

**Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**REENGROSSED**

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 10-0144.01 Thomas Morris

**HOUSE BILL 10-1365**

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Appropriations

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**A BILL FOR AN ACT**

101      **CONCERNING INCENTIVES FOR ELECTRIC UTILITIES TO REDUCE AIR**  
102            **EMISSIONS, AND, IN CONNECTION THEREWITH, REQUIRING PLANS**  
103            **TO ACHIEVE SUCH REDUCTIONS THAT GIVE PRIMARY**  
104            **CONSIDERATION TO REPLACING OR REPOWERING COAL**  
105            **GENERATION WITH NATURAL GAS AND ALSO CONSIDERING**  
106            **OTHER LOW-EMITTING RESOURCES, AND MAKING AN**  
107            **APPROPRIATION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

HOUSE  
3rd Reading Unamended  
March 22, 2010

HOUSE  
Amended 2nd Reading  
March 19, 2010

[http://www.leg.state.co.us/bills/summaries.](http://www.leg.state.co.us/bills/summaries/))

In order to meet anticipated federal "Clean Air Act" requirements to reduce emissions from coal-fired power plants, **section 1** of the bill requires all rate-regulated utilities that own or operate coal-fired electric generating units to submit to the public utilities commission (PUC) an emission reduction plan for emissions from those units covering the lesser of 900 megawatts or 50% of the utility's coal-fired electric generating units in Colorado. The plans have to give primary consideration to replacing or repowering coal-fired electric generators with natural gas and to also consider other low-emitting resources, including energy efficiency.

The PUC will provide the department of public health and environment (department) an opportunity to comment on the utilities' plans. The department will determine whether certain new or repowered electric generating units proposed under the plans will emit more than 1,100 pounds of carbon dioxide per megawatt-hour and whether the plans comply with applicable requirements of the federal and state clean air laws. The plans are to be implemented by December 31, 2017.

In evaluating the plans, the PUC is to consider the following factors: The pollution reductions to be achieved; the increased use of existing natural gas-fired electric generating capacity; and the plan's effect on economic development, electricity reliability, cost and rate increases, compliance with renewable energy standards, and reliance on energy efficiency or other low-emitting resources. The PUC is to approve, deny, or modify the plans by December 15, 2010. The utilities' actions in complying with the plans are presumed to be prudent actions, the costs of which are recoverable in rates.

The air quality control commission will consider incorporating the emissions reductions derived from the plans into the regional haze element of the state implementation plan. Early reductions of greenhouse gas emissions will count as voluntary for purposes of early reduction credits under federal law.

**Section 2** authorizes the PUC to approve interim rates taking effect no later than 60 days after a rate increase filing. **Section 3** directs the PUC to require a utility to rebate rates if a final rate is lower than an interim rate.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 3.2 of title 40, Colorado Revised Statutes,  
3 is amended BY THE ADDITION OF A NEW PART to read:

4 **PART 2**

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COORDINATED UTILITY PLAN  
TO REDUCE AIR EMISSIONS

**40-3.2-201. Short title.** THIS PART 2 SHALL BE KNOWN AND MAY BE CITED AS THE "CLEAN AIR - CLEAN JOBS ACT".

**40-3.2-202. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FEDERAL "CLEAN AIR ACT", 42 U.S.C. SEC. 7401 ET SEQ., WILL LIKELY REQUIRE REDUCTIONS IN EMISSIONS FROM COAL-FIRED POWER PLANTS IN COLORADO. A COORDINATED PLAN OF EMISSION REDUCTIONS FROM COAL-FIRED POWER PLANTS WILL ENABLE COLORADO UTILITIES TO MEET THE REQUIREMENTS OF THE FEDERAL ACT AND PROTECT PUBLIC HEALTH AND THE ENVIRONMENT AT A LOWER COST THAN A PIECEMEAL APPROACH. A COORDINATED PLAN OF REDUCTION OF EMISSIONS WILL ALSO RESULT IN REDUCTIONS IN CARBON DIOXIDE AND PROMOTE THE USE OF NATURAL GAS AND OTHER LOW-EMITTING RESOURCES TO MEET COLORADO'S ELECTRICITY NEEDS, WHICH WILL IN TURN PROMOTE DEVELOPMENT OF COLORADO'S ECONOMY AND INDUSTRY.

(2) THE GENERAL ASSEMBLY FURTHER FINDS THAT THE USE OF NATURAL GAS TO REDUCE COAL-FIRED EMISSIONS MAY REQUIRE UTILITIES TO ENTER INTO LONG-TERM CONTRACTS FOR NATURAL GAS IN A MANNER THAT PROTECTS ELECTRICITY CONSUMERS. EVEN THOUGH SUCH LONG-TERM CONTRACTS MIGHT BE BENEFICIAL TO CONSUMERS, FINANCIAL RATING AGENCIES COULD FIND THAT SUCH LONG-TERM CONTRACTS INCREASE THE FINANCIAL RISK TO THE UTILITY, WHICH IN TURN COULD INCREASE THE COST OF CAPITAL TO THE UTILITY. THE GENERAL ASSEMBLY FINDS THAT IT IS IMPORTANT TO GIVE FINANCIAL MARKETS CONFIDENCE THAT UTILITIES WILL BE ABLE TO RECOVER THE COSTS OF LONG-TERM GAS

