

Staff Findings
and Recommendations

Connecticut Sunset Law

February 22, 2012

Legislative Program Review
& Investigations Committee

Committee Staff on Project
Miriam P. Kluger, Principal Analyst

Legislative Program Review and Investigations Committee
Connecticut General Assembly
State Capitol Room 506
Hartford, CT 06106

(860) 240-0300

Email: pri@cga.ct.gov Web: www.cga.ct.gov/pri/index.htm

Introduction

CONNECTICUT SUNSET LAW

The Connecticut sunset law is contained in the Connecticut statutes and sets out a list of 75 specifically named entities or programs that will automatically terminate on a date certain (i.e., sunset) unless the legislature specifically acts to re-establish each one. Enacted in 1977 as part of a larger government reorganization effort¹, the Connecticut sunset law is based on two statutory findings made at the time:

- “There has been a proliferation of governmental entities and programs, which has occurred without sufficient legislative oversight or regulatory accountability”
- “There is a need for periodic comprehensive review of certain entities and programs, and for the termination and modification of those which did not significantly benefit the public health, safety, or welfare.”

Review Process

The law sets out a review process for each entity or program prior to its automatic termination date that includes:

- a ***PRI performance audit*** that is guided by, but not limited to, statutory criteria;
- a ***PRI written report*** (submitted to the Government Administration and Elections Committee (GAE) and the General Assembly) addressing the criteria, summarizing the PRI performance audit findings, and making recommendations based on those findings to abolish, reestablish, modify, or consolidate the specific entity or program under review; and
- a ***GAE public hearing***, and the authority for GAE to recommend to the General Assembly that the entity or program be modified, consolidated with another entity or program, or re-established.

If the outcome of the review process is a recommendation to continue an entity or program, with or without modifications, the only way for the entity or program to continue is if the General Assembly agrees and passes explicit legislation re-establishing the entity or program. If the review process recommendation is to terminate, and the General Assembly agrees, it does not need to act at all.

¹ P.A. 77-614 State Government Reorganization

Review Criteria

Two sets of criteria guide the sunset review process. The first set of criteria is to help determine **whether there is a public need for the continued existence of the entity or program;** the legislature is to consider, among other things:

1. whether termination of the entity or program would significantly endanger public health, safety or welfare;
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation;
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and
4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

The second set of criteria is to help determine **whether a regulatory entity or program serves the general public, and not merely the persons regulated;** the legislature is to consider, among other things:

1. the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program;
2. the extent to which the governmental entity involved has complied with federal and state affirmative action requirements;
3. the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated;
4. the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation.

Study Scope

The Legislative Program Review and Investigations Committee (PRI) voted to conduct this sunset review performance audit on September 27, 2011. The study reviewed two entities/programs on the first year of the sunset list (set to terminate July 1, 2013): 1) the *Board of Examiners of Embalmers and Funeral Directors*, located within and assisted by the Department of Public Health (DPH); and 2) the *hearing aid dealer* regulation program, administered totally by DPH. Both the current sunset criteria and results-based accountability (RBA) questions were applied to compare the processes and results of a traditional sunset performance audit with those of an RBA assessment.

The purpose of this approach was to provide a first-hand opportunity to observe and understand the benefits and drawbacks of the current sunset performance audit process and results. Changes to the sunset law were to be considered to improve the efficiency and

effectiveness of this legislative oversight tool. A related question not explicitly stated in the scope was whether any aspect of the sunset law should continue.

Study Methodology

For the performance audits of the two programs/entities, program review committee staff conducted several interviews and obtained information from members of the Board of Examiners of Embalmers and Funeral Directors, and staff from the Department of Public Health (DPH), Department of Consumer Protection (DCP), Auditors of Public Accounts, and the Office of the Attorney General. Program review committee staff also met with the Connecticut Funeral Directors Association, Connecticut Hearing Aid Dispenser's Organization, and the Connecticut Academy of Audiology. Staff also toured a funeral home and the offices of a hearing instrument specialist.

As part of the sunset review performance audit, agency complaint files were reviewed and surveys distributed to the parties involved in the regulation of the entity or program.² In this review, surveys were completed by both members of the Board of Examiners of Embalmers and Funeral Directors, and the Department of Public Health's Practitioner Licensing and Investigations Section staff. This experience was used to help inform the overall assessment of the Connecticut sunset law.

Also in examining the overall Connecticut sunset law, telephone interviews were conducted with personnel in several states with sunset laws including Texas, Florida, Missouri, and Washington. Previous Legislative Program Review and Investigations Committee studies of the Connecticut sunset law, individual performance audit reports from 1979 to 1983, and national literature were also reviewed.

