Representative Casey Snider proposes the following substitute bill: **ENERGY SECURITY AMENDMENTS** 1 2 **2024 GENERAL SESSION** 3 STATE OF UTAH **Chief Sponsor: Derrin R. Owens** 4 5 House Sponsor: Carl R. Albrecht 6 7 LONG TITLE 8 **General Description:** 9 This bill modifies provisions related to the regulation of energy. 10 **Highlighted Provisions:** This bill: 11 12 defines terms; 13 allows a project entity to submit an application for an alternative air permit; • outlines the review process for an alternative permit and conditions for either the 14 15 alternative or transition permit to become effective; 16 • provides the state the option to purchase an electrical generation facility intended for decommissioning; 17 18 ► creates a Decommissioned Asset Disposition Authority (authority) within the Office of Energy Development; 19 20 requires the authority to: 21 govern the disposition of an electrical generation facility purchased by the state; • 22 and 23 prepare and submit an application to the Division of Air Quality for an evaluation of the feasibility of an alternative permit; and 24 25 requires a study from the authority to:

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26	• analyze issues related to the state implementation plan arising out of a permit
27	issued to an electrical generation facility intended for decommissioning;
28	• determine and provide the fair market value of a project entity's electrical
29	generation facility intended for decommissioning; and
30	• evaluate the process for selling an electrical generation facility purchased by the
31	state.
32	Money Appropriated in this Bill:
33	None
34	Other Special Clauses:
35	None
36	Utah Code Sections Affected:
37	AMENDS:
38	11-13-318, as enacted by Laws of Utah 2023, Chapter 195
39	ENACTS:
40	11-13-320, Utah Code Annotated 1953
41	<b>19-2-109.4</b> , Utah Code Annotated 1953
42	<b>79-6-404</b> , Utah Code Annotated 1953
43	<b>79-6-405</b> , Utah Code Annotated 1953
44 45	Be it enacted by the Legislature of the state of Utah:
46	Section 1. Section 11-13-318 is amended to read:
47	11-13-318. Notice of decommissioning or disposal of project entity assets.
48	(1) As used in this section:
49	(a) <u>"Alternative permit" means the same as that term is defined in Section 11-13-320.</u>
50	(b) "Decommissioning" means to remove an electrical generation facility from active
51	service.
52	(c) "Disposal" means the sale, transfer, dismantling, or other disposition of a project
53	entity's assets.
54	(d) "Division" means the Division of Air Quality created in Section 19-1-105.
55	(e) "Fair market value" means the same as that term is defined in Section 79-6-405.
56	[(b)] (f) (i) "Project entity asset" means a project entity's:

57	(A) land;
58	(B) buildings; or
59	(C) essential equipment, including turbines, generators, transformers, and transmission
60	lines.
61	(ii) "Project entity asset" does not include an asset that is not essential for the
62	generation of electricity in the project entity's coal-powered electrical generation facility.
63	(2) A project entity shall provide a notice of decommissioning or disposal to the
64	Legislative Management Committee at least 180 days before:
65	(a) the disposal of any project entity assets; or
66	(b) the decommissioning of the project entity's coal-powered electrical generation
67	facility.
68	(3) The notice of decommissioning or disposal described in Subsection (2) shall
69	include:
70	(a) the date of the intended decommissioning or disposal;
71	(b) a description of the project entity's coal-powered electrical generation facility
72	intended for decommissioning or any project entity asset intended for disposal; and
73	(c) the reasons for the decommissioning or disposal.
74	(4) A project entity may not intentionally prevent the functionality of the project
75	entity's existing coal-powered electrical generation facility.
76	(5) Notwithstanding the requirements in Subsections (2) through (4), a project entity
77	may take any action necessary to transition to a new electrical generation facility powered by
78	natural gas, hydrogen, or a combination of natural gas and hydrogen, including any action that
79	has been approved by a permitting authority.
80	(6) If a project entity intends to submit an application for an alternative permit to the
81	division as described in Section 11-13-320, the project entity shall notify the Legislative
82	Management Committee that the project entity intends to submit an application before July 1,
83	<u>2024.</u>
84	(7) If a project does not notify the Legislative Management Committee of an intent to
85	submit an application, the Legislative Management Committee shall make recommendations to
86	the governor regarding appropriate action, which may include calling a special session to enact
87	legislation reconstituting the board of the project entity.

