
Sunset Evaluation Update: Sanitararians

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 91-18
December 1991

Foreword

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The auditor is responsible for evaluating each program for the Legislature prior to the date of repeal.

This report evaluates the regulation of sanitarians under Sections 321-13 to 321-15, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate sanitarians to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, the report incorporates in Appendix B the draft legislation intended to improve the regulatory program.

We acknowledge the cooperation and assistance of the Department of Health, the Department of Commerce and Consumer Affairs, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Newton Sue
Acting Auditor
State of Hawaii

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the auditor to evaluate each licensing statute prior to the repeal date and determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of sanitarians under Sections 321-13 to 321-15, HRS, complies with policies for occupational regulation in the Sunset Law.

Background on Sanitarians

Sanitarians are environmental health practitioners who enforce state and federal environmental standards and inspect, sample, test, and help manage aspects of the environment that might harm the public's health. They inspect, among other places, retail food markets, food manufacturing plants, food service establishments, public swimming pools, and water systems before issuing health clearances required by law. They oversee solid waste and sewage disposal and other activities relating to environmental health.

Nationwide, most sanitarians are government employees.¹ Hawaii is one of fifteen states requiring the licensing of sanitarians and restricting the use of the title "registered sanitarian" to those who are licensed. Fifteen other states have voluntary registration programs.² In recent years, several states have repealed statutes regulating sanitarians.

The National Environmental Health Association (NEHA) is the principal professional association for sanitarians. It administers credentialing programs for three types of workers in environmental health: environmental health specialists (including sanitarians), environmental health technicians, and hazardous waste specialists.³ To be credentialed by NEHA as an environmental health specialist/sanitarian, applicants must have a bachelor's degree in environmental health from an accredited institution and pass the National Examination for the Registration of Sanitarians given by the Professional Examination Service, or demonstrate equivalent education, experience, and testing.

Regulation of sanitarians in Hawaii

Hawaii began regulating sanitarians in 1955 when Act 117 added them to the list of occupations for which the Territorial Board of Health was authorized to prescribe rules. Currently, Sections 321-13 to 321-15, HRS, make it unlawful for anyone to practice as a sanitarian without a license and authorize the Department of Health to make rules as necessary for the public health and safety. No significant amendments have been made to the sanitarian licensing statute since then.

The department's rules define sanitarians as "persons engaged in the professional application of the principles of sanitary science."⁴ Excluded are those engaged in industrial sanitary maintenance or similar operations. The rules say that no one may use the title "registered sanitarian" and perform the duties falling under the definition of registered sanitarian unless the person is licensed. A registered sanitarian is one who meets education and experience requirements, is licensed, and "may be engaged in the promotion and protection of the public health by applying technical knowledge to formulate and execute methods and procedures to control those factors of the environment which influence the health, safety and welfare of the public."⁵

Applicants for licensure must provide proof of a bachelor's degree in biological, physical, or sanitary science, and must pass an examination administered by the department. Hawaii uses the Professional Examination Service exam to screen applicants for licenses. The requirements may be waived if the applicant is licensed in another state that uses the same examination.

The rules also provide that the director may deny, suspend, or revoke any license for professional misconduct, for fraud or misrepresentation in obtaining a license, and other reasons. Violations of the rules are misdemeanors.

Regulatory role of Sanitation Branch

The regulatory program is operated by an advisory committee supervised by the Sanitation Branch in the Department of Health. The director of health established the committee in 1981 to assist in carrying out the licensing program. The committee is appointed by the director and comprises five registered sanitarians—one each from Oahu, Maui, Kauai, West Hawaii, and East Hawaii. Current members of the committee are supervisory employees of the Sanitation Branch.

The committee administers the licensing examination, reviews applications, and makes recommendations to the director of health concerning them. The committee also can investigate complaints and make recommendations on license suspension, revocation, reinstatement, and renewal.

Practice of registered sanitarians in Hawaii

In Hawaii, most registered sanitarians are public employees who oversee and enforce public health regulations in such areas as food service and food products, public swimming pools, wastewater systems, and mortuaries and cemeteries.

As of March 1991, there were 183 registered sanitarians licensed by the State. Of these, 131 were working in Hawaii. The large majority work for state, federal, and local governments. Only 21 work in the private sector. The Department of Health is the largest single employer with 75 registered sanitarians, most of whom work in the Sanitation Branch.⁶

The objective of the Sanitation Branch is to maintain a healthful and sanitary environment. It is responsible for ensuring that state and county sanitary regulations are enforced and for monitoring the performance of the sanitarians it employs. The branch requires all its sanitarians above the entry level to be licensed. Sanitarians in the department's other branches, such as the Noise and Radiation Branch, do not have to be licensed.