Report Organization

The findings and recommendations report is organized into three sections. The first section provides a review of the overall Connecticut sunset law. Recommendations to make it more useful to the legislature are also contained in this section. Section II summarizes the findings and recommendations for the sunset review performance audit of embalmers, funeral directors, and funeral homes. Section III summarizes the findings and recommendations for the sunset review performance audit of hearing instrument specialists.

Four additional, separate reports were produced as part of the individual program/entity performance audits. More detail is contained in the following reports:

1. Connecticut Sunset Law Performance Audit of Board of Examiners of Embalmers and Funeral Directors (Attachment A)

² The sunset law requires each entity or program under review to provide PRI with an analysis of its activities that specifically address the two sets of criteria found in statute (C.G.S. Secs. 2c-7, 2c-8).

2. Results-Based Accountability Approach to the Connecticut Sunset Law Performance Audit of Board of Examiners of Embalmers and Funeral Directors (Attachment B)
3. Connecticut Sunset Law Performance Audit of Regulation of Hearing Instrument Specialists (Attachment C)
4. Results-Based Accountability Approach to the Connecticut Sunset Law Performance Audit of Regulation of Hearing Instrument Specialists (Attachment D)

REVIEW OF THE OVERALL CONNECTICUT SUNSET LAW

Connecticut Past Experience

Programs or entities on Connecticut's sunset review list regulate occupations or professions, formulate or guide specific state policies, advise state officials in specific areas, enforce industry standards, or provide services to the public or other state agencies. The largest category of entities regulates a profession or occupation.

Unlike the Texas sunset review process which has an expansive list of approximately 130 programs and entities, Connecticut's law includes 75 programs and entities to undergo sunset reviews. This is obviously not an exhaustive list, and thirty years after most of the programs and entities were selected, it is difficult to identify a clear rationale for the placement of these particular programs and entities on the sunset list. There are other professions regulated by DPH, such as acupuncturists and athletic trainers, for example, which are not included on the sunset list.

In the first and only completed five-year sunset review cycle, PRI examined 94 entities and made approximately 350 recommendations, of which 270 were implemented. Overall, PRI proposed terminating 32 entities, and 17 were acted upon favorably by the General Assembly with the remaining 15 being rejected.

In summary, since the first sunset review cycle was completed in 1984:

- The **legislature has postponed doing sunset reviews for almost 30 years.**
- The legislature has periodically **eliminated programs or entities independent of a sunset review** (e.g., eliminated Veterans Home and Hospital Commission (P.A. 88-285) and the Tri-State Regional Planning Commission (P.A. 81-463)).
- The legislature has occasionally **taken currently existing programs or entities off of the sunset list without benefit of a sunset review** (e.g., Department of Economic and Community Development (P.A. PA 09-234) and the State Tree Protection Examining Board (P.A. 99-73)).
- **Given the many postponements, the purpose of the sunset law has not been achieved**, which was to address the "...proliferation of governmental entities and programs" that has occurred due to insufficient legislative oversight or regulatory accountability. The Connecticut sunset law is intended to fill a need for "...periodic comprehensive review of certain entities and programs, and for the termination or modification of those which do not significantly benefit the public health, safety or welfare."
- There continues to be concern about the proliferation of governmental entities and programs and over-regulation.

Current Connecticut Experience

PRI staff found value in conducting the two recent sunset review performance audits. As summarized in Sections II and III, while PRI staff recommends continuing licensure of embalmers, funeral directors, and funeral homes, there are recommendations to address several concerns. For embalmers and funeral directors, for example, a pre-need funeral service contract guaranty fund is recommended to address instances when funds are misdirected away from escrow accounts (i.e., reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home.). Similarly, while staff also recommends continuing licensure for hearing instrument specialists, it also recommends the elimination of duplicative and conflicting statutory requirements for audiologists fitting and dispensing hearing aids. Thus, to the extent sunset requires a focused review of state programs, it is a tool that can be valuable to improving programs in the monitoring and oversight role of the general assembly and should be retained.

Comparison of Traditional Sunset Performance Review and Results-Based Accountability Framework

In studying the Board of Examiners of Embalmers and Funeral Directors, and hearing instrument specialists, both the current sunset criteria and RBA questions were applied to compare the processes and results of a traditional sunset performance audit with those of an RBA assessment. Informed in part by these reviews, the benefits and drawbacks of each methodology are now summarized.

Traditional Sunset Review

The benefits and drawbacks of traditional sunset reviews are summarized in Table I-1. The benefits range from requiring consideration of various aspects of how well the regulated program or entity is protecting public health, safety and welfare, to requiring the program or entity to participate in a self-evaluation.

