

Effective 7/1/2021

Part 4
Office of Energy Development

79-6-401 Office of Energy Development -- Creation -- Director -- Purpose -- Rulemaking regarding confidential information -- Fees -- Transition for employees.

- (1) There is created an Office of Energy Development within the Department of Natural Resources to be administered by a director.
- (2)
 - (a) The executive director shall appoint the director and the director shall serve at the pleasure of the executive director.
 - (b) The director shall have demonstrated the necessary administrative and professional ability through education and experience to efficiently and effectively manage the office's affairs.
- (3) The purposes of the office are to:
 - (a) serve as the primary resource for advancing energy and mineral development in the state;
 - (b) implement:
 - (i) the state energy policy under Section 79-6-301; and
 - (ii) the governor's energy and mineral development goals and objectives;
 - (c) advance energy education, outreach, and research, including the creation of elementary, higher education, and technical college energy education programs;
 - (d) promote energy and mineral development workforce initiatives;
 - (e) support collaborative research initiatives targeted at Utah-specific energy and mineral development;
 - (f) in coordination with the Department of Environmental Quality and other relevant state agencies:
 - (i) develop effective policy strategies to advocate for and protect the state's interests relating to federal energy and environmental entities, programs, and regulations;
 - (ii) participate in the federal environmental rulemaking process by:
 - (A) advocating for positive reform of federal energy and environmental regulations and permitting;
 - (B) coordinating with other states to develop joint advocacy strategies; and
 - (C) conducting other government relations efforts; and
 - (iii) direct the funding of legal efforts to combat federal overreach and unreasonable delays regarding energy and environmental permitting; and
 - (g) fund the development of detailed and accurate forecasts of the state's long-term energy supply and demand, including a baseline projection of expected supply and demand and analysis of potential alternative scenarios.
- (4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:
 - (a) seek federal grants or loans;
 - (b) seek to participate in federal programs; and
 - (c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.
- (5) The office shall perform the duties required by Sections 11-42a-106, 59-5-102, 59-7-614.7, 59-10-1029, Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High Cost Infrastructure Development Tax Credit Act.
- (6)

- (a) For purposes of administering this section, the office may make rules, by following Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.
 - (b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.
- (7) The office may charge application, filing, and processing fees in amounts determined by the office in accordance with Section 63J-1-504 as dedicated credits for performing office duties described in this part.
- (8)
- (a) An employee of the office on April 30, 2024, is an at-will employee.
 - (b) For an employee described in Subsection (8)(a) who was employed by the office on April 30, 2024, the employee shall have the same salary and benefit options an employee had when the office was part of the office of the governor.
 - (c) An employee of the office hired on or after May 1, 2024, shall receive compensation as provided in Title 63A, Chapter 17, Utah State Personnel Management Act.
- (9)
- (a) The office shall prepare a strategic energy plan to achieve the state's energy policy, including:
 - (i) technological and infrastructure innovation needed to meet future energy demand including:
 - (A) energy production technologies;
 - (B) battery and storage technologies;
 - (C) smart grid technologies;
 - (D) energy efficiency technologies; and
 - (E) any other developing energy technology, energy infrastructure planning, or investments that will assist the state in meeting energy demand;
 - (ii) the state's efficient use and development of:
 - (A) energy resources, including natural gas, coal, clean coal, hydrogen, oil, oil shale, and oil sands;
 - (B) renewable energy resources, including geothermal, solar, hydrogen, wind, biomass, biofuel, and hydroelectric;
 - (C) nuclear power; and
 - (D) earth minerals;
 - (iii) areas of energy-related academic research;
 - (iv) specific areas of workforce development necessary for an evolving energy industry;
 - (v) the development of partnerships with national laboratories; and
 - (vi) a proposed state budget for economic development and investment.
 - (b) In preparing the strategic energy plan, the office shall:
 - (i) consult with stakeholders, including representatives from:
 - (A) energy companies in the state;
 - (B) private and public institutions of higher education within the state conducting energy-related research; and
 - (C) other state agencies; and
 - (ii) use modeling and industry standard data to:
 - (A) define the energy services required by a growing economy;
 - (B) calculate energy needs;
 - (C) develop state strategy for energy transportation, including transmission lines, pipelines, and other infrastructure needs;
 - (D) optimize investments to meet energy needs at the least cost and least risk while meeting the policy outlined in this section;

