

Senator Todd D. Weiler proposes the following substitute bill:

ENERGY SECURITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill modifies provisions related to the regulation of energy.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ outlines the review process for an alternative permit and conditions for either the 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 Division of Air Quality;
 - ▶ 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



26 issued to an electrical generation facility intended for decommissioning;

27 • determine and provide the fair market value of a project entity's electrical
28 generation facility intended for decommissioning; and

29 • evaluate the process for selling an electrical generation facility purchased by the
30 state.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **11-13-318**, as enacted by Laws of Utah 2023, Chapter 195

38 ENACTS:

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

40 **19-2-130**, Utah Code Annotated 1953

41 **19-2-131**, Utah Code Annotated 1953



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

44 Section 1. Section **11-13-318** is amended to read:

45 **11-13-318. Notice of decommissioning or disposal of project entity assets.**

46 (1) As used in this section:

47 (a) "Alternative permit" means the same as that term is defined in Section [19-2-109.4](#).

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

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

52 (d) "Fair market value" means the same as that term is defined in Section [79-6-405](#).

53 ~~(b)~~ (e) (i) "Project entity asset" means a project entity's:

54 (A) land;

55 (B) buildings; or

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

57 lines.

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

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

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

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

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

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

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

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

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

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

77 (6) If, after the evaluation required under Subsection 19-2-109.4(2)(a), the division
78 concludes that an alternative permit would likely be issued to a project entity, and the project
79 entity is obligated under Subsection 19-2-109.4(2)(c) to submit an application for an alternative
80 permit, the project entity shall provide the state the option to purchase for fair market value a
81 project entity asset intended for decommissioning, with the option remaining open for at least
82 two years, beginning on July 2, 2025.

83 Section 2. Section 19-2-109.4 is enacted to read:

84 **19-2-109.4. Project entity transition permit.**

85 (1) As used in this section:

86 (a) "Alternative permit" means an amendment to a transition permit that, for purposes
87 of transitioning an electrical generation facility to a new facility, allows one or more existing

88 generating units to continue operating while also providing for closure of one but not all
89 existing generating units.

90 (b) "Authority" means the Decommissioned Asset Disposition Authority established in
91 Section 19-2-130.

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

93 (d) "Pre-existing permit" means the air quality permit held by the operator of an
94 existing electrical generation facility prior to any amendments associated with transitioning to a
95 new facility.

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

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

101 (2) (a) Upon receipt of an alternative air permit application prepared and submitted by
102 the authority in accordance with Subsection 19-2-130(4)(c), the division shall conduct a full
103 evaluation as if the application had been prepared and submitted by a project entity to
104 determine whether the alternative air permit would be issued if applied for by the project entity.

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

107 (c) If the division concludes after evaluation that an alternative permit would likely be
108 issued to a project entity, the project entity shall, within 120 days after the determination is
109 provided to the Legislative Management Committee, submit an application to the division for
110 an alternative permit.

111 (d) A project entity shall submit an application for an alternative permit if all of the
112 following conditions are satisfied:

113 (i) neither the application nor the activities or conditions contemplated by the
114 application will have a negative impact on a project entity's construction, operation of, or
115 transition to an electrical generation facility powered by natural gas, hydrogen, or a
116 combination of natural gas and hydrogen;

117 (ii) the state promptly pays all costs related to a project entity's application or the
118 activities and conditions contemplated by the application as those costs are billed to:

119 (A) the project entity; or
120 (B) any of the project entity's members, purchasers, agents, directors, employees,
121 representatives, bondholders, other creditors or vendors;

122 (iii) the state defends and indemnifies a project entity, the project entity's members,
123 purchasers, agents, directors, employees, representatives, bondholders, and other creditors or
124 vendors against all claims and losses relating to the application or the activities or conditions
125 contemplated by the application; and

126 (iv) as of the date of the application, the application and the activities and conditions
127 contemplated by the application will:

128 (A) comply with all federal and state regulatory requirements; and

129 (B) not impair any of the project entity's legal commitments for operating the project
130 entity's existing electrical generation facilities.

131 (3) The division shall evaluate an application for an alternative permit independently
132 from any pre-existing permit or transition permit based on updated assumptions, modeling, and
133 requirements established in rule by the division.