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88	(8) A project entity shall provide the state the option to purchase for fair market value a
89	project entity asset intended for decommissioning, with the option remaining open for at least
90	two years, beginning on July 2, 2025.
91	Section 2. Section <b>11-13-320</b> is enacted to read:
92	<u>11-13-320.</u> Air quality permitting transition process.
93	(1) As used in this section:
94	(a) "Alternative permit" means an amendment to a transition permit that, for purposes
95	of transitioning an electrical generation facility to a new facility, allows one or more existing
96	generating units to continue operating while also providing for closure of one but not all
97	existing generating units.
98	(b) "Authority" means the Decommissioned Asset Disposition Authority established in
99	<u>Section 79-6-404.</u>
100	(c) "Division" means the Division of Air Quality created in Section 19-1-105.
101	(d) "Pre-existing permit" means the air quality permit held by the operator of an
102	existing electrical generation facility prior to any amendments associated with transitioning to a
103	new facility.
104	(e) "Transition permit" means an amendment to the pre-existing permit, issued to the
105	operator of an existing electrical generation facility for the purpose of transitioning to a new
106	electrical generation facility, which authorizes construction of the new facility but does not
107	require closure of all existing generating units until after the new facility commences operation.
108	(2) A project entity that holds a pre-existing permit for an existing electrical generation
109	facility with multiple generating units, and has been issued a transition permit for a new
110	electrical generation facility, may submit an application to the division in accordance with
111	Section 19-2-109.4 for issuance of an alternative permit.
112	(3) If a project entity intends to submit an application under Subsection (2), the project
113	entity shall provide a binding notice of intent to the Legislative Management Committee on or
114	<u>before July 1, 2024.</u>
115	(4) If a project entity submits an application under Subsection (2), the project entity
116	shall submit the application on or before January 1, 2025.
117	Section 3. Section <b>19-2-109.4</b> is enacted to read:
118	<b>19-2-109.4.</b> Project entity transition permit.

119	(1) As used in this section:
120	(a) "Alternative permit" means an amendment to a transition permit that, for purposes
121	of transitioning an electrical generation facility to a new facility, allows one or more existing
122	generating units to continue operating while also providing for closure of one but not all
123	existing generating units.
124	(b) "Authority" means the Decommissioned Asset Disposition Authority established in
125	<u>Section 79-6-404.</u>
126	(c) "Division" means the Division of Air Quality created in Section 19-1-105.
127	(d) "Pre-existing permit" means the air quality permit held by the operator of an
128	existing electrical generation facility prior to any amendments associated with transitioning to a
129	new facility.
130	(e) "Project entity" means the same as that term is defined in Section <u>11-13-103</u> .
131	(f) "Transition permit" means an amendment to the pre-existing permit, issued to the
132	operator of an existing electrical generation facility for the purpose of transitioning to a new
133	electrical generation facility, which authorizes construction of the new facility but does not
134	require closure of all existing generating units until after the new facility commences operation.
135	(2) The division shall accept an application for an alternative permit from a project
136	entity that has previously obtained a transition permit to authorize the same new electrical
137	generating capacity contemplated by the transition permit.
138	(3) If the application for an alternative permit meets the requirements established by
139	the board:
140	(a) the division shall issue an approval order for the alternative permit to the project
141	entity;
142	(b) the conditions of the transition permit shall cease to apply, including requirements
143	to reduce the capacity of existing generating units at the electrical generation facility; and
144	(c) the project entity shall submit all documentation required to modify any federal
145	operating permit required to be maintained by the project entity, consistent with deadlines
146	established by the division.
147	(4) If an alternative permit is not approved under Subsection (3), the conditions of the
148	transition permit shall remain effective.
149	(5) (a) Upon receipt of an alternative air permit application prepared and submitted by