Drawbacks include the paucity of readily available information to conduct sunset reviews, a challenge that also exists with regular PRI performance audits, and the lack of timeliness and legislative interest in the current programs and entities on the sunset review list.

Results-Based Accountability

The benefits and drawbacks of using a results-based accountability approach in conducting sunset reviews are summarized in Table I-2. Advantages to using RBA to conduct sunset reviews include its readily accessible format, and generation of recommended improvements to the regulated program or entity. The primary drawback is the general nature of the RBA questions can lead to assessments that do not include aspects of regulation that are spelled out in the sunset law.

Table I-1. Benefits of Traditional Sunset Review

Benefits
<ul style="list-style-type: none">• Requires consideration of important areas/issues in the regulation of a particular program or entity• Focuses on specific criteria when assessing the importance of regulation of a particular program or entity• Requires the governmental regulatory body to be involved in the process and self-assessment• Leads to generation of recommended improvements that can benefit the public• Identifies areas where the regulation is not protecting the public, having a potentially detrimental impact on health, safety and welfare• Has the potential to reduce the size of government• Has the potential to eliminate unnecessary regulation that is detrimental to those required to adhere to the regulations• With additional criteria proposed in this PRI study, has the potential to find ways to streamline the regulatory process to be advantageous to all involved—the public, those falling under the regulation, and the government entity mandated to oversee the regulation
Drawbacks
<ul style="list-style-type: none">• The government entity overseeing the regulation does not provide an in-depth response to questions/superficial• Information is not readily available; PRI staff—as occurs with regular PRI performance audits—is required to develop data in order to attempt to address the criteria• Uses committee and staff time that could otherwise be spent doing regular PRI performance audits—is a limited resource• Interest in the programs and entities on the list may not be present—there is nothing timely about reviewing a particular program or entity• It is questionable whether there is a need to conduct additional sunset reviews of programs or entities reviewed 25-30 years ago, reestablished, and still languishing on the sunset list—maybe once is enough• There is an anti-business element in the second set of sunset criteria that does not fit with the current need to support businesses, particularly when trying to grow jobs and improve the economy• There have not been any new additions to the sunset list in many years—some states attach sunset reviews to newly develop programs or entities, including tax credits and other pieces of regulation

Table I-2. Benefits of Results-Based Accountability to Conduct Sunset Reviews	
Benefits	
<ul style="list-style-type: none"> • The three questions are easy to understand, and boil the information down in a simple, logical way • The emphasis on outcomes and whether the program or entity is having any impact is important, and reflective of the bottom line of the original purpose of sunset laws, which was to eliminate unnecessary and ineffectual government regulation • The second question about how well did we do it encourages thinking about ways to improve the current regulation of the program or entity • The RBA process led to more recommendations, particularly from the second question (<i>how well did we do it?</i>) • Requires consideration of how the particular program or entity under sunset review fits into the bigger picture • The report card format provides a quick snapshot of the sunset review results 	
Drawbacks	
<ul style="list-style-type: none"> • There are certain issues that are important and specific to regulation that could be overlooked in the RBA process, such as whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost • Given the latitude in how the questions may be answered—especially the last two questions—there is danger that certain issues will not be addressed, such as whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation 	

Conclusion

There are advantages and disadvantages to both the traditional sunset review and RBA approach for the current sunset list entities. The specific sunset criteria are important and serve as standards by which to review programs and entities. The RBA approach focuses on outcomes and encourages thinking about ways to improve the current regulation of the program or entity. Another benefit of RBA is the report card format, which provides a quick snapshot of sunset review results, and is a good way to organize and present the information obtained by addressing each of the traditional criteria.

Should Sunset be “Sunsetted”?

The purpose of the sunset law is to provide the legislature with an oversight tool to control the proliferation of governmental entities. As was found in this current sunset review experience and in previous sunset studies, there are advantages to retaining aspects of sunset review, such as using a set of criteria with which to conduct the performance audit required by sunset reviews, and retaining the action forcing mechanism—or threat of termination.

Changes to Consider to Improve the Efficiency and Effectiveness of Sunset

As a whole, evaluating the programs and entities on the current sunset review list is not of pressing importance to the legislature—this conclusion is based on the fact that the legislature has postponed doing sunset reviews for almost 30 years.

The problem with the current sunset law is not so much the process as where it is applied. **PRI staff proposes redirecting sunset efforts toward new regulatory requirements.** This is an area that has received a lot of attention in recent years, with Connecticut seen as one of the more regulated states in the country.

There are currently many regulatory requirements and it would not be practical to examine all of them. However, the legislature could focus on new regulatory requirements and only those that the legislature believes should have a sunset provision attached.

