

October 7, 1977

## **SUNSET PROPOSALS :**

# **CAN THEY REFORM THE BUREAUCRACY ?**

### EXECUTIVE SUMMARY

Politicians are well aware of the rising citizen impatience with the almost exponential growth in the size and cost of the federal government. As Senator William Roth has stated, "One clear mandate from the 1976 election is to streamline the federal bureaucracy and reform poor planning, excessive paperwork, administrative overlap, and program duplication in government." The reasons for this mandate are obvious. Consider:

\*There are 228 health programs, 156 income-security and social-service programs, and 83 housing programs scattered among several of the executive departments.

\*In the last twelve years, the number of federal spending programs increased from 50 to nearly 1,000. The federal budget climbed from \$158.2 billion in 1967 to \$413 billion in fiscal year 1977.

\*The federal debt currently exceeds \$633 billion, and the yearly interest payment is almost \$40 billion.

\*Combined state and federal taxes, says a report by the Joint Economic Committee of Congress, are rising twice as fast as the costs of food, housing, and transportation. The average taxpayer today must work four months to pay his tax bill.

\*A January Gallup poll found that 39 percent of the American people believe that big government is "the biggest threat to the country in the future."

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NOTE: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

In the last three years, Congress, in response to public outrage about federal spending, has sought ways to reverse the profligate spending which has become almost institutionalized since the administration of Franklin Roosevelt. The Congressional Budget and Impoundment Control Act, passed in 1974, is a major reform which forces Congress to establish spending and revenue targets and budgetary priorities in its annual consideration of the federal budget. It also requires both Houses to vote annually on the level of the federal debt, which had previously been treated as a leftover result of the budgetary process. Passage of the budget act was a first step towards disciplining the larger categories of the budget. In the last two years, committees of both Houses, but primarily of the Senate, have discussed legislation designed to extend the same discipline to the multitude of individual federal programs and the regulatory agencies.

Two much-discussed legislative ideas, zero-based budgeting and sunset review, have been the subject of over fifty bills introduced in the Congress during the last two years. Under the sunset idea, government agencies and programs would be forced to justify their own existence at the end of their authorization period or face automatic termination. Senator Edmund Muskie, backed by a bipartisan Senate group of supporters, included both sunset review and zero-based review in S2925, which he introduced in the last session of the 94th Congress. Critics contended that this was too big a pill for the federal bureaucracy to swallow at once, and the bill died in committee. Undeterred, Muskie has introduced a new sunset bill, S2, with more flexible review guidelines for the committees to follow, into the 95th Congress.

Muskie's bill would take on the entire federal spending process at once. Eight other proposed bills have the regulatory agencies as their target. In recent years, the mass of federal regulation has provoked more rancorous argument between Congress, business, consumers, and federal bureaucrats than any other part of the government.

This paper provides detailed analyses of the sunset act, S2, and the major regulatory reform bills now pending in the Senate. All of them had wide bipartisan support when introduced, but enthusiasm for the bills has waned as many questions have arisen over their merits.

The Sunset Act of 1977, S2. Critics have contended that the time and work involved in reviewing one-third of federal spending programs every two years would be an impossible burden for congressional committees. There is no agreement about what federal programs should be exempt from sunset. Such long-established federal programs as the Tennessee Valley Authority,

the Center for Disease Control, and most veteran's benefits would be subject to the review and termination process as the bill is now written.

The Regulatory Reform Act, S600. A tough bill which would require periodic executive department attempts to reduce the number and scope of federal regulations. The executive department would be required to regularly assess the effects of regulation on specific categories of business.

The Interim Regulatory Act, S263. This bill would require seven independent regulatory commissions to make recommendations to Congress for the simplification and recodification of all statutes by authority of which they carry out their activities. It would not effect any reduction in the amount of regulation.

The Interim Regulatory Acts, S1532-1537. These bills concern the same seven regulatory commissions and also would not reduce the level of federal regulatory activity. Their purpose is to force the commissions to recodify, update, and streamline the regulations they have issued. The commissions would be provided new muscle to enforce their regulations under a clause which grants them extensive powers of litigation. In addition, the bill would provide, both to business and consumer advocates, easier and quicker access to the ruling boards of the commissions.

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## THE PROBLEM

-- There are 228 health programs, 156 income-security and social-service programs, 83 housing programs scattered among several of the executive departments.

