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
LONG TITLE
General Description:
This bill modifies provisions related to the regulation of energy.
Highlighted Provisions:
This bill:
defines terms;
 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;
 requires a 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
transition permit requiring closure of all existing units;
 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



20	purchased by the state, and
27	requires a study from the authority to:
28	 analyze issues related to the state implementation plan arising out of a permit
29	issued to an electrical generation facility intended for decommissioning;
30	 determine and provide the fair market value of a project entity's electrical
31	generation facility intended for decommissioning; and
32	 evaluate the process for selling an electrical generation facility purchased by the
33	state.
34	Money Appropriated in this Bill:
35	None
36	Other Special Clauses:
37	None
38	Utah Code Sections Affected:
39	AMENDS:
40	11-13-318, as enacted by Laws of Utah 2023, Chapter 195
41	ENACTS:
42	11-13-320, Utah Code Annotated 1953
43	19-2-109.4, Utah Code Annotated 1953
44	79-6-404 , Utah Code Annotated 1953
45 46	79-6-405 , Utah Code Annotated 1953
46 47	Be it enacted by the Legislature of the state of Utah:
48	Section 1. Section 11-13-318 is amended to read:
49	11-13-318. Notice of decommissioning or disposal of project entity assets.
50	(1) As used in this section:
51	(a) "Alternative permit" means the same as that term is defined in Section 11-13-320.
52	(b) "Decommissioning" means to remove an electrical generation facility from active
53	service.
54	(c) "Disposal" means the sale, transfer, dismantling, or other disposition of a project
55	entity's assets.
56	(d) "Division" means the Division of Air Quality created in Section 19-1-105.

57	(e) "Electrical generation facility" means a facility that generates electricity for
58	provision to customers.
59	(f) "Fair market value" means the same as that term is defined in Section 11-13-321.
60	[(b)] (g) (i) "Project entity asset" means a project entity's:
61	(A) land;
62	(B) buildings; or
63	(C) essential equipment, including turbines, generators, transformers, and transmission
64	lines.
65	(ii) "Project entity asset" does not include an asset that is not essential for the
66	generation of electricity in the project entity's coal-powered electrical generation facility.
67	(2) A project entity shall provide a notice of decommissioning or disposal to the
68	Legislative Management Committee at least 180 days before:
69	(a) the disposal of any project entity assets; or
70	(b) the decommissioning of the project entity's coal-powered electrical generation
71	facility.
72	(3) The notice of decommissioning or disposal described in Subsection (2) shall
73	include:
74	(a) the date of the intended decommissioning or disposal;
75	(b) a description of the project entity's coal-powered electrical generation facility
76	intended for decommissioning or any project entity asset intended for disposal; and
77	(c) the reasons for the decommissioning or disposal.
78	(4) A project entity may not intentionally prevent the functionality of the project
79	entity's existing coal-powered electrical generation facility.
80	(5) Notwithstanding the requirements in Subsections (2) through (4), a project entity
81	may take any action necessary to transition to a new electrical generation facility powered by
82	natural gas, hydrogen, or a combination of natural gas and hydrogen, including any action that
83	has been approved by a permitting authority.
84	(6) Within 10 days after submitting an application for an alternative permit to the
85	division as required under Section 11-13-320, a project entity shall provide notice to the
86	<u>Legislative Management Committee that the project entity has complied with the requirement</u>
87	to submit the application.

