. Some States have, sort of after their initial review, sort of petered out a bit in whether they're

going to come back in 4 years or 6 years, so there is no pattern of regular review that everyone can count on.

A third part of that success is that in those States it really works and people see it as real reform, an opportunity to look at the mission of an agency, they really focus on what they are doing. Oftentimes, again, the good agencies thrive under sunset. The ones that are responsive, don't duplicate, that have a high priority, they really shine under this process.

And the fourth part that we've tried to incorporate in the final part in our bill, Mr. Chairman, is that in Texas the Commission works very closely with the committees, the authorizing committees and the appropriators, so that if authorizing has an area they want to look at, they recommend sunset. If appropriators have an area that concerns them, they want a higher focus that they just don't have the time to do at that point, they forward it and make that. So there is a real cooperative approach, and that's what we are recommending in this bill, as well.

Mr. WELDON. Would both of you be willing to work with the subcommittee to address any issues that may be raised during this hearing and in future deliberations on the bill in order to try to perfect the legislation as we go through the process?

Mr. TURNER. Certainly, Mr. Chairman, and I think that there's probably some suggestions that can be made that would be very beneficial. Transferring an idea like this from the State Legislature to this Congress may require some modifications.

Mr. WELDON. What about the impact on State employees in Texas? Has there been a loss of jobs as a consequence of this program?

Mr. BRADY. Actually, no. Somewhat like the Federal Government, Texas government is always looking for good employees. We always have a list of vacancies that are open. We're always—just like in our own offices up here, we're always looking for good people. What happens is that the other agencies tend to grab them pretty quickly in that process, because you always—like in the Federal Government here, we've got some 80,000 mid-level managers and senior-level managers who will retire just in the next 8 years. The number of other jobs is far greater than that. So they are quickly picked up.

Mr. WELDON. My time has expired.

I'd like to now recognize the ranking member for 5 minutes of questioning.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Representative Brady, I understand that 44 agencies have been abolished since this legislation was passed. Did you share what kind of agencies those were? I mean, what did some of them do?

Mr. BRADY. I don't have the full list, but, for example, when Congressman Turner and I were there, one of the more significant consolidations really were eliminating three or four different agencies creating one Texas Natural Resources Conservation Commission, much like our EPA, where we were able really to put the best parts of three or four separate agencies together, eliminate the areas that just no longer had usefulness, and beef up the areas we really wanted to focus on. That's one example of it.

Mr. DAVIS. Were any of them agencies that had been fairly recently constituted, or were they agencies that may have been 100 years old?

Mr. BRADY. In looking at all the States that have had sunset, the process seems to work this way, and it is sort of common sense, just like the legislation. In the first round of review, there's normally a high percentage of eliminations, averaging about 23 percent, because that's where you find the agencies that really have really outlived their usefulness. In subsequent reviews, that No. 10ds to go down and the focus becomes a more accountable streamlining, you know, working and be more responsive, so each review seems to have a sort of a different benefit that accrues from it. That's one of the reasons Jim and I believe so much in sunset—that in this bill we've sunsetted the Sunset Commission. I mean, if you want to hold others accountable, you ought to do the same, so we sunset it after two review cycles so that we all have an opportunity to find out if it is working for us.

Mr. DAVIS. Jim, I noticed you use the terminology "clout," and I thought that was an Illinois term. [Laughter.]

I didn't know that it extended to Texas.

Mr. TURNER. I knew it was a Chicago term.

Mr. DAVIS. A Chicago term. But let me ask you, can this—I always thought that clout was sort of given by the people in terms of electing someone to do something. Can that clout be shared by individuals who are appointed and not necessarily elected?

Mr. TURNER. Mr. Davis, I think it can, because I think when you use that term we're—I was attempting to describe the degree of influence that one has in a given position. Clearly, you know, we have many Federal appointments that are very influential, and I think that an appointment to a Federal Sunset Commission, whether you are a legislative appointment or a public appointee by the President, would be deemed to be a very significant role, so I think that, even though in most of our legislatures or in many of our legislatures we have a stronger legislative branch than we do an executive—it's particularly true in Texas, where we have what most government professors would call a "weak executive form of government." In the Congress and in Washington and the executive branch here, the executive branch is very powerful, and I think it is appropriate that there be some Presidential appointees to this type of review Commission.

Keep in mind, once the Sunset Commission makes its recommendations, it is only a recommendation. It would be the Congress that would have to pass the enabling legislation to carry out whatever the Sunset Commission recommends. So we're not bypassing the Congress.

And we've had occasions, I know, in Texas where the Sunset Commission recommended changes in an agency and they turned out not to be smooth sailing in the next legislative session and Legislature got hung up, couldn't pass the bill, and ended up passing a short-term extension of the agency for 2 more years so the process of sunsetting could be delayed while the Sunset Commission took another look or while the members of the legislature worked to try to see if they could reach some accord and pass the legislation to reform the agency.

I suspect we would find that kind of process here when you made changes in agencies that were deemed to be controversial and difficult to reach an accord on.

But, by and large, if you look at the list of the 44 agencies that were abolished in Texas—and I wish we had brought it with us—you know, many of those agencies were small agencies. Many of them you find out that they were created, you know, 25 years ago. They have some single function that's really not that significant any more, and it was very easy, if they had legitimate functions, to place it in some other agency and eliminate the overhead and bureaucracy and the function goes on, and a lot of those abolishments were that type of changes.

Mr. DAVIS. Thank you very much. Of course, in Illinois it is against the law to have a weak executive. [Laughter.]

Thank you, Mr. Chairman.

Mr. WELDON. The Chair now would like to recognize the gentlelady from the State of Maryland, Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman.

Thank you, colleagues, for being here with this interesting proposition. I've always thought sunsetting made a great deal of sense in many instances. I have a concern about your proposal in terms of you say there would be an appointed Commission, prestigious Commission. You have to determine whether they serve for a period of time; you have to look at the kind of support network they would need, the kind of expertise they would need as they scrutinize each one of these agencies, and they've got to have some knowledge; whether there would be the adverse effect of a chilling effect on the part of the employees, make them want to kowtow to these Commissioners—all of that, if you can answer any of those concerns that I have.

But let me ask, let me point out another thought. Paradoxically, in some of the States that have this sunset provision, instead of reducing the number of agencies they have actually increased the number of agencies. It has been called to my attention that Florida is one of those. They've sunsetted 90 agencies since 1978, but they've created 104 new ones. Do you have any comments about how that would happen, and the concern of promoting a bureaucracy in order to have the expertise to look at each one of these agencies, and the problems of the idea of the chilling effect on the employees?

Mr. BRADY. If I may, Mr. Chairman, let me address that issue first. In Texas, at least—I don't know if it is this way in other States—it has actually had the opposite effect. Employees know that they have people's ears when sunset comes around. They are listened to very carefully. They actually have a process for input in the sunset area.

What we've discovered is that, for example, in research areas, where there has never seemed to be enough money to do the needed research that can't be done anywhere else, those dollars are often diverted into programs that aren't as effective or aren't as needed, and government employees have been some of our best routes to root out the areas that don't have the priority today that they once did, in fact, and so they've actually been a big part of that role in the sunset act.

Mrs. MORELLA. Would they know when they would be up for this process?

Mr. BRADY. My experience is yes.

Mrs. MORELLA. They would know in advance that this is going to happen next year, we are going to be given the evaluation?

Mr. BRADY. And actually, the way the process works would be that the Sunset Commission would publish the dates through the whole 12-year cycle of who was being sunsetted what period. This raises one of the issues on Constitutionality on the bill, if I could address it real quickly——

Mrs. MORELLA. Yes.

Mr. BRADY [continuing]. Because it sort of goes to what you asked.

In looking at the bill, the only area that raised concern was the thought that the Legislature needs to set the expiration date where an agency is reviewed, and perhaps eliminated or consolidated or streamlined, rather than the Commission. We actually think that's helpful and can be addressed several different ways. The committee probably has its own ideas, but you could in the original legislation set the agency dates at that time.

Second, part of this bill requires our agencies to work together to do a full program inventory of all of our programs by function. We could direct the Sunset Commission, as its first act, to bring back, to study those programs, put them in order where they can study them where they make sense, bring that back to the Congress to be——

Mrs. MORELLA. Seems like a monumental responsibility.

Mr. BRADY. Well, actually, when you're looking at trying to save money that is being wasted and shift it to the agencies we really need that help and programs for, it's not.

Mrs. MORELLA. Mr. Turner.

Mr. TURNER. Thank you, Mrs. Morella. You ask very good questions.

I think, from my perspective, if there is created in the management of an agency some uncertainty, you do have to offer some expertise. It seems to me that what we're trying to do through this legislation is to exercise in a greater degree the responsibility that we all know this Congress has in terms of legislative oversight, and to effectively exercise that may occasionally cause agencies and managers in those agencies to be a little bit apprehensive.

Now, the process, as it has worked in Texas, you do have together on the Commission staff some expertise. In our case, I could envision much of that coming from places like the General Accounting Office. The way we oftentimes exercise of oversight responsibility today is we ask the General Accounting Office to do a report, and occasionally they get read. What we do in the Sunset Commission is ask people who understand that agency, understand the body of law administered by that agency, to take a good, hard look at it, and the GAO I think has those types of people on board, and those are the types that could work on the staff of the Sunset Commission.

After they've made a recommendation—i.e., done their report—you would know, in this process, that something is likely to happen, rather than the report collecting dust on a shelf.

You know, it could be that on occasion agencies would be created. We're about, I assume, to do one with the INS by the proposal pending in Judiciary. We could very well find the Commission recommends splitting up an agency into different parts for some reason. But history is that there ends up being less bureaucracy as a result of this process.

But I think that it is also important to understand that this process does not preclude the Congress from doing what we are contemplating doing with the INS. There's nothing about the sunset process that says that Congress can't, by its own initiative, look at an agency and change it. What we're doing in the sunset process is making sure that every agency, over a period of time, usually about every 12 years, gets this review, and we're not waiting for crises to determine whether an agency ought to be examined. It is institutionalized.

I think that it is a healthy process that can save taxpayer dollars. And, in addition to emphasizing the savings, I think it can cause government to be more responsive to the public. It can cause services of an agency to be rendered in a more consumer-friendly and effective way, which is equally as important as the tax dollars we might save in the process of eliminating the so-called "bureaucracy."

Mrs. MORELLA. Thank you.

Mr. WELDON. The gentlelady's time has expired.

Well, I want to thank both of our witnesses in the first panel. Your presentations have been most informative.

I would like to now ask the second panel to come forward. It's actually one person. I'd like to welcome the Honorable Mark Everson, the controller of the Office of Federal Financial Management for OMB. Mr. Everson chairs the President's Management Council and leads the development of the traffic light score card that has been included in the President's budget.

Last week, President Bush announced his intent to nominate Mr. Everson to the deputy director for management at OMB. This is a critically important position, and I would like to congratulate Mr. Everson on the pending nomination.