-- A General Accounting Office study found eight health clinics which receive federal funds operating in one neighborhood under different programs with none of them having any knowledge of what the others were doing.

-- The GAO has found agencies unable to say how much they were spending on administrative costs as compared with actual services.

-- In the last twelve years, the number of federal spending programs increased from 50 to nearly 1,000. The Federal budget climbed from \$158.2 billion in 1967 to an estimated \$413 billion for fiscal year 1977.

-- The federal debt currently exceeds \$633 billion, and the yearly interest payment is almost \$40 billion.

-- Combined state and federal taxes, says a report by the Joint Economic Committee of Congress, are rising twice as fast as the costs of food, housing and transportation. The average taxpayer today must work four full months just to pay his tax bill.

-- There are now forty-four independent agencies, twelve cabinet departments and 1,240 other units of the federal government.

-- A January Gallup poll found that 39 percent of the American people believe that big government is "the biggest threat to the country in the future." (Emphasis added.)

-- A 1976 Harris survey found that 76 percent of the people think that: "the trouble with government is that the elected officials have lost control over the bureaucrats, who really run things."

## HISTORY OF GOVERNMENT REORGANIZATION AND REGULATORY REFORM PLANS

Worry about the growth of the federal bureaucracy is not new. Former Supreme Court Justice William O. Douglas, as chairman of the Securities and Exchange Commission, proposed to President Franklin Roosevelt that every federal agency should be abolished within ten years of creation. Since World War II, two independent federally funded citizens commissions, commonly known as the Hoover Commissions, have conducted thorough reviews of the organization and effectiveness of the federal government.

The recommendations of the first Hoover Commission (1947-1949) led to the Reorganization Act of 1949, which gave the President the authority to reorganize the executive branch and create new executive agencies subject to the veto of either House of Congress. The creation of the Office of Management and Budget, the Domestic Council, and the Environmental Protection Agency in 1970 are examples of federal reorganization that took place under this act. Before the President's reorganization authority under this act terminated in 1973, seventy-one reorganizations went into effect while nineteen were vetoed. President Johnson proposed seventeen reorganization plans and President Nixon six; all went into effect. It should be noted that most presidential actions under the Reorganization Act sought a greater efficiency in the federal bureaucracy, but did not have the effect of reducing its size. In 1971, President Nixon proposed that the twelve cabinet departments be reduced to eight. The plan was widely praised by political scientists and various other observers of government, but was never given serious consideration in congress.

#### PROGRAM EVALUATION AND CONGRESSIONAL OVERSIGHT

~~Congress' "oversight" authority, by which it assigns itself the task of periodically evaluating the efficiency, purpose and cost-effectiveness of federal agencies and programs, is well established in law. The most important congressional bills and resolutions concerning oversight are:~~

-- the Intergovernmental Cooperation Act of 1968 which requires congressional committee to reevaluate at least every four years grant-in-aid programs that do not have expiration dates;

-- the Legislative Reorganization Act of 1970 which ordered the Comptroller General to "review and analyze the results of government programs and activities carried on under existing law." The same act also directed that GAO personnel should be available to congressional committees to assist in evaluations.

In 1973 the Office of Management and Budget established a Division of Evaluation and Program Implementation to assist federal agencies in improving their own evaluation work. The House Committee Reform Amendments of 1974 stated that the House legislative committees must establish special oversight subcommittees. It also required existing subcommittees to carry out substantial oversight in their legislative areas. The same group of amendments also directed the House Committee on Government Operations to assist the oversight committees in their activities.

Obviously Congress is becoming increasingly concerned about evaluating the programs that receive federal funds. According to the Congressional Research Service of the Library of Congress,

federal expenditures for program evaluation rose 650 per- cent from 1969 to 1974 -- from \$20 million to more than \$130 million. Still, many members of Congress, and a growing per- cent of the public, think that the oversight procedures already established are inadequate and often ignored.

## THE FEDERAL BUDGET

Review of the budget -- as opposed to review of the programs for which funds are budgeted -- has been brought under increasing scrutiny in recent years. The replacement of the old Bureau of the Budget with the Office of Management and Budget in 1970 was an executive plan to get more centralized control over the budget process. In 1973 OMB inaugurated a management by budget system -- a procedure designed to force the managers of the bureaucracy to direct their programs according to stated objectives.

