

## SB0161S04 compared with SB0161S03

~~text~~ shows text that was in SB0161S03 but was deleted in SB0161S04.

text shows text that was not in SB0161S03 but was inserted into SB0161S04.

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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: 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;
- ~~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;~~
- ~~requires a 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;~~
- ▶ outlines the review process for an alternative permit and conditions for either the

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alternative or transition permit to become effective;

- ▶ provides the state the option to purchase an electrical generation facility intended for decommissioning;
- ▶ creates a Decommissioned Asset Disposition Authority (authority) within the Office of Energy Development;
- ▶ requires the authority to ~~{~~ 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
- ▶ requires a study from the authority to:
  - analyze issues related to the state implementation plan arising out of a permit issued to an electrical generation facility intended for decommissioning;
  - determine and provide the fair market value of a project entity's electrical generation facility intended for decommissioning; and
  - evaluate the process for selling an electrical generation facility purchased by the state.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**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~~

**79-6-404**, Utah Code Annotated 1953

**79-6-405**, Utah Code Annotated 1953

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

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Section 1. 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.~~

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

~~{ (c) "Disposal" means the sale, transfer, dismantling, or other disposition of a project entity's assets.~~

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

~~{ (e) "Electrical generation facility" means a facility that generates electricity for provision to customers.~~

~~{ (f) "Fair market value" means the same as that term is defined in Section 11-13-321 79-6-405.~~

~~{ (g) (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.

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(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.~~

‡ ~~(8)6~~ (6) A project entity shall provide the state the option to purchase for fair market value a project entity asset intended for decommissioning ~~{ for fair market value }~~, with the option remaining open for at least two years, beginning on July 2, 2025.

Section 2. Section ~~{11-13-320}~~19-2-109.4 is enacted to read:

~~{11-13-320}~~19-2-109.4. ~~{ Air quality permitting }~~ Project entity transition  
~~{process}~~permit.

(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) "Authority" means the Decommissioned Asset Disposition Authority established in Section 79-6-404.

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

(d) "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.

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~~(e) "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 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.~~

~~(4) If a project entity fails to submit an application for an alternative permit as required under this section, the authority shall take actions regarding the air permit application in accordance with Subsection 79-6-404(4)(c).~~

~~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" **Project entity** means the same as that term is defined in Section 11-13-320.~~

~~(b) "Authority" means the Decommissioned Asset Disposition Authority established in Section 79-6-404.~~

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

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

~~(e) **11-13-103.**~~

~~(f) "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} **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** ~~generating capacity contemplated by the transition}~~ **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) Upon receipt of an alternative air permit application prepared and submitted by~~

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the authority in accordance with Subsection 79-6-404(4)(c), the division shall conduct a full evaluation as if the application had been prepared and submitted by a project entity to determine whether the alternative air permit would be issued if applied for by the project entity.

(b) The division shall provide the results of any evaluation conducted under Subsection (2)(a) to the Legislative Management Committee no later than January 30, 2025.

(c) If the division concludes after evaluation that an alternative permit would likely be issued to a project entity, the project entity shall, within 30 days after the determination is provided to the Legislative Management Committee, submit an application to the division for an alternative permit.

(3) ~~{An}~~The division shall evaluate an application for an alternative permit ~~{shall be evaluated}~~ independently from ~~{the}~~any pre-existing permit or transition permit based on updated assumptions, modeling, and requirements established in rule by the ~~{board}~~division 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, and the division receives an alternative air permit application prepared and submitted by the authority in accordance with Subsection 79-6-404(4)(c), the division shall conduct a full evaluation as if the application had been prepared and submitted by the project entity to determine whether the alternative air permit would be issued if applied for by the project entity.

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~~(b) The division shall provide the results of any report conducted under Subsection(6)(a) to the Public Utilities, Energy, and Technology Interim Committee no later than the November 2024 interim meeting.~~

~~(c) If the division concludes in the division's 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.~~

‡ Section ~~{4}~~3. Section **79-6-404** is enacted to read:

### **79-6-404. Decommissioned Asset Disposition Authority.**

(1) ~~{(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 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 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

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### 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 (5); and

(iii) take any other action necessary for governance of a decommissioned asset purchased by the state; and

(c) ~~if a project entity fails to submit an application for an alternative air permit as required under Section 11-13-320,~~ 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.

(5) 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:

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(i) the fair market value of the asset, including the valuation study conducted by the authority under Section 79-6-405; 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.

(6) 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.

Section ~~5}4~~. Section **79-6-405** is enacted to read:

### **79-6-405. 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 79-6-404.

(b) "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~~; same as that term is defined in Section 79-6-404.

(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

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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 maximize flexibility for the state to utilize an alternative permit and preserve electric generating capacity sufficient to support economic growth in the state while ensuring the state implementation plan meets federal air quality standards;

(b) for the valuation of the project entity asset that a project entity intends to

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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

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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.

Section ~~6~~5. **Effective date.**

This bill takes effect on May 1, 2024.