1 CONTRACTS WITHOUT THE RISK OF FUTURE REGULATORS DISALLOWING  
2 CONTRACTS.

3 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT  
4 COLORADO UTILITIES REQUIRE TIMELY AND FORWARD-LOOKING REVIEWS  
5 OF THEIR COSTS OF PROVIDING UTILITY SERVICE IN ORDER TO UNDERTAKE  
6 THE COMPREHENSIVE AND EXTENSIVE PLANNING AND CHANGES TO THEIR  
7 BUSINESS OPERATIONS CONTEMPLATED BY THIS PART 2. IN ORDER TO  
8 ALLOW THESE UTILITIES TO CONTINUE TO PROVIDE RELIABLE ELECTRIC  
9 SERVICE, ALTER THEIR OPERATIONS IN THE MANNER DESCRIBED BY THIS  
10 PART 2, AND MEET OTHER STATE PUBLIC POLICY GOALS SUCH AS THE  
11 RENEWABLE ENERGY STANDARD, IT IS IMPERATIVE THAT COLORADO  
12 UTILITIES CONTINUE IN SOUND FINANCIAL CONDITION AND REMAIN  
13 ATTRACTIVE INVESTMENTS SO THAT SUFFICIENT CAPITAL IS PROVIDED TO  
14 ACHIEVE THE STATE'S GOALS. TO THAT END, THE GENERAL ASSEMBLY  
15 FINDS THAT THE COMMISSION SHOULD HAVE ADDITIONAL TOOLS AND  
16 MORE FLEXIBILITY IN ITS REGULATORY AUTHORITY TO ENSURE THE  
17 CONTINUED FINANCIAL HEALTH OF THESE UTILITIES.

18 **40-3.2-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE  
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "AIR QUALITY CONTROL COMMISSION" MEANS THE COMMISSION  
21 CREATED IN SECTION 25-7-104, C.R.S.

22 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH  
23 AND ENVIRONMENT.

24 (3) "FEDERAL ACT" MEANS THE FEDERAL "CLEAN AIR ACT", 42  
25 U.S.C. SEC. 7401 ET SEQ., AS AMENDED.

26 (4) "STATE ACT" MEANS THE "COLORADO AIR POLLUTION  
27 PREVENTION AND CONTROL ACT", ARTICLE 7 OF TITLE 25, C.R.S.

1 (5) "STATE IMPLEMENTATION PLAN" MEANS THE PLAN REQUIRED  
2 BY AND DESCRIBED IN SECTION 110 (a) AND OTHER PROVISIONS OF THE  
3 FEDERAL ACT.

4 **40-3.2-204. Emission control plans - role of the department of**  
5 **public health and environment - timing of emission reductions -**  
6 **approval.** (1) ON OR BEFORE AUGUST 15, 2010, AND IN COORDINATION  
7 WITH CURRENT OR EXPECTED REQUIREMENTS OF THE FEDERAL ACT AND  
8 THE STATE ACT, ALL RATE-REGULATED UTILITIES THAT OWN OR OPERATE  
9 COAL-FIRED ELECTRIC GENERATING UNITS LOCATED IN COLORADO SHALL  
10 SUBMIT TO THE COMMISSION AN EMISSION REDUCTION PLAN FOR  
11 EMISSIONS FROM THOSE UNITS.

12 (2) (a) THE PLAN FILED UNDER THIS SECTION SHALL COVER A  
13 MINIMUM OF NINE HUNDRED MEGAWATTS OR FIFTY PERCENT OF THE  
14 UTILITY'S COAL-FIRED ELECTRIC GENERATING UNITS IN COLORADO,  
15 WHICHEVER IS SMALLER. EXCEPT AS SET FORTH IN SECTION 40-3.2-206,  
16 THE COAL-FIRED CAPACITY COVERED UNDER THE PLAN FILED UNDER THIS  
17 SECTION SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT THE  
18 UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR TO  
19 JANUARY 1, 2015. AT THE UTILITY'S DISCRETION, THE PLAN MAY INCLUDE  
20 SOME OR ALL OF THE FOLLOWING ELEMENTS:

21 (I) NEW EMISSION CONTROL EQUIPMENT FOR OXIDES OF NITROGEN  
22 AND OTHER POLLUTANTS;

23 (II) RETIREMENT OF COAL-FIRED UNITS, IF THE RETIRED  
24 COAL-FIRED UNITS ARE REPLACED BY NATURAL GAS-FIRED ELECTRIC  
25 GENERATION OR OTHER LOW-EMITTING RESOURCES AS DEFINED IN SECTION  
26 40-3.2-206, INCLUDING ENERGY EFFICIENCY;

27 (III) CONVERSION OF COAL-FIRED GENERATION TO RUN ON

1 NATURAL GAS;

2 (IV) LONG-TERM FUEL SUPPLY AGREEMENTS;

