

111TH CONGRESS
1ST SESSION

H. R. 393

To provide for the periodic review of the efficiency and public need for Federal agencies, to establish a Commission for the purpose of reviewing the efficiency and public need of such agencies, and to provide for the abolishment of agencies for which a public need does not exist.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

Mr. BRADY of Texas (for himself, Mr. BACHUS, Mr. BARTLETT, Mr. BARTON of Texas, Mrs. BIGGERT, Mr. BLUNT, Mr. BURTON of Indiana, Mr. COLE, Mr. CONAWAY, Mr. CRENSHAW, Mr. EDWARDS of Texas, Ms. FOXX, Mr. GARRETT of New Jersey, Mr. GOHMERT, Mr. HENSARLING, Mr. HERGER, Mr. HOEKSTRA, Mr. SAM JOHNSON of Texas, Mr. KINGSTON, Mr. MARCHANT, Mr. MCHENRY, Mrs. MYRICK, Mr. NEUGEBAUER, Mr. PENCE, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. TERRY, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To provide for the periodic review of the efficiency and public need for Federal agencies, to establish a Commission for the purpose of reviewing the efficiency and public need of such agencies, and to provide for the abolishment of agencies for which a public need does not exist.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Federal Sunset Act of 2009”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Review and abolishment of Federal agencies.
- Sec. 3. Establishment of Commission.
- Sec. 4. Review of efficiency and need for Federal agencies.
- Sec. 5. Criteria for review.
- Sec. 6. Commission oversight.
- Sec. 7. Rulemaking authority.
- Sec. 8. Relocation of Federal employees.
- Sec. 9. Program inventory.
- Sec. 10. Definition of agency.
- Sec. 11. Offset of amounts appropriated.

6 **SEC. 2. REVIEW AND ABOLISHMENT OF FEDERAL AGEN-**
7 **CIES.**

8 (a) SCHEDULE FOR REVIEW.—Not later than one
9 year after the date of the enactment of this Act, the Fed-
10 eral Agency Sunset Commission established under section
11 3 (in this Act referred to as the “Commission”) shall sub-
12 mit to Congress a schedule for review by the Commission,
13 at least once every 12 years (or less, if determined appro-
14 priate by Congress), of the abolishment or reorganization
15 of each agency.

16 (b) REVIEW OF AGENCIES PERFORMING RELATED
17 FUNCTIONS.—In determining the schedule for review of
18 agencies under subsection (a), the Commission shall pro-
19 vide that agencies that perform similar or related func-

1 tions be reviewed concurrently to promote efficiency and
2 consolidation.

3 (c) ABOLISHMENT OF AGENCIES.—

4 (1) IN GENERAL.—Each agency shall—

5 (A) be reviewed according to the schedule
6 created pursuant to this section; and

7 (B) be abolished not later than one year
8 after the date that the Commission completes
9 its review of the agency pursuant to such sched-
10 ule, unless the agency is reauthorized by the
11 Congress.

12 (2) EXTENSION.—The deadline for abolishing
13 an agency may be extended for an additional two
14 years after the date described in paragraph (1)(B)
15 if the Congress enacts legislation extending such
16 deadline by a vote of a super majority of the House
17 of Representatives and the Senate.

18 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

19 (a) ESTABLISHMENT.—There is established a com-
20 mission to be known as the “Federal Agency Sunset Com-
21 mission”.

22 (b) COMPOSITION.—The Commission shall be com-
23 posed of 12 members (in this Act referred to as the “mem-
24 bers”) who shall be appointed as follows:

1 (1) Six members shall be appointed by the
2 Speaker of the House of Representatives, one of
3 whom may include the Speaker of the House of Rep-
4 resentatives, with minority members appointed with
5 the consent of the minority leader of the House of
6 Representatives.

7 (2) Six members shall be appointed by the ma-
8 jority leader of the Senate, one of whom may include
9 the majority leader of the Senate, with minority
10 members appointed with the consent of the minority
11 leader of the Senate.

