

SB0161S01 compared with SB0161

~~text~~ shows text that was in SB0161 but was deleted in SB0161S01.

inserted text shows text that was not in SB0161 but was inserted into SB0161S01.

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Senator Derrin R. Owens proposes the following substitute bill:

ENERGY SECURITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~}~~ Derrin R. Owens

House Sponsor: ~~}~~ _____

LONG TITLE

General Description:

This bill modifies provisions related to the regulation of energy.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a project entity to provide notice to the Public Service Commission (commission) before decommissioning an electrical generation facility;
- ▶ outlines a process for the commission to determine and provide the fair market value of an electrical generation facility intended for decommissioning;
- ▶ requires a project entity to offer an electrical generation facility intended for decommissioning for sale at fair market value before decommissioning;
- ▶ allows the state the option to purchase an electrical generation facility intended for

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decommissioning if no buyer purchases at full fair market value;

- ▶ amends provisions related to air quality permits for a project entity that owns an electrical generation facility with multiple generating units and is transitioning to a new electrical generation facility;
- ▶ allows the project entity to apply for an alternative permit to keep one or more existing generating units in operation during the transition, if the project entity has a transition permit requiring closure of all existing units; and
- ▶ outlines the review process for an alternative permit and conditions for either the alternative or transition permit to become effective.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

11-13-320, Utah Code Annotated 1953

19-2-109.4, Utah Code Annotated 1953

54-1-14, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

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

(c) "Electrical generation facility" means a facility that generates electricity for

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provision to customers.

(d) "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.

(e) "Highest ~~{bidder}~~ and best purchase offer" means the ~~{potential purchaser of}~~ purchase offer for the electrical generation facility intended for decommissioning that ~~{submits the highest purchase offer amount to the project entity, provided that}~~ the commission determines to be in the overall best interest of the state, considering the following factors:

(i) the purchase price offer amount;

(ii) the potential ~~{purchaser}~~ purchaser's:

~~{i} agrees to operate the electrical generation facility using resources in the state}~~ A)

commitment to utilize the best available clean energy technology;

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

~~{ii} commits to acting in the interest}~~ C) commitment to provide jobs and other

economic benefits to the state;

(D) intent to promote the interests of state residents and ~~{state}~~ ratepayers;

~~{iii} meets the approval of the commission in terms of possessing the technical and}~~
and

(E) financial capability ~~{to safely and responsibly operate the generation facility in the long term}~~; and

~~{iv}~~ iii} ~~{meets}~~ any other ~~{qualifications stipulated by}~~ factors the commission considers relevant.

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

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

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

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

- (a) a project for which a feasibility study was initiated prior to the effective date;
- (b) any facilities providing additional project capacity;
- (c) any facilities providing replacement project capacity; or
- (d) transmission lines required for the delivery of electricity from a project described in

Subsection ~~[(2)(a)]~~ (3)(a), or facilities providing additional project capacity, or facilities providing replacement project capacity within the corridor of a transmission line, with reasonable deviation, of a project producing as of April 21, 1987.

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

(5) Within 60 days of providing the notice of intent to decommission to the commission, the commission shall hold a public hearing for the purpose of establishing the fair market value of the electrical generation facility that is intended for decommissioning.

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

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

(b) the project entity shall disclose:

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

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

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

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

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

(9) If a project entity fails to disclose information as required under Subsection (6)(b),

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the project entity retains any liability related to the electrical generation facility regardless of the sale.

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

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

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

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

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

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

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

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

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

(b) The project entity shall hold open the option described in Subsection (~~11~~12)(a) for at least one year.

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

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

(1) As used in this section:

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

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

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new facility.

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

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

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

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

19-2-109.4. Project entity transition permit.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the division concludes in its determination that an alternative permit would likely be issued if the project entity had submitted an application as required, the project entity shall, within 30 days after the determination is provided to the Public Utilities, Energy, and Technology Interim Committee, submit an application to the division for an alternative permit.

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

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

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

(1) As used in this section:

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

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

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

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

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

(2) The commission shall:

(a) within 60 days after receiving notice of intent to decommission an electrical

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generation facility provided under Section 11-13-304, hold a public hearing to determine the fair market value of the electrical generation facility intended for decommissioning;

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

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

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

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

(f) provide oversight regarding the final sale and transfer of ownership of the electrical generation facility intended for decommissioning to a new buyer; and

(g) take any other action necessary to enforce and oversee the requirements related to the sale and transfer of the electrical generation facility intended for decommissioning described in Section 11-13-304.

Section 5. Effective date.

This bill takes effect on May 1, 2024.