It is the practice of the Government Reform Committee to swear in witnesses at all of our hearings, so, therefore, Mr. Everson, I would like you to now rise and raise your right hand.

[Witness sworn.]

Mr. WELDON. Would the court reporter please note the witness has answered in the affirmative.

Mr. Everson, you are recognized for a 5-minute opening statement.

STATEMENT OF MARK W. EVERSON, CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. EVERSON. Thank you. I think you have my full statement, Mr. Chairman, so I'll just cover parts of it.

Mr. Chairman, members of the committee, I am pleased to be here and to represent the administration in support of this legislation. The President has called for and the administration strongly supports establishment of a Sunset Review Board at the Federal

level with the specific charge to review every agency and every program at least once every decade.

The administration supports a regular and rigorous examination of the efficiency and effectiveness of all Federal Government programs and agencies. We do have concerns about the structure and operation of the Commission, but we strongly support its fundamental purpose.

There is much common ground between the President's proposal for a Sunset Review Board and the Sunset Commission in the legislation, and we will be getting to the committee later today, I believe, in fact, a detailed letter on the Constitutional issues from the Department of Justice, so that I think is on its way.

We would note that the President has no role under the legislation, as currently drafted, in determining the composition of the Commission. We would hope to see that remedied.

We would also urge you to consider some safeguards against the risk of delay in congressional action in the case that there would be normally a reauthorization but just hasn't yet been achieved by the Congress.

Finally, I think one of the points that the Justice Department will be making is the retention of bicameralism and the presentation process to make sure that there is the same Presidential role and full role of the Congress in abolishment of agencies as normally exists in the legislative process.

As I mentioned, during the campaign President Bush gave strong support for a Federal Commission or board such as that proposed in the legislation, and he did have experience, as was indicated, in Texas. As part of the President's management agenda, which you mentioned, the administration has included as one of five Government-wide initiatives budget and performance integration. This initiative has a simple purpose—to improve programs by focusing on performance and results.

The administration has launched, with the 2003 budget, a process that is consistent with the broad objectives of the sunset legislation by proposing to reinforce provably strong programs and to redirect funds in many cases from programs that demonstrably fail or cannot offer evidence of success.

I don't know if you've all seen the budget in detail, but if you go into any one of the chapters we've evaluated, we've taken a first cut at evaluating program effectiveness by indicating whether programs are effective, ineffective, moderately effective, or, in the case where there is enough data on outcomes, of unknown effectiveness.

So we see the need for rigorous methodology for assessing program results and effectiveness as entirely consistent with this effort here, and we are actually reaching out at this time to the academic community and others to try and refine our methodologies to improve the program evaluations that we're undertaking as a part of the President's management agenda.

I believe both Congressmen Brady and Turner are correct in trying to launch this sort of initiative. There is broad support for getting more examination of government results, I've indicated in the prepared testimony. I'd just like to quote the Comptroller General from some recent testimony. He indicated that, "A fundamental review of existing programs and operations can create much-needed

fiscal flexibility to address emerging needs by weeding out programs that have proven to be outdated, poorly targeted, or inefficient in their design and management. It is always easier to subject proposals for new activities or programs to greater scrutiny than that given to existing ones."

We also believe that, at a minimum, it is time to reinstitute permanent reorganization authority for the President to permit expedited legislative approval of plans to reorganize the executive branch. That's something I would also draw to your attention.

I'd just like to say in closing, again, we strongly support this concept. I was very pleased to hear the remarks of your two opening witnesses.

I would be happy to take any questions from the committee.

[The prepared statement of Mr. Everson follows:]

STATEMENT OF THE HONORABLE MARK W. EVERSON,
CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE, CENSUS, AND AGENCY ORGANIZATION
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

April 23, 2002

Thank you, Mr. Chairman, Ranking Member Davis.

I am pleased to be with you today to discuss the merits of H.R. 2373, a bill to create a Federal Agency Sunset Commission, the purpose of which would be to review the performance of and need for individual Federal agencies. The President has called for, and the Administration strongly supports, establishment of a Sunset Review Board at the Federal level, with the specific charge to review every agency and every program at least once every decade. The Federal Government is an enormous enterprise that has built up over time, and includes programs and agencies that were designed for a specific purpose but have in some cases outlived that purpose or duplicate the work of other existing programs or agencies. The Administration supports a regular and rigorous examination of the efficiency and effectiveness of all Federal government programs and agencies. A Sunset Review Board would assist the government in assessing the utility of the myriad Federal organizations, some of which may no longer serve the interests of the American people. We have some concerns about the structure of the Commission but we strongly support its fundamental purpose.

There is much common ground between the President's proposal for a Sunset Review Board and the Sunset Commission in the legislation -- both recognize that every agency and program should be reviewed periodically to determine whether we ought to keep it. We note, however, that the President has no role under this legislation in determining the composition of the Commission. This ought to be remedied. We also would urge you to consider some safeguards against risk of delay in Congressional consideration of agency reauthorizations by giving the President the authority to retain agencies understood to be critical to the operation of the Federal Government. This would be necessary in instances where the Commission recommends reauthorization but Congress has failed to act.

As I mentioned, during the campaign President Bush gave strong support for a Federal commission or board such as that proposed in the legislation. He had experience with the Texas Sunset Advisory Commission, which was created by the Texas Legislature in 1977. Its purpose is to identify and eliminate waste, duplication, and inefficiency in state agencies. The 10-member Texas Commission reviews the policies and programs of more than 150 state agencies and questions the need for each agency; it looks for duplication of other public services or programs; and considers changes to improve each agency's operations and activities. In Texas, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them. Agencies must routinely prove their worth.

The President is keeping his campaign promise to assess agency and program performance and allocate funding or suggest reforms accordingly. As part of the President's Management Agenda, the Administration has included as one of five government-wide initiatives Budget and Performance Integration. The initiative to integrate budget and performance has an important purpose – to improve programs by focusing on results.

The President's Budget for 2003 takes the first step toward reporting to taxpayers on the relative effectiveness of the thousands of programs on which their money is spent. It commences the overdue process of seriously linking program performance to future spending levels. Like the Sunset Commission would, the Administration is asking not merely "How much?"; but also "How well?"

In an initial and admittedly exploratory way, the Administration has launched with the FY 2003 Budget a process consistent with the broad objectives of the Sunset legislation by proposing to reinforce provably strong programs and to redirect funds in many cases from programs that demonstrably fail, or cannot offer evidence of success. Eager to make government work better, the Administration used all of the performance information it could gather in making decisions for the FY 2003 Budget. We have made judgments about whether programs are effective, ineffective, or, where data was simply unavailable, that the level of program effectiveness was unknown. We seek to change the burden of proof, asking agencies and advocates to supply evidence of program effectiveness instead of assuming effectiveness in the absence of evidence to the contrary. OMB staff and agencies collected evaluations, studies and performance documentation of all sorts from a variety of sources to assess which programs were achieving desired outcomes.

The results of this performance-oriented process of policy development and budget allocation promise to bring about a new era of results-based budgeting, including:

- directing funding to the more effective programs;
- shifting resources among programs with similar missions to fund those programs which can demonstrate good performance;
- setting program targets and strategies based on our enhanced understanding of the relationships between cost and performance;
- adding incentives to enhance program performance; and
- improving the overall efficiency of programs and support services.

The information on which program ratings are based is far from perfect, and some conclusions may ultimately prove erroneous. We are working to develop a rigorous methodology for assessing program effectiveness, and are reaching out to the academic community to do so. The Sunset Review Board or Commission we contemplate would provide additional support, tangible recommendations pertaining to the assessment process, and increase the credibility of this important effort.

Congressman Kevin Brady, author of H.R. 2373 and a former member of the Texas State Legislature, is right to bring the idea of a sunset commission to the Federal Government. And like our efforts to integrate budget and performance information, support for a fresh look at the make-up of the Federal Government is substantial.

House Majority Leader Dick Armey has bemoaned the overlap and duplication that besets the Federal Government. He said, "[F]ederal agencies are more consumed with preserving their budgets and bureaucratic empires than with results and efficiency. Consequently, taxpayers pay more for bigger, inefficient and redundant government."

Senator Fred Thompson has called for more substantive analysis of the state of the Federal Government. At a hearing on the challenges facing the Federal Government, Senator Thompson said, "Clearly, the time has come to take a comprehensive and fresh look at what the Federal government does and how it goes about doing it. There is an obvious need to bring some order out of this chaos."

Testifying recently, the Comptroller General said, "A fundamental review of existing programs and operations can create much-needed fiscal flexibility to address emerging needs by weeding out programs that have proven to be outdated, poorly targeted, or inefficient in their design and management. It is always easier to subject proposals for new activities or programs to greater scrutiny than that given to existing ones."

The "Budget and Performance Integration" initiative under the President's Management Agenda is putting government programs under the microscope. Dollars will go to programs that work; those programs that don't work will be reformed, constrained, or face closure. The Administration has started to apply these principles, using existing data to make performance the focus of decision-making. The Sunset Commission could help in this regard.

While we strongly support the idea of a sunset commission as I have outlined, we also believe that at a minimum it is time to re-institute permanent reorganization authority for the President to permit expedited legislative approval of plans to reorganize the Executive Branch. This time-tested management tool was available to Presidents for 50 years until the law expired in 1984. For example, the Environmental Protection Agency and the National Oceanic and Atmospheric Administration were formed after President Nixon submitted a reorganization plan to the Congress in 1970. The Bureau of the Budget was reorganized into the Office of Management and Budget the same year.

A Sunset Commission would be a step in the right direction of results-based government. There is much common ground between H.R. 2373 and the Administration's views. It is time to take a systemic approach to analyzing government performance and making tough decisions about what goes and what remains. I am happy to take your questions.

Mr. WELDON. Thank you, Mr. Everson.

The Chair now recognizes himself for 5 minutes for questioning.

Could you be a little bit more specific on the Presidential involvement? Are you talking about perhaps the President having the right to appoint some members of the Commission?

Mr. EVERSON. I think that certainly would be our preferred position, and that, as in so many other instances, the President makes an appointment and then the Senate reviews the appointment and consents to the appointment.

Mr. WELDON. The entire Commission?

Mr. EVERSON. I think that would be the easiest way to resolve some of the appointment clause issues. And let me stress I don't want to get outside my area of expertise here on Constitutionality, and I think the letter will address all of this, but some of the functions that are—some of the technical powers given to the Commission under the legislation, as drawn, do get into questions of, I gather, the appointments clause and certain duties and ability to execute certain actions, so I think we'll have some rather technical comments on that would get to the substance of it all.

Mr. WELDON. I was very interested in your comments about safeguards against the risk of delay in congressional consideration. Could you describe how any authorities in the legislation could be crafted in such a way to avoid the Constitutional issues that have been raised?

