

February 27, 1976

Marty:

Thanks for the opportunity to review the Energy Development and Conservation Act.

The following are general comments, more detailed notes are attached.

- a. The concept is good but it may be opposed by the REA cooperatives who consider themselves rather independent. Its applicability to federally related projects or municipal projects is questionable. It is unlikely the latter will be a problem.
- b. Effective implementation will require good funding support. The self-financing concept is attractive but the fee limit of \$150,000. is too low. The provision to account for expenditures and to return what is unused will control abuse, so a .5% of the estimated project cost is reasonable for a fee.
- c. Consolidation of the application requirements and hearings is good. The review process is not overly lengthy.
- d. As counties prefer to use H.B. 1034 as opposed to H.B. 1041, the elimination of the application of H.B. 1041 but the requirement to comply with all other local regulations does not gain much. Requiring compliance with all local regulations may cause problems for the timely development of energy facilities.
- e. The potential for citizen's suits is an excellent motivator for effective implementation, though it is seldom used. Those objecting seem to protest too much; there is adequate protection against harassment.
- f. The requirement to submit long range plans is excellent and can provide a basis for coordinating energy planning with other planning activities. We have got to begin coordinated anticipatory planning.

Best Wishes:



519 EAST GEORGIA AVENUE

• GUNNISON, COLORADO 81230

36-30

- 102 (1) (a) application to transmission facilities is good but will create opposition from the REA cooperatives that are used to being independent.
- how or can this be applied to federal projects such as the Colorado River Storage project?
- (d) siting and construction will affect the state and localities, but can localities evaluate the implications of the information they receive;
- and (2) (a) who is to evaluate the extent of information provided - provision is costly and creates problems for proponents?
- (b) good - the determination of mechanisms and funding prior to development forces decision making, integration of decisions, and permits definition of "capacity" in part 102 (2) (c).
- (d) sometimes there is no choice or opportunity to achieve diversity in economy.
- (e) is "compatible" sufficient to address problems related to trade-offs between use of water for energy production or for agriculture?
- 102 in general sounds great; to implement what is intended will require tough decisions to be made fast, the gathering and use large amounts of data - much by original research, and personpower.
- 103 (1) affected "directly or indirectly" is open ended - impacts can be traced for ever; "significant" is a cop-out word but is useful in this case.
- (2) "person" is defined elsewhere as corporation, etc.? Ok reference (9).
- (5) (b) might be checked in reference to nuclear initiative.
- (7) generally the larger the facility the more economical or lower the unit cost of construction and operation within the energy industry; so the sizes seem reasonable to provide that this act covers the major proposals - unless there is a technological breakthrough which permits development of much smaller facilities. The size limits will not discourage development of small facilities related to solid waste treatment or by-product power production.
- (7) (a) (II) why the difference in size between coverage for a new facility and expansion of an existing one - 50 million cubic feet and 100 million cubic feet of synthetic gas per day? I don't know whether we have one operating in the state now which is of commercial size. This is to apply to coal-gas production but would also apply to the Monfort of Colorado methane production facility which is proposed to treat feedlot waste.
- (c) 115 kilovolts may be too large a size; many are 69 kilovolt systems - reference Electrical Power Plants and Distribution Systems, May 1974, published by the Colorado Land Use Commission as a map.
- 104 (1) (b) the executive directors are already exofficio members of a number of boards; they will need staff just to sit on the boards and represent them. The boards composed of the executive directors does provide the opportunity for needed coordination, such as between weather modification and energy siting. This coordination is essential.

