



# Montgomery County Government

## Title

### A PROPOSAL FOR THE MONITORING AND REVIEW OF COUNTY CODE SUNSET PROVISIONS

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## I. AUTHORITY, SCOPE AND METHODOLOGY

A. Authority. Council Resolution No. 11-97, CY 1987 Work Program of the Office of Legislative Oversight, adopted February 24, 1987.

B. Scope. To survey current sunset provisions in the Montgomery County Code, 1984, as amended, and to recommend procedures for the monitoring and review of existing and future County Code sunset provisions. This report defines a sunset provision as statutory language that designates a termination or expiration date for a specific code section, program, or activity.

Appendix A to this report provides some general background about the concept of sunset and summarizes the reported experiences with various sunset programs that were enacted primarily at the state level during the 1970's.

C. Methodology. This project was conducted by Karen Orlansky, Program Evaluator, with assistance from Johanna Ettl, Public Administration Intern and Jolene Lauria, Public Administration Intern. It involved review of legislative files and consultation with Council staff, the Office of the Chief Administrative Officer, the Office of the County Attorney, the Department of Housing and Community Development, and the Department of Finance. Information was also obtained from Common Cause, the National Conference of State Legislatures, and Maryland's Department of Fiscal Services.

## II. BACKGROUND

In 1985, the Council directed the Office of Legislative Oversight to survey the Montgomery County Code (MCC) to identify all sections subject to a sunset provision. In December 1985, OLO issued a memorandum report listing all MCC sections that designated a termination or expiration date for a specific program or activity. Since the initial sunset report in December 1985, OLO has issued five updates. In early 1987, after questioning whether tracking sunset provisions was appropriate as an ongoing OLO responsibility, the Council requested that OLO's work program include developing recommended procedures and agency responsibilities for the monitoring and review of MCC sunset provisions.

## III. OVERVIEW OF EXISTING COUNTY CODE SUNSET PROVISIONS

A. General. There are currently 11 programs and activities established by County law that are subject to a sunset provision. There are an additional two programs with legally established application deadlines that serve the same function as sunset provisions to the extent that when new applicants are not accepted, the programs cease to exist.

Table 1 (page 3) lists the 11 programs and activities subject to a sunset provision in chronological order of their scheduled termination dates. Both the code section containing the sunset provision and the County department(s) or office(s) with primary responsibility for administering the program or activity are listed.

Table 1

Programs/Activities Subject to a Sunset Provision in the  
Montgomery County Code, 1984 as Amended

<u>Sunset Date</u>	<u>Program and Code Section(s) Subject to Sunset</u>	<u>Code Section of Provision</u>	<u>Administering Department(s)/Office(s)</u>
06/30/88	Maintenance Support for Association Roadways 24B-14 thru 24B-19	24B-19	Department of Transportation
07/01/88	Minority Business Purchasing Program 11B-23A thru 11B-23E	11B-23G	Finance Department
12/31/88	Cooperative Purchasing Reporting Requirements 11B-42(e)	11B-42(e)(2)	Finance Department
03/31/89	Tenant Displacement 53A-1 thru 53A-13	53A-13	Office of Consumer Affairs; Department of Housing and Community Development
04/30/89	Drug Enforcement Forfeitures Fund 35-13B	35-13B(e)	Police Department
07/01/90	Committee for Ethnic Affairs 27-53 thru 27-60	27-61	Office of the Chief Administrative Officer
12/01/90	Commission on the Humanities 9A-1 thru 9A-4	9A-4	Office of the County Council
01/01/91	Partnership Fund for Victims of Hate/Violence 27-26F	27-26F(h)	Human Relations Commission
06/30/91	Anti-Hate/Violence Fund 35-13A	35-13A(g)	Police Department
08/01/91	Rental Assistance Program 41A-1 thru 41A-8	41A-8	Department of Housing and Community Development
10/09/95	Development Rights Fund and its Board of Directors 13A-1 thru 13A-7	13A-7	Development Rights Fund Board of Directors; Finance Department

Table 2 (below) lists the two programs that contain legally established application deadlines. While the application deadline for the Real Estate Tax Deferral Program is set forth as a single deadline after which no one can apply, the law establishes both an application deadline and a project completion deadline for the Child Care Property Tax Credit Program. (Note: The list of programs subject to an application deadline does not include the accessory apartment law. This is because the deadline specified in Section 59-G-2.00, MCC acts only as a cut-off date from receiving an exemption from certain special exception standards and requirements, and does not have the effect of terminating the entire accessory apartment program.)

Table 2

Programs with Legally Established Application Deadlines in the  
Montgomery County Code, 1984, as Amended

<u>Program With Application Date</u>	<u>Application Deadline</u>	<u>Code Section of Application Deadline</u>	<u>Administering Department</u>
09/01/89	Residential Real Property Tax Deferral Program	52-18C(n)	Finance Department
07/01/91*	Child Care Property Tax Credit Program	52-18E(d)	Finance Department

\* In addition to an application deadline, the Child Care Property Tax Credit law stipulates that to be eligible to receive the tax credit, the property improvement must have been completed and assessed after July 1, 1987.

B. Statutory Language Differs. The Montgomery County Plain Language Drafting Manual, adopted by the Council in 1985, contains recommended standard language for writing a clearly identifiable sunset provision. Section 207(e) of the Manual suggests that each sunset date be written as a numbered section of the Code, not merely as a section of a bill without a Code section number. The Manual also suggests that the term "Sunset Date" be used in the Code Section heading, and recommends the following standard wording:

Example: Section 80-10. Sunset date

Sections 80-6 through 80-10 are no longer effective after  
December 31, 1990.

Since the adoption of the Drafting Manual, the Council has enacted 12 bills either creating or extending a sunset provision. Only four of these bills have conformed to the sunset form and language suggested in the Drafting Manual. Other statutory phrases used to describe a time limit to a program or activity include: "ceases to exist", "terminates", "ends", and "expires".

C. Reasons for Council Including a Sunset Provision. A review of the legislative files of bills that either established sunset provisions or set forth application deadlines indicates that, in contrast to the broad based sunset programs enacted by many states during the late 1970's, (see Appendix A), the County has employed the sunset concept on a selected basis.