12 (c) QUALIFICATIONS OF MEMBERS.—

13 (1) IN GENERAL.—(A) Of the members ap-
14 pointed under subsection (b)(1), four shall be mem-
15 bers of the House of Representatives (not more than
16 two of whom may be of the same political party),
17 and two shall be an individual described in subpara-
18 graph (C).

19 (B) Of the members appointed under subsection
20 (b)(2), four shall be members of the Senate (not
21 more than two of whom may be of the same political
22 party) and two shall be an individual described in
23 subparagraph (C).

24 (C) An individual under this subparagraph is
25 an individual—

- 1 (i) who is not a member of Congress; and
2 (ii) with expertise in the operation and ad-
3 ministration of Government programs.

4 (2) CONTINUATION OF MEMBERSHIP.—If a
5 member was appointed to the Commission as a
6 Member of Congress and the member ceases to be
7 a Member of Congress, that member shall cease to
8 be a member of the Commission. The validity of any
9 action of the Commission shall not be affected as a
10 result of a member becoming ineligible to serve as
11 a member for the reasons described in this para-
12 graph.

13 (d) INITIAL APPOINTMENTS.—All initial appoint-
14 ments to the Commission shall be made not later than 90
15 days after the date of the enactment of this Act.

16 (e) CHAIRMAN; VICE CHAIRMAN.—

17 (1) INITIAL CHAIRMAN.—An individual shall be
18 designated by the Speaker of the House of Rep-
19 resentatives from among the members initially ap-
20 pointed under subsection (b)(1) to serve as chairman
21 of the Commission for a period of 2 years.

22 (2) INITIAL VICE-CHAIRMAN.—An individual
23 shall be designated by the majority leader of the
24 Senate from among the individuals initially ap-
25 pointed under subsection (b)(2) to serve as vice-

1 chairman of the Commission for a period of two
2 years.

3 (3) ALTERNATE APPOINTMENTS OF CHAIRMEN
4 AND VICE-CHAIRMEN.—Following the termination of
5 the two-year period described in paragraphs (1) and
6 (2), the Speaker and the majority leader shall alter-
7 nate every two years in appointing the chairman and
8 vice-chairman of the Commission.

9 (f) TERMS OF MEMBERS.—

10 (1) MEMBERS OF CONGRESS.—Each member
11 appointed to the Commission who is a member of
12 Congress shall serve for a term of six years, except
13 that, of the members first appointed under para-
14 graphs (1) and (2) of subsection (b), 2 members
15 shall be appointed to serve a term of three years
16 under each such paragraph.

17 (2) OTHER MEMBERS.—Each member of the
18 Commission who is not a member of Congress shall
19 serve for a term of three years.

20 (3) TERM LIMIT.—(A) A member of the Com-
21 mission who is a member of Congress and who
22 serves more than three years of a term may not be
23 appointed to another term as a member.

24 (B) A member of the Commission who is not a
25 member of Congress and who serves as a member of

1 the Commission for more than 56 months may not
2 be appointed to another term as a member.

3 (g) POWERS OF COMMISSION.—

4 (1) HEARINGS AND SESSIONS.—The Commis-
5 sion may, for the purpose of carrying out this Act,
6 hold such hearings, sit and act at such times and
7 places, take such testimony, and receive such evi-
8 dence as the Commission considers appropriate. The
9 Commission may administer oaths to witnesses ap-
10 pearing before it.

11 (2) OBTAINING INFORMATION.—The Commis-
12 sion may secure directly from any department or
13 agency of the United States information necessary
14 to enable it to carry out its duties under this Act.
15 Upon request of the Chairman, the head of that de-
16 partment or agency shall furnish that information to
17 the Commission in a full and timely manner.

18 (3) SUBPOENA POWER.—(A) The Commission
19 may issue a subpoena to require the attendance and
20 testimony of witnesses and the production of evi-
21 dence relating to any matter under investigation by
22 the Commission.

23 (B) If a person refuses to obey an order or sub-
24 poena of the Commission that is issued in connection
25 with a Commission proceeding, the Commission may

1 apply to the United States district court in the judi-
2 cial district in which the proceeding is held for an
3 order requiring the person to comply with the sub-
4 poena or order.

5 (4) IMMUNITY.—The Commission is an agency
6 of the United States for purposes of part V of title
7 18, United States Code (relating to immunity of wit-
8 nesses).

