

# Sunset Legislation in the States: Balancing the Legislature and the Executive

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## ABSTRACT

Sunset provisions are clauses embedded in legislation that allow a piece of legislation or a regulatory board to expire on a certain date unless the legislature takes affirmative action to renew the legislation or board. The time between enactment or renewal and the next sunset date varies from state to state but typically runs from four to twelve years. The sunset provision typically requires that the legislation or board undergo a review, usually conducted by legislative staff or by state auditors. The reviewers will recommend allowing the law or board to sunset, allowing it to continue but with changes, or leaving it unchanged. Sunset provisions also frequently allow or even require a preliminary review before the final review. Sunset laws are a key tool the legislature uses in asserting itself against an executive branch that often dominates state government.

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**S**unset provisions are clauses embedded in legislation that allow a piece of legislation or a regulatory board to expire on a certain date unless the legislature takes action to renew the legislation or board. The time between enactment (or renewal) and the next sunset date varies from state to state but typically runs from four to twelve years. The sunset provision typically requires that the legislation or board undergo a review, usually conducted by legislative staff or by state auditors. The reviewers will recommend allowing the law or board to sunset, allowing it to continue but with changes, or leaving it unchanged. Sunset provisions also frequently allow or even require a preliminary review before the final review. Sunset laws are a key tool the legislature uses in asserting itself against an executive branch that often dominates state government.

This sunset process is used almost exclusively at the state level. Local governments have adopted sunset provisions unevenly, and the federal government has used it in isolated cases, such as the tax-rate reductions enacted early in president George W. Bush's first term and a few provisions of the Patriot Act. Generally, though, Congress has been reluctant to use sunset provisions; J. W. Drury, a political science professor and former director of the Kansas Legislative Research Department, explains that "one can reasonably assert that the size and complexity of the federal government would make implementation of such a move as widespread use of [sunset provisions] impossible."<sup>1</sup> In contrast to the federal government's selective use of sunset provisions, many state governments use them regularly.

The first state government to use a sunset provision was Colorado in 1976,<sup>2</sup> although it could be argued that the federal Alien and Sedition Acts of 1798, which contained a clause that terminated the law at the end of John

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1. J. W. Drury, "Sunset Laws: A New Type of Legislative Oversight?," *State and Local Government Review* 14, no. 3 (1982): 107–9.

2. The first state to propose a sunset provision was Texas, as a constitutional provision. J. K. Falk, "State Regulatory Development and Reform: An Overview," *Arizona State Law Journal* 1985: 261.

Adams’s presidency, was the first sunset provision. However, it was not a sunset provision as we understand it in the modern usage, because there was no intent to renew the Alien and Sedition Acts. As of 2014 only three states have never had a sunset law, and five others have repealed their sunset laws.<sup>3</sup> However, approaches to sunset laws and their application vary greatly from state to state. This paper provides a broad overview covering all the states and uses case studies to illustrate specific points.

## I. THE SUNSET REVIEW PROCESS

Sunset reviews take different forms and can be applied broadly or selectively. The four main approaches state governments use can be described as comprehensive, regulatory, selective, and discretionary. A comprehensive review state requires all statutory agencies to undergo sunset review on a preset schedule. A regulatory review state requires only licensing and regulatory boards to undergo sunset reviews, and a selective review state reviews select agencies and regulatory boards. A discretionary state allows the legislature to choose which agencies and statutes to review. There are also some special cases. Table 1 identifies which states fall into each of the main four categories, and table 2 details the special cases.

TABLE 1. TYPE OF SUNSET REVIEW LAW BY STATE, STATUS IN 2010

Category	States
Comprehensive (10 states)	Alabama, Alaska, Arizona, Delaware, Florida,* Louisiana, Minnesota, Nevada, Ohio, Tennessee
Regulatory (8 states)	Colorado, Georgia, Hawaii, Illinois, Kentucky, Maryland, Missouri, Pennsylvania
Selective (12 states)	California, Connecticut, Illinois, Indiana, Maine, Minnesota, New Mexico, Oklahoma, Texas, Utah, Virginia, West Virginia
Discretionary (6 states)	Arkansas, Nebraska, Oklahoma, Oregon, Washington, Wyoming

Source: Council of State Governments, “Summary of Sunset Legislation,” table 3.27 in *Book of the States* 2010, January 1, 2009, [http://knowledgecenter.csg.org/kc/system/files/Table\\_3.27.pdf](http://knowledgecenter.csg.org/kc/system/files/Table_3.27.pdf).

\* Florida eliminated its sunset statute in 2011. Florida Legislature, Office of Program Policy Analysis and Government Accountability, “Sunset Reviews,” accessed January 23, 2015, <http://www.oppaga.state.fl.us/shell.aspx?pagepath=sunset.htm>.

Note: Some states use more than one approach.

3. Council of State Governments, “Summary of Sunset Legislation,” table 3.27 in *Book of the States* 2010, January 1, 2009, [http://knowledgecenter.csg.org/kc/system/files/Table\\_3.27.pdf](http://knowledgecenter.csg.org/kc/system/files/Table_3.27.pdf).

