# **ENERGY SECURITY AMENDMENTS** 2024 GENERAL SESSION STATE OF UTAH **Chief Sponsor: Derrin R. Owens**

### House Sponsor: Carl R. Albrecht

2 3	LONG TITLE
1	General Description:
5	This bill modifies provisions related to the regulation of energy.
6	Highlighted Provisions:
7	This bill:
8	<ul> <li>defines terms;</li> </ul>
9	<ul> <li>allows a project entity to submit an application for an alternative air permit;</li> </ul>
)	• outlines the review process for an alternative permit and conditions for either the
l	alternative or transition permit to become effective;
2	<ul> <li>provides the state the option to purchase an electrical generation facility intended for</li> </ul>
3	decommissioning;
1	<ul> <li>creates a Decommissioned Asset Disposition Authority (authority) within the Office of</li> </ul>
5	Energy Development;
5	<ul> <li>requires the authority to:</li> </ul>
7	• 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
)	<ul> <li>requires a study from the authority to:</li> </ul>
_	• analyze issues related to the state implementation plan arising out of a permit issued
2	to an electrical generation facility intended for decommissioning;
3	• determine and provide the fair market value of a project entity's electrical generation
1	facility intended for decommissioning; and
5	• evaluate the process for selling an electrical generation facility purchased by the state.
5	Money Appropriated in this Bill:
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27 None

28	Other Special Clauses:
29	None
30	Utah Code Sections Affected:
31	AMENDS:
32	11-13-318, as enacted by Laws of Utah 2023, Chapter 195
33	ENACTS:
34	11-13-320, as Utah Code Annotated 1953
35	<b>19-2-109.4</b> , as Utah Code Annotated 1953
36	79-6-404, as Utah Code Annotated 1953
37	<b>79-6-405</b> , as Utah Code Annotated 1953
38	
39	Be it enacted by the Legislature of the state of Utah:
40	Section 1. Section <b>11-13-318</b> is amended to read:
41	11-13-318 . Notice of decommissioning or disposal of project entity assets.
42	(1) As used in this section:
43	(a) <u>"Alternative permit" means the same as that term is defined in Section 11-13-320.</u>
44	(b) "Decommissioning" means to remove an electrical generation facility from active
45	service.
46	(c) "Disposal" means the sale, transfer, dismantling, or other disposition of a project
47	entity's assets.
48	(d) "Division" means the Division of Air Quality created in Section 19-1-105.
49	(e) "Fair market value" means the same as that term is defined in Section 79-6-405.
50	[(b)] (i) "Project entity asset" means a project entity's:
51	(A) land;
52	(B) buildings; or
53	(C) essential equipment, including turbines, generators, transformers, and
54	transmission lines.
55	(ii) "Project entity asset" does not include an asset that is not essential for the
56	generation of electricity in the project entity's coal-powered electrical generation
57	facility.
58	(2) A project entity shall provide a notice of decommissioning or disposal to the Legislative
59	Management Committee at least 180 days before:
60	(a) the disposal of any project entity assets; or
61	(b) the decommissioning of the project entity's coal-powered electrical generation