9 (5) CONTRACT AUTHORITY.—The Commission
10 may contract with and compensate government and
11 private agencies or persons for services without re-
12 gard to section 3709 of the Revised Statutes (41
13 U.S.C. 5).

14 (h) COMMISSION PROCEDURES.—

15 (1) MEETINGS.—The Commission shall meet at
16 the call of the Chairman.

17 (2) QUORUM.—Seven members of the Commis-
18 sion shall constitute a quorum but a lesser number
19 may hold hearings.

20 (i) PERSONNEL MATTERS.—

21 (1) COMPENSATION.—Members shall not be
22 paid by reason of their service as members.

23 (2) TRAVEL EXPENSES.—Each member shall
24 receive travel expenses, including per diem in lieu of

1 subsistence, in accordance with sections 5702 and
2 5703 of title 5, United States Code.

3 (3) DIRECTOR.—The Commission shall have a
4 Director who shall be appointed by the Chairman.
5 The Director shall be paid at a rate not to exceed
6 the maximum rate of basic pay payable for GS–15
7 of the General Schedule.

8 (4) STAFF.—The Director may appoint and fix
9 the pay of additional personnel as the Director con-
10 siderers appropriate.

11 (5) APPLICABILITY OF CERTAIN CIVIL SERVICE
12 LAWS.—The Director and staff of the Commission
13 shall be appointed subject to the provisions of title
14 5, United States Code, governing appointments in
15 the competitive service, and shall be paid in accord-
16 ance with the provisions of chapter 51 and sub-
17 chapter III of chapter 53 of that title relating to
18 classification and General Schedule pay rates.

19 (j) OTHER ADMINISTRATIVE MATTERS.—

20 (1) POSTAL AND PRINTING SERVICES.—The
21 Commission may use the United States mails and
22 obtain printing and binding services in the same
23 manner and under the same conditions as other de-
24 partments and agencies of the United States.

(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

14 SEC. 4. REVIEW OF EFFICIENCY AND NEED FOR FEDERAL
15 AGENCIES.

(b) RECOMMENDATIONS; REPORT TO CONGRESS.—

The Commission shall submit to Congress and the President not later than September 1 of each year a report containing—

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1 to the schedule submitted to Congress under section
2 2;

3 (2) recommendations on whether each such
4 agency should be abolished or reorganized;

5 (3) recommendations on whether the functions
6 of any other agencies should be consolidated, trans-
7 ferred, or reorganized in an agency to be reviewed
8 in the year in which the report is submitted pursu-
9 ant to the schedule submitted to Congress under
10 section 2; and

11 (4) recommendations for administrative and
12 legislative action with respect to each such agency,
13 but not including recommendations for appropriation
14 levels.

15 (c) DRAFT LEGISLATION.—The Commission shall
16 submit to Congress and the President not later than Sep-
17 tember 1 of each year a draft of legislation to carry out
18 the recommendations of the Commission under subsection
19 (b).

20 (d) INFORMATION GATHERING.—The Commission
21 shall—

22 (1) conduct public hearings on the abolishment
23 of each agency reviewed under subsection (b);

24 (2) provide an opportunity for public comment
25 on the abolishment of each such agency;

1 (3) require the agency to provide information to
2 the Commission as appropriate; and

3 (4) consult with the General Accounting Office,
4 the Office of Management and Budget, the Comptroller General, and the chairman and ranking minority members of the committees of Congress with
5 oversight responsibility for the agency being reviewed regarding the operation of the agency.

6 (e) USE OF PROGRAM INVENTORY.—The Commission shall use the program inventory prepared under section 9 in reviewing the efficiency and public need for each
7 agency under subsection (a).

8 **SEC. 5. CRITERIA FOR REVIEW.**

9 The Commission shall evaluate the efficiency and
10 public need for each agency pursuant to section 4 using
11 the following criteria:

12 (1) The effectiveness, and the efficiency of the
13 operation of, the programs carried out by each such
14 agency.

15 (2) Whether the programs carried out by the
16 agency are cost-effective.

