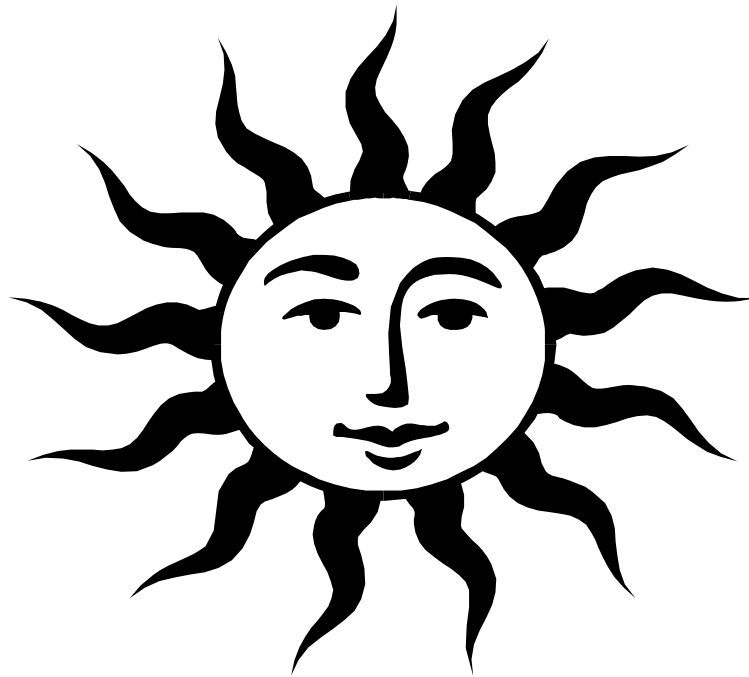


HANDBOOK  
ON  
ARIZONA'S  
SUNSET & SUNRISE  
REVIEW



50<sup>th</sup> Legislature  
2011 – 2012

# TABLE OF CONTENTS

|                                                   |    |
|---------------------------------------------------|----|
| <b>Introduction</b>                               | 1  |
| <b>Role of Participants</b>                       |    |
| Joint Legislative Audit Committee                 | 2  |
| Office of the Auditor General                     | 5  |
| Committees of Reference                           | 6  |
| Agency Subject to Review                          | 7  |
| Legislative Staff                                 | 7  |
| <b>Sunset Review Process</b>                      |    |
| Description                                       | 11 |
| <b>Conducting a Sunset Review</b>                 |    |
| Auditor General Conducts Performance Audit        | 12 |
| Timetable                                         | 16 |
| Committee of Reference Conducts Performance Audit | 17 |
| Timetable                                         | 21 |
| <b>Sunrise Review Process</b>                     |    |
| Description                                       | 22 |
| <b>Conducting a Sunrise Review</b>                |    |
| Conducting a Sunrise Review                       | 23 |
| Timetable                                         | 25 |

## INTRODUCTION

The *Handbook on Arizona's Sunset and Sunrise Review* is a guide for parties involved in the sunset and sunrise review of state agencies, boards, commissions, institutions and programs (agencies). Because statute prescribes both the sunset and sunrise processes, it is recommended that statute be consulted in conjunction with the use of this handbook.

Established by Laws 1978, Chapter 210, Arizona's sunset review process requires the Legislature to periodically review the purpose and functions of state agencies to determine whether continuation, revision, consolidation or termination is warranted. Sunset reviews are based on audits conducted by either the Office of the Auditor General (OAG) or a Committee of Reference (COR). Following the audit, a public hearing is held by the COR to discuss the audit and receive testimony from agency officials and the public.

Established by Laws 1985, Chapter 352, and expanded by Laws 2008, Chapter 132, Arizona's sunrise process provides a mechanism for both health professions and nonhealth professions to request regulation and, for health professions, an expansion in scope of practice. The sunrise process begins when an applicant group presents the Joint Legislative Audit Committee (JLAC) with a report defining the need for regulation or scope of practice expansion. JLAC assigns the report to a COR for review and recommendation.

The handbook is divided into four primary sections. The first section provides a brief description of the entities that play an important role in the processes, specifically, JLAC, COR, OAG and legislative committee staff. The following two sections are divided based upon the actual sunset and sunrise processes and provide a step-by-step guide of how to conduct a sunset or sunrise review. Finally, samples from previous reviews are provided to help eliminate questions regarding written correspondence and final reports.

This 2011-2012 edition replaces the 2009-2010 edition which was dedicated to Janice Stell, Senate Research Executive Assistant.

## **ROLE OF PARTICIPANTS**

### **JOINT LEGISLATIVE AUDIT COMMITTEE**

(Title 41, Chapter 7, Article 10.1, Arizona Revised Statutes)

#### ***MEMBERSHIP***

JLAC is a 12-member committee consisting of 6 members from each chamber of the Legislature. Five members each are appointed by the President of the Senate and the Speaker of the House of Representatives based on the members' understanding and interest in agency audits. JLAC membership includes an Appropriations Committee member from each chamber, and no more than three appointees from each chamber may be members of the same political party. Additionally, the President of the Senate and Speaker of the House of Representatives serve as ex-officio members. JLAC chairmanship alternates each year between the House and Senate. For current JLAC membership please see the Interim Committee Inquiry option available via the A.L.I.S. Launcher.

