

SUNSET AND SUNRISE OF THE ILLINOIS WEATHER MODIFICATION ACT

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Abstract. Illinois, which had enacted a regulatory and monitoring act for planned weather modification activities in 1973, recently saw its model act sunset (repealed), as a part of a State's sunset act for all Illinois regulatory activities. This paper describes the original Illinois Control Act, the process of sunset, and the subsequent reformulation of a new control act in Illinois. A review of the history of these sunset and then sunrise activities, as represented by the new 1981 Weather Modification Act in Illinois, may help others facing similar sunset of regulatory activities, specifically those relating to weather modification, why the 1973 Weather Modification Control Act in Illinois, considered by many to be a model statute (Weather Modification Advisory Board, 1978) was revised, with parts eliminated, during the sunset and sunrise is discussed.

1. THE INITIAL WEATHER MODIFICATION CONTROL ACT

As early as 1971, atmospheric scientists of the Illinois State Water Survey concluded that some forms of monitoring and control of planned weather modification activities in Illinois were desirable. A preliminary statute, drafted with the help of Professor Ray J. Davis, was reviewed by several state agencies and university legal experts. The Illinois Farm Bureau became interested, found sponsors for the legislation, and the proposed act was signed into law in 1973 (Ackermann et al., 1974).

The "skeleton" Act called for licensing operators, permitting projects, monitoring, and record keeping, but left details to the rules and regulations to be issued under the Act. This design allowed for changes expected in a evolving technological field like weather modification. Enforcement of the regulatory activities was assigned to the Department of Registration and Education which in turn, relied on a 5-person Weather Modification Board (specified in the Act) for assessing permits and licenses, as well as for monitoring projects.

A series of summer cloud seeding projects began in 1976, under provisions of the Act. After two years, some rules relating to project operations and data collection were found not effective, and certain rules were revised in 1978. No major problems were encountered in their enforcement.

2. ILLINOIS ADOPTS SUNSET ACT

In 1979, Illinois enacted the "Regulatory Agency Sunset Act," PA 81-999, to review and repeal all regulatory acts. This was a result of statewide concern over the more than 35 regulatory activities in Illinois, rooted in public concern over the growth of too much government, and growing complaints over the degree and cost of regulating several professions.

The Sunset Act asked two fundamental questions: 1) is regulation needed to protect the public health, safety, or welfare from significant

and discernible damages? 2) if so, is the present regulation program the least restrictive or is better possible? This Act established a "Select Joint Committee on Regulatory Agency Reform" of 13 members, 6 from the general public and 7 from the General Assembly (a mix of Senators and Representatives). The joint committee was to conduct hearings on all regulatory acts and to recommend on the need for each regulatory function. Among the seven of 35 regulatory acts were chosen for review in 1980, with sunset slated for each on October 1, 1981, was the 1973 Illinois Weather Modification and Control Act.

The joint committee conducted hearings in Springfield and Chicago on all seven regulatory acts during October 1980. Seven people who testified (three in Springfield and four in Chicago) on the Weather Modification Act included a farmer, the Chief of the Illinois State Water Survey, a representative of the Illinois Farm Bureau, a lawyer from the American Bar Association, the Executive Director of the Crop-Hail Insurance Actuarial Association, a representative of the enforcement organization (Registration and Education), and a representative of an environmental concern group. All indicated strong support for the regulation of planned weather modification in Illinois, with general approval of the 1973 control act.

The joint committee finished its deliberations on the seven regulatory acts by January 1981, and issued a series of seven reports in February 1981, recommending that only two of the seven regulatory acts under review should be sustained with future legislation, including the control of weather modification, with revisions. The two principal recommendations of the Joint Committee (1981) were: 1) absence of state regulation of weather modification activities would endanger the public, and 2) certain activities of the prior act should be altered, including the removal of a licensing requirement and a restructuring of the Advisory Board (presumably to reduce costs).

The sunset review activities also involved assessments by the Office of the Governor, for whom the Bureau of the Budget in Illinois investigated separately all regulatory activities, focusing heavily on needs, benefits, and costs (Illinois Bureau of the Budget, 1981). This assessment, independent of the Select Joint Committee, provided the Governor a perspective independent of the legislative view of the Select Joint Committee. The extensive analysis of the Bureau of the Budget concluded that the past law had worked effectively, that future regulation was needed, and that it was not too expensive an activity for the State to provide. Thus, the Bureau of the Budget's assessment agreed with the findings of the Joint Committee.