3 (V) NEW NATURAL GAS PIPELINES AND OTHER SUPPORTING GAS

4 INFRASTRUCTURE;

5 (VI) INCREASED UTILIZATION OF EXISTING GAS-FIRED GENERATING

6 CAPACITY;

7 (VII) NEW TRANSMISSION LINES AND OTHER SUPPORTING

8 TRANSMISSION INFRASTRUCTURE;

9 (VIII) EMISSION CONTROL EQUIPMENT THAT IS REQUIRED TO BE

10 INSTALLED AT AFFECTED UNITS PRIOR TO OR IN CONJUNCTION WITH ANY

11 RETIREMENT, CONVERSION, OR EMISSION CONTROL EQUIPMENT RETROFIT

12 SET FORTH UNDER THE PLAN IN ORDER TO LIMIT ANY POLLUTANT OTHER

13 THAN OXIDES OF NITROGEN; AND

14 (IX) ANY OTHER CAPITAL, FUEL, AND OPERATIONS AND

15 MAINTENANCE EXPENDITURES APPROPRIATE TO SUPPORT THE

16 IMPLEMENTATION OF THE PLAN.

17 (b) (I) PRIOR TO FILING THE PLAN, THE UTILITY SHALL CONSULT

18 WITH THE DEPARTMENT AND SHALL WORK WITH THE DEPARTMENT IN

19 GOOD FAITH TO DESIGN A PLAN TO MEET THE CURRENT AND ANTICIPATED

20 REQUIREMENTS OF THE FEDERAL ACT AND STATE LAW IN A

21 COST-EFFECTIVE AND FLEXIBLE MANNER.

22 (II) THE COMMISSION SHALL PROVIDE THE DEPARTMENT AN

23 OPPORTUNITY TO:

24 (A) COMMENT ON THE AIR QUALITY, ALL OTHER AIR POLLUTANTS,

25 AND OTHER EMISSION REDUCTIONS OF THE PLAN; AND

26 (B) EVALUATE AND DETERMINE WHETHER THE PLAN IS

27 CONSISTENT WITH THE CURRENT AND ANTICIPATED REQUIREMENTS OF THE

1 FEDERAL ACT.

2 (III) IN COMMENTING UPON THE UTILITY'S PLAN, THE DEPARTMENT  
3 SHALL DETERMINE WHETHER ANY NEW OR REPOWERED ELECTRIC  
4 GENERATING UNIT PROPOSED UNDER THE PLAN, OTHER THAN A PEAKING  
5 FACILITY UTILIZED LESS THAN TWENTY PERCENT ON AN ANNUAL BASIS,  
6 WILL EMIT MORE THAN ONE THOUSAND ONE HUNDRED POUNDS OF CARBON  
7 DIOXIDE PER MEGAWATT-HOUR; EXCEPT THAT IN NO EVENT SHALL THE  
8 DEPARTMENT OR COMMISSION INCORPORATE AN ENFORCEABLE CARBON  
9 DIOXIDE EMISSION LIMIT INTO ANY AIR QUALITY OR OTHER PERMIT OR  
10 CONDITION TO OPERATE ANY SUCH FACILITY UNLESS OTHERWISE  
11 REQUIRED BY FEDERAL LAW.

12 (IV) THE COMMISSION SHALL NOT APPROVE A PLAN EXCEPT AFTER  
13 AN EVIDENTIARY HEARING AND UNLESS THE DEPARTMENT HAS  
14 DETERMINED THAT THE PLAN IS CONSISTENT WITH THE CURRENT AND  
15 ANTICIPATED REQUIREMENTS OF THE FEDERAL ACT.

16 (c) THE PLAN SHALL INCLUDE A SCHEDULE THAT WOULD RESULT  
17 IN FULL IMPLEMENTATION OF THE PLAN ON OR BEFORE DECEMBER 31,  
18 2017. THE SCHEDULE MAY INCLUDE INTERIM MILESTONES. THE UTILITY  
19 SHALL DESIGN THE SCHEDULE TO PROTECT SYSTEM RELIABILITY, CONTROL  
20 OVERALL COST, AND ASSURE CONSISTENCY WITH THE REQUIREMENTS OF  
21 THE FEDERAL ACT.

22 (d) THE PLAN SHALL SET FORTH THE COSTS ASSOCIATED WITH  
23 ACTIVITIES IDENTIFIED IN THE PLAN, INCLUDING THE PLANNING,  
24 DEVELOPMENT, CONSTRUCTION, AND OPERATION OF ELEMENTS IDENTIFIED  
25 PURSUANT TO SUBPARAGRAPHS (I) TO (IX) OF PARAGRAPH (a) OF  
26 SUBSECTION (2) OF THIS SECTION, AS WELL AS THE COSTS OF ANY  
27 SHUTDOWN, DECOMMISSIONING, OR REPOWERING OF EXISTING COAL-FIRED

1 ELECTRIC GENERATING UNITS THAT ARE SET FORTH IN THE PLAN.

2 **40-3.2-205. Review - approval.** (1) IN EVALUATING THE PLAN,  
3 THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

4 (a) WHETHER THE DEPARTMENT REPORTS THAT THE PLAN IS  
5 LIKELY TO ACHIEVE AT LEAST A SEVENTY TO EIGHTY PERCENT REDUCTION,  
6 OR GREATER, IN ANNUAL EMISSIONS OF OXIDES OF NITROGEN AS  
7 NECESSARY TO COMPLY WITH CURRENT AND ANTICIPATED REQUIREMENTS  
8 OF THE FEDERAL ACT AND THE STATE ACT. THE REDUCTION IN EMISSIONS  
9 UNDER THIS PARAGRAPH (a) SHALL BE MEASURED FROM 2008 LEVELS AT  
10 COAL-FIRED POWER PLANTS IDENTIFIED IN THE PLAN. IN DETERMINING THE  
11 REDUCTION IN EMISSIONS UNDER THIS PARAGRAPH (a), THE DEPARTMENT  
12 SHALL INCLUDE:

13 (I) EMISSIONS FROM COAL-FIRED POWER PLANTS IDENTIFIED IN THE  
14 PLAN AND CONTINUING TO OPERATE AFTER RETROFIT WITH EMISSION  
15 CONTROL EQUIPMENT; AND

16 (II) EMISSIONS FROM ANY FACILITIES CONSTRUCTED TO REPLACE  
17 ANY RETIRED COAL-FIRED POWER PLANTS IDENTIFIED IN THE PLAN.

18 (b) WHETHER THE DEPARTMENT HAS MADE THE DETERMINATION  
19 UNDER SECTION 40-3.2-204 (2) (b) (III);

20 (c) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS  
21 OF OTHER POLLUTANTS;

22 (d) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS  
23 IN OTHER AIR POLLUTANTS EMISSIONS;

24 (e) THE DEGREE TO WHICH THE PLAN WILL INCREASE UTILIZATION  
25 OF EXISTING NATURAL GAS-FIRED GENERATING CAPACITY;

26 (f) THE DEGREE TO WHICH THE PLAN ENHANCES THE ABILITY OF  
27 THE UTILITY TO MEET STATE OR FEDERAL RENEWABLE ENERGY



1 REQUIREMENTS, RELIES ON ENERGY EFFICIENCY, OR RELIES ON OTHER LOW  
2 EMITTING RESOURCES;

3 (g) WHETHER THE PLAN PROMOTES COLORADO ECONOMIC  
4 DEVELOPMENT;

5 (h) WHETHER THE PLAN PRESERVES RELIABLE ELECTRIC SERVICE  
6 FOR COLORADO CONSUMERS;

7 (i) WHETHER THE PLAN IS LIKELY TO HELP PROTECT COLORADO  
8 CUSTOMERS FROM FUTURE COST INCREASES, INCLUDING COSTS  
9 ASSOCIATED WITH POTENTIAL FEDERAL CLIMATE POLICY; AND

10 (j) WHETHER THE COST OF THE PLAN RESULTS IN REASONABLE  
11 RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE PLAN, THE  
12 COMMISSION SHALL EXAMINE THE IMPACT OF THE RATES ON LOW-INCOME  
13 CUSTOMERS.

