

**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: Carl R. Albrecht

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the regulation of energy.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
  - ▶ outlines the review process for an alternative permit and conditions for either the alternative or transition permit to become effective;
  - ▶ provides the state the option to purchase an electrical generation facility intended for decommissioning;
  - ▶ creates a Decommissioned Asset Disposition Authority (authority) within the Office of Energy Development;
  - ▶ requires the authority to:
    - govern the disposition of an electrical generation facility purchased by the state;
- and
- prepare and submit an application to the Division of Air Quality for an evaluation of the feasibility of an alternative permit; and
  - ▶ requires a study from the authority to:
    - analyze issues related to the state implementation plan arising out of a permit



26 issued to an electrical generation facility intended for decommissioning;

27 • determine and provide the fair market value of a project entity's electrical  
28 generation facility intended for decommissioning; and

29 • evaluate the process for selling an electrical generation facility purchased by the  
30 state.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **11-13-318**, as enacted by Laws of Utah 2023, Chapter 195

38 ENACTS:

39 **19-2-109.4**, Utah Code Annotated 1953

40 **79-6-404**, Utah Code Annotated 1953

41 **79-6-405**, Utah Code Annotated 1953



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

44 Section 1. Section **11-13-318** is amended to read:

45 **11-13-318. Notice of decommissioning or disposal of project entity assets.**

46 (1) As used in this section:

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

49 (b) "Disposal" means the sale, transfer, dismantling, or other disposition of a project  
50 entity's assets.

51 (c) "Fair market value" means the same as that term is defined in Section 79-6-405.

52 ~~(b)~~ (d) (i) "Project entity asset" means a project entity's:

53 (A) land;

54 (B) buildings; or

55 (C) essential equipment, including turbines, generators, transformers, and transmission  
56 lines.

57 (ii) "Project entity asset" does not include an asset that is not essential for the  
58 generation of electricity in the project entity's coal-powered electrical generation facility.

59 (2) A project entity shall provide a notice of decommissioning or disposal to the  
60 Legislative Management Committee at least 180 days before:

61 (a) the disposal of any project entity assets; or

62 (b) the decommissioning of the project entity's coal-powered electrical generation  
63 facility.

64 (3) The notice of decommissioning or disposal described in Subsection (2) shall  
65 include:

66 (a) the date of the intended decommissioning or disposal;

67 (b) a description of the project entity's coal-powered electrical generation facility  
68 intended for decommissioning or any project entity asset intended for disposal; and

69 (c) the reasons for the decommissioning or disposal.

70 (4) A project entity may not intentionally prevent the functionality of the project  
71 entity's existing coal-powered electrical generation facility.

72 (5) Notwithstanding the requirements in Subsections (2) through (4), a project entity  
73 may take any action necessary to transition to a new electrical generation facility powered by  
74 natural gas, hydrogen, or a combination of natural gas and hydrogen, including any action that  
75 has been approved by a permitting authority.

76 (6) A project entity shall provide the state the option to purchase for fair market value a  
77 project entity asset intended for decommissioning, with the option remaining open for at least  
78 two years, beginning on July 2, 2025.

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

80 **19-2-109.4. Project entity transition permit.**

81 (1) As used in this section:

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

86 (b) "Authority" means the Decommissioned Asset Disposition Authority established in  
87 Section [79-6-404](#).

88 (c) "Division" means the Division of Air Quality created in Section 19-1-105.

89 (d) "Pre-existing permit" means the air quality permit held by the operator of an  
90 existing electrical generation facility prior to any amendments associated with transitioning to a  
91 new facility.

92 (e) "Project entity" means the same as that term is defined in Section 11-13-103.

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

97 (2) (a) Upon receipt of an alternative air permit application prepared and submitted by  
98 the authority in accordance with Subsection 79-6-404(4)(c), the division shall conduct a full  
99 evaluation as if the application had been prepared and submitted by a project entity to  
100 determine whether the alternative air permit would be issued if applied for by the project entity.

101 (b) The division shall provide the results of any evaluation conducted under Subsection  
102 (2)(a) to the Legislative Management Committee no later than January 30, 2025.

103 (c) If the division concludes after evaluation that an alternative permit would likely be  
104 issued to a project entity, the project entity shall, within 30 days after the determination is  
105 provided to the Legislative Management Committee, submit an application to the division for  
106 an alternative permit.

