

Your Question:

You wanted information relating to state legislative sunset review provisions. Specifically, you wanted to know how the review process works and the scope of review.

Our Response:

Sunset provisions were created to improve accountability and provide oversight to government agencies. According to a [2015 report](#) from the [Mercatus Center at George Mason University](#), a market-oriented think tank, sunset provisions are clauses 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.

Our response provides an overview of the sunset review process accompanied by state examples for each distinct type of sunset provision and concludes with some general policy considerations for evaluating sunset provisions in the context of education policy.

Sunset Review Process

Most states employ some form of a sunset provision in their policies. Sunset provisions are applied in varying ways in different states. The [Council of State Governments](#) identifies four distinct types of sunset provisions:

- *Comprehensive:* All statutory agencies undergo sunset review on a preset schedule.
- *Regulatory:* Licensing and regulatory boards undergo sunset review.
- *Selective:* Only selected agencies undergo a sunset review.
- *Discretionary:* The legislature may choose which agencies and statutes undergo a sunset review.

States vary in the agencies or statutes that are subject to sunset review and the oversight body charged with conducting the review. However, the general process for conducting a review is similar in most states.

The following is a sample of state sunset provisions according to each of the distinct types of sunset laws:

Comprehensive

Arizona ([ARS § 41-2953](#)): All state government agencies, departments, boards, commissions, institutions, and programs are subject to sunset termination. Sunset provisions here require a coordinated effort between the joint legislative audit committee (JLAC) and the Office of the Auditor General. The [auditing process](#) for state agencies takes place over the course of 20-months and is initiated by the JLAC after reviewing the list of agencies scheduled for termination. The Office of the Auditor General performs the evaluation of the agency and JLAC assigns agencies being reviewed to the appropriate [committee of reference](#) to hold public hearings. During the public hearings, the agency undergoing sunset review is required to prepare a presentation addressing 13 statutory sunset factors and four agency factors. The Office of the Auditor General prepares a performance audit which is shared with the JLAC

and the committee of reference. The process concludes with recommendations to retain, modify, or terminate the agency based the recommendations of the performance audit and public hearings. A complete overview of the sunset process may be found [here](#).

Regulatory

Maryland ([Md. Code Ann. § 8-402](#)): Sunset provisions in Maryland focus on the role of regulatory agencies. [State law](#) explicitly identifies the agencies that are subject to sunset review. Reviews are conducted by the Department of Legislative Services and must identify significant legislative/regulatory changes since the last review of an agency, licensing and enforcement activities, registered complaints against the agency and their outcomes, and revenues and expenditures for the most recent 6-year period including indirect costs. The Department is required to make legislative recommendations based on the findings of the evaluation, and the legislature can determine whether the agency should be retained, modified, or terminated based on the findings of the Department.

Selective

Texas ([Texas Gov. Code Sec. 325](#)): Under state law, 140 state agencies are subject to the Texas Sunset Act and typically undergo review once every 12 years. The agencies are reviewed by a 12-member commission that consists of five members from the Senate, five members from the House, one public member appointed by the Lieutenant Governor, and one public member appointed by the Speaker of the House. According to [state sunset commission materials](#), the process for the sunset review includes an extensive evaluation of the performance of the agency, publication of the evaluation, commission deliberation of the evaluation findings, and legislative action based on the commission's findings. The outcome of the review concludes with an agency continuing with its improvements, or the agency is abolished and required to wind down business over the course of one year. More information on Texas' sunset provisions may be found [here](#).

Discretionary

Washington ([RCW 43.131](#)): The state requires a [sunset review](#) when statutory language indicates a sunset date in the legislation. Statutes subject to sunset provisions undergoes a review from a joint legislative audit and review committee and are assessed using criteria that include whether the program or agency complies with legislative intent, operates in an efficient manner, reaches expected performance goals, and performs duplicative activities. Based on the findings of the evaluation, the committee will recommend either retaining the program or agency, modifying the program or agency, or allowing the program or agency to terminate. Termination timeframes are specified in legislation with sunset provisions, or the legislation is [terminated after seven years](#) if no timeframe is included.

Policy Considerations

It is difficult to assess how sunset provisions may relate to education policies. State education agencies (SEAs) operate in varying governance structures and have different relationships with each of the districts they serve. As such, there are several things to keep in mind when considering applying sunset provisions to education laws.

Some education policy related considerations are:

- **Governance Structure**: Governance structure may broaden or limit a state's ability to use sunset provisions. As our [50-State Comparison](#) demonstrates, in many states, education related functions are constitutionally mandated. While it is unclear how (or if) sunset provisions would be affected by this, constitutional language may complicate efforts to place state education agencies in this type of accountability framework. **Key Consideration**: Are new government accountability practices compatible with your state's core governance framework?
- **Existing State Agency Accountability Frameworks**: In some cases, state agencies are required to provide a report to the legislature or undergo regular audits for performance evaluation. In these scenarios, sunset review may be redundant or could complicate existing auditing practices. **Key Consideration**: What are the existing performance tracking practices in your state?
- **Cost**: Sunset provisions help states to determine if agencies are effectively utilizing taxpayer money. The process for evaluating whether an agency is adequately performing its duties on a regular basis could be costly. **Key Consideration**: Are sufficient means already available to perform rigorous evaluations prior to expanding sunset provisions? If not, is the value of an in-depth analysis of education agencies and programs worth the potential costs to the state?
- **Compliance Mindset**: As states begin to implement provisions in ESSA and take greater ownership over their education plans, SEAs may begin to move away from compliance mindsets toward more innovative practices. Adopting accountability measures for state agencies that are too rigid may create disincentives for adopting new practices. **Key Consideration**: How can your state strike the right balance between metric based performance evaluations and providing flexibility for SEAs to innovate?

Additionally, we recommend using our [State Education Policy Checklist](#) to evaluate whether adopting new policies or processes is the best option.