The remainder of this section discusses four areas and recommended improvements to the Connecticut sunset review process: 1) the list; 2) the criteria; 3) the sunset review cycle; and 4) agency data and reporting requirements.

1. The List

Current Sunset Review List

The governmental entities and programs originally listed in the Connecticut sunset law were primarily small regulatory boards and commissions, although there was also some large agencies and programs. The original sunset review list contained 94 entities and programs. According to the 1998 PRI study of the sunset law, almost everything with the word “board” or “commission” in its title was selected, along with “...a few other entities and programs that had, for one reason or another, caught the attention of the proponents of reorganization.”³

The current list of 75 programs and entities is contained in Sec. 2c-2b of the Connecticut sunset law. Any program or entity that terminated under the law is given one year to conclude its affairs. As part of the five-year sunset review cycle, any program or entity that is reestablished is scheduled for another sunset review five years later.

As was noted earlier, the legislature has periodically eliminated programs or entities on the sunset list without benefit of a sunset review. That was the case when the Tri-State Regional Planning Commission and the Veterans Home and Hospital Commission were eliminated in 1981 and 1988, respectively. The legislature has also occasionally removed ongoing programs and entities from the sunset list without conducting a sunset review. For example, the State Tree Protection Examining Board and the Department of Economic and Community Development were removed in 1999 and 2009, respectively.

³ Sunset Review Process in Connecticut, December 1998, Legislative Program Review and Investigations Committee.

Other States with Sunset Laws

Some states focus their sunset laws on new programs as opposed to existing programs. Missouri, for example, conducts sunset reviews on new program and entities, with raised bills stipulating that the program automatically sunset six years from its effective date. The Missouri General Assembly Joint Committee on Legislative Research listed the following recently completed and varied sunset reviews on its website:⁴

- Children in Crisis Tax Credit
- Residential Treatment Center Tax Credit
- Internet Cyber Crime Grant
- Pregnancy Resource Tax Credits
- Sunset Review of the Food Pantry Tax Credit
- Missouri Military Family Relief Fund Check-Off
- Review of the Model School Wellness Program
- Review of the National Violent Death Reporting System

Washington State similarly applies sunset review to new programs at the discretion of the legislature. Similar to Missouri, the sunset review is attached as a provision of new legislation. It is applied only to new programs selected by the legislature—it is not automatically applied to all new programs. Recent examples in Washington State of new programs with sunset review provisions are:

- Washington Manufacturing Innovation and Modernization Extension Service Program (purpose to increase availability of innovation and modernization services to Washington manufacturers); and
- Alternative Public Works Procedures (allow public entities to design and construct public facilities without following the traditional procedure).

PRI Staff Recommendation

Reports and members of the legislature have expressed concern in recent years about the preponderance of regulation in Connecticut. It could be useful to the legislature to apply the sunset review action forcing mechanism/automatic termination to assess whether a new regulatory requirement, upon implementation, is actually providing a public benefit.

Similar to Missouri and Washington State, the *Connecticut legislature could choose to include a sunset review requirement for any newly established regulatory requirement*. This would foster improvement and continuation of new regulations deemed necessary, while eliminating those that are no longer necessary or that were found to be ineffective or otherwise

⁴ <http://www.moga.mo.gov/oversight/Sunset%20Reviews.htm>

unnecessary. New regulatory requirements would include new licensure, certification, registration, and permitting, or other new business mandates. *The governmental entities and programs currently on the sunset review list would be removed*, with this new approach used to identify any new regulatory requirement the legislature wants to subject to a sunset review performance audit prior to its automatic termination date.

Table I-3 shows some of the new regulatory requirements that passed in the 2011 legislative session. If this redirection of sunset had been in place, the legislature could have included a sunset review requirement in any of these Acts.

Table I-3. New Regulatory Requirements that Passed in the 2011 Legislative Session	
Public Act Number:	Act:
11-52	AA Mandating Employers Provide Paid Sick Leave to Employees
11-76	AAC Patient Access and Control Over Medical Test Results
11-100	AAC the Licensing and Record Keeping of Pawnbrokers, Secondhand Dealers and Precious Metals or Stones Dealers , the Retention of Certain Goods and Certain Fees Charged by Pawnbrokers
11-164	AA Authorizing the Sale of Connecticut Wine at Farmers' Markets and Establishing a Farmers' Market Wine Permit
11-183	AA Requiring Certificate of Need Approval for the Termination of Inpatient and Outpatient Services by a Hospital
11-190	AA Requiring a Permit for Certain Commercial Projects that Involve Quarrying
11-245	AA Requiring the Adoption of Regulations for the Siting of Wind Projects
11-248	AA Requiring Carbon Monoxide Detectors in all Public and Nonpublic Schools
11-81	AA Concerning the Licensing of Swimming Pool Installers , Electronic Notice of Proposed Agency Regulations and Minor and Technical Changes to Department of Consumer Protection Statutes. (The act requires the DCP commissioner to establish requirements for obtaining and renewing a swimming pool builder's license.)