#### ***JLAC POWERS & DUTIES***

JLAC oversees all legislative and agency audit functions. Subject to legislative approval, JLAC appoints the Auditor General and directs all sunset, performance, special and financial audits and special research requests. JLAC is required to ensure that agencies comply with audit findings and recommendations and has legislative subpoena power.

In order to facilitate the sunrise and sunset process JLAC:

- 1) assigns agencies subject to sunset review to a COR;
- 2) assigns sunrise review applicants to a COR;
- 3) determines whether the OAG or a COR will conduct an agency's sunset audit;
- 4) directs the OAG or a COR to conduct audits;
- 5) oversees the preparation and introduction of legislation to delay a sunset review if the OAG or a COR is unable to complete the review according to schedule;
- 6) directs the OAG or a COR to conduct performance audit follow-up reviews;
- 7) assigns COR chairmen (JLAC has the statutory authority to appoint COR chairmen, but traditionally the chairs are selected by standing committee chairmen when appointing the members); and
- 8) meets quarterly or on the call of the chairman.

#### ***PERFORMANCE AUDIT FOLLOW-UP PROCEDURES***

In July 1997, JLAC adopted a process to follow-up on audit recommendations, which was subsequently expanded in 1999. Prior to 1999, the OAG would follow-up with an agency six months after a performance audit was issued and report to JLAC whether the agency was making progress in implementing the audit report's recommendations. If the agency appeared to be making satisfactory progress, the OAG conducted no further follow-up. If the agency was not making progress, further follow-up was conducted at 18 months.

The follow-up process in place as of September 1999 is as follows:

1. In the written response to each audit recommendation in a performance audit report, the auditee will make one of the following statements:
  - a) the finding of the OAG is agreed to and the audit recommendations will be implemented,
  - b) the finding of the OAG is agreed to and a different method of dealing with the finding will be implemented,
  - c) the finding of the OAG is not agreed to but the recommendations will be implemented, or
  - d) the finding of the OAG is not agreed to and the recommendations will not be implemented.
2. Following the release of each audit report, JLAC will ensure that each audit receives a public hearing by a legislative committee. JLAC may refer the audit to a COR if the audit is performed under the sunset law. However, JLAC may request other pertinent committees to hold a hearing on any audit, or JLAC may hold the hearing.
3. JLAC shall request other committees holding a hearing on an audit to specifically address, and report back to JLAC, the nature of all report recommendations with which the agency does not agree and will not implement.
4. Six months after the audit report is issued, the auditee must provide to the OAG a written explanation of the status of all audit recommendations. (The OAG shall require the auditee to provide data and information necessary to document its efforts at implementing the recommendations.) The OAG will then issue a follow-up report to JLAC indicating the status of the agency's efforts in implementing the audit recommendations. Specifically, the follow-up report will identify how many recommendations the agency has implemented, how many recommendations it is in the process of implementing and how many recommendations have not been implemented. If the auditee has implemented all recommendations as of six months, the OAG shall report this fact to JLAC and no further follow-up will be conducted.

If the auditee has not fully implemented all recommendations at six months, but appears to be making progress, then this process continues at six-month intervals up to a period of two years after the release of the audit report.

If the OAG finds that the auditee is not making substantial progress in implementing the recommendations at 6 months and 12 months, the OAG may, within a period not to exceed

18 months, initiate a more involved follow-up review. This review shall determine the status of the recommendations and what further actions, if any, are still necessary to implement the recommendations.

At two years, JLAC may require the auditee to appear before it to review the status of any remaining recommendations and to determine whether continued reporting is warranted.

The OAG has the authority to verify all information provided by the auditees and issue reports to JLAC and other relevant legislative committees.

5. The JLAC chairman may at any time following the release of an audit report convene a panel of JLAC members to meet with the OAG and the auditee to discuss recommendations with which the agency disagrees and will not implement. The panel will hear from both parties and will recommend to the full committee that:
  - a) there is no need for further action, or
  - b) sufficient differences exist between the OAG and the auditee to warrant the attention of the full JLAC.
6. JLAC will determine the need for further review and may, as an option, convene a final meeting of the two parties.
7. If after final review JLAC feels it is warranted, it will draft a memorandum summarizing the differences between the OAG and the auditee and will make a memorandum available, together with any recommendations, to all members of the Legislature.

**OFFICE OF THE AUDITOR GENERAL**

(Title 41, Chapter 7, Article 10.1, Arizona Revised Statutes)

***REQUIREMENTS & TERM***

Statute provides for the appointment of the Auditor General by JLAC, subject to approval by the Legislature. The term of office is five years; however, the Auditor General may be reappointed or removed from office pursuant to a concurrent resolution of the Legislature.