107 (3) The division shall evaluate an application for an alternative permit independently  
108 from any pre-existing permit or transition permit based on updated assumptions, modeling, and  
109 requirements established in rule by the division and may rely upon the reduction of capacity of  
110 the existing electrical generation facility only as necessary to ensure that emissions of the new  
111 generating facility do not exceed thresholds established by federal law which would necessitate  
112 new source review as a major modification.

113 Section 3. Section 79-6-404 is enacted to read:

114 **79-6-404. Decommissioned Asset Disposition Authority.**

115 (1) As used in this section:

116 (a) "Asset intended for decommissioning" means an electrical generation facility  
117 owned by a project entity that is intended to be removed from active service.

118 (b) "Authority" means the Decommissioned Asset Disposition Authority created in this

119 section.

120 (c) "Fair market value" means the value of an electrical generation facility considering  
121 both the assets and liabilities of the facility, including the value of water rights necessary to  
122 operate the existing electrical generation facility at full capacity.

123 (d) "Highest and best purchase offer" means the purchase offer for the asset intended  
124 for decommissioning that the authority determines to be in the overall best interest of the state,  
125 considering:

126 (i) the purchase price offer amount;

127 (ii) the potential purchaser's:

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

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

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

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

132 (E) financial capability; and

133 (iii) any other factors the authority considers relevant.

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

135 (2) There is established within the office the Decommissioned Asset Disposition  
136 Authority.

137 (3) (a) The authority shall be composed of:

138 (i) the executive director of the office;

139 (ii) two members appointed by the governor;

140 (iii) two members appointed by the president of the Senate; and

141 (iv) two members appointed by the speaker of the House of Representatives.

142 (b) The office shall provide staff and support to the authority.

143 (4) The authority shall:

144 (a) provide recommendations to the governor and Legislature regarding the state  
145 exercising an option to purchase an asset intended for decommissioning;

146 (b) if the state exercises an option to purchase the asset intended for decommissioning  
147 under Section [11-13-318](#):

148 (i) enter into contracts and agreements related to the decommissioned asset;

149 (ii) govern the disposition of assets intended for decommissioning as outlined in

150 Subsection (5); and

151 (iii) take any other action necessary for governance of a decommissioned asset

152 purchased by the state; and

153 (c) contract with independent professionals that have expertise in emissions modeling,  
154 air quality impact assessments, regulatory compliance, and any other discipline necessary for  
155 the preparation and submission of a complete alternative air permit application, including:

156 (i) conducting emissions modeling, air quality impact assessments, and gathering any  
157 other information necessary for inclusion in a complete alternative air permit application;

158 (ii) preparing the full application with all necessary information included, as would be  
159 required for an application submitted by the owner of the electrical generation facility; and

160 (iii) submitting the full permit application to the Division of Air Quality.

161 (5) If the state exercises an option to purchase or otherwise take control of the asset  
162 intended for decommissioning under Section 11-13-318, the authority may, no sooner than July  
163 2, 2025:

164 (a) hold a public hearing to receive comment and evidence regarding:

165 (i) the fair market value of the asset, including the valuation study conducted by the  
166 authority under Section 79-6-405; and

167 (ii) the proposed disposition of the decommissioned asset;

168 (b) establish procedures and timelines for potential purchasers to submit binding  
169 purchase offers;

170 (c) evaluate all purchase offers to determine the highest and best purchase offer;

171 (d) approve the sale of the decommissioned asset to the purchaser that has submitted  
172 the highest and best purchase offer; and

173 (e) take any other action necessary to govern the disposition of the decommissioned  
174 asset in accordance with this section.

175 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
176 authority shall make rules that establish:

177 (a) procedures and associated timelines for potential purchasers to submit binding  
178 purchase offers for a decommissioned asset;

179 (b) objective criteria and a process to evaluate all purchase offers submitted for a  
180 decommissioned asset and determine which purchase offer is the highest and best offer; and

181 (c) a process for the authority to approve the sale of a decommissioned asset to the  
182 purchaser that has submitted the highest and best purchase offer.

183 Section 4. Section **79-6-405** is enacted to read:

184 **79-6-405. Study of project entity asset intended for decommissioning.**

185 (1) As used in this section:

186 (a) "Authority" means the Decommissioned Asset Disposition Authority, created in  
187 Section [79-6-404](#).