TABLE 2. STATES WITH ALTERNATIVE APPROACHES TO THE SUNSET PROCESS AS OF 2010

Description	State
States that allow sunset clauses to be attached to specific legislation (10 states)	Idaho, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Virginia, Wisconsin
States with an irregular or ad hoc sunset process (3 states)	Kansas, South Dakota, Vermont
States with an inactive sunset program (1 state)	Rhode Island
States that have repealed their sunset laws (5 states)	Mississippi, New Hampshire, North Carolina, South Carolina, Wyoming
States that have never had a sunset law (3 states)	Iowa, Massachusetts, North Dakota

Source: Council of State Governments, "Summary of Sunset Legislation," table 3.27 in *Book of the States 2010*, January 1, 2009, [http://knowledgecenter.csg.org/kc/system/files/Table\\_3.27.pdf](http://knowledgecenter.csg.org/kc/system/files/Table_3.27.pdf).

Note: Some states use more than one approach.

There is a wide range in the number of boards and statutes subject to review, and reviews can apply to a handful of smaller agencies and commissions, as in Washington and Kansas, or to hundreds of agencies, as in Texas and Ohio.

Any regulatory board subject to the sunset process must follow a process for review and evaluation before the legislature acts. The actual agency that conducts the review varies from state to state but is usually either the agency responsible for state audits or the legislative services agency. Sunset reviews may also be the responsibility of the state auditor, the state comptroller, the examiner of public accounts, the secretary of state, or the finance committee, and some state governments have established a specific committee or commission to oversee the sunset process. Appendix A shows which entity conducts the initial sunset review in each state.

The mechanics of a sunset evaluation are usually straightforward. The preliminary step involves data collection and a cursory review. The full-review step examines the agency's operations and performance. The legislative step may have several substeps as the appropriate legislative committees consider and act on the report and recommendations. The process typically involves some or all of the following steps:

- interviewing board members,
- interviewing professional and support staff,

- interviewing members of the profession and professional associations,
- attending board meetings and reviewing past meeting minutes,
- reviewing financial audits, and
- reviewing complaint records and licensing data.

The reviewers may also use other reports, such as state audit reports and media reports.

## II. POSSIBLE OUTCOMES

The sunset review process has four possible outcomes:

- *Renewal—unchanged*: The review process may find that the board or statute is performing as expected and is valuable. The reviewers will recommend that the board's termination dates be extended and that the enacting legislation, reporting requirements, funding mechanism, and so forth be left as is. The status quo is maintained.
- *Renewal—changed*: Another possible result is that the board or statute is renewed but with changes. Items that may change include the scope of duties, board composition, funding mechanism and levels, personnel, and any other troublesome issues identified during the review.
- *Consolidation*: If the reviewing entity determines that some board functions are essential but others are redundant, underused, or superfluous, the legislature may consolidate two boards or create a separate office under another board's jurisdiction and eliminate the other duties.
- *Termination*: When a board or statute has outlived its usefulness or never achieved its intended goals, the legislature may allow it to sunset.

Ronald Reagan famously remarked that the closest thing to eternal life this side of the grave is a government program.<sup>4</sup> A survey of legislative history provides some justification for this notion that government programs never end, but it also shows that the sunset process does sometimes terminate boards and statutes. Table 3 reports the results of sunset reviews for recent years in selected states. In the 11 states we studied (which represent the main approaches to sunset reviews), reviewers allowed 21 percent of the statutes or boards they examined to sunset. Ohio, however, heavily influences

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4. Ronald Reagan and Alfred A. Balitzer, *A Time for Choosing: The Speeches of Ronald Reagan, 1961–1982* (Chicago: Regnery Gateway in Cooperation with Americans for the Reagan Agenda, 1983).

this number. This state government reviews a significantly higher number of smaller boards and ad hoc committees than any other state government does. Excluding Ohio from the sample, approximately 11 percent of the boards and statutes reviewed were allowed to sunset, and seven states of the eleven in the sample allowed some boards or statutes to sunset. State governments allowed most boards and statutes to continue. A sampling of sunset report recommendations and legislative actions reveals that many renewed boards are changed, however. Appendix B presents a nonscientific but suggestive sample of sunset reports from selected states. Five statutes were renewed with no significant changes, seven were renewed with significant changes or recommendations, two were abolished, and one's decision was deferred.

TABLE 3. RESULTS OF THE SUNSET REVIEW PROCESS IN SELECTED STATES

State	Type of review	Years reviewed	Number of reviews*	Number of boards or laws eliminated	Number renewed
MD	regulatory	2007–2012	47	3**	45**
TX	selective	2006–2013	79	14	65
OH	comprehensive	2005–2010	274	79	195
WA	discretionary	2007–2014	6	2	4
NV	comprehensive	2012	29	3	26
OK	discretionary	2012	21	2	19
AK	comprehensive	2012–2014	17	0	17
CT	selective	2013–2014	12	0	12
DE	comprehensive	2014	10	0	9***
AZ	comprehensive	2007–2013	9	0	9
HI	regulatory	2010–2014	1	1	0
TOTALS			505	104	401

Sources:

MD: Department of Legislative Services, "Recent Sunset Evaluation Reports," General Assembly of Maryland, accessed January 23, 2015, <http://dls.state.md.us/Content.aspx?page=104>.

TX: Sunset Advisory Commission, "Report to the 83rd Legislature," Austin, TX, 2013.

OH: Jason Phillips, "Fiscal Note and Local Impact Statement," Ohio Legislative Service Commission, 2011.

WA: Washington State Legislature, "Audit and Study Reports," accessed January 24, 2015, <http://leg.wa.gov/jlarc/AuditAndStudyReports/Pages/default.aspx>.

NV: Sunset Subcommittee of the Legislative Commission, "Summary of Recommendations," Nevada Legislature, January 1, 2013.