- (E) address state needs and investments through a prospective 30-year period, divided into five-year working plans; and
- (F) update the plan at least every two years.
- (c) The office shall report annually to the Public Utilities, Energy, and Technology Interim Committee on or before the October interim meeting describing:
 - (i) progress towards creation and implementation of the strategic energy plan;
 - (ii) the plan's compliance with the state energy policy; and
 - (iii) a proposed budget for the office to continue development of the strategic energy plan.
- (10) The director shall:
 - (a) annually review and propose updates to the state's energy policy, as contained in Section 79-6-301;
 - (b) promote as the governor considers necessary:
 - (i) the development of cost-effective energy resources both renewable and nonrenewable; and
 - (ii) educational programs, including programs supporting conservation and energy efficiency measures;
 - (c) coordinate across state agencies to assure consistency with state energy policy, including:
 - (i) working with the State Energy Program to promote access to federal assistance for energy-related projects for state agencies and members of the public;
 - (ii) working with the Division of Emergency Management to assist the governor in carrying out the governor's energy emergency powers under Title 53, Chapter 2a, Part 10, Energy Emergency Powers of the Governor Act;
 - (iii) participating in the annual review of the energy emergency plan and the maintenance of the energy emergency plan and a current list of contact persons required by Section 53-2a-902; and
 - (iv) identifying and proposing measures necessary to facilitate low-income consumers' access to energy services;
 - (d) coordinate with the Division of Emergency Management ongoing activities designed to test an energy emergency plan to ensure coordination and information sharing among state agencies and political subdivisions in the state, public utilities and other energy suppliers, and other relevant public sector persons as required by Sections 53-2a-902, 53-2a-1004, 53-2a-1008, and 53-2a-1010;
 - (e) coordinate with requisite state agencies to study:
 - (i) the creation of a centralized state repository for energy-related information;
 - (ii) methods for streamlining state review and approval processes for energy-related projects; and
 - (iii) the development of multistate energy transmission and transportation infrastructure;
 - (f) coordinate energy-related regulatory processes within the state;
 - (g) compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects;
 - (h) act as the state's advocate before federal and local authorities for energy-related infrastructure projects or coordinate with the appropriate state agency; and
 - (i) help promote the Division of Facilities Construction and Management's measures to improve energy efficiency in state buildings.
- (11) The director has standing to testify on behalf of the governor at the Public Service Commission created in Section 54-1-1.
- (12) The office shall include best practices in developing actionable goals and recommendations as part of preparing and updating every two years the strategic energy plan required under Subsection (9).

- (13) The office shall maintain and regularly update a public website that provides an accessible dashboard of relevant metrics and reports and makes available the data used to create the strategic energy plan.

Amended by Chapter 4, 2024 Special Session 3

79-6-402 In-state generator need -- Merchant electric transmission line.

- (1) As used in this section:
 - (a) "Capacity allocation process" means the process outlined by the Federal Energy Regulatory Commission in its final policy statement dated January 17, 2013, "Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission," 142 F.E.R.C. P61,038 (2013).
 - (b) "Certificate of in-state need" means a certificate issued by the office in accordance with this section identifying an in-state generator that meets the requirements and qualifications of this section.
 - (c) "Expression of need" means a document prepared and submitted to the office by an in-state merchant generator that describes or otherwise documents the transmission needs of the in-state merchant generator in conformance with the requirements of this section.
 - (d) "In-state merchant generator" means an electric power provider that generates power in Utah and does not provide service to retail customers within the boundaries of Utah.
 - (e) "Merchant electric transmission line" means a transmission line that does not provide electricity to retail customers within the boundaries of Utah.
 - (f) "Office" means the Office of Energy Development established in Section 79-6-401.
 - (g) "Open solicitation notice" means a document prepared and submitted to the office by a merchant electric transmission line regarding the commencement of the line's open solicitation in compliance with 142 F.E.R.C. P61,038 (2013).
- (2) As part of the capacity allocation process, a merchant electric transmission line shall file an open solicitation notice with the office containing a description of the merchant electric transmission line, including:
 - (a) the proposed capacity;
 - (b) the location of potential interconnection for in-state merchant generators;
 - (c) the planned date for commencement of construction; and
 - (d) the planned commercial operations date.
- (3) Upon receipt of the open solicitation notice, the office shall:
 - (a) publish the notice on the Utah Public Notice Website created under Section 63A-16-601;
 - (b) include in the notice contact information; and
 - (c) provide the deadline date for submission of an expression of need.
- (4)
 - (a) In response to the open solicitation notice published by the office, and no later than 30 days after publication of the notice, an in-state merchant generator may submit an expression of need to the office.
 - (b) An expression of need submitted under Subsection (4)(a) shall include:
 - (i) a description of the in-state merchant generator; and
 - (ii) a schedule of transmission capacity requirement provided in megawatts, by point of receipt and point of delivery and by operating year.
- (5) No later than 60 days after notice is published under Subsection (3), the office shall prepare a certificate of in-state need identifying the in-state merchant generators.