Although there are no written criteria for attaching a sunset provision, the legislative files indicate that the reason for including statutory language to limit the existence of a program or activity most often has been to force a legislative review of the program or activity within a designated period of time. Specifically, there have been several recurring reasons that the Council has cited for including a sunset provision or application deadline:

- The intent of a program is to address a situation perceived of as temporary (Ex: Tenant Displacement);
- A program is considered a trial solution (Ex: Anti-Hate/Violence Fund);
- The program must conform to state enabling legislation that sets a time limit for the program's existence (Ex: Child Care Property Tax Credit); or,
- The bill establishes a board, committee, or commission for more than two years<sup>1</sup> (Ex: Commission on the Humanities).

D. Length of Sunset and Extensions. Because there is no legally required minimum or maximum length of a sunset provision (i.e., the amount of time a program is permitted to exist prior to expiration), the Council can decide the length of any sunset provision based on the circumstances surrounding the individual program or activity. The 11 sunset provisions currently in the code had initial sunsets ranging in length from two to ten years. The programs with legally established application deadlines were initially established to operate for three or four years.

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<sup>1</sup> Section 2-146, MCC provides that if no term is stated for a board, committee or commission, then the term shall be two years from the date the board, committee, or commission is established. See Section V of this report for discussion of this issue.

If, before a sunset date goes into effect, the Council determines that the program or activity should not terminate on its designated sunset date, then legislation can be enacted to extend or remove the sunset provision. Of the 11 programs subject to sunset provisions currently in law, six have been extended at least once. One program (Anti-Hate/Violence Fund) has been extended twice and one program (Tenant Displacement Program) has been extended three times. Two of the six bills to extend a sunset provision within the past three years were enacted as emergency legislation.

Of the two programs with application deadlines, the deadline to apply for the Residential Real Property Tax Deferral Program has been extended once by emergency legislation. The deadline for the Child Care Property Tax Credit Program was enacted for the first time by the Council in October 1987, and was established with a four-year sunset.

E. Statutory Requirement for Report/Evaluation. Eight of the 11 programs with sunset provisions contain a statutory requirement for a report or evaluation. The requirement has varied in terms of who is responsible for producing the report, the frequency of reports, and who receives the report. Only three of the statutory requirements include details of what is to be included in the report or evaluation (the Minority Business Purchasing Program, the Cooperative Purchasing Reporting Requirements, and the Committee for Ethnic Affairs).

Seven out of the eight statutory requirements for a report direct that the report be produced by the County Executive, the department with primary responsibility for administering the program or activity, or the commission or committee itself that is subject to sunset. While the law stipulates that the annual report on the Drug Enforcement Forfeiture Fund goes only to the County Executive, the laws governing the other reports require they be submitted either to the Council, or to both the County Executive and the Council.

#### IV. PROPOSED PROCEDURE FOR MONITORING SUNSET PROVISIONS

A. Purpose and Assumptions. The purpose of establishing procedures for monitoring sunset provisions is to institutionalize a process for notifying the Council and the County Executive in a timely manner when a particular program or activity is scheduled to terminate so that County elected officials can make informed decisions about the future of the program or activity.

The assumptions used in designing this process were as follows:

- At a minimum, a process must provide for notice to avoid the inadvertent termination of a program, and notice must be timed to allow for informed actions to be taken. Specifically, the notice of an upcoming sunset date must be sent sufficiently before the actual termination date specified in the law so that the Council has enough lead time to: (1) affirmatively decide to let a sunset date go into effect; or (2) introduce and act upon legislation to extend or remove the sunset date, or (3) request and receive more information upon which the Council can then base a decision to introduce and act upon legislation to extend or remove the sunset date. The process must be designed to allow the most time-consuming option to run its full course before the sunset date takes effect.

- Tracking legally established sunset provisions is primarily a legislative branch responsibility. This assumption is based upon the fact that legislative action is required to continue a program or activity beyond its legally designated termination date. Moreover, this procedure recognizes that the intent of most sunset provisions is to force a legislative review of a designated program or activity within a specified period of time.

- A bill to extend or remove a sunset provision should not, as a general rule, be acted upon as emergency legislation. Whatever procedures are established to monitor sunset provisions must allow ample time for the legislative process to operate on a non-emergency basis.

- Finally, the procedure being proposed assumes that the County Executive has not already requested that the Council President introduce a bill to extend or remove the sunset date of the program or activity in question. Obviously, if such a bill has been requested, then the Council's normal legislative process will allow for discussion and review of the upcoming sunset date.

B. Outline of Proposed Procedure. The fold-out flow chart (Appendix C) depicts an example of how the proposed procedure for the monitoring and Council review would function for the sunset date of a hypothetical Program Z.

Except for the 91 days between the date a bill becomes law and its effective date, (a provision of Charter Section 112), the lengths of time allowed for each step are intended to be realistic estimates of the average time required. It must be recognized, however, that the time between steps may be extended if the process, for example, coincides with an extended Council vacation or the middle of the budget season. Moreover, the process will likely take less time if the only change in question is the extension of the sunset date, and will likely take more time if changes being discussed include revisions to the structure and operations of a program.

The steps in the proposed process are as follows:

- Send Written Notice of Upcoming Sunset Dates. The first step is to send timely written notice of upcoming sunset dates to Councilmembers and the County Executive. Because, as outlined in Appendix C, Council review and action on a sunset provision can take up to 14 months, the procedure must call for written notice to be sent at least 14 months in advance of the sunset date specified in law.

The Council's Rules of Procedure currently require the Council President, or the Council President's designee, to inform all Councilmembers in writing of the pending expiration of a bill at least one month in advance. Similarly, the Rules of Procedure should also require the Council President, or the Council President's designee, to send written notice of upcoming sunset dates to Councilmembers and the County Executive 14 months in advance.

As a routine matter, every notice of a pending sunset date should remind Councilmembers that anyone interested in sponsoring an extension to the sunset provision should take the appropriate steps to have such a bill



introduced. In addition, the notice should include a statement that, if, within 30 days, no Councilmember has indicated an interest in sponsoring a bill to extend the sunset provision, the Council President will refer the issue of the upcoming sunset to a Council committee.

In practice, just as the responsibility for informing Councilmembers about pending bill expiration dates is delegated to the Council staff, it would be logical for the Council President to similarly delegate the responsibility for tracking and sending notice of sunset provisions. It would also be useful for the Council President to request the Council staff to circulate, at least once a year, a complete list of all sunset provisions contained in the Code. This list could also be published annually in the Montgomery County Register.

