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# ISSUE BRIEF

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## SUNRISE AND SUNSET PROCESS

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The statutory sunrise process examines whether there is a need to regulate a previously unregulated occupation or profession. Conversely, sunset laws require the legislature to periodically review the need for state regulation and to update the law creating the regulatory entity or government function. These reviews seek to balance the need for regulation to protect the public interest with the need to ensure that industry and professions are not overregulated. This *issue brief* provides an overview of Colorado's sunrise and sunset process.

### The Sunrise Process

**Overview.** The Colorado Department of Regulatory Agencies (DORA) is responsible for conducting the analysis and evaluation of a proposed regulation. Currently, DORA regulates more than 50 professions, occupations, and businesses within the state.

**Sunrise review criteria.** Colorado law states that occupations and professions should be regulated only when necessary to protect the public interest. The following criteria are used in determining the need for new regulation:

- whether the unregulated practice of the occupation or profession endangers the health, safety, or welfare of the public;
- whether the public needs, and can expect to benefit from, the regulation; and
- whether the public can be adequately protected in a more cost-effective manner.

**Sunrise review application.** Any professional or organizational organizations, individuals, or other interested parties may propose that an unregulated profession or occupation be regulated by submitting the following to DORA:

- a description of the group proposed for regulation and the problems solved by regulation;
- a statement of support for the proposed regulation;
- the reasons why the type of regulation (e.g., licensing, certification, registration) was chosen; and
- the cost of the proposed regulation.

The proposal must be signed by at least ten members of the group for which regulation is being sought or by ten individuals that are not members. For sunrise applications received by December 1, DORA must complete a review by October 15 of the following year. After the review is complete, DORA submits a report to the supporters and to the General Assembly.

If DORA finds that the unregulated occupation or regulation poses an imminent threat to public health, safety, or welfare, it may forego a full review provided the Legislative Council of the General Assembly concurs with the finding of an imminent threat.

DORA may decline to conduct an analysis of the proposed regulation if it has previously conducted a review of the same occupation or profession within the previous 36 months and finds that no new

submitted information would alter the previous recommendations.

After DORA issues a sunrise review report, the General Assembly may, but is not required to, consider legislation that regulates the profession or occupation during the following two legislative sessions.

## **The Sunset Process**

**Overview.** Colorado's sunset laws provide for the automatic termination of a state regulatory agency, board, or function of government on a certain date. The state legislature must then pass a bill to continue the entity or function.

**Sunset reviews.** DORA is responsible for conducting a review of the entity or government function prior to the legislative sunset hearings. DORA produces a sunset report for each entity and function scheduled to sunset that includes the history of the entity, the laws that created the entity, and recommendations regarding changes to the laws and the continuation of the entity.

Each entity and function scheduled for termination must demonstrate that there is a public need for its continued existence and that its regulation is the least restrictive regulation consistent with the public interest. To determine whether a public need exists and the degree of regulation necessary, the following factors are considered:

- whether regulation by the agency is necessary to protect the public health, safety, and welfare;
- if regulation is necessary, whether the existing statutes and regulations are the least restrictive form of regulation consistent with the public interest;
- whether the agency operates in the public interest and is impeded or enhanced by existing statutes and rules;
- whether the agency performs its statutory duties efficiently and effectively;

- whether the composition of the agency's board or commission adequately represents the public interest;
- the economic impact of regulation and whether the agency stimulates or restricts competition;
- whether complaint, investigation, and disciplinary procedures and final dispositions of complaints are in the public interest or are self-serving to the profession;
- whether regulations encourage affirmative action and contribute to optimum personnel utilization; and
- whether administrative and statutory changes are necessary to enhance the public interest.

**General Assembly responsibilities.** In conducting a sunset review, a legislative committee reviews recommendations from DORA concerning the continuation of the entity or government function in question. The review is conducted at a public hearing that occurs after the report is published and generally at the beginning of the legislative session. The responsibility for conducting sunset reviews alternates between the House and the Senate each year.

**Legislative recommendations.** The legislative committee may propose legislation recommending the entity or function be continued and making other changes to the regulation of the function or entity. Any bills recommended at sunset hearings proceed through the normal legislative process. Entities and functions of government may be continued for any time period up to 15 years. There is no similar limitation on the continuation of advisory committees.

A legislative committee recommends termination of a function or entity simply by not proposing continuation legislation. In the event that the General Assembly allows an entity or function of state government to terminate, the entity or function continues to exist for the following year to wind up its affairs.