

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0150.01 Gregg Fraser x4325

HOUSE BILL 21-1246

HOUSE SPONSORSHIP

Sirota,

SENATE SPONSORSHIP

Jaquez Lewis,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING DIVESTMENT ACTION BY THE PUBLIC EMPLOYEES'**
102 **RETIREMENT ASSOCIATION AGAINST COMPANIES FINANCIALLY**
103 **INVOLVED WITH FOSSIL FUEL COMPANIES.**

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 <http://leg.colorado.gov>.)

The public employees' retirement association (PERA) board (board) is required to create an exclusion list of all fossil fuel companies in whose stocks, securities, equities, assets, or other obligations PERA has any money or assets directly invested. The board is required to notify any company on the list of its inclusion on the list and of the divestment

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

requirements of the bill. The board is required to periodically update the exclusion list.

A company that was included on the exclusion list may request that it be removed from the list on the basis of clear and convincing evidence that it is not currently a fossil fuel company or that it will no longer meet such definition by a certain date.

Within 6 months from the completion of the exclusion list, the board is required to issue a determination as to whether divestment from the companies on the exclusion list complies with the board's fiduciary obligations. If the board determines that divestment from any company on the exclusion list does not comply with its fiduciary obligations, the board will remove the company from the exclusion list.

Beginning one year after the effective date of the bill, the board is required to:

- Divest the funds managed by PERA (fund) of any stocks, securities, equities, assets, or other obligations of companies on the exclusion list in which any money or assets of the fund are directly invested; and
- Cease new direct investments of any money or assets of the fund in any stocks, securities, or other obligations of any company that is a fossil fuel company.

The board is required to complete divestment from fossil fuel companies by a specified date.

Beginning one year after the effective date of the bill, the board is required to endeavor to ensure that no money or assets of the fund are invested in an indirect investment vehicle unless the board is satisfied that such indirect investment vehicle is unlikely to have in excess of 2% of its assets directly or indirectly invested in fossil fuel companies.

The board is required to issue periodic reports to the members of the pension review commission of the general assembly outlining all actions taken to comply with the requirements of the bill.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article
3 54.8 of title 24 as follows:

4 **PART 3**

5 **PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION**

6 **FOSSIL FUEL DIVESTMENT**

7 **24-54.8-301. Short title.** THE SHORT TITLE OF THIS PART 3 IS THE

1 "FOSSIL FUEL DIVESTMENT ACT".

2 **24-54.8-302. Legislative declaration - intent.** (1) THE GENERAL
3 ASSEMBLY FINDS AND DECLARES THAT:

4 (a) CLIMATE CHANGE IS A REAL AND SERIOUS THREAT TO THE
5 HEALTH, WELFARE, AND PROSPERITY OF ALL COLORADANS, NOW AND IN
6 THE FUTURE, AND MAINTAINING THE STATUS QUO OF FOSSIL FUEL ENERGY
7 PRODUCTION WILL LEAD TO CATASTROPHIC RESULTS;

8 (b) THE UNITED NATIONS INTERGOVERNMENTAL PANEL ON
9 CLIMATE CHANGE HAS DETERMINED THAT TO KEEP THE INCREASE IN
10 GLOBAL AVERAGE TEMPERATURE BELOW ONE AND ONE-HALF DEGREES
11 CELSIUS, GLOBAL GREENHOUSE GAS EMISSIONS MUST DECLINE BY
12 FORTY-FIVE PERCENT BY 2030 AND REACH NET ZERO BY 2050;

13 (c) AS SUCH, THE GENERAL ASSEMBLY ENACTED HOUSE BILL
14 19-1261, ENACTED IN 2019, THAT CREATED STATEWIDE GOALS TO REDUCE
15 2025 GREENHOUSE GAS EMISSIONS BY AT LEAST TWENTY-SIX PERCENT,
16 2030 GREENHOUSE GAS EMISSIONS BY AT LEAST FIFTY PERCENT, AND 2050
17 GREENHOUSE GAS EMISSIONS BY AT LEAST NINETY PERCENT OF THE
18 LEVELS OF GREENHOUSE GAS EMISSIONS THAT EXISTED IN 2005;