Mr. EVERSON. I think we would be happy to work with you on that element of it, but recognizing that there are some functions in the government that are obviously much more important to have an ability to retained in others defense, to cite one that was already talked about briefly earlier on. But I think we are simply suggesting that this automatic mechanism, where things really, simply because of the passage of time, would expire without full legislative action or the involvement of the President, that does constitute a problem. Perhaps with a bridge period before you would get to such definitive action, you could retain much of what is sought here.

Mr. WELDON. Well, my concern in that is that any language—you know, typically the way the Congress keeps agencies alive that have never been reauthorized in years and years and years is by inserting reauthorization language——

Mr. EVERSON. Right.

Mr. WELDON [continuing]. Into the Appropriation Act, and any provisions that could be inserted into this legislation to try to force a reauthorization could be construed, I think, as violating the separation of powers and getting into Constitutional questions, so certainly any language that might help us come closer to that I would be very happy to look favorably on, assuming that it met Constitutional concerns.

Mr. EVERSON. We would be happy to provide that for you, sir.

Mr. WELDON. I have been very pleased with the initiatives coming from the administration in terms of rating agencies on their effectiveness. In your statement you alluded a little bit to how this legislation could complement what the president is doing in that. Could you expand on that a little bit more for me?

Mr. EVERSON. Sure.

Mr. WELDON. You kind of brushed over it in your statement.

Mr. EVERSON. Yes. What we did in this first round, if you will, really did not attempt to cover the full range of government programs. We took some programs. We're in the process now of internally developing our guidance for the 2004 budget process, and we are going to establish a methodology, if you will. We're actually convening a workshop—the National Science Foundation is doing this very soon—to cover the methodologies on how we would do some of these evaluations, and we will have a period of time where we will get, over a period of several years, full evaluations of all programs and agencies.

What this does—and I agree with both Congressmen Brady and Turner—having this set timeline, a set time table where you get to every program over a specified schedule, that strengthens this very concept, because you are holding people accountable, you know that your turn at bat is coming, and so often I would say my reflection on coming back into Government is that you push out the issue. You push out the day of reckoning. When you have a clear schedule, that's helpful. I think this methodology is consistent with what we are developing right now internally in the administration to look at everything.

Mr. WELDON. Do you believe the law should formally incorporate some of the provisions the President is pursuing, such as requiring a review for an agency that has been rated by the administration as being ineffective?

Mr. EVERSON. A review by this Commission or a review——

Mr. WELDON. This Commission.

Mr. EVERSON [continuing]. By OMB?

Mr. WELDON. This Commission.

Mr. EVERSON. My initial—I'd like to reflect on it, but my initial instinct is probably yes, because the more scrutiny we can bring to the things that aren't working—and this assumes that we've gotten to a point where we have an agreement on the methodology. Here, again, we want to be very clear that we have value neutral, very sustainable criteria for forming these evaluations so that you don't get, as you mentioned, one program that's doing something in education being judged differently than another program in another agency that's also doing things in education. You level the playing field, and then you find certain programs are less effective than others. Yes, anything that brings focus on those that are behind is helpful.

Mr. WELDON. I see my time has expired. I'd like to now recognize the gentleman from Illinois for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Mr. Everson, as I mentioned in my opening statement, the Department of Justice issued a legal opinion on this legislation in 1998. Have you sought or obtained any further legal opinion from Justice on this type of legislation?

Mr. EVERSON. As I indicated, sir, there will be a letter coming either today or tomorrow that addresses the issues that we see in the legislation, I think summarizing one being the appointments area, another being principally being this retention of the Presidential role and the full congressional role in terms of the abolition of the agencies, but we will have a detailed letter to you shortly.

Mr. DAVIS. In 1998, Mr. Deceive, who was then acting deputy director for management, opposed this legislation because, among other things, the administration believed that it established procedures that would supersede the authority of the President and Congress——

Mr. EVERSON. Right.

Mr. DAVIS [continuing]. In reality. Do you have any opinions in relationship to the——

Mr. EVERSON. I think the comments from Justice will indicate that we do feel you need to retain the role—once the Commission is taken, it has made its recommendations, the role of the full Congress and the President in ratifying, or not the ultimate decision of the Commission, so that would be one point.

But as to the internal role of OMB, I said to Congressman Brady and Congressman Turner a few minutes ago, this was a very short discussion that we had—Mitch and some of the others had, and myself—because we believe the more focus you bring on program effectiveness and whether people are—the citizenry is getting its money's worth, that's better. That's positive. So we're not turf conscious here in saying that there shouldn't be others who are looking at the effectiveness of progress. We're not saying we should have the only role by far in making proposals of what should be abolished or not.

Mr. DAVIS. If I recall, Representative Turner expressed appreciation for the fact that the President was supportive. Now, is the President supportive of the concept of a Commission, or is the President supportive of this legislation?

Mr. EVERSON. The administration—the President is supportive of the concept of the Commission as incorporating some modifications, some of which I've mentioned, and others that we would be happy to work with the committee on. I mean, obviously we have strongly held positions on these Constitutional and appointment issues. So we would want to go forward with you and very much address those.

Mr. DAVIS. Thank you very much.

Mr. Chairman, I have no further questions.

Mr. WELDON. I thank the ranking member, and I now yield to the gentlelady from Maryland for 5 minutes.

Mrs. MORELLA. Thank you. Thanks, Mr. Chairman. I find this very interesting.

I'm curious. You know, I've pointed out that there have been some instances where States have actually added the agencies, and Mr. Turner's response was, "Well, they still add up to a savings." A possibility. But, you know, there are 12 States I understand that did have this sunset provision that dropped it, and I'm curious about why they have dropped it.

Mr. EVERSON. I'm sorry, Congresswoman, I don't have detailed knowledge of the experience of the individual States. I'm approaching this really from the point of view of trying to get the intellectual support and the extra scrutiny on effectiveness, so we would take a view, if the result was—I can tell you this: if the result was that we should have another agency, we would support that. This is, from our point of view, about evaluating effectiveness and what works or doesn't work for the taxpayers, so it is, for us, a value

neutral proposition. Obviously, we think over time we're going to get savings, but if in one instance there was growth in the drug area—you mentioned drugs before. If that's the right answer, because of a good evaluation of program effectiveness, then that's an answer we would want to support, from a management point of view.

Mrs. MORELLA. Incidentally, congratulations on your appointment.

Mr. EVERSON. Thank you.

Mrs. MORELLA. You know, we passed GPRA—Government Performance and Results Act.

Mr. EVERSON. Right.

Mrs. MORELLA. We looked to that and we say, "Hey, this is the way to really discern whether we're getting the results that we really want." So I just wonder if this is going to be overlapping, or does it mean that GPRA is not working or we're not assessing enough?

And then I pick up on what was mentioned with the first panel, and our chairman mentioned that, and that is the delay strategy. I sit here thinking about the fact that almost every year we have the continuing resolution and almost every year we have items that are in the appropriations bills that were not authorized—I mean, even appropriated and not even authorized in the appropriations bill sometimes.

So I just think that maybe it works in some States, but do you realize how vast this is going to be to try to make it applicable to the Federal Government? Do we need to do that? Maybe there is another way of doing it. I am concerned about also the bureaucracy that this may be creating.

Mr. EVERSON. Let me say to you, Congresswoman, probably no one better than I realizes how vast the Government is, given the job that I'm trying to now do. Particularly in this management area, whenever you get into evaluation and assessment, the first answer you get to or the first reason not to proceed is the one you just cited—that it's too complicated, it's too far-flung, there are too many differences in the programs.

I think that our approach would be that you've got to start and you've got to instill that discipline that has been articulated by the Congressmen, the first panelists, so well.

Let me come back to GPRA. I would think that one of the things that this Commission would do is strengthen the GPRA process, because it would do what the administration and the Congress, frankly, have not done as well as they could, which is to take a look at the strategic objectives of these departments and agencies and then to see whether the outcomes of the programs correlate to the objectives that were set under the GPRA process. I think these are glossed over far too frequently and everything is looked, as the Comptroller General indicated, on a basis of incremental change. It doesn't—you're not going back and looking at the broad strokes of are you educating the children better or are the streets safer. Instead, you're looking at, "Do we have more teachers or do we have more police officers?" I think this Commission, this concept would advance that GPRA concept that you mentioned.

Mrs. MORELLA. Yes. Does the legislation affect or address the releasing of sensitive information that might well come out in the review process?

Mr. EVERSON. I'm not sure. I'm not sure that it does get to that. Could you clarify maybe what you would mean by that information?

Mrs. MORELLA. Well, there might be some information that should not be public, publicly declared, and I would hope that there would be some way of preserving some intelligence information.

Mr. EVERSON. Right. Sure. Of course. That should be adequately addressed. I agree with you there 100 percent.

Mrs. MORELLA. Yes.

Mr. Chairman, I think I'll yield back. But I think the concept has some merit, but I think it needs a lot more work on some of the various details of it.

Thank you.

Mr. WELDON. I thank the gentlelady.

I would just point out on page 13 of the act line nine, it includes a paragraph, "The extent to which the agency, as part of their evaluation, has complied with the provisions contained in the Government Performance and Results Act of 1993."

I'd like to now recognize the gentlelady from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. Everson, I don't envy the position you have been put in to come and testify about a bill with a pending Constitutional memo due you, and to somehow appear before our committee.

The issues, as you must realize, raised by this proposal fairly pulsate with Constitutional questions.

Mr. EVERSON. Yes.

Ms. NORTON. Each State has its own Constitution, and I understand the State of Texas is where it has inspired this bill. I've not looked at the Texas Constitution, but I have looked closely at our Constitution.

Mr. EVERSON. Yes.

Ms. NORTON. I continue to—I taught full time at Georgetown before coming to Congress, and continue to teach a course called, "Lawmaking and statutory construction." The main theory of the course is the separation of powers has left us a cumbersome system, perhaps too cumbersome for the 21st century, when we are competing against parliamentary democracies that can—with unified governments that can make a decision, and that's it.

And so I challenge my students, "Help us to come to the point where there are sufficient shortcuts in our system——"

Mr. EVERSON. Right.

Ms. NORTON [continuing]. "So that the brilliant separation of powers system created in the 18th century is not obsolete today."

I am not unsympathetic with the motivation behind this bill, although my interest is not so much the mundane notion of, "Shall there be one committee or another committee," but I think the earth-shattering notion of whether or not, with separation of powers government, one can compete with parliamentary governments that can make a decision about Microsoft and that's it, not 10 years

of litigation. I think this is a serious question. It is a marvelous intellectual challenge.

I can only say to you that I am reminded of how the Supreme Court has struck down our shortcuts time and time again, the one-house veto. I mean, I could go on and on.

Mr. EVERSON. Yes.

Ms. NORTON. They have been fairly clear about the presentment clause, about needing both Houses of Congress, and I admire the fact that Congress was seeking ways around this cumbersome system. I think it is a brilliant system and I think we've got to put our best minds to thinking how to preserve it and make it efficient in a global market economy.