88	(7) If a project entity fails to submit an application for an alternative permit as required
89	under Section 11-13-320, the Legislative Management Committee shall make
90	recommendations to the governor regarding appropriate action, which may include calling a
91	special session to enact legislation reconstituting the board of the project entity.
92	(8) A project entity shall provide the state the option to purchase a project entity asset
93	intended for decommissioning for fair market value, with the option remaining open for at least
94	two years beginning on July 2, 2025.
95	Section 2. Section 11-13-320 is enacted to read:
96	11-13-320. Air quality permitting transition process.
97	(1) As used in this section:
98	(a) "Alternative permit" means an amendment to a transition permit that, for purposes
99	of transitioning an electrical generation facility to a new facility, allows one or more existing
100	generating units to continue operating while also providing for closure of one but not all
101	existing generating units.
102	(b) "Authority" means the Decommissioned Asset Disposition Authority established in
103	Section 79-6-404.
104	(c) "Division" means the Division of Air Quality created in Section 19-1-105.
105	(d) "Pre-existing permit" means the air quality permit held by the operator of an
106	existing electrical generation facility prior to any amendments associated with transitioning to a
107	new facility.
108	(e) "Transition permit" means an amendment to the pre-existing permit, issued to the
109	operator of an existing electrical generation facility for the purpose of transitioning to a new
110	electrical generation facility, which authorizes construction of the new facility but does not
111	require closure of all existing generating units until after the new facility commences operation
112	(2) A project entity that holds a pre-existing permit for an existing electrical generation
113	facility with multiple generating units, and has been issued a transition permit for a new
114	electrical generation facility, shall submit an application to the division in accordance with
115	Section 19-2-109.4 for issuance of an alternative permit.
116	(3) A project entity shall submit the application described in Subsection (2) on or
117	before July 1, 2024.
118	(4) If a project entity fails to submit an application for an alternative permit as required

119	under this section, the authority shall take actions regarding the air permit application in
120	accordance with Subsection 79-6-404(4)(c).
121	Section 3. Section 19-2-109.4 is enacted to read:
122	19-2-109.4. Project entity transition permit.
123	(1) As used in this section:
124	(a) "Alternative permit" means the same as that term is defined in Section 11-13-320.
125	(b) "Authority" means the Decommissioned Asset Disposition Authority established in
126	Section 79-6-404.
127	(c) "Pre-existing permit" means the same as that term is defined in Section 11-13-320.
128	(d) "Project entity" means the same as that term is defined in Section 11-13-103.
129	(e) "Transition permit" means the same as that term is defined in Section 11-13-320.
130	(2) The division shall accept an application for an alternative permit from a project
131	entity that has previously obtained a transition permit to authorize the same new electrical
132	generating capacity contemplated by the transition permit.
133	(3) An application for an alternative permit shall be evaluated independently from the
134	pre-existing permit or transition permit based on updated assumptions, modeling, and
135	requirements established in rule by the board and may rely upon the reduction of capacity of
136	the existing electrical generation facility only as necessary to ensure that emissions of the new
137	generating facility do not exceed thresholds established by federal law which would necessitate
138	new source review as a major modification.
139	(4) If the application for an alternative permit meets the requirements established by
140	the board:
141	(a) the division shall issue an approval order for the alternative permit to the project
142	entity;
143	(b) the conditions of the transition permit shall cease to apply, including requirements
144	to reduce the capacity of existing generating units at the electrical generation facility; and
145	(c) the project entity shall submit all documentation required to modify any federal
146	operating permit required to be maintained by the project entity, consistent with deadlines
147	established by the division.
148	(5) If an alternative permit is not approved under Subsection (4), the conditions of the
149	transition permit shall remain effective.

150	(6) (a) If a project entity fails to submit an application for an alternative permit by July
151	1, 2024, and the division receives an alternative air permit application prepared and submitted
152	by the authority in accordance with Subsection 79-6-404(4)(c), the division shall conduct a full
153	evaluation as if the application had been prepared and submitted by the project entity to
154	determine whether the alternative air permit would be issued if applied for by the project entity.
155	(b) The division shall provide the results of any report conducted under
156	Subsection(6)(a) to the Public Utilities, Energy, and Technology Interim Committee no later
157	than the November 2024 interim meeting.
158	(c) If the division concludes in the division's determination that an alternative permit
159	would likely be issued if the project entity had submitted an application as required, the project
160	entity shall, within 30 days after the determination is provided to the Public Utilities, Energy,
161	and Technology Interim Committee, submit an application to the division for an alternative
162	permit.
163	Section 4. Section 79-6-404 is enacted to read:
164	79-6-404. Decommissioned Asset Disposition Authority.
165	(1) (1) As used in this section:
166	(a) "Asset intended for decommissioning" means an electrical generation facility
167	owned by a project entity that is intended to be removed from active service.
168	(b) "Authority" means the Decommissioned Asset Disposition Authority created in this
169	section.
170	(c) "Fair market value" means the value of an electrical generation facility considering
171	both the assets and liabilities of the facility, including the value of water rights necessary to
172	operate the existing electrical generation facility at full capacity.
173	(d) "Highest and best purchase offer" means the purchase offer for the asset intended
174	for decommissioning that the authority determines to be in the overall best interest of the state,
175	considering:
176	(i) the purchase price offer amount;
177	(ii) the potential purchaser's:
178	(A) commitment to utilize the best available clean energy technology;
179	(B) intent to use state resources to the maximum extent feasible;
180	(C) commitment to provide jobs and other economic benefits to the state;