62		facility.
63	(3)	The notice of decommissioning or disposal described in Subsection (2) shall include:
64		(a) the date of the intended decommissioning or disposal;
65		(b) a description of the project entity's coal-powered electrical generation facility
66		intended for decommissioning or any project entity asset intended for disposal; and
67		(c) the reasons for the decommissioning or disposal.
68	(4)	A project entity may not intentionally prevent the functionality of the project entity's
69		existing coal-powered electrical generation facility.
70	(5)	Notwithstanding the requirements in Subsections (2) through (4), a project entity may
71		take any action necessary to transition to a new electrical generation facility powered by
72		natural gas, hydrogen, or a combination of natural gas and hydrogen, including any
73		action that has been approved by a permitting authority.
74	<u>(6)</u>	If a project entity intends to submit an application for an alternative permit to the
75		division as described in Section 11-13-320, the project entity shall notify the Legislative
76		Management Committee that the project entity intends to submit an application before
77		<u>July 1, 2024.</u>
78	(7)	If a project does not notify the Legislative Management Committee of an intent to
79		submit an application, the Legislative Management Committee shall make
80		recommendations to the governor regarding appropriate action, which may include
81		calling a special session to enact legislation reconstituting the board of the project entity.
82	<u>(8)</u>	A project entity shall provide the state the option to purchase for fair market value a
83		project entity asset intended for decommissioning, with the option remaining open for at
84		least two years, beginning on July 2, 2025.
85		Section 2. Section <b>11-13-320</b> is enacted to read:
86		<b><u>11-13-320</u></b> . Air quality permitting transition process.
87	<u>(1)</u>	As used in this section:
88		(a) "Alternative permit" means an amendment to a transition permit that, for purposes of
89		transitioning an electrical generation facility to a new facility, allows one or more
90		existing generating units to continue operating while also providing for closure of
91		one but not all existing generating units.
92		(b) "Authority" means the Decommissioned Asset Disposition Authority established in
93		Section 79-6-404.
94		(c) "Division" means the Division of Air Quality created in Section 19-1-105.
95		(d) "Pre-existing permit" means the air quality permit held by the operator of an existing

96	electrical generation facility prior to any amendments associated with transitioning to
97	<u>a new facility.</u>
98	(e) "Transition permit" means an amendment to the pre-existing permit, issued to the
99	operator of an existing electrical generation facility for the purpose of transitioning to
100	a new electrical generation facility, which authorizes construction of the new facility
101	but does not require closure of all existing generating units until after the new facility
102	commences operation.
103	(2) A project entity that holds a pre-existing permit for an existing electrical generation
104	facility with multiple generating units, and has been issued a transition permit for a new
105	electrical generation facility, may submit an application to the division in accordance
106	with Section 19-2-109.4 for issuance of an alternative permit.
107	(3) If a project entity intends to submit an application under Subsection (2), the project
108	entity shall provide a binding notice of intent to the Legislative Management Committee
109	on or before July 1, 2024.
110	(4) If a project entity submits an application under Subsection (2), the project entity shall
111	submit the application on or before January 1, 2025.
110	Section 3. Section 19-2-109.4 is enacted to read:
112	Section 5. Section 17 = 1074 is character to read.
112	<u>19-2-109.4</u> . Project entity transition permit.
113	<u>19-2-109.4</u> . Project entity transition permit.
113 114	<u>19-2-109.4</u> . Project entity transition permit. (1) <u>As used in this section:</u>
113 114 115	<ul> <li><u>19-2-109.4</u>. Project entity transition permit.</li> <li>(1) <u>As used in this section:</u></li> <li>(a) "Alternative permit" means an amendment to a transition permit that, for purposes of</li> </ul>
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130	commences operation.
131	(2) The division shall accept an application for an alternative permit from a project entity
132	that has previously obtained a transition permit to authorize the same new electrical
133	generating capacity contemplated by the transition permit.
134	(3) If the application for an alternative permit meets the requirements established by the
135	board:
136	(a) the division shall issue an approval order for the alternative permit to the project
137	entity:
138	(b) the conditions of the transition permit shall cease to apply, including requirements to
139	reduce the capacity of existing generating units at the electrical generation facility;
140	and
141	(c) the project entity shall submit all documentation required to modify any federal
142	operating permit required to be maintained by the project entity, consistent with
143	deadlines established by the division.
144	(4) If an alternative permit is not approved under Subsection (3), the conditions of the
145	transition permit shall remain effective.
146	(5) (a) Upon receipt of an alternative air permit application prepared and submitted by
147	the authority in accordance with Subsection 79-6-404(4)(c), the division shall
148	conduct a full evaluation as if the application had been prepared and submitted by a
149	project entity to determine whether the alternative air permit would be issued if
150	applied for by the project entity.
151	(b) The division shall provide the results of any evaluation conducted under Subsection
152	(5)(a) to the authority no later than January 30, 2025.
153	(c) If the division concludes after evaluation that an alternative permit would likely be
154	issued to a project entity, the authority shall, within 30 days after the authority
155	receives the results of the evaluation, submit recommendations to the Legislative
156	Management Committee regarding options for the state to continue to authorize
157	construction of the project entity's new electrical generation facility that do not
158	require the closure of all of the project entity's existing electrical generating facilities.
159	(6) The division shall evaluate an application for an alternative permit independently from
160	any pre-existing permit or transition permit based on updated assumptions, modeling,
161	and requirements established in rule by the division and may rely upon the reduction of
162	capacity of the existing electrical generation facility only as necessary to ensure that
163	emissions of the new generating facility do not exceed thresholds established by federal