Now, the first thing—you talk about what the President wants to do. I think you would get bipartisan support for budget and performance integration to improve programs that are focusing on results. I mean, you know, here's the problem. Here's the evidence. It would be pretty hard to say, unless you just have some political reason for wanting an agency to exist.

Many Members will instantly believe that their own jurisdiction is being usurped by a few Members, so, you know, first you're going to get people in your face with that.

Your notion about a Presidential Commission I don't think improves this bill because we have had Presidential Commissions since the beginning of time. They can recommend. They then have a Member put in a bill. But I don't think you get the instant result that this bill would try to get.

Until we find the shortcut that is Constitutional and does not raise more questions than it solves, I would advise that the President's own Sunset Review Board—you could think more deeply about it and whether some of the problems raised by this bill could be solved administratively rather than spend the next seven or 8 years in court trying to find out whether or not this suggestion is Constitutional.

Mr. EVERSON. Yes. If I might respond, first, I very much appreciate what I consider very eloquent questioning or presentation of our system and its broadest elements in the European model. I've lived overseas, most recently in France, and, although I guess with their elections you can't actually cite the French as maybe getting the best results.

Ms. NORTON. OK. Cite the British.

Mr. EVERSON. The British. Yes. Please. Thank you.

I think it really does—the issue you pose of the government being led by the leader of the legislative branch, it is a different system. As you point out equally correctly, we do have the checks that ensure very real democratic processes.

I think that what we'll come up with in the commentary that we'll provide from the Justice Department will get back to a correct weighing of things like the Chada decision and others that you're getting to, so that perhaps some will be disappointed with the solution as not breathtaking enough or not leaving a strong enough shortcut role for the Commission, if you will, but again we would still think it is worth doing because of the focus it will bring on a regularly scheduled basis to the activities of these agencies, many

of which have expanded or outlived their usefulness or now are duplicated by other entities of the government.

Ms. NORTON. Thank you.

Thank you, Mr. Chairman.

Mr. WELDON. Well, I thank the gentlelady for her very erudite comments. I thank our witness, Mr. Everson, for his testimony. It has been most helpful.

I'd like to now call the third panel to come before the committee.

I would like to extend a welcome to the members of the third panel. Each of these gentleman represents a watchdog organization dedicated to safeguarding the interests of the American people, the American taxpayers.

Mr. Thomas Schatz is president of Citizens Against Government Waste [CAGW]. Citizens Against Government Waste's mission is to eliminate waste, fraud, and abuse, and mismanagement in the Federal Government.

I'd also like to welcome Mr. Chris Edwards, who is the director of fiscal policy studies at the Cato Institute. Mr. Edwards has close to a decade of experience in tax and budget policy, including working as a senior economist on the Joint Economic Committee.

I'd also like to welcome Mr. John Berthoud. He is president of the National Taxpayers Union, a well-known, nationwide, grassroots lobbying organization of taxpayers.

Gentlemen, it is the practice of the Government Reform Committee to swear in witnesses at all of our hearings. I'd ask that you now rise and raise your right hands and I will administer the oath.

[Witnesses sworn.]

Mr. WELDON. Let the court reporter please note the witnesses have answered in the affirmative.

We'll proceed from my left to right, your right to left. We'll begin with you, Mr. Schatz. I'd ask that each of the witnesses please try your best to summarize your comments to 5 minutes.

STATEMENTS OF THOMAS A. SCHATZ, PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE; JOHN BERTHOUD, PRESIDENT OF THE NATIONAL TAXPAYERS UNION; AND CHRIS EDWARDS, DIRECTOR OF FISCAL POLICY, CATO INSTITUTE

Mr. SCHATZ. Thank you very much, Mr. Chairman. I appreciate being here today on behalf of the more than 1 million members and supporters of Citizens Against Government Waste, and appreciate also the opportunity to provide testimony on H.R. 2373, the Abolishment of Obsolete Agencies and Federal Sunset Act of 2001.

We have quoted President Reagan that the nearest thing to eternal life we'll ever see on life is a government program. You obviously found an earlier quote. But it is still, nonetheless, a perennial problem in Washington. The big issue today is apparently what to do and how to do it in a way that meets everybody's satisfaction in terms of Constitutionality and achieving the goals.

A number of items that are already in place have been mentioned—Government Performance and Results Act, the listing of items in the President's budget for the first time with the score card. Ultimately, whether we have a Sunset Commission—and hopefully we will when that passes the Constitutional questions—it is really, in the end, up to the Members of Congress to make de-

cisions about what to do about the information that is before them regarding these agencies.

It seems that a Sunset Commission would add to the intelligence about what is working and what is not in Washington, and certainly it puts pressure on the agencies, themselves, to continue to justify their existence.

As we've seen time and again, programs and agencies are included in appropriations bills without being reauthorized. The authorizing committees, themselves, are, on numerous occasions, distraught by the activity of the Appropriations Committee, because they are unable to get to the work that they need to do. I think the Sunset Commission would be a welcome addition to the question of what to do in terms of true review of how the programs are working.

We are facing, obviously, very troubled times, obviously, the war on terrorism being of the prominent consideration in the budget for this year and in the foreseeable future, and we also have a different type of revenue flow to the Federal Government than we had just a year or two ago. Both of those problems will continue to put pressure on determining whether or not we are putting our resources in the appropriate places.

The Sunset Act does not make a determination of which agencies should be reformed, reorganized, or eliminated. It simply creates this 12-member Commission to assign an expiration date to every agency. Twelve years would be the normal length, and it could be shorter if Congress thought that was appropriate.

It draws on the resources of the Comptroller General, the Congressional Budget Office, and the Congressional Research Service, who prepare an inventory of Federal programs within each agency to assist and advise the Commission and Congress in implementing the requirements of the act. It also instructs the Commission to consider the need and purpose of each agency if each operates efficiently, if the agency's programs are duplicative, and whether the agency is in compliance with the Government Performance and Results Act.

One of the tougher issues when it comes to establishing the mission and determining the performance of Federal agencies is not necessarily whether it is meeting its own goals, but whether it duplicates the activities of another agency. Agencies tend to look inside themselves and even committees of Congress tend to look only at the jurisdiction that they have and not outside the parameters of what they are considering in terms of what might be duplicative elsewhere in the Federal Government. With a Sunset Commission, it would be, I think, easier for Congress to look at what is really out there and what is being duplicated before a committee or the Congress, itself, votes on creating a new program.

The Commission will evaluate the agency and submit recommendations as to whether they should be abolished, streamlined, or reorganized, also provide suggestions for administrative and legislative action. If Congress does reauthorize the agency, it will assign a sunset date.

This has worked well in Texas and in a number of the other States that have sunset laws, and when one looks at all of the lists of programs that are considered wasteful, inefficient, duplicative,

there are many, many out there, but there are not many objective ways that they can be evaluated so that the public can get a better idea of what is working and what is not. The President's budget certainly takes a first step in that direction. We welcome that.

Mr. Chairman, I appreciate the opportunity to appear before you today. We feel that it doesn't matter if an agency was created a year ago or 100 years ago. Our tax dollars are stretched to the limit, and we believe this will be a welcome step in determining where our priorities should lie.

Thank you.

Mr. WELDON. Thank you, Mr. Schatz.

[The prepared statement of Mr. Schatz follows:]

Testimony

before the

House Committee
on
Government Reform

Subcommittee on
Civil Service, Census, and Agency Organization

Thomas A. Schatz
President

Citizens Against Government Waste

April 23, 2002

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My name is Thomas A. Schatz and I am president of Citizens Against Government Waste (CAGW). CAGW is a 501c(3) private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement and inefficiency in the federal government. CAGW was founded in 1984 by J. Peter Grace and nationally-syndicated columnist Jack Anderson to build public support for implementation of the recommendations made in President Reagan's Private Sector Survey on Cost Control, better known as the Grace Commission. CAGW currently has more than one million members and supporters. Since 1986, CAGW has helped save taxpayers more than $687 billion. CAGW does not receive any grants from the federal government. On behalf of CAGW's membership, I appreciate the opportunity to provide testimony before this subcommittee today and in support of H.R. 2373, the *Abolishment of Obsolete Agencies and Federal Sunset Act of 2001*.

President Reagan once said, "The nearest thing to eternal life we'll ever see on earth is a government program." No truer words have ever been spoken. Yet, since he long ago spoke these words, very little has been done to eliminate the government's wasteful programs and inefficient agencies.

H.R. 2373 provides one way to control spending in Washington and to make agencies and government programs accountable for what they do. Prior attempts have been made to pass similar legislation, and considering the budget crisis our country will face in a few short years, it is time we rid ourselves of expensive and wasteful government programs that no longer serve a purpose.

The Sunset Act does not make a determination of what agencies should be reformed, reorganized or eliminated. Instead, it creates the Federal Agency Sunset Commission, a 12-member bipartisan group of individuals composed of eight members of Congress and four from the private sector. The Speaker of the House and the Majority Leader of the Senate would appoint the private sector members in equal numbers. The four members of Congress would be appointed from each chamber of which two will be of the majority party and two of the minority party. The length of terms would be six years for a member of Congress and three years for private individuals. Members of Congress cannot serve beyond their term in elected office.

The commission's task would be to assign an expiration date to every agency of the federal government not specifically enumerated in the U.S. Constitution. The normal sunset length will be 12 years for most agencies, but a shorter length will be imposed when thought to be appropriate by Congress. The 12-year cycle – or even less time – is sufficient to determine whether a federal program is working or not.

The legislation also directs the Comptroller General, the Director of the Congressional Budget Office, and the Director of the Congressional Research Service, to prepare an inventory of federal programs within each agency to assist and advise both the Commission and Congress in implementing the requirements of this Act. CAGW

believes these government organizations will provide critical and nonpartisan information and advice in carrying out this legislation.

Before the sunset date of an agency, the Sunset Commission will consider its need and purpose, whether it operates efficiently, its cost-effectiveness in delivering its services, whether there are duplication of programs, and its responsiveness to Congressional recommendations. The commission will study whether the agency is in compliance with the Government Reform Results Act, how it performs its customer service and its promptness in processing complaints.

After the commission evaluates each agency, it will submit to Congress a recommendation as to whether the agency should be abolished, streamlined, reorganized or re-established. If the agency to be renewed, the commission will provide suggestions for any administrative and legislative action needed to do so and Congress will assign a future sunset date for the agency. This will ensure the agency will always be accountable and open to periodic reviews.

CAGW believes this process of review will ensure non-partiality and frankly, will give members the willpower to make decisions on which agencies to eliminate, similar to the Base Realignment and Closure Commission.

The Sunset Commission will also report to Congress on all legislation that has been introduced to establish a new agency or a new program that is being carried out by an existing agency. This is vitally important. Both Congress and the agencies themselves often don't realize that existing programs can perform the services they are providing by creating a new agency or program.