14 (2) THE COMMISSION SHALL REVIEW THE PLAN AND ENTER AN  
15 ORDER APPROVING, DENYING, OR MODIFYING THE PLAN BY DECEMBER 15,  
16 2010. ANY MODIFICATIONS REQUIRED BY THE COMMISSION SHALL RESULT  
17 IN A PLAN THAT THE DEPARTMENT DETERMINES IS LIKELY TO MEET  
18 CURRENT AND ANTICIPATED FEDERAL AND STATE CLEAN AIR ACT  
19 REQUIREMENTS.

20 (3) ALL ACTIONS TAKEN BY THE UTILITY IN FURTHERANCE OF, AND  
21 IN COMPLIANCE WITH, AN APPROVED PLAN ARE PRESUMED TO BE PRUDENT  
22 ACTIONS, THE COSTS OF WHICH ARE RECOVERABLE IN RATES AS PROVIDED  
23 IN SECTION 40-3.2-207.

24 (4) IF THE UTILITY DISAGREES WITH THE COMMISSION'S  
25 MODIFICATIONS TO ITS PROPOSED PLAN WITH RESPECT TO RESOURCE  
26 SELECTION, THE UTILITY MAY WITHDRAW ITS APPLICATION.

27 **40-3.2-206. Coal plant retirements - replacement resources.**

1 (1) (a) THE GENERAL ASSEMBLY FINDS THAT, IN DESIGNING A  
2 COORDINATED EMISSION REDUCTION PLAN AS DESCRIBED IN SECTION  
3 40-3.2-204 AND TO EXPEDITIOUSLY ACCELERATE COAL PLANT  
4 RETIREMENTS, IT IS IN THE PUBLIC INTEREST FOR UTILITIES TO GIVE  
5 PRIMARY CONSIDERATION TO REPLACING OR REPOWERING THEIR COAL  
6 GENERATION WITH NATURAL GAS GENERATION AND THAT UTILITIES SHALL  
7 ALSO CONSIDER OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY  
8 EFFICIENCY, IF THIS REPLACEMENT OR REPOWERING CAN BE  
9 ACCOMPLISHED PRUDENTLY AND FOR REASONABLE RATE IMPACTS  
10 COMPARED WITH PLACING ADDITIONAL EMISSION CONTROLS ON  
11 COAL-FIRED GENERATING UNITS, AND IF ELECTRIC SYSTEM RELIABILITY  
12 CAN BE PRESERVED. TO THAT END, IN THE PLAN REQUIRED UNDER  
13 SECTION 40-3.2-204, EACH UTILITY SHALL INCLUDE AN EVALUATION OF  
14 THE FOLLOWING PROPOSALS:

15 (I) THE COST AND SYSTEM RELIABILITY IMPACTS OF RETIRING A  
16 MINIMUM OF NINE HUNDRED MEGAWATTS OF COAL-FIRED ELECTRIC  
17 GENERATING CAPACITY, OR FIFTY PERCENT OF THE UTILITY'S COAL-FIRED  
18 GENERATING UNITS IN COLORADO, WHICHEVER IS LESS, BY JANUARY 1,  
19 2015, AND REPOWERING THE AFFECTED COAL-FIRED FACILITIES WITH  
20 NATURAL GAS OR REPLACING THEM WITH NATURAL GAS-FIRED  
21 GENERATION OR OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY  
22 EFFICIENCY. THE COAL-FIRED CAPACITY EVALUATED UNDER THIS  
23 SUBPARAGRAPH (I) SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT  
24 THE UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR  
25 TO JANUARY 1, 2015. THE UTILITY MAY ALSO PREPARE EVALUATIONS OF  
26 ADDITIONAL SCENARIOS, INCLUDING SCENARIOS THAT RESULT IN THE  
27 RETIREMENT OF LESS THAN NINE HUNDRED MEGAWATTS OF COAL-FIRED

1 ELECTRIC GENERATING CAPACITY OR THE RETIREMENT OF SOME PORTION  
2 OF THE NINE HUNDRED MEGAWATTS OF CAPACITY AFTER JANUARY 1,  
3 2015, BUT BEFORE JANUARY 1, 2018.

4 (II) RETIREMENTS OF A PORTION OF ITS COAL-FIRED GENERATING  
5 CAPACITY IN THE PERIOD AFTER THE EFFECTIVE DATE OF THIS PART 2 BUT  
6 PRIOR TO JANUARY 1, 2015. AT A MINIMUM, THE UTILITY SHALL  
7 EVALUATE WHETHER TO RETIRE A PORTION OF ITS COAL-FIRED CAPACITY  
8 ON OR BEFORE JANUARY 1, 2013, OR WHETHER THE RETIREMENTS OF  
9 COAL-FIRED GENERATING FACILITIES THAT HAVE ALREADY BEEN  
10 ANNOUNCED COULD BE ADVANCED TO AN EARLIER RETIREMENT DATE.

11 (b) (I) FOR ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1),  
12 THE UTILITY SHALL REPORT:

13 (A) THE ESTIMATED OVERALL IMPACTS ON THE UTILITY'S  
14 EMISSIONS OF OXIDES OF NITROGEN AND OTHER POLLUTANTS AND CARBON  
15 DIOXIDE;

16 (B) THE FEASIBILITY OF THE RETIREMENT, REPOWERING, OR  
17 REPLACEMENT ON THE SCHEDULE PROPOSED IN THE EVALUATION;

18 (C) THE COSTS AND IMPACT ON ELECTRIC RATES FROM THESE  
19 PROPOSALS; AND

20 (D) THE IMPACT OF THE RETIREMENTS ON THE RELIABILITY OF THE  
21 UTILITY'S ELECTRIC SERVICE.