#### S.B. 161

164	law which would necessitate new source review as a major modification.
165	Section 4. Section <b>79-6-404</b> is enacted to read:
166	79-6-404 . Decommissioned Asset Disposition Authority.
167	(1) As used in this section:
168	(a) "Asset intended for decommissioning" means an electrical generation facility owned
169	by a project entity that is intended to be removed from active service.
170	(b) "Authority" means the Decommissioned Asset Disposition Authority created in this
171	section.
172	(c) <u>"Fair market value" means the value of an electrical generation facility considering</u>
173	both the assets and liabilities of the facility, including the value of water rights
174	necessary to operate the existing electrical generation facility at full capacity.
175	(d) "Highest and best purchase offer" means the purchase offer for the asset intended for
176	decommissioning that the authority determines to be in the overall best interest of the
177	state, considering:
178	(i) the purchase price offer amount;
179	(ii) the potential purchaser's:
180	(A) commitment to utilize the best available control technology;
181	(B) intent to use state resources to the maximum extent feasible;
182	(C) commitment to provide jobs and other economic benefits to the state;
183	(D) intent to promote the interests of state residents and ratepayers; and
184	(E) financial capability; and
185	(iii) any other factors the authority considers relevant.
186	(e) <u>"Project entity" means the same as that term is defined in Section 11-13-103.</u>
187	(2) There is established within the office the Decommissioned Asset Disposition Authority.
188	(3) (a) The authority shall be composed of:
189	(i) the executive director of the office;
190	(ii) two members appointed by the governor;
191	(iii) two members appointed by the president of the Senate; and
192	(iv) two members appointed by the speaker of the House of Representatives.
193	(b) The office shall provide staff and support to the authority.
194	(4) The authority shall:
195	(a) provide recommendations to the governor and Legislature regarding the state
196	exercising an option to purchase an asset intended for decommissioning;
197	(b) if the state exercises an option to purchase the asset intended for decommissioning

198	under Section 11-13-318:
199	(i) enter into contracts and agreements related to the decommissioned asset;
200	(ii) govern the disposition of assets intended for decommissioning as outlined in
201	Subsection (5); and
202	(iii) take any other action necessary for governance of a decommissioned asset
203	purchased by the state; and
204	(c) contract with independent professionals that have expertise in emissions modeling,
205	air quality impact assessments, regulatory compliance, and any other discipline
206	necessary for the preparation and submission of a complete alternative air permit
207	application, 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
210	application;
211	(ii) preparing the full application with all necessary information included, as would
212	be required for an application submitted by the owner of the electrical generation
213	facility; and
214	(iii) submitting the full permit application to the Division of Air Quality.
215	(5) If the state exercises an option to purchase or otherwise take control of the asset
216	intended for decommissioning under Section 11-13-318, the authority may, no sooner
217	<u>than July 2, 2025:</u>
218	(a) hold a public hearing to receive comment and evidence regarding:
219	(i) the fair market value of the asset, including the valuation study conducted by the
220	authority under Section 79-6-405; and
221	(ii) the proposed disposition of the decommissioned asset;
222	(b) establish procedures and timelines for potential purchasers to submit binding
223	purchase offers;
224	(c) evaluate all purchase offers to determine the highest and best purchase offer;
225	(d) approve the sale of the decommissioned asset to the purchaser that has submitted the
226	
	highest and best purchase offer; and
227	highest and best purchase offer; and (e) take any other action necessary to govern the disposition of the decommissioned
227 228	
	(e) take any other action necessary to govern the disposition of the decommissioned
228	(e) take any other action necessary to govern the disposition of the decommissioned asset in accordance with this section.
228 229	<ul> <li>(e) take any other action necessary to govern the disposition of the decommissioned asset in accordance with this section.</li> <li>(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the</li> </ul>

