

**Senator Derrin R. Owens** proposes the following substitute bill:

**ENERGY SECURITY AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill modifies provisions related to the regulation of energy.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires a project entity to provide notice to the Public Service Commission (commission) before decommissioning an electrical generation facility;
- ▶ outlines a process for the commission to determine and provide the fair market value of an electrical generation facility intended for decommissioning;
- ▶ requires a project entity to offer an electrical generation facility intended for decommissioning for sale at fair market value before decommissioning;
- ▶ allows the state the option to purchase an electrical generation facility intended for decommissioning if no buyer purchases at full fair market value;
- ▶ amends provisions related to air quality permits for a project entity that owns an electrical generation facility with multiple generating units and is transitioning to a new electrical generation facility;
- ▶ allows the project entity to apply for an alternative permit to keep one or more existing generating units in operation during the transition, if the project entity has a



26 transition permit requiring closure of all existing units; and

27       ▶ outlines the review process for an alternative permit and conditions for either the  
28 alternative or transition permit to become effective.

29 **Money Appropriated in this Bill:**

30       None

31 **Other Special Clauses:**

32       None

33 **Utah Code Sections Affected:**

34 AMENDS:

35       **11-13-304**, as last amended by Laws of Utah 2016, Chapter 382

36 ENACTS:

37       **11-13-320**, Utah Code Annotated 1953

38       **19-2-109.4**, Utah Code Annotated 1953

39       **54-1-14**, Utah Code Annotated 1953



41 *Be it enacted by the Legislature of the state of Utah:*

42       Section 1. Section **11-13-304** is amended to read:

43       **11-13-304. Certificate of public convenience and necessity required -- Exceptions**  
44 **-- Decommissioning of electrical generation facility by project entity.**

45       (1) As used in this section:

46       (a) "Commission" means the Public Service Commission established in Section  
47 54-1-1.

48       (b) "Decommissioning" means to remove an electrical generation facility from active  
49 service.

50       (c) "Electrical generation facility" means a facility that generates electricity for  
51 provision to customers.

52       (d) "Fair market value" means the value of an electrical generation facility considering  
53 both the assets and liabilities of the facility, including the value of water rights necessary to  
54 operate the existing electrical generation facility at full capacity.

55       (e) "Highest and best purchase offer" means the purchase offer for the electrical  
56 generation facility intended for decommissioning that the commission determines to be in the

57 overall best interest of the state, considering the following factors:

58 (i) the purchase price offer amount;

59 (ii) the potential purchaser's:

60 (A) commitment to utilize the best available clean energy technology;

61 (B) intent to use state resources to the maximum extent feasible;

62 (C) commitment to provide jobs and other economic benefits to the state;

63 (D) intent to promote the interests of state residents and ratepayers; and

64 (E) financial capability; and

65 (iii) any other factors the commission considers relevant.

66 (f) "Project entity" means the same as that term is defined in Section [11-13-103](#).

67 (g) "Public hearing" means the public hearing to establish the fair market value of an  
68 electrical generation facility intended for decommissioning described in Section [11-13-304](#).

69 [(+)] (2) Before proceeding with the construction of any electrical [~~generating plant~~  
70 generation facility or transmission line, each interlocal entity and each out-of-state public  
71 agency shall first obtain from the public service commission a certificate, after hearing, that  
72 public convenience and necessity requires such construction and in addition that such  
73 construction will in no way impair the public convenience and necessity of electrical  
74 consumers of the state of Utah at the present time or in the future.

75 [(2)] (3) The requirement to obtain a certificate of public convenience and necessity  
76 applies to each project initiated after the section's effective date but does not apply to:

77 (a) a project for which a feasibility study was initiated prior to the effective date;

78 (b) any facilities providing additional project capacity;

79 (c) any facilities providing replacement project capacity; or

80 (d) transmission lines required for the delivery of electricity from a project described in  
81 Subsection ~~[(2)(a)]~~ (3)(a), or facilities providing additional project capacity, or facilities  
82 providing replacement project capacity within the corridor of a transmission line, with  
83 reasonable deviation, of a project producing as of April 21, 1987.