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- 201 (3) (e) How does this process relate to the NEPA environmental impact statement process? At some point the projects covered by the act will normally require an EIS for some aspect of the project, if not for the project itself. Early coordination between the proponent and the Board would be very useful and should begin at the time the design for the environmental evaluation of the project is prepared. Ok, 201 (8) answers some of this, but the identification of the problems to be addressed in the EIS is critical to determining its quality and all parties should coordinate on this aspect.
- (9) The identification of "potential areas of any permit denial" and local  
(10) concerns at this point is great. It lets the proponent know what is going to be looked for in his reports. It starts everyone thinking at an early stage while the development plans are still flexible. This is the opportunity to coordinate.
- 202 (3) A uniform application incorporating the information requirements of all reviewing agencies will greatly reduce "red tape" for proponents and make agencies justify their requirements for information.
- (e) Add methods of enhancing positive environmental impact as for example coordinating the project with other projects or controlling the timing to reduce "boom - bust" cycles.
- (4) (a) The fee could be simply .5% as many projects are over \$30 million and study fees for assessment are high. The refund provision is very good as is the requirement to account for the expenditure of fees. In local government such fees go to the general fund and the proponent does not receive his money's worth in local review.
- 203 (1) (c) A representative of the public interest is a good idea if the person would not be assumed to speak for the public but rather to identify and facilitate public input. A very difficult job it is.
- (3) The opportunity for agency input and public input is good; this would be a chance to get federal input *also*.
- 204 In general the review process is good, particularly the provision for a common hearing, 204 (2) (b), and a hearing in the general locale, 204 (2) (c).
- (3) This forces action by the agencies but leaves open the question of what happens when and agency will not issue a permit but the board approves.
- (5) (a) This is saying that H.B. 1041 does not apply, but there could be problems satisfying regulations under the H.B. 1034 approach favored by most counties. Local governments could pose a major problem for the timely development of energy facilities if their every regulation is met.
- 207 This and 212 are related. When agencies are short handed and under funded, other agencies are a useful prod in activating concern for a problem. If the other agencies are told to keep out or not monitor activities over which the inactive have responsibility, the citizen's right to seek mandamus is an essential back-up system. This approach is incorporated into the 1972 Water Quality Act on the federal level.

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missing*

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STATE OF COLORADO

BY REPRESENTATIVE Hogan

*Rec 23.00  
amend  
23.00  
and 27*

*Butch  
Let me know what  
you think. Marty*

*Hi Butch &  
Judy  
Marilyn*

A BILL FOR AN ACT

1 ESTABLISHING A STATE ENERGY FACILITY SITING PROGRAM.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Enacts the "Energy Development and Conservation Act" to establish a state energy facility siting program. Declares that state energy development and conservation policy requires a full assessment of the impact of a proposed energy facility upon the state and affected local governments. Requires that any person proposing to construct an energy facility obtain a siting permit from the energy facility siting board. Provides for notices, investigations, and reports by the department of natural resources, investigations and comments from local governments, and for public comment concerning the granting or denial of a siting permit. Provides procedures for advance meetings between an applicant and the board and the department and for the receipt of public comment before actual application for a siting permit is made. The granting of a siting permit for the construction and operation of an energy facility may include such conditions as the board deems appropriate. Exempts persons having a permit from having to obtain a development permit from local government to engage in development in an area of state interest or to conduct an activity of state interest.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. Title 36, Colorado Revised Statutes 1973, as  
4 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

5 ARTICLE 30

6 Energy Development and Conservation

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

PART 1

GENERAL PROVISIONS

36-30-101. Short title. This article shall be known and may be cited as the "Energy Development and Conservation Act".

36-30-102. Legislative declaration - state energy development and conservation policy. (1) The general assembly finds and declares that:

(a) The siting of major facilities to generate, convert, enrich, and transmit energy is a matter in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state;

(b) The prudent use of the state's natural resources to meet energy needs is essential to the general welfare of the people of the state, the maintenance of a productive and diverse economy, the beneficial exchange of goods and services with other states, and the maintenance of a quality of life cherished by the people of the state;

(c) The siting and construction of major energy facilities will have substantial impact upon the use of the state's natural resources, on population concentration, on the ability of the state and local governments to provide necessary public services, and on the overall environmental quality of the state; and

(d) The siting and construction of major energy facilities will have environmental and socioeconomic impacts that will profoundly affect this state. Therefore, the state and local governments shall be vested with the authority to have full

1 knowledge of the impact and to mitigate its adverse effects.