1989 sunset evaluation

In 1989, the auditor conducted a sunset evaluation of sanitarians. Finding no evidence that the absence of licensure would endanger the public, we recommended repeal of the statute. But we also recommended that in the event regulation were continued, the department (1) adopt the 70 percent passing score on the examination set by the Professional Examination Service instead of applying its own formula; (2) revise the rules to make clear that the statutes serve merely to restrict the title "registered sanitarian" to those who are licensed; and (3) establish an agreement with the Department of Commerce and Consumer Affairs for the handling of complaints and cases of unlicensed activity.

In his response to the report, the director of health wrote that the regulation of sanitarians should not continue and agreed that licensing serves little or no purpose in protecting the public from health hazards and environmental disease.

In the 1990 legislative session, however, the director reversed his position and testified in favor of continued licensing.⁷ He said that the department had concluded, after considerable debate, that it would be prudent to support regulation until a more thorough review could be conducted. Licensure might be warranted, he said, since improper decisions by sanitarians could endanger public health. The director saw a link between the licensing of sanitarians and the protection of the public. For example, the licensing examination assured the competency of sanitarians who inspect food establishments. He also

claimed that licensing enhanced the status of the department's sanitarians as expert witnesses in court. Several registered sanitarians also testified against repeal.

The Legislature then extended the law to the end of 1992, giving rise to this sunset evaluation.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of sanitarians complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate sanitarians to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations relating to the above.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on sanitarians and their regulation. We examined current developments and regulation in other states, and we also examined statutes and rules on sanitarians in Hawaii.

To determine the appropriateness of current regulatory provisions and the effectiveness of regulatory operations, we interviewed personnel of the Department of Health, the Department of Commerce and Consumer Affairs, and others. At the Department of Health, we reviewed correspondence and other files relating to the regulation of sanitarians. We conducted telephone interviews and obtained survey information from the National Environmental Health Association.

Fieldwork on the project, including research, interviews, and the review of files, was performed between February and April 1990.

Chapter 2

Findings and Recommendations

Our findings and recommendations are similar to those in our previous report: the practice of sanitarians does not pose potential harm to the public, and we therefore recommend repeal of the statutes regulating sanitarians.

Findings

1. There is no evidence that sanitarians should be regulated to protect the public.
2. The statutes regulating sanitarians are imprecise and inconsistent.
3. The Sanitation Branch of the Department of Health is not the appropriate place for the regulatory program.

Regulation Is Not Needed

We found no new evidence that regulation of sanitarians is needed to protect the public health and welfare. There were no consumer complaints against sanitarians to suggest problems with these practitioners. The public's protection, we believe, derives from the quality of the State's sanitation *program*, not from the licensing of individual sanitarians. Moreover, the trend nationwide is toward deregulation of sanitarians.

No consumer complaints

There were complaints about the Department of Health's sanitation program but not about sanitarians. Some businesses inspected by branch sanitarians complained about health regulations and some consumers complained about unsanitary conditions that needed inspection. The absence of complaints directed specifically at these practitioners supports the argument for deregulation.

Inspection program already protects the public

In their 1990 testimony, several registered sanitarians and the director of health claimed that in order to protect the public from foodborne diseases, sanitarians need to be licensed. We disagree. Public protection depends not on the licensing of individual sanitarians but on the administration of the inspection and sanitation programs. The department is responsible for *supervising* the sanitarians to ensure that state and county regulations are properly enforced. The licensing is superfluous. Unlicensed sanitarians work in many of the department's

program areas—radiation and solid waste, for instance. The work of most sanitarians employed in the public sector is already under public control.

Some officials, including the director of health, say that licensing enhances the status of sanitarians as expert witnesses. But this argument does not justify regulation. The Sunset Law says that regulation is warranted *only when the practice endangers the public's health, safety, and welfare.*

The branch has been using licensure as a screening device, requiring sanitarians to be licensed before they can be promoted from position classification I, an entry level position, to classification II. But it could accomplish the same end by requiring applicants to pass the examination now being used as a condition for licensure—the National Environmental Health Association examination given by the Professional Examination Service. The examination could be made a requirement for promotion to level II. (Those who pass the examination would also qualify for credentialing by the National Environmental Health Association as an environmental health specialist/sanitarian.)