84 (4) Before decommissioning an electrical generation facility, a project entity shall  
85 provide notice to the commission, no less than 12 months prior to the date of  
86 decommissioning.

87 (5) Within 60 days of providing the notice of intent to decommission to the

88 commission, the commission shall hold a public hearing for the purpose of establishing the fair  
89 market value of the electrical generation facility that is intended for decommissioning.

90 (6) At the public hearing described in Subsection (5):

91 (a) the commission shall receive evidence and public comment regarding the fair  
92 market value of the electrical generation facility that is intended for decommissioning; and

93 (b) the project entity shall disclose:

94 (i) all known assets and potential liabilities or risks related to the electrical generation  
95 facility;

96 (ii) any encumbrances on the electrical generation facility; and

97 (iii) whether a sale of the electrical generation facility would transfer liabilities related  
98 to the electrical generation.

99 (7) Within 30 days of the public hearing described in Subsection (5), the commission  
100 shall issue a decision to the project entity establishing the fair market value of the electrical  
101 generation facility that is intended for decommissioning.

102 (8) Within 90 days of receiving the decision described in Subsection (7), a project  
103 entity shall offer the electrical generation facility that is intended for decommissioning for sale  
104 to the public at fair market value.

105 (9) If a project entity fails to disclose information as required under Subsection (6)(b),  
106 the project entity retains any liability related to the electrical generation facility regardless of  
107 the sale.

108 (10) A project entity that receives an offer for the full fair market value of the electrical  
109 generation facility prior to the scheduled decommissioning date shall:

110 (a) provide notice of the purchase offer to the commission; and

111 (b) upon approval by the commission, sell the electrical generation facility to the  
112 potential purchaser that has submitted the highest and best purchase offer, as determined in the  
113 commission's evaluation under Subsection (11)(b)(ii).

114 (11) (a) The commission shall oversee the sale of an electrical generation facility that a  
115 project entity offers for sale under Subsection (8).

116 (b) To oversee the sale as required by Subsection (11)(a), the commission shall:

117 (i) establish timelines and procedures for potential purchasers to follow in submitting  
118 binding purchase offers;

119 (ii) evaluate all purchase offers submitted to the project entity to determine the highest  
120 and best purchase offer; and

121 (iii) approve the selected purchase offer that meets the requirements of this section.

122 (12) (a) If the project entity does not receive an offer for the full fair market value of  
123 the electrical generation facility within 60 days of the date the project entity offered the  
124 electrical generation facility for sale under Subsection (8), the project entity shall offer the state  
125 an option to purchase the electrical generation facility for fair market value.

126 (b) The project entity shall hold open the option described in Subsection (12)(a) for at  
127 least one year.

128 Section 2. Section **11-13-320** is enacted to read:

129 **11-13-320. Air quality permitting transition process.**

130 (1) As used in this section:

131 (a) "Alternative permit" means an amendment to a transition permit that, for purposes  
132 of transitioning an electrical generation facility to a new facility, allows one or more existing  
133 generating units to continue operating while also providing for closure of one but not all  
134 existing generating units.

135 (b) "Pre-existing permit" means the air quality permit held by the operator of an  
136 existing electrical generation facility prior to any amendments associated with transitioning to a  
137 new facility.

138 (c) "Transition permit" means an amendment to the pre-existing permit, issued to the  
139 operator of an existing electrical generation facility for the purpose of transitioning to a new  
140 electrical generation facility, which authorizes construction of the new facility but does not  
141 require closure of all existing generating units until after the new facility commences operation.

142 (2) A project entity that holds a pre-existing permit for an existing electrical generation  
143 facility with multiple generating units, and has been issued a transition permit for a new  
144 electrical generation facility, shall submit an application to the Department of Environmental  
145 Quality in accordance with Section [19-2-109.4](#) for issuance of an alternative permit.

146 (3) A project entity shall submit the application described in Subsection (2) on or  
147 before July 1, 2024.

148 Section 3. Section **19-2-109.4** is enacted to read:

149 **19-2-109.4. Project entity transition permit.**

150 (1) As used in this section:

151 (a) "Alternative permit" means the same as that term is defined in Section [11-13-320](#).