232	purchase offers for a decommissioned asset;
233	(b) objective criteria and a process to evaluate all purchase offers submitted for a
234	decommissioned asset and determine which purchase offer is the highest and best
235	offer; and
236	(c) a process for the authority to approve the sale of a decommissioned asset to the
237	purchaser that has submitted the highest and best purchase offer.
238	Section 5. Section <b>79-6-405</b> is enacted to read:
239	79-6-405 . Study of project entity asset intended for decommissioning.
240	(1) As used in this section:
241	(a) "Authority" means the Decommissioned Asset Disposition Authority, created in
242	<u>Section 79-6-404.</u>
243	(b) "Fair market value" means the same as that term is defined in Section 79-6-404.
244	(2) The authority, in consultation with the office, shall conduct a study to:
245	(a) evaluate issues in regards to a state implementation plan as a result of issuing an
246	alternative permit under Section 19-2-109.4;
247	(b) establish the fair market value of an electrical generation facility that a project entity
248	intends to decommission; and
249	(c) evaluate the potential sale of the facility to new owners.
250	(3) In conducting the study described in this section, the authority shall contract or consult
250 251	(3) In conducting the study described in this section, the authority shall contract or consult with independent professionals with expertise in:
251	with independent professionals with expertise in:
251 252	with independent professionals with expertise in: (a) areas relevant to environmental regulatory compliance and clean air act state
251 252 253	<ul> <li>with independent professionals with expertise in:</li> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including:</li> </ul>
251 252 253 254	<ul> <li>with independent professionals with expertise in:</li> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including:         <ul> <li>(i) related electric generation capacity;</li> </ul> </li> </ul>
251 252 253 254 255	<ul> <li>with independent professionals with expertise in:</li> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including:         <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> </ul> </li> </ul>
251 252 253 254 255 256	<ul> <li>with independent professionals with expertise in:</li> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including: <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> <li>(iii) economic development considerations; and</li> </ul> </li> </ul>
251 252 253 254 255 256 257 258 259	<ul> <li>with independent professionals with expertise in:</li> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including: <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> <li>(iii) economic development considerations; and</li> </ul> </li> <li>(b) areas relevant to the valuation and disposition of electrical generation facilities,</li> </ul>
251 252 253 254 255 256 257 258 259 260	<ul> <li>with independent professionals with expertise in: <ul> <li>(a) areas relevant to environmental regulatory compliance and clean air act state</li> <li>implementation plan development, including: <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> <li>(iii) economic development considerations; and</li> </ul> </li> <li>(b) areas relevant to the valuation and disposition of electrical generation facilities, including: <ul> <li>(i) engineering;</li> <li>(ii) environmental assessments;</li> </ul> </li> </ul></li></ul>
251 252 253 254 255 256 257 258 259 260 261	<ul> <li>with independent professionals with expertise in:</li> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including: <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> <li>(iii) economic development considerations; and</li> </ul> </li> <li>(b) areas relevant to the valuation and disposition of electrical generation facilities, including: <ul> <li>(i) engineering;</li> <li>(ii) environmental assessments;</li> <li>(iii) energy economics;</li> </ul> </li> </ul>
251 252 253 254 255 256 257 258 259 260 261 262	<ul> <li>with independent professionals with expertise in: <ul> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including: <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> <li>(iii) economic development considerations; and</li> </ul> </li> <li>(b) areas relevant to the valuation and disposition of electrical generation facilities, including: <ul> <li>(i) engineering;</li> <li>(ii) environmental assessments;</li> <li>(iii) energy economics;</li> <li>(iv) water rights;</li> </ul> </li> </ul></li></ul>