Finally, the commission will require the elimination of any agency within one year of its review and recommendation for abolition, unless Congress reauthorizes the agency. Taxpayers, the agency's customers, state and local governments will be asked to provide their voice and opinions to the process through public hearings and other forms of communication such as the Internet on whether the agency provides good service and addresses a need effectively and efficiently. CAGW believes this is also important. Who knows better but those who are served by the agency, or the taxpayers who pay for it, on whether an agency serves a valid purpose and should remain?

CAGW was pleased to see that in the President's budget this year, the administration has developed a "score card" in order to ensure accountability for performance and results, called the Executive Branch Management Scorecard. It tracks how well departments and agencies are executing five management initiatives, and where they stand at a given point in time against standards for success.

These five management initiatives include: 1). attracting talented and imaginative people to the federal government in order to improve the service provided to our citizens; 2). exposing parts of the government to competition so that agencies may better focus on what customers want while controlling cost; 3). improving how the government manages

its money, such as reducing the billions in improper payments the government makes every year; 4). harnessing the power of the Internet to make the government more productive; and finally, 5). linking budget decisions with results. Simply put, by comparing budget to performance, the administration hopes to improve programs by focusing on results. The administration promises that dollars will go to programs that work. For those programs that don't work, they will be reformed, constrained, or shut down.

This scorecard should provide a roadmap for the Sunset Commission under H.R. 2373. It will assist them in their duties of finding out what agencies should be retooled or eliminated.

One sunset law that appears to have worked well was enacted in Texas. The 1977 law created a commission, composed of ten members, which reviews the policies and programs of more than 150 state agencies. Approximately 20-30 agencies go under review every 12 years. The commission questions the need for each agency and looks for duplication of its services or programs.

Since the sunset law was implemented, Texas has abolished 44 agencies and 11 other agencies have been consolidated. In addition, the state legislature has adopted a large majority of the recommendations made by the commission.

As for the fiscal impact of the Texas sunset law, estimates of reviews conducted between 1982 and 2001 indicate savings of approximately $720 million. The commission itself cost approximately $17 million over the same time period. Using these figures, it has been determined that for every dollar the sunset process has spent, taxpayers have been saved $42.50 in return.

Every year, CAGW produces *Prime Cuts*. In it are recommendations of programs that can be consolidated or eliminated, drawn from public and private sources as well as CAGW's own recommendations. For example, CAGW has long recommended elimination of the archaic federal milk marketing order program, which could save taxpayers almost $700 million over five years, plus save consumers at least $1 billion annually. CAGW has also long supported the elimination of the sugar subsidy and peanut quota programs, which could save taxpayers another $800 million over five years, plus save consumers at least another $1 billion annually.

Eliminating the Market Access Program in the Department of Agriculture would save $348 million over five years, terminating the Neighborhood Reinvestment Corporation, an independent agency, would save $450 million over five years, ending the Appalachian Regional Commission, an independent agency would save $177 million over five years, and abolishing the Advanced Technology Program, a program in the Department of Commerce, would save of $480 million over five years – just to name a few.

It does not matter if an agency or a program was created a year ago or 100 years ago. All should be subject to scrutiny and should be made to prove they are worth continuing and

to be paid for by our tax dollars. By moving forward with H.R. 2373, Congress will force all agencies to streamline, prove they provide what they are mandated to do in an efficient and cost-effective way, and be more responsive to taxpayers.

I know many of you are committed to eliminating wasteful programs and I commend you in your efforts. H.R. 2373 would be a valuable tool to allow you to discover and eliminate wasteful programs in an efficient and fair manner.

At a time when our tax dollars are stretched to the limit to pay for the war of terrorism and entitlement programs such as Social Security and Medicare, agencies can no longer assume they will live forever. H.R. 2373 would force agencies to regularly justify their existence. Congress and the American people will then have the final say on whether they should continue to receive our valuable tax dollars.

Federal Sunset Act of 2001

CAGW's Response

to

Questions from the Subcommittee on Civil Service,
Census, and Agency Organization

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1. **Given the vast number of Federal Programs, how will a 12-member commission have the knowledge base necessary to evaluate all the programs? What criteria will be used to evaluate all the programs? What criteria will be used to evaluate individual commission member expertise?**

A. In our nation's history, several commissions have been created that reviewed how the federal government functions and made recommendations on improving structure and function. There has not been a problem finding qualified and knowledgeable people to evaluate various agencies or programs. In 1947, President Truman asked former President Hoover to chair the Commission on Organization of the Executive Branch of the Government (known as 1st Hoover Commission.) A few years later, President Eisenhower asked President Hoover to chair a second Hoover Commission. In 1982, President Reagan asked W.R. Grace CEO Peter Grace to oversee the President's Private Sector Survey on Cost Control (Grace Commission).

For example, the first Hoover Commission, created under the Reorganization Act of 1945, consisted of 12 members, four appointed by the President, four appointed by the President pro-tempore of the Senate and four appointed by the Speaker of the House. The Commission was given the power to appoint and fix compensation as it needed, in accordance with the law. Within the 3 appointed classes, two individuals were appointed from within government and two came from the private sector.

In addition to the members of Congress that are appointed under the Federal Sunset Act, Citizens Against Government Waste (CAGW) believes the private sector members could be former high level individuals that served within the agencies. These individuals could be ex-secretaries, deputy secretaries or other ex-agency employees that have served at a level that enable them to understand how the entire agency operates. Other private sector individuals could include former members of Congress and individuals from think tanks that have written on restructuring and in-efficiencies found in the government. Individuals such as these would be familiar with the agencies and in many cases would know what changes could and should be made.

Criteria used to review specific agencies or programs are listed in Sec. 5, Criteria for Review of H.R. 2373. CAGW also believes consulting with the Congressional Budget Office (CBO) or the General Accounting Office (GAO) would be of benefit in establishing other criteria to decide whether an agency is needed, efficient and operating properly. Similar criteria have been used by the Texas Sunset Commission, which has had success in evaluating agencies on whether they should be abolished, reorganized or reauthorized.

Sect. 3 of H.R. 2373 provides criteria for qualifications for members of the commission and staff.

If the committee believes additional criteria are needed, CAGW would encourage them to be debated and added to the legislation.

2. Will the Commission need to hire staff to complete its mission? If so, how many people will need to be hired? What qualifications will they need? What is the total annual budget for the additional staff? Has the Congressional Budget Office scored the bill?

A. CAGW believes that some staff will be required to help the commission complete its mission effectively and efficiently. However, CAGW does not have the resources to determine how many staff members would be required or what the initial appropriation should be. In any case, CAGW urges Congress to follow the example exemplified in the Texas Sunset Commission. For every dollar spent by the commission during its 19 year existence, $42.50 was returned to the taxpayer. If a federal sunset commission returns similar results, it would certainly be worth its existence and staff.

If the committee believes that it is necessary to quantify the number of staff within the commission, CAGW encourages the committee to do so. Perhaps the Congressional Budget Office (CBO) could give an appropriate number with which to begin and place a cap on the number of employees to be hired. In addition, the cap could only be lifted with approval from Congress.

According to H.R. 2373, a staff director will be paid at a G.S. 15 level (for 2002, this amount is $92,060-$119,682). The director in turn may appoint and fix the pay of additional personnel as the Director considers appropriate. These employees will be appointed subject to the provisions of title 5, United States Code, which govern appointments in the competitive service. The employees will also 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. CAGW believes these requirements would help assure that well-qualified people will be hired to undertake the duties required by the commission.

By way of background, the first Hoover Commission was permitted by law to appoint and fix compensation for staff as it deemed necessary. In its last report, the commission reported to Congress that it had 74 people on its staff. It was a mixture of secretaries, commissioner assistants, administrative staff and central staff. The commission received an initial appropriation of $750,000.

The Grace Commission had 161 corporate executives and community leaders, which led an army of 2,000 volunteers on a waste hunt through the federal government for two years. However, the search was funded entirely by voluntary contributions of $76 million from the private sector and cost the taxpayers nothing.

The Texas Sunset Commission, which H.R 2373 is based on, is authorized to appoint a director who can employ sufficient staff to carry out the commission's responsibilities. This year, the commission is employing 32 staff persons and its budget is $1.6 million, or 0.003 percent of the total budget of $57 billion for Texas.

In addition, the Texas Sunset Commission has found little cost associated with its mandate. The commission uses existing mechanisms to implement the provisions found in the bill and any costs the commission does incur is offset in the budget for each fiscal year. A similar mechanism is also provided for in H.R. 2373.

CBO has not scored the bill as of this memo.

3. **It was suggested that staff from the Congressional Budget Office (CBO) and the Congressional Accounting Office could assist the commission. How would they be able to accomplish this significant workload increase without hiring additional staff?**

A. CBO already provides a list of budget options that the commission could use to recommend changes within the federal government. For example, CBO's *February 2001 Budget Options*, listed over 50 choices to cut non-defense spending that could have saved taxpayers well over $3 billion in just one year. For example (see p. 193), one option would be to eliminate the Export-Import Bank, the Overseas Private Investment Corporation, and the Trade and Development Agency. These agencies provide direct loans, credit insurance, investment financing, insurance, grants and other forms of financial assistance. In 2001, appropriations for these agencies cost the U.S. taxpayer $927 million, $62 million and $50 million respectively, or $1.39 billion.

Another option listed by the CBO is ending the Rural Utilities Service (p. 206). This agency's mission is to subsidize loans and grants to electric and phone companies serving primarily rural areas. In 2001, subsidies total $41 million and the agency spends approximately $35 million to simply administer its programs.

Eliminating the Advanced Technology Program is another option the CBO provides in its report (p. 242.) Its objective is to further the competitiveness of the U.S. industry by helping to convert discoveries in basic research into technological advances. Eliminating this program could save taxpayers $1.2 billion over ten years.

We presume "Congressional Accounting Office" means the General Accounting Office (GAO), which regularly writes reports on agencies' performances under the Government Performance and Results Act of 1993. For example, the GAO more than 70 performance reports and plans for years 1999, 2000, and 2000. The commission could use these reports in evaluating agencies for abolition, re-organization or re-authorization.

In addition, congressional committees such as the Government Reform Committee could make recommendations as part of its usual mandate. Organizations such as CAGW, other taxpayer/consumer groups, think tanks in Washington D.C. and across the country are always making recommendations on how to make government more effective and efficient. Their recommendations could be evaluated and if appropriate, could be adopted by the commission without any cost to the government.

4. In the past, we witnessed Federal government shutdowns because of the failure of Congress to pass legislation. How would this bill ensure that similar consequences do not occur if Congress failed to pass agency reauthorization legislation?

A. Failure to pass legislation to prevent government shutdowns is usually due to political gamesmanship. It also usually involves the appropriations process, which is different from the re-authorization process. CAGW believes H.R. 2373 will actually force Congress to behave prudently and quickly if an agency is to be re-authorized. If Congress cannot get beyond political gamesmanship to re-authorize an agency, perhaps the agency is not worth keeping.