Statute requires the Auditor General to be a certified public accountant licensed to practice in Arizona and therefore subject to the standards and ethics of the accounting profession as regulated by the Arizona Board of Accountancy.

***OAG POWERS & DUTIES***

The OAG is responsible for providing independent financial, performance and compliance audits and special research requests in support of legislative oversight and public accountability regarding funds administered by the state and certain local governments. The OAG is authorized by statute to access agency correspondence, files and other records, bank accounts, criminal history record information, money and other property of any state agency. Prior to conducting a performance audit, the OAG attempts to contact legislators and legislative committee staff to receive input and suggestions regarding areas of concern. The OAG staff also contacts legislators and staff following the publication of an audit to respond to any questions concerning audit findings.

The OAG is required to perform the following duties relating to the sunset process:

- 1) prepare and submit to JLAC a list of all agencies scheduled for sunset termination at least 20 months prior to agency termination,
- 2) recommend to JLAC sunset audits to be conducted by the OAG or COR,
- 3) conduct all audits assigned by JLAC (audits conducted by the OAG for the sunset review process are called performance audits or sunset audits),
- 4) distribute copies of agency performance audits to JLAC members and staff, and
- 5) testify before the COR regarding the performance audit findings.

## COMMITTEES OF REFERENCE

(A.R.S. § 41-2954)

### **MEMBERSHIP**

A COR is a subcommittee that is intended to act as a proxy for a standing committee. Statute requires that each standing committee of both legislative houses appoint a five-member COR and stipulates that no more than three members may belong to the same political party. Although JLAC has the statutory authority to appoint COR chairs, tradition has given this task to standing committee chairs. A COR is usually appointed in the early part of a Legislature with the first member named serving as the COR chair. For current COR membership please see the Interim Committee Inquiry option available via the A.L.I.S. Launcher.

### **COR POWERS & DUTIES**

The COR may be responsible for conducting a sunset audit. A sunset audit conducted by a COR is essentially a self audit whereby the agency responds to statutorily prescribed questions and questions developed by the COR.

When conducting a sunset or sunrise hearing, the House and Senate COR meet jointly as a single COR; and separate motions for the House side and the Senate side are **not** in order. A quorum for sunset and sunrise purposes consists of a majority of all COR members.

Agencies subject to sunset review are generally assigned to a COR whose standing committee would most likely be responsible for hearing any legislation affecting that particular agency.

A COR has legislative subpoena power and is responsible for:

- 1) conducting a sunset audit of each agency assigned to it by JLAC,
- 2) holding at least one public hearing upon receipt of the OAG performance audit or completion of the COR sunset audit,
- 3) evaluating and recommending agency continuance, revision, consolidation or termination based on statutory sunset factors,
- 4) evaluating and recommending regulation or increased scope of practice based on statutory sunrise factors,
- 5) submitting a final sunset or sunrise review report by December 1 to JLAC, the President of the Senate, Speaker of the House of Representatives, Governor, OAG and the agency that was the subject of the review, and
- 6) preparing legislation to implement its recommendations (JLAC is statutorily required to oversee the preparation of such legislation, but traditionally the COR chair and staff have overseen this responsibility).

## AGENCY SUBJECT TO REVIEW

An agency subject to sunset review performs the following functions in the sunset and sunrise review process:

- 1) Assists the OAG or COR - The agency works with the OAG to provide any necessary information. If the sunset audit is conducted by a COR, the agency must provide all necessary information and respond to the sunset questions as requested by the COR.
- 2) Testifies at hearings - Agency officials testify at public hearings, present agency responses to the required agency factors, and provide justification for agency continuance, modification or creation and any additional information requested by COR members.
- 3) Supports introduction of legislation - Agency officials should work with legislative committee staff and COR chairman to coordinate the drafting and introduction of legislation to continue, modify or create the agency pursuant to COR recommendations.

## LEGISLATIVE STAFF

Sunset and sunrise staffing responsibilities shift with legislative terms. Senate legislative committee staff is responsible for staffing sunset hearings during even-numbered legislatures, and legislative committee staff from the House is responsible during odd-numbered legislatures. Regardless of who has primary responsibility, it is always a good idea to keep one's staff counterpart(s) apprised of information and progress.

Staff responsibilities vary slightly depending on whether the OAG or COR conducts the sunset audit. Committee staff:

- 1) coordinates with their Senate/House counterpart,
- 2) facilitates contact between the COR chair and the agency subject to sunset review,
- 3) compiles background information,
- 4) prepares information for COR members and other interested legislators,
- 5) schedules the sunset and sunrise hearing(s),
- 6) writes the final sunset and/or sunrise report, and
- 7) facilitates the drafting of any legislative recommendations of the COR.