2 (2) It is the policy of the state and the intent of the  
3 general assembly that:

4 (a) A full assessment of the impact of a proposed energy  
5 facility must be provided by the proponent which shall include  
6 all environmental impacts as well as all potential direct and  
7 indirect costs to municipalities, counties, and the state which  
8 will be likely to result from the proposed facility;

9 (b) Mechanisms and funds for dealing with all direct and  
10 indirect costs resulting from the proposed facility as well as  
11 the utilization of the best technology available for commercial  
12 application to mitigate adverse environmental impact shall be  
13 determined prior to developments;

14 (c) The pace and magnitude of growth caused by energy  
15 resource development shall not exceed the capacity of state and  
16 local governments to mitigate and absorb the adverse  
17 environmental, economic, and social impacts of such growth;

18 (d) Economic diversity shall be maintained in the state and  
19 in areas affected by energy resource development;

20 (e) Development of the state's energy resources shall be  
21 compatible with other uses of the state's land, air, and water  
22 resources, such as food and fiber production and recreation, and  
23 with the maintenance of scenery and wildlife habitats;

24 (f) The cost of growth impacts caused by energy resource  
25 development shall not be unfairly borne by local residents and  
26 industries;

27 (g) The state should embark on a comprehensive, long-range

1 assessment and planning process for the development of energy  
2 which recognizes the needs of future generations and the limits  
3 to economic growth based on the consumptive use of nonrenewable  
4 resources; and

5 (h) In order to establish and consolidate the state's role  
6 and responsibility for conservation and development of energy  
7 resources and to ensure that the location, construction, and  
8 operation of energy facilities will produce minimal adverse  
9 effects on the environment and upon the citizens of this state,  
10 no energy facility shall hereafter be constructed in this state  
11 without a siting permit acquired pursuant to this article.

12 36-30-103. Definitions. As used in this article, unless  
13 the context otherwise requires:

14 (1) "Affected local governments" means any unit of local  
15 government which would receive physical, environmental, social,  
16 economical, or other substantial impact, directly or indirectly,  
17 as a result of the locating, constructing, or operation of an  
18 energy facility.

19 (2) "Applicant" means any person who submits an application  
20 for certification of an energy facility pursuant to provisions of  
21 this article.

22 (3) "Application" means any request for a permit to locate,  
23 construct, and operate an energy facility which is filed in  
24 accordance with the procedures established by this article.

25 (4) "Board" means the energy facility siting board created  
26 pursuant to this article.

27 (5) "Construction" means:



1 (a) Any on-site clearing of land, excavation, construction,  
2 or other action that would affect the physical nature of a site,  
3 but does not include:

4 (I) The installation of environmental monitoring equipment;

5 (II) A soil or geological investigation;

6 (III) A topographical survey;

7 (IV) Any other study or investigation to determine the  
8 environmental acceptability or feasibility of the site for a  
9 particular energy facility;

10 (V) Any work to provide access to a site for any of the  
11 purposes specified in subparagraphs (I) to (IV) of this paragraph

12 (a).

13 (b) Any physical preparation for the detonation of any  
14 nuclear device for the purpose of developing an energy resource.

15 (6) "Department" means the department of natural resources.

16 (7) "Energy facility" means:

17 (a) Any energy-generating, energy-conversion, or  
18 demonstration facility:

19 (I) Designed for or capable of generating one hundred  
20 megawatts of electricity or more or any enlargement or addition  
21 of units increasing the capacity of an existing facility by at  
22 least one hundred megawatts of electricity;

23 (II) Designed for or capable of producing fifty million  
24 cubic feet of synthetic gas per day or more or any enlargement  
25 increasing the capacity of an existing facility by at least one  
26 hundred million cubic feet of synthetic gas per day;

27 (III) Designed for or capable of producing ten thousand

1 barrels per day or more of synthetic crude processed from shale  
2 rock; or

3 (IV) Designed for or capable of enriching uranium minerals  
4 from  $U_3O_8$  (yellow cake) in quantities exceeding five hundred  
5 pounds of  $U_3O_8$  per day;

6 (b) Any in situ gasification or liquification of coal;

7 (c) Any electric transmission line and appurtenant  
8 facilities of a design capacity of more than one hundred fifteen  
9 kilovolts;

10 (d) Any pipeline and associated facilities designed for or  
11 capable of transporting gas, coal slurry, or liquid hydrocarbon  
12 products from or to any energy facility as such is defined in  
13 paragraphs (a) and (b) of this subsection (7), whether or not  
14 such energy facility is located within or without this state, and  
15 any such pipeline located in more than one county; or

16 (e) Any nuclear fuel reprocessing plant, waste storage and  
17 disposal facility, or nuclear fuel fabricating plant.