149 (5) (a) Upon receipt of 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 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
(5)(a) to the authority 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 authority shall, within 30 days after the authority receives the
results of the evaluation, submit recommendations to the Legislative Management Committee
regarding options for the state to continue to authorize construction of the project entity's new
electrical generation facility that do not require the closure of all of the project entity's existing
electrical generating facilities.
(6) The division shall evaluate an application for an alternative permit independently
from any pre-existing permit or transition permit based on updated assumptions, modeling, and
requirements established in rule by the 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.
Section 4. Section <b>79-6-404</b> is enacted to read:
79-6-404. Decommissioned Asset Disposition Authority.
(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;

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181	(ii) the potential purchaser's:
182	(A) commitment to utilize the best available control technology;
183	(B) intent to use state resources to the maximum extent feasible;
184	(C) commitment to provide jobs and other economic benefits to the state;
185	(D) intent to promote the interests of state residents and ratepayers; and
186	(E) financial capability; and
187	(iii) any other factors the authority considers relevant.
188	(e) "Project entity" means the same as that term is defined in Section 11-13-103.
189	(2) There is established within the office the Decommissioned Asset Disposition
190	Authority.
191	(3) (a) The authority shall be composed of:
192	(i) the executive director of the office;
193	(ii) two members appointed by the governor;
194	(iii) two members appointed by the president of the Senate; and
195	(iv) two members appointed by the speaker of the House of Representatives.
196	(b) The office shall provide staff and support to the authority.
197	(4) The authority shall:
198	(a) provide recommendations to the governor and Legislature regarding the state
199	exercising an option to purchase an asset intended for decommissioning;
200	(b) if the state exercises an option to purchase the asset intended for decommissioning
201	under Section 11-13-318:
202	(i) enter into contracts and agreements related to the decommissioned asset;
203	(ii) govern the disposition of assets intended for decommissioning as outlined in
204	Subsection (5); and
205	(iii) take any other action necessary for governance of a decommissioned asset
206	purchased by the state; and
207	(c) contract with independent professionals that have expertise in emissions modeling,
208	air quality impact assessments, regulatory compliance, and any other discipline necessary for
209	the preparation and submission of a complete alternative air permit application, including:
210	(i) conducting emissions modeling, air quality impact assessments, and gathering any
211	other information necessary for inclusion in a complete alternative air permit application;

212	(ii) preparing the full application with all necessary information included, as would be
213	required for an application submitted by the owner of the electrical generation facility; and
214	(iii) submitting the full permit application to the Division of Air Quality.
215	(5) If the state exercises an option to purchase or otherwise take control of the asset
216	intended for decommissioning under Section 11-13-318, the authority may, no sooner than July
217	<u>2, 2025:</u>
218	(a) hold a public hearing to receive comment and evidence regarding:
219	(i) the fair market value of the asset, including the valuation study conducted by the
220	authority under Section 79-6-405; and
221	(ii) the proposed disposition of the decommissioned asset;
222	(b) establish procedures and timelines for potential purchasers to submit binding
223	purchase offers;
224	(c) evaluate all purchase offers to determine the highest and best purchase offer;
225	(d) approve the sale of the decommissioned asset to the purchaser that has submitted
226	the highest and best purchase offer; and
227	(e) take any other action necessary to govern the disposition of the decommissioned
228	asset in accordance with this section.
229	(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
230	authority shall make rules that establish:
231	(a) procedures and associated timelines for potential purchasers to submit binding
232	purchase offers for a decommissioned asset;
233	(b) objective criteria and a process to evaluate all purchase offers submitted for a
234	decommissioned asset and determine which purchase offer is the highest and best offer; and
235	(c) a process for the authority to approve the sale of a decommissioned asset to the
236	purchaser that has submitted the highest and best purchase offer.
237	Section 5. Section <b>79-6-405</b> is enacted to read:
238	79-6-405. Study of project entity asset intended for decommissioning.
239	(1) As used in this section:
240	(a) "Authority" means the Decommissioned Asset Disposition Authority, created in
241	<u>Section 79-6-404</u>
242	(b) "Fair market value" means the same as that term is defined in Section 79-6-404.