# SUNSET REVIEW PROCESS

(Title 41, Chapter 27, Arizona Revised Statutes)

## ***DESCRIPTION***

The sunset process dates to the 1970s and was one of the first government accountability tools. Although individual sunset processes differ from state to state, a key feature is the inclusion of an automatic termination (repeal) clause in the authorizing legislation for state agencies and programs. Agencies are reviewed by the Legislature prior to their termination at which time the Legislature may choose to reauthorize the agency.

Established by Laws 1978, Chapter 210, Arizona's sunset laws provide a systematic process to evaluate an agency to determine if the merits of the agency justify its continuation, continuation with modification or termination. Agencies subject to sunset review automatically terminate (sunset) if legislation to continue the agency is not approved by the Legislature and Governor.

The entire sunset review process takes place over a 20-month period. JLAC initiates the sunset review process by reviewing the list of agencies scheduled for termination and assigning the agencies to a COR. All agencies scheduled for sunset are assigned to a House and Senate COR. Sunset reviews are based on sunset audits conducted by either the OAG or a COR. JLAC also determines whether the OAG or a COR will conduct the sunset audit (called a performance audit if conducted by the OAG). This determination is based upon a number of factors including: the number of audit hours the OAG estimates a performance audit of the agency will require, the number and seriousness of concerns and issues identified by legislators, legislative staff or the OAG regarding the agency, and the size and budget of the agency.

The COR is required to hold at least one public hearing to discuss the sunset audit and receive testimony from agency officials and the public. The COR may hold subsequent hearings as necessary. Upon completion of COR deliberations, which include a review of the 13 statutory sunset factors, the COR must submit a final sunset review report by December 1, containing its recommendation for continuation, revision, consolidation or termination of the agency. Statute prohibits continuation of an agency for a period in excess of ten years. Legislative committee staff typically facilitates, and Legislative Council typically drafts, any recommended legislation.

Historically, the COR chair has introduced the legislation necessary to continue, consolidate or revise an agency during the following legislative session; however, the agency subject to sunset review has the responsibility of requesting the chair, or any other legislative member, to sponsor the necessary legislation. Legislative committee staff should communicate this responsibility to the agency. If the COR recommends that the agency terminate, legislation is not necessary.

## CONDUCTING A SUNSET REVIEW

A sunset review is based on an audit conducted by either the OAG (performance audit) or the legislative committee staff assigned to the COR. The essential difference between a performance audit and an audit conducted by a COR is the depth and scope of the audit. A performance audit is usually conducted over a period of several months with the OAG staff going on-site with the agency to review files and records and conduct interviews. COR audits are typically self audits as the agency is asked to respond to the sunset factors and legislative committee staff conducts minimal background and legal research.

The steps for conducting a sunset review when the OAG conducts a performance audit are very similar to the steps for conducting a review when the COR conducts the audit. Following is a brief discussion of staff responsibilities under both of these scenarios.

### 1. WHAT TO DO IF OAG CONDUCTS THE AUDIT:

#### **Step 1 - Assignment of Reviews** (approximately 20 months prior to the sunset hearing)

- The OAG submits a list of agencies scheduled for termination to JLAC - This list includes all agencies statutorily scheduled for sunset and an estimate of the hours necessary to complete each agency's audit if the OAG were to conduct a performance audit.
- JLAC establishes the sunset review schedule - Based on a review of the sunset schedule and audit hours information submitted by the OAG, JLAC approves the audit schedule. JLAC may delay an agency's sunset if it believes the OAG will not be able to complete the audit and subsequent review according to schedule. If JLAC delays termination, JLAC is responsible for introducing legislation to extend the agency's termination date so that the agency will not sunset pending review.
- JLAC determines who shall perform the sunset audit - Based on the sunset schedule and audit hours information submitted by the OAG, JLAC determines whether the OAG will conduct the audit. The more complex agencies are generally assigned to the OAG for an agency-wide performance audit.
- JLAC assigns agencies subject to review to a COR - Statute requires all agencies scheduled to sunset to be assigned to a COR for the purposes of reviewing the sunset audit, holding a public hearing and making recommendations concerning the continuation of the agency. Legislative staff is provided a list of COR assignments by JLAC staff.

**Step 2 - Performance Audit**

- The OAG conducts the performance audit - Legislative staff and all JLAC members receive a copy of completed performance audits.

**Step 3 - Pre-Sunset Hearing** (3 to 4 months prior to sunset hearing)

- Contact the COR chairman and staff counterpart - Legislative committee staff should inform the COR chair of their respective body regarding the upcoming sunset review and discuss any potential issues/concerns.
- COR chair contacts the agency - Legislative committee staff facilitates the communication between the COR chair and agency by preparing a notification letter on behalf of the COR chair informing the agency of its coming review. The COR chair should also request that the agency submit a required report containing the agency's response to the statutorily prescribed agency factors (A.R.S. § 41-2954, subsection F). The agency factors are in addition to the 13 sunset factors that are addressed in the OAG performance audit.