188 (b) "Fair market value" means the same as that term is defined in Section [79-6-404](#).

189 (2) The authority, in consultation with the office, shall conduct a study to:

190 (a) evaluate issues in regards to a state implementation plan as a result of issuing an  
191 alternative permit under Section [19-2-109.4](#);

192 (b) establish the fair market value of an electrical generation facility that a project  
193 entity intends to decommission; and

194 (c) evaluate the potential sale of the facility to new owners;

195 (3) In conducting the study described in this section, the authority shall contract or  
196 consult with independent professionals with expertise in:

197 (a) areas relevant to environmental regulatory compliance and clean air act state  
198 implementation plan development, including:

199 (i) related electric generation capacity;

200 (ii) resource adequacy; and

201 (iii) economic development considerations; and

202 (b) areas relevant to the valuation and disposition of electrical generation facilities,  
203 including:

204 (i) engineering;

205 (ii) environmental assessments;

206 (iii) energy economics;

207 (iv) water rights;

208 (v) mineral rights;

209 (vi) regulatory analysis;

210 (vii) financial analysis;

211 (viii) real estate valuation; and

212           (ix) legal analysis.  
213           (4) The study described in Subsection (2) shall:  
214           (a) for the evaluation of issues in regards to a state implementation plan as a result of  
215 issuing an alternative permit under Section [19-2-109.4](#), based on input from the Division of Air  
216 Quality and independent modeling, legal analysis, and economic analysis, evaluate:  
217           (i) any technical deficiencies that could occur in a state implementation plan as a result  
218 of issuing an alternative permit; and  
219           (ii) options for revising the state implementation plan to maximize flexibility for the  
220 state to utilize an alternative permit and preserve electric generating capacity sufficient to  
221 support economic growth in the state while ensuring the state implementation plan meets  
222 federal air quality standards;  
223           (b) for the valuation of the project entity asset that a project entity intends to  
224 decommission, include:  
225           (i) an assessment of all assets associated with the electrical generation facility,  
226 including real property, equipment, water rights, mineral rights, and any other associated  
227 assets;  
228           (ii) an assessment of all financial assets and potential financial liabilities or risks  
229 related to the electrical generation facility intended for decommissioning;  
230           (iii) an analysis of any encumbrances on the electrical generation facility;  
231           (iv) the impact on valuation of an electrical generation facility related to the issuance of  
232 an alternative air quality permit under Section [19-2-109.4](#);  
233           (v) a review of any potential effect a sale of the electrical generation facility would  
234 have on liabilities related to the electrical generation facility;  
235           (vi) incorporation of any relevant local, regional, or national economic and market  
236 factors that may impact the fair market value; and  
237           (vii) any other factors the authority considers relevant in establishing a fair market  
238 value for the electrical generation facility; and  
239           (c) to evaluate the issues surrounding a potential sale of the facility, include:  
240           (i) potential purchase and sale agreement terms;  
241           (ii) the necessary financial capability of a potential purchaser, including experience  
242 raising capital, access to capital, financial stability, and ability to provide security for



243 obligations related to decommissioning, remediation, and other liabilities;

244 (iii) operational experience and capability of a potential purchaser, including  
245 experience operating electrical generation facilities, contracting history, and historical  
246 operating metrics;

247 (iv) permitting, regulatory compliance, and construction issues for continued operation  
248 of the facility;

249 (v) the likelihood that continued operation of the facility would impact other electrical  
250 generation facilities in the state;

251 (vi) the potential for continued operation of the facility to infringe on existing utility  
252 service territories;

253 (vii) the viability of alternative business models for continued operation of the facility;

254 (viii) potential community and regional impacts resulting from continued operation or  
255 the retirement of the facility; and

256 (ix) the potential for continued operation of the facility to interfere with the rights and  
257 interests of the project entity, the project entity's members, power purchasers, bondholders,  
258 creditors, or other entities.

259 (5) In conducting the study described in Subsection (2), the project entity shall timely  
260 provide to the authority information related to the assets and potential liabilities of the  
261 electrical generation facility intended for decommissioning.

262 (6) The authority shall report the progress and results of the study to the Public  
263 Utilities, Energy, and Technology Interim Committee on or before November 30, 2024.

264 **Section 5. Effective date.**

265 This bill takes effect on May 1, 2024.