The most significant budgetary legislation of recent years was the Congressional Budget and Impoundment Control Act of 1974, which, for the first time, established a yearly procedure for Congress to specify the total size of the federal budget. This sweeping budget reform act:

- 1) forces the two houses to agree on spending and revenue targets and budgetary priorities,
- 2) authorizes the legislative committees of Congress to undertake evaluations of federal programs and agencies or the laws by which money is granted to these federal programs, or to order federal agencies to undertake these evaluations them- selves and then report to the committees,
- 3) created a new GAO office for the purpose of recommending methods of evaluation to Congress,
- 4) requires the Treasury Department and OMB to provide in- formation on federal programs and spending to congressional com- mittees, the GAO and the Congressional Budget Office on request,
- 5) provides for increased congressional control over execu- tive spending decisions through the impoundment provision of the Act.

## ACTIONS BY THE STATES

State governments have been more vigorous in reorganizing and streamlining their bureaucracies. During the last ten years, twenty states have completely overhauled their executive branches. In 1971 Governor Jimmy Carter introduced zero-based budgeting into the government of Georgia. Modified versions of zero-based

budgeting are used in four additional states. In 1976 Colorado became the first state to pass a comprehensive sunset law. Under the Colorado plan, the state's regulatory agencies, representing about a third of the executive bureaucracy, face termination or "sunset" every six years unless they justify the purpose and costs of their existence. A third of the state's thirty-nine agencies subject to the sunset law are reviewed in public hearings every two years. Of the thirteen agencies reviewed in the 1977 session of the legislature, four were abolished, two were merged and another one was moved to a different department. Twenty-two other states have enacted versions of the sunset idea. The first round of review is scheduled to go into effect within the next two years for all these states. In addition, Alabama has enacted a "high noon" law whereby state agencies are automatically reviewed but not terminated; they can be terminated only by a special act of the legislature.

#### FEDERAL SUNSET LEGISLATION

Sunset legislation was introduced by members of both houses of Congress in 1976. In the House, the proposal, despite the bipartisan support of 112 co-sponsors, never got beyond hearings held separately by the Budget Committee and the Rules Committee. The Senate bill, S2925, co-sponsored by fifty-five senators, was referred to three different committees. Senator Edmund Muskie, the power behind the budget reform act of 1974, introduced the bill in the Senate. Muskie, who is chairman of the Senate Budget Committee, saw the sunset bill as a necessary adjunct to budgetary reform.

The Senate Government Affairs Committee unanimously reported S2925 on August 6, 1976. There were six significant provisions of the bill.

1. Budgeted programs and activities, grouped by function, would be assigned to legislative committees for review -- that is, all federal programs of similar purpose would be reviewed at the same time. During the first cycle of review, all programs of similar purpose, regardless of their original authorization period, would have to be reauthorized. After the first cycle, these programs would then come up for reauthorization together every five years.

2. Each category of budgeted programs and activities would have to be reviewed and reauthorized every five years. If a program was not reauthorized, the money for its activities would be taken away.

3. The bill did not apply to any authorizing law, but only to the funding of specific agencies or programs. Thus, agencies and programs terminated under sunset would still exist on paper

with complete legal authority but would have no funds to operate. Obviously, funds could be reappropriated at any time.

4. Reauthorizations would be limited to five years or less.

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5. Exempted from the sunset process were interest payments on the national debt, other interest payments, and programs funded by individual contributions such as Social Security and Medicare.

6. The process of sunset review was quite detailed and would be carried out over an 18-month period prior to the sunset date. The legislative committees of Congress would be required to conduct extensive zero-based reviews of all programs within their jurisdiction every five years. In addition, the President, before submitting his budget message to Congress, would be required to conduct zero-based review of all executive branch programs and activities scheduled for termination in the upcoming year. Bills authorizing funds for less than five years would not be subject to zero-base review.