Following are the required agency factors (A.R.S. § 41-2954):

- 1) An identification of the problem or needs that the agency is intended to address.
  - 2) A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency.
  - 3) Identification of any conflicting or overlapping duties with other agencies.
  - 4) An analysis of the consequences of eliminating the agency.
- Review performance audit - Legislative committee staff should review the performance audit, which includes the 13 sunset factors and the agency's response to the 4 required agency factors.

By way of information, the 13 sunset factors are as follows (A.R.S. § 41-2954):

- 1) The objective and purpose in establishing (continuing) the agency and the extent to which the objective and purpose are met by private enterprises in other states.
- 2) The extent to which the agency has met its statutory objective and purpose and the efficiency with which it has operated.
- 3) The extent to which the agency serves the entire state rather than specific interests.
- 4) The extent to which rules adopted by the agency are consistent with the legislative mandate.

- 5) The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
  - 6) The extent to which the agency has been able to investigate and resolve complaints within its jurisdiction.
  - 7) The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
  - 8) The extent to which the agency has addressed deficiencies in its enabling statutes that prevent the agency from fulfilling its statutory mandate.
  - 9) The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
  - 10) The extent to which the termination of the agency would significantly affect the public health, safety or welfare.
  - 11) The extent to which the level of regulation exercised by the agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.
  - 12) The extent to which the agency has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.
  - 13) The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.
- Contact other parties - Upon review of the performance audit, legislative committee staff should contact other parties, such as the Joint Legislative Budget Committee (JLBC), Legislative Council, professional associations and interested constituents, to discuss agency performance, problems and other issues relating to the agency. Any concerns or questions identified should be conveyed to the COR.
  - Schedule a public hearing and prepare agenda and materials for members - The COR is required to hold at least one public hearing.

When scheduling the public meeting, legislative committee staff should consult with agency staff and the OAG to ensure their attendance and ability to present the required agency factors.

A sunset hearing agenda should include a presentation on the performance audit by the OAG, a presentation by the agency on the required agency factors, and an opportunity for testimony from agency officials and the public. The agenda may also include adoption of the COR recommendations if additional COR meetings are not necessary. Materials distributed by legislative committee staff to the COR may include a summary

of the performance audit and agency response, the written required agency factors, budget data, other relevant information and any draft recommendations.

- Notify the agency - Legislative committee staff may prepare a notification letter on behalf of the COR chair stating the date and time of the sunset review hearing. Meeting notices should also be sent to COR members, OAG, JLAC members, Legislative Council, JLBC and other interested parties.

#### Step 4 - Sunset Hearing

- Hold a public hearing - Statute (A.R.S. § 41-2954) requires the COR to hold a public hearing to:
  - 1) determine the need of the agency to regulate or direct a particular activity,
  - 2) determine if the agency is meeting its statutory responsibilities and if those responsibilities are necessary,
  - 3) provide an opportunity for public testimony,
  - 4) provide an opportunity for the agency to justify its continuation, and
  - 5) receive a presentation from the agency that addresses the prescribed agency factors (A.R.S. § 41-2954, subsection F).
- Sunset factors - Statute (A.R.S. § 41-2954) requires the COR to consider, at a minimum, the 12 sunset factors when determining the need for continuation or termination of an agency. The sunset factors are addressed in writing in the OAG report.

#### Step 5 - Follow-up

- Prepare a final sunset report - Legislative committee staff prepares a final report pursuant to statutory guidelines (A.R.S. § 41-2954) containing the following information:
  - 1) A recommendation that the agency be continued, revised, consolidated or terminated.
  - 2) A written statement prepared by the agency that contains the required agency factors.
- Distribute final sunset review report - By **December 1**, legislative committee staff should distribute the final sunset report. Address the report to JLAC and distribute copies of the final report to the:
 

|                                          |                                          |
|------------------------------------------|------------------------------------------|
| Governor                                 | Office of the Auditor General            |
| President and Speaker                    | State Library, Archives & Public Records |
| COR members                              | House and Senate Research Staff          |
| Senate Resource Center                   | House and Senate Majority Staff          |
| Chief Clerk                              | House and Senate Minority Staff          |
| Director of the Agency subject to review |                                          |
- Draft legislation - Legislative committee staff works with Legislative Council to draft any recommended legislation. Legislation is not necessary if the COR recommends agency termination.