- If Bill to Extend Not Requested, then Council President Should Refer Issue of Upcoming Sunset to Appropriate Council Committee. If, within 30 days from the time the initial notice of sunset is circulated, no Councilmember has indicated an immediate interest in sponsoring a bill to extend the sunset, then the Council President should refer the matter of the upcoming sunset to the appropriate Council Committee.<sup>1</sup> Once the issue has been scheduled on a Committee agenda (Appendix C estimates this will take 30 days), then agency staff responsible for administering the program or activity under discussion should be contacted and encouraged to attend the Council Committee meeting in order to participate in the Council Committee's discussion of the upcoming sunset date.

- Council Committee Recommends One of Three Options. The flow chart (Appendix C) outlines the three major options available to the Committee. If Committee members feel they have enough information upon which to base a recommendation about a pending sunset, then the Committee will choose either Option (A) or Option (B). If Committee members feel they need more information about a pending sunset, then they will choose Option (C).

Option (A): Committee recommends that Program Z be allowed to terminate as of its statutory sunset date. Choosing this option implies that the Committee believes the existing code provision designating a sunset date for Program Z should go into effect.

When dealing with sunset, a recommendation to take no further action is, in effect, a recommendation to let a program or activity terminate. To ensure that all Councilmembers are fully informed that the Committee has discussed the upcoming sunset of Program Z and recommends that no action be taken to extend or remove Program Z's sunset date, the procedure for Option (A) proposes that the Committee Chair report the Committee's recommendation to the full Council at the Council's next appropriate legislative session. This will provide any Councilmember who disagrees with the Committee's recommendation with another opportunity to introduce legislation to extend or remove Program Z's sunset date.

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<sup>1</sup> According to the Council's Rules of Procedure, (Rule 5. Notice and Agenda Preparation), the Council President assigns matters to Council committees. An assignment may be changed by a motion, approved by a majority of the Council, to refer the matter to another committee.

(Note: On the flow chart (Appendix C), for purposes of illustrating the alternatives, the estimated three months required for Option (A) is based upon the assumption that the Council concurs with the Committee's recommendation to take no further action. If, however, the Council does not agree with the Committee's recommendation, Council can choose to either introduce legislation affecting Program Z's sunset date (Option (B)), or request an evaluation of Program Z be conducted (Option (C)).

Option (B): Committee sponsors legislation to extend or remove Program Z's sunset date. In certain cases, Councilmembers know they want a sunset provision either extended or removed, and are prepared to sponsor legislation to do so. As depicted on the flow chart, Option (B) outlines the steps and estimates the time it takes for the legislative process to run its course. The estimated time required for Option (B) is ten months.

Option (C): Committee requests more information about Program Z. This option is potentially the most time-consuming because it includes an estimated 120 days for information about Program Z to be compiled and presented back to the Committee. The flow chart terms the gathering of additional information an "evaluation". The extent of the evaluation may depend upon the subject matter and/or the Councilmembers' interest or support of the program. For example, Councilmembers may not feel it is necessary to explore all aspects of a program's operations, but may want additional data concerning one or two aspects, such as program costs or number of persons served.

The flow chart also indicates that under Option (C) the Committee can request that the evaluation be conducted either by the Executive branch or by the Office of Legislative Oversight (OLO). In many cases, an evaluation can appropriately (and sometimes most efficiently) be conducted by the Executive branch. However, there may be situations where the issues involved lend themselves most appropriately to an OLO project. If the Committee decides it would be best to have OLO conduct the evaluation, then as with all OLO projects, the request must be approved by the full Council.

As shown on the flow chart, once the evaluation is completed, the Committee meets again to consider whether to sponsor legislation to extend or remove Program Z's sunset date, or to recommend that Program Z be allowed to terminate as of its statutory sunset date. If the Committee decides to sponsor legislation, then the procedure allows for the additional four months it takes, on average, to draft, introduce, hold a public hearing, consider and enact a bill, plus the additional 91 days between the time a bill becomes law and the date it goes into effect.

Under Option (C), if the Committee decides to recommend that Program Z sunset, then similar to the procedure followed in Option (A), the Committee Chair would report the Committee's recommendation to the full Council at the Council's next appropriate legislative session. This timing still allows any other Councilmember to introduce legislation to extend or remove Program Z's sunset date.

The total time required for Option (C) is approximately 14 months if, after receiving more information, the Committee (or Council) decides to go ahead and sponsor legislation to extend or remove Program Z's sunset date. Option (C) will, however, only take seven months if the Council concurs with a Committee's recommendation to let Program Z sunset after receiving more information about it.

## V. RELATED ISSUE: THE APPLICATION OF SUNSET TO BOARDS, COMMITTEES AND COMMISSIONS

In 1977, the Council created a citizens' Committee on Committees to study and make recommendations for improving the County's system of boards, committees and commissions. The Committee on Committees' final report, issued in January 1979, included a recommendation that the Council should enact a general sunset provision requiring a two-year term of existence for all boards, committees and commissions, unless otherwise stated. The Committee on Committees argued that while many boards, committees, and commissions in the County exercise governmental authority, there are many other ad hoc committees that are created to function only in an advisory capacity or to carry out a particular task. The Committee on Committees recommended that once a committee's work is completed, it should cease to exist.

In November 1978, largely as a result of the Committee on Committees' interim report recommendations, the Council enacted Bill No. 55-78 (Chapter 2, Article XI, Boards, Committees and Commissions, MCC) to establish a more uniform system of boards, committees and commissions. Enacted as part of Bill No. 55-78, Section 2-146 stipulated that, in the future, the law, resolution or executive order establishing or continuing any committee shall state the term of the committee's existence. If no term is established, then the committee's term would be two years from the date it is established; if the term of a committee expired without the life of the committee being continued, the committee shall " . . . automatically cease to exist and shall have no further authority or responsibility." Section 2-146 made an exception to this sunset for all boards, committees and commissions created prior to the effective date of the article; the law stated that these could expire only if the Council took affirmative action to terminate them after having received the recommendations of the County Executive.

In 1984, when it was brought to the Council's attention that several boards and commissions created after the effective date of Bill No. 55-78 had inadvertently expired, the Council met in emergency public session to reconsider the effects of the sunset provision in Section 2-146. A review of the legislative file shows that while the Council concluded the intent of the sunset provision in Section 2-146 was basically sound, until a reliable system for tracking sunset dates was implemented, a general sunset provision applicable to all boards, committees and commissions was not feasible.