- (6) Within five days of preparing the certificate of in-state need, the office shall:
 - (a) publish the certificate on the Utah Public Notice Website created under Section 63A-16-601; and
 - (b) provide the certificate to the merchant electric transmission line for consideration in the capacity allocation process.
- (7) The merchant electric transmission line shall:
 - (a) provide the Federal Energy Regulatory Commission with a copy of the certificate of in-state need; and
 - (b) certify that the certificate is being provided to the Federal Energy Regulatory Commission in accordance with the requirements of this section, including a citation to this section.
- (8) At the conclusion of the capacity allocation process, and unless prohibited by a contractual obligation of confidentiality, the merchant electric transmission line shall report to the office whether a merchant in-state generator reflected on the certificate of in-state need has entered into a transmission service agreement with the merchant electric transmission line.
- (9) This section may not be interpreted to:
 - (a) create an obligation of a merchant electric transmission line to pay for, or construct any portion of, the transmission line on behalf of an in-state merchant generator; or
 - (b) preempt, supersede, or otherwise conflict with Federal Energy Regulatory Commission rules and regulations applicable to a commercial transmission agreement, including agreements, or terms of agreements, as to cost, terms, transmission capacity, or key rates.
- (10) Subsections (2) through (9) do not apply to a project entity as defined in Section 11-13-103.

Amended by Chapter 84, 2021 General Session

Renumbered and Amended by Chapter 280, 2021 General Session

Amended by Chapter 345, 2021 General Session

79-6-403 Utah Energy Research Grant Program.

- (1)
 - (a) There is created within the office the Utah Energy Research Grant Program.
 - (b) The purpose of the program is to encourage energy-related research within the state by providing matching grants to applicants that have received federal or private grants for specific ongoing energy-related research projects.
- (2)
 - (a) An applicant that submits a proposal for a grant to the office shall include details in the proposal regarding:
 - (i) the specific ongoing energy-related research project;
 - (ii) information about previously awarded federal and private grants for the specific ongoing energy-related research project, including:
 - (A) the amount of the previously awarded federal or private grant; and
 - (B) the requirements to qualify for the previously awarded federal or private grant; and
 - (iii) other information the office determines necessary to evaluate the proposal.
 - (b) When evaluating a proposal for a grant, the office shall consider:
 - (i) the grant amount requested, which may not exceed the amount of federal or private grants the applicant has been awarded;
 - (ii) the extent to which the proposal advances the goals of the state energy policy and strategic energy plan;
 - (iii) the extent to which any additional funding sources or existing or planned partnerships may benefit the proposal; and

- (iv) the viability of the proposal.
- (3) Subject to this Subsection (3), the office may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish:
 - (a) eligibility criteria for a grant;
 - (b) the form and process for submitting a proposal to the office for a grant;
 - (c) the process and criteria for determining the priority of applications received;
 - (d) the formula and method for determining a grant amount; and
 - (e) reporting requirements for a grant recipient.
- (4) On or before October 31 of each year, the office shall provide a written report to the Public Utilities, Energy, and Technology Interim Committee regarding:
 - (a) the number of grants and grant amounts awarded under the program;
 - (b) data gathered under the program; and
 - (c) the impact of the program on encouraging energy-related research within the state.

Enacted by Chapter 196, 2023 General Session

79-6-404 Agency cooperation.

A state agency shall provide the office with any energy-related information requested by the office if the office's request is consistent with other law.

Renumbered and Amended by Chapter 88, 2024 General Session

79-6-405 Reports.

- (1) The director shall report annually to the Public Utilities, Energy, and Technology Interim Committee.
- (2) The report required in Subsection (1) shall:
 - (a) summarize the status and development of the state's energy resources;
 - (b) summarize the activities and accomplishments of the office;
 - (c) address the director's activities under this part;
 - (d) recommend any energy-related executive or legislative action the director or office considers beneficial to the state, including updates to the state energy policy under Section 79-6-301; and
 - (e) address long-term energy planning required under Subsection 79-6-401(10).

Renumbered and Amended by Chapter 88, 2024 General Session

79-6-406 Authority to study transportation, heating, and electricity-generating fuel storage reserve.

