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PROFESSIONS AND BUSINESSES

Review, Continuation, Re-establishment, or Termination of Regulatory Agencies: End Mandatory Sunset Audits

CODE SECTIONS:	O.C.G.A. §§ 12-5-138, 12-6-63, 12-12-26, 26-4-1 (repealed), 43-2-1 to -9 (amended), 43-3-38, 43-4-18, 43-4A-18, 43-5-15, 43-6-26, 43-7-27, 43-9-20, 43-10-20, 43-10A-24, 43-11-23, 43-11A-18, 43-14-18, 43-15-31, 43-18-7, 43-19-28, 43-20-21, 43-23-20, 43-24-7, 43-26-13, 43-26-39, 43-27-12, 43-28-17, 43-29-22, 43-30-15, 43-33-21, 43-34-2, 43-35-14, 43-36-22, 43-38-17, 43-39-29, 43-39A-27, 43-40-32, 43-44-17, 43-45-26, 43-47-16, 43-48-21, 43-50-4, 43-51-15 (repealed)
BILL NUMBER:	SB 535
ACT NUMBER:	1412
SUMMARY:	The Act eliminates the requirement that the state auditor audit certain regulatory agencies every six years for the purpose of determining whether their continued existence is warranted. In addition, it repeals previous statutes which would have terminated specific agencies on specified dates.
EFFECTIVE DATE:	July 1, 1992

History

In 1977 the General Assembly enacted legislation to require that specified regulatory agencies be terminated on specified dates unless the General Assembly determined that they should be continued or re-established.¹ Such a determination to continue or re-establish the agency could maintain the agency's existence for a period not greater than six years.² The legislation affected only agencies which are privately funded.³ Prior to this determination, the state auditor was required to conduct a performance audit on these agencies.⁴ Select

1. 1977 Ga. Laws 961 (formerly found at O.C.G.A. § 43-2-2 (1991)).

2. 1977 Ga. Laws at 971 (formerly found at O.C.G.A. § 43-2-4(a) (1991)).

3. Telephone Interview with Sen. Don Johnson, Senate District No. 47 (Apr. 8, 1992) [hereinafter Johnson Interview]. Sen. Johnson was one of the sponsors of SB 535.

4. 1977 Ga. Laws at 963-64 (formerly found at O.C.G.A. § 43-2-6 (1991)). The state auditor was required to supply a copy of this audit within 15 days of its completion to each member of the Senate and House standing committees to which

House and Senate committees were then required to conduct a joint public hearing to determine a proper recommendation as to whether each agency should remain in existence.⁵ The agency had the burden of proving the need for its continued existence at this hearing.⁶

The purpose of this legislation was to terminate regulatory agencies "which do not serve the public interest" and to increase the efficiency of those agencies whose continuation was justified.⁷ Unfortunately, the legislation's primary effect was to cause the legislature to spend time and money conducting audits which were rarely heeded by the General Assembly.⁸ These audits, which became known as "sunset audits," led to the permanent termination of only three regulatory agencies: the Board of Sanitarians, the Board of Soil Classifiers, and the Employment Agency Advisory Council.⁹ Even when an audit indicated that an agency should be terminated, that agency's lobbying efforts usually prevented the General Assembly from following the recommendation.¹⁰

A total of fifty-one regulatory agencies were audited pursuant to the legislation.¹¹ Of these agencies, two were audited four times, sixteen were audited three times, twenty-four were audited twice, and nine were audited once.¹² Thus, a total of 113 sunset audits were conducted resulting in a total cost exceeding \$1.15 million.¹³ Five more audits were scheduled for 1992, and seventeen were scheduled for 1993.¹⁴

At least one local columnist expressed frustration with this waste of taxpayer money and called for the process to end.¹⁵ In addition, legislators felt this money could be better spent supervising publicly funded agencies, rather than the privately funded boards which the previous legislation required.¹⁶

the agency was assigned, the presiding officers of the Senate and the House of Representatives, the Governor, the Attorney General, the legislative counsel, the chairperson of the audited agency, and the joint secretary. *Id.*

5. 1977 Ga. Laws at 962-63 (formerly found at O.C.G.A. § 43-2-5(a) (1991)).

6. *Id.*

7. 1977 Ga. Laws at 961-62 (formerly found at O.C.G.A. § 43-2-2 (1991)).

8. Johnson Interview, *supra* note 3.

9. Memorandum from C. D. Lunsford, Director, Program Audits Division to G. W. Hogan, State Auditor (Jan. 23, 1992) [hereinafter Lunsford Memorandum] (available in Georgia State University College of Law Library).