17 (3) Whether the agency has acted outside the
18 scope of its original authority, and whether the original objectives of the agency have been achieved.

1 (4) Whether less restrictive or alternative meth-
2 ods exist to carry out the functions of the agency.

3 (5) The extent to which the jurisdiction of, and
4 the programs administered by, the agency duplicate
5 or conflict with the jurisdiction and programs of
6 other agencies.

7 (6) The potential benefits of consolidating pro-
8 grams administered by the agency with similar or
9 duplicative programs of other agencies, and the po-
10 tential for consolidating such programs.

11 (7) The number and types of beneficiaries or
12 persons served by programs carried out by the agen-
13 cy.

14 (8) The extent to which any trends, develop-
15 ments, and emerging conditions that are likely to af-
16 fect the future nature and extent of the problems or
17 needs that the programs carried out by the agency
18 are intended to address.

19 (9) The extent to which the agency has com-
20 plied with the provisions contained in the Govern-
21 ment Performance and Results Act of 1993 (Public
22 Law 103–62; 107 Stat. 285).

23 (10) The promptness and effectiveness with
24 which the agency seeks public input and input from
25 State and local governments on the efficiency and ef-

1 fectiveness of the performance of the functions of
2 the agency.

3 (11) Whether the agency has worked to enact
4 changes in the law that are intended to benefit the
5 public as a whole rather than the specific business,
6 institution, or individuals that the agency regulates.

7 (12) The extent to which the agency has en-
8 couraged participation by the public as a whole in
9 making its rules and decisions rather than encour-
10 aging participation solely by those it regulates.

11 (13) The extent to which the public participa-
12 tion in rulemaking and decisionmaking of the agency
13 has resulted in rules and decisions compatible with
14 the objectives of the agency.

15 (14) The extent to which the agency complies
16 with section 552 of title 5, United States Code (com-
17 monly known as the “Freedom of Information Act”).

18 (15) The extent to which the agency complies
19 with equal employment opportunity requirements re-
20 garding equal employment opportunity.

21 (16) The extent of the regulatory, privacy, and
22 paperwork impacts of the programs carried out by
23 the agency.

1 (17) The extent to which the agency has coordi-
2 nated with State and local governments in per-
3 forming the functions of the agency.

4 (18) The potential effects of abolishing the
5 agency on State and local governments.

6 (19) The extent to which changes are necessary
7 in the authorizing statutes of the agency in order
8 that the functions of the agency can be performed
9 in the most efficient and effective manner.

10 **SEC. 6. COMMISSION OVERSIGHT.**

11 (a) MONITORING OF IMPLEMENTATION OF REC-
12 OMMENDATIONS.—The Commission shall monitor imple-
13 mentation of laws enacting provisions that incorporate rec-
14 ommendations of the Commission with respect to abolish-
15 ment or reorganization of agencies.

16 (b) MONITORING OF OTHER RELEVANT LEGISLA-
17 TION.—

18 (1) IN GENERAL.—The Commission shall review
19 and report to Congress on all legislation introduced
20 in either house of Congress that would establish—

21 (A) a new agency; or

22 (B) a new program to be carried out by an
23 existing agency.

1 (2) REPORT TO CONGRESS.—The Commission
2 shall include in each report submitted to Congress
3 under paragraph (1) an analysis of whether—

4 (A) the functions of the proposed agency
5 or program could be carried out by one or more
6 existing agencies;

7 (B) the functions of the proposed agency
8 or program could be carried out in a less re-
9 strictive manner than the manner proposed in
10 the legislation; and

11 (C) the legislation provides for public input
12 regarding the performance of functions by the
13 proposed agency or program.

14 **SEC. 7. RULEMAKING AUTHORITY.**

15 The Commission may promulgate such rules as nec-
16 essary to carry out this Act.

17 **SEC. 8. RELOCATION OF FEDERAL EMPLOYEES.**

18 If the position of an employee of an agency is elimi-
19 nated as a result of the abolishment of an agency in ac-
20 cordance with this Act, there shall be a reasonable effort
21 to relocate such employee to a position within another
22 agency.