Trend toward deregulation

Since the mid-1970s, the majority of sunset reviews conducted by other states on sanitarians have recommended repeal of licensing statutes. Our 1989 report noted this nationwide trend toward deregulation. A representative of the National Environmental Health Association reported that seven states have recently repealed laws regulating sanitarians and that states with voluntary certification programs do not have inferior inspections or more disease.¹ The trend we noted in 1989 has continued, apparently without ill effects.

Further, the federal government does not require sanitarians to be licensed and uses unlicensed sanitarians to enforce regulations in such areas as food and drugs.

Statutes Are Imprecise and Inconsistent

The statutes make it unlawful to practice without a license but do not define the nature of the practice. They leave to the Department of Health the responsibility to promulgate rules, but offer little guidance to the department about which sanitarians are covered by the law and how they should be regulated.

The rules apply broadly to persons engaged in the professional application of the principles of sanitary science but do not delineate a scope of practice that is subject to regulation. At the same time, the

rules exempt certain sanitarians in industrial sanitary maintenance or similar operations and also exempt the supervisors of these persons. Because the scope of regulation is not clear, the main effect of the law is to restrict the use of the title “registered sanitarian” to those who choose to be licensed.

If the Legislature chooses to continue the regulation of sanitarians, it should amend the statutes to define clearly the (1) nature of the occupation; (2) scope of practice; (3) exemptions from licensure; (4) requirements for education, training, and experience (including written examination requirements); (5) prohibited acts and practices; and (6) penalties and fines. The department’s rules contain some of these elements, but not enough to make up for the broad and imprecise statutes.

In amending the statutes, the Legislature should also correct some inconsistencies in language. The statutes now use interchangeably several terms having very different meanings, such as, “certificate,” “certificate of registration,” “permit,” and “license.” The single term “license” should be used throughout if the same type of regulation continues to be imposed.

Sanitation Branch Is Not the Appropriate Place for Licensing Program

The Sanitation Branch handles most regulatory activities. The chief of the Sanitation Branch signs licenses for the director of health. An advisory committee consisting of branch supervisors operates much like a licensing board, screening applications, monitoring the examination, and processing licensing renewals. The committee members have administered the program in good faith and have worked to improve it. Based on a recommendation in our 1989 sunset evaluation, the committee changed the scoring procedure. Exams are now scored by the Professional Examination Service, using its national cutoff score for passing (70 percent of the total questions must be answered correctly).

Despite this improvement, having the program administered by staff of the sanitation branch may not be appropriate.

Risk of conflicts of interest

The duties of advisory committee members are in addition to their regular duties as branch supervisors. Their dual roles make possible the *perception* of conflicts of interest, which could harm both the licensing program and the branch. Committee members can be perceived—because of their positions—to lack independence and objectivity. For example, since they are all supervisors, committee members could recommend licensing for favored colleagues in order

to promote them within the branch, to recommend discipline for others, or to favor colleagues in the branch over private sector sanitarians.

Handling of complaints

We foresee a problem should the branch have to deal with complaints against licensed sanitarians whom it employs. It is not clear whether members of the advisory committee would act as supervisors receiving complaints about a subordinate, or whether they would act as impartial advisory board members receiving complaints about a licensed sanitarian. The location of the licensing program leaves the impartiality and objectivity of advisory board members open to question.

If the Legislature decides to continue regulation of sanitarians, it should consider moving the licensing program to the Department of Commerce and Consumer Affairs, the agency responsible for most of the occupational regulation programs in the State and best organized to handle consumer complaints. Moving the program would also eliminate the potential for conflict of interest.

Recommendations

1. The regulation of sanitarians should be repealed by deleting the word “sanitarians” from Section 321-13(a)(1), HRS.
2. If the Legislature decides to continue the regulation of sanitarians, it should enact a new chapter on sanitarians placing regulatory authority with the Department of Commerce and Consumer Affairs. The new chapter would define the occupation precisely and establish the scope of practice; exemptions from licensure; requirements for education, training, and experience; prohibited acts and practices; and penalties.

Notes

Chapter 1

1. U. S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 1990-91 Edition, p. 43.
2. Data compiled from National Environmental Health Association, *The NEHA REHS/RS Survey: States Registration Requirements for Environmental Health Professionals in the United States*, Denver, Colo., June 1990.
3. National Environmental Health Association, "Summary of NEHA," undated.
4. Section 11-18-1, *Hawaii Administrative Rules*.
5. Section 11-18-2, *Hawaii Administrative Rules*.
6. Data compiled from printout from Department of Health, Sanitation Branch, March 1991.
7. Testimony by John C. Lewin, M. D., Director of Health, to the Committee on Health on Senate Bill 2122, January 30, 1990.