251 252 253 254 255 256 257 258 259 260 261 262 263	<ul> <li>with independent professionals with expertise in: <ul> <li>(a) areas relevant to environmental regulatory compliance and clean air act state implementation plan development, including: <ul> <li>(i) related electric generation capacity;</li> <li>(ii) resource adequacy; and</li> <li>(iii) economic development considerations; and</li> </ul> </li> <li>(b) areas relevant to the valuation and disposition of electrical generation facilities, including: <ul> <li>(i) engineering;</li> <li>(ii) environmental assessments;</li> <li>(iii) energy economics;</li> <li>(iv) water rights;</li> <li>(v) mineral rights;</li> </ul> </li> </ul></li></ul>
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266	(viii) real estate valuation; and
267	(ix) legal analysis.
268	(4) The study described in Subsection (2) shall:
269	(a) for the evaluation of issues in regards to a state implementation plan as a result of
270	issuing an alternative permit under Section 19-2-109.4, based on input from the
271	Division of Air Quality and independent modeling, legal analysis, and economic
272	analysis, evaluate:
273	(i) any technical deficiencies that could occur in a state implementation plan as a
274	result of issuing an alternative permit; and
275	(ii) options for revising the state implementation plan to maximize flexibility for the
276	state to utilize an alternative permit and preserve electric generating capacity
277	sufficient to support economic growth in the state while ensuring the state
278	implementation plan meets federal air quality standards:
279	(b) for the valuation of the project entity asset that a project entity intends to
280	decommission, include:
281	(i) an assessment of all assets associated with the electrical generation facility,
282	including real property, equipment, water rights, mineral rights, and any other
283	associated assets;
284	(ii) an assessment of all financial assets and potential financial liabilities or risks
285	related to the electrical generation facility intended for decommissioning;
286	(iii) an analysis of any encumbrances on the electrical generation facility;
287	(iv) the impact on valuation of an electrical generation facility related to the issuance
288	of an alternative air quality permit under Section 19-2-109.4;
289	(v) a review of any potential effect a sale of the electrical generation facility would
290	have on liabilities related to the electrical generation facility;
291	(vi) incorporation of any relevant local, regional, or national economic and market
292	factors that may impact the fair market value; and
293	(vii) any other factors the authority considers relevant in establishing a fair market
294	value for the electrical generation facility; and
295	(c) to evaluate the issues surrounding a potential sale of the facility, include:
296	(i) potential purchase and sale agreement terms;
297	(ii) the necessary financial capability of a potential purchaser, including experience
298	raising capital, access to capital, financial stability, and ability to provide security
299	for obligations related to decommissioning, remediation, and other liabilities;

S.B. 161

300	(iii) operational experience and capability of a potential purchaser, including
301	experience operating electrical generation facilities, contracting history, and
302	historical operating metrics;
303	(iv) permitting, regulatory compliance, and construction issues for continued
304	operation of the facility;
305	(v) the likelihood that continued operation of the facility would impact other
306	electrical generation facilities in the state;
307	(vi) the potential for continued operation of the facility to infringe on existing utility
308	service territories;
309	(vii) the viability of alternative business models for continued operation of the
310	facility:
311	(viii) potential community and regional impacts resulting from continued operation
312	or the retirement of the facility; and
313	(ix) the potential for continued operation of the facility to interfere with the rights and
314	interests of the project entity, the project entity's members, power purchasers,
315	bondholders, creditors, or other entities.
316	(5) In conducting the study described in Subsection (2), the project entity shall timely
317	provide to the authority information related to the assets and potential liabilities of the
318	electrical generation facility intended for decommissioning.
319	(6) The authority shall report the progress and results of the study to the Public Utilities,
320	Energy, and Technology Interim Committee on or before November 30, 2024.
321	Section 6. Effective date.
322	This bill takes effect on May 1, 2024.