10. Johnson Interview, *supra* note 3.

11. Lunsford Memorandum, *supra* note 9.

12. *Id.*

13. *Id.*

14. *Id.*

15. Jim Wooten, *Million Dollars Spent and It's Still Business as Usual*, ATLANTA CONST., Sept. 26, 1990, at A12.

16. Johnson Interview, *supra* note 3.

SB 535

In response to this concern, the General Assembly adopted SB 535, which eliminates the requirement of a sunset audit on specified agencies every six years and allows performance audits to be conducted at the request of the Senate or House committee to which a particular agency is assigned.¹⁷ The Act eliminates the requirement that a sunset audit be performed on specified regulatory agencies every six years in order to establish a need for an agency's continued existence.¹⁸ The Act also repeals other statutes which provided a termination date for specified agencies.¹⁹ This repeal eliminates the requirement for audits of those specified agencies.²⁰

17. O.C.G.A. § 43-2-4(a) (Supp. 1992).

18. *Id.* §§ 43-2-1 to -9 (Supp. 1992).

19. The following Code sections were repealed: O.C.G.A. §§ 12-5-138, 12-6-63, 12-12-26, 26-4-1, 43-3-38, 43-4-18, 43-4A-18, 43-5-15, 43-6-26, 43-7-27, 43-9-20, 43-10-20, 43-10A-24, 43-11-23, 43-11A-18, 43-14-18, 43-15-31, 43-18-7, 43-19-28, 43-20-21, 43-23-20, 43-24-7, 43-26-13, 43-26-39, 43-27-12, 43-28-17, 43-29-22, 43-30-15, 43-33-21, 43-34-2, 43-35-14, 43-36-22, 43-38-17, 43-39-20, 43-39A-27, 43-40-32, 43-44-17, 43-45-26, 43-47-16, 43-48-21, 43-50-4, 43-51-15. The repeal of these Code sections cancelled the termination of the following agencies, respectively: the State Water Well Standards Advisory Council; the State Board of Registration for Foresters; the Asbestos Licensing Board; the State Board of Pharmacy; the State Board of Accountancy; the State Board of Architects; the Georgia Athlete Agent Regulatory Commission; the Georgia Board of Athletic Trainers; the Georgia Auctioneers Commission; the State Board of Barbers; the Georgia Board of Chiropractic Examiners; the State Board of Cosmetology; the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists; the Georgia Board of Dentistry; the Georgia Board of Examiners of Licensed Dietitians; the State Construction Industry Licensing Board; the State Board of Registration for Professional Engineers and Land Surveyors; the State Board of Funeral Service; the State Board of Registration for Professional Geologists; the State Board of Hearing Aid Dealers and Dispensers; the Georgia Board of Landscape Architects; the State Board for the Certification of Librarians; the Georgia Board of Nursing; the Georgia Board of Examiners of Licensed Practical Nurses; the State Board of Nursing Home Administrators; the State Board of Occupational Therapy; the State Board of Dispensing Opticians; the State Board of Examiners in Optometry; the State Board of Physical Therapy; the Composite State Board of Medical Examiners; the State Board of Podiatry Examiners; the State Board of Polygraph Examiners; the Georgia Board of Private Detective and Security Agencies; the State Board of Examiners of Psychologists; the Georgia Real Estate Appraisers Board; the Georgia Real Estate Commission; the State Board of Examiners for Speech-Language Pathology and Audiology; the State Structural Pest Control Commission; the State Board of Registration of Used Car Dealers; the State Board of Registration for Used Motor Vehicle Dismantlers, Rebuilders, and Salvage Dealers; the State Board of Veterinary Medicine; and, the State Board of Examiners for Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysts.

20. Johnson Interview, *supra* note 3.

The primary purpose of the Act is to eliminate mandated audits, thereby saving taxpayers the costs of audits which had little practical effect on the General Assembly's determination of whether or not to terminate an agency.²¹ The Legislature felt that the money used for the audits of privately funded agencies could be better spent overseeing publicly funded agencies.²² In addition, the fact that agencies knew well in advance when an audit would be conducted seemed to interfere with the auditor's ability to obtain a true reading of the agency's performance.²³ Furthermore, the Act retains the power to perform audits of a regulatory agency when requested by a particular Senate or House committee.²⁴

SB 535, as introduced, would have included all state regulatory agencies.²⁵ However, the Senate Committee on Governmental Operations amended SB 535's definition of "regulatory agency"²⁶ to cover only certain agencies.²⁷ This amendment was made after the Agriculture Department expressed concern that, as the Act was previously worded, it would fall under the Act's provisions.²⁸

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21. *Id.*

22. *Id.* The General Assembly attempted to accomplish this goal with the passage of SB 410, which was budget legislation that included provisions for cost-benefit reviews of programs. *Id.*; Final Composite Status Sheet, Mar. 31, 1992.

23. Telephone Interview with William Miller, Joint Secretary, State Examining Board (Apr. 9, 1992) [hereinafter Miller Interview].

24. O.C.G.A. § 43-2-4(a) (Supp. 1992).

25. SB 535, as introduced, 1992 Ga. Gen. Assem.

26. *Id.*

27. SB 535 (SCA), 1992 Ga. Gen. Assem.

28. Miller Interview, *supra* note 23.