To prevent additional committees from unintentionally sunsetting, the Council enacted legislation (Emergency Bill No. 33-84) to delete the sentence in Section 2-146 which required the automatic termination of any committee, board or commission whose term of existence was not extended by the Council. Bill No. 33-84 also deleted the phrase in Section 2-146 which stated that only committees, boards or commissions created prior to the effective date of the article were not subject to the sunset provision. The overall effect of Bill No. 33-84 was to exempt all boards, committees and commissions, regardless of when they were created, from the general two-year sunset provision.

There have been no further amendments to Section 2-146 since the Council enacted Emergency Bill No. 33-84 in June 1984. A copy of the current statutory language affecting the terms of boards, committees, and commissions is attached as Appendix B to this report.

## VI. RECOMMENDATIONS

### Recommendation A: Implement the Proposed Procedure for Monitoring Sunset Provisions

The procedure, as described in Section IV of this report and outlined as a sample in Appendix C, should be adopted by the Council as the Council's general operating procedure for the monitoring and review of County Code sunset provisions. This procedure should also apply to legally established application deadlines that serve the same function as sunset provisions.

The Council's Rules of Procedure should be amended to formally assign responsibility for the tracking of sunset provisions and the sending to the Council and County Executive timely written notice of upcoming sunset dates. Specifically, a new section governing sunset provisions should be added to Rule 6. Legislation, in the Rules of Procedure to read as follows:

Sunset Provisions. The Council president or the president's designee informs all Councilmembers and the County Executive in writing of the pending sunset date of a law ~~12~~<sup>18</sup> months in advance. In addition, on an annual basis, the Council president or the Council president's designee circulates a list of all existing Montgomery County Code sunset provisions to all Councilmembers and the County Executive. In addition, this list should also be published annually in the Montgomery County Register.

### Recommendation B: Establish Recommended Guidelines for Enacting Sunset Provisions

In order to make sunset dates easy to locate in the County Code and to allow for a systematic review process, the Council should establish recommended guidelines for enacting sunset provisions.

1. Standard Language. The writing of sunset provisions should follow the language and format contained in the Council's Plain Language Drafting Manual. As Section 207(e) of the Manual suggests, each sunset date should be written as a numbered section of the Code, and the term "Sunset Date" should be used in the Code section heading. The phrase for describing the sunset date should follow the example offered in the Manual, i.e., "Sections 80-6 through 80-10 are no longer effective after December 31, 1990."
2. Three-Year Minimum Sunset. Although there may be situations that warrant establishing a sunset date less than three years into the future, as a general practice, the initial sunset date of a program should be set at least three years from the effective date of the legislation that created the program. If the Council decides to continue a program past its initial sunset date, then the extension of a sunset provision, in general, should also be set at least three years into the future.

As outlined in this report, it can take more than one year to conduct an evaluation and take appropriate legislative action to extend or remove a sunset provision. In general, three years will allow sufficient time for a newly created program to get started and complete at least one additional year of operating before coming up for legislative review. Similarly, three years between extensions of a sunset provision will usually allow sufficient time for any revisions to an already existing program to be implemented.

3. Sunset Either on June 30 or December 31 (except in Council election years). To allow for a more systematic notification and review process, unless there is a compelling reason to do otherwise, all sunset dates should be established on either June 30 or December 31. The exception to this would be Council election years, in which sunset dates should be established only on June 30. This will avoid a sunset date arriving during the first month of a new Council's term of office.

In addition to the logic of scheduling the termination of programs either at the end of the County's fiscal year (June 30) or at the end of the calendar year (December 31), establishing two standard dates during the year for sunset would enable the written notice of pending sunsets to be sent out twice a year; once in April to send notice of programs scheduled to sunset on June 30 of the following year, and once in October to send notice of programs scheduled to sunset on December 31 of the following year.

Over time, this recommendation could be implemented by setting all future sunset dates on either June 30 or December 31. In addition, the Council could pass an omnibus bill that amends the laws containing existing sunset provision to bring all existing sunset provisions into either June 30th or December 31st time slots. Table 3 (page 14) outlines recommendations for the changes that would be necessary. Three sunset dates are already on a June 30th or December 31st, and an additional three sunset dates are only one day off. The largest shifts would effect the Commission on the Humanities and the Partnership Fund for Victims of Hate/Violence because they are currently scheduled to sunset in December (and the following January) of a Council election year.

4. Specify Reporting and Data Collection Requirements In Law. When the intent of a sunset provision is to force the evaluation of a program within a designated period of time, the law that establishes the program should include requirements that specify what data and reports are needed to conduct an evaluation and when such data and reports must be available.
5. Consider Removing Sunsets that are Repeatedly Extended. When a sunset provision comes up for review, especially one that has been extended several times, consideration should be given to removing the sunset date altogether. The Council did just that

when the law that established the licensing of condominium and cooperative rental units came up for sunset review in 1984. The County Executive presented a report to the Council that demonstrated the condominium/cooperative rental licensing law was delivering a valuable service to a significant segment of the County's rental population. The Executive recommended, and the Council concurred, that it was appropriate to remove the sunset provision so that this licensing program would become a permanent operating program.

6. Include Reference to Sunset Dates Established in State Law. If a sunset date for a particular program is established because of a sunset or deadline specified in the State enabling legislation (e.g., Child Care Property Tax Credit), then the County law should include a reference to the State law. In addition to providing an explanation for inclusion of the sunset provision, the reference will serve as a reminder that if the County wishes to continue the program past its sunset date, then the County must pursue a change in the State law during the legislative session before the sunset date arrives.

**Recommendation C: Review the "Sunset" Provision Currently in the Montgomery County Code for Boards, Committees and Commissions**

The Council may wish to review Code sections 2-146 regarding the terms of boards, committees and commissions in order to determine if the current language continues to represent the Council's policy.