2. The Criteria

Current Criteria

As described earlier, the sunset law provides two sets of criteria to guide the General Assembly in carrying out the sunset review process. Per C.G.S. Sec. 2c-7, the first set of criteria is used to help determine whether there is a *public need for continuing the regulatory entity or program*:

1. whether termination of the entity or program would significantly endanger public health, safety or welfare;
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation;
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and

4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

In addition to the first set of criteria, the second set of criteria (per C.G.S. Sec. 2c-8) is used to help determine *whether a regulatory entity or program serves the general public, and not merely the persons regulated*:

1. the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program;
2. the extent to which the governmental entity involved has complied with federal and state affirmative action requirements;
3. the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated;
4. the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation.

The December 1998 PRI study of the sunset review process in Connecticut offered four options for modification of Connecticut's sunset law. Two of the options recommended elimination of the second set of review criteria outlined in C.G.S. Sec. 2c-8. The explanation given for recommending the elimination of these criteria was that their focus was solely on regulatory matters rather than on how well entity or program complies with state rules and regulations.

Other States with Sunset Laws

Many of the other states that have sunset laws were developed in the 1970's around the same time as the Connecticut sunset law was established; thus, the criteria are strikingly similar. The criteria tend to fall into two broad categories:

- need for the state to be involved in the area under review, and the appropriate level of involvement; and
- extent to which goals have been met and resources used efficiently.

PRI Staff Recommendations

Whether examining programs and entities or regulatory requirements, there is still a need to have a uniform set of standards by which to guide the associated performance audit. The current criteria focusing on whether the public health, safety and welfare are protected is still important, as that is the public policy goal for regulatory requirements. The criteria could be further improved by making the modifications described below.

Add a new criterion to address the streamlining of regulatory processes. The following new criterion is recommended: *the extent to which the regulatory requirement has been implemented in a streamlined way that avoids inconsistent, duplicative and/or unnecessary requirements or procedures.* Unjustified burdens and costs as well as processing delays can be reduced through elimination of inconsistencies and duplication of effort without adversely

impacting the health, safety and welfare of the public. Statutory changes can be recommended that have a neutral impact on the public, but benefit the persons regulated such as streamlining processes and cutting red tape. Given the need for job growth in the state, there is increased focus on reduction of unnecessary or cumbersome regulations in Connecticut.

Combine two criteria into one pertaining to the treatment of qualified applicants.

There are currently two sunset criteria that relate to the treatment of applicants: 1) the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program; and 2) the extent to which the governmental entity involved has complied with federal and state affirmative action requirements. Since both criteria relate to the treatment of qualified applicants in a fair and equitable manner, it is recommended that the two criteria be reduced to one broader criterion that addresses this area.

Delete two criteria. PRI staff recommends deleting the criterion that pertains to *the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated*. The PRI staff found that, since there are already criteria to assess the extent to which the regulated program or entity has been beneficial to the public health, safety and welfare, it would not be harmful to recommend statutory changes that have a neutral impact on the public, but are beneficial to the persons regulated. Reducing the time to process permitting applications, for example, could be beneficial to new or existing businesses in Connecticut.

Another criterion relates to *the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies*. This criterion would be less relevant to the redirected focus toward new regulatory requirements.

Retain remaining criteria. With minor adjustments to the wording, the remaining criteria are all relevant to the assessment of new regulatory requirements. The slight wording changes are shown in Table I-4.

3. The Sunset Review Cycle

Background on the Five-Year Schedule for Periodic Review of Each Entity/Program

The Connecticut sunset review process currently has a five-year cycle. The 1998 PRI study of sunset review recommended increasing the length of the cycle from five to eight years. Rationale for this recommended change included allowing the program review committee to devote more resources to non-sunset activities in any given cycle year, without reducing the quantity or quality of the sunset reviews.

It is possible that sunset reviews have been postponed because the vast majority of the programs and entities currently on the sunset list have been reviewed once and found to be worthy of continuing for at least five years. In the current PRI study, sunset reviews of both the hearing instrument specialists and embalmers and funeral directors concluded that the professions should continue to be regulated. There were no significant changes that were uncovered that would have led to recommendations to eliminate the regulation of either profession. Thus, for many of the regulatory programs and entities, perhaps the first sunset

review is the most critical and after that, it is less of an issue as to whether the program or entity should continue.