18 (8) "Executive director" means the executive director of  
19 the department of natural resources.

20 (9) "Person" means an individual, corporation, government  
21 or governmental subdivision or agency, business trust, estate,  
22 trust, partnership, association, or other legal entity.

23 (10) "Site" means any location upon which an energy  
24 facility or associated facilities are constructed or are proposed  
25 to be constructed.

26 (11) "Siting permit" means a permit granted pursuant to the  
27 provisions of this article authorizing the site of an energy

1 facility.

2 36-30-104. Board created. (1) (a) There is hereby created  
3 within the department of natural resources the energy facility  
4 siting board which shall exercise its powers, duties, and  
5 functions as if transferred to said department by a type 1  
6 transfer. The board shall consist of seven members who shall be  
7 appointed in the manner and serve for the terms set forth in this  
8 section. The board shall assume its duties July 1, 1976, and all  
9 terms of the board members shall commence on that date.

10 (b) The board shall include the executive directors of the  
11 departments of health, agriculture, local affairs, and natural  
12 resources. In addition, the governor shall appoint three  
13 citizens of the state of Colorado, who shall be confirmed by the  
14 senate.

15 (2) The terms of office for the three members appointed  
16 from citizens of the state shall be for four years. Any board  
17 member vacancies shall be filled by appointment by the governor  
18 with confirmation by the senate for the unexpired term.

19 (3) The governor shall appoint a chairman from among the  
20 members of the board.

21 36-30-105. Powers and duties of the board. (1) The board  
22 shall have the following powers and duties:

23 (a) To hold hearings upon and adopt rules concerning  
24 applications for siting permits to construct energy facilities  
25 and the basis upon which the board will ultimately decide to  
26 grant or deny said permits;

27 (b) To grant or deny siting permits for the construction of

1 energy facilities in accordance with the procedures set forth in  
2 this article;

3 (c) To assist the department in developing policies and  
4 rules to effectuate the state energy development and conservation  
5 policy set forth in section 36-30-102;

6 (d) To keep abreast with the most recent technology  
7 concerning the locating, constructing, and operating of energy  
8 facilities;

9 (e) To assist the department in enforcing the provisions of  
10 this article, the rules promulgated under this article, and any  
11 order of the board;

12 (f) To issue appropriate orders in furtherance of its  
13 duties given in this article;

14 (g) To give its opinion concerning any finding or decision  
15 of the board when deemed necessary or proper;

16 (h) To perform all duties given to it by this article and  
17 any necessary acts related to such duties;

18 (i) To perform such other duties as may lawfully be  
19 assigned to it.

20 36-30-106. Administration - promulgation of rules -  
21 delegation of duties. (1) The executive director is authorized  
22 to promulgate such rules as are necessary for the administration  
23 of this article in accordance with article 4 of title 24, C.R.S.  
24 1973.

25 (2) The powers and duties of the executive director may be  
26 delegated to qualified employees of the department.

PART 2

STATE PERMIT AND REVIEW PROCESS

1  
2  
3 36-30-201. Preapplication process. (1) All persons  
4 proposing to make application for a siting permit for the  
5 construction of an energy facility should consult with the board  
6 and the department at the earliest possible date. For such  
7 consultation the department shall bring together all the  
8 appropriate state agencies to discuss the permit process with the  
9 developer, and the various state agencies involved shall begin to  
10 assemble the required baseline data prior to formal application.

11 (2) Any person proposing to construct an energy facility is  
12 required to file a "notice of intent to apply" with the board at  
13 least six months prior to the date of formal application.

14 (3) The notice of intent shall include:

15 (a) The location of the proposed site;

16 (b) A description of the type of facility, including its  
17 size, capacity, and estimated cost;

18 (c) A list of the types of fuels to be used and their  
19 intended use;

20 (d) A development schedule; and

21 (e) A list of any federal requirements imposed on the  
22 facility and any other studies the operator may choose to tender.