The Senate Rules and Administration Committee reported sunset without recommendation but also "without prejudice." The criticisms of the committee stemmed from its perspective of having jurisdiction over all legislation concerning rules and procedures for the conduct of daily business of the Senate. Although four Rules Committee members were co-sponsors of S2925, the committee as a whole warned that "this far-reaching proposal would considerably alter as well as increase existing congressional procedure." The committee considered it unrealistic that so few programs were exempted from the sunset review process, and accordingly, recommended that programs such as the Tennessee Valley Authority and the Center for Disease Control, be excluded. The committee further warned that there was no exact estimate of the number of programs to be reviewed, that many programs lacked definite objectives and, therefore, were not easily subject to evaluation, that the five-year reauthorization period and the 18-month review period were too inflexible, and that the review and reauthorization schedule would disrupt the orderly functioning of many programs now on three to five-year authorization plans. In addition, the committee pointed out that 92.2 percent of the 1050 budget accounts represented only 10 percent of total outlays in fiscal year 1977. The houses of Congress would be forced to conduct lengthy reviews of these programs on an equal basis as the programs that account for 90 percent of the federal budget. Finally, the committee recommended a phase-out period of one year for any program terminated to soften the blow to both agency personnel and to the general economy.

The Senate Finance Committee, while not reporting the bill, raised similar questions in a staff analysis. The analysis contended that legislative experience has shown that permanent



authorization is the most useful and efficient means of budgeting for certain programs. The analysis argued that permanent authorizations were an indispensable diplomatic tool in negotiating international agreements and establishing economic incentives. The analysis also claimed that congressional oversight would in fact decrease because committees would be put in the position of conducting reviews as advocates rather than critics, "since their ability to obtain reenactment may depend on how convincing a case for reenactment they can make through those studies."

With the little impetus that House committees gave to pushing sunset legislation to the floor combined with the misgivings raised by the Senate Rules and Finance committees, sunset legislation died in the normal legislative logjam at the end of the second session of the 94th Congress. Undeterred, Senator Muskie, with the major criticisms of the bill in mind, revised the bill and reintroduced it as S2 in the new 95th Congress. Hearings were held in March; the bill was further revised in committee and then reported to the Senate. Again, the Rules and Finance Committees have delayed action on the bill, which almost certainly will not get to the Senate floor during the first session of the current Congress. Muskie is hoping to get the bill reported out of the Rules and Finance committees by the spring of 1978 in the hope that the Senate would begin debate by the beginning of summer.

## ANALYSIS OF S2

S2 as amended defines sunset review as "consideration by the committees of the Senate and House of Representatives which have legislative jurisdiction over the program, as to whether the merits of the program justify its continuation rather than termination, its alteration, or its continuation at levels less than, equal to, or greater than the existing level." The preamble of the bill further states that, for purposes of grouping federal agencies and programs, the functional and subfunctional categories will be those set forth by OMB in the budget of the United States. Also, off-budget programs, that is, those programs that are federally funded but whose outlays do not appear in the outlays of the total budget (1977 outlays of these programs: \$11.1 billion), are to be brought under the sunset review and included in the functional categories.

## TITLE I

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Title I establishes a six-year schedule for the review and reauthorization of the budgets of federal programs, according to groupings by budget subfunction. Sunset review would be conducted on a third of the federal budget every two years, with the first review date scheduled for September 30, 1982. The

next review date in the first cycle of the six-year review procedure would be September 30, 1984, and the last would occur on September 30, 1986.

In addition, under its major provisions, Title 1:

-- requires that the funding for all programs, including those which are now permanently funded, be specifically reauthorized every six years according to the schedule or be terminated;

-- states that programs can be authorized or reauthorized for less than six years but no program's authorization can extend beyond the sunset review date for that program's budgetary subfunction;

-- exempts interest on the public debt and other government interest obligations, all trust funds, general and federal employee retirement and disability insurance, the enforcement of civil rights, the federal judiciary, and funding authorized in one year but available for expenditures in subsequent years (such as construction and procurement contracts) from the jurisdiction of the bill;

-- restricts Congress from reauthorizing any program without having considered a report which assesses "to the extent practicable in quantitative and qualitative terms" the objectives and achievements of the program, describes similar programs that unnecessarily duplicate the work of the program in question, and includes any other analyses which the relevant congressional committees want to include; and

-- provides that if the budgetary authorization for a program is terminated, the substantive laws and statutes which enacted the program will not automatically be terminated at the same time.

#### ANALYSIS OF TITLE I

For fiscal year 1977, 77 percent of the budget of the United States was "uncontrollable," that is, permanently authorized, which only major changes in substantive law could either increase or decrease. Trust funds financed by individual contributions, such as Social Security and Medicare, have always constituted the major part of the yearly uncontrollable percentage of the federal budget. For fiscal year 1977, Congress considered only the 23 percent of the federal budget that was subject to reauthorization.