Chapter 2

1. Telephone interview with Terry L. Johnson, Credential Program Manager, National Environmental Health Association, April 20, 1989.

Responses of the Affected Agencies

Comments on Agency Response

We transmitted a draft of this Sunset Evaluation Update to the Department of Health and Department of Commerce and Consumer Affairs on September 4, 1991. A copy of the transmittal letter to the Department of Health is included as Attachment 1 of this Appendix. A similar letter was sent to the Department of Commerce and Consumer Affairs. The Department of Health's response is included as Attachment 2. The Department of Commerce and Consumer Affairs did not submit a response.

The department does not agree with our recommendation to end the regulation of sanitarians. It says that the absence of consumer complaints about sanitarians shows regulation is working and that licensed sanitarians are needed to effectively administer the department's inspection and sanitation programs. The department agrees with us, however, that the statutes regulating sanitarians are imprecise and inconsistent and that the Sanitation Branch of the department is not the appropriate place for the regulatory program.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813



(808) 548-2450
FAX: (808) 548-2693

September 4, 1991

C O P Y

The Honorable John C. Lewin, Director
Department of Health
Kinau Hale
1250 Punchbowl Street
Honolulu, Hawaii 96813

Dear Dr. Lewin:

Enclosed are three copies, numbered 6 through 8, of our draft report, *Sunset Evaluation Update: Sanitarians*. We ask that you telephone us by Monday, September 9, 1991, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, October 4, 1991.

The Director of the Department of Commerce and Consumer Affairs, the Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script that reads 'Newton Sue'.

Newton Sue
Acting Auditor

Enclosures



JOHN WAIHEE
GOVERNOR OF HAWAII

JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

October 14, 1991

In reply, please refer to:
File:

The Honorable Newton Sue
Acting Legislative Auditor
Office of the Legislative Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

RECEIVED
Oct 15 1 23 PM '91
OFC. OF THE AUDITOR
STATE OF HAWAII

Dear Mr. Sue:

Subject: Sunset Evaluation Update: Sanitarians

In response to the evaluation done by your office, the Department of Health would like to comment on the recommendations in the following fashion: We are in disagreement with Finding #1 and in agreement with Findings #2 and #3. Specifically, it is our position that the sanitarians should be regulated to protect the public; the statutes regulating sanitarians are imprecise and inconsistent; and the Sanitation Branch of the Department of Health is not the appropriate place for the regulatory program.

FINDING #1 -- THERE IS NO EVIDENCE THAT SANITARIANS SHOULD BE REGULATED TO PROTECT THE PUBLIC.

The draft evaluation report states:

We found no new evidence that regulation of sanitarians is needed to protect the public health and welfare. There were no consumer complaints against sanitarians to suggest problems with these practitioners. The public's protection, we believe, derives from the quality of the State's sanitation program, not from the licensing of individual sanitarians. Moreover, the trend nationwide is toward deregulation of sanitarians.

DEPARTMENT POSITION TO FINDING #1:

We disagree.

Point 1:

The fact that there are no consumer complaints to suggest problems with these practitioners supports the continued licensure of sanitarians. If it is operating so well at present, why take the chance of "breaking it." The point is that the program is effective as it is, utilizing professional, licensed sanitarians. A sanitarian's job is mainly preventative in nature with the primary goal being zero or no notoriety for a job done.

Point 2:

It is difficult to accept the statement of the auditor report that no evidence was found that the regulation of sanitarians is needed to protect the public health and welfare since public protection depends not on the licensing of individual sanitarians but on the administration of the inspection and sanitation programs.

We believe that one cannot separate the implementors of any program (in this case the licensed registered sanitarians) from the administration of the program. The administration of any program is only as good as the administrator, the administrative structure, and the people implementing the program; of these components of the State's sanitation program, the individual sanitarian is of paramount importance. The program is only as good as the people in the program, in this case the sanitarians. Sanitarians work independently in the field, and the effectiveness of the program is directly dependent on their knowledge and skills. If the State's sanitation program is protecting the public health and welfare at this time, and we believe it is, it is because of the efforts of the licensed registered sanitarian.

Historically, the sanitarian has been the backbone, "general practitioner" of the environmental arena along with public health nursing and vector control. Over the past twenty years the State Department of Health has developed numerous specialty programs, along with their own environmental health specialists (unlicensed sanitarians). These unlicensed sanitarians work within a limited program as environmental health specialists.