134 Section 3. Section 19-2-130 is enacted to read:

135 **19-2-130. Decommissioned Asset Disposition Authority.**

136 (1) As used in this section:

137 (a) "Asset intended for decommissioning" means an electrical generation facility
138 owned by a project entity that is intended to be removed from active service.

139 (b) "Authority" means the Decommissioned Asset Disposition Authority created in this
140 section.

141 (c) "Fair market value" means the value of an electrical generation facility considering
142 both the assets and liabilities of the facility, including the value of water rights necessary to
143 operate the existing electrical generation facility at full capacity.

144 (d) "Highest and best purchase offer" means the purchase offer for the asset intended
145 for decommissioning that the authority determines to be in the overall best interest of the state,
146 considering:

147 (i) the purchase price offer amount;

148 (ii) the potential purchaser's:

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

- 150 (B) intent to use state resources to the maximum extent feasible;
- 151 (C) commitment to provide jobs and other economic benefits to the state;
- 152 (D) intent to promote the interests of state residents and ratepayers; and
- 153 (E) financial capability; and
- 154 (iii) any other factors the authority considers relevant.
- 155 (e) "Project entity" means the same as that term is defined in Section [11-13-103](#).
- 156 (2) There is established within the division the Decommissioned Asset Disposition
- 157 Authority.
- 158 (3) (a) The authority shall be composed of:
- 159 (i) the executive director of the Department of Environmental Quality;
- 160 (ii) the executive director of the Department of Natural Resources;
- 161 (iii) one member appointed by the governor;
- 162 (iv) one member appointed by the president of the Senate;
- 163 (v) one member appointed by the speaker of the House of Representatives;
- 164 (vi) a member appointed by the project entity's board of directors;
- 165 (vii) one mayor or municipal council member of a city that is a member of the project
- 166 entity, selected by the Utah League of Cities and Towns;
- 167 (viii) the chair of the Millard County Commission; and
- 168 (ix) a power manager from a municipal power system selected by the Utah League of
- 169 Cities and Towns.
- 170 (b) The division shall provide staff and support to the authority.
- 171 (4) The authority shall:
- 172 (a) provide recommendations to the governor and Legislature regarding the state
- 173 exercising an option to purchase an asset intended for decommissioning;
- 174 (b) if the state exercises an option to purchase the asset intended for decommissioning
- 175 under Section [11-13-318](#);
- 176 (i) enter into contracts and agreements related to the decommissioned asset;
- 177 (ii) govern the disposition of assets intended for decommissioning as outlined in
- 178 Subsection (5); and
- 179 (iii) take any other action necessary for governance of a decommissioned asset
- 180 purchased by the state; and

181 (c) contract with independent professionals that have expertise in emissions modeling,
182 air quality impact assessments, regulatory compliance, and any other discipline necessary for
183 the preparation and submission of a complete alternative air permit application, including:

184 (i) conducting emissions modeling, air quality impact assessments, and gathering any
185 other information necessary for inclusion in a complete alternative air permit application;

186 (ii) preparing the full application with all necessary information included, as would be
187 required for an application submitted by the owner of the electrical generation facility; and

188 (iii) submitting the full permit application to the Division of Air Quality.

189 (5) If the state exercises an option to purchase or otherwise take control of the asset
190 intended for decommissioning under Section 11-13-318, the authority may, no sooner than July
191 2, 2025:

192 (a) hold a public hearing to receive comment and evidence regarding:

193 (i) the fair market value of the asset, including the valuation study conducted by the
194 authority under Section 19-2-131; and

195 (ii) the proposed disposition of the decommissioned asset;

196 (b) establish procedures and timelines for potential purchasers to submit binding
197 purchase offers;

198 (c) evaluate all purchase offers to determine the highest and best purchase offer;

199 (d) approve the sale of the decommissioned asset to the purchaser that has submitted
200 the highest and best purchase offer; and

201 (e) take any other action necessary to govern the disposition of the decommissioned
202 asset in accordance with this section.

203 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
204 authority shall make rules that establish:

205 (a) procedures and associated timelines for potential purchasers to submit binding
206 purchase offers for a decommissioned asset;

207 (b) objective criteria and a process to evaluate all purchase offers submitted for a
208 decommissioned asset and determine which purchase offer is the highest and best offer; and

209 (c) a process for the authority to approve the sale of a decommissioned asset to the
210 purchaser that has submitted the highest and best purchase offer.