23 (4) Upon receipt of a notice of intent to apply, the  
24 department shall immediately distribute such notice to all  
25 appropriate state agencies and affected local governments and  
26 shall cause to be published one time in a newspaper of general  
27 circulation in each affected local government an announcement of

1 receipt of the notice of intent to apply.

2 (5) An application fee of five thousand dollars shall  
3 accompany the notice of intent to apply. Such fee shall be used  
4 for the preapplication process and publication of the notice.

5 (6) Upon receipt of the notice by appropriate state  
6 agencies, the department shall arrange for a meeting of such  
7 agencies and the person filing the notice to discuss the nature  
8 and extent of the required application.

9 (7) Within sixty days after receiving the notice, but not  
10 before the termination of the meeting required in subsection (6)  
11 of this section, all state agencies shall tender comments to the  
12 department concerning the proposed application.

13 (8) After the department receives the state agency  
14 comments, the board shall formally meet with the proponent prior  
15 to his making application for a permit to determine the extent to  
16 which a federal environmental impact statement or other documents  
17 prepared by the applicant might suffice for the information  
18 required in the application. Wherever it deems such possible,  
19 the board is to utilize all reports and environmental impact  
20 statements required of the developer in place of original  
21 information required by this process. The board shall also  
22 determine the amount of the application fee pursuant to section  
23 36-30-202 (4).

24 (9) The board shall use the formal preapplication meeting  
25 to note potential areas of any permit denial by a state agency  
26 based on comments from state agencies and may request certain  
27 additional information in the application. The board shall have

1 the responsibility to determine that local residents, locally  
2 elected officials, and appropriate regional governments are  
3 sufficiently aware of the intent of the proponent to apply for a  
4 permit to construct an energy facility.

5 (10) Members of the public shall be allowed to comment on  
6 the proposed energy facility during the formal preapplication  
7 meeting between the board and the person filing the notice.

8 36-30-202. Application for siting permit. (1) No person  
9 shall commence the construction of an energy facility without a  
10 siting permit obtained from the board.

11 (2) All applications for a siting permit, together with the  
12 required application fee, shall be tendered to the department.

13 (3) The board shall adopt universal permit application  
14 requirements which will meet the requirements of all other state  
15 agencies requiring individual permits for the energy facility.  
16 The permit application shall include, but not be limited to:

17 (a) A description of the potential hazards which could  
18 affect the health, welfare, and safety of any person of this  
19 state and which could result from the construction or operation  
20 of the facility;

21 (b) Potential direct and indirect socioeconomic impacts of  
22 the development;

23 (c) Benefits derived from the construction and operation of  
24 the facility;

25 (d) Alternatives to construction of the facility and  
26 alternatives to the selected location of the facility;

27 (e) Methods of mitigating the adverse environmental,

1 social, and economic impacts, together with the cost of such  
2 mitigation;

3 (f) A detailed development plan; and

4 (g) Information concerning the utilization of energy  
5 conserving techniques and technology in the construction and  
6 operation of the facility.

7 (4) (a) At the time of filing an application, the applicant  
8 shall pay an application fee to be determined by the board based  
9 upon the estimated cost of investigating, reviewing, processing,  
10 and publishing and posting notices concerning the application.  
11 The fee shall be credited to a siting permit reserve account set  
12 aside and maintained by the state treasurer and used only for the  
13 prompt payment of expenditures incurred by the department for  
14 publication of notices and for posting the proposed site, for  
15 expenditures incurred by affected local governments for  
16 investigations required to be made by the executive director, and  
17 for making any refund due the applicant. The maximum fee  
18 chargeable shall not exceed one-half of one percent of the  
19 estimated construction cost of the energy facility or one hundred  
20 fifty thousand dollars, whichever is less. Any unallocated  
21 portion of the fee shall be refunded to the applicant.

22 (b) The board shall determine that portion of the  
23 application fee to be allocated to affected local governments to  
24 defer the costs to such governments to investigate the  
25 application.

26 (c) The amount of any refund shall be that portion of the  
27 application fee not allocated by the department for



1 investigating, reviewing, processing, and publishing and posting  
2 notices of the application or for affected local governments for  
3 investigations required to be made.

4 (d) The executive director shall provide the applicant with  
5 a full financial accounting, including, but not limited to, all  
6 materials, labor, and overhead costs relating to the expenditures  
7 of the fee at the time of the board's final decision.