OK: Daniel M. Desantis, "Most State Agencies Survive Oklahoma 'Sunset Laws,'" *World News*, May 15, 2012, [http://article.wn.com/view/2012/05/15/Most\\_state\\_agencies\\_survive\\_Oklahoma\\_sunset\\_laws/](http://article.wn.com/view/2012/05/15/Most_state_agencies_survive_Oklahoma_sunset_laws/).

AK: Alaska Division of Legislative Audit, "Sunset Audits," accessed January 23, 2015, <http://legaudit.akleg.gov/audits/sunset/>.

CT: Office of Program Review and Investigations, "Welcome to the PRI Staff Office Website," Connecticut General Assembly, accessed January 24, 2015, <http://www.cga.ct.gov/pri/index.asp>.

DE: Joint Sunset Committee, "Joint Sunset Committee Sunset Review Process Timeline," State of Delaware, accessed January 23, 2015, [http://legis.delaware.gov/Legislature.nsf/Lookup/JSC\\_Home](http://legis.delaware.gov/Legislature.nsf/Lookup/JSC_Home).

AZ: Arizona Office of the Auditor General Home Page, accessed January 23, 2015, <http://www.azauditor.gov>.

HI: Office of the Auditor, "Reports," State of Hawai'i, accessed January 23, 2015, <http://auditor.hawaii.gov/reports/>.

\* Counted a preliminary review and a final review as one review.

\*\* Does not add to 47 since one report eliminated one board and renewed another.

\*\*\* A follow-up report was required as a condition of continuation.

The changes the legislature enacts can be relatively minor, such as adding new members, or can go as far as a complete overhaul just short of termination, as in Maryland's review of the State Board of Electrologists. A 2002 review of the practice of electrolysis (using electrical epilation to permanently remove human hair) in Maryland recommended that electrolysis continue to be regulated. Financial challenges and a declining number of licensees made it infeasible to justify an autonomous board, however. Maryland terminated the State Board of Electrologists and established a new Electrology Practice Committee under the State Board of Nursing.<sup>5</sup>

### III. SUNRISE REVIEW

While sunrise review is not this paper's focus, it is worth mentioning as a more recent development in the state legislative and regulatory process. Twelve state governments currently use sunrise reviews; two others did but repealed the legislation. The sunrise process requires those in favor of a new regulatory board to justify its creation with a benefit-cost analysis along with other justifications and support. As with the sunset process, there are variations among the states in how the sunrise process works, but generally, any interested party may submit a proposal to the appropriate legislative committee for consideration. The states that use sunrise reviews are Arizona, Colorado, Florida, Georgia, Hawaii, Illinois, Maine, Minnesota, Nebraska, Vermont, Virginia, and West Virginia.

We would expect a more difficult process for initiating a board to deter the formation of new regulatory boards that benefit-cost analysis does not support, but this area requires further study.

### IV. DEVELOPING A THEORY OF SUNSET REVIEWS

Examining the number of boards and statutes from year to year in any given state can lead to the conclusion that, despite sunset reviews, little changes; the numbers are similar from year to year. If the goal is to eliminate boards, the numbers indicate an inefficient outcome. Sunset reviews cost staff, legislators, agencies, and the executive time; investigative and compliance activities also cost money. An ongoing review process that requires resources from two branches of government and from one to five legislative committees is

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5. Sara Fiddler, "Preliminary Evaluation of the Electrology Practice Committee," General Assembly of Maryland: Department of Legislative Services, December 1, 2010, [http://dls.state.md.us/data/polanasubare/polanasubare\\_sunrev/Electrology-2010-prelim.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_sunrev/Electrology-2010-prelim.pdf).



expensive. Depending on the board and its scope, it may take several hundred to several thousand man-hours to complete a review and act on it. Reviews have a high opportunity cost and are expected to produce results.

What results do sunset reviews produce? And, maybe more importantly, what results do legislatures want? There are several possible answers to these questions. We explore them next, then offer our conclusion about the sunset process, its goals, and its results.

## Good Government Theory

The stated purpose of sunset reviews is to provide a built-in process to evaluate the effectiveness of an agency or a piece of legislation. “Effectiveness” means that the public interest is being served in an administratively efficient and cost-effective way. The good government theory of sunset reviews argues that the sunset process allows the legislature to eliminate agencies and laws that have outlived their usefulness and to make administrative and budgetary changes to those that still serve the public interest but have become bloated and inefficient. The test for effectiveness compares the status quo with what the cost or effectiveness of government would have been without the sunset laws. This is a difficult test to conduct, since there is no way to know what government would have been like under an alternative condition. However, some state studies have examined sunset laws and offer insight.

A Nevada study of sunset-law effectiveness in other states used fiscal-note analysis to estimate the cost of proposed legislation. The study concluded that in Texas, the estimated savings owing to sunset reviews over the 27-year period ending in 2009 was approximately \$783.7 million. The reviews cost about \$28.6 million, meaning the state government saved \$27 for every \$1 spent. Minnesota had a 42 to 1 return on its sunset spending.<sup>6</sup>

Even discounting various built-in biases and assumptions such studies may have, the Nevada study indicates that some state governments have achieved identifiable savings from the sunset process. The Nevada study did not address the less-measurable variable, administrative efficiency, but to the extent that taxpayers prefer lower-cost government, then these results support the good government theory.

Continuing to focus on the cost of government, a second test would determine whether the states with sunset laws have lower per capita government

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6. Sunset Subcommittee of the Legislative Commission, “Summary of Recommendations,” Nevada Legislature, January 1, 2013.