Table I-4. Comparison of Remaining Criteria	
Current Criterion	Proposed Criterion
1. whether termination of the entity or program would significantly endanger public health, safety or welfare	(a) whether elimination of the regulatory requirement would significantly endanger public health, safety or welfare
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation	(c) whether the public could be adequately protected by a less restrictive regulatory requirement
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost	(d) whether the regulatory requirement produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the regulatory requirement outweigh the public burden of the increase in cost
4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies	(e) whether the effective implementation of the regulatory requirement is impeded by existing statutes, other regulatory requirements, or policies, including budgetary and personnel policies
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation	(g) the extent to which the governmental entity responsible for implementing the regulatory requirement has processed and resolved public complaints concerning persons or organizations subject to the regulatory requirement

In considering the redirection of sunset reviews to new regulatory requirements, it is noted that some regulations may take more or less time to become established. A larger, more complex regulation may take years to be established, whereas a more narrowly-focused, smaller regulation that is similar to other already-established regulations may require less start-up time. Therefore, a one-size-fits-all timeframe may not be the best solution for sunset dates for new regulatory requirements.

Other States with Sunset Laws

The review cycle length identified for 21 states ranged from four to 15 years, with eight states saying the life of agencies/associated review cycles varied.⁵ A number of the states that

⁵ The Council of State Governments' survey, January 2009 with updates August 2009.

reported a variable review cycle set maximum limits, such as “up to six years” (e.g., Louisiana, Tennessee) or a range (e.g., 6 to 12 years (Missouri)).

PRI Staff Recommendations

First sunset review. Five years out from the date the regulation was established seems a reasonable amount of time to give before conducting the sunset review. However, some more complex regulations may require more time to become established, and others less time to become established. Consistent with some of the other states with variable cycles, a variable time with an upper limit of six years might be a compromise solution. A longer period of time prior to the initial sunset review could contribute to the expansion of government regulation without oversight.

Subsequent sunset reviews. It is questionable whether an automatic repeated sunset cycle is necessary for the regulatory requirements. An alternative is to conduct the first sunset review within six years of establishment of the new regulatory requirement. If the legislature then chose to reauthorize the regulatory requirement, it would be removed from any future sunset review list, unless the legislature wished to schedule a new date for termination, not to exceed six years from the date of the last sunset review.

4. Agency Data and Reporting Requirements: PRI Staff Recommendations

The Sunset Review Performance Audit Report

As is currently the case with the sunset law, the PRI committee would submit to the General Assembly a written report on each new regulatory requirement by January first of the year in which the regulatory requirement would be scheduled for termination. The assessment of the regulatory requirement would address the seven criteria described earlier. The report would contain recommendations regarding the termination, continuation, modification, or streamlining of the regulatory requirement. The report would present the findings in a concise and outcomes-oriented format.

The State Agency Data Requirements

The state agency responsible for implementing the new regulatory requirement containing the sunset provision, would establish results-based measures by which to assess progress in addressing the seven criteria described earlier. As is currently the case with the sunset law, the agency would have the burden of demonstrating the extent to which the performance results have been achieved.

The state agency responsible for implementing the regulatory requirement would develop results-based measures and a data collection plan and submit it to the PRI committee for review and comment. The results-based measures and data collection plan would be submitted within one year of the effective date of the legislation establishing the sunset termination.

Note that, in instances where more than one agency is responsible for implementing the new regulatory requirement, a lead agency would be named in the sunset termination legislation. This lead agency would have responsibility for developing and implementing the data collection plan and submitting the resulting performance information to the PRI committee for its review and comment.

In summary, PRI staff makes the following recommendations regarding the Connecticut sunset law:

New regulatory requirement focus

- **After July 1, 2012, the General Assembly may add a sunset date to any new regulatory requirement.⁶ The sunset date shall not be more than six years after the effective date of the regulatory requirement.**
- **The Legislative Program Review and Investigations Committee shall conduct a performance audit of each regulatory requirement scheduled for termination under the sunset law.**

Criteria

- **Criteria for determining public need. In determining whether there is a public need for the continuation of a regulatory requirement, and whether the regulatory requirement is being implemented in an efficient and effective manner, the General Assembly shall consider, among other things:**
 - (a) whether elimination of the regulatory requirement would significantly endanger public health, safety or welfare;**
 - (b) the extent to which the regulatory requirement has been implemented in a streamlined way that avoids inconsistent, duplicative and/or unnecessary requirements or procedures;**
 - (c) whether the public could be adequately protected by a less restrictive regulatory requirement;**
 - (d) whether the regulatory requirement produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the regulatory requirement outweigh the public burden of the increase in cost;**
 - (e) whether the effective implementation of the regulatory requirement is impeded by existing statutes, other regulatory requirements, or policies, including budgetary and personnel policies;**
 - (f) the extent to which the governmental entity responsible for implementing the regulatory requirement has treated qualified applicants or regulated individuals or organizations in a fair and equitable manner; and**
 - (g) the extent to which the governmental entity responsible for implementing the regulatory requirement has processed and resolved public complaints concerning persons or organizations subject to the regulatory requirement.**

⁶ New regulatory requirements would include new licensure, certification, registration, and permitting, or other new business mandates.