Table 3

Recommended Changes to Existing Sunset Dates  
To Move Them Into June 30 or December 31 Time Slots

<u>Program Subject to Sunset</u>	<u>Current Sunset Date</u>	<u>Proposed Change</u>	<u>Length/Direction of Change</u>
Maintenance Support for Association Roadways	06/30/88	None	None
Minority Business Purchasing Program	07/01/88	06/30/88	- 1 day
Cooperative Purchasing Reporting Requirements	12/31/88	None	None
Tenant Displacement	03/31/88	06/30/88	+ 3 months
Drug Enforcement Forfeitures Fund	04/30/89	06/30/89	+ 2 months
Committee for Ethnic Affairs	07/01/90	06/30/90	- 1 day
Commission on the Humanities	12/01/90	06/30/91	+ 7 months
Partnership Fund for Victims of Hate/Violence	01/01/91	06/30/91	+ 6 months
Anti-Hate/Violence Fund	06/30/91	None	None
Rental Assistance Program	08/01/91	06/30/91	- 1 month
Development Rights Fund and its Board of Directors	10/09/95	12/31/95	+ 2 months

Programs with Legally  
Established Application  
Deadlines

Residential Real Property Tax Deferral	09/01/89	12/31/89	+ 4 months
Child Care Property Tax Credit	07/01/91	06/30/91	- 1 day

## VII. OFFICE/DEPARTMENT COMMENTS AND OLO'S RESPONSE

On December 22, 1987, OLO circulated a draft of this report to the Council staff, the Office of the Chief Administrative Officer, the County Attorney, the Department of Finance, and the Department of Housing and Community Development (the latter two as representatives of departments that administer laws containing sunset provisions). All technical corrections received either orally or in writing are incorporated into this final report. Most of the suggestions received orally from the Council Staff Director and in writing from the Executive branch have also been incorporated into this final report. Written comments received by January 20, 1988 are included in their entirety starting on page 16.

OLO Response to Comments in General. It is apparent from several of the written comments received that this report sparked some discussion of issues that went beyond the immediate scope of OLO's study. OLO perceived this assignment as a very practical request from the Council to recommend a procedure for tracking existing legislative sunset provisions. OLO did not interpret the Council's request as extending to the development of standards for applying sunset provisions to particular programs or activities. OLO included mention of the application of sunset to boards, committees and commissions only as a related issue that the Council may wish to pursue in more detail; the scope of this report was certainly not intended to cover a thorough analysis of that issue.

Among the written recommendations received were two that, although not adopted as recommendations in this final report, deserve to be highlighted for the Council's consideration. These suggestions are:

- Mr. Kendal's recommendation that if the Council decides to allow a sunset provision to take effect (Option (A) on the flow chart), then the Council should consider holding a public hearing on this decision; and
- Mr. Sherman's recommendation that the Council may wish to consider establishing a single section in the County Code to index all laws that are subject to sunset provisions and to list the sunset dates.

Additional OLO responses to specific comments are inserted as footnotes to the comments on the following pages.





Montgomery County Government  
ROCKVILLE, MARYLAND 20850

MEMORANDUM

January 19, 1988

TO: Andrew Mansinne, Director, Office of Legislative Oversight  
FROM: Keith E. Kolodgie, Asst. to the Chief Administrative Officer  
SUBJECT: OLO 87-5: DRAFT Report A Proposal for the Monitoring and  
Review of County Code Sunset Provisions

Per your request, attached are comments on the above-named proposal from Ed Rovner, Bob Kendal, Max Bohnstedt and Rocky Sorrell. Thank you for the opportunity to comment.

KEK:psa

Attachments



Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

January 15, 1988

TO: Karen Orlansky, Program Evaluator  
Office of Legislative Oversight

VIA: Keith Kolodgie  
Assistant to the Chief Administrative Officer

FROM: Edmond F. Rovner *EFR*  
Special Assistant to the County Executive

SUBJECT: County Sunset Provisions

- 1) The study is only a cursory analysis of the standards for applying a sunset concept to a program or a commission. Obviously, different standards would apply to handle a program such as snow removal versus doing away with a Commission such as Commission on Aging. There are situations where programs or commissions should not be subject to sunset because the debate polarizes the community and the likelihood of allowing the program or commission to expire is minimal. Some artful way of describing the standards to be used should be included in the final Report.
- 2) If a standing committee of the Council decided to allow a commission or program to expire, this conclusion should have been reached after the Executive branch has had an opportunity to discuss it with the Council. The committee may reject the advice, but, at least, an opportunity to present it should be provided.

See OLO Response #1

See OLO Response #2

- 3) I do not know of a program or a commission which has been terminated because of the operation of the sunset law. Although it has a theoretical appeal, I am not certain that events justify its maintenance. In other words, perhaps it is time to sunset the sunset concept. The budget process pretty well provides an annual opportunity to review every program operated by the County and the weak ones have been eliminated or modified. In sum, I think sunset may be a remedy looking for an illness.

EFR/cm

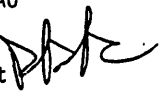
OLO Response #1: The procedure offered in this report does offer the Executive branch the opportunity to discuss a pending sunset with the Council. Specifically, the notice provision includes notification to both the County Council and the County Executive, and the intent is for representatives of the Executive branch to participate in a Council Committee's initial discussion of an upcoming sunset. Language clarifying this intent has been added to the text of the report.

OLO Response #2: In June 1984, the Council enacted emergency legislation to recreate five commissions that inadvertently expired by operation of the earlier "sunset" provisions of Section 2-146. These commissions were the Fire and Rescue Commission, the Historic Preservation Commission, the Interagency Coordinating Board for Community Use of Educational Facilities and Services, the Agricultural Preservation Advisory Board, and the Drug Abuse Advisory Council.

MEMORANDUM

January 19, 1988

TO: Keith Kolodgie, Assistant to CAO

FROM: Robert K. Kendal, Director  
Office of Management and Budget 

SUBJECT: OLO Proposal for Monitoring and Review of County Code Sunset Provisions

I have reviewed OLO's report No. 87-5 and recommendations, and recommend that they be supported by the Executive.

The recommendations allow for Executive notification 13 months in advance of possible changes to a particular law. Each of the three possible "options" for sunset revision allow for Executive involvement in the Council's decision to continue the statute in question or to let it expire. However, I believe we should recommend to the Council that their procedures for Option A (leading to a decision to let a statute expire) should explicitly provide for consultation with the Executive. Both Options "B" and "C" call for public hearing and worksession prior to any enactment of extensions. Since a statute already in effect may have created expectations of some kind in the minds of certain citizens, we should also suggest that the Council consider holding a public hearing on Option A also. /In addition, I recommend that we suggest to OLO that the language under option (c) on the chart be changed from "Committee directs an evaluation of Program 2 be conducted by the County Executive..." to "Committee requests ... /The Executive may not want to conduct such an evaluation or at least may not feel that Executive Branch are sufficient.

See OLO Response #3

See OLO Response #4

See OLO Response #4

One of OLO's recommendations would consider removal of sunset provisions when considered appropriate (such as was done with the condominium transfer tax, as requested by the Executive). This should be included within Options "B" and "C". /Because removal of a sunset provision constitutes a change in the permanent effectiveness of any law, the inclusion of public hearing and worksession would presumably be mandatory.)