22 (II) ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1) SHALL  
23 CONTRAST THE COSTS OF REPLACING COAL GENERATION WITH NATURAL  
24 GAS GENERATION AND OTHER LOW-EMITTING RESOURCES, INCLUDING  
25 ENERGY EFFICIENCY, WITH THE COSTS OF INSTALLING ADDITIONAL  
26 EMISSION CONTROLS ON THE COAL PLANTS.

27 (2) THE UTILITY SHALL SET FORTH IN ITS PLAN THE UTILITY'S

1 PROPOSAL FOR THE BEST WAY OF TIMELY MEETING THE EMISSION  
2 REDUCTION REQUIREMENTS REQUIRED BY FEDERAL AND STATE LAW,  
3 GIVEN THE NEED TO PRESERVE ELECTRIC SYSTEM RELIABILITY, TO AVOID  
4 UNREASONABLE RATE INCREASES, AND THE ECONOMIC AND  
5 ENVIRONMENTAL BENEFITS OF COORDINATED EMISSION REDUCTIONS.

6 (3) IN REVIEWING THE REASONABLENESS OF THE UTILITY'S  
7 PROPOSED PLAN, THE COMMISSION SHALL:

8 (a) COMPARE THE RELATIVE COSTS OF REPOWERING OR REPLACING  
9 COAL FACILITIES WITH NATURAL GAS GENERATION OR OTHER  
10 LOW-EMITTING RESOURCES, INCLUDING ENERGY EFFICIENCY, TO AN  
11 ALTERNATIVE THAT INCORPORATES EMISSION CONTROLS ON THE EXISTING  
12 COAL-FIRED UNITS;

13 (b) USE REASONABLE PROJECTIONS OF FUTURE COAL AND  
14 NATURAL GAS COSTS;

15 (c) INCORPORATE A REASONABLE ESTIMATE FOR THE COST OF  
16 FUTURE CARBON DIOXIDE EMISSION REGULATION;

17 (d) CONSIDER THE DEGREE TO WHICH THE PLAN WILL INCREASE  
18 UTILIZATION OF EXISTING NATURAL GAS-FIRED GENERATING RESOURCES  
19 AVAILABLE TO THE UTILITY, TOGETHER WITH INCREASED UTILIZATION OF  
20 OTHER LOW-EMITTING RESOURCES INCLUDING ENERGY EFFICIENCY; AND

21 (e) CONSIDER THE ECONOMIC AND ENVIRONMENTAL BENEFITS OF  
22 A COORDINATED EMISSIONS REDUCTION STRATEGY.

23 (4) THE UTILITY MAY ENTER INTO LONG-TERM GAS SUPPLY  
24 AGREEMENTS TO IMPLEMENT THE REQUIREMENTS OF THIS PART 2. A  
25 LONG-TERM GAS SUPPLY AGREEMENT IS AN AGREEMENT WITH A TERM OF  
26 NOT LESS THAN THREE YEARS OR MORE THAN TWENTY YEARS. ALL  
27 LONG-TERM GAS SUPPLY AGREEMENTS MAY BE FILED WITH THE

1 COMMISSION FOR REVIEW AND APPROVAL. THE COMMISSION SHALL  
2 DETERMINE WHETHER THE UTILITY ACTED PRUDENTLY BY ENTERING INTO  
3 THE SPECIFIC AGREEMENT, WHETHER THE PROPOSED AGREEMENT APPEARS  
4 TO BE BENEFICIAL TO CONSUMERS, AND WHETHER THE AGREEMENT IS IN  
5 THE PUBLIC INTEREST. IF AN AGREEMENT IS APPROVED, THE UTILITY IS  
6 ENTITLED TO RECOVER THROUGH RATES THE COSTS IT INCURS UNDER THE  
7 APPROVED AGREEMENT, AND ANY APPROVED AMENDMENTS TO THE  
8 AGREEMENT, NOTWITHSTANDING ANY CHANGE IN THE MARKET PRICE OF  
9 NATURAL GAS DURING THE TERM OF THE AGREEMENT. THE COMMISSION  
10 SHALL NOT REVERSE ITS APPROVAL OF THE LONG-TERM GAS AGREEMENT  
11 EVEN IF THE AGREEMENT PRICE IS HIGHER THAN A FUTURE MARKET PRICE  
12 OF NATURAL GAS.

13 **40-3.2-207. Cost recovery - legislative declaration.** (1) (a) A  
14 UTILITY IS ENTITLED TO FULLY RECOVER THE COSTS THAT IT PRUDENTLY  
15 INCURS IN EXECUTING AN APPROVED EMISSION REDUCTION PLAN,  
16 INCLUDING THE COSTS OF PLANNING, DEVELOPING, CONSTRUCTING,  
17 OPERATING, AND MAINTAINING ANY EMISSION CONTROL OR REPLACEMENT  
18 CAPACITY CONSTRUCTED PURSUANT TO THE PLAN, AS WELL AS ANY  
19 INTERIM AIR QUALITY EMISSION CONTROL COSTS THE UTILITY INCURS  
20 WHILE THE PLAN IS BEING IMPLEMENTED.

21 (b) THE GENERAL ASSEMBLY FINDS THAT THE EMISSIONS  
22 REDUCTIONS UNDER THIS PART 2 ARE BEING MADE TO ASSIST THE STATE  
23 OF COLORADO TO COMPLY WITH CURRENT AND ANTICIPATED EMISSION  
24 RESTRICTIONS UNDER FEDERAL LAW. TO PROVIDE THIS ASSISTANCE, THE  
25 UTILITY IS BEING ASKED TO MAKE SUBSTANTIAL CAPITAL INVESTMENTS  
26 AND TO ENTER INTO SUBSTANTIAL CONTRACTUAL COMMITMENTS IN AN  
27 EXPEDITED TIME PERIOD OUTSIDE OF THE NORMAL RESOURCE PLANNING

1 PROCESS.

2 (2) (a) IF A PUBLIC UTILITY'S WHOLESALE SALES ARE SUBJECT TO  
3 REGULATION BY THE FEDERAL ENERGY REGULATORY COMMISSION, AND IF  
4 THE PUBLIC UTILITY SELLS POWER ON THE WHOLESALE MARKET FROM A  
5 PROJECT DEVELOPED PURSUANT TO THE PLAN, THE COMMISSION SHALL  
6 DETERMINE WHETHER TO ASSIGN A PORTION OF THE PLAN COST TO BE  
7 RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE  
8 COMMISSION MAY MAKE SUCH ASSIGNMENT TO THE EXTENT THAT IT DOES  
9 NOT CONFLICT WITH THE PUBLIC UTILITY'S WHOLESALE CONTRACTS  
10 ENTERED INTO BEFORE THE EFFECTIVE DATE OF THIS PART 2.