By way of example, the HEW-Labor reappropriations bill for fiscal year 1978, which was delayed because of the House-Senate argument over public funding of abortion, is \$60.1 billion. But

the spending by those two departments for fiscal year 1978, including this controllable \$60.1 billion, will actually be about \$190 billion.

If enacted, S2 would reduce the uncontrollable outlays of the federal budget from 77 percent to roughly 54 percent. Many long-established federal programs, such as the Tennessee Valley Authority, the Center for Disease Control, many of the programs which the Veterans' Administration controls, now permanently funded or annually renewed with little congressional criticism or debate, would go out of business unless Congress reviewed their achievements and specifically reauthorized them.

Government spending programs are already grouped according to their budgetary subfunction, that is, their purpose. But the many programs under any one subfunction are now reauthorized individually and in different years. Sunset would bring about a major reform by collecting all programs of each subfunction and mandating their reauthorization on the same date. Every two years Congress would be forced to think and to vote in terms of the larger purposes of federal spending rather than in terms of individual programs.

Under Title I, every program, before it can be reauthorized, must be reviewed by the appropriate congressional committee or committees with the conclusions of this review reported to both houses. How reviews of programs would be carried out is a major question mark of the whole sunset idea. Critics contend that congressional committees would be burdened with an impossible workload. On the one hand, Title I gives the criteria (as outlined above) which each sunset review must "include, but is not limited to." On the other hand, this same title gives each committee the discretion to conduct reviews "in the scope and detail the committee or committees having jurisdiction deem appropriate."

To allow Congress to respond to unforeseen emergencies, Title I permits new appropriations for which no money had been voted in the preceding fiscal year, as long as the relevant committee explains the nature of the emergency. An example of this type of emergency is the authorization of relief money for the bursting of the Grand Teton Dam. Title I would also allow a one-year extension for ongoing programs that the Congress has not yet reauthorized by the sunset review date if an authorization has passed either the House or Senate or been reported by a committee of either House. Finally, either House may change the review date applicable to any program, subject to some procedural limitations.

Senator Muskie had included a provision which would have brought the government program of tax expenditures under the sunset review process. Tax expenditures are those tax credits,

deferrals and low tax rates which the government allows in order to encourage certain economic activities, such as investment, exporting, support of charitable institutions and others. If the government did not allow tax expenditures, federal revenues would increase an estimated \$101 billion annually. The Governmental Affairs Committee voted to exclude tax expenditures from automatic sunset review because many critics contended that the investment climate would be seriously jeopardized by the uncertainty that tax expenditures could be eliminated. Muskie has vowed to fight on the Senate floor to reinstate tax expenditures under sunset.

## TITLE II

Under its major provisions, Title II:

-- directs the Congressional Budget Office to compile, by July 1, 1979, an inventory which would provide a comprehensive, detailed portfolio of the legislative, budgetary and achievement record of every federal spending program, and

-- requires all legislative and executive agencies to provide the CBO any assistance that the CBO requests in the preparation of the program inventory.

## ANALYSIS OF TITLE II

When Senator Muskie introduced S2 on the floor of the Senate, he asked whether anyone "really knows how many federal programs there are all together." Under Title II, the Congressional Budget Office would have to find out. In addition, the CBO would become the permanent scorekeeper of this comprehensive inventory which it must regularly update as Congress acts to reauthorize or terminate.

## TITLE III

Under its major provisions, Title III:

-- allows the Senate and House to select a number of specific programs for "comprehensive evaluation" from among those subject to review in any two-year period,

-- requires the President to include in his annual budget message his recommendations for programs to undergo this comprehensive evaluation,

-- requires the President to submit his own evaluation of the programs specified by the two Houses as subject to comprehensive evaluation, and

-- specifies guidelines for congressional committees to follow in conducting the comprehensive evaluations.

### ANALYSIS OF TITLE III

The most controversial section of last year's sunset bill dealt with the requirements and guidelines for the authorizing committees to follow in conducting their reviews of programs scheduled for reauthorization of sunset. Last year's bill S2925, detailed four separate stages for authorizing committees to follow. It included a mandatory zero-based budget review of every program. Critics cautioned that putting the entire federal budget on sunset review and zero-based budget review at the same time was far too ambitious and that the results would be unpredictable. It was also claimed that the workload would be excessively burdensome.