19 (d) THE THREAT OF CLIMATE CHANGE AND THE TRANSFORMATION
20 OF THE GLOBAL ENERGY SYSTEM THAT WILL BE NECESSARY TO MITIGATE
21 IT WILL HAVE A SERIOUS NEGATIVE IMPACT ON INVESTORS WHOSE ASSETS
22 ARE NOT ALIGNED WITH A ONE AND ONE-HALF DEGREE TRAJECTORY;

23 (e) CONTINUED INVESTMENT IN FOSSIL FUEL PRODUCERS POSES
24 UNACCEPTABLE RISK TO THE LONG-TERM SUSTAINABILITY OF THE PUBLIC
25 EMPLOYEES' RETIREMENT ASSOCIATION;

26 (f) EXPERTS ESTIMATE THAT DEMAND FOR FOSSIL FUELS IS LIKELY
27 TO PEAK WITHIN THE NEXT DECADE;

1 (g) IN SPITE OF THIS, THE MAJORITY OF FOSSIL FUEL PRODUCERS
2 ARE NOT ADJUSTING THEIR BUSINESS MODELS TO TAKE INTO ACCOUNT THE
3 CHANGING ENERGY MARKET, AND ARE INSTEAD INVESTING BILLIONS OF
4 DOLLARS IN EXPLORING AND EXTRACTING NEW RESERVES, WHICH IS
5 CREATING STRANDED ASSET RISK AND THE POTENTIAL FOR RAPID,
6 UNEXPECTED, AND SIGNIFICANT LOSS OF VALUE;

7 (h) FOSSIL FUEL PRODUCERS ARE CURRENTLY UNDERPERFORMING
8 COMPARED TO THE BROADER MARKET, BUT EVEN IF THEY WERE TO
9 PRODUCE ACCEPTABLE RETURNS IN THE NEAR TERM, THEY PRESENT UNDUE
10 LONG-TERM RISK THAT COMPELS TRUSTEE ACTION ON BEHALF OF FUTURE
11 BENEFICIARIES;

12 (i) THE FIDUCIARY DUTIES OF THE BOARD OF THE PUBLIC
13 EMPLOYEES' RETIREMENT ASSOCIATION TO FUTURE BENEFICIARIES MAY
14 REASONABLY INCLUDE CONSIDERATION OF THEIR HUMAN INTERESTS,
15 QUALITY OF LIFE, AND PUBLIC SAFETY AND SECURITY, AND THEREFORE
16 MAY MANDATE THAT THE BOARD TRY TO ACCELERATE THE SHIFT AWAY
17 FROM FOSSIL FUELS TO HELP MITIGATE THE FUTURE ADVERSE EFFECTS OF
18 CLIMATE CHANGE;

19 (j) GIVEN THE SYSTEMIC THREAT OF CLIMATE CHANGE TO THE
20 ECONOMY AS A WHOLE, AND THEREFORE TO THE VALUE OF THE PUBLIC
21 EMPLOYEES' RETIREMENT ASSOCIATION'S ENTIRE PORTFOLIO,
22 CONSIDERATION OF THE CLIMATE IMPACT OF CERTAIN INVESTMENTS IS
23 APPROPRIATE;

24 (k) ACCORDING TO THE UNITED STATES DEPARTMENT OF LABOR'S
25 INTERPRETIVE BULLETIN 2015-1, ENVIRONMENTAL ISSUES "MAY HAVE A
26 DIRECT RELATIONSHIP TO THE ECONOMIC VALUE OF THE PLAN'S
27 INVESTMENT. IN THESE INSTANCES, SUCH ISSUES ARE NOT MERELY

1 COLLATERAL CONSIDERATIONS OR TIE-BREAKERS, BUT RATHER ARE
2 PROPER COMPONENTS OF THE FIDUCIARY'S PRIMARY ANALYSIS OF THE
3 ECONOMIC MERITS OF COMPETING INVESTMENT CHOICES". THIS 2015
4 GUIDANCE HAS BEEN UPDATED AND NOW INCLUDES A 2019 RULE
5 RECOGNIZING "THAT THERE ARE INSTANCES WHERE ONE OR MORE
6 ENVIRONMENTAL, SOCIAL, OR GOVERNANCE FACTORS WILL PRESENT AN
7 ECONOMIC BUSINESS RISK OR OPPORTUNITY THAT CORPORATE OFFICERS,
8 DIRECTORS, AND QUALIFIED INVESTMENT PROFESSIONALS WOULD
9 APPROPRIATELY TREAT AS MATERIAL ECONOMIC CONSIDERATIONS UNDER
10 GENERALLY ACCEPTED INVESTMENT THEORIES".