“It may be that sunset laws are less likely to be adopted in more efficient states and that, over time, the sunset process has brought efficiency to the states that needed it.”

spending than states that do not have sunset laws. Jonathan Waller conducted such a test and found that “states with sunset laws spend slightly less than those without sunset laws. This difference is not statistically significant, so may simply be the result of random variation.”<sup>7</sup> He further examines this question by categorizing states by type of review, to look for differences associated with a particular type of sunset. “Regulatory states have the highest average and discretionary states have the lowest, but again, the differences between the states are small, and lack statistical significance. This simple look at the data suggests that sunset laws do not have an impact on state expenditures.”<sup>8</sup>

While it may seem contradictory, it is possible for both the Texas and Minnesota results to be accurate and for Waller’s findings to be correct. It may be that sunset laws are less likely to be adopted in more efficient states and that, over time, the sunset process has brought efficiency to the states that needed it, so at this point there is little difference between the states that use the sunset process and those that do not. If this hypothesis is true, some state governments that initially adopted the sunset process would likely reduce its use or even eliminate the process after the early review cycles addressed the pressing issues and inefficiencies and the returns to the investment decreased. Texas senator O. H. Harris, who has served twice on the Sunset Advisory Commission,<sup>9</sup> recently introduced legislation that would do away with Texas’s Sunset Advisory Commission because he believes it has outlived its usefulness. He may have a point: as the last four rows of table 2 show, 12 states either never had a sunset process, repealed it, or use it sparingly.

7. Jonathan Waller, “The Expenditure Effects of Sunset Laws in State Governments” (PhD dissertation, Clemson University, 2009).

8. Ibid.

9. Dave McNeely, “Is the Sun Setting on the Texas Sunset Law?,” *State Legislatures*, January 1, 1994, <http://www.thefreelibrary.com/Is+the+sun+setting+on+the+Texas+sunset+law%3f-a015443787>.

## Political Advantage Theory

Another theory for the adoption of the sunset process is that the process creates political advantages for incumbents. This theory is not mutually exclusive with the good government theory. Indeed, a politician would likely campaign on any advantages the sunset process creates. The distinction here is that the political advantage theory implies that the sunset process is purely or mostly rhetorical, with few real results. The process may give politicians rhetorical cover to claim they are holding government accountable and ensuring every program is needed and every dollar is well spent. Few people outside special-interest groups are likely to spend the time and invest the resources to become knowledgeable about licensing boards and the like.<sup>10</sup> It is beyond the scope of this paper to examine the public and political utterances of state officials to see how often they speak of the sunset process. While we cannot reject the political advantage theory, the arcane minutia of the sunset process are not popular raw material for political campaigns, which are more likely to focus on taxes, education, crime, and other headline issues.

Whether the sunset review process results in real savings and efficiencies, as the good government theory suggests and some data support, or the savings and efficiencies are illusory, as the political advantage theory suggests, both theories imply that the process provides little advantage to the politician. Good government is not to be discounted, but what is the point of the effort and investment in this behind-the-scenes activity if it does not create advantages for the political actor? The lack of political currency that the sunset process provides begs for a different explanation. These two theories' conclusions suggest that the process serves other purposes; another explanation must address the advantage the legislative politician derives from the process.

## Rent-Seeking Theory

One possible benefit of the sunset process is rent. A board or statute has interested parties that desire its continuation; the regulatory agency, the board members, the licensed professionals in the industry, and likely other special-interest groups benefit from the board's or statute's existence and are willing to invest in its continuation. It could be easy for the legislature to indicate, even if it is not the legislature's true intention, that the board's continuation is in doubt, in an effort to capture political favors such as donations, support,

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10. For more on rational ignorance, see Anthony Downs, *An Economic Theory of Democracy* (New York: Harper, 1957).

lobbyist attention, and other electioneering activities designed to curry favor with committee members.

For successful rent-seeking to occur, interest groups must perceive the threat of termination as real, and there must be a responsive political action. Testing for how various interest groups perceive any termination threat is difficult and would require extensive surveys near review time. A researcher would also need to test for increased political activity, such as donations to the appropriate legislators, and establish that this political activity increase is tied to the aforementioned perception. An accurate review of these variables is beyond the scope of this paper.

Despite these limitations, there are other ways to investigate the possible rent-seeking aspect of the sunset review process; the limitations suggest possibilities but do not offer definite conclusions. One indication that the sunset process has value is if there is competition for seats on the legislative committees involved. Another indicator is that the committee makeup favors the majority party; a rule determining the committee composition versus an appointment process by leadership or even the direct involvement of leadership would imply there are less rent-seeking opportunities in the sunset process. Also, the opportunity for rent-seeking is more likely the more layered the process. A multistep process that involves partisan committees composed of leadership and chairpersons lends itself to more rent-seeking than a process that is streamlined and nonpartisan. These are proxy measures, but they still may be reasonable indicators. We cannot explore how competitive the committee seats are, but appendix A presents details of some key political factors for each state government's process. Of the twenty-five states for which information was readily available, five have decision committees that are more partisan than the legislature as a whole and four have processes in which legislative leadership is involved, but only one state meets both conditions. Twenty states have nonpartisan decision committees and twenty-one have processes in which leadership is not involved.

The evidence suggests that some states have more opportunities for rent-seeking than others and that a more in-depth investigation is merited. This investigation would need to be timed with the sunset calendar and focus on the boards under review. However, even if there is rent-seeking attached to the sunset process, and there assuredly is some, the sunset process does not appear to generate significant rents in excess of the returns to regulating the profession. It seems unlikely that the legislature would choose to regulate an industry or board or create an agency for the once-a-decade opportunity to capture rents during the sunset process. The sunset process is an add-on to the main event: the regulation or agency itself. If the sunset process creates

more rents, the political actor will not reject them, but they are incidental to the main motivation: preference alignment, the theory that best explains the existence of the sunset process.

