{deleted text} shows text that was in SB0161S01 but was deleted in SB0161S02. inserted text shows text that was not in SB0161S01 but was inserted into SB0161S02.

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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: <u>Carl. R. Albrecht</u>

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 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

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

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

((a)b) "Commission" means the Public Service Commission established in Section

<u>54-1-1.</u>

((b)c) "Decommissioning" means to remove an electrical generation facility from

active service.

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

(<u>{d}e</u>) "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}f) "Highest and best purchase offer" means the purchase offer for the electrical generation facility intended for decommissioning 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's:

(A) commitment to utilize the best available clean energy 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 commission considers relevant.

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

(<u>{g}h</u>) "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.

[(1)] (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.

[(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} If the division approves a project entity's application for an alternative permit, the project entity shall provide notice to the commission{, no less than 12 months prior to} of the {date of decommissioning} approval.

(5) Within {60}90 days of {providing the}receiving notice of {intent to decommission to the commission} the approval described in Subsection (4), 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 facility.

(7) {Within 30 days of} <u>After</u> the public hearing described in Subsection ({5}6), 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}<u>After</u> 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), 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

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 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 (12)(a) for at least one year.

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

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

(1) As used in this section:

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

 $(\underline{\{a\}b})$ "Disposal" means the sale, transfer, or other disposition of a project entity's assets.

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

[(b)](d) (i) "Project entity asset" means a project entity's:

(A) land;

(B) buildings; or

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

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

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

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

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

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

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

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

(c) the reasons for the decommissioning or disposal.

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

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

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

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

Section $\frac{2}{2}$. Section 11-13-320 is enacted to read:

<u>11-13-320.</u> 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) "Division" means the Division of Air Quality created in Section 19-1-105.

({b}c) "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 new facility.

({c}d) "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}division 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 $\frac{3}{4}$. Section **19-2-109.4** is enacted to read:

<u>19-2-109.4.</u> 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;

(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:

<u>54-1-14.</u> 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 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.

 $\frac{1}{7}$ Section 5. Effective date.

This bill takes effect on May 1, 2024.