State agency data requirements

- **The state agency responsible for implementing the new regulatory requirement (being subject to a sunset review performance audit) shall establish results-based measures to address the criteria set forth in recommendation #3. The agency has the burden of demonstrating the extent to which performance results have been achieved.**

The sunset termination legislation shall name a lead agency, if more than one agency is affected by scheduled termination. The affected agency or lead agency has the responsibility for developing and implementing a data collection plan and submitting the resulting performance information to the Legislative Program Review and Investigations Committee.

The affected agency or lead agency shall develop results-based measures and a data collection plan and submit them for review and comment to the Legislative Program Review and Investigations Committee within one year of the effective date of the legislation establishing the sunset termination.

Reporting requirements

- **The Legislative Program Review and Investigations Committee shall submit to the General Assembly a written report on each regulatory requirement by January first of the year in which the regulatory requirement is scheduled for termination. Such report shall specifically address the criteria set forth in recommendation #3 and present findings in a concise, outcomes oriented format. Such report shall include recommendations regarding the termination, continuation, modification, or streamlining of such regulatory requirement.**

Managing sunset list

- **Any regulatory requirement reauthorized by the General Assembly shall be removed from the sunset review list, unless the legislature schedules a new date for termination, not to exceed six years from date of last sunset review.**
- **All governmental entities and programs contained in Sec. 2c-2b scheduled to terminate no later than July 1, 2017, shall be removed from the sunset list.**

Section II

SUMMARY OF PERFORMANCE AUDIT OF BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS

Continue Licensure

Based on a review of the sunset criteria, the evidence suggests there is a public need for continuing licensure of embalmers, funeral directors, and funeral homes in order to help protect the mental health of mourners and potential physical health threatened by the spread of communicable diseases should sanitary safeguards be eliminated. It is further suggested that a less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. The licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public. The development of regulations pertaining to funeral homes would further enhance the department's ability to regulate funeral homes.

As demonstrated by the experience during which full regulation of embalmers, funeral directors, and funeral homes was not occurring, such level of regulation is needed to protect the public health, safety, and welfare of Connecticut residents.

Continue Board

The department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of boards or commissions. It is uncertain, however, what advantage would be gained by eliminating the Board of Examiners of Embalmers and Funeral Directors. There is little to no expense to the department or public, and the board provides readily available expertise to draw upon for the processing of complaints. A potential downside to eliminating the board would be an increase in the time to resolve some complaints, exposing the public to unscrupulous practitioners for a longer period of time. *Evidence exists that the Board provides a value-added service to DPH in its regulation of embalmers, funeral directors and funeral homes, and plays a role in protecting public health, safety and welfare.*

Recommended Modifications

Board attendance requirement. There are no requirements for board member attendance at board hearings on complaints. Because the perspective of the public and the professional was considered important to the work of the board, there should be representation of these two viewpoints at board hearings on complaints.

DPH licensure report. Data on the number of licensed embalmers, funeral directors, and funeral homes is reported annually as part of the DPH report, "Total Active Licenses." To assess trends, data from each year's separate report must be compiled manually. By having columns for

each of the years on the same report, viewers can see trends over time for the number of licensed embalmers, funeral directors, and funeral homes—as well as the 87 other categories of licensed professions.

DPH monitoring of timeliness of complaint processing. Despite department guidelines on the time to process complaints according to the severity of the complaint (i.e., Class 1, 2 or 3), DPH does not maintain reports on complaint processing time by classification.

DCP website. The DCP website could reduce consumer confusion by clarifying that consumer complaints regarding pre-need funeral service contracts are handled by DCP.

DPH website. The DPH website could also reduce consumer confusion by providing the same information so that complainants are clear as to where to register their complaints.

Pre-need funeral service contracts fact sheet. The new DCP consumer fact sheet on pre-need funeral service contracts will help to better inform consumers. Beyond having the fact sheet on the DCP website, the DPH and DSS websites should make consumers aware of the fact sheet for consumers on pre-need funeral service contracts.

Another avenue for receipt of the information would be directly from the funeral directors and embalmers, who could distribute the fact sheet to customers considering or purchasing a pre-need funeral service contract.