8 (e) Any balance of the application fee not expended  
9 pursuant to paragraph (a) of this subsection (4) or not allocated  
10 or refunded pursuant to paragraph (c) of this subsection (4),  
11 shall be transferred to the general fund.

12 36-30-203. Review of permit. (1) Upon receipt of an  
13 application for a siting permit, the department shall:

14 (a) Transmit a copy of the application to all appropriate  
15 state agencies and affected local governments;

16 (b) Publish notice of receipt of the application one time  
17 in a newspaper of general circulation in the county in which the  
18 facility is proposed to be located, post similar notice on the  
19 site of the energy facility, and utilize any other means of  
20 notifying the public that the board deems necessary; and

21 (c) Appoint a state employee or hire a consultant from the  
22 public sector who shall participate in all department staff  
23 reviews, hearings, and deliberations on behalf of the public and  
24 whose duty it is to see that the public is well informed about  
25 the proposed energy facility and to facilitate broad public  
26 input.

27 (2) Within sixty days of receipt of the application, all

1 state agencies shall report to the department concerning:

2 (a) The adequacy of the application, including whether  
3 sufficient information exists upon which to base a decision; and

4 (b) Any potential areas of denial of the siting permit or  
5 any other permit required of the facility and any variance with  
6 state policy.

7 (3) Within thirty days after the date for receipt of  
8 comment from state agencies, the department shall issue a staff  
9 report to the board concerning the adequacy of the application,  
10 and the board shall hold a public hearing to determine the  
11 adequacy of the application, including whether sufficient  
12 information exists in the application upon which to base a  
13 decision. Such hearing shall include public comment upon the  
14 application which shall be accepted by the board.

15 (4)(a) Within thirty days after the public hearing, the board  
16 shall issue a finding with respect to the adequacy of the  
17 application.

18 (b) If the board determines that the application is  
19 inadequate or if it deems any other information necessary to  
20 review the substance of the application, it shall provide the  
21 applicant with specific requests for such information and it  
22 shall provide the applicant sufficient time to supply such  
23 additional information required.

24 (c) Within sixty days after receipt of additional  
25 information requested by the board, the board shall determine  
26 whether the additional information renders the application  
27 adequate, and if the board determines that the application is

1 still inadequate, it shall deny the permit.

2 36-30-204. Final review and decision of the board. (1)

3 Upon a finding by the board that the application is adequate, all  
4 state agencies shall have sixty days to review the substance of  
5 the permit application and to report to the department as to  
6 whether the construction of the energy facility is consistent  
97 with laws and regulations of the state of Colorado. Any agency,  
8 board, or commission which has the responsibility to issue a  
9 permit for the energy facility shall report as to any possible  
10 reasons for denial of such permit.

11 (2) (a) Within thirty days after receipt of the reports by  
12 the department, it shall transmit them to the board, and the  
13 board shall conduct a public hearing on the substance of the  
14 application.

15 (b) The hearing shall be a common hearing for all state  
16 agencies which are reviewing the siting permit application or are  
17 responsible for issuing its own permit for the energy facility.

18 (c) At least one day of the hearing shall be conducted in  
19 the general locale of the proposed energy facility.

20 (d) Representatives from affected local governments shall  
21 be allowed to sit with the board during the hearing and question  
22 all witnesses.

23 (3) Within thirty days after the conclusion of the public  
24 hearings, all state agencies shall either modify their original  
25 reports on the substance of the application or waive further  
26 comment, and all state agencies responsible for issuing a permit  
27 for the energy facility shall make their determinations as to

1 whether the various permits will be issued and notify the board  
2 of such determinations.

3 (4) Within sixty days after the conclusion of the public  
4 hearings, the board shall make complete findings upon all issues  
5 raised during the review and hearing process and render its  
6 decision upon the record, either granting or denying a siting  
7 permit based upon the application as filed or granting it upon  
8 such terms, conditions, or modifications in construction,  
9 operation, or maintenance of the energy facility as the board may  
10 deem appropriate.