I also recommend that we support OLO's other recommendations, such as making sunset timing consistent with either June 30 or December 31 dating, that both initial sunsets and any extension should be for three years that standard language and reporting requirements be used, etc.

RKK:ph/7828A

OLO Response #3: This suggestion is highlighted for Council consideration at the beginning of this section.

OLO Response #4: These suggestions have been incorporated into the final report.

MEMORANDUM

January 13, 1988

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight  
FROM: Max R. Bohnstedt, Director, Department of Finance *MBB*  
SUBJECT: Monitoring and Review of Sunset Provisions

Your review of the sunset provisions deals well with the procedural underpinnings of the sunset provisions. I would suggest that you incorporate into your report a consideration of the following subjects.

In a system of sunseting you should consider different treatments for the following classes of local laws:

- a. Governance. Certain laws that are passed deal with governance issues that are expected to be permanent. These might include limitations on the use of real or personal property, proscribed personal behavior, or limit the rights of citizens, etc. In most cases these things are intended to be permanent and should not be sunsetted.
- b. Regulatory Acts. In most cases local laws which regulate activities such as fire codes, building codes generally, traffic regulations, etc. are expected to deal with permanent conditions and have a continuing impact. Code provisions effecting these regulations should be of a permanent nature and changed only when the underlying conditions change, not with the passage of time.
- c. Structural Provisions. These provisions go primarily to the structure of the government or its agencies. Certain structural elements are prescribed by Charter or State law and are of necessity permanent. Other structural elements exist primarily to serve a transient need which can be expected to disappear if the program or activity is successful or is a function of time. Transferable Development Rights and the Development Rights Fund Board is an example of a structural element that should in fact disappear when the approximately 18,000 development rights are transferred from the sending areas to the receiving areas.

- d. Programmatic. Certain legislative actions are taken to implement reasonably closely defined programmatic thrusts intended to serve particular needs. In most cases, these programs should be of a limited life and should therefore be subject to sunset provisions. Actions which would fall under this section would include such things as Minority, Female and Disabled purchasing programs which are intended to change the automatic decisions and systemic biases in our procurement operation. When that objective is achieved, the program should go out of existence. Having a sunset provision requires us to look at this sort of provision on a periodic basis and to determine whether we are achieving our goal and if so, allowing the program to go by the board.

Any permanent Code provisions dealing with sunset limits on legislation should recognize in some fashion the originator of the law. While the Council enacts all local laws, they at times do it in response to requests from the Executive or other agencies in the County. Examples might be housing program laws done at the request of HOC, or capital improvement laws or building and zoning laws taken at the request of Park & Planning. Where the program or legislative act was taken at the request of the Executive or another agency, that agency should be involved in the review along with Council.

If the sunset provisions of the Code are to be changed, there ought to be a review of most structural and programmatic provisions in the Code to see if they fall into a sunsettable definition. If they do, then consideration should be given to implementing sunset provisions uniformly for existing as well as new programs.

To properly achieve the purpose of a sunset provision, there ought to be mandatory standards setting the time of the sunset review at three or five years unless there is specific reason for it being different. An example might be a law recognizing things such as the Bicentennial celebration in 1986. There ought to be specific conditions which have to be met for extending the original bill. One of the purposes of the sunset provisions is to not permit the automatic extension of programs. This ought to be enforced by having certain standards which must be met in extending the bill. One of these standards might be that any extension of a sunset provision could only deal with extending the sunset provision, if any changes were to be made to the basic law or to the programmatic elements in the legislative enactment then the original bill should be repealed and reenacted in total or amended as a legislative action differentiated and separate from the extension of the sunset provision. This sort of action would limit and focus consideration of the particular purpose being served.

MRB/mla

MEMORANDUM

January 19, 1988

TO: Andrew Mansinn, Director  
Office of Legislative Oversight

FROM: Bruce P. Sherman  
Senior Assistant County Attorney  
Administration Team

RE: Comments on Office of Legislative Oversight Draft  
Report No. 86-5: A Proposal for the Monitoring and  
Review of County Code Sunset Provisions

I have reviewed the draft of your Report No. 87-5 concerning the monitoring and review of County Code Sunset Provisions. While the report was in its formative stages, the County Attorney's Office was given the opportunity to meet with Karen Orlansky, program evaluator for OLO, to provide verbal comments concerning many of the major issues raised in this report. To a great extent, our comments are already incorporated in the structure of your report. The following specific comments respond to or supplement the recommendations contained in the report:

RECOMMENDATION A: IMPLEMENT THE PROPOSED PROCEDURE  
FOR MONITORING SUNSET PROVISIONS

The proposed procedure for monitoring sunset dates appears to be an appropriate, organized manner for monitoring and tracking sunset provisions in County legislation. I recommend that you consider adding to the procedure outlined in Recommendation A the publication of the annual sunset list in the Montgomery County Register. This is an appropriate forum in which to publish the list of existing Code provisions that are coming up for sunset. The Montgomery County Register is distributed widely to persons interested in the status of County regulations and legal issues. /

See OLO Response #5

RECOMMENDATION B: ESTABLISH RECOMMENDED GUIDELINES  
FOR ENACTING SUNSET PROVISIONS

The six major recommendations contained in Section B of the report are quite reasonable. Use of standardized language, a three-year minimum sunset period, consistent sunset dates, and

OLO Response #5: This suggestion has been incorporated into the final report.

other procedural requirements would provide for consistency in interpretation and application of sunset provisions. You may wish to consider recommending in addition to these procedures that a single section be established in the Montgomery County Code to index all laws that are subject to sunset provisions and list the sunset dates. Thus, it would be easy for anyone receiving a copy of the Montgomery County Code to identify sunset provisions either by looking at the substantive law section or by reference to a single index type listing.

See OLO Response #6

Your report reviewed practice and policy in a very technical and rather dry, although important, subject concerning the legislative process. The evaluation of the sunset process in concept and operation contained in Appendix A is an extremely important component of the report. It deserves to be included in the main body of the report rather than being relegated to the Appendix. The policy issues raised in the utilization of sunset provisions should receive greater consideration and discussion in the legislative process as well.

See OLO Response #7

BPS:sk:3235

cc: Lewis T. Roberts, Chief Administrative Officer  
Clyde H. Sorrell, County Attorney

**OLO Response #6:** This suggestion is highlighted for Council consideration at the beginning of this section.

**OLO Response #7:** OLO chose to keep the discussion of the sunset concept as Appendix A because the scope and focus of this project was to design a process to monitor existing sunset provisions.