243	(2) The authority, in consultation with the office, shall conduct a study to:
244	(a) evaluate issues in regards to a state implementation plan as a result of issuing an
245	alternative permit under Section 19-2-109.4;
246	(b) establish the fair market value of an electrical generation facility that a project
247	entity intends to decommission; and
248	(c) evaluate the potential sale of the facility to new owners;
249	(3) In conducting the study described in this section, the authority shall contract or
250	consult with independent professionals with expertise in:
251	(a) areas relevant to environmental regulatory compliance and clean air act state
252	implementation plan development, including:
253	(i) related electric generation capacity;
254	(ii) resource adequacy; and
255	(iii) economic development considerations; and
256	(b) areas relevant to the valuation and disposition of electrical generation facilities,
257	including:
258	(i) engineering;
259	(ii) environmental assessments;
260	(iii) energy economics;
261	(iv) water rights;
262	(v) mineral rights;
263	(vi) regulatory analysis;
264	(vii) financial analysis;
265	(viii) real estate valuation; and
266	(ix) legal analysis.
267	(4) The study described in Subsection (2) shall:
268	(a) for the evaluation of issues in regards to a state implementation plan as a result of
269	issuing an alternative permit under Section 19-2-109.4, based on input from the Division of Air
270	Quality and independent modeling, legal analysis, and economic analysis, evaluate:
271	(i) any technical deficiencies that could occur in a state implementation plan as a result
272	of issuing an alternative permit; and
273	(ii) options for revising the state implementation plan to maximize flexibility for the

274	state to utilize an alternative permit and preserve electric generating capacity sufficient to
275	support economic growth in the state while ensuring the state implementation plan meets
276	federal air quality standards;
277	(b) for the valuation of the project entity asset that a project entity intends to
278	decommission, include:
279	(i) an assessment of all assets associated with the electrical generation facility,
280	including real property, equipment, water rights, mineral rights, and any other associated
281	<u>assets;</u>
282	(ii) an assessment of all financial assets and potential financial liabilities or risks
283	related to the electrical generation facility intended for decommissioning;
284	(iii) an analysis of any encumbrances on the electrical generation facility;
285	(iv) the impact on valuation of an electrical generation facility related to the issuance of
286	an alternative air quality permit under Section 19-2-109.4;
287	(v) a review of any potential effect a sale of the electrical generation facility would
288	have on liabilities related to the electrical generation facility;
289	(vi) incorporation of any relevant local, regional, or national economic and market
290	factors that may impact the fair market value; and
291	(vii) any other factors the authority considers relevant in establishing a fair market
292	value for the electrical generation facility; and
293	(c) to evaluate the issues surrounding a potential sale of the facility, include:
294	(i) potential purchase and sale agreement terms;
295	(ii) the necessary financial capability of a potential purchaser, including experience
296	raising capital, access to capital, financial stability, and ability to provide security for
297	obligations related to decommissioning, remediation, and other liabilities;
298	(iii) operational experience and capability of a potential purchaser, including
299	experience operating electrical generation facilities, contracting history, and historical
300	operating metrics;
301	(iv) permitting, regulatory compliance, and construction issues for continued operation
302	of the facility;
303	(v) the likelihood that continued operation of the facility would impact other electrical
304	generation facilities in the state;

305	(vi) the potential for continued operation of the facility to infringe on existing utility
306	service territories;
307	(vii) the viability of alternative business models for continued operation of the facility;
308	(viii) potential community and regional impacts resulting from continued operation or
309	the retirement of the facility; and
310	(ix) the potential for continued operation of the facility to interfere with the rights and
311	interests of the project entity, the project entity's members, power purchasers, bondholders,
312	creditors, or other entities.
313	(5) In conducting the study described in Subsection (2), the project entity shall timely
314	provide to the authority information related to the assets and potential liabilities of the
315	electrical generation facility intended for decommissioning.
316	(6) The authority shall report the progress and results of the study to the Public
317	Utilities, Energy, and Technology Interim Committee on or before November 30, 2024.
318	Section 6. Effective date.
319	This bill takes effect on May 1, 2024.