Title III of S2 allows the Congress to select, and the President to recommend, certain specific program areas for comprehensive evaluation from among those subject to review. It is important to realize that each budgetary subfunction has many program areas. Title III does not state that Congress must select an entire subfunction for comprehensive evaluation, but only a program area. Under the six-year sunset cycle, Congress would review nineteen subfunctions in the first two-year period, the same number in the second two-year period, and twenty-three in the final two-year period. Title III does not mandate the number of program areas which must be subject to comprehensive evaluation. It does not even require that any areas be so selected, although the report on S2 by the Committee on Government Affairs states that "It is the intent of this section that a committee choose to select at least one program for evaluation within a Congress."

If each oversight committee in the House and Senate chose one program area to scrutinize in detail over a two-year period, how and in what detail would it accomplish the mandatory reviews, as required in Title I, of all other programs in the budgetary subfunctions which are subject to termination in each Congress? For instance, the Senate Committee on Human Resources has jurisdiction over legislation relating to education, labor, health, and public welfare, all of which would be subject to sunset in the 97th Congress (1981-1982). The seven subcommittees of this committee might each pick one program area to concentrate on. Would the many other program areas receive only cursory review and automatic reauthorization as is the case now?

The guidelines for comprehensive evaluation of single program areas under Title III are more specific and detailed than the guidelines for the required reviews of all program areas under Title I. But S2 allows for much committee discretion as to what is appropriate for both reviews and comprehensive evaluations.

## TITLE IV

Under its major provisions, Title IV:

-- establishes a non-partisan, independent, eighteen-member commission with subpoena authority to study and investigate the organization and operation of the executive branch with the purpose of making recommendations "to increase the effectiveness of government services, programs, functions and activities," and

-- requires the commission to submit a report of its conclusions by July 1, 1981, ninety days after which it will cease to exist.

## ANALYSIS OF TITLE IV

This Hoover-type commission would be authorized \$12 million to carry out its three-year study. The personal expenses of witnesses appearing before the commission would be paid for by the government.

## TITLE V

Under its major provisions, Title V:

-- exempts twenty-one federal regulatory agencies from the first full cycle of sunset review established by the bill (The agencies would come under the authority of S2 on January 1, 1987.) and,

-- provides for a privileged "sunset reauthorization bill" to extend the budgetary authorization of a program in the event that its reauthorization is prevented due to a filibuster or other delaying tactic.

## ANALYSIS OF TITLE V

The twenty-one major regulatory agencies are exempted from the first full cycle of sunset because they are the subject of a companion sunset bill, S600. (See analysis below.)

Title V provides for a special sunset reauthorization bill that would defer for up to six years the operation of the sunset termination. Congress must adopt a joint resolution to effect the deferral. A sunset reauthorization bill for any program could not be considered by the Senate unless a budgetary reauthorization bill had been debated on the floor of the Senate for fifty hours. Appropriations for a program under a sunset

reauthorization bill could not exceed the amount of budgetary authority provided for that program for the fiscal year in progress. The entire apparatus is designed to prevent members of Congress from deliberately delaying congressional action on a reauthorization bill so long that the program is automatically terminated.

#### THE REGULATORY REFORM ACT OF 1977, S600

This sunset bill proposes an eight-year cycle of review of the thirty major regulatory agencies and the regulatory offices of the departments of Interior and Agriculture, a quarter of which would be reviewed every Congress, that is, every two years. The sunset reviews would be accomplished by the President. His reports to Congress must include:

-- recommendations for the reorganization or elimination of the functions, procedures and jurisdictions of the agencies,

-- recommendations for the modification or abolition of federal regulations or agencies,

-- recommendations for increasing economic competition in the regulated industries, and

-- a report on the impact of federal regulations on specific categories of industry.