## Sunset in Concept and Operation

### Introduction

Montgomery County's use of sunset provisions has differed from the use of sunset at the state level. While the County has used sunset provisions primarily on a selected basis for the purpose of reviewing a limited number of programs, most of the states which adopted the concept of sunset during the late 1970's and early 1980's enacted broad sunset laws that affected numerous agencies and programs.

While the purpose of this OLO report was to recommend a practical system for dealing with the County's sunset provisions, the following is a brief overview of the broader sunset concept, a description of the first sunset laws at the state level, and a summary of reported results. This overview was based upon reports and conversations with staff from Common Cause, the Maryland Department of Fiscal Services, and the National Conference of State Legislatures.

### The Concept of Sunset

In general, a sunset provision is statutory language that terminates a government program or activity as of a given date. Legislative action is required to continue the designated program or activity beyond its termination date. Continuations are most often for a limited period of time, and the program or activity becomes subject to a cycle of reevaluation that is triggered by a scheduled termination date.

Common Cause was a major driving force behind the sunset concept in the mid-1970's. Sunset laws were advocated as a way to promote both efficiency and accountability in government by encouraging legislators to perform a necessary oversight function. Sunset laws were intended to place the burden of proof on those advocating the continuation of a program, and also to provide an incentive for government agencies to implement corrective administrative changes on their own.

### Enactment of First Sunset Laws

The reported experiences with sunset come predominantly from laws enacted at the state level. The first laws establishing broad based sunset programs were enacted in 1976 by Colorado, Alabama, and Florida. In 1978, another 22 states passed some type of sunset legislation, and between 1979-81, an additional 11 states (including Maryland) enacted sunset laws. As of December 1984, 36 states had adopted some type of a sunset process.

The scope, timing, and organization of sunset review established varied from state to state. For example, a 1981 Common Cause survey of sunset laws in 35 states indicated that ten required review of regulatory agencies only, 15 required review of regulatory plus other selected agencies, and ten required a comprehensive review of all agencies created by the legislature. The number of agencies and programs reviewed in a given year also varied, as did the length of the sunset review cycle. In some states, sunset reviews were conducted by standing legislative committees, and in others by legislative staff or an independent sunset commission.



In Maryland, the Program Evaluation Act of 1978 identified 62 entities (primarily regulatory boards and commissions) for sunset review over a four-year period, beginning in 1979. The Department of Fiscal Services was directed to prepare detailed evaluation reports to assist legislative committees make determinations as to the continuation, modification, or termination of entities up for sunset. As initially enacted, the law required entities continued after the first review cycle to be reevaluated every six years.

### Results of Sunset

The reported experiences with sunset laws have been mixed with most results discussed in terms of the volume of programs or agencies reviewed, and the number terminated, modified, or recreated without change. The general consensus appears to be that while the overall impact of sunset laws has been positive in terms of increased agency efficiency and public accountability, original expectations of saving significant tax dollars through the sunset review process have apparently not been met.

The great majority of states, including Maryland, have made changes to their sunset laws based upon experience gained during an initial review cycle. At least five states have either repealed or phased out their sunset laws, two have delayed implementation of a second sunset cycle, and nine more have considered (but not passed) legislation to do away with the sunset process.

The most frequent changes to remaining sunset laws have involved the timing of the review cycle, and the numbers and types of programs and agencies reviewed. At least 13 states have moved to more flexible sunset review cycles, and in many places the emphasis has shifted from the sunset of regulatory agencies to other programs and larger agencies where there are more likely to be substantial savings from program changes.

Surveys by Common Cause and the National Conference of State Legislatures (NCSL) have indicated that the majority of agencies reviewed under sunset laws have been recreated, and only a minority have been terminated. For example, in 1982, Common Cause reported that out of 1,500 agencies throughout 35 states reviewed under the sunset process between 1977-81, approximately 40 percent were recreated without change, 40 percent recreated with modification, and 20 percent terminated. In 1984, an NCSL survey showed that out of 1,155 agencies throughout 29 states reviewed under the sunset process between 1981-83, 84 percent were recreated and 16 percent terminated.

In Maryland, 66 statutory entities were evaluated between 1978-1983 through the sunset process: 46 occupational licensing boards, six regulatory agencies, 12 advisory panels, one publicly chartered corporation (Maryland Credit Union Insurance Corporation) and one non-regulatory agency (Office for Children and Youth). Of the 66 entities reviewed, seven were not continued, 27 were modified by action of the General Assembly, and 32 were continued without change.

While some states report significant financial savings from sunset, according to Common Cause, at least one-sixth of the states conducting sunset reviews have not been able to document significant savings. Several articles written about the status of sunset point out that financial savings frequently come from program improvements implemented as a result of sunset, and not merely from agency terminations. In Maryland, the Department of Fiscal Services estimated in an October 1983 report to the Legislative Policy Committee that savings from sunset exceeded average annual cost of implementation by over 300%. The four-year cost of sunset review was \$82,500 per year. This compares to net annual savings of over \$250,000 estimated from agency terminations and administrative and programmatic changes that resulted from sunset reviews.

Two of the most frequently cited benefits of sunset are significant improvements in government performance and an increased legislative commitment to oversight and accountability. The results of a survey conducted by Common Cause indicated that two-thirds of the respondents from states with sunset laws believe that the principle benefit of sunset has been increased agency efficiency and public accountability. The improvements have come both from agencies making internal improvements in anticipation of sunset review, and from legislators implementing recommendations that come out of evaluations conducted as part of sunset reviews.

In many jurisdictions, sunset reviews have received criticism for being too time-consuming and costly. Other specific problems cited have been a lack of clear criteria or adequate data for evaluating agency effectiveness; the fact that the timing of scheduled reviews doesn't always coincide with the need for review; and inadequate linkages between the evaluation process and budget decisions.

Maryland is a good example of a state where, based on experience, changes have been made to the sunset review process in order to make it work better. In 1982, the Maryland General Assembly determined that the sunset process should continue, but amended the law to require sunset review on a ten year interval rather than a six-year interval. In addition, the Legislative Policy Committee can now waive the requirement that an evaluation report be prepared for every agency up for sunset.

### Conclusion

The popularity of the sunset concept has faded since its inception in the mid-1970's. While some jurisdictions have discarded the sunset process, others have adopted changes in its scope and direction, so that in certain places sunset has evolved into a more useful and effective expenditure of resources. In order to accurately assess sunset, one needs to recognize that sunset does not mean an instant reduction in the size of government; sunset does not produce instant dollar savings; and termination is intended as an "action-forcing" mechanism to initiate review and not necessarily as the goal.