23 **SEC. 9. PROGRAM INVENTORY.**

24 (a) PREPARATION.—The Comptroller General and
25 the Director of the Congressional Budget Office, in co-

1 operation with the Director of the Congressional Research
2 Service, shall prepare an inventory of Federal programs
3 (in this Act referred to as the “program inventory”) with-
4 in each agency.

5 (b) PURPOSE.—The purpose of the program inven-
6 tory is to advise and assist the Congress and the Commis-
7 sion in carrying out the requirements of this Act. Such
8 inventory shall not in any way bind the committees of the
9 Senate or the House of Representatives with respect to
10 their responsibilities under this Act and shall not infringe
11 on the legislative and oversight responsibilities of such
12 committees. The Comptroller General shall compile and
13 maintain the inventory and the Director of the Congres-
14 sional Budget Office shall provide budgetary information
15 for inclusion in the inventory.

16 (c) INVENTORY CONTENT.—The program inventory
17 shall set forth for each program each of the following mat-
18 ters:

19 (1) The specific provision or provisions of law
20 authorizing the program.

21 (2) The committees of the Senate and the
22 House of Representatives which have legislative or
23 oversight jurisdiction over the program.

24 (3) A brief statement of the purpose or pur-
25 poses to be achieved by the program.

1 (4) The committees which have jurisdiction over
2 legislation providing new budget authority for the
3 program, including the appropriate subcommittees of
4 the Committees on Appropriations of the Senate and
5 the House of Representatives.

6 (5) The agency and, if applicable, the subdivi-
7 sion thereof responsible for administering the pro-
8 gram.

9 (6) The grants-in-aid, if any, provided by such
10 program to State and local governments.

11 (7) The next reauthorization date for the pro-
12 gram.

13 (8) A unique identification number which links
14 the program and functional category structure.

15 (9) The year in which the program was origi-
16 nally established and, where applicable, the year in
17 which the program expires.

18 (10) Where applicable, the year in which new
19 budget authority for the program was last author-
20 ized and the year in which current authorizations of
21 new budget authority expire.

22 (d) BUDGET AUTHORITY.—The report also shall set
23 forth for each program whether the new budget authority
24 provided for such programs is—

25 (1) authorized for a definite period of time;

1 (2) authorized in a specific dollar amount but
2 without limit of time;

3 (3) authorized without limit of time or dollar
4 amounts;

5 (4) not specifically authorized; or

6 (5) permanently provided,

7 as determined by the Director of the Congressional Budg-
8 et Office.

9 (e) CBO INFORMATION.—For each program or group
10 of programs, the program inventory also shall include in-
11 formation prepared by the Director of the Congressional
12 Budget Office indicating each of the following matters:

13 (1) The amounts of new budget authority au-
14 thorized and provided for the program for each of
15 the preceding four fiscal years and, where applicable,
16 the four succeeding fiscal years.

17 (2) The functional and subfunctional category
18 in which the program is presently classified and was
19 classified under the fiscal year 2009 budget.

20 (3) The identification code and title of the ap-
21 propriation account in which budget authority is
22 provided for the program.

23 (f) MUTUAL EXCHANGE OF INFORMATION.—The
24 General Accounting Office, the Congressional Research
25 Service, and the Congressional Budget Office shall permit

1 the mutual exchange of available information in their pos-
2 session which would aid in the compilation of the program
3 inventory.

4 (g) ASSISTANCE BY EXECUTIVE BRANCH.—The Of-
5 fice of Management and Budget, and the Executive agen-
6 cies and the subdivisions thereof shall, to the extent nec-
7 essary and possible, provide the General Accounting Office
8 with assistance requested by the Comptroller General in
9 the compilation of the program inventory.

10 **SEC. 10. DEFINITION OF AGENCY.**

11 As used in this Act, the term “agency” has the mean-
12 ing given that term by section 105 of title 5, United States
13 Code, except that such term includes an advisory com-
14 mittee as that term is defined in section 102(2) of the
15 Federal Advisory Committee Act.

16 **SEC. 11. OFFSET OF AMOUNTS APPROPRIATED.**

17 Amounts appropriated to carry out this Act shall be
18 offset by a reduction in amounts appropriated to carry out
19 programs of other Federal agencies.

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