## SUNSET REVIEW PROCESS TIMETABLE

(OAG Conducts the Performance Audit)

| Deadline                                                       | Activity                                                                                                                                                                              |
|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Occurs at least 20 months prior to termination of the agency) |                                                                                                                                                                                       |
| May/June                                                       | OAG submits list of agencies subject to sunset review.<br><br>JLAC determines OAG will conduct audit and assigns agency to COR.<br>Legislative staff is notified of JLAC assignments. |
| June/August                                                    | OAG conducts audit.                                                                                                                                                                   |
| (Occurs year of review.)                                       |                                                                                                                                                                                       |
| June/July                                                      | COR chair initiates communication with agency. Committee staff prepares letters. Agency is required to respond to four agency factors (A.R.S. § 41-2954)                              |
| August                                                         | Draft performance audit completed.                                                                                                                                                    |
| September/October                                              | OAG submits final performance audit report to Legislature.<br>Committee staff schedules sunset review hearing(s).                                                                     |
| December                                                       | Final sunset review report is due December 1. Committee staff prepares final sunset review report and distributes.                                                                    |
| January                                                        | Introduction of legislation to implement COR recommendations, if necessary.                                                                                                           |
| July                                                           | Termination of agency unless legislatively continued.                                                                                                                                 |

## 2. WHAT TO DO IF COR CONDUCTS THE PERFORMANCE AUDIT:

### Step 1 - Assignment of Reviews (approximately 20 months prior to the sunset hearing)

- The OAG submits a list of agencies scheduled for termination to JLAC - This list includes all agencies statutorily scheduled for sunset and an estimate of the hours necessary to complete each agency's audit if the OAG were to conduct a performance audit.
- JLAC establishes the sunset review schedule - Based on a review of the sunset schedule and audit hours information submitted by the OAG, JLAC approves the audit schedule. JLAC may delay an agency's sunset if it believes the COR will not be able to complete the audit and subsequent review according to schedule. If JLAC delays termination, JLAC is responsible for introducing legislation to extend the agency's termination date so that the agency will not sunset pending review.
- JLAC determines who shall perform the sunset audit - Based on the sunset schedule and audit hours information submitted by the OAG, JLAC determines whether the COR will conduct the audit. The more complex agencies are generally assigned to the OAG for an agency-wide performance audit.
- JLAC assigns agencies subject to review to a COR - Statute requires all agencies scheduled to sunset to be assigned to a COR for the purposes of reviewing the sunset audit, holding a public hearing and making recommendations concerning the continuation of the agency. Legislative staff is provided a list of COR assignments by JLAC staff.

### Step 2 - Initiate Agency Contact (3 to 4 months prior to sunset hearing)

- Contact the COR chairman and staff counterpart - Legislative committee staff should inform the COR chair of their respective body of the upcoming sunset review and discuss any potential issues/concerns.
- COR chair contacts the agency - Legislative committee staff facilitates the communication between the COR chair and agency by preparing a notification letter on behalf of the COR chair informing the agency of its coming review.

The COR chair should request that the agency submit a required report containing the agency's response to the 13 sunset factors as well as a written statement addressing the 4 required agency factors (A.R.S. § 41-2954). The COR chair may request other relevant information, such as copies of the agency's annual report or minutes from meetings, or ask other relevant questions. The sunset audit, when conducted by the COR, consists of the written response of the agency and other relevant information procured by the legislative committee staff.

The chair's correspondence should direct the agency to report on all of the factors by a date certain, allowing enough time for legislative committee staff to review and distribute to COR members the materials received from the agency.

Following are the 13 sunset factors (A.R.S. § 41-2954):

- 1) The objective and purpose in establishing (continuing) the agency and the extent to which the objective and purpose are met by private enterprises in other states.
- 2) The extent to which the agency has met its statutory objective and purpose and the efficiency with which it has operated.
- 3) The extent to which the agency serves the entire state rather than specific interests.
- 4) The extent to which rules adopted by the agency are consistent with the legislative mandate.
- 5) The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
- 6) The extent to which the agency has been able to investigate and resolve complaints within its jurisdiction.
- 7) The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
- 8) The extent to which the agency has addressed deficiencies in its enabling statutes that prevent the agency from fulfilling its statutory mandate.
- 9) The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
- 10) The extent to which the termination of the agency would significantly affect the public health, safety or welfare.
- 11) The extent to which the level of regulation exercised by the agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.
- 12) The extent to which the agency has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.
- 13) The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.

Following are the prescribed agency factors (A.R.S. § 41-2954, subsection F):

- 1) An identification of the problem or needs that the agency is intended to address.
- 2) A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency.
- 3) Identification of any conflicting or overlapping duties with other agencies.
- 4) An analysis of the consequences of eliminating the agency.

- Contact other parties - Legislative committee staff should contact other parties, such as JLBC, Legislative Council, professional associations and interested constituents, to discuss agency performance, problems and other issues relating to the agency. Any concerns or questions identified should be conveyed to the COR.

### **Step 3 - Pre-Sunset Meeting/Review Materials**

- Review and evaluate sunset factors - Legislative committee staff should review the agency's report to ensure that the agency fully responded to the sunset and required agency factors.
- Schedule a public hearing and prepare agenda and materials for members - The COR is required to hold at least one public hearing. The agenda should include a presentation from agency officials on the sunset factors and required agency factors, and provide an opportunity for public input. The agenda may also include adoption of the COR recommendations if subsequent COR meetings are not necessary. Materials distributed by legislative committee staff may include a summary of the performance audit and agency response, budget data and draft recommendations.
- Notify the agency - Legislative committee staff may prepare a notification letter on behalf of the COR chair stating the date and time of the sunset review hearing. Meeting notices should also be sent to COR members, OAG, JLAC members, Legislative Council, JLBC and other interested parties.