Although it is clear that not all experiences with sunset have been positive, increased agency efficiency and public accountability are principal benefits. Used appropriately, sunset can be a valuable tool for legislative oversight.

Excerpt from Montgomery County Code  
1984 as Amended

**Sec. 2-146. Terms of committees; certain committees re-established.**

(a) The term of existence of each committee shall be established in the manner provided in this section.

(b) The law, resolution or executive order establishing or continuing any committee shall hereafter state the term of the committee's existence. If no such term is stated, then the committee's term shall be two (2) years from the date of such establishment or continuation. The term of any committee created prior to the effective date of this article shall be as provided by the governing law or resolution or, if none is so provided, then two (2) years from the effective date of this article; provided, however, that a committee, board or commission shall not be terminated except by affirmative action of the county council after having received the recommendations of the county executive. The county executive shall have responsibility for monitoring the expiration date of those committees over which the county executive has appointing authority. The county council shall have responsibility for monitoring the expiration date of those committees over which the county council has appointing authority.

(c) The county executive shall appoint and convene every five (5) years, subject to confirmation by the council, a citizens review committee which shall review the committee system and each of the then existing committees and make a report to the council which shall include recommendations for changes in individual committees and the system as a whole. (1979 L.M.C., ch. 22, § 1; 1984 L.M.C., ch. 37, § 1)

Editor's note—1984 L.M.C., ch. 37, § 2 provides as follows: "If prior to the enactment of this act a committee, board, or commission expired under the terms of section 2-146 of the Montgomery County Code, then the county council hereby retroactively reestablishes such committees, boards, or commissions and reconfirms all appointments made to such bodies from the date of such expirations. All actions taken by such committees, boards or commissions during such periods of expiration shall have the same force and effect as if such expirations had not occurred."



## SAMPLE OF PROPOSED PROCEDURE FOR MONITORING SUNSET DATE OF HYPOTHETICAL PROGRAM Z

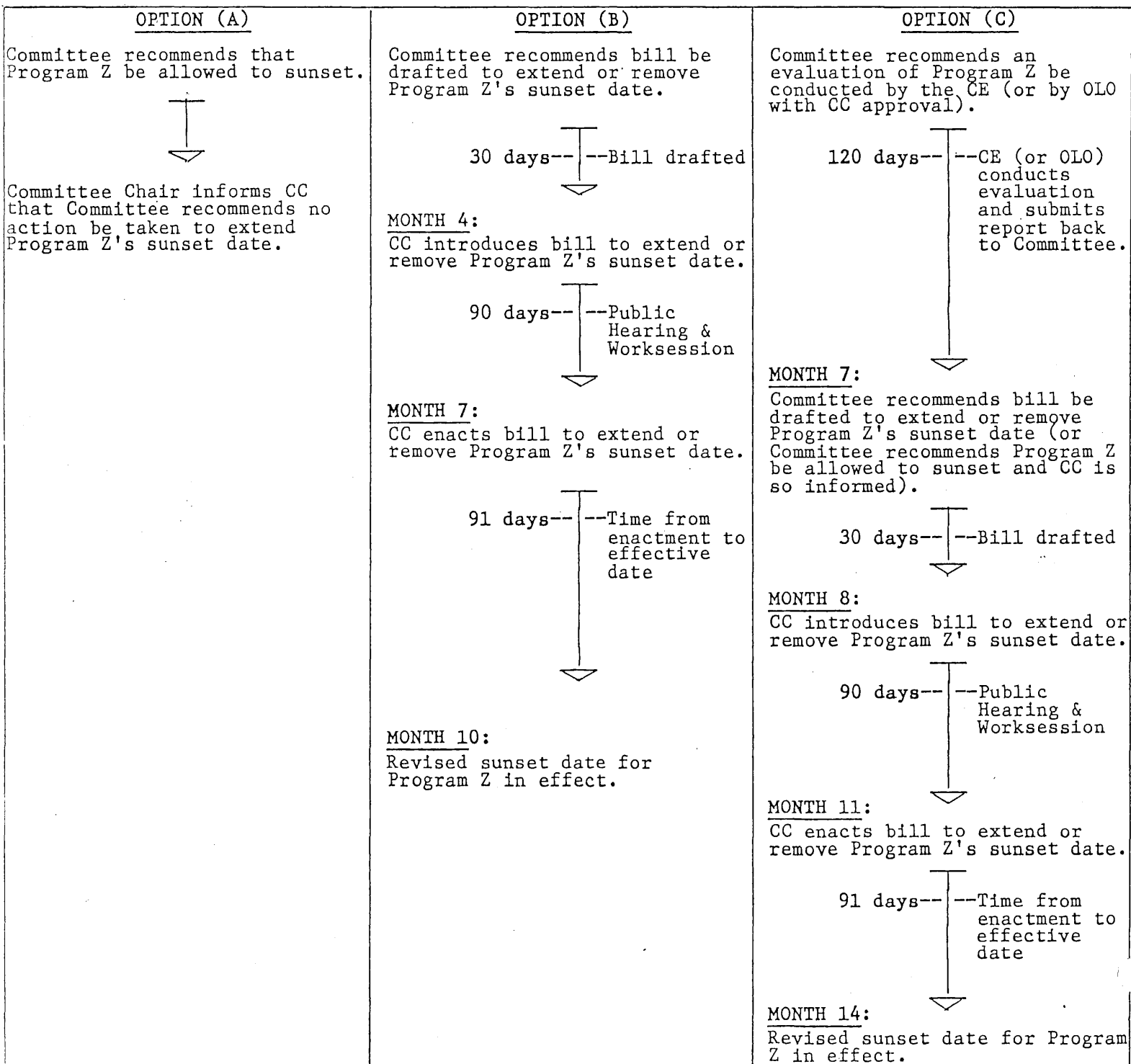
## MONTH 1:

The Council President (or designee) notifies the County Council (CC) and County Executive (CE) that Program Z will sunset in 14 months. If within 30 days no Councilmember has indicated interest in sponsoring bill to extend Program Z's sunset, then the Council President assigns the upcoming sunset to the appropriate Council Committee.

30 days---|--Notice of Council Committee Meeting (with special notice to department that administers Program Z).

## MONTH 3:

Committee discusses Program Z's upcoming sunset and recommends OPTION (A), (B), or (C):



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