Presidential reviews would be due for the following by April 30, 1979: the Environmental Protection Agency, Federal Energy Administration, Federal Power Commission, Nuclear Regulatory Commission, Federal Housing Administration, Occupational Safety and Health Administration and the regulatory functions of the Department of the Interior;

By April 30, 1981 for: the Civil Aeronautics Board, Interstate Commerce Commission, Federal Maritime Commission, Department of Transportation, Federal Communications Commission;

By April 30, 1983, for: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, Board of Governors of the Federal Reserve System, National Credit Union Administration, Federal Savings and Loan Insurance Corporation, International Trade Commission, Commodity Futures Trading Commission, Securities and Exchange Commission, Farm Credit Administration, General Services Administration;

By April 30, 1985, for: the Consumer Product Safety Commission, Federal Aviation Administration, Federal Trade

Commission, Food and Drug Administration, National Highway Traffic Safety Administration, National Labor Relations Board, Federal Mediation Board, Equal Employment Opportunity Commission, and the regulatory functions of the Department of Agriculture.

In addition, the House or Senate could demand the same extensive reviews on any other agency which they wished to scrutinize. The provision which requires a report on the impact of federal regulations on categories of industry (four categories which taken together are comprehensive) must be submitted as part of each biannual review, and updated with each new review. Both the GAO and the Congressional Budget Office would be required to submit, contemporaneously with the presidential reports, a report largely similar to the President's but also including a cost-effective statement for each agency.

If Congress did not pass reform legislation for an agency within fourteen months after each biannual presidential report, the agency would lose its authority to issue new rules and regulations. Two months later, if Congress had still not acted, the agency would lose its authority to enforce all rules and regulations and would be terminated at the end of the calendar year. Regulations "essential for preserving public health and safety" would be transferred to the Department of Justice for enforcement. Congress would have concurrent veto power over any regulation which it determined was inessential to the public health or safety.

#### ANALYSIS OF S600

The principal co-sponsors of this bill, Senators Percy, Robert Byrd and Ribicoff, wanted to exclude the regulatory agencies from the sunset process of S2 in order to give the agencies time to reorganize before joining the rest of the government in the review timetable outlined in S2. Under S2, the first cycle of the sunset review process, from which the agencies covered by S600 would be exempt, would end September 30, 1986. These agencies would become subject to S2 on January 1, 1987. If passed without S2 as companion, S600 would provide for continuing sunset review for the regulatory agencies every ten years.

S600, as introduced, is a tough straightforward bill which has a built-in system of making sure that Congress gets the information it wants about each agency. The details of what the President must include in his report are explicit. The provision which demands an executive department assessment of the regulatory impact on industry, if it is to be substantial at all, must necessarily require government consultation with the affected industries. Section four of the bill allows the relevant committees of Congress to disapprove any presidential



review if it is inadequate under the guidelines for the reviews. After disapproving, or if the President fails completely to issue a report, the committees themselves would prepare the reports. The simultaneous sunset review by the GAO and the CBO offer the members an assessment to compare to that of the executive branch. The sixteen month lag time between submission of the President's report and the sunset of the affected agencies should allow enough time for the Congress to adequately consider the merits of the agencies up for sunset. Under S600, Congress would be considering reauthorization or sunset of ten regulatory agencies every two years -- instead of a third of the federal government as required by S2. Another essential difference between S2 and S600 is that the former scrutinizes the federal budget and considers termination from the perspective of program function (which concerns many agencies at once), while the latter scrutinizes the agencies themselves (and each agency's many programs) and considers reform or termination of their activities and the statutes which gave birth to them.

The Senate Governmental Affairs Subcommittee on Intergovernmental Relations, chaired by Senator Muskie, held hearings on S600 in May and June of 1977, but there has been no action on the bill since then. It is generally conceded that the possibilities for passage of S600 are closely linked to passage of S2. Another legislative possibility is that S2 could be passed without the paragraph which exempts the regulatory agencies from the first cycle of sunset review. Thus, the regulatory agencies would not have any opportunity to reorganize before becoming part of the general sunset review system.

#### THE INTERIM REGULATORY REFORM ACT, S263

This bill concerns the seven independent regulatory commissions: the Federal Communications Commission, the Interstate Commerce Commission, the Federal Power Commission, the Consumer Product Safety Commission, the Civil Aeronautics Board, the Federal Maritime Commission, and the Federal Trade Commission.

Each independent commission would be required to review the laws and court decisions which define its authority and recommend legislation to Congress that would streamline and recodify these authorizing laws. The chairman of each commission would be authorized to appoint a director to conduct and supervise the review. Each commission would have to submit a report of recommendations both to the President and to Congress by October 1, 1980.