### **Step 4 - Sunset Meeting**

- Hold a public hearing - Statute (A.R.S. § 41-2954) requires the COR to hold a public hearing to:
  - 1) determine the need of the agency to regulate or direct a particular activity,
  - 2) determine if the agency is meeting its statutory responsibilities and if those responsibilities are necessary,
  - 3) provide an opportunity for public testimony,
  - 4) provide an opportunity for the agency to justify its continuation, and
  - 5) receive a presentation from the agency that addresses the prescribed agency factors.
- Sunset factors - Statute (A.R.S. § 41-2954) requires the COR to consider, at a minimum, the 13 sunset factors when determining the need for continuation or termination of an agency.

### Step 5 - Follow-up

- Prepare a final sunset report - Legislative committee staff prepares a final report pursuant to statutory guidelines (A.R.S. § 41-2954) containing the following information:
  - 1) A recommendation that the agency be continued, revised, consolidated or terminated.
  - 2) A written statement prepared by the agency that contains the required agency factors.
- Distribute final sunset review report - By **December 1**, legislative committee staff should distribute the final sunset report. Address the report to JLAC and distribute copies of the final report to the:
 

|                                          |                                          |
|------------------------------------------|------------------------------------------|
| Governor                                 | Office of the Auditor General            |
| President and Speaker                    | State Library, Archives & Public Records |
| COR members                              | House and Senate Research Staff          |
| Senate Resource Center                   | House and Senate Majority Staff          |
| Chief Clerk                              | House and Senate Minority Staff          |
| Director of the Agency subject to review |                                          |
- Draft legislation - Legislative committee staff works with Legislative Council to draft any recommended legislation. Legislation is not necessary if the COR recommends agency termination.

## SUNSET REVIEW PROCESS TIMETABLE

(COR Conducts the Performance Audit)

| Deadline                                                       | Activity                                                                                                                                                                                          |
|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Occurs at least 20 months prior to termination of the agency) |                                                                                                                                                                                                   |
| May/June                                                       | <p>OAG submits list of agencies subject to sunset review.</p> <p>JLAC determines COR will conduct audit; assigns agency to COR for review. Legislative staff is notified of JLAC assignments.</p> |
| (Occurs year of review.)                                       |                                                                                                                                                                                                   |
| June/July                                                      | COR chair initiates communication with agency. Committee staff prepares letters. Agency is requested to respond to 12 sunset factors and 4 agency factors.                                        |
| August/September/October                                       | <p>Agency submits responses to sunset and agency factors.</p> <p>Committee staff schedules sunset review hearing(s). Prepares agency responses for review by COR.</p>                             |
| December                                                       | <p>Final sunset report is due December 1.</p> <p>Committee staff prepares final sunset review report and distributes.</p>                                                                         |
| January                                                        | Introduction of legislation to implement COR recommendations, if necessary.                                                                                                                       |
| July                                                           | Termination of agency, unless legislatively continued.                                                                                                                                            |

## SUNRISE REVIEW PROCESS

(A.R.S. § 32-3101 through 32-3106 and 32-4301 through 32-4303)

### ***DESCRIPTION***

Established by Laws 1985, Chapter 352, and expanded by Laws 2008, Chapter 132, Arizona's sunrise review process provides a mechanism for both health professions and nonhealth professions to request regulation and, for health professions, expansion in scope of practice.

A health profession is defined as a profession regulated pursuant to A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, and Title 36, Chapter 6, Article 7, and Chapter 17. Statute requires regulation of nonhealth related professions only if all of the following apply:

- 1) An unregulated practice can clearly harm or endanger the public health, safety or welfare.
- 2) The actual or anticipated public benefit of the regulation clearly exceeds the costs imposed on consumers, businesses and individuals.
- 3) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability.
- 4) The public cannot be effectively protected by private certification or other alternatives.

To initiate the sunrise application process, an applicant must submit a written request (report) to JLAC by September 1, responding to the statutorily prescribed sunrise factors. The request/report is then assigned by JLAC to a COR for review. The COR may hold meetings as necessary to consider the report and receive testimony from the public, the applicant group and, if applicable, the regulatory board of the health profession.

Although statute does not require that the COR hold meetings to deliberate on the sunrise application, the COR is required to study the sunrise request/report and deliver a COR report of its recommendations regarding the sunrise application to JLAC, the Governor, President of the Senate, Speaker of the House of Representatives and the applicant group by December 1, of the same year the application is submitted to JLAC. Legislative committee staff and Legislative Council draft any recommended legislation.