11 (b) EXCEPT AS SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION  
12 (2), IF THE COMMISSION MAKES AN ASSIGNMENT OF COSTS PURSUANT TO  
13 PARAGRAPH (a) OF THIS SUBSECTION (2) AND IF THE UTILITY APPLIES TO  
14 THE FEDERAL ENERGY REGULATORY COMMISSION FOR RECOVERY AND  
15 PURSUES THAT APPLICATION IN GOOD FAITH, THEN:

16 (I) TO THE EXTENT THAT THE FEDERAL ENERGY REGULATORY  
17 COMMISSION DOES NOT PERMIT RECOVERY OF THE ALLOCATED  
18 WHOLESALE PORTION OF PLAN-RELATED INVESTMENT, THE COMMISSION  
19 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER SUCH DISALLOWED  
20 WHOLESALE PORTION OF THE INVESTMENT THROUGH THE RECOVERY  
21 MECHANISM DETAILED IN THIS SECTION; AND

22 (II) THE PUBLIC UTILITY MAY NOT RECOVER ANY REVENUE  
23 SHORTFALL CAUSED BY A DELAY IN MAKING ANY FILING WITH THE  
24 FEDERAL ENERGY REGULATORY COMMISSION OR DUE TO ANY RATE  
25 SUSPENSION PERIOD EMPLOYED BY THE FEDERAL ENERGY REGULATORY  
26 COMMISSION OR BECAUSE THE PUBLIC UTILITY FAILED TO PURSUE  
27 RECOVERY OF THE AMOUNTS AT THE FEDERAL ENERGY REGULATORY

1 COMMISSION IN GOOD FAITH.

2 (c) IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL  
3 ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE  
4 COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE PLAN'S COSTS  
5 TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY IS  
6 NOT ENTITLED TO RECOVER THE ASSIGNED PORTION OF THE COSTS FROM  
7 ITS RETAIL CUSTOMERS.

8 (3) CURRENT RECOVERY SHALL BE ALLOWED ON CONSTRUCTION  
9 WORK IN PROGRESS AT THE UTILITY'S WEIGHTED AVERAGE COST OF  
10 CAPITAL, INCLUDING ITS MOST RECENTLY AUTHORIZED RATE OF RETURN  
11 ON EQUITY, FOR EXPENDITURES ON PROJECTS ASSOCIATED WITH THE PLAN  
12 DURING THE CONSTRUCTION, STARTUP, AND PRE-SERVICE  
13 IMPLEMENTATION PHASES OF THE PROJECTS.

14 (4) TO THE EXTENT THAT AN APPROVED PLAN INCLUDES THE  
15 EARLY CONVERSION OR CLOSURE OF COAL-BASED GENERATION CAPACITY  
16 BY JANUARY 1, 2015, AND TO THE EXTENT THAT THE UTILITY  
17 DEMONSTRATES THAT A LAG IN THE RECOVERY OF THE COSTS OF THE PLAN  
18 RELATED TO THE INVESTMENT REQUIRED BY SUCH PLAN CONTRIBUTES TO  
19 A UTILITY EARNING LESS THAN ITS AUTHORIZED RETURN ON EQUITY, THE  
20 COMMISSION SHALL EMPLOY RATE-MAKING MECHANISMS, IN ADDITION TO  
21 ALLOWING A CURRENT RETURN ON CONSTRUCTION WORK IN PROGRESS,  
22 THAT PERMIT RATE ADJUSTMENTS, NO LESS FREQUENTLY THAN ONCE PER  
23 YEAR, WITHOUT REQUIRING THE UTILITY TO FILE A GENERAL RATE CASE TO  
24 ALLOW RECOVERY OF THE APPROVED PLAN'S COSTS. SUCH RATE-MAKING  
25 MECHANISMS MAY INCLUDE A SEPARATE RATE ADJUSTMENT CLAUSE,  
26 REGULAR MAKE-WHOLE RATE INCREASES, OR OTHER APPROPRIATE  
27 MECHANISMS AS DETERMINED BY THE COMMISSION.

1 (5) DURING THE TIME ANY SPECIAL REGULATORY PRACTICE IS IN  
2 EFFECT, THE UTILITY SHALL FILE A NEW RATE CASE AT LEAST EVERY TWO  
3 YEARS OR FILE A BASE RATE RECOVERY PLAN THAT SPANS MORE THAN ONE  
4 YEAR.

5 (6) THE COMMISSION SHALL ALLOW, BUT NOT REQUIRE, THE  
6 UTILITY TO DEVELOP AND OWN AS UTILITY RATE-BASED PROPERTY ANY  
7 NEW ELECTRIC GENERATING PLANT CONSTRUCTED PRIMARILY TO REPLACE  
8 ANY COAL-FIRED ELECTRIC GENERATING UNIT RETIRED PURSUANT TO THE  
9 PLAN FILED UNDER THIS PART 2.