5. During testimony, if was suggested that if agencies were eliminated, employees would have opportunities for other jobs because there were many vacancies in the federal government. What formalized outplacement services would be provided for displaced workers so that they would not suffer a break-in-service?

A. CAGW believes that no further formalized outplacement services would be needed other than what already exists within the federal government, and that is stated in Sec. 8 of the legislation. Currently, according to the Office of Personnel Management, agencies can generally choose from among 3 groups of candidates to fill competitive service jobs. One route is for an agency to choose from a list of eligibles that have civil service status and are eligible for noncompetitive movement within the competitive service because they either now are or were serving under career-type appointments in the competitive service. These individuals are selected under agency merit promotion procedures and can receive an appointment by promotion, reassignment, transfer, or reinstatement. CAGW suspects that this avenue would provide a proper vehicle for assisting any employees losing their job due to their agency being abolished.

In addition, when a federal agency or department is scheduled for abolition by the commission and Congress, employees will essentially have up to a year's notice to find a new job. This is almost like a year's "severance" package. Government employees would be given far more notice than most employees in the private sector receive if their job is eliminated.

. **Customer satisfaction was one of the criteria for basing a decision on whether or not to sunset a federal agency. Because of the nature of their work, compliance-type agencies, such as the Environmental Protection Agency, the US Customs Service, the Equal Employment Opportunity Commission, and others, are often met by angry customers. How would this phenomenon be considered during the evaluation process?**

. The commission will be composed of eight members of Congress. CAGW believes they and the other commissioners will be able to discern the difference between valid and invalid customer complaints. Members of Congress do this as they write and pass legislation that affects thousands of individuals and businesses every day while being besieged by lobbyists with differing points of view and set agendas.

However, this does not mean that complaints should be dismissed out of hand. If the commission notices a pattern of complaints, it is likely a valid point to consider in the review process.

7. **How much staff time and resources will each agency need to devote to sunset commission auditors?**

A. Staff time and resources will vary from agency to agency. However, since the sunset evaluation will only occur, on average, every 12 years, actual staff time will be minimal over that period of time.

Representatives from the Texas Sunset Commission said obtaining an accurate figure is difficult but thought that upper management probably spends less than 5 percent of their time assisting commission auditors during the actual review time. Should that remain true at the federal level, it is an insignificant burden on the agencies and tax payer.

Mr. WELDON. Mr. Berthoud.

Mr. BERTHOUD. Chairman Weldon and distinguished members of the committee, thank you very much for inviting us here today. I am John Berthoud, president of the National Taxpayers Union. We have 335,000 members nationwide, and we have been a long-time supporter of budget process reforms, and so we are pleased to speak and support this legislation.

Delegate Norton asked some very important questions, I think, about delegation. It seems to be a—there's some agreement among all members of the committee that there are issues of duplication, excess, and I think we all, no matter what political philosophy we come from, would rather see dollars spent in more efficacious ways than in what we might identify as waste and abuse, and the issue is how, within the constructs that the founding fathers gave us 225 years ago, can we best create a process to eliminate that which is no longer useful, that which is no longer necessary. I think, which there is some agreement among all of us here today, that there is at least some problem to that degree in the Federal Government.

Delegating—the issues of Congress delegating powers, Congress binding itself to future—in future Congresses has been an issue perennially, both in a programmatic sense such as entitlements, where one Congress binds future Congresses, and in process reforms. We can go back to the Gramm-Rudman-Hollings legislation of 1995—excuse me, 1985, which was struck down in the *Bowsher* v. *Cynar* case and then resurrected in 1987, we can also look at something we support. And we supported the Gramm-Rudman very strongly. We also supported the BRAC process, creating an independent Commission to cut spending in an area where most would agree that excess had crept up in.

And so what we look at your efforts, Mr. Chairman and members of the committee, with this legislation is to craft legislation that passes Constitutional muster, that will not perfect the process—we don't see any magic golden bullets in the legislative process—but that will improve the process within Constitutional bounds. For us it is an issue of government by inertia versus greater review and the possibility of dislocation. I think Congresswoman Morella in her questions was asking about the possibility for upset and dislocation in agencies. I don't think necessarily that's a bad thing. If agencies have to hustle and have to, you know, either reorganize themselves or occasionally go out of business because their functions are not the best use of Federal dollars, that is a good thing for taxpayers and for, indeed, all Americans.

Let me say a couple words about a somewhat analogous process, the budget. The Base Closing and Realignment Commission, which was first sponsored in the late 1980's by a still relatively obscure Texan again—seems to be something about Texas today—named Dick Armey who worked with Members on both sides of the aisle to create an independent Commission that would select sites for closing.

Besides getting a list of recommendations from an impending Commission, the BRAC process had another very unique aspect, which was that all recommendations had to either be accepted by Congress as a whole or rejected. No log-rolling was allowed. So legislators whose Districts were adversely impacted could not trade

votes with other legislators, although it did certainly cause some legislative discomfort.

The Congress we believe wisely passed the BRAC process. We've had four rounds of base closings in ensuing years, and the Defense Department estimates that taxpayers are currently saving $6 billion per year because of those BRAC rounds. I think that's the kind of savings—and what happens to those dollars, now we might have a debate. I might say those dollars should go back to taxpayers. Others might see those dollars as being going to other programs. That, to me, seems to be a very healthy and very positive debate. But a politics of inertia where those dollars just stay in obsolete bases or, in the case of today, obsolete programs seems to be a lose/lose for all concerned.

So for us the message from the BRAC process is clear: independent Commissions can provide very effective assistance to the job of ferreting out waste, and so we also particularly applaud the mechanism in H.R. 2373 that requires an affirmative act of Congress, congressional reauthorization for an agency. The legislation specifies that otherwise agency would terminate. Such a process would ensure that programs continue to exist not simply because of inertia, but rather because America has a continuing need for them.

So, Mr. Chairman, we applaud this legislation. We thank Congressman Brady and Congressman Turner for their good efforts.

On behalf of our 335,000 members, we would encourage you and the members of the committee to work through the Constitutional issues, hopefully with advice from the Department of Justice, and get legislation that will help us re-prioritize and better spend Federal dollars.

Thank you very much.

Mr. WELDON. Thank you very much.

[The prepared statement of Mr. Berthoud follows:]

Statement of John Berthoud, Ph.D.
President of the National Taxpayers Union

before the
United States House of Representatives
Subcommittee on the Civil Service, Census, and Agency Organization

on
H.R. 2373, The Abolishment of Obsolete Agencies and Federal Sunset Act of 2001

April 23, 2002

I. Introduction

Mr. Chairman and Members of the Subcommittee, my name is John Berthoud. I am President of the National Taxpayers Union (NTU), a nationwide grassroots lobbying organization of taxpayers with 335,000 members. You can find out all about NTU – and our educational affiliate, the National Taxpayers Union Foundation – on our website: www.ntu.org.

I come before you today to state our views on H.R. 2373, The Abolishment of Obsolete Agencies and Federal Sunset Act of 2001. NTU supports this legislation, which is sponsored by Representative Kevin Brady, and we thank you for holding this important hearing.

In my remarks today, I will offer some comments on federal spending growth in the aggregate and why legislative efforts such as H.R. 2373 are needed.

II. Federal Spending: Spiraling Out of Control

Despite promises that we have "reinvented" government, and that "the era of big government is over," the past decade witnessed a continuation in the growth of non-defense federal spending that began in the 1930s.

With tens of billions of dollars taken from the defense budget, as well as the wealth of new revenues generated by the strong economy of the 1990s, politicians went on one of the greatest spending binges in our nation's history. Non-defense spending rose – in real terms – by 24 percent in just this past decade (see Figure 1).

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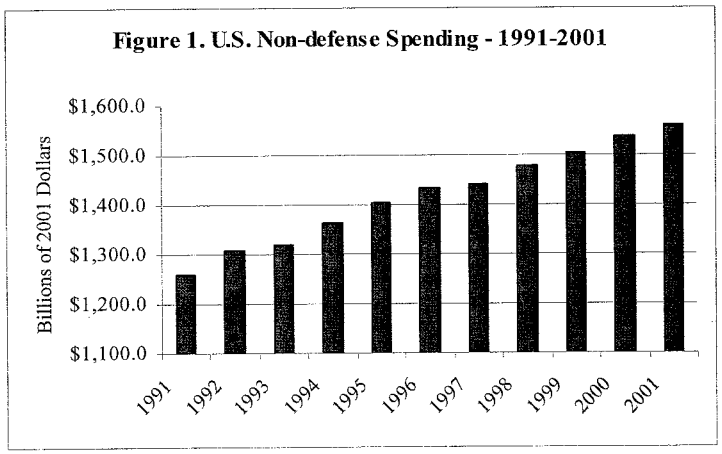

Yet, this growth in spending is apparently not enough for many in Congress. Some are actually calling for repealing part or all of last year's historic tax cut to enable Washington to create more programs.

Perhaps the loudest proponent of increasing taxes has been Senator Ted Kennedy of Massachusetts. Senator Kennedy's exact plans for more government programs are made clear in the National Taxpayers Union Foundation's BillTally tracking system, which examines the sponsorship and cosponsorship records of Members of Congress. According to our most recent analysis, Kennedy is authoring legislation to increase spending $56.6 billion per year above current levels. That's $566 billion in new spending over the coming decade. Kennedy was signed onto 65 pieces of legislation that would increase spending, but could bring himself to sign onto only one bill that would save taxpayer dollars.

III. The Need for Process Reforms

NTU has long recognized the importance of systemic reform of the budget process. Changing the rules of the game can help level the playing field for taxpayers against well-heeled special interests who are seeking more federal dollars.

In fact, NTU was the first sponsoring organization of a Balanced Budget Amendment, which would prevent the waste that comes from deficit spending. Decades of deficit spending have saddled future generations with trillions in liabilities, and helped spawn faster growth of government than would otherwise have been the case. Imagine, for instance, if President Lyndon Johnson wasn't

allowed to simply pay for all of his "Great Society" programs with a credit card (deficit finance). We believe that President Johnson would have been unable to launch many of these programs had he presented taxpayers in the 1960s with the costly bill up-front.