### Preference Alignment Theory

A legislature establishes a new agency or statute with a desire that it provide certain services and deliver certain benefits. However, once the agency is established, the executive administers it and the agency's main incentives are to be responsive to the executive's policy preferences. If the executive's policy preferences differ from the legislature's policy preferences, as they often will, the agency will tend to drift toward the executive's preferences.

Roger Congleton discussed agenda control and veto power within the king-and-council template (or, for our case, an executive-and-legislature template) and how that template can be used in bargaining between the two parties.<sup>11</sup> In our context, the agenda control is with the legislature and the veto power is with the executive. The ideal point of either the legislature or the executive can be defended as long as one branch has agenda control or veto power.

In figure 1, the ideal point of the legislature is P, the median position of the three players (A, B, and C), which represent different positions within the legislature. The ideal position of the executive branch is E, and points 1 and 2 represent other possible positions the executive might consider and imply that there is debate and discussion within the executive branch over the appropriate policy position, as there is within the legislature. The curves surrounding the various policy positions are the indifference curves of members of the legislature and executive. The larger circles surrounding points P and E are the indifference curves from the ideal positions of each branch.

“If the executive’s policy preferences differ from the legislature’s policy preferences, as they often will, the agency will tend to drift toward the executive’s preferences.”

11. Roger D. Congleton, “On the Durability of King and Council: The Continuum between Dictatorship and Democracy,” *Constitutional Political Economy* 12 (2001).

Regardless of which branch has veto power or agenda control, their respective ideal points (P and E) will be difficult if not impossible to achieve. In the case of a preexisting policy, if the initial position or status quo is 2, the legislature can at best achieve point 1; similarly, the executive can at best achieve point 3. The shaded region indicates the feasible policy combinations where the movement from the status quo can occur.

Once an agency is established, the roles reverse. The agenda control is with the executive, and the veto power (through the power of the purse) is with the legislature. As long as the legislature is a credible veto player, then figure 1 generally holds. The area of negotiation in policy is restricted to the shaded region, which means that the legislature has no incentive to expend resources on extra efforts to balance the executive's power. However, if this balance is unstable, then figure 1 will not hold, and the agency will drift away from the legislature's preferred positions and toward the executive's preferred positions (point E).

The difference in the results of veto power and agenda control with a decisive council, where the power is reasonably balanced and the policy outcomes are within the shaded range (as in figure 1), compared with those of a nondecisive council, where one actor has the advantage, is stark. If the legislature is a nondecisive council, the executive could secure its ideal policy combination. In Congleton's original formulation, the king can achieve his preferred policy position by playing members of the council or legislature against each other and co-opting those members susceptible to king or executive overtures.<sup>12</sup> Inherent weaknesses within the council or legislature, such as partisan divide and cycling, can also make the legislature a nondecisive council and give the king or executive relatively more power.<sup>13</sup>

In figure 2, the initial position or status quo is point 2, which is "Pareto-dominated among council members" by policies within shaded area P.<sup>14</sup> By setting the agenda and desires to be at point 3, the executive can play the legislators against each other, or let the inherent weaknesses within the legislature lead to inaction, and secure this point. In figure 2, the executive could get the support of legislator B, as point 3 is closer to the legislature's ideal point. Legislator A is indifferent between points 2 and 3. Legislator C is worse off and will not support the move from 2 to 3. The nondecisive councils are typically instances where the legislature is unable to settle on specific policy recommendations.

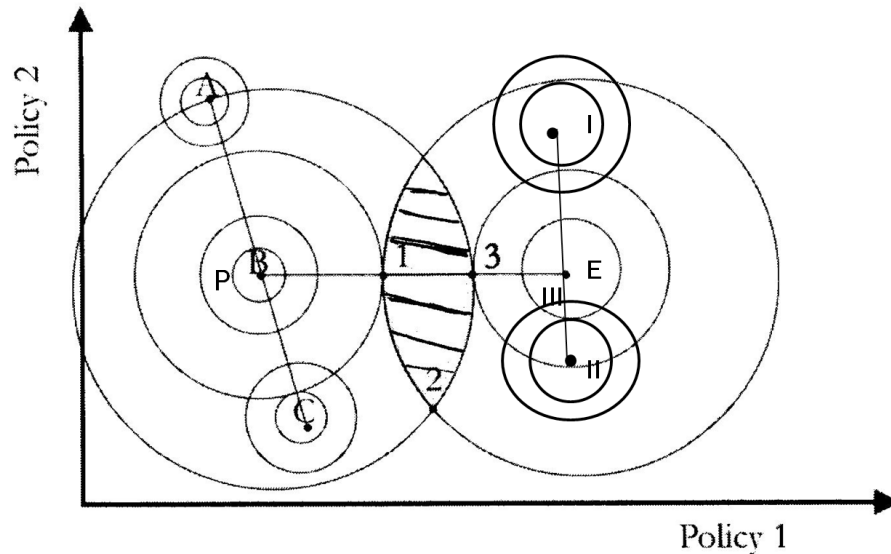
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12. Ibid.

13. Due to cycling, the nondecisive council cannot have agenda control.

14. Congleton, "On the Durability of King and Council."

FIGURE 1. AN EXTENSION OF CONGLETON'S KING-AND-COUNCIL MODEL AND ITS APPLICATION TO SUNSET LAWS



Source: Roger D. Congleton, "On the Durability of King and Council: The Continuum between Dictatorship and Democracy," *Constitutional Political Economy* 12 (2001): 202.

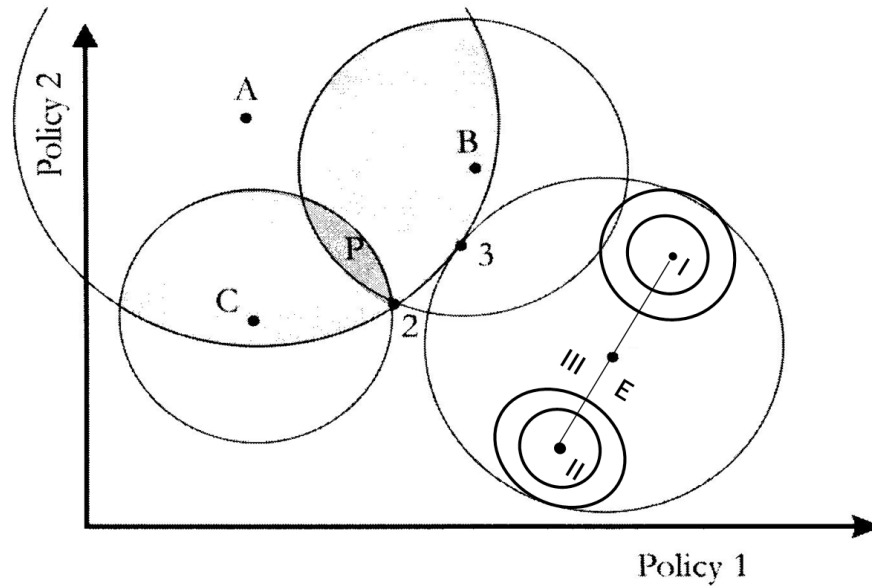
There is another case that is not contained in Congleton where the legislature could be a nondecisive council: the case where the legislature is literally not present for long periods. We hypothesize that the main reason that state legislatures would be nondecisive when dealing with bureaucracies is that many state legislatures are part-time legislatures.

There are two ways a legislature can be considered part time: by how much time legislative work requires and by legislators' compensation. Appendix C details which state legislatures fall into which category, but only three states have legislators who are paid a full-time salary and who spend all their working time as legislators. In the other 47 states, legislators' time and attention are diverted to other activities.<sup>15</sup>

The executive (and possibly a few other constitutional officers) is the only full-time elected official in some states, which gives the executive a significant information advantage and agenda control. The legislature does have

15. Determining the full- or part-time status of a legislature is not as straightforward as it may seem. Depending on the criteria, it could be argued that there are 10 full-time legislatures (see appendix C), but this number seems high, considering salary and legislative obligations.

FIGURE 2. THE CASE OF ONE NONDECISIVE COUNCIL AND ONE DECISIVE COUNCIL



Source: Roger D. Congleton, "On the Durability of King and Council: The Continuum between Dictatorship and Democracy," *Constitutional Political Economy* 12 (2001): 204.

Note: Point E is the executive's ideal point (median position); point 2 is the status quo.

the power of the purse, but that power can be diluted because an agency, once established, is housed in some larger department. Threatening an entire department's budget can be extreme and not appear credible, so the legislature can find itself stuck between ignoring the agency's drift toward the executive's preferences and getting extreme in budget negotiations with a department.

This situation puts the legislature at a distinct disadvantage and is consistent with William Niskanen's basic bureaucracy model of a bargaining situation between a bureau and a sponsor: "The bureaucracy has all of the relevant information and power, [while] the sponsor has only the money and the power to turn down the bureau's offer."<sup>16</sup> The legislature faces a situation where the bureaucracy has the power and the executive provides the incentives, and the only way for the legislature to address the issue is with the less-than-credible threat of defunding an agency or an entire department.

The sunset process allows the legislature to move away from the disadvantaged situation described by Niskanen and to shift the power balance

16. Dennis C. Mueller, *Public Choice III* (Cambridge, UK: Cambridge University Press, 2003), 380.



back in its favor toward recapturing its position as a decisive council from Congleton's model (see figure 2), where the legislature is a decisive veto player. Without the sunset process, the legislature's only veto power lies in defunding, a threat that is often not credible. This reality cedes almost all agenda control to the executive. With the sunset process, the legislature becomes a decisive council: one that has credible veto power by singling out the agency or statute in question for intense examination. This credible veto by the legislature creates a situation where the agency's agenda is no longer executive dominated but is a negotiation between the executive and the legislature. The sunset process creates the default position that the agency will be eliminated, and that if the administration and interest groups want the agency to continue, they must fully consider the legislature's policy preferences. The sunset process, much more so than the budget process, keeps the legislature relevant and pulls the agency toward the legislature's policy preferences.

Waller confirms this conclusion in his research:

Sunset programs often continue in states even when few entities are being discontinued. Proponents of the system point to studies like those by Lyons and Freeman, Curry, and Kearney which indicate that feedback from the legislators about sunset is generally favorable. Even in states where few agencies actually are dissolved, the lawmakers feel they have a greater ability to oversee the actions of these entities than they did without sunset reviews. There is a sense that there is greater accountability for the bureaucrats in these agencies if they realize that their actions must be justified every few years. So beyond the immediate fiscal impact, there appears to be evidence of benefits in the form of greater management of bureaucracies that might otherwise have gone unsupervised.<sup>17</sup>

Lawmakers express this sentiment as well:

[Texas state senator Carl] Parker said that a legislator has little chance of getting answers to questions about an agency's operation unless your vote is essential to their continued operation . . . But with the specter of sunset even the lowliest legislator can have an impact.

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17. Waller, "The Expenditure Effects of Sunset Laws in State Governments."

Gonzalo Barrientos, the senator who represents Austin [Texas] . . . acknowledged that the process isn't perfect and doesn't deep-six many agencies any more. He says while its role has changed, it is absolutely needed to allow "realigning, correcting, streamlining, eliminating. That can always be done by an individual legislator. However, to get it done with more detail and more focus, you need staff like the sunset staff. Otherwise, it can be a very difficult process for one or two members to try to do that.

That, in fact, has been the pattern in most other states. They have modified the sunset process over the years, but the specter of death has made agencies more receptive to things like adding public members to regulatory boards, changing regulations and working for greater efficiency.<sup>18</sup>

The idea that sunset reviews keep agencies in line is echoed by other legislators, such as Oklahoma representative George Faught, who says "sunset laws make sure boards are still serving their purposes."<sup>19</sup>

Termination is the threat that makes the other changes possible. As discussed earlier, few agencies are terminated, but enough are to make the threat credible. Texas allowed a significant board, the one that licensed and regulated dentists, to sunset when the board did not work out a legislative-preferred compromise with another board.

## V. CONCLUSION

At the outset of this project, we hypothesized that the sunset process was primarily or exclusively a rent-seeking opportunity. We assumed that the threat of terminating a board or agency activates the political apparatus of the regulated industry and generates a number of political favors accruing to the relevant policymakers. While we cannot rule out this possibility, and there is some evidence suggesting that such behavior does occur, political conditions do not seem to support the notion that rent-seeking is as pervasive or as persuasive as expected. While a more intensive and detailed study is merited, in many states the circumstantial evidence was weak or nonexistent.

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18. McNeely, "Is the Sun Setting on the Texas Sunset Law?"

19. Daniel M. Desantis, "Most State Agencies Survive Oklahoma 'Sunset Laws,'" *World News*, May 15, 2012, [http://article.wn.com/view/2012/05/15/Most\\_state\\_agencies\\_survive\\_Oklahoma\\_sunset\\_laws/](http://article.wn.com/view/2012/05/15/Most_state_agencies_survive_Oklahoma_sunset_laws/).

As a result, we offer a different explanation, one consistent with prior research on bargaining between the executive and legislative branches. The sunset process appears to be an effective bargaining tool for the legislature to minimize the executive's influence on a wide variety of state boards and agencies. It is a way for the legislature to make its veto power credible and to influence agencies' agendas. As the research shows, enough boards are allowed to sunset to keep the threat credible, and as the case of the Texas dental board shows, even significant ones are sometimes terminated.

State legislatures operate from distinct information and power disadvantages, in part due to their part-time status in many states. The sunset process seems to be an effective method for a legislature to assert itself, to increase its influence over the agendas of high-profile agencies within various special-interest groups, and to ensure that at least some of the legislature's preferred outcomes are achieved.

## APPENDIX A. DEGREE OF PARTISANSHIP INVOLVED IN THE SUNSET PROCESS

State	Body in charge of initial review	Partisan level of committee	Partisan distribution		Leadership on committee
			Committee	Legislature	
AL	Department of Examiners of Public Accounts	+	83% R 17% D	71% R 29% D	yes
AK	Division of Legislative Audits	-	56% R 44% D	70% R 30% D	no
AZ	legislative staff	0	56% D 44% R	54% R 46% D	yes (ex officio)
AR	no standing process				
CA	Joint Legislative Sunset Review Committee	0	45% R 55% D	45% R 55% D	no
CO	Department of Regulatory Agencies				
CT	Legislative Program Review and Investigations Committee	-	50% R 50% D	42% R 58% D	no
DE	Joint Sunset Committee	0	40% R 60% D	40% R 60% D	no
FL*	Office of Program Policy Analysis	N/A	reports to full legislature		
GA	Department of Audits and Accounts		no information readily available		
HI	legislative auditor	N/A	submits reports to full legislature and governor simultaneously		
ID	no information readily available				
IL	Governor's Office of Management and Budget		no further information readily available		
IN	nonpartisan legislative staff		no further information readily available		
IA	never enacted a sunset process				
KS	no information readily available				
KY	Program Review and Investigations Committee	-	50% R 50% D	51% R 49% D	no
LA	standing committees of the 2 houses with subject-matter jurisdiction	0	N/A		no
ME	Joint Standing Committee of Jurisdiction	0	N/A		no
MD	Department of Legislative Services	0	N/A		no
MA	never enacted a sunset process				
MI	no information readily available				
MN	Legislative Audit Committee	0	50% R 50% D	55% R 45% D	no
	Sunset Advisory Commission	+	75% R 25% D		no
MS	sunset law repealed				
MO	Oversight Division of Committee on Legislative Research	-	60% R 40% D	73% R 27% D	no
MT	legislative auditor	-	50% R 50% D	59% R 41% D	no
NE	Legislative Performance Audit Committee		nonpartisan legislature		

State	Body in charge of initial review	Partisan level of committee	Partisan distribution		Leadership on committee
			Committee	Legislature	
NV	Sunset Subcommittee of the Legislative Affairs Committee	+	33% R 66% D	42% R 58% D	no
NH	sunset law repealed				
NJ	no information readily available				
NM	Sunset Subcommittee of the Legislative Finance Committee	+	32% R 67% D	48% R 52% D	no
NY	no information readily available				
NC	sunset process repealed				
ND	never enacted sunset law				
OH	Sunset Review Committee		no information readily available		
OK	joint committees with jurisdiction over sunset bills	0	N/A		no
OR	Joint Committee on Audits	+	33% R 67% D	42% R 58% D	no
PA	Leadership Committee	-	50% R 50% D	55% R 45% D	yes
RI	no information readily available				
SC	repealed sunset law				
SD	no information readily available				
TN	Joint Subcommittee on Judiciary and Government Affairs	0	84% R 16% D	77% R 23% D	no
TX	Sunset Advisory Commission staff	0	70% R 30% D	82% R 18% D	no
UT	interim committees	-	50% R 50% D	77% R 23% D	yes
VT	no information readily available				
VA	Joint Legislative Audit and Review Commission	0	69% R 31% D	65% R 35% D	no
WA	no initial reviews; uses performance evaluations				
WV	Joint Committees on Government Operations	-	50% R 50% D	62% R 38% D	no
WI	no information readily available				
WY	sunset process repealed				

Source: Audrey Wall, *Book of the States 2014* (Lexington, KY: Council of State Governments).

+ means a committee that is more partisan than the legislature as a whole.

0 means a committee that is as partisan as the legislature.

- means a committee that is less partisan than the legislature.

\* Florida discontinued using the sunset process in 2011.

## APPENDIX B. SAMPLE OF SUNSET REVIEW OUTCOMES FROM VARIOUS STATES

State	Year	Statute or board reviewed	Outcome
AK <sup>(a)</sup>	2014	Alcoholic Beverage Control Board	renewed with 4 changes or recommendations
AK	2012	Board of Public Accountancy	renewed with 1 change
CA <sup>(b)</sup>	2012	Physical Therapy Board	renewed with no significant changes or recommendations
MD <sup>(c)</sup>	2013	Horse Industry Board (preliminary review)	waived from full review and renewed
MD	2011	Office of Cemetery Oversight	renewed with 19 changes or recommendations
NM <sup>(d)</sup>	2014	Board of Chiropractic Examiners	renewed with no significant changes or recommendations
NM	2014	Massage Therapy Board	motion to renew tabled pending the board's addressing certain questions and issues
NV <sup>(e)</sup>	2013	Alfalfa Seed Advisory Board	renewed with no changes or recommendations
NV	2013	State Board of Oriental Medicine	renewed with changes or recommendations
NV	2013	Nevada Commission on Sports	abolished
TX <sup>(f)</sup>	2013	Board of Architectural Examiners	renewed with 6 changes or recommendations
TX	2011	Coastal Coordination Council	abolished
TX	2009	Texas-Israel Exchange	renewed with 10 changes or recommendations, including a complete management restructuring
VA <sup>(g)</sup>	2014	Management of Menhaden Fishery	renewed with 8 changes or recommendations
VA <sup>(h)</sup>	2014	Autism Advisory Council	renewed with no changes or recommendations

Sources:

(a) Alaska Division of Legislative Audit, "Sunset Audits," accessed January 23, 2015, <http://legaudit.akleg.gov/audits/sunset/>.

(b) "Physical Therapy Board of California: Although It Can Make Improvements, It Generally Processes Complaints and Monitors Conflict-of-Interest Requirements Appropriately," Sacramento, CA, 2012.

(c) Maryland Department of Legislative Services, "Recent Sunset Evaluation Reports," accessed January 23, 2015, <http://dls.state.md.us/Content.aspx?page=104>.

(d) Sunset Subcommittee, "Memorandum," Legislative Finance Committee, 2014.

(e) Sunset Subcommittee of the Legislative Commission, "Summary of Recommendations," Nevada Legislature, January 1, 2013, <http://www.leg.state.nv.us/Interim/77th2013/Minutes/Sunset/IM-Sunset-011314-10766.pdf>.

(f) Sunset Advisory Commission, "Report to the 83rd Legislature," Austin, TX, 2013.

(g) "HB 655 Menhaden Fishery; Extends Sunset Provision for Management of Fishery," Virginia's Legislative Information System, January 1, 2014, <http://lis.virginia.gov/cgi-bin/legp604.exe?141sumHB655>.

(h) "HB 538 Autism Advisory Council," Virginia's Legislative Information System, January 1, 2014, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=141&typ=bil&val=HB538>.

## APPENDIX C. FULL-TIME AND PART-TIME LEGISLATURES

	States with full-time responsibilities and full-time pay	States with full-time responsibilities and less than full-time pay	States with more than half-time work with less than full-time pay	States with part-time legislatures and part-time pay
	California Pennsylvania New York	Alaska Florida Illinois Massachusetts Michigan Ohio Wisconsin	Alabama* Arizona Arkansas Colorado Connecticut Delaware Hawaii Indiana Iowa Kentucky* Louisiana Maryland Minnesota New Jersey Missouri Nebraska North Carolina Oklahoma Oregon South Carolina Tennessee Texas Virginia Washington	Georgia Idaho Kansas* Maine Mississippi Nevada* New Mexico Rhode Island Vermont* West Virginia Montana* New Hampshire North Dakota* South Dakota Utah* Wyoming*
Average salary	\$84,368	\$53,400	\$27,065	\$11,794

Source: National Council of State Legislatures. Average salary figures come from Morgan Cullen, "Legislator Compensation 2009," National Conference of State Legislatures, February 2009, <http://www.ncsl.org/research/about-state-legislatures/2009-legislator-compensation-data.aspx>.

\* These state governments pay legislators per diem during session.

## ABOUT THE AUTHORS

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