

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1650 Session of
1979

INTRODUCED BY GALLEN, HOFFEL AND S. E. HAYES, JR.,
JULY 11, 1979

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JULY 11, 1979

AN ACT

1 Requiring the termination of certain agencies of State
2 Government under certain circumstances, creating a Leadership
3 Committee and the Office of Legislative Postauditor with
4 certain powers and duties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the "Sunset Act."

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have, unless the context clearly indicates otherwise, the
12 meanings given to them in this section:

13 "Agency." Any authority, agency, board, bureau, commission,
14 department, division, office or any similar unit of State
15 government.

16 "Preliminary performance audit." A written report evaluating
17 the performance of an agency based on the statistics on its
18 operations and carried out in accordance with the standards for
19 performance postauditing developed by the United States General

1 Accounting Office. This report shall include, but not be limited
2 to, the criteria listed in section 5(c). It shall also determine
3 whether the agency:

4 (1) Is conducting authorized activities or programs in a
5 manner consistent with accomplishing the objectives intended
6 by the General Assembly.

7 (2) Is conducting programs and activities and expending
8 funds made available in a faithful, efficient, economical and
9 effective manner.

10 Section 3. Leadership Committee.

11 There is hereby created a joint committee of the General
12 Assembly to be known as the Leadership Committee. The Leadership
13 Committee shall be composed of the Speaker of the House of
14 Representatives, the President pro tempore of the Senate and the
15 Majority and Minority Leaders of the House of Representatives
16 and the Senate. Members of the Leadership Committee may
17 designate alternates who will have the same powers and duties as
18 regular members.

19 Section 4. Powers and duties of the Leadership Committee.

20 The committee shall have the power and its duty shall be:

21 (1) To study the legislative oversight structure.

22 (2) To assign the responsibility for the review and
23 evaluation of each agency scheduled for such review and
24 evaluation under the provisions of this act to an appropriate
25 standing committee of the Senate or the House of
26 Representatives or to a joint standing committee.

27 (3) To evaluate the qualifications of candidates for the
28 position of legislative postauditor and hire a qualified
29 person for that position.

30 (4) To consider and approve the budget for the Office of

1 the Legislative Postauditor and recommend appropriations
2 therefor.

3 (5) To utilize the staff of the Budget and Finance
4 Committee in the administration of its duties.

5 Section 5. Evaluation and review.

6 (a) The standing committee designated by the Leadership
7 Committee shall develop a plan for the evaluation of an agency,
8 program or project in conjunction with the legislative
9 postauditor and representatives of the agency being evaluated.

10 (b) The standing committee shall hold at least one public
11 hearing for each evaluation and review of an agency, program or
12 project. At the hearing, the highest ranking officer of the
13 agency or an individual appointed by him shall testify
14 concerning the need for continued existence of the agency,
15 program or project.

16 (c) The standing committee shall make a determination in
17 each evaluation and review as to whether the agency, program or
18 project shall be continued, altered or terminated. The committee
19 shall base their determination on the following criteria:

20 (1) whether termination would significantly harm or
21 endanger the public health, safety or welfare;

22 (2) whether there is overlap or duplication of effort by
23 other agencies that permit the termination of the agency;

24 (3) whether there is a more economical way of
25 accomplishing the objectives of the agency;

26 (4) whether there is a demonstrated need, based on
27 service to the public, for the continuing existence of the
28 agency;

29 (5) whether the operation of the agency has been in the
30 public interest;

1 (6) whether the agency has encouraged public
2 participation in the making of its rules and decisions or
3 whether the agency has permitted participation solely by the
4 persons it regulates;

5 (7) whether there is an alternate, less restrictive
6 method of providing the same services to the public; and

7 (8) such other criteria as may be established by the
8 standing committees.

9 (d) Such standing committees shall draft a report concerning
10 each evaluation and review, stating in that report their
11 findings, their determination as to whether the agency, program
12 or project should be continued, altered or terminated, the
13 reasons for such a determination and appropriate legislation to
14 implement the committees' recommendations. The report shall be
15 available for public inspection in the Office of the Chief Clerk
16 of the Senate and of the House of Representatives. The report
17 shall be made to the General Assembly on or before the first
18 session day of September of the year in which the agency,
19 program or project in question is scheduled for termination
20 under section 6, or if the agency in question is not scheduled
21 under section 6, then the report shall be placed before the
22 General Assembly as directed by the Leadership Committee.

23 (e) On or before March 1 of the year in which the agency,
24 program or project in question is scheduled for termination, the
25 standing committees designated by the Leadership Committee as
26 responsible for the evaluation and review of the agency, program
27 or project shall receive:

28 (1) from the legislative postauditor, a preliminary
29 performance audit; and

30 (2) from the Legislative Reference Bureau, a report

1 outlining all legislation, then in effect, pertaining to the
2 creation, operation, duties, powers and funding of the
3 agency, program or project.