Although not required, the COR chair may introduce any legislation recommended to regulate a currently unregulated profession or request that the scope of practice of a currently regulated profession be expanded during the following legislative session; however, the sunrise applicant has the responsibility of requesting the chair, or any other legislative member, to sponsor the legislation. Legislative committee staff should communicate this responsibility to the applicant.

## CONDUCTING A SUNRISE REVIEW

### Step 1 - Application Submitted

- Submission of application - An applicant that is seeking regulation must submit a written report on or before September 1. The report must define the problem, explain the need for regulation and discuss the costs, benefits and negative impact of regulation. The report lists the affected associations, organizations and other practitioner groups; summarizes efforts taken to address the problem; describes alternatives to regulation; and discusses the maintenance of professional standards. Health professionals should refer to A.R.S. § 32-3104 and nonhealth professionals should refer to A.R.S. § 32-4302.

The application should be addressed and delivered to the JLAC chair with a copy provided to the vice-chair at:

1700 West Washington  
Phoenix, Arizona, 85007

**Note:** It is strongly recommended that the applicant provide a copy of the application to the Office of the Auditor General and House and Senate staff assigned to JLAC. Staff assignments can be determined by contacting the House and Senate Research Staffs, respectively.

- Applicants for new regulation - The applicant must respond to each of the listed sunrise criteria within the written sunrise report submitted to JLAC and subsequently provided to the COR. Review A.R.S. § 32-3105 or 32-4303 for a full and complete reading of the factors.
- Applicants for increased scope of practice - The applicant must respond to each of the listed sunrise criteria within the written sunrise report submitted to JLAC and subsequently provided to the COR. Review A.R.S. § 32-3105 for a full and complete reading of the factors.

An applicant seeking an increase in scope of practice must also submit a copy of the report to the regulatory board of the health profession for review and comment. If applicable, the regulatory board shall make recommendations based on the submitted report to the extent requested by the COR.

### Step 2 - Assignment of Review

- JLAC receives the applicant's request/report and assigns it to a COR.

### Step 3 - Pre-Sunrise Meeting

- Review and evaluate sunrise factors - Legislative committee staff should determine if the sunrise report is for an increase in scope of practice or new regulation and review the appropriate sunrise factors, review the applicant's written report and distribute copies of the report to COR members.
- Contact the COR chair - Legislative committee staff should inform the COR chair of the application for new regulation or expanded scope of practice and discuss any potential issues or concerns.
- Schedule a public hearing - A public hearing is not required by law and is held at the discretion of the COR chair.

If the COR chair decides to hold a public hearing, the agenda should include the presentation of the written report by the applicant and an opportunity for testimony from other officials and the public. The agenda may also include adoption of final recommendations if additional COR meetings are not necessary. If a public hearing is held, it is recommended that staff contact other legislative staff such as JLBC and Legislative Council.

- Recommendation - The COR may make recommendations regarding the request for new regulation or the increased scope of practice. Statute stipulates that an unregulated health or nonhealth profession shall not be regulated unless the regulation is for the express purpose of protecting the public interest. All legislation proposed in order to regulate a health or nonhealth profession for the first time must be reviewed according to statutory criteria.

### Step 4 - Follow-up

- Prepare final sunrise report - While a meeting is not required on a sunrise, the COR is required to submit a report of its findings to JLAC, the Governor, President of the Senate and Speaker of the House by **December 1**.
- Distribute sunrise review report - Legislative committee staff distributes copies of the sunrise report and recommendations to the following individuals:

|                                          |                                          |
|------------------------------------------|------------------------------------------|
| Governor                                 | Office of the Auditor General            |
| President and Speaker                    | State Library, Archives & Public Records |
| COR members                              | House and Senate Research Staff          |
| Senate Resource Center                   | House and Senate Majority Staff          |
| Chief Clerk                              | House and Senate Minority Staff          |
| Director of the Agency subject to review |                                          |

- Draft legislation - Legislative committee staff works with Legislative Council to draft any recommended legislation.



## SUNRISE PROCESS TIMETABLE

| Deadline      | Activity                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| September 1   | <p>Applicant group submits a written report to JLAC detailing the reasons for regulation or increase in scope of practice.</p> <p>It is <b>strongly</b> recommended that the applicant group provide a copy of the application to the Office of the Auditor General and House and Senate staff assigned to JLAC. Staff assignments can be determined by contacting the House and Senate Research Staffs, respectively.</p> |
| Not specified | JLAC assigns agencies to COR for review.                                                                                                                                                                                                                                                                                                                                                                                   |
| Not specified | <p>Committee staff schedules sunrise review hearing(s).</p> <p>Statute does not require that a hearing be held.</p>                                                                                                                                                                                                                                                                                                        |
| December      | Final sunrise report is due December 1.                                                                                                                                                                                                                                                                                                                                                                                    |
| January       | Introduction of legislation to implement COR recommendations, if necessary.                                                                                                                                                                                                                                                                                                                                                |