211 Section 4. Section 19-2-131 is enacted to read:

212 **19-2-131. Study of project entity asset intended for decommissioning.**

213 (1) As used in this section:

214 (a) "Authority" means the Decommissioned Asset Disposition Authority, created in
215 Section 19-2-130.

216 (b) "Fair market value" means the same as that term is defined in Section 19-2-130.

217 (2) The authority, in consultation with the division, shall conduct a study to:

218 (a) evaluate issues in regards to a state implementation plan as a result of issuing an
219 alternative permit under Section 19-2-109.4;

220 (b) establish the fair market value of an electrical generation facility that a project
221 entity intends to decommission, including the diminution in value to the remaining assets of the
222 project entity; and

223 (c) evaluate the potential sale of the facility to new owners.

224 (3) In conducting the study described in this section, the authority shall contract or
225 consult with independent professionals with expertise in:

226 (a) areas relevant to environmental regulatory compliance and clean air act state
227 implementation plan development, including:

228 (i) related electric generation capacity;

229 (ii) resource adequacy; and

230 (iii) economic development considerations; and

231 (b) areas relevant to the valuation and disposition of electrical generation facilities,
232 including:

233 (i) engineering;

234 (ii) environmental assessments;

235 (iii) energy economics;

236 (iv) water rights;

237 (v) mineral rights;

238 (vi) regulatory analysis;

239 (vii) financial analysis;

240 (viii) real estate valuation; and

241 (ix) legal analysis.

242 (4) The study described in Subsection (2) shall:

243 (a) for the evaluation of issues in regards to a state implementation plan as a result of
244 issuing an alternative permit under Section 19-2-109.4, based on input from the Division of Air
245 Quality and independent modeling, legal analysis, and economic analysis, evaluate:

246 (i) any technical deficiencies that could occur in a state implementation plan as a result
247 of issuing an alternative permit; and

248 (ii) options for revising the state implementation plan to maximize flexibility for the
249 state to utilize an alternative permit and preserve electric generating capacity sufficient to
250 support economic growth in the state while ensuring the state implementation plan meets
251 federal air quality standards;

252 (b) for the valuation of the project entity asset that a project entity intends to
253 decommission, include:

254 (i) an assessment of all assets associated with the electrical generation facility,
255 including real property, equipment, water rights, mineral rights, and any other associated
256 assets;

257 (ii) an assessment of all financial assets and potential financial liabilities or risks
258 related to the electrical generation facility intended for decommissioning;

259 (iii) an analysis of any encumbrances on the electrical generation facility;

260 (iv) the impact on valuation of an electrical generation facility related to the issuance of
261 an alternative air quality permit under Section 19-2-109.4;

262 (v) a review of any potential effect a sale of the electrical generation facility would
263 have on liabilities related to the electrical generation facility;

264 (vi) incorporation of any relevant local, regional, or national economic and market
265 factors that may impact the fair market value; and

266 (vii) any other factors the authority considers relevant in establishing a fair market
267 value for the electrical generation facility; and

268 (c) to evaluate the issues surrounding a potential sale of the facility, include:

269 (i) potential purchase and sale agreement terms;

270 (ii) the necessary financial capability of a potential purchaser, including experience
271 raising capital, access to capital, financial stability, and ability to provide security for
272 obligations related to decommissioning, remediation, and other liabilities;

273 (iii) operational experience and capability of a potential purchaser, including

274 experience operating electrical generation facilities, contracting history, and historical
275 operating metrics;

276 (iv) permitting, regulatory compliance, and construction issues for continued operation
277 of the facility;

278 (v) the likelihood that continued operation of the facility would impact other electrical
279 generation facilities in the state;

280 (vi) the potential for continued operation of the facility to infringe on existing utility
281 service territories;

282 (vii) the viability of alternative business models for continued operation of the facility;

283 (viii) potential community and regional impacts resulting from continued operation or
284 the retirement of the facility; and

285 (ix) the potential for continued operation of the facility to interfere with the rights and
286 interests of the project entity, the project entity's members, power purchasers, bondholders,
287 creditors, or other entities.

288 (5) In conducting the study described in Subsection (2), the project entity shall timely
289 provide to the authority information related to the assets and potential liabilities of the
290 electrical generation facility intended for decommissioning.

291 (6) The authority shall report the progress and results of the study to the Public
292 Utilities, Energy, and Technology Interim Committee on or before November 30, 2024.

293 **Section 5. Effective date.**

294 This bill takes effect on May 1, 2024.