- (1) As used in this section, "energy fuel" means transportation, heating, and electricity-generating fuels used in the state.
- (2) The office shall conduct a study analyzing the potential benefits, risks, feasibility, and requirements of establishing a Utah transportation, heating, and electricity-generating fuel storage reserve.
- (3) A study conducted under this section shall evaluate:
 - (a) current and predicted energy fuel consumption patterns and needs for the state;
 - (b) existing energy fuel infrastructure in the state, including refineries, powerplants, pipelines, railroads, transmission lines, and storage facilities;
 - (c) strengths and vulnerabilities in the state's regional and national energy fuel supply chains;

- (d) impacts on energy fuel availability from natural disasters, accidents, or other causes;
 - (e) feasibility of storage options to mitigate supply risks, including:
 - (i) optimal locations, including salt caverns located in the state;
 - (ii) ownership structures;
 - (iii) inventory management;
 - (iv) strategies for prioritizing fuel supplies in emergency situations;
 - (v) accessibility protocols; and
 - (vi) funding mechanisms;
 - (f) opportunities to work with industry to serve strategic initiatives and critical needs; and
 - (g) economic modeling to analyze required state energy fuel reserve sizes and costs.
- (4) In conducting a study under this section, the office may:
- (a) contract with independent experts and consultants; and
 - (b) coordinate with private industry and others with relevant expertise.
- (5) The office shall present a status update on the study in a report to the Public Utilities, Energy, and Technology Interim Committee by November 30, 2024.

Enacted by Chapter 62, 2024 General Session

79-6-407 Decommissioned Asset Disposition Authority.

- (1) As used in this section:
- (a) "Asset intended for decommissioning" means an electrical generation facility owned by a project entity that is intended to be removed from active service.
 - (b) "Authority" means the Decommissioned Asset Disposition Authority created in this section.
 - (c) "Fair market value" means the value of an electrical generation facility considering both the assets and liabilities of the facility, including the value of water rights necessary to operate the existing electrical generation facility at full capacity.
 - (d) "Highest and best purchase offer" means the purchase offer for the asset intended for decommissioning that the authority determines to be in the overall best interest of the state, considering:
 - (i) the purchase price offer amount;
 - (ii) the potential purchaser's:
 - (A) commitment to utilize the best available control technology;
 - (B) intent to use state resources to the maximum extent feasible;
 - (C) commitment to provide jobs and other economic benefits to the state;
 - (D) intent to promote the interests of state residents and ratepayers; and
 - (E) financial capability; and
 - (iii) any other factors the authority considers relevant.
 - (e) "Project entity" means the same as that term is defined in Section 11-13-103.
- (2) There is established within the office the Decommissioned Asset Disposition Authority.
- (3)
- (a) The authority shall be composed of:
 - (i) the executive director of the office;
 - (ii) two members appointed by the governor;
 - (iii) two members appointed by the president of the Senate; and
 - (iv) two members appointed by the speaker of the House of Representatives.
 - (b) The office shall provide staff and support to the authority.
- (4) The authority shall:

- (a) provide recommendations to the governor and Legislature regarding the state exercising an option to purchase an asset intended for decommissioning;
 - (b) if the state exercises an option to purchase the asset intended for decommissioning under Section 11-13-318:
 - (i) enter into contracts and agreements related to the decommissioned asset;
 - (ii) govern the disposition of assets intended for decommissioning as outlined in Subsection (6); and
 - (iii) take any other action necessary for governance of a decommissioned asset purchased by the state;
 - (c) contract with independent professionals that have expertise in emissions modeling, air quality impact assessments, regulatory compliance, and any other discipline necessary for the preparation and submission of a complete alternative air permit application, including:
 - (i) conducting emissions modeling, air quality impact assessments, and gathering any other information necessary for inclusion in a complete alternative air permit application;
 - (ii) preparing the full application with all necessary information included, as would be required for an application submitted by the owner of the electrical generation facility; and
 - (iii) submitting the full permit application to the Division of Air Quality; and
 - (d) submit a complete alternative air permit application to the division on or before December 31, 2024, unless the authority determines that it is not feasible to submit a complete application on or before that date.
- (5) If the authority determines under Subsection (4)(d) that it is not feasible to submit a complete application on or before December 31, 2024, the authority shall:
- (a) submit a written report to the Legislative Management Committee on or before December 15, 2024, explaining the reasons for the delay and providing an estimated time line for submitting the complete application; and
 - (b) submit the complete application to the division as soon as practicable after December 31, 2024.
- (6) If the state exercises an option to purchase or otherwise take control of the asset intended for decommissioning under Section 11-13-318, the authority may, no sooner than July 2, 2025:
- (a) hold a public hearing to receive comment and evidence regarding:
 - (i) the fair market value of the asset, including the valuation study conducted by the authority under Section 79-6-408; and
 - (ii) the proposed disposition of the decommissioned asset;
 - (b) establish procedures and timelines for potential purchasers to submit binding purchase offers;
 - (c) evaluate all purchase offers to determine the highest and best purchase offer;
 - (d) approve the sale of the decommissioned asset to the purchaser that has submitted the highest and best purchase offer; and
 - (e) take any other action necessary to govern the disposition of the decommissioned asset in accordance with this section.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the authority shall make rules that establish:
- (a) procedures and associated timelines for potential purchasers to submit binding purchase offers for a decommissioned asset;
 - (b) objective criteria and a process to evaluate all purchase offers submitted for a decommissioned asset and determine which purchase offer is the highest and best offer; and
 - (c) a process for the authority to approve the sale of a decommissioned asset to the purchaser that has submitted the highest and best purchase offer.