11 (5) The board shall not grant a siting permit either as  
12 proposed or as modified by the board unless it finds that:

13 (a) Except as provided in section 36-30-213, all permits  
14 and regulations required by local units of government having  
15 jurisdiction over the energy facility have been issued or met to  
16 the satisfaction of said local governments;

17 (b) The public utilities commission has issued a  
18 certificate of public convenience and necessity to the facility;

19 (c) The appropriate state air and water quality agencies  
20 have certified that the proposed energy facility will not violate  
21 state or federally established standards and implementation  
22 plans. The judgments of such agencies shall be conclusive on all  
23 questions relating to the satisfaction of such state and federal  
24 air and water quality standards and plans; and

25 (d) The applicant has the financial capacity and technical  
26 ability to meet all environmental standards and all conditions  
27 attached to the permit.

1 (6) A complete verbatim transcript shall be made of all  
2 hearings held pursuant to this section.

3 (7) A copy of the decision and any opinion issued with the  
4 decision shall be served upon the applicant, affected local  
5 governments, and appropriate state agencies and made available to  
6 the public for the cost of reproduction.

7 36-30-205. Burden of proof on applicant. The burden of  
8 proof as to all issues of fact presented in the application or  
9 supplements thereto shall be upon the applicant and must be  
10 established by a preponderance of evidence.

11 36-30-206. Confidentiality of information. Any records,  
12 reports, or information obtained by the board shall be available  
13 to the public; except that, upon showing satisfactory to the  
14 board that any records, reports, information, or particular part  
15 thereof, if made public, would divulge methods or processes  
16 entitled to protection as trade secrets, the board shall consider  
17 such record, report, information, or particular part thereof  
18 confidential in accordance with the purposes of section 1905 of  
19 title 18 of the United States Code and except that such record,  
20 report, information, or particular part thereof may be disclosed  
21 to other officers, employees, or authorized representatives of  
22 the United States or the state of Colorado who are concerned with  
23 the administration of this article or to other appropriate  
24 persons when relevant in any proceeding under this article.

25 36-30-207. Monitoring. The department, utilizing and  
26 cooperating with, to the fullest extent possible, the staff and  
27 resources of all state agencies, boards, and commissions, shall

1 have the continuing authority and responsibility for monitoring  
2 the operations of all energy facilities which have been granted a  
3 siting permit under this article, for assuring compliance with  
4 this article and the siting permit issued under this article, and  
5 for discovering and preventing noncompliance with this article  
6 and the applicable siting permit; except that the department  
7 shall not monitor activities over which other state agencies are  
8 responsible for issuing and monitoring permits.

9 36-30-208. Revocation or suspension of permit. (1) A  
10 siting permit may be revoked or suspended upon a finding by the  
11 board of:

12 (a) Any false statement knowingly made in the application  
13 or in accompanying statements or studies required of the  
14 applicant, if a true statement would have warranted the  
15 commission's refusal to grant a siting permit;

16 (b) Failure to comply with the terms or conditions of the  
17 siting permit after notice of the failure from the board and  
18 reasonable opportunity to correct such failure; or

19 (c) Any violation of the provisions of this article, any  
20 rule promulgated pursuant to this article, or any order of the  
21 board.

22 (2) A revocation or suspension may be issued only after  
23 adequate notice of the alleged grounds for the revocation or  
24 suspension and a full and fair hearing in which the siting permit  
25 holder has an opportunity to confront any witness and respond to  
26 any evidence against him and to present rebuttal or mitigating  
27 evidence.

1       36-30-209. Injunctive relief. Whenever the department  
2 finds that any provision of this article or any rule or order  
3 issued pursuant thereto is being violated or an apparent  
4 violation, which in the opinion of the board constitutes an  
5 emergency requiring immediate action to protect the public's  
6 health, welfare, or safety, is imminent, the department shall  
7 request the attorney general to bring, and if so requested it  
8 shall be his duty to bring, a suit for a temporary restraining  
9 order, preliminary injunction, or permanent injunction to prevent  
10 any further violation or imminent violation constituting an  
11 emergency. In any such suit the final findings of the  
12 department, based upon evidence in the record, shall be prima  
13 facie evidence of the facts found therein.