3. NEW ACT OF 1981

The 1973 Weather Modification Control Act was revised to fit the recommendations of the Joint Committee. The sponsors for two similar versions of the new Act (House and Senate) were members of the Joint Committee; Senator Gitz sponsored a Senate Bill and Representative Currie the House Bill (HB978).

Since a secondary objective of the regulatory review was to decrease the functions, if possible, of the State Department of Registration and Education, the revised Act called for placing the new regulatory functions in the Illinois Department of Agriculture (IDOA). During the hearings in April-May 1981, in both House and Senate, a major issue arose: should the agency in control be IDOA or the Illinois Institute of Natural Resources (INR) which includes the Illinois State Water Survey, the state's major agency involved in weather modification? The Governor's office finally supported the placement of the regulatory function with INR. Other more minor items of discussion in the hearings related to the permit fees and to the membership of the Weather Modification Advisory Board.

Following hearings in both Houses, the modified Act was nearly unanimously passed by both Houses in June and sent to the Governor, who signed it in July 1981.

In many important respects, the new Illinois regulatory act is similar to the 1973 model act. The new act in itself is but a skeleton calling for permitting, monitoring, and record keeping, with details delegated to rules and regulations. The licensing activities were gone but the permitting activities largely covered the need to ensure quality project staff. Annual fees for projects were set between \$100 and \$1000, depending upon size of permit fee. Monitoring was to be conducted by the regulating agency (INR), with keeping of detailed, daily, monthly, and seasonal records for each project.

New rules and regulations were developed by the Institute of Natural Resources and approved by the state in October 1981. The members of the Weather Modification Control Board were identified as the Chief of the Illinois State Water Survey as Chairman; the Director of the Illinois Environmental Protection Agency, and the Director of the Illinois Department of Agriculture. Since the enactment of the new law no permits have been requested up to the end of 1982.

4. SUMMARY

This review of the sunseting of the old act and the sunrising of a new weather modification control act in Illinois establishes a record of these activities, and should provide guidance to those elsewhere who may address similar activities. Defense of the need for regulation can be difficult, because it is being addressed at a time where the process intrinsically calls for termination of State regulatory activities.

In Illinois everyone external to state government who addressed the issue called for regulation. Also important were defense of the economics involved; the need for government involvement; and demonstration that public health, safety and welfare would be endangered should controls not exist (the evolving technology concept), and that the technology and its application brought potential community if not statewide impacts. In other words, it was important to make it a state and not a local issue, and that regulation did not bring undue economic hardship to the state or to the private sector.

The removal of licensing reflected two concepts. One was simply a need to somehow modify the past law (there must be a more efficient way to do this). The other reflected the desire to minimize regulation of professions, a theme of the sunset thinking.

The change in the Weather Modification Control Board resulted largely from trying to reduce costs by not paying board fees to private citizens. Hence the Board is totally in the hands of leaders of three state agencies. Finally, a few other modifications were made, including a change in the fee assessment, that could be labeled as benefits.

The interests of the Illinois State Water Survey, which maintained that regulation of weather modification is an extremely important state activity (Changnon, 1980), required considerable staff time. The Survey provided testimony to the Select Joint Committee, and subsequently worked extensively with members of the General Assembly and the Governor's Office in providing information.

Of some concern was the placement of the regulatory act within the Illinois Institute of Natural Resources (now Department of Energy and Natural Resources) as the singular new regulatory function for that 5-year old agency. Its willingness to adopt this function represented a shift in institutional thinking. However, it seems appropriate and innovative, considering the unique nature of weather modification and the placement of the state's expertise within that agency at the Illinois State Water Survey.

In the net, sunseting of regulatory activities or at least their review, is desirable. If one is to seek a sunrise, with some reconstitution of the past regulatory function, one must prepare for a considerable amount of work and spend much time at the policy level to offer solid arguments for its sustenance.

A copy of the new Act and its Rules can be obtained from the Department of Energy and

Natural Resources, 325 West Adams, Room 300,
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5. REFERENCES

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