4 Section 6. Termination of agencies.

5 (a) The following agencies shall terminate all activities
6 and shall go out of existence on December 31, 1980:

7 The State Board of Examiners of Public Accountants.

8 The State Board of Examiners of Architects.

9 The State Board of Auctioneer Examiners.

10 The State Board of Barber Examiners.

11 The State Board of Cosmetology.

12 The State Board of Funeral Directors.

13 The State Real Estate Commission.

14 The State Registration Board for Professional Engineers.

15 The State Board of Landscape Architects.

16 The State Board of Motor Vehicle Manufacturers, Dealers and
17 Salesmen.

18 (b) The following agencies shall terminate all activities
19 and shall go out of existence on December 31, 1981:

20 The State Board of Chiropractic Examiners.

21 The State Board of Medical Education and Licensure.

22 The State Board of Nurse Examiners.

23 The State Board of Examiners of Nursing Home Administrators.

24 The State Board of Optometrical Examiners.

25 The State Board of Osteopathic Examiners.

26 The State Board of Pharmacy.

27 The State Board of Podiatry Examiners.

28 The Pennsylvania Board of Psychologist Examiners.

29 The State Board of Veterinary Medical Examiners.

30 The State Board of Physical Therapy Examiners.

1 The State Dental Council and Examining Board.

2 (c) The following agencies shall terminate all activities
3 and shall go out of existence on December 31, 1982:

4 The State Board of Private Academic Schools.

5 The State Board of Private Business Schools.

6 The State Board of Private Correspondence Schools.

7 The State Board of Private Trade Schools.

8 Anthracite Mine Inspectors and Electrical Inspectors
9 Examining Board.

10 Bituminous Mine Inspectors and Electrical Inspectors
11 Examining Board.

12 Pennsylvania Drug, Device and Cosmetic Board.

13 State Board for Certification of Sewage Treatment Plant and
14 Waterworks Operators.

15 State Board for Certification of Sewage Enforcement
16 Officers.

17 State Harness Racing Commission.

18 State Horse Racing Commission.

19 State Athletic Commission.

20 (d) The following agencies shall terminate all activities
21 and shall go out of existence on December 31, 1983:

22 Public Utility Commission.

23 Liquor Control Board.

24 Milk Marketing Board.

25 State Lottery Commission.

26 Turnpike Commission.

27 (e) On or before March 1 of each year, beginning with March
28 1, 1980, the Leadership Committee shall make recommendations as
29 to any additional agencies, programs and projects that shall be
30 scheduled for evaluation and review during the next fiscal year.

1 Prior to such recommendations, the Leadership Committee shall
2 hold at least one public hearing to receive such testimony as it
3 shall deem appropriate concerning its recommendation.

4 (f) The General Assembly shall, each calendar year, by
5 concurrent resolution, schedule any agencies, programs or
6 projects to be terminated at the conclusion of the next calendar
7 year.

8 (g) Agencies, programs or projects terminated shall be given
9 until June 30 of the year following the one in which they are
10 terminated to wind up their affairs. During that period, the
11 Governor may petition the General Assembly for a review of the
12 termination but the agency, program or project shall be
13 terminated unless the General Assembly passes a law to the
14 contrary.

15 (h) The terms of office of appointees of an agency, program
16 or project terminated under this act shall end on June 30 of the
17 year following termination.

18 Section 7. Reestablishment of agencies, programs or projects.

19 Any agency, program or project scheduled for termination
20 under this act, may be reestablished by the General Assembly, by
21 legislation. Each reestablishment shall be:

22 (1) for a period of six years unless otherwise specified
23 in the legislation; and

24 (2) in a separate bill, in which no more than one
25 agency, program or project shall be reestablished and such
26 agency, program or project shall be mentioned in the title of
27 the bill.

28 Section 8. Newly created agencies.

29 An agency, program or project created after January 1, 1979
30 shall be scheduled for termination, according to section 6, at

1 the conclusion of the fifth year following its creation unless
2 otherwise specified by the General Assembly at its creation.

3 Section 9. Primacy of employees of terminated agencies.

4 Employees of agencies, programs or projects terminated under
5 this act, who have civil service status or who are covered by
6 union contracts shall fill any existing vacancies within the
7 administrative branch of State Government in their grade and
8 position. If there are more employees than vacant positions at
9 the time of termination, then such terminated employees shall
10 receive employment in the first vacancies that shall thereafter
11 exist in their grade and position.

12 Section 10. Causes of action.

13 The provisions of this act shall not affect any liability
14 incurred or right accrued or vested or affect any suit pending
15 or to be instituted to enforce any right under the authority of
16 any act or part thereof repealed by this act.

17 Section 11. Establishment of the Office of the Legislative
18 Postauditor.

19 There is hereby created and established an Office of the
20 Legislative Postauditor, to serve the General Assembly. It is
21 the stated policy of the General Assembly to provide for the
22 impartial and independent postauditing of the management and
23 performance of the State agencies and political subdivisions by
24 an impartial auditor who is entirely independent of the State
25 administration whose affairs he is called upon to audit.