11 (l) THE GENERAL ASSEMBLY HAS SET A PRECEDENT BY REQUIRING
12 THE ASSOCIATION TO DIVEST FROM CERTAIN INDUSTRIES IN THE PAST DUE
13 TO THE MORAL IMPLICATIONS OF THEIR BUSINESS MODELS, INCLUDING
14 COMPANIES DOING BUSINESS WITH SUDAN, COMPANIES THAT BOYCOTTED
15 ISRAEL, AND COMPANIES DOING BUSINESS WITH IRAN, ALL WHILE
16 ALLOWING THE ASSOCIATION TO COMPLY WITH ITS FIDUCIARY
17 OBLIGATIONS; AND

18 (m) OVER ONE THOUSAND TWO HUNDRED INSTITUTIONAL
19 INVESTORS REPRESENTING MORE THAN FOURTEEN TRILLION DOLLARS IN
20 HOLDINGS HAVE CHOSEN TO PURSUE FULL OR PARTIAL DIVESTMENT FROM
21 FOSSIL FUEL PRODUCERS.

22 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
23 THE INTENT OF THIS PART 3 IS TO REQUIRE THE PUBLIC EMPLOYEES'
24 RETIREMENT ASSOCIATION TO TAKE AVAILABLE STEPS TO AVERT AND
25 MITIGATE CLIMATE CHANGE WHILE ACTING WITHIN THE SCOPE OF ITS
26 FIDUCIARY OBLIGATIONS.

27 **24-54.8-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE

1 CONTEXT OTHERWISE REQUIRES:

2 (1) "ASSOCIATION" MEANS THE PUBLIC EMPLOYEES' RETIREMENT
3 ASSOCIATION, CREATED IN ARTICLE 51 OF THIS TITLE 24.

4 (2) "BOARD" MEANS THE BOARD OF TRUSTEES OF THE PUBLIC
5 EMPLOYEES' RETIREMENT ASSOCIATION CREATED IN SECTION 24-51-202.

6 (3) "DIRECT INVESTMENT" MEANS PUBLICLY TRADED SECURITIES
7 OF A COMPANY HELD DIRECTLY BY THE ASSOCIATION IN AN ACTIVELY
8 MANAGED ACCOUNT.

9 (4) "EXCLUSION LIST" MEANS THE LIST CREATED PURSUANT TO
10 SECTION 24-54.8-304.

11 (5) "FOSSIL FUEL COMPANY" MEANS A COMPANY IDENTIFIED BY A
12 GLOBAL INDUSTRY CLASSIFICATION STANDARD CODE IN ONE OF THE
13 FOLLOWING SECTORS:

14 (a) COAL AND CONSUMABLE FUELS;

15 (b) INTEGRATED OIL AND GAS; OR

16 (c) EXPLORATION AND PRODUCTION.

17 (6) "FUND" MEANS THE TOTAL ASSETS OF THE ASSOCIATION THAT
18 ARE CREDITED TO THE VARIOUS TRUST FUNDS ESTABLISHED AND INVESTED
19 BY THE ASSOCIATION PURSUANT TO THE PROVISIONS OF ARTICLE 51 OF
20 THIS TITLE 24.

21 (7) "INDIRECT INVESTMENT" MEANS PUBLICLY TRADED SECURITIES
22 OF A COMPANY HELD IN AN ACTIVELY MANAGED COMMINGLED ACCOUNT,
23 IN WHICH THE ASSOCIATION OWNS SHARES OR INTERESTS TOGETHER WITH
24 OTHER INVESTORS NOT SUBJECT TO THE PROVISIONS OF THIS PART 3.

25 (8) "PUBLICLY TRADED SECURITIES" MEANS OWNERSHIP INTEREST
26 OR DEBT INSTRUMENTS THAT ARE CURRENTLY TRADED ON A SECURITIES
27 EXCHANGE THAT IS OFFICIALLY RECOGNIZED, SANCTIONED, OR

1 SUPERVISED BY A GOVERNMENTAL AUTHORITY OF THE COUNTRY IN WHICH
2 THE MARKET IS LOCATED OR CURRENTLY TRADED THROUGH THE UNITED
3 STATES OVER-THE-COUNTER MARKET THAT IS REFLECTED BY THE
4 EXISTENCE OF AN INTERDEALER QUOTATION SYSTEM.

5 **24-54.8-304. Fossil fuel company exclusion list.** (1) WITHIN SIX
6 MONTHS OF THE EFFECTIVE DATE OF THIS PART 3, THE BOARD SHALL
7 CREATE AN EXCLUSION LIST OF ALL FOSSIL FUEL COMPANIES IN WHOSE
8 STOCKS, SECURITIES, EQUITIES, ASSETS, OR OTHER OBLIGATIONS THE
9 ASSOCIATION HAS ANY MONEY OR ASSETS DIRECTLY INVESTED.

10 (2) UPON COMPLETION OF THE EXCLUSION LIST, THE BOARD SHALL
11 MAKE THE LIST AVAILABLE TO THE PUBLIC ON ITS WEBSITE AND SHALL
12 PROVIDE A COPY TO EACH MEMBER OF THE PENSION REVIEW COMMISSION
13 OF THE GENERAL ASSEMBLY.

14 (3) THE BOARD SHALL SUBMIT NOTIFICATION TO ANY
15 CORPORATION OR COMPANY THAT HAS BEEN INCLUDED IN THE EXCLUSION
16 LIST INFORMING THEM OF THEIR INCLUSION, AS WELL AS THE
17 REQUIREMENTS OF SECTIONS 24-54.8-305 AND 24-54.8-307.

18 (4) THE ASSOCIATION SHALL REFER TO THE GLOBAL INDUSTRY
19 CLASSIFICATION STANDARD CATEGORIES TO DETERMINE DIVESTIBLE
20 FOSSIL FUEL COMPANIES, INCLUDING ENERGY EQUIPMENT AND SERVICES;
21 OIL AND GAS DRILLING; OIL AND GAS EQUIPMENT AND SERVICES; OIL, GAS,
22 AND CONSUMABLE FUELS; INTEGRATED OIL AND GAS; OIL AND GAS
23 EXPLORATION AND PRODUCTION; OIL AND GAS REFINING AND MARKETING;
24 OIL AND GAS STORAGE AND TRANSPORTATION; AND COAL AND
25 CONSUMABLE FUELS.

26 (5) AT THE BOARD'S DISCRETION, BUT NO LATER THAN TWO YEARS
27 AFTER THE COMPLETION OF THE EXCLUSION LIST, AND NO LESS

1 FREQUENTLY THAN BIENNIALLY THEREAFTER, THE BOARD SHALL UPDATE
2 THE EXCLUSION LIST TO REMOVE ANY CORPORATION OR COMPANY THAT
3 IS NO LONGER A FOSSIL FUEL COMPANY AND ADD ANY CORPORATION OR
4 COMPANY NECESSARY TO COMPLY WITH SUBSECTION (1) OF THIS SECTION;
5 EXCEPT THAT ANY CORPORATION OR COMPANY REMOVED FROM THE
6 EXCLUSION LIST PURSUANT TO SECTION 24-54.8-306 (2) SHALL NOT BE
7 INCLUDED ON THE EXCLUSION LIST.

8 **24-54.8-305. Removal from the fossil fuel company exclusion**
9 **list.** (1) AT ANY TIME FOLLOWING THE PUBLICATION OF THE EXCLUSION
10 LIST PURSUANT TO SECTION 24-54.8-304, ANY CORPORATION OR COMPANY
11 INCLUDED IN THE EXCLUSION LIST MAY SUBMIT TO THE BOARD A REQUEST
12 FOR REMOVAL ON THE BASIS OF CLEAR AND CONVINCING EVIDENCE THAT
13 THEY ARE NOT CURRENTLY FOSSIL FUEL COMPANIES OR THAT THEY WILL
14 NO LONGER MEET SUCH DEFINITION BY JANUARY 1, 2031.

15 (2) UPON SATISFACTION THAT A CORPORATION OR COMPANY
16 MEETS THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, THE
17 BOARD SHALL REMOVE THAT CORPORATION OR COMPANY FROM THE
18 EXCLUSION LIST AND PROVIDE A WRITTEN EXPLANATION FOR SUCH
19 REMOVAL TO THE MEMBERS OF THE PENSION REVIEW COMMISSION OF THE
20 GENERAL ASSEMBLY.

21 **24-54.8-306. Determination of prudence.** (1) WITHIN SIX
22 MONTHS FROM THE COMPLETION OF THE EXCLUSION LIST, THE BOARD
23 SHALL ISSUE A DETERMINATION AS TO WHETHER DIVESTMENT FROM ANY
24 OR ALL CORPORATIONS OR COMPANIES ON THE EXCLUSION LIST, IN WHOLE
25 OR IN PART, PURSUANT TO SECTION 24-54.8-305 COMPLIES WITH THE
26 BOARD'S FIDUCIARY OBLIGATIONS AS SPECIFIED IN SECTION 24-51-207.
27 THE BOARD SHALL MAKE SUCH DETERMINATION AVAILABLE TO THE

1 PUBLIC ON ITS WEBSITE AND SEND A COPY TO EACH MEMBER OF THE
2 PENSION REVIEW COMMISSION OF THE GENERAL ASSEMBLY.

3 (2) IF THE BOARD DETERMINES THAT DIVESTMENT FROM ANY
4 CORPORATION OR COMPANY ON THE EXCLUSION LIST DOES NOT COMPLY
5 WITH ITS FIDUCIARY OBLIGATIONS AS SPECIFIED IN SECTION 24-51-207,
6 THAT CORPORATION OR COMPANY SHALL BE REMOVED FROM THE
7 EXCLUSION LIST.

8 (3) AT ANY TIME, SUBJECT TO THE BOARD'S DISCRETION, BUT NO
9 LATER THAN FIVE YEARS AND SIX MONTHS FROM THE EFFECTIVE DATE OF
10 THIS PART 3, AND EVERY FIVE YEARS THEREAFTER, ANY CORPORATION OR
11 COMPANY REMOVED FROM THE EXCLUSION LIST PURSUANT TO SUBSECTION
12 (2) OF THIS SECTION SHALL BE RETURNED TO THE EXCLUSION LIST IF THE
13 BOARD DETERMINES PURSUANT TO SUBSECTION (1) OF THIS SECTION THAT
14 DIVESTMENT FROM THE CORPORATION OR COMPANY COMPLIES WITH THE
15 BOARD'S FIDUCIARY OBLIGATIONS AS SPECIFIED IN SECTION 24-51-207.

16 **24-54.8-307. Divestment.** (1) COMMENCING IMMEDIATELY AFTER
17 THE EFFECTIVE DATE OF THIS PART 3, SUBJECT TO AN AFFIRMATIVE
18 DETERMINATION OF PRUDENCE PURSUANT TO SECTION 24-54.8-306, AND
19 IN ACCORDANCE WITH SOUND INVESTMENT CRITERIA AND CONSISTENT
20 WITH THE BOARD'S FIDUCIARY OBLIGATIONS, THE BOARD SHALL:

21 (a) DIVEST THE FUND OF ANY STOCKS, SECURITIES, EQUITIES,
22 ASSETS, OR OTHER OBLIGATIONS OF CORPORATIONS OR COMPANIES ON THE
23 EXCLUSION LIST IN WHICH ANY MONEY OR ASSETS OF THE FUND ARE
24 DIRECTLY INVESTED; AND

25 (b) CEASE NEW DIRECT INVESTMENTS OF ANY MONEY OR ASSETS
26 OF THE FUND IN ANY STOCKS, SECURITIES, OR OTHER OBLIGATIONS OF ANY
27 CORPORATION OR COMPANY THAT IS A FOSSIL FUEL COMPANY.

1 (2) DIVESTMENT FROM FOSSIL FUEL COMPANIES PURSUANT TO THIS
2 SECTION SHALL BE COMPLETED NO LATER THAN FIVE YEARS FROM THE
3 EFFECTIVE DATE OF THIS PART 3. DIVESTMENT FROM FOSSIL FUEL
4 COMPANIES RETURNED TO THE EXCLUSION LIST PURSUANT TO SECTION
5 24-54.8-306 (3) SHALL BE COMPLETED NO LATER THAN FIVE YEARS FROM
6 THE DATE OF RETURN TO THE EXCLUSION LIST.

7 **24-54.8-308. Limitations on indirect investment.** COMMENCING
8 ONE YEAR AFTER THE EFFECTIVE DATE OF THIS PART 3, AND NO LATER
9 THAN FIVE YEARS FROM THE EFFECTIVE DATE OF THIS PART 3, SUBJECT TO
10 AN AFFIRMATIVE DETERMINATION OF PRUDENCE PURSUANT TO SECTION
11 24-54.8-306 AND IN ACCORDANCE WITH SOUND INVESTMENT CRITERIA
12 AND CONSISTENT WITH ITS FIDUCIARY OBLIGATIONS, THE BOARD SHALL
13 ENDEAVOR TO ENSURE THAT NO MONEY OR ASSETS OF THE FUND ARE
14 INVESTED IN AN INDIRECT INVESTMENT VEHICLE UNLESS THE BOARD IS
15 SATISFIED ON REASONABLE GROUNDS THAT SUCH INDIRECT INVESTMENT
16 VEHICLE IS UNLIKELY TO HAVE IN EXCESS OF TWO PERCENT OF ITS ASSETS,
17 AVERAGED ANNUALLY, DIRECTLY OR INDIRECTLY INVESTED IN FOSSIL
18 FUEL COMPANIES.

19 **24-54.8-309. Other legal obligations - immunity.** (1) WITH
20 RESPECT TO ACTIONS TAKEN IN COMPLIANCE WITH THIS PART 3, INCLUDING
21 ALL GOOD FAITH DETERMINATIONS REGARDING COMPANIES AS REQUIRED
22 BY THIS PART 3, THE ASSOCIATION SHALL BE EXEMPT FROM ANY
23 CONFLICTING STATUTORY OR COMMON LAW OBLIGATIONS, INCLUDING ANY
24 SUCH OBLIGATIONS IN RESPECT TO CHOICE OF ASSET MANAGERS,
25 INVESTMENT FUNDS, OR INVESTMENTS FOR THE PUBLIC FUND'S SECURITIES
26 PORTFOLIOS.

27 (2) WITH RESPECT TO ALL ACTIONS TAKEN IN GOOD FAITH

1 COMPLIANCE WITH THIS PART 3, THE ASSOCIATION, ITS BOARD OF
2 DIRECTORS, INDIVIDUAL BOARD MEMBERS, AGENTS, TRUSTEES, OFFICERS,
3 EMPLOYEES, CUSTODIANS, AND FIDUCIARIES SHALL BE IMMUNE FROM ANY
4 LIABILITY.

5 **24-54.8-310. Reporting.** COMMENCING TWO YEARS AFTER THE
6 EFFECTIVE DATE OF THIS PART 3 AND ANNUALLY THEREAFTER, THE BOARD
7 SHALL ISSUE A REPORT TO THE MEMBERS OF THE PENSION REVIEW
8 COMMISSION OF THE GENERAL ASSEMBLY OUTLINING ALL ACTIONS TAKEN
9 TO COMPLY WITH THE REQUIREMENTS OF THIS PART 3. THE BOARD SHALL
10 MAKE THE REPORT AVAILABLE TO THE PUBLIC ON THE ASSOCIATION'S
11 WEBSITE.

12 **SECTION 2. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, or safety.