14       36-30-210. Penalties for violation. (1) It is unlawful  
15 for any person:

16       (a) To commence to construct or operate an energy facility  
17 without first obtaining a siting permit as required by this  
18 article;

19       (b) Who has first obtained a siting permit to construct,  
20 operate, or maintain an energy facility other than in compliance  
21 with the permit; or

22       (c) To cause any of the acts in paragraphs (a) or (b) of  
23 this subsection (1) to occur.

24       (2) Any person who violates any of the provisions of  
25 subsection (1) of this section shall be subject to a civil  
26 penalty of not more than ten thousand dollars per day for each  
27 day during which such violation occurs. The penalty shall be

1 recoverable in a civil suit brought by the attorney general on  
2 behalf of the state in the second judicial district of Colorado.

3 36-30-211. Judicial review of board action. Any person  
4 affected or aggrieved by the final decision of the board on an  
5 application for a siting permit may obtain judicial review in  
6 accordance with the provisions of this article and article 4 of  
7 title 24, C.R.S. 1973, by the filing of a complaint in the  
8 district court where the violation occurs within thirty days  
9 after the issuance of such final decision. Upon being served a  
10 copy of such complaint, the board shall deliver to the court a  
11 copy of the written transcript of the board's final decision and  
12 any opinion entered therewith which shall constitute the record  
13 on judicial review. Subject to the provisions of section  
14 36-30-206, a copy of such transcript, decision, and opinion shall  
15 remain on file with the board and shall be available for public  
16 inspection.

17 36-30-212. State resident may seek mandamus. (1) Any  
18 resident of this state with knowledge that a requirement of this  
19 article, a rule adopted under this article, or condition of a  
20 citing permit issued pursuant to this article is not being  
21 enforced by a public officer or employee whose duty it is to  
22 enforce such requirement may bring such failure of enforcement to  
23 the attention of the public officer or employee by a written  
24 statement under oath that shall state the specific facts which  
25 constitute the failure of enforcement. If the resident knowingly  
26 makes a materially false statement or charge in such written  
27 statement, he commits perjury in the second degree.





1 development, construction, and operation of all energy facilities  
2 contemplated by that person.

3 (2) The long-range energy plan shall include the following:

4 (a) The general location, size, and type of all energy  
5 facilities to be owned or operated by the person, the  
6 construction of which is projected to commence during the ensuing  
7 ten years;

8 (b) A detailed explanation of the need for the energy  
9 facilities, the reasons for selecting the sites proposed, and a  
10 feasibility analysis of all alternative sites considered; and

11 (c) A description of the person's long-range energy  
12 planning process and the efforts made by the person to involve  
13 the public and environmental protection and land use planning  
14 agencies in this process.

15 36-30-302. Report on long-range energy plans. (1) The  
16 department shall distribute long-range plans to all appropriate  
17 state agencies and shall notify all affected local governments of  
18 the potential development of an energy facility that may impact  
19 their jurisdiction.

20 (2) The department shall compile a staff report on all  
21 long-range energy plans which they have received and submit such,  
22 together with comments from state agencies, to the governor and  
23 the general assembly by June 1 of every year. The report shall  
24 also be available to the public for the cost of reproduction.

25 SECTION 2. 24-1-124, Colorado Revised Statutes 1973, as  
26 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

27 24-1-124. Department of natural resources - creation -

1 divisions of. (5) The department of natural resources shall  
2 include the energy facility siting board created in section  
3 36-30-104, C.R.S. 1973, and said board shall exercise its powers,  
4 duties, and functions as if transferred by a type 1 transfer to  
5 the department of natural resources.

6 SECTION 3. 24-65.1-501 (1), Colorado Revised Statutes  
7 1973, as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH  
8 to read:

9 24-65.1-501. Permit for development in an area of state interest  
10 or to conduct an activity of state interest required. (1) (c)  
11 The provisions of this part 5 shall not apply to a person granted  
12 an energy facility siting permit pursuant to article 30 of title  
13 36, C.R.S. 1973.

14 SECTION 4. Effective date. This act shall take effect July  
15 1, 197~~6~~.

16 SECTION 5. Safety clause. The general assembly hereby  
17 finds, determines, and declares that this act is necessary for  
18 the immediate preservation of the public peace, health, and  
19 safety.