181	(D) intent to promote the interests of state residents and ratepayers; and
182	(E) financial capability; and
183	(iii) any other factors the authority considers relevant.
184	(e) "Project entity" means the same as that term is defined in Section 11-13-103.
185	(2) There is established within the office the Decommissioned Asset Disposition
186	Authority.
187	(3) (a) The authority shall be composed of:
188	(i) the executive director of the office;
189	(ii) two members appointed by the governor;
190	(iii) two members appointed by the president of the Senate; and
191	(iv) two members appointed by the speaker of the House of Representatives.
192	(b) The office shall provide staff and support to the authority.
193	(4) The authority shall:
194	(a) provide recommendations to the governor and Legislature regarding the state
195	exercising an option to purchase an asset intended for decommissioning;
196	(b) if the state exercises an option to purchase the asset intended for decommissioning
197	under Section 11-13-318:
198	(i) enter into contracts and agreements related to the decommissioned asset;
199	(ii) govern the disposition of assets intended for decommissioning as outlined in
200	Subsection (5); and
201	(iii) take any other action necessary for governance of a decommissioned asset
202	purchased by the state; and
203	(c) if a project entity fails to submit an application for an alternative air permit as
204	required under Section 11-13-320, contract with independent professionals that have expertise
205	in emissions modeling, air quality impact assessments, regulatory compliance, and any other
206	discipline necessary for the preparation of a complete alternative air permit application,
207	including:
208	(i) conducting emissions modeling, air quality impact assessments, and gathering any
209	other information necessary for inclusion in a complete alternative air permit application;
210	(ii) preparing the full application with all necessary information included, as would be
211	required for an application submitted by the owner of the electrical generation facility; and

212	(iii) submitting the full permit application to the Division of Air Quality.
213	(5) If the state exercises an option to purchase or otherwise take control of the asset
214	intended for decommissioning under Section 11-13-318, the authority may, no sooner than July
215	<u>2, 2025:</u>
216	(a) hold a public hearing to receive comment and evidence regarding:
217	(i) the fair market value of the asset, including the valuation study conducted by the
218	authority under Section 79-6-405; and
219	(ii) the proposed disposition of the decommissioned asset;
220	(b) establish procedures and timelines for potential purchasers to submit binding
221	purchase offers;
222	(c) evaluate all purchase offers to determine the highest and best purchase offer;
223	(d) approve the sale of the decommissioned asset to the purchaser that has submitted
224	the highest and best purchase offer; and
225	(e) take any other action necessary to govern the disposition of the decommissioned
226	asset in accordance with this section.
227	(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
228	authority shall make rules that establish:
229	(a) procedures and associated timelines for potential purchasers to submit binding
230	purchase offers for a decommissioned asset;
231	(b) objective criteria and a process to evaluate all purchase offers submitted for a
232	decommissioned asset and determine which purchase offer is the highest and best offer; and
233	(c) a process for the authority to approve the sale of a decommissioned asset to the
234	purchaser that has submitted the highest and best purchase offer.
235	Section 5. Section 79-6-405 is enacted to read:
236	79-6-405. Study of project entity asset intended for decommissioning.
237	(1) As used in this section:
238	(a) "Authority" means the Decommissioned Asset Disposition Authority, created in
239	Section 79-6-404.
240	(b) "Fair market value" means the value of an electrical generation facility considering
241	both the assets and liabilities of the facility, including the value of water rights necessary to
242	operate the existing electrical generation facility at full capacity.