Pre-need funeral service contract guaranty fund. There were instances where consumer funds intended to pay for pre-need funeral service contracts were lost because the embalmer or funeral director did not properly deposit the money into the required escrow account. If Connecticut had a pre-need funeral service contract guaranty fund, then DCP might be able to offer repayment to consumers faced with this situation.

Board member vacancy. The Board of Examiners of Embalmers and Funeral Directors has been awaiting appointment by the Governor's Office of a public board member vacancy for more than six months. As the state auditors pointed out, boards without a full complement of participating members may not benefit from the intended representation of various public and private sector groups.

In summary, PRI staff makes the following recommendations regarding the regulation of embalmers, funeral directors, and funeral homes:

- 1. The regulation at the licensure level of embalmers, funeral directors, and funeral homes should be continued.**
- 2. The Board of Examiners of Embalmers and Funeral Directors shall be reestablished.**
- 3. DPH shall expand the current regulations pertaining to funeral homes to address issues including but not limited to a definition for “funeral service” and specific requirements related to funeral home inspection certificates.**
- 4. DPH’s report, “Total Active Licenses,” be formatted to include data from each of the past five years.**
- 5. DPH should consider developing a system to monitor timeliness of complaint processing for all cases, with the ability to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.**
- 6. Specifically state on the DCP website that DCP handles consumer complaints about pre-need funeral service contracts. Other complaints related to services received from embalmers, funeral directors and funeral homes are handled by DPH.**
- 7. Specifically state on the DPH website that DPH handles complaints related to services received by from embalmers, funeral directors and funeral homes. Complaints about pre-need funeral service contracts are handled by DCP.**
- 8. DPH and DSS should make consumers aware of the pre-need funeral service contracts fact sheet by providing a link to the document on the DCP website.**
- 9. Funeral directors and embalmers shall distribute paper copies of the DCP pre-need funeral service contracts fact sheet to customers considering or purchasing such a contract.**
- 10. A Pre-Need Funeral Service Contract Guaranty Fund shall be established and managed by DCP.**
- 11. DPH Commissioner should request of the Governor’s Office the anticipated timeframes for the filling of DPH board and commission vacancies**
- 12. At least one public board member and one professional board member shall be present at DPH board hearings**

Section III

SUMMARY OF PERFORMANCE AUDIT OF REGULATION OF HEARING INSTRUMENT SPECIALISTS

Continue Licensure

Based on a review of the sunset criteria, *the evidence suggests there is a public need for licensure of hearing instrument specialists* in order to protect against further hearing loss due to an improperly fitted hearing aids for a patient population consisting of many frail and elderly clients.

Hearing instrument specialists are regulated in all 50 states, most often through licensure (92 percent of the time). Hearing aids are classified as medical devices by the FDA. The FDA website notes that hearing aids should be properly fitted so that amplification matches the individual's hearing loss. If the hearing aid is not properly fitted, then too much amplification may cause additional hearing loss. The experience of Colorado following its sunset of the regulation of hearing instrument specialists found significant actual public harm by the unregulated practice of hearing aid sales, and led to re-regulation of the profession.

A less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. Further, the licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public.

The DPH (rather than DCP) is the appropriate agency for the regulation of this profession as hearing aids are classified as FDA-regulated medical devices, and hearing instrument specialists screen clients for eight medical conditions.

Recommended Modifications

Audiologist requirements. The hearing instrument specialist statute requires audiologists to pass an exam, get another license, or submit documentation to DPH before they can fit and dispense hearing aids. This statutory requirement is unnecessary as the practice of audiology includes fitting or selling hearing aids, and audiology licensure requires a doctorate.

DPH licensure report. Data on the number of licensed embalmers, funeral directors, and funeral homes is reported annually as part of the DPH report, "Total Active Licenses." To assess trends, data from each year's separate report must be compiled manually. By having columns for each of the years on the same report, viewers can see trends over time for the number of licensed embalmers, funeral directors, and funeral homes—as well as the 87 other categories of licensed professions.

Continuing education requirement. Hearing instrument specialist licensure does not currently require continuing education as a condition of licensure renewal. However, it is a rapidly changing field, with new software and products changing approximately every three years. The public may be better protected and served by having a continuing education requirement.

In summary, PRI staff makes the following recommendations regarding the regulation of hearing instrument specialists:

- 1. The regulation at the licensure level of hearing instrument specialists should be continued.**
- 2. C.G.S. Sec. 20-398 shall be amended so that audiologists will not have to meet the additional hearing instrument specialist requirements in order to fit and dispense hearing aids.**
- 3. DPH's report, "Total Active Licenses," be formatted to include data from each of the past five years.**
- 4. Hearing instrument specialists shall be required to complete 16 continuing education units prior to licensure renewal.**