10 **40-3.2-208. Air quality planning.** (1) THE AIR QUALITY  
11 PROVISIONS OF THE EMISSION REDUCTION PLAN FILED UNDER THIS PART 2  
12 ARE INTENDED TO FULFILL THE REQUIREMENTS OF THE STATE AND  
13 FEDERAL ACTS AND SHALL BE PROPOSED BY THE DEPARTMENT TO THE AIR  
14 QUALITY CONTROL COMMISSION AFTER THE UTILITY FILES THE PLAN WITH  
15 THE COMMISSION TO BE CONSIDERED FOR INCORPORATION INTO THE  
16 REGIONAL HAZE ELEMENT OF THE STATE IMPLEMENTATION PLAN.

17 (2) (a) UPON THE UTILITY'S FILING OF THE UTILITY PLAN WITH THE  
18 COMMISSION PURSUANT TO SECTION 40-3.2-204, THE AIR QUALITY  
19 CONTROL COMMISSION, IN RESPONSE TO THE PROPOSAL BY THE  
20 DEPARTMENT, SHALL INITIATE A PROCEEDING TO INCORPORATE THE AIR  
21 QUALITY PROVISIONS OF THE UTILITY PLAN INTO THE REGIONAL HAZE  
22 ELEMENT OF THE STATE IMPLEMENTATION PLAN. EXCEPT AS SET FORTH IN  
23 THIS SUBSECTION (2), THE AIR QUALITY CONTROL COMMISSION SHALL NOT  
24 ACT ON THE UTILITY PLAN OR THE PROVISIONS OF THE REGIONAL HAZE  
25 ELEMENT OF THE STATE IMPLEMENTATION PLAN THAT WOULD ESTABLISH  
26 CONTROLS FOR THOSE UNITS COVERED BY THE UTILITY PLAN UNTIL AFTER  
27 THE COMMISSION'S APPROVAL OF THE UTILITY PLAN.



1 (b) THE AIR QUALITY CONTROL COMMISSION SHALL VACATE THE  
2 ENTIRE PROCEEDING RELATED TO THE UTILITY PLAN AND SHALL INITIATE  
3 A NEW PROCEEDING FOR THE CONSIDERATION OF ALTERNATIVE PROPOSALS  
4 FOR THE APPROPRIATE CONTROLS FOR THOSE UNITS COVERED BY THE  
5 UTILITY PLAN FOR INCLUSION IN THE REGIONAL HAZE ELEMENT OF THE  
6 STATE IMPLEMENTATION PLAN IF:

7 (I) THE COMMISSION DOES NOT APPROVE THE UTILITY PLAN BY  
8 DECEMBER 15, 2010;

9 (II) THE UTILITY WITHDRAWS ITS APPLICATION PURSUANT TO  
10 SECTION 40-3.2-205 (4); OR

11 (III) THE AIR QUALITY CONTROL COMMISSION REJECTS ANY  
12 PORTION OF THE UTILITY PLAN AS APPROVED BY THE COMMISSION.

13 (c) THE AIR QUALITY CONTROL COMMISSION SHALL CONDUCT THE  
14 PROCEEDINGS SPECIFIED IN THIS SUBSECTION (2) AFTER PUBLIC NOTICE  
15 AND AN OPPORTUNITY FOR THE PUBLIC TO PARTICIPATE IN ACCORDANCE  
16 WITH THE AIR QUALITY CONTROL COMMISSION'S PROCEDURES.

17 (3) IF THE FINAL APPROVED PROVISIONS OF THE STATE  
18 IMPLEMENTATION PLAN ARE NOT CONSISTENT WITH THE AIR QUALITY  
19 PROVISIONS OF THE UTILITY PLAN, THE UTILITY MAY FILE A REVISED  
20 UTILITY PLAN WITH THE COMMISSION THAT MODIFIES THE ORIGINAL PLAN  
21 TO BE CONSISTENT WITH THE FINAL APPROVED STATE IMPLEMENTATION  
22 PLAN. THE REVISED UTILITY PLAN IS SUBJECT TO ALL OF THE REVIEW AND  
23 COST RECOVERY PROVISIONS CONTAINED IN THIS PART 2.  
24 NOTWITHSTANDING ANY REVISION REQUIRED TO THE UTILITY PLAN, THE  
25 UTILITY IS ENTITLED TO FULLY RECOVER ANY COSTS IT PRUDENTLY  
26 INCURRED OR CONTRACTED TO INCUR UNDER THE ORIGINALLY APPROVED  
27 PLAN PRIOR TO THE PLAN'S REVISION AND ANY COSTS INCURRED AS A

1 RESULT OF ANY ENFORCEABLE STATE IMPLEMENTATION PLAN OR OTHER  
2 AIR QUALITY REQUIREMENTS.

3 **40-3.2-209. Annual certification of early reductions in**  
4 **greenhouse gases.** REDUCTIONS IN GREENHOUSE GASES ACHIEVED  
5 THROUGH A COMPLIANCE STRATEGY BEFORE SUCH REDUCTIONS ARE  
6 MANDATED UNDER FEDERAL LAW ARE VOLUNTARY FOR PURPOSES OF  
7 DETERMINING EARLY REDUCTION CREDITS UNDER FEDERAL LAW. SUBJECT  
8 TO APPLICABLE AND APPROPRIATE PROTECTIONS FOR CONFIDENTIAL  
9 BUSINESS INFORMATION, THE UTILITY SHALL ANNUALLY CERTIFY AS  
10 APPROPRIATE THE COMPARATIVE CARBON DIOXIDE EQUIVALENT EMISSION  
11 RATE OF THE RETIRED AND REPLACEMENT ELECTRIC GENERATING  
12 RESOURCES, THE COMPARATIVE UNIT UTILIZATION, HEAT RATES, NET  
13 GREENHOUSE GASES, AND THE OVERALL VOLUME OF CARBON DIOXIDE  
14 EQUIVALENT EMISSIONS REDUCED UNDER THE PLAN APPROVED UNDER  
15 THIS PART 2. THE GOVERNOR SHALL ENUNCIATE EXPLICIT SUPPORT FOR  
16 TREATING SUCH QUANTIFIED REDUCTIONS AS EARLY REDUCTIONS IN A  
17 RESOLUTION OR CORRESPONDENCE TO THE UNITED STATES CONGRESS AND  
18 THE PRESIDENT OF THE UNITED STATES CALLING FOR THE RECOGNITION OF  
19 EARLY REDUCTIONS UNDER FEDERAL LAW.