152 (b) "Pre-existing permit" means the same as that term is defined in Section [11-13-320](#).

153 (c) "Project entity" means the same as that term is defined in Section [11-13-103](#).

154 (d) "Transition permit" means the same as that term is defined in Section [11-13-320](#).

155 (2) The division shall accept an application for an alternative permit from a project  
156 entity that has previously obtained a transition permit to authorize the same new electrical  
157 generating capacity contemplated by the transition permit.

158 (3) An application for an alternative permit shall be evaluated independently from the  
159 pre-existing permit or transition permit based on updated assumptions, modeling, and  
160 requirements established in rule by the board and may rely upon the reduction of capacity of  
161 the existing electrical generation facility only as necessary to ensure that emissions of the new  
162 generating facility do not exceed thresholds established by federal law which would necessitate  
163 new source review as a major modification.

164 (4) If the application for an alternative permit meets the requirements established by  
165 the board:

166 (a) the division shall issue an approval order for the alternative permit to the project  
167 entity;

168 (b) the conditions of the transition permit shall cease to apply, including requirements  
169 to reduce the capacity of existing generating units at the electrical generation facility; and

170 (c) the project entity shall submit all documentation required to modify any federal  
171 operating permit required to be maintained by the project entity, consistent with deadlines  
172 established by the division.

173 (5) If an alternative permit is not approved under Subsection (4), the conditions of the  
174 transition permit shall remain effective.

175 (6) (a) If a project entity fails to submit an application for an alternative permit by July  
176 1, 2024, as required under Section [11-13-320](#), the division shall immediately begin an  
177 evaluation of the feasibility of issuing an alternative permit to the project entity and provide the  
178 division's determination on the feasibility of an alternative permit to the Public Utilities,  
179 Energy, and Technology Interim Committee no later than the November 2024 interim meeting.

180 (b) If the division concludes in its determination that an alternative permit would likely

181 be issued if the project entity had submitted an application as required, the project entity shall,  
182 within 30 days after the determination is provided to the Public Utilities, Energy, and  
183 Technology Interim Committee, submit an application to the division for an alternative permit.

184 (c) If the project entity fails to submit an application within the 30 days under  
185 Subsection (6)(b), the division shall revoke any transition permit previously issued to the  
186 project entity.

187 Section 4. Section **54-1-14** is enacted to read:

188 **54-1-14. Project entity sale of decommissioned assets.**

189 (1) As used in this section:

190 (a) "Decommissioning" means the same as that term is defined in Section [11-13-304](#).

191 (b) "Electrical generation facility" means the same as that term is defined in Section  
192 [11-13-304](#).

193 (c) "Fair market value" means the same as that term is defined in Section [11-13-304](#).

194 (d) "Project entity" means the same as that term is defined in Section [11-13-103](#).

195 (e) "Public hearing" means the public hearing to establish the fair market value of an  
196 electrical generation facility intended for decommissioning described in Section [11-13-304](#).

197 (2) The commission shall:

198 (a) within 60 days after receiving notice of intent to decommission an electrical  
199 generation facility provided under Section [11-13-304](#), hold a public hearing to determine the  
200 fair market value of the electrical generation facility intended for decommissioning;

201 (b) at the public hearing, receive evidence and public comment regarding the fair  
202 market value of the electrical generation facility intended for decommissioning;

203 (c) within 30 days after the public hearing, issue a decision to the project entity  
204 establishing the fair market value of the electrical generation facility intended for  
205 decommissioning;

206 (d) monitor a project entity's compliance with Section [11-13-304](#) to offer an electrical  
207 generation facility intended for decommissioning for sale to the public, including required  
208 disclosures;

209 (e) consult with the project entity regarding offers received for the purchase of the  
210 electrical generation facility intended for decommissioning;

211 (f) provide oversight regarding the final sale and transfer of ownership of the electrical

212 generation facility intended for decommissioning to a new buyer; and

213 (g) take any other action necessary to enforce and oversee the requirements related to

214 the sale and transfer of the electrical generation facility intended for decommissioning

215 described in Section [11-13-304](#).

216 Section 5. **Effective date.**

217 This bill takes effect on May 1, 2024.