#### ANALYSIS OF S263

The ages of these seven commissions range from ninety years (the ICC) to five years (the CPSC). The purpose of this bill is

modernization and streamlining of authorizing statutes. No restriction of regulatory authority is contemplated, for the purpose of each commission is not in question. The success of the report each commission submits could depend on the independence of the director of each commission's study. The bill allows for the possibility of such independence for it does not require the appointment of each commission's director to be subject to the provisions of the laws governing appointments in the civil service. The Senate passed S263 on June 10, 1977, and sent it to the House where there has been little action. The Commerce Committee estimates the total costs for all seven reports to be \$2.1 million over the authorized three-year period.

#### INTERIM REGULATORY REFORM ACTS, S1532-1537 -- SPECIFIC COMMISSIONS

These six bills, originally included as parts of S263, concern the same seven independent agencies individually and would:

- require the commissions to recodify all the rules and regulations they have promulgated,

- require each commission to respond within four months to petitions concerning regulations,

- require the commissions to submit their budget requests and legislative proposals simultaneously to Congress and the President,

- allow each commission to prosecute court cases if the Justice Department fails to do so,

- establish a conflict-of-interest policy by prohibiting former high-ranking agency officials from representing cases before a commission for two years after leaving it,

- require presidential appointment and senatorial confirmation of commission chairmen, and

- specify the appropriations for each commission (except for the Consumer Product Safety Commission) for each of the next four years.

#### ANALYSIS OF S1532-1537

The Senate Commerce Committee decided to separate the provisions of these bills from S263 with the hope that the House would be more likely to pass at least some of them during the first session of the 95th Congress. The bills were reported out of the Commerce Committee along with S263 on May 16. Since that time, S1532 (the Federal Maritime Commission),

S1534 (the Interstate Commerce Commission), S1535 (the Federal Power Commission), and S1536 (the Federal Communications Commission) have passed the Senate and have been sent to the House, where there has been no action. S1537 (the Civil Aeronautics Board) has been delayed in the Senate because of a major bill, which would vastly change CAB's regulatory powers over the airlines, has been under consideration there.

The Commerce Committee chose to specify each commission's appropriations for the next four years but did not thereby establish a permanent cycle of four-year reauthorizations, as in the six-year cycle of S2. Nor did it provide for any automatic sunset termination of the commissions after four years. In fact, the committee report states that the committee is ready to raise the appropriation authorizations for any commission for any year if "it becomes evident that the authorizations for appropriations is too low." The Consumer Product Safety Commission was excluded from budget reauthorization because it had previously been reauthorized two years ago. Under current law, the other six commissions operate with permanent budget authority and yearly receive "such funds as are necessary." Also under current law, Congress does not receive copies of the budgets of the commissions at the time when they are submitted to the President, and in fact, the commissions have sometimes simply refused to allow Congress to see their detailed budgets.

While S263 would require the commissions to recodify the authorizing statutes by power of which they issue regulations, these six bills would require the commissions to tidy up, but not change substantively, the regulations themselves. It is conceivable that the provision which forces the commissions to give timely consideration to petitions could result in less regulation since the regulated community would better be able to oppose what it considers ill-advised regulations. On the other hand, the same provision would allow any "interested person" the same timely access for the purpose of proposing that a commission issue new regulations concerning some area under its authority.

Finally, the commissions would be given new muscle to take violators of regulations to court under the provision which allows them to initiate court proceedings if the Justice Department fails to do so when requested by any commission. Under current law, the Interstate Commerce Commission, the Federal Maritime Commission, and the Federal Trade Commission have limited independent powers of litigation of their own. These bills would substantially extend the powers of those three commissions and grant the same substantial powers for the first time to the Civil Aeronautics Board, the Federal Communications Commission, The Federal Power Commission, and Consumer Product Safety Commission.

THE FEDERAL SPENDING CONTROL ACT OF 1977, S1244

Under its major provisions, this act:

-- provides that no new authorizations be for longer than four years,

-- that existing programs be reauthorized within five years,

-- that the reports on new programs or the reauthorizations of existing programs reflect a basic evaluation of the need for such program and of its probable (or actual) success.

ANALYSIS OF S1244

This bill, sponsored by Senator Biden, while seeking the same ends as S2, is far less elaborate and ambitious. S1244 limits the period of authorizations for any program and establishes a four-year review cycle, but it does not force review of all similar programs at the same time, as does S2. The bill has been referred to the Senate Committee on Governmental Affairs, but no hearings have been held.

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