20 **40-3.2-210. Exemption from limits on voluntary emission**  
21 **reductions.** THE LIMITS ON UTILITY EXPENDITURES ON VOLUNTARY  
22 EMISSION REDUCTIONS IN SECTION 40-3.2-102 DO NOT APPLY TO UTILITY  
23 EXPENDITURES UNDER A PLAN APPROVED BY THE COMMISSION UNDER THIS  
24 PART 2.

25 **SECTION 2.** 40-6-111 (1), Colorado Revised Statutes, is  
26 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

27 **40-6-111. Hearing on schedules - suspension - new rates -**

1 **rejection of tariffs.** (1) (d) NOTWITHSTANDING ANY ORDER OF  
2 SUSPENSION OF A PROPOSED INCREASE IN ELECTRIC, GAS, OR STEAM RATES  
3 UNDER THIS SUBSECTION (1), THE COMMISSION MAY ORDER, WITHOUT  
4 HEARING, INTERIM RATES, AT ANY LEVEL UP TO THE PROPOSED NEW  
5 RATES, TO TAKE EFFECT NOT LATER THAN SIXTY DAYS AFTER THE FILING  
6 FOR THE PROPOSED RATE INCREASE. IN MAKING A DETERMINATION AS TO  
7 WHETHER TO ALLOW INTERIM RATES, THE COMMISSION SHALL CONSIDER  
8 THE AMOUNT OF THE REVENUE DEFICIENCY PRESENTED BY THE UTILITY  
9 AND THE EXTENT TO WHICH THIS DEFICIENCY WOULD ADVERSELY AFFECT  
10 THE UTILITY DURING THE TIME PERIOD REQUIRED TO HOLD HEARINGS ON  
11 THE SUSPENDED RATES.

12 **SECTION 3.** 40-6-111 (2) (a), Colorado Revised Statutes, is  
13 amended to read:

14 **40-6-111. Hearing on schedules - suspension - new rates -**  
15 **rejection of tariffs.** (2) (a) (I) If a hearing is held thereon, whether  
16 completed before or after the expiration of the period of suspension, the  
17 commission shall establish the rates, fares, tolls, rentals, charges,  
18 classifications, contracts, practices, OR rules ~~or regulations~~ proposed, in  
19 whole or in part, or others in lieu thereof, ~~which~~ THAT it finds just and  
20 reasonable. In making such finding in the case of a public utility other  
21 than a rail carrier, the commission may consider current, future, or past  
22 test periods or any reasonable combination thereof and any other factors  
23 ~~which~~ THAT may affect the sufficiency or insufficiency of such rates,  
24 fares, tolls, rentals, charges, or classifications during the period the same  
25 may be in effect and may consider any factors ~~which~~ THAT influence an  
26 adequate supply of energy, encourage energy conservation, or encourage  
27 renewable energy development. THE COMMISSION SHALL CONSIDER THE

1 REASONABLENESS OF THE TEST PERIOD REVENUE REQUIREMENTS  
2 PRESENTED BY THE UTILITY.

3 (II) IF THE RATES ESTABLISHED BY THE COMMISSION AFTER  
4 HEARING ARE LOWER THAN ANY INTERIM RATES ESTABLISHED UNDER  
5 PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, THEN THE  
6 COMMISSION SHALL ORDER THE UTILITY TO RETURN TO CUSTOMERS ON  
7 THEIR UTILITY BILLS THROUGH A NEGATIVE RATE RIDER THE DIFFERENCE  
8 BETWEEN THE TOTAL AMOUNT THAT WOULD HAVE BEEN COLLECTED  
9 UNDER THE FINAL APPROVED RATES AND THE AMOUNT COLLECTED UNDER  
10 THE INTERIM RATES FOR THE PERIOD THAT THE INTERIM RATES WERE IN  
11 EFFECT, WITH INTEREST AT A RATE ESTABLISHED BY THE COMMISSION.

12 (III) All such rates, fares, tolls, rentals, charges, classifications,  
13 contracts, practices, OR rules ~~or regulations~~ not so suspended, on the  
14 effective date thereof, which, in the case of a public utility other than a  
15 rail carrier, shall not be less than thirty days ~~from~~ AFTER the time of filing  
16 the same with the commission, or of such lesser time as the commission  
17 may grant, shall go into effect and be the established and effective rates,  
18 fares, tolls, rentals, charges, classifications, contracts, practices, AND rules  
19 ~~and regulations~~ subject to the power of the commission, after a hearing  
20 on its own motion or upon complaint, as provided in this article, to alter  
21 or modify the same.

22 **SECTION 4. Appropriation.** (1) In addition to any other  
23 appropriation, there is hereby appropriated, out of any moneys in the  
24 public utilities commission fixed utility fund created in section 40-2-114,  
25 Colorado Revised Statutes, not otherwise appropriated, to the department  
26 of regulatory agencies, for allocation to the public utilities commission,  
27 for the fiscal year beginning July 1, 2010, the sum of seventy-four

1 thousand one hundred fifteen dollars (\$74,115) cash funds and 0.6 FTE,  
2 or so much thereof as may be necessary, for the implementation of this  
3 act.

4 (2) In addition to any other appropriation, there is hereby  
5 appropriated to the department of law, for the fiscal year beginning July  
6 1, 2010, the sum of thirteen thousand forty-one dollars (\$13,041) and 0.1  
7 FTE, or so much thereof as may be necessary, for the provision of legal  
8 services to the department of regulatory agencies related to the  
9 implementation of this act. Said sum shall be from reappropriated funds  
10 received from the department of regulatory agencies out of the  
11 appropriation made in subsection (1) of this section.

12 **SECTION 5. Applicability.** This act shall apply to conduct  
13 occurring on or after the effective date of this act.

14 **SECTION 6. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety.