

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0210.01 Nicole Myers x4326

HOUSE BILL 21-1237

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HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101     **CONCERNING THE CREATION OF A COMPETITIVE PHARMACY BENEFITS  
102     MANAGER MARKETPLACE.**

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

The department of personnel (department) is required to contract for the services of a pharmacy benefit manager (PBM) for group benefit plans provided pursuant to the "State Employees Group Benefits Act" (state employee group benefits plans) and to procure a technology platform with the required capabilities for conducting a PBM reverse auction and the related services of a technology platform operator.

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.*

The department is required to repurpose the technology platform used to conduct the reverse auction over the duration of the PBM services contract to perform reviews of all invoiced PBM prescription drug claims, and to identify all deviations from the specific terms of the PBM services contract. The department is required to reconcile the electronically adjudicated pharmacy claims with PBM invoices to ensure that state payments do not exceed the terms specified in any PBM services contract.

Each PBM reverse auction is required to be completed and the PBM services contract awarded to the winning PBM within a specified timeline.

The department may perform a market check for providing PBM services during the term of the current PBM services contract to ensure continuing competitiveness of incumbent prescription drug pricing over the life of a PBM services contract.

To ensure that the department does not incur additional expenditures associated with the requirements of the bill, the department is required to implement a no-pay option that obligates the winning PBM to pay the cost of the technology platform and related technology platform operator services by assessing a per-prescription fee and requiring the PBM to pay these fees to the technology operator over the duration of the PBM services contract.

The bill allows other health plans to use the processes and procedures established in the bill individually, collectively, or as a joint purchasing group with the state employee group benefits plans.

After completion of the first state employees group benefits plans PBM reverse auction, self-funded private sector employer or multi-employer health plans have the option to participate in a joint purchasing pool with state employees for conduct of subsequent PBM reverse auctions.

The state employees group benefits plans and any self-funded public or private sector health plans that opt to participate with the state employees group benefits plans in a joint PBM reverse auction purchasing pool shall retain full autonomy over determination of their respective prescription drug formularies and pharmacy benefit designs and shall not be required to adopt a common prescription drug formulary or common prescription pharmacy benefit design.

Any PBM providing services to the department or a self-funded public or private sector employee health plan is required to provide the department and the plan access to complete pharmacy claims data necessary to conduct the reverse auction and carry out their administrative and management duties.

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

1                   **SECTION 1.** In Colorado Revised Statutes, **add** part 12 to article  
2       50 of title 24 as follows:

## PART 12

# COLORADO COMPETITIVE PHARMACY BENEFIT MANAGERS MARKETPLACE

**24-50-1201. Short title.** THE SHORT TITLE OF THIS PART 12 IS THE  
"COLORADO COMPETITIVE PHARMACY BENEFIT MANAGERS  
MARKETPLACE ACT".

9                   **24-50-1202. Legislative declaration - intent.** (1) THE GENERAL  
10                  ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS THE INTENT OF THIS  
11                  ACT TO OPTIMIZE PRESCRIPTION DRUG SAVINGS BY THE STATE BY  
12                  REQUIRING THE FOLLOWING:

13 (a) THE ADOPTION OF A DYNAMICALLY COMPETITIVE REVERSE  
14 AUCTION PROCESS FOR STATE HEALTH PLAN SELECTION OF PHARMACY  
15 BENEFIT MANAGERS;

16 (b) THE ELECTRONIC REVIEW AND VALIDATION OF PHARMACY  
17 BENEFIT MANAGER CLAIMS AS THE FOUNDATION FOR RECONCILING  
18 PHARMACY BILLS; AND

19 (c) THE TECHNOLOGY-DRIVEN EVALUATION OF INCUMBENT  
20 PHARMACY BENEFIT MANAGER PRESCRIPTION DRUG PRICING BASED ON  
21 BENCHMARK COMPARATORS DERIVED FROM PHARMACY BENEFIT  
22 MANAGER REVERSE AUCTION PROCESSES CONDUCTED IN THE UNITED  
23 STATES OVER THE PREVIOUS TWELVE MONTHS.

24           **24-50-1203. Definitions.** AS USED IN THIS PART 12, UNLESS THE  
25           CONTEXT OTHERWISE REQUIRES:

26 (1) "AWP" MEANS AVERAGE WHOLESALE PRICE.

27 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PERSONNEL.

1 (3) "GNC" MEANS GUARANTEED NET COST.

2 (4) "MARKET CHECK" MEANS A TECHNOLOGY-DRIVEN  
3 EVALUATION OF AN INCUMBENT PBM'S PRESCRIPTION DRUG PRICING  
4 BASED ON BENCHMARK COMPARATORS DERIVED FROM PBM REVERSE  
5 AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE  
6 PREVIOUS TWELVE MONTHS.

7 (5) "NADAC" MEANS NATIONAL AVERAGE DRUG ACQUISITION  
8 COST.

9 (6) "NIST" MEANS NATIONAL INSTITUTE OF STANDARDS AND  
10 TECHNOLOGY.

17 (8) "PHARMACY BENEFIT MANAGER" OR "PBM" MEANS A PERSON,  
18 BUSINESS, OR OTHER ENTITY THAT, PURSUANT TO A CONTRACT WITH A  
19 HEALTH CARE SERVICE PLAN, MANAGES, IN WHOLE OR THROUGH A  
20 COORDINATION OF SERVICE PROVIDERS, THE PRESCRIPTION DRUG  
21 COVERAGE PROVIDED BY THE HEALTH CARE SERVICE PLAN, INCLUDING,  
22 BUT NOT LIMITED TO, THE PROCESSING AND PAYMENT OF CLAIMS FOR  
23 PRESCRIPTION DRUGS, THE PERFORMANCE OF DRUG UTILIZATION REVIEW,  
24 THE PROCESSING OF PRIOR AUTHORIZATION REQUESTS FOR SPECIFIED  
25 DRUGS, THE ADJUDICATION OF APPEALS OR GRIEVANCES RELATED TO  
26 PRESCRIPTION DRUG COVERAGE, CONTRACTING WITH NETWORK  
27 PHARMACIES, AND CONTROLLING THE COST OF COVERED PRESCRIPTION

1 DRUGS.

2 (9) "PBM REVERSE AUCTION" MEANS AN AUTOMATED,  
3 TRANSPARENT, AND DYNAMICALLY COMPETITIVE BIDDING PROCESS  
4 CONDUCTED ONLINE THAT STARTS WITH AN OPENING ROUND OF BIDS AND  
5 ALLOWS QUALIFIED PBM BIDDERS TO COUNTER-OFFER A LOWER PRICE FOR  
6 AS MANY ROUNDS OF BIDDING AS DETERMINED BY THE DEPARTMENT FOR  
7 A MULTIPLE HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP.

8 (10) "PRICE" MEANS THE PROJECTED COST OF A PBM OFFER OR BID  
9 FOR PROVIDING PRESCRIPTION DRUG BENEFITS PURSUANT TO THIS PART 12,  
10 TO ENABLE DIRECT COMPARISON OF THE COMPARABLY CALCULATED COSTS  
11 OF COMPETING PBM PROPOSALS OVER THE DURATION OF THE PBM  
12 SERVICES CONTRACT.

13 (11) "REAL-TIME" MEANS WITHIN NO MORE THAN ONE HOUR.

14 (12) "SELF-FUNDED PRIVATE SECTOR HEALTH PLAN" MEANS ANY  
15 SELF-FUNDED PRIVATE SECTOR EMPLOYER OR MULTI-EMPLOYER HEALTH  
16 PLAN.

17 (13) "SELF-FUNDED PUBLIC SECTOR HEALTH PLAN" MEANS ANY  
18 GROUP BENEFIT PLAN PROVIDED PURSUANT TO THE "STATE EMPLOYEES  
19 GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50; ANY STATE-FUNDED  
20 HEALTH PLAN OR SELF-FUNDED COUNTY, MUNICIPAL, OR OTHER LOCAL  
21 GOVERNMENT EMPLOYEE HEALTH PLAN; AND ANY PUBLIC SCHOOL  
22 EMPLOYEE HEALTH PLAN, HEALTH PLAN OF THE UNIVERSITY OF  
23 COLORADO, COLORADO PUBLIC FOUR-YEAR COLLEGE, OR COLORADO  
24 COMMUNITY COLLEGE SYSTEM.

25 (14) "SOC 2" MEANS SERVICE ORGANIZATION CONTROL 2.

26 **24-50-1204. Competitive pharmacy benefit manager - contract**  
27 **- requirements.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,

1 THE DEPARTMENT SHALL ENTER INTO A CONTRACT FOR THE SERVICES OF  
2 A PHARMACY BENEFIT MANAGER FOR THE ADMINISTRATION OF BENEFITS  
3 UNDER THE "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS  
4 ARTICLE 50, IN A TRANSPARENT, ONLINE, AND DYNAMICALLY COMPETITIVE  
5 PROCESS AND IN THE MANNER SPECIFIED IN THIS SECTION.

6 (2) PRIOR TO NOVEMBER 1, 2021, THE DEPARTMENT SHALL  
7 PROCURE, THROUGH THE SOLICITATION OF PROPOSALS FROM QUALIFIED  
8 PROFESSIONAL SERVICES VENDORS, THE FOLLOWING PRODUCTS AND  
9 SERVICES BASED ON PRICE, CAPABILITIES, AND OTHER FACTORS DEEMED  
10 RELEVANT BY THE DEPARTMENT:

11 (a) A TECHNOLOGY PLATFORM WITH THE REQUIRED CAPABILITIES  
12 FOR CONDUCTING A PBM REVERSE AUCTION. THE TECHNOLOGY  
13 PLATFORM SHALL, AT A MINIMUM, POSSESS THE CAPACITY TO:

14 (I) CONDUCT AN AUTOMATED, ONLINE, REVERSE AUCTION OF PBM  
15 SERVICES USING A SOFTWARE APPLICATION AND HIGH-PERFORMANCE  
16 DATA INFRASTRUCTURE TO INTAKE, CLEANSE, AND NORMALIZE PBM DATA  
17 WITH DEVELOPMENT METHODS AND INFORMATION SECURITY STANDARDS  
18 THAT HAVE BEEN VALIDATED BY RECEIVING SOC 2 AND NIST  
19 CERTIFICATION;

20 (II) AUTOMATE REPRICING OF DIVERSE AND COMPLEX PBM  
21 PRESCRIPTION DRUG PRICING PROPOSALS TO ENABLE DIRECT COMPARISON  
22 OF THE COMPARABLY CALCULATED COSTS TO THE STATE OF PBM BIDS  
23 USING ONE HUNDRED PERCENT OF ANNUAL PRESCRIPTION DRUG CLAIMS  
24 DATA AVAILABLE FOR STATE-FUNDED HEALTH PLANS OR A MULTIPLE  
25 HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP AND USING  
26 CODE-BASED CLASSIFICATION OF DRUGS FROM NATIONALLY ACCEPTED  
27 DRUG SOURCES;

6 (IV) PRODUCE AN AUTOMATED REPORT AND ANALYSIS OF PBM  
7 BIDS, INCLUDING THE RANKING OF PBM BIDS BASED ON THE COMPARATIVE  
8 COSTS AND QUALITATIVE ASPECTS OF THE BIDS WITHIN A ONE-HOUR  
9 PERIOD FOLLOWING THE CLOSE OF EACH ROUND OF REVERSE AUCTION  
10 BIDDING; AND

11 (V) PERFORM REAL-TIME, ELECTRONIC, LINE-BY-LINE,  
12 CLAIM-BY-CLAIM REVIEW OF ONE HUNDRED PERCENT OF INVOICED PBM  
13 PRESCRIPTION DRUG CLAIMS, AND IDENTIFY ALL DEVIATIONS FROM THE  
14 SPECIFIC TERMS OF THE PBM SERVICES CONTRACT RESULTING FROM THE  
15 RESERVE AUCTION PROCESS; AND

16 (b) RELATED SERVICES FROM THE OPERATOR OF THE TECHNOLOGY  
17 PLATFORM IDENTIFIED IN SUBSECTION (2)(a) OF THIS SECTION, WHICH  
18 SHALL INCLUDE, AT A MINIMUM:

19 (I) EVALUATION OF THE QUALIFICATIONS OF PBM BIDDERS;

20 (II) ONLINE AUTOMATED REVERSE AUCTION SERVICES TO SUPPORT  
21 THE DEPARTMENT IN COMPARING THE PRICING FOR THE PBM  
22 PROCUREMENT; AND

### 23 (III) RELATED PROFESSIONAL SERVICES.

5 (5) THE VENDOR AWARDED THE CONTRACT BY THE DEPARTMENT  
6 SHALL NOT OUTSOURCE ANY PART OF THE PBM REVERSE AUCTION OR THE  
7 AUTOMATED, REAL-TIME, ELECTRONIC, LINE-BY-LINE, CLAIM-BY-CLAIM  
8 REVIEW OF INVOICED PBM PRESCRIPTION DRUG CLAIMS.

9 (6) WITH TECHNICAL ASSISTANCE AND SUPPORT PROVIDED BY THE  
10 TECHNOLOGY PLATFORM OPERATOR, THE DEPARTMENT SHALL SPECIFY THE  
11 TERMS OF THE PARTICIPANT BIDDING AGREEMENT. THE TERMS OF THE  
12 PARTICIPANT BIDDING AGREEMENT SHALL NOT BE MODIFIED EXCEPT BY  
13 SPECIFIC CONSENT OF THE DEPARTMENT.

14 (7) (a) THE TECHNOLOGY PLATFORM USED TO CONDUCT THE  
15 REVERSE AUCTION SHALL BE REPURPOSED OVER THE DURATION OF THE  
16 PBM SERVICES CONTRACT AS AN AUTOMATED PHARMACY CLAIMS  
17 ADJUDICATION ENGINE TO PERFORM REAL-TIME, ELECTRONIC,  
18 LINE-BY-LINE, CLAIM-BY-CLAIM REVIEW OF ONE HUNDRED PERCENT OF  
19 INVOICED PBM PRESCRIPTION DRUG CLAIMS, AND IDENTIFY ALL  
20 DEVIATIONS FROM THE SPECIFIC TERMS OF THE PBM SERVICES CONTRACT.

21 (b) THE DEPARTMENT SHALL RECONCILE THE ELECTRONICALLY  
22 ADJUDICATED PHARMACY CLAIMS, AS DESCRIBED IN SUBSECTION (7)(a) OF  
23 THIS SECTION, WITH PBM INVOICES ON A MONTHLY OR QUARTERLY BASIS  
24 TO ENSURE THAT STATE PAYMENTS SHALL NOT EXCEED THE TERMS  
25 SPECIFIED IN ANY PBM SERVICES CONTRACT.

26 (c) IF FOLLOWING STATE PAYMENT TO THE PBM ON THE BASIS OF  
27 SUCH RECONCILIATION, THE PBM ASSERTS THAT THE DEPARTMENT OR ITS

1 AUTHORIZED REPRESENTATIVE HAS UNDERPAID ON THE AMOUNT OWED,  
2 THE PBM MAY SEEK RESOLUTION THROUGH A MUTUALLY ACCEPTABLE  
3 DISPUTE RESOLUTION PROCESS, WHICH THE PARTIES SHALL HAVE AGREED  
4 TO PREVIOUSLY IN THE TERMS OF THEIR CONTRACT.

5 (8) (a) EACH PBM REVERSE AUCTION SHALL BE COMPLETED AND  
6 THE PBM SERVICES CONTRACT SHALL BE AWARDED TO THE WINNING PBM  
7 NO LATER THAN THREE MONTHS PRIOR TO TERMINATION OR EXPIRATION  
8 OF THE CURRENT PBM SERVICES CONTRACT FOR A COVERED GROUP, SUCH  
9 AS THE STATE EMPLOYEES BENEFITS GROUP, THAT INCLUDES ONLY ACTIVE  
10 EMPLOYEES AND DEPENDENTS, BUT DOES NOT INCLUDE RETIREE  
11 PARTICIPANTS IN A MEDICARE PART D EMPLOYER GROUP WAIVER  
12 PROGRAM PURSUANT TO THE "MEDICARE PRESCRIPTION DRUG,  
13 IMPROVEMENT, AND MODERNIZATION ACT OF 2003", PUB.L. 108-173.

14 (b) IN THE EVENT AN ELIGIBLE COVERED GROUP THAT INCLUDES  
15 RETIREE PARTICIPANTS IN A PART D EMPLOYER GROUP WAIVER PROGRAM  
16 PURSUANT TO THE "MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND  
17 MODERNIZATION ACT OF 2003", PUB.L. 108-173, OPTS TO USE THE  
18 PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12, THE RELEVANT  
19 PBM REVERSE AUCTION SHALL BE COMPLETED AND THE PBM SERVICES  
20 CONTRACT SHALL BE AWARDED TO THE WINNING PBM NO LATER THAN SIX  
21 MONTHS PRIOR TO TERMINATION OR EXPIRATION OF THE PBM SERVICES  
22 CONTRACT CURRENTLY COVERING THE RETIREE EMPLOYER GROUP WAIVER  
23 PROGRAM PARTICIPANTS.

24 (9) THE DEPARTMENT MAY PERFORM A MARKET CHECK FOR  
25 PROVIDING PBM SERVICES DURING THE TERM OF THE CURRENT PBM  
26 SERVICES CONTRACT, WHICH SHALL BE A TECHNOLOGY-DRIVEN  
27 EVALUATION OF THE INCUMBENT PBM'S PRESCRIPTION DRUG PRICING

1 BASED ON BENCHMARK COMPARATORS DERIVED FROM PBM REVERSE  
2 AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE  
3 PREVIOUS TWELVE MONTHS IN ORDER TO ENSURE CONTINUING  
4 COMPETITIVENESS OF INCUMBENT PRESCRIPTION DRUG PRICING OVER THE  
5 LIFE OF A PBM SERVICES CONTRACT.

6 (10) TO ENSURE THAT THE DEPARTMENT DOES NOT INCUR  
7 ADDITIONAL EXPENDITURES ASSOCIATED WITH CONDUCT OF THE PBM  
8 REVERSE AUCTION, ONGOING ELECTRONIC REVIEW AND VALIDATIONS OF  
9 PBM CLAIMS, AND OPTIONAL PERIODIC MARKET CHECKS, THE  
10 DEPARTMENT SHALL IMPLEMENT A NO-PAY OPTION THAT OBLIGATES THE  
11 WINNING PBM, RATHER THAN THE STATE, TO PAY THE COST OF THE  
12 TECHNOLOGY PLATFORM AND RELATED TECHNOLOGY PLATFORM  
13 OPERATOR SERVICES BY ASSESSING THE PBM A PER-PRESCRIPTION FEE IN  
14 AN AMOUNT AGREED TO BY THE DEPARTMENT AND THE TECHNOLOGY  
15 OPERATOR AND REQUIRING THE PBM TO PAY THESE FEES TO THE  
16 TECHNOLOGY OPERATOR OVER THE DURATION OF THE PBM SERVICES  
17 CONTRACT. THE OBLIGATION OF THE WINNING PBM TO PAY THE  
18 PER-PRESCRIPTION FEES SHALL BE INCORPORATED AS A TERM OF THE  
19 PARTICIPANT BIDDING AGREEMENT AND THE PBM SERVICES CONTRACT  
20 AWARDED TO THE PBM REVERSE AUCTION WINNER.

21 (11)(a) THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART  
22 12 APPLY TO GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE  
23 EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50. THIS  
24 PART 12 SHALL NOT APPLY IN THE CASE OF A NONPROFIT,  
25 NONGOVERNMENTAL HEALTH MAINTENANCE ORGANIZATION WITH  
26 RESPECT TO MANAGED CARE PLANS THAT PROVIDE A MAJORITY OF  
27 COVERED PROFESSIONAL SERVICES THROUGH A SINGLE CONTRACTED

1 MEDICAL GROUP.

2 (b) ANY OTHER SELF-FUNDED PUBLIC SECTOR HEALTH PLAN MAY  
3 USE THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12  
4 INDIVIDUALLY, COLLECTIVELY, OR AS A JOINT PURCHASING GROUP WITH  
5 THE GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE  
6 EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50.

7 (c) (I) AFTER COMPLETION OF THE FIRST PBM REVERSE AUCTION,  
8 SELF-FUNDED PRIVATE SECTOR HEALTH PLANS WITH SUBSTANTIAL  
9 PARTICIPATION BY COLORADO EMPLOYEES AND THEIR DEPENDENTS SHALL  
10 HAVE THE OPTION TO PARTICIPATE IN A JOINT PURCHASING POOL WITH  
11 STATE EMPLOYEES FOR SUBSEQUENT PBM REVERSE AUCTIONS.

12 (II) THE GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE  
13 "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50,  
14 AND ANY SELF-FUNDED PUBLIC SECTOR HEALTH PLANS OR SELF-FUNDED  
15 PRIVATE SECTOR HEALTH PLANS THAT OPT TO PARTICIPATE WITH THE  
16 STATE EMPLOYEES GROUP BENEFITS PLAN IN A JOINT PBM REVERSE  
17 AUCTION PURCHASING POOL SHALL RETAIN FULL AUTONOMY OVER  
18 DETERMINATION OF THEIR RESPECTIVE PRESCRIPTION DRUG FORMULARIES  
19 AND PHARMACY BENEFIT DESIGNS AND SHALL NOT BE REQUIRED TO ADOPT  
20 A COMMON PRESCRIPTION DRUG FORMULARY OR COMMON PRESCRIPTION  
21 PHARMACY BENEFIT DESIGN. ANY SUCH ENTITY OR PURCHASING GROUP  
22 SHALL AGREE, BEFORE PARTICIPATING IN THE PBM REVERSE AUCTION, TO  
23 ACCEPT THE PRESCRIPTION DRUG PRICING PLAN THAT IS SELECTED  
24 THROUGH THE PBM REVERSE AUCTION PROCESS.

25 (III) ANY PBM PROVIDING SERVICES TO THE DEPARTMENT, TO  
26 SELF-FUNDED PUBLIC SECTOR HEALTH PLANS, OR TO SELF-FUNDED  
27 PRIVATE SECTOR HEALTH PLANS AS DESCRIBED IN THIS SECTION SHALL

1 PROVIDE THE DEPARTMENT AND THE PLAN ACCESS TO COMPLETE  
2 PHARMACY CLAIMS DATA NECESSARY TO CONDUCT THE REVERSE AUCTION  
3 AND CARRY OUT THEIR ADMINISTRATIVE AND MANAGEMENT DUTIES.

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