Today, the sanitation program is still charged with providing sanitation services, which include inspectional, educational, consultative and enforcement activities to implement HRS 321 and 322 as they apply to environmental sanitation. The sanitation program is still responsible for administering through rule making the following rules: Chapters 11-11 Sanitation; 1-A Food Service and Food Establishments; 11-13-A Swimming Pools; 11-14 Housing; 11-16 Recreational Trailer Camps; 11-17 Tattoo Artists; 11-18 Licensing of Sanitarians; 11-22 Mortuaries, Cemeteries, and Embalmers; 11-39 Ventilation. In addition, it works with other branches to implement: Chapters 11-15, Milk; 11-26 Vector Control; 11-30 Frozen

Desserts; and 11-62 Wastewater. In fact, the sanitation program is still a "catch all" for problems that do not fit neatly into the purview of the environmental management specialty programs.

In the future, the registered sanitarian will continue to be the "general practitioner" of environmental health. The inherent value and need for the licensing of the registered sanitarians will continue to be necessary to protect the public health. The registration process assures the sanitarian has the knowledge to understand the broad aspects of environmental health.

Point 3:

The trend nationwide is not toward deregulation of sanitarians. The June 1990 National Environmental Health Association survey on "State Registration Requirements for Environmental Health Professionals in the United States" shows that of the 50 states that were polled, only three (3) states responded that they expected sunset legislation on the registration of Registered Sanitarians. Of these three states, South Carolina stated that they expect sunset legislation and a new law; registration is currently voluntary in South Carolina. Further, the poll showed that 74% of the states that responded had a mandatory or voluntary program of licensing in place and that 56% of these states utilize the examination provided by the Professional Licensing Service; Hawaii is one such state. Since the 1990 NEHA survey, the association has decided to conduct such a survey yearly. Given the data, it is likely that future surveys will show a trend toward more professional registration programs in the environmental health professions. The Department of Health has recently placed much emphasis on the continued educational needs of its employees to maintain a high degree of professional employee standards. The Registered Sanitarian exam serves as an additional screen to insure these standards.

FINDING #2 -- THE STATUTES REGULATING SANITARIANS ARE IMPRECISE AND INCONSISTENT.

DEPARTMENT POSITION TO FINDING #2:

We agree.

FINDING #3 -- THE SANITATION BRANCH OF THE DEPARTMENT OF HEALTH IS NOT THE APPROPRIATE PLACE FOR THE REGULATORY PROGRAM.

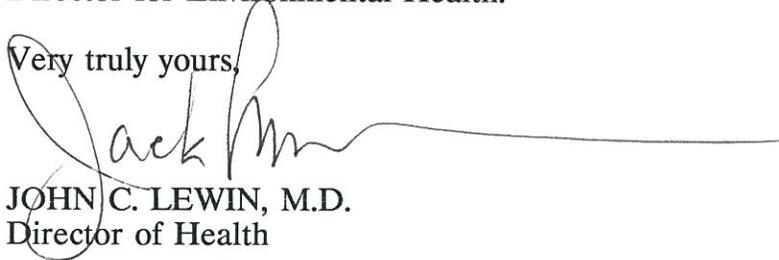
DEPARTMENT POSITION TO FINDING #3:

We agree.

The Honorable Newton Sue
October 14, 1991
Page 4

These are the comments of the Department of Health to the recommendations of the of your draft report, Sunset Evaluation Update: Sanitarians. If you wish to obtain further information relating to these comments, please contact me or Bruce S. Anderson, Deputy Director for Environmental Health.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jack Lewin", with a long horizontal line extending to the right.

JOHN C. LEWIN, M.D.
Director of Health

JCL:mi

c: Advisory Committee on the Licensing of Sanitarians

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 321-13, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The department of health, with the approval of the
4 governor, may prescribe such rules as it deems necessary for the
5 public health or safety respecting:

6 (1) The occupations or practices of laboratory directors,
7 laboratory technologists, laboratory supervisors,
8 laboratory technicians, tattoo artists, [sanitarians,]
9 asbestos inspectors, asbestos management planners, and
10 asbestos abatement project designers;

11 (2) The health, education, training, experience, habits,
12 qualifications, or character of persons to whom
13 certificates of registration or permits for these
14 occupations or practices may be issued;

15 (3) The health, habits, character, practices, standards, or
16 conduct of persons holding these certificates or
17 permits; or

18 (4) The grounds or causes for revoking or suspending these
19 certificates or permits.

1 The rules shall have the force and effect of law."

2 SECTION 2. Statutory material to be repealed is bracketed.

3 New statutory material is underscored.

4 SECTION 3. This Act shall take effect upon its approval.

5

6

INTRODUCED BY: _____