We also support a Tax Limitation Amendment (TLA) to the United States Constitution. Al Cors, NTU's Vice President for Government & Corporate Affairs, makes the following compelling case for the TLA:

> The U.S. Constitution once contained strong protections against unlimited taxes. An income tax was not permissible, and for many years scholars believed that Article I, Section 8 of the Constitution granted to Congress only 18 specific powers such as the ability "to raise and support Armies." Adoption of the 16th Amendment in 1913 authorized an income tax without any limitation. Then in the 1930s the Supreme Court buried the doctrine of enumerated powers, ruling that the spending power was "not limited by the direct grants of legislative power found in the Constitution."
>
> With the Constitution's original tax limits stripped away, taxes soared. . . . [F]ederal tax collections have climbed more than 175,000%. (That's not a misprint.)
>
> It is time to correct this fundamental defect, the surrender of effectively unlimited power to Congress to raise our taxes. The Tax Limitation Amendment is very much in the spirit of the Bill of Rights, which limits the government in order to preserve freedom. While a Balanced Budget Amendment will likely be adopted first, and is necessary to protect against unlimited debt, we must also protect the people from excessive taxes.[1]

The legislation we are discussing today, H.R. 2373, would also be helpful in the fight against Washington excess. Clearly, we need to create a mechanism to end programs that no longer have value to the American taxpayer. But this is a difficult task. As Ronald Reagan said, "The nearest thing to eternal life we'll ever see on the earth is a government program."[2]

H.R. 2373 would establish a 12-member commission that would review the efficiency and public need of federal agencies. The legislation would also provide for the abolishment of agencies for which a public need does not exist.

Cutting government waste via commissions has proven to be a successful strategy. One of the most successful examples of government by commission has come in the area of military bases. As with overall federal spending, the number of military bases has grown far in excess of what America needs. Despite a clear need to eliminate bases, Congress never made the cuts, because each base could be effectively protected by just a handful of interested lawmakers.

Then, in the late 1980s, under the leadership of a still somewhat obscure Representative from Texas named Dick Armey, the Congress adopted the BRAC (Base Realignment and Closure) process,

whereby an independent commission would select sites for closing. The idea of government decisions made by independent authorities can be traced to the Progressive era and reflects the thoughts of Chester Bowles who once said that, "government is too big and important to be left to the politicians."[3]

Besides getting a list of recommendations from an independent commission, the BRAC process has had another very unique aspect – all recommendations have to be either accepted as a whole by Congress or rejected – no logrolling is allowed. Thus, legislators whose districts are adversely impacted cannot trade votes with other legislators on other issues to get their districts exempted.

Congressman Armey was able to win passage of this legislation and we have had four rounds of base closings over the ensuing years. The Defense Department estimates that taxpayers are currently saving $6 billion per year because of these four BRAC rounds.[4] Those savings make a good argument for further rounds of the BRAC process and for adoption of this legislation.

The message from the BRAC process is clear: independent commissions can provide very effective assistance to the job of ferreting out waste.

We also particularly applaud the mechanism in H.R. 2373 that requires an affirmative act of Congressional reauthorization for an agency. The legislation specifies that otherwise, this agency would terminate. Such a process would ensure that programs continue to exist not simply because of inertia, but rather because America has a continuing need for them.

IV. Conclusion

Mr. Chairman, we again thank you for today's hearing. We think this is important legislation which we are proud to support. We look forward to working with the sponsors of this bill to achieve its passage.

We know that Members of this Subcommittee – reflecting Congress as a whole – have some vastly differing political ideologies. Some believe that the federal government should be much smaller. Others believe that the federal government isn't large enough. But wherever you fall on the ideological spectrum, we believe that cutting wasteful programs and ending obsolete agencies is the right thing to do.

For fiscal conservatives, the logic is clear. But we believe that even those seeking more expansive government should support this legislation. A large, bloated government with great waste not only damages the economy, but breeds cynicism about what government can do. Such cynicism can hardly further the objectives of those who would seek a larger government presence in our lives.

While I do not share the liberal outlook on government, I know that when their case is made honestly, it is not just an argument that "bigger, more expensive government is better." It is about

bigger, rational government to achieve specific goals and objectives. While NTU believes that society would be better served by smaller government, no matter how big a Member of Congress believes government should be, waste and inefficiency simply cannot further their goals. And perhaps most importantly, waste and inefficiency are certainly not in the interest of the American public.

Thank you.

Endnotes

1. Letter of Al Cors to Representative Joe Barton, February 24, 1998, http://www.ntu.org/features/ntu_on_capitolhill/Letter_1998_03_29.php3.

2. Source: http://www.house.gov/brady/sunsetindex.html.

3. Source: "The Political Resource Page: Chester Bowles," http://www.politicalresource.net/chester_bowles_quotations.html.

4. "Under Secretary Aldridge Briefing on Base Closure Process," United States Department of Defense News Transcript, August 2, 2001, http://www.defenselink.mil/news/Aug2001/t08022001_t802brac.html.

Mr. WELDON. Mr. Edwards, you may proceed. You are recognized.

Mr. EDWARDS. Thank you very much, Mr. Chairman and members of the committee, for allowing me to testify today regarding the Abolishment of Obsolete Agencies and Federal Sunset Act. Establishing a systematic procedure to review all agencies and abolish unneeded ones is a great idea. It is an idea that would be a sound management practice in any large organization, especially one as big as the $2 trillion Federal Government.

Sunset legislation has been debated before, as you know, at the Federal level. In the late 1970's there was a strong bipartisan movement to pass Federal sunset legislation introduced by Senator Ed Muskie. It would have sunset most Federal programs every 10 years. Supporters of the sunset legislation at the time ranged all the way from Jesse Helms and William Roth to Ed Kennedy and John Glenn.

Twenty-five years later, the need to reform, review, and abolish Federal agencies and programs is much greater. Today the explosive budget costs of the baby boomers loom on the horizon. The country has more than two decades of experiences with Federal agency and program failures, and a privatization revolution has swept the world, but not yet this country.

Let me illustrate the need for Federal sunset legislation by contrasting private industry with the Government industry. In the private sector, companies are sunset routinely when their products are no longer needed. For example, retailer Montgomery Ward was recently sunset by the market, and it looks like K-Mart may be next. That's good news for the overall economy, because it means that more efficient methods of satisfying the public have arrived. Wal-Mart and Target come to mind. By contrast, there is no structured method to sunset Federal agencies when they no longer serve a useful or cost-effective purpose.

In the private sector, companies also get sunsetted if they follow shoddy financial practices. Enron, of course, is a recent example. By contrast, Government agencies are often dreadful financial performers year in and year out but face no effective sanction to enforce better results.

The administration's 2003 budget notes that Amtrak has utterly failed to wean itself off subsidies and is a futile system. Clearly, Amtrak should have been up for sunset review many years ago.

Overall—and these are staggering statistics—10 percent of all businesses in the United States go out of business every year, and 10 percent of all private sector jobs disappear either through business contractions or failures. Now look at Government. While Members of Congress are threatened with sunsetting every 2 years, the executive branch has no mechanism to create the constant renewal that every organization needs in our fast-changing society, so in the private sector poor performers are routinely weeded out and Federal sunset law can help bring that private sector dynamism to the Federal Government.

There have, of course, been numerous attempts to bring private sector management practices into the executive branch of Government. The Bush administration has launched an effort to grade programs as effective and ineffective, as has been discussed today,

but that initiative needs and enforcement mechanism, and I think the Federal sunset law would be a way to enforce the administration's management initiatives.

Aside from reforming programs, of course, a Federal Sunset Commission would ask the more fundamental question of whether an agency or program ought to exist at all. For example, the public cannot rely on the Agriculture Committees in the House and Senate, for example, to eliminate unneeded farming programs, as this year's farm debate makes clear. Congress needs an independent voice within Congress to push for needed reforms.

This committee should consider how a Sunset Commission could build on the administration's new management rating system to cut wasteful spending. As I think has been mentioned, I think a good idea would be, say, 5 years in a row of ineffective grades from the OMB for a Federal agency should trigger perhaps an automatic Sunset Commission review.

Let me suggest an additional idea that the committee may want to consider with this sort of legislation. Aside from proposing agency reforms and termination of wasteful spending, the Federal Sunset Commission ought to have a broad capability to proactively study how agencies could be transferred to the private sector. Privatization is an idea that has transformed economies around the world, but the Federal Government has so far been oddly resistant to the idea, even for obvious candidates such as Amtrak. The Federal Sunset Commission could examine privatization models that have worked elsewhere, such as Canada's privatization of air traffic control or Britain's privatization of some military facilities, or Germany's privatization of its post office, and figure out how to implement ideas here.

So, at minimum, a Federal Sunset Commission could help uncover serious management lapses at agencies before they explode into crises. The current overhaul of the horribly run Immigration and Naturalization Service would have been completed probably years ago if the Federal Sunset Commission had been in place. But, beyond averting management disasters, a Sunset Commission could determine which agencies and programs are needed at all.

With the coming budget pressures of entitlement programs set to explode with the retirement of baby boomers, we need to start terminating and privatizing as many government programs as we possibly can so that the next generation is not crushed with taxes.

Thank you for holding these important hearings. I look forward to working with the committee on these issues.

Mr. WELDON. Thank you, Mr. Edwards.

[The prepared statement of Mr. Edwards follows:]

Statement of
Chris Edwards, Director of Fiscal Policy, Cato Institute

before the
House Committee on Government Reform,
Subcommittee on Civil Service, Census, and Agency Organization

regarding
Abolishment of Obsolete Agencies and Federal Sunset Act of 2001

April 23, 2002

Mr. Chairman and members of the committee, thank you for inviting me to testify today regarding the Abolishment of Obsolete Agencies and Federal Sunset Act of 2001 (H.R. 2373). In compliance with the truth in testimony rules, I note that the Cato Institute receives no federal grants, loans, or subsidies.

Establishing a systematic procedure to review all federal agencies and abolish unneeded ones is a great idea. It is an idea that would be a sound management practice for any large organization, especially one as big as the $2 trillion federal government.

Since the 1970s, numerous state governments have adopted the sunset process, and it is currently used in about 16 states with varying degrees of success.[1] The State of Texas sunset program is apparently one of the most successful due to the broad range of agencies reviewed, the ability of the state sunset commission to take on major reforms, and the program's success in getting reforms enacted.[2]

Sunset legislation has been debated before at the federal level. In 1995, a seven-year sunset rule for federal regulations gained some legislative support, but was not enacted.[3] In the late 1970s, there was a strong bipartisan movement to pass federal sunset legislation introduced by Senator Edmund Muskie (D-Maine) that would have sunset most federal programs every ten years.[4] Supporters of sunset legislation at the time ranged from Jesse Helms (R-N.C.) and William Roth (R-Del.) to Edward Kennedy (D- Mass.) and John Glenn (D-Ohio). While gaining broad support in the Senate, the legislative effort failed in the House.

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

Stagnant Government vs. the Dynamic Private Sector

Let me illustrate the need for federal sunset legislation by contrasting private industry with the "government industry." Some may say that automatically sunsetting or terminating

agencies on a certain date unless reauthorized is radical medicine for government reform. But in the private sector, companies are routinely "sunset," or put out of business, by new companies that better serve the public.

In the private sector, companies are sunset when their products are no longer needed or consumers choose superior alternatives. For example, retailer Montgomery Ward was recently sunset by the market, and it looks like K-Mart may be next. That is good news for the overall economy because it means that more efficient methods of satisfying the public have arrived (Wal-mart and Target come to mind). By contrast, there is no structured method to sunset federal agencies when they no longer serve a useful or cost-effective purpose, or when more efficient private alternatives become available. As a result, government agencies very rarely disappear.

In the private sector, companies also get sunset if they follow shoddy financial management practices (Enron is a recent example). By contrast, government agencies are often dreadful financial performers year in and year out, but face no effective sanction to enforce better results. For example, the administration's fiscal 2003 budget notes that Amtrak has "utterly failed" to wean itself off subsidies and is a "futile system." Clearly, Amtrak should have been sunset long ago.

Consider the high overall rate of "sunsetting" in the private sector. Studies indicate that roughly 10 percent of business establishments in the United States go out of business each year, and that roughly 10 percent of all private sector jobs disappear due to business contractions and failures.[5] Clearly, businesses and private sector workers are under constant threat of being sunset.

Now look at government. While members of Congress are threatened with sunsetting every two years, the executive branch has no mechanism to create the constant renewal that every organization needs in our fast-changing modern society. Government agencies are the only organizations in society that can have immortality without good performance. Government employees are the only workers with near guarantees of lifetime jobs regardless of their competency and level of effort.

In the private sector, poor performers are routinely weeded out, with resources continually shifted to more productive activities. A federal sunset law can help bring that same healthy process of renewal to the federal government sector.

Management Reform and Program Elimination

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

More importantly, a new federal sunset commission would ask the more fundamental question of whether an agency or program up for review ought to exist at all. A sunset commission could be a voice within Congress pushing for needed eliminations. The public cannot rely on the agriculture committees in the House and Senate, for example, to eliminate unneeded farm programs, as this year's farm debate makes clear. A sunset commission would need to be designed with enough clout so that its recommendations were carried through to enactment.

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

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

Proactive Solutions

Aside from proposing agency reforms and termination of wasteful spending, a federal sunset commission ought to have a broad capability to proactively study how agencies could be transferred to the private sector. Privatization is an idea that has transformed economies around the world, but the federal government has so far been peculiarly resistant to the idea, even for obvious candidates such as Amtrak. A federal sunset commission could examine privatization models that have worked elsewhere, such as Canada's privatization of air traffic control, Britain's privatization of some military facilities, or Germany's privatization of its post office, and figure out how to implement such ideas here.[6]

Conclusion

At minimum, a new federal sunset commission could help uncover serious management lapses at agencies before they explode into crises. Perhaps the current congressional overhaul of the horribly run Immigration and Naturalization Service would have been completed years ago if a federal sunset commission had been in place. Beyond averting federal management disasters, a sunset commission could lay out the facts regarding whether agencies and programs are needed at all. With the coming budget pressures of entitlement programs set to explode with the retirement of the baby boomers, we need to start terminating or privatizing as many government programs as possible so that the next

generation is not crushed with taxes. A new federal sunset commission with a broad mandate could help Congress make these needed reforms.

Thank you for holding these important hearings. I look forward to working with the committee on these issues.

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[1] National Conference of State Legislatures, "The Sunset Process: Still Effective After All These Years," background materials for NCSL annual meeting, August 14, 2001, www.ncsl.org.
[2] Ken Levine, Assistant Director, Texas Sunset Advisory Commission, presentation to NCSL annual meeting, August 14, 2001.
[3] Congressional Quarterly, *CQ Almanac*, Vol. LI, 1995, p. 3-7
[4] Senator Muskie (D-Maine) introduced sunset legislation in the 94th, 95th, and 96th Congresses. See Congressional Quarterly, *CQ Almanac*, Vol. XXXVI, 1980, p. 530.
[5] Steven Davis and John Haltiwanger, "Gross Job Flows," in *Handbook of Labor Economics*, 1999. See also Timothy Pivetz, Michael Searson, and James Spletzer, "Measuring job and establishment flows with BLS longitudinal microdata," *Monthly Labor Review*, Department of Labor, April 2001. And phone conversation with James Spletzer.
[6] "How Canada Soared in Air-Traffic Control," *Wall Street Journal*, March 22, 2001, p. A19; Wess Mitchell, "Privatizing Defense: Britain Leads the Way," National Center for Policy Analysis, March 29, 2002, www.ncpa.org/pub/ba/ba391/; Deutsche Post website at www.postag.de/postagen.

Mr. WELDON. The Chair now recognizes himself for 5 minutes.

I'd ask all the members of the committee maybe to respond to this. There are some people who would say that the sunset process is not necessary because Congress already has sufficient authority to oversee the Federal Government and eliminate agencies and programs that do not work. How do we respond to that type of criticism against this legislation?

Mr. SCHATZ. Yes, Mr. Chairman, the Congress does have that authority. Unfortunately, it's not exercised very often. As I mentioned in my remarks, the committees, themselves, get caught up in the programs and agencies that are under their jurisdiction and often are unable or, in some cases, unwilling to see the duplication that lies elsewhere in the Federal Government.

One very important role that a Sunset Commission would play would be to determine whether a program or an agency is duplicative and whether or not it is performing the way it is supposed to; therefore, giving a more objective list and evaluation to the committee. It would also help educate the public about whether or not these particular programs and agencies are doing what they're supposed to do and taxpayers can go to really one place to find out what's going on. Right now there's so much that is involved in terms of getting information from Congress, in terms of finding what you're looking for, that I think the Sunset Commission would help address that particular issue.

Mr. BERTHOUD. Mr. Chairman, I think that's a good question. If you look at the small case study that I suggested, which is base closings, both the first Bush administration and the Clinton administration, their Department of Defense every year would publish statistics about the decline, huge decline post end of the cold war in military spending, in military personnel, in procurement dollars, and the area of spending in Defense that was least scathed or most unscathed was military bases. Congress certainly had the power and the ability, but the institutional logic was not there and military independent base closing process helped facilitate a need that institutional politics of Congress was not able to adequately do by itself.

So I think absolutely you are correct that Congress has the ability to do it, but Congress has not done as good a job as it can, and I think this process would help it do better.

Mr. EDWARDS. I would agree with those comments, and I would say that often the problem is, of course, that the authorizing committees get captured by the industry they're supposed to be overseeing. I mean, the Agriculture Committees in the House and Senate I think are a good example. They seem to be very resistant to farm reforms that, you know, there's wide agreement in the private sector, everyone from the "Washington Post" to the Cato Institute agrees that farm programs need reform, and yet it didn't happen this year.

Also, you know, the Federal Government is so vast that often, you know, problems are below the surface for many years, and, you know, obviously Members can only focus on narrow issues, and, you know, problems at the INS were sort of under the surface for many years, but until a crisis occurs it often doesn't get on the congressional agenda, so I think the sunset process would be a way

to get problem agencies onto the agenda for Congress to take a look at.

Mr. WELDON. Do you any of you have any insight into this issue of how you appoint the Commission? The legislation, as it has been crafted by Mr. Brady and Mr. Turner—and I think Mr. Doggett was also involved in drafting this legislation—calls for, I think, all the members to be appointed by the legislative branch. It was recommended possibly they could all be appointed by the President and confirmed by the Senate. I think that's another extreme. Do you have any thoughts on this issue? It was raised by the administration witness that there's some concerns about the makeup of the Commission.

Mr. EDWARDS. I think the way the bill is structured now is actually pretty good. I think that the members of the Commission should be appointed by Congress. I think this Sunset Commission should be an agency of Congress so that—I mean, ultimately the recommendations are going to be forwarded to Congress, and I think that there can be greater prestige and clout—a word that was used earlier—if these are Members of Congress appointed by the Speaker and the majority leader. I think the recommendations will get more thorough analysis by Members of Congress.

Mr. WELDON. Would each of you agree with that, or would you offer an olive branch to the White House?

Mr. SCHATZ. Well, clearly the Justice Department's letter will have some impact on what happens at the subcommittee and committee levels, so I would really defer judgment until we see what they have to say and then do a separate analysis, because it wasn't necessarily what we were looking at specifically when we came before you this afternoon.

Mr. WELDON. I see my time has expired.

Mr. Davis, did you have any questions for this panel?

Mr. DAVIS. Yes, Mr. Chairman. Thank you very much.

Perhaps each one of the panelists could just respond. I mean, Texas is a big State, but it is small in comparison to the United States of America, and getting around to each one of the agencies obviously is quite time consuming and labor intense. Given the Texas experience, do you think that the amount of—or that we would get to the agencies in such a manner that we could effectively carry out the intent of the Commission?

Mr. BERTHOUD. Congressman, I think that's a good question. I think Congresswoman Morella was asking questions similar to that, and I think part of the answer—Texas is not the United States. The United States is not Texas. Washington also has tools such as the General Accounting Office, such as the Congressional Budget Office that I think will be of great assistance to this Commission.

Bill Eggers I would recommend to the committee has done terrific work on the Texas Commission, and the committee might want to—and I would be happy to provide information on how to get a hold of Mr. Eggers. I've seen him give a presentation on what was done in Texas. It's terrific. I just wanted to amend that to my comments and for the sake of the committee.

Mr. SCHATZ. I would agree with my friend from NCU here because there are resources that do exist. We put together a list each

year called "Prime Cuts," which is more than 550 recommendations that are gathered from CBO and OMB and years of congressional proposals. That is a laundry list of what could be done. There will be obvious disagreements about whether those things are appropriate or agreeable to the Congress, but the information does exist.

I think what the Sunset Commission would be able to do is to consolidate a lot of what is out there in a way that would be more understandable to the taxpayers and perhaps more acceptable and maybe more objective in terms of what is being presented to Congress. It would be outside of the committee process, perhaps be less partisan, and hopefully result in something that could be used.

The Grace Commission, for example, made over 2,400 recommendations, $424 billion in savings over 3 years. That was about—was 160 senior business people and about 2,000 volunteers over a year-and-a-half. So there are experiences over the years—the Hoover Commission, other Commissions have done this type of work in the past.

Obviously, if you appoint a Sunset Commission and you're not getting your money's worth, it is time to reexamine whether it's working well.

Mr. EDWARDS. I think, you know, the one role of the Sunset Commission would be to do something that the GAO and the departmental IGs and others don't currently do. There's currently a lot of focus, and the GAO does a tremendous job in looking at management reform and management issues and financial issues with the agencies, but they don't look at agency and program possible terminations and they don't look at how to move Federal activities into the private sector, and I think that would be an area where a Sunset Commission would have to get staff specialization to look at experiences of other countries and to look at how a lot of these agencies and programs could be moved to the private sector.

Mr. DAVIS. Mr. Chairman, I don't have any further questions. I certainly just want to thank the witnesses for their testimony. I appreciate their response.

Mr. WELDON. Well, I thank the ranking member for his input and all the Members who attended the hearing, and I certainly thank this panel for their very useful input. Again, I thank all of the witnesses.

The record will be left open for a couple of weeks to allow Members to submit questions in writing and for additional comments and extension of remarks.

With that, this hearing is now adjourned.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

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