Amended by Chapter 4, 2024 Special Session 3

79-6-408 Study of project entity asset intended for decommissioning.

- (1) As used in this section:
 - (a) "Authority" means the Decommissioned Asset Disposition Authority, created in Section 79-6-407.
 - (b) "Fair market value" means the same as that term is defined in Section 79-6-407.
- (2) The authority, in consultation with the office, shall conduct a study to:
 - (a) evaluate issues in regards to a state implementation plan as a result of issuing an alternative permit under Section 19-2-109.4;
 - (b) establish the fair market value of an electrical generation facility that a project entity intends to decommission; and
 - (c) evaluate the potential sale of the facility to new owners.
- (3) In conducting the study described in this section, the authority shall contract or consult with independent professionals with expertise in:
 - (a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including:
 - (i) related electric generation capacity;
 - (ii) resource adequacy; and
 - (iii) economic development considerations; and
 - (b) areas relevant to the valuation and disposition of electrical generation facilities, including:
 - (i) engineering;
 - (ii) environmental assessments;
 - (iii) energy economics;
 - (iv) water rights;
 - (v) mineral rights;
 - (vi) regulatory analysis;
 - (vii) financial analysis;
 - (viii) real estate valuation; and
 - (ix) legal analysis.
- (4) The study described in Subsection (2) shall:
 - (a) for the evaluation of issues in regards to a state implementation plan as a result of issuing an alternative permit under Section 19-2-109.4, based on input from the Division of Air Quality and independent modeling, legal analysis, and economic analysis, evaluate:
 - (i) any technical deficiencies that could occur in a state implementation plan as a result of issuing an alternative permit; and
 - (ii) options for revising the state implementation plan to ensure that the continued operation of the power plants under an alternative permit will not jeopardize the state's ability to meet federal air quality standards;
 - (b) for the valuation of the project entity asset that a project entity intends to decommission, include:
 - (i) an assessment of all assets associated with the electrical generation facility, including real property, equipment, water rights, mineral rights, and any other associated assets;
 - (ii) an assessment of all financial assets and potential financial liabilities or risks related to the electrical generation facility intended for decommissioning;
 - (iii) an analysis of any encumbrances on the electrical generation facility;
 - (iv) the impact on valuation of an electrical generation facility related to the issuance of an alternative air quality permit under Section 19-2-109.4;

- (v) a review of any potential effect a sale of the electrical generation facility would have on liabilities related to the electrical generation facility;
 - (vi) incorporation of any relevant local, regional, or national economic and market factors that may impact the fair market value; and
 - (vii) any other factors the authority considers relevant in establishing a fair market value for the electrical generation facility; and
- (c) to evaluate the issues surrounding a potential sale of the facility, include:
- (i) potential purchase and sale agreement terms;
 - (ii) the necessary financial capability of a potential purchaser, including experience raising capital, access to capital, financial stability, and ability to provide security for obligations related to decommissioning, remediation, and other liabilities;
 - (iii) operational experience and capability of a potential purchaser, including experience operating electrical generation facilities, contracting history, and historical operating metrics;
 - (iv) permitting, regulatory compliance, and construction issues for continued operation of the facility;
 - (v) the likelihood that continued operation of the facility would impact other electrical generation facilities in the state;
 - (vi) the potential for continued operation of the facility to infringe on existing utility service territories;
 - (vii) the viability of alternative business models for continued operation of the facility;
 - (viii) potential community and regional impacts resulting from continued operation or the retirement of the facility; and
 - (ix) the potential for continued operation of the facility to interfere with the rights and interests of the project entity, the project entity's members, power purchasers, bondholders, creditors, or other entities.
- (5) In conducting the study described in Subsection (2), the project entity shall timely provide to the authority information related to the assets and potential liabilities of the electrical generation facility intended for decommissioning.
- (6) The authority shall report the progress and results of the study to the Public Utilities, Energy, and Technology Interim Committee on or before November 30, 2024.

Amended by Chapter 4, 2024 Special Session 3