

**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;
- ▶ 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 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



26 transition permit requiring closure of all existing units; and

27       ▶ outlines the review process for an alternative permit and conditions for either the  
28 alternative or transition permit to become effective.

29 **Money Appropriated in this Bill:**

30       None

31 **Other Special Clauses:**

32       None

33 **Utah Code Sections Affected:**

34 AMENDS:

35       **11-13-304**, as last amended by Laws of Utah 2016, Chapter 382

36       **11-13-318**, as enacted by Laws of Utah 2023, Chapter 195

37 ENACTS:

38       **11-13-320**, Utah Code Annotated 1953

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



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

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

43       **11-13-304. Certificate of public convenience and necessity required -- Exceptions**  
44 **-- Decommissioning of electrical generation facility by project entity.**

45       (1) As used in this section:

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

47       (b) "Commission" means the Public Service Commission established in Section  
48 [54-1-1](#).

49       (c) "Decommissioning" means to remove an electrical generation facility from active  
50 service.

51       (d) "Electrical generation facility" means a facility that generates electricity for  
52 provision to customers.

53       (e) "Fair market value" means the value of an electrical generation facility considering  
54 both the assets and liabilities of the facility, including the value of water rights necessary to  
55 operate the existing electrical generation facility at full capacity.

56       (f) "Highest and best purchase offer" means the purchase offer for the electrical

57 generation facility intended for decommissioning that the commission determines to be in the  
 58 overall best interest of the state, considering the following factors:

59 (i) the purchase price offer amount;

60 (ii) the potential purchaser's:

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

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

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

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

65 (E) financial capability; and

66 (iii) any other factors the commission considers relevant.

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

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

70 ~~[(1)]~~ (2) Before proceeding with the construction of any electrical ~~[generating plant]~~  
 71 generation facility or transmission line, each interlocal entity and each out-of-state public  
 72 agency shall first obtain from the public service commission a certificate, after hearing, that  
 73 public convenience and necessity requires such construction and in addition that such  
 74 construction will in no way impair the public convenience and necessity of electrical  
 75 consumers of the state of Utah at the present time or in the future.

76 ~~[(2)]~~ (3) The requirement to obtain a certificate of public convenience and necessity  
 77 applies to each project initiated after the section's effective date but does not apply to:

78 (a) a project for which a feasibility study was initiated prior to the effective date;

79 (b) any facilities providing additional project capacity;

80 (c) any facilities providing replacement project capacity; or

81 (d) transmission lines required for the delivery of electricity from a project described in  
 82 Subsection ~~[(2)(a);]~~ (3)(a), or facilities providing additional project capacity, or facilities  
 83 providing replacement project capacity within the corridor of a transmission line, with  
 84 reasonable deviation, of a project producing as of April 21, 1987.

85 (4) If the division approves a project entity's application for an alternative permit, the  
 86 project entity shall provide notice to the commission of the approval.

87 (5) Within 90 days of receiving notice of the approval described in Subsection (4), the

88 commission shall hold a public hearing for the purpose of establishing the fair market value of  
89 the electrical generation facility that is intended for decommissioning.

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

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

93 (b) the project entity shall disclose:

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

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

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

99 (7) After the public hearing described in Subsection (6), the commission shall issue a  
100 decision to the project entity establishing the fair market value of the electrical generation  
101 facility that is intended for decommissioning.

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

105 (9) If a project entity fails to disclose information as required under Subsection (6)(b),  
106 the project entity retains any liability related to the electrical generation facility regardless of  
107 the sale.

108 (10) A project entity that receives an offer for the full fair market value of the electrical  
109 generation facility shall:

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

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

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

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

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

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

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

122 (12) (a) If the project entity does not receive an offer for the full fair market value of  
123 the electrical generation facility, the project entity shall offer the state an option to purchase the  
124 electrical generation facility for fair market value.

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

127 Section 2. Section **11-13-318** is amended to read:

128 **11-13-318. Notice of decommissioning or disposal of project entity assets.**

129 (1) As used in this section:

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

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

132 (c) "Division" means the Division of Air Quality created in Section [19-1-105](#).

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

134 (A) land;

135 (B) buildings; or

136 (C) essential equipment, including turbines, generators, transformers, and transmission  
137 lines.

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

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

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

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

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

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

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

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

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

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

157 (6) Within 10 days after submitting an application for an alternative permit to the  
158 division as required under Section 11-13-320, a project entity shall provide notice to the  
159 Legislative Management Committee that the project entity has complied with the requirement  
160 to submit the application.

161 (7) If a project entity fails to submit an application for an alternative permit as required  
162 under Section 11-13-320, the Legislative Management Committee shall make  
163 recommendations to the governor regarding appropriate action, which may include calling a  
164 special session to enact legislation reconstituting the board of the project entity.

165 Section 3. Section 11-13-320 is enacted to read:

166 **11-13-320. Air quality permitting transition process.**

167 (1) As used in this section:

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

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

173 (c) "Pre-existing permit" means the air quality permit held by the operator of an  
174 existing electrical generation facility prior to any amendments associated with transitioning to a  
175 new facility.

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

180 (2) A project entity that holds a pre-existing permit for an existing electrical generation

181 facility with multiple generating units, and has been issued a transition permit for a new  
182 electrical generation facility, shall submit an application to the division in accordance with  
183 Section 19-2-109.4 for issuance of an alternative permit.

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

186 Section 4. Section 19-2-109.4 is enacted to read:

187 **19-2-109.4. Project entity transition permit.**

188 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

211 (5) If an alternative permit is not approved under Subsection (4), the conditions of the

212 transition permit shall remain effective.

213 (6) (a) If a project entity fails to submit an application for an alternative permit by July  
214 1, 2024, as required under Section 11-13-320, the division shall immediately begin an  
215 evaluation of the feasibility of issuing an alternative permit to the project entity and provide the  
216 division's determination on the feasibility of an alternative permit to the Public Utilities,  
217 Energy, and Technology Interim Committee no later than the November 2024 interim meeting.

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

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

225 **Section 5. Effective date.**

226 This bill takes effect on May 1, 2024.