243	(2) The authority, in consultation with the office, shall conduct a study to:
244	(a) evaluate issues in regards to a state implementation plan as a result of issuing an
245	alternative permit under Section 19-2-109.4;
246	(b) establish the fair market value of an electrical generation facility that a project
247	entity intends to decommission; and
248	(c) evaluate the potential sale of the facility to new owners;
249	(3) In conducting the study described in this section, the authority shall contract or
250	consult with independent professionals with expertise in:
251	(a) areas relevant to environmental regulatory compliance and clean air act state
252	implementation plan development, including:
253	(i) related electric generation capacity;
254	(ii) resource adequacy; and
255	(iii) economic development considerations; and
256	(b) areas relevant to the valuation and disposition of electrical generation facilities,
257	including:
258	(i) engineering;
259	(ii) environmental assessments;
260	(iii) energy economics;
261	(iv) water rights;
262	(v) mineral rights;
263	(vi) regulatory analysis;
264	(vii) financial analysis;
265	(viii) real estate valuation; and
266	(ix) legal analysis.
267	(4) The study described in Subsection (2) shall:
268	(a) for the evaluation of issues in regards to a state implementation plan as a result of
269	issuing an alternative permit under Section 19-2-109.4, based on input from the Division of Air
270	Quality and independent modeling, legal analysis, and economic analysis, evaluate:
271	(i) any technical deficiencies that could occur in a state implementation plan as a result
272	of issuing an alternative permit; and
273	(ii) options for revising the state implementation plan to maximize flexibility for the

274	state to utilize an alternative permit and preserve electric generating capacity sufficient to
275	support economic growth in the state while ensuring the state implementation plan meets
276	federal air quality standards;
277	(b) for the valuation of the project entity asset that a project entity intends to
278	decommission, include:
279	(i) an assessment of all assets associated with the electrical generation facility,
280	including real property, equipment, water rights, mineral rights, and any other associated
281	assets;
282	(ii) an assessment of all financial assets and potential financial liabilities or risks
283	related to the electrical generation facility intended for decommissioning;
284	(iii) an analysis of any encumbrances on the electrical generation facility;
285	(iv) the impact on valuation of an electrical generation facility related to the issuance of
286	an alternative air quality permit under Section 19-2-109.4;
287	(v) a review of any potential effect a sale of the electrical generation facility would
288	have on liabilities related to the electrical generation facility;
289	(vi) incorporation of any relevant local, regional, or national economic and market
290	factors that may impact the fair market value; and
291	(vii) any other factors the authority considers relevant in establishing a fair market
292	value for the electrical generation facility; and
293	(c) to evaluate the issues surrounding a potential sale of the facility, include:
294	(i) potential purchase and sale agreement terms;
295	(ii) the necessary financial capability of a potential purchaser, including experience
296	raising capital, access to capital, financial stability, and ability to provide security for
297	obligations related to decommissioning, remediation, and other liabilities;
298	(iii) operational experience and capability of a potential purchaser, including
299	experience operating electrical generation facilities, contracting history, and historical
300	operating metrics;
301	(iv) permitting, regulatory compliance, and construction issues for continued operation
302	of the facility;
303	(v) the likelihood that continued operation of the facility would impact other electrical
304	generation facilities in the state;

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305	(vi) the potential for continued operation of the facility to infringe on existing utility
306	service territories;
307	(vii) the viability of alternative business models for continued operation of the facility;
308	(viii) potential community and regional impacts resulting from continued operation or
309	the retirement of the facility; and
310	(ix) the potential for continued operation of the facility to interfere with the rights and
311	interests of the project entity, the project entity's members, power purchasers, bondholders,
312	creditors, or other entities.
313	(5) In conducting the study described in Subsection (2), the project entity shall timely
314	provide to the authority information related to the assets and potential liabilities of the
315	electrical generation facility intended for decommissioning.
316	(6) The authority shall report the results of the study to the Public Utilities, Energy, and
317	Technology Interim Committee on or before November 30, 2024.
318	Section 6. Effective date.
319	This bill takes effect on May 1, 2024.