26 Section 12. Qualifications, selection process and term.

27 (a) The legislative postauditor shall, at the time of his
28 appointment, have demonstrated technical competence and
29 administrative ability. He shall be a certified public
30 accountant or a licensed public accountant and have at least

1 five years experience in a supervisory or management capacity in
2 public accounting; or have received a bachelor's degree from an
3 accredited institution of higher learning in accounting,
4 economics, public affairs and administration, business
5 administration or similar field of learning and had at least
6 five years of supervisory and management experience in program
7 and performance auditing in the public or private sector or have
8 equivalent experience as determined by the Leadership Committee.

9 (b) An advisory commission is hereby established to evaluate
10 and recommend candidates for the position of legislative
11 postauditor. The advisory commission shall be composed of five
12 members, and shall include the Dean of the Graduate School of
13 Business Administration, University of Pittsburgh; Dean of the
14 Wharton School, University of Pennsylvania; the Secretary of
15 Budget; the Director of the Pennsylvania Economy League; and the
16 President of the Pennsylvania Institute of Certified Public
17 Accountants.

18 (c) The advisory commission shall review, evaluate and
19 submit a list of three recommended candidates for the position
20 of legislative postauditor in accordance with the qualifications
21 listed above. This list shall be prepared and submitted within
22 45 days after a vacancy in the position of legislative
23 postauditor occurs.

24 (d) The Leadership Committee shall select the legislative
25 postauditor from among the list of three recommended candidates
26 submitted by the advisory commission within 30 days.

27 (e) The legislative postauditor shall serve for a term of
28 seven years following the date of his appointment and until a
29 successor has been appointed and shall be eligible for
30 reappointment.

1 (f) The legislative postauditor may be removed from office
2 by concurrent resolution of the General Assembly, when in the
3 opinion of the General Assembly the legislative postauditor is
4 permanently incapacitated or is guilty of malfeasance,
5 misfeasance, nonfeasance, or has been adjudged by a court of
6 law, guilty of any felony or conduct involving moral turpitude.
7 The legislative postauditor shall be suspended by the Leadership
8 Committee from his duties whenever such charges as listed above
9 have been filed in a court of record prior to court action. The
10 legislative postauditor shall be provided with retroactive pay
11 and full restoration of duties and responsibilities should these
12 charges be dismissed in a court of record.

13 (g) In order to preserve the independence and objectivity of
14 the postaudit function, the legislative postauditor shall devote
15 his full time and effort to postaudit examinations and reporting
16 and budgetary analysis. He may not serve in any capacity on an
17 administrative board, commission or agency of the Commonwealth
18 that, under the provisions of this act, he has the
19 responsibility to postaudit. He shall not have a material direct
20 or indirect financial or other economic interest in the
21 transaction of any Commonwealth agency or political subdivision.
22 He shall not be responsible for the collection of any money
23 belonging to the Commonwealth or a political subdivision or for
24 the handling or custody of any Commonwealth or political
25 subdivision funds. Neither the legislative postauditor nor any
26 member of his staff shall engage in or be associated with any
27 partisan political activity or hold any public office.

28 (h) The legislative postauditor shall neither conduct nor
29 supervise a postaudit of a program or activity for which he was
30 responsible or in which he participated personally, and he shall

1 neither conduct nor supervise a postaudit of any program or
2 activity of an entity within which he was employed for at least
3 two years after the termination of that employment. The
4 legislative postauditor shall not be eligible for appointment or
5 election to any other public office during his employment and
6 two years thereafter.

7 Section 13. Access to records and witnesses.

8 The legislative postauditor and his authorized
9 representatives shall, for the purpose of examination and audit
10 authorized by this act, have ready access to persons and may
11 examine and copy to the extent deemed necessary, pertinent
12 records, accounts, papers, reports, vouchers, correspondence,
13 books and other documentation of any Commonwealth agency or
14 political subdivision.

15 Section 14. Authority to administer oaths, subpoena witnesses
16 and records and take depositions.

17 For the purpose of this act, the legislative postauditor,
18 with the consent of a majority of the members of the Leadership
19 Committee, shall have the power to compel the attendance of
20 witnesses and the production of any papers, books, accounts and
21 documents to subpoena witnesses, take testimony under oath; to
22 cause the deposition of witnesses, residing within or without
23 the Commonwealth, to be taken in the manner prescribed by law
24 and to assemble records and documents, by subpoena or otherwise,
25 with the same power and authority as courts of record and may
26 apply to courts of record for the enforcement of these powers.

27 Any person who willfully neglects or refuses to comply with
28 any subpoena issued in behalf of the joint committee, or refuses
29 to testify to any matters regarding which he may be lawfully
30 interrogated, shall be subject to the penalties provided by the

1 laws of the Commonwealth of Pennsylvania.

2 Section 15. General repeal.

3 All acts or parts of acts inconsistent with the provisions of
4 this act are repealed to the extent of the inconsistency.

5 Section 16. Effective date and termination.

6 This act shall take effect on January 1, 1980 and shall
7 expire on December 31, 1992.