

JAN 23 2025

A BILL FOR AN ACT

RELATING TO ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that it is imperative to enable the development of affordable clean energy resources for the benefit of utility customers in the State. Many existing generating units in Hawaii will need to be retired in the next few years due to obsolescence and environmental permitting requirements. The impending retirement of these units makes it urgent to obtain replacement resources, without which the reliability of electrical supplies in the State will be at risk. In addition, continued reliance on these aging units, even if feasible, would result in increased costs for utility customers and continued reliance on fossil fuels, contrary to the State's policy to transition to renewable, non-carbon-emitting resources.

The procurement of replacement clean energy resources by a certain investor-owned electric utility and its electric utility subsidiaries is ongoing in its stage 3 request for proposals and further anticipated in its first Integrated Grid Planning



1 request for proposals. These requests for proposals implement
2 energy plans that are developed through extensive engagement
3 with local stakeholders and communities and reviewed and
4 approved by the public utilities commission. The legislature
5 finds that successful procurement of clean energy resources is
6 in the public interest and necessary to avoid significant
7 detrimental reliability and affordability impacts to electric
8 utility customers.

9 The legislature also finds that the development of clean
10 energy resources by independent power producers is essential to
11 achieve the State's goals of one hundred per cent net
12 electricity sales from renewable sources by 2045, a zero
13 emissions economy by 2045, and greater energy security and
14 energy diversification, as established by the Hawaii state
15 planning act and existing public utility laws.

16 The legislature further finds that continued development of
17 clean energy resources requires adequate assurances to
18 independent power producers that prompt and full payments for
19 purchased power will be made, irrespective of the financial
20 strength of an electric utility. The current
21 sub-investment-grade status of a certain investor-owned electric



1 utility and its subsidiaries, arising from the tragic events
2 that occurred in the 2023 Maui wildfires, has led independent
3 power producers, and those who would finance renewable energy
4 projects, to raise concerns about the reliability of payment by
5 the utility and its subsidiaries under new power purchase
6 agreements. Those concerns may cause independent power
7 producers to cancel renewable energy projects or increase the
8 prices they would charge for deliveries to address this
9 perceived credit risk. Either outcome would be contrary to the
10 interests of electric utility customers in the State.

11 The legislature further finds that the public interest
12 could be served by the State providing limited credit support
13 through step-in agreements, under which the State will agree to
14 make payments to independent power producers in the event of a
15 default in payment by an electric utility. These agreements can
16 provide assurances to independent power producers that prompt
17 and full payments for purchased power will be made. The
18 legislature also finds that the intent of this Act is further
19 served by appointing, authorizing, and empowering the electric
20 utility to serve as the billing, collection, payment, and
21 management agent of the State.



1 The legislature also finds that the State's obligations in
2 connection with step-in agreements do not constitute contingent
3 liabilities of the State pursuant to article VII, section 13,
4 clause 8, of the Hawaii State Constitution, because the State
5 will be vested with all ownership of and title to revenues
6 resulting from on-bill charges for power purchase costs, and the
7 full faith and credit of the State will not be pledged for
8 obligations under these step-in agreements. In the event of a
9 default by an electric utility on its payment obligations, these
10 revenues would cover all payment obligations of the State for
11 electric energy and related products. In the absence of
12 default, the electric utility will be authorized to utilize
13 these revenues to discharge its obligations to pay independent
14 power producers for electric energy and related products. The
15 obligations of the State under this Act are undertaken for a
16 public purpose, namely, the protection of public health, safety,
17 and welfare by supporting the development of clean energy
18 resources that are needed for the reliable provision of electric
19 supply at a reasonable cost.

20 Therefore, the purpose of this Act is to:



- 1 (1) Allow the State to enter into step-in agreements for
2 payment obligations arising under new power purchase
3 agreements entered into between a certain
4 investor-owned electric utility and its regulated
5 subsidiaries and independent power producers;
- 6 (2) Establish a trust fund within the State treasury that
7 shall be capitalized immediately in the event of a
8 default to fulfill State-backed payment obligations
9 arising from power purchase agreements subject to
10 step-in agreements;
- 11 (3) Establish that revenues from on-bill charges for
12 covered power purchase agreements and accompanying
13 reserves shall be held in trust by the State, and that
14 independent power producers shall hold a beneficial
15 interest in the revenues and reserves to the extent
16 they are owed under the covered power purchase
17 agreements; and
- 18 (4) Appoint, authorize, and empower an electric utility to
19 serve as the billing, collection, payment, and
20 management agent of the department of budget and



1 finance in the service of performing step-in
2 agreements.

3 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 **"PART . STEP-IN AGREEMENTS COVERING POWER PURCHASE COSTS**

7 **§269-A Definitions.** As used in this part:

8 "Covered power purchase agreement" means a power purchase
9 agreement that is subject to a step-in agreement.

10 "Default" means the failure by an electric utility to pay
11 power purchase costs when due to an obligee under a covered
12 power purchase agreement after the expiration of any applicable
13 grace or cure periods and extensions thereto. "Default" does
14 not mean a bankruptcy filing by an electric utility.

15 "Department" means the department of budget and finance, or
16 any successor by law.

17 "Electric utility" means a public utility that produces,
18 conveys, transmits, delivers, or furnishes electric power.

19 "Energy cost recovery clause" means the provision, or other
20 equivalent, in an electric utility's rate schedules that allows
21 the electric utility to recover its costs of fuel, expenses, and



1 related taxes for energy costs of power purchased under a power
2 purchase agreement.

3 "Fund" means the power purchase costs trust fund
4 established pursuant to section 269-D.

5 "Investment grade status" means a credit rating for the
6 electric utility's senior unsecured long-term debt obligations
7 or an issued credit rating for the electric utility (in each
8 case, not supported by third party credit enhancements) from at
9 least two out of the three of the following:

10 (1) At least BBB- or higher from S&P Global Ratings, or
11 any successor by law;

12 (2) At least BAA3 or higher from Moody's Investor
13 Services, Inc., or any successor by law; or

14 (3) At least BBB- or higher from Fitch Ratings, Inc., or
15 any successor by law.

16 "Obligee" means any user, owner, or operator of the Hawaii
17 electric system that is owed payment of power purchase costs by
18 the electric utility under a power purchase agreement.

19 "Power purchase agreement" means a contract between an
20 electric utility and a user, owner, or operator of the Hawaii
21 electric system, approved by the public utilities commission,



1 pursuant to which the electric utility agrees to purchase, and
2 the user, owner, or operator of the Hawaii electric system
3 agrees to sell, electric energy and related products produced by
4 plants or facilities that have not provided, sold, or
5 transmitted electricity to the electric utility before July 1,
6 2025.

7 "Power purchase charges" means the on-bill charges
8 authorized by the public utilities commission to be imposed on
9 and collected from all existing and future customers of an
10 electric utility or any successor for power purchase costs,
11 including the energy cost recovery clause and the purchased
12 power adjustment clause. "Power purchase charges" do not
13 include any amounts for state and county revenue taxes,
14 including any franchise tax, public service company tax, and
15 public utility commission fee.

16 "Power purchase costs" means costs incurred by an electric
17 utility pursuant to the terms of a power purchase agreement.

18 "Power purchase costs" include all categories of costs
19 recoverable under the energy cost recovery clause and the
20 purchased power adjustment clause under its respective tariffs
21 in effect on July 1, 2025.



1 "Purchased power adjustment clause" means the provision, or
2 other equivalent, in an electric utility's rate schedules that
3 allows the electric utility to recover expenses and related
4 taxes for non-energy costs of power purchased under a power
5 purchase agreement.

6 "Step-in agreement" means a contract by which the State
7 undertakes an obligation of prompt and full payment for power
8 purchase costs owed to an obligee by an electric utility under a
9 power purchase agreement following a default.

10 "User, owner, or operator of the Hawaii electric system"
11 has the same meaning as defined in section 269-141.

12 **§269-B Step-in agreements.** (a) The department shall
13 enter into a step-in agreement with an obligee that requires the
14 department to make prompt and full payments for power purchase
15 costs owed by an electric utility to the obligee in the event of
16 a default. Upon the default, the department shall make payments
17 to the obligee for power purchase costs with moneys from the
18 fund as and when due under the covered power purchase agreement.
19 The step-in agreement shall not be an obligation for which the
20 full faith and credit of the State is pledged, and an obligee
21 shall have no claim or lien on any revenues or moneys of the



1 State, except for those revenues from the power purchase charges
2 attributable to the covered power purchase agreement.

3 (b) The department shall enter into a step-in agreement
4 only if the power purchase agreement subject to the step-in
5 agreement arises from the stage 3 request for proposals under
6 docket number 2017-0352 before the public utilities commission
7 or the first integrated grid planning request for proposals
8 issued under docket number 2024-0258 before the public utilities
9 commission. The department shall enter into a step-in agreement
10 when the power purchase agreement subject to the step-in
11 agreement is executed, or if the power purchase agreement has
12 already been executed as of July 1, 2025, as soon as reasonably
13 possible.

14 (c) Payment by the department under a step-in agreement
15 shall commence not later than two days after the date of a
16 notice from the department to the electric utility pursuant to
17 section 269-C(a).

18 (d) The step-in agreement shall terminate when the credit
19 rating of the electric utility or its successor achieves
20 investment grade status or by express agreement of the obligee.



1 (e) Following a default of a covered power purchase
2 agreement and any payment by the department, the electric
3 utility, within its sole discretion, may elect to resume
4 payments for power purchase costs owed by the electric utility,
5 regardless of the credit rating of the electric utility at that
6 time, in which case the electric utility may use the revenue
7 from power purchase charges as specified in subsection (h);
8 provided that the payments shall not terminate the step-in
9 agreement, which shall remain in effect until terminated
10 pursuant to subsection (d), and the department shall remain
11 obligated to pay the obligee upon a subsequent payment default
12 by the electric utility.

13 (f) The department may impose other conditions, and may
14 include other terms, in a step-in agreement that it deems
15 necessary to implement the requirements of this part; provided
16 that the conditions and terms shall not be inconsistent with the
17 covered power purchase agreement.

18 (g) As consideration for the State entering into the
19 step-in agreement, the electric utility or its successor shall
20 enter into an agreement to assign and transfer any ownership in
21 and title to the revenue from power purchase charges



1 attributable to the covered power purchase agreement to the
2 department, and, under the agreement, the department shall be
3 deemed to be the sole holder in trust of all ownership and title
4 to the revenue for the benefit of the obligees under the covered
5 power purchase agreements to the extent the obliges are owed.

6 The revenue shall not be subject to appropriation for any other
7 purpose. The revenue, if held in a depository other than the
8 state treasury, shall be exempt from the requirements of
9 chapters 36 and 38. The electric utility or its successor shall
10 be obligated to bill and collect the power purchase charges and
11 to manage the revenue attributable to the agreement as an agent
12 for the department.

13 (h) If any payment obligation of the electric utility
14 under a covered power purchase agreement for power purchase
15 costs becomes owed and due, any ownership of or title to the
16 revenue from power purchase charges for the payment obligation
17 owed and due shall divest from the department and vest in the
18 electric utility or its successor at the time the payment by the
19 electric utility is made to the obligee. Any vesting of
20 revenues to the electric utility when payment obligations are
21 owed and due may be made without appropriation or allotment by



1 the legislature. The department may not otherwise assign, sell,
2 or transfer any ownership of, or title to, any claim or right to
3 the revenue from power purchase charges.

4 (i) To meet the requirements of the State and the public
5 utilities commission as it pertains to electric reliability,
6 energy security, and energy diversification under this chapter
7 and any rules adopted pursuant thereto, an electric utility
8 shall ensure that it maintains sufficient availability of
9 electric energy and related products, to the extent provided by
10 an obligee in accordance with a covered power purchase
11 agreement. The department shall exercise its regulatory powers
12 to ensure that an electric utility complies with its obligations
13 under the covered power purchase agreements.

14 (j) Notwithstanding any other law to the contrary, an
15 electric utility shall file with the public utilities
16 commission, and the public utilities commission shall allow to
17 become effective, monthly rate adjustments provided under the
18 energy cost recovery clause and purchased power adjustment
19 clause to establish or adjust power purchase charges in a manner
20 designed to:



1 (1) Generate sufficient revenue to timely and fully pay
2 amounts when owed and due under covered power purchase
3 agreements; and

4 (2) Ensure that in no event shall revenues fall below the
5 amounts owed and due under covered power purchase
6 agreements by a sum that exceeds the amounts in the
7 reserve established under section 269-E.

8 To achieve the objectives established pursuant to this
9 subsection, unless the public utilities commission otherwise
10 directs, the electric utility may retain revenue collected in
11 excess of amounts owed and due under the covered power purchase
12 agreement. The obligations of the electric utility and of the
13 public utilities commission under this section shall survive any
14 default by the electric utility and shall terminate only upon
15 the termination of the step-in agreement as provided in
16 subsection (d).

17 (k) If the electric utility fails to timely file any
18 submission as described in subsection (j), the department shall
19 promptly file, and the public utilities commission shall allow
20 to become effective, a substitute submission as if the
21 submission had been filed by the electric utility under



1 subsection (j). The electric utility shall implement the power
2 purchase charges in the substitute submission from the
3 department.

4 **§269-C Default of electric utility; successor**
5 **requirements.** (a) If the obligee provides notice to the
6 department of a default of a covered power purchase agreement,
7 the department shall provide the electric utility notice of the
8 default. Two days after the electric utility receives the
9 notice, the electric utility shall turn over all revenues from
10 power purchase charges arising from any covered power purchase
11 agreements identified in the notice, regardless of when
12 collected, then in its possession, and all future revenues from
13 the power purchase charges thereafter collected, to the fund as
14 directed by the department; provided that the amounts shall
15 include revenues received by the electric utility after a
16 default for power purchase charges billed before the default
17 that were intended to be used to pay power purchase costs
18 arising from the covered power purchase agreement. The
19 department shall use the revenue from the power purchase
20 charges, including the revenues turned over, only in the order
21 as follows:



1 (1) To pay power purchase costs pursuant to a step-in
2 agreement, subject to the appointment, authorization,
3 and empowerment of the electric utility as an agent as
4 described in section 269-F(e); and

5 (2) To implement a rate credit to customers for revenue in
6 excess of amounts owed under the covered power
7 purchase agreement.

8 (b) Any step-in agreement shall remain in full force and
9 effect notwithstanding any bankruptcy, reorganization, or other
10 insolvency proceedings with respect to the electric utility.

11 (c) The obligation of an electric utility to collect and
12 remit the power purchase charges pursuant to the requirements of
13 this part shall not be subject to any setoff, counterclaim,
14 surcharge, or defense by the electric utility, or in connection
15 with a bankruptcy of any electric utility.

16 (d) Any successor to an electric utility shall be bound by
17 the requirements of this part. The successor shall perform and
18 satisfy all obligations of the electric utility in the same
19 manner and to the same extent as the electric utility, including
20 the obligation to bill and collect the power purchase charges
21 and remit the collected revenue to the department in connection



1 with any covered power purchase agreement, unless and until the
2 step-in agreement is terminated as described in section
3 269-B(d).

4 (e) If the credit rating of the electric utility or its
5 successor achieves investment grade status, then by operation of
6 law, any ownership of and title to the revenue from power
7 purchase charges attributable to the covered power purchase
8 agreement shall immediately divest from the department and vest
9 in the electric utility or its successor; provided that the
10 electric utility or its successor shall thereafter be the sole
11 owner and holder of title or beneficial and equitable interest
12 in, and any claim or right to, the revenue, and the obligation
13 of the electric utility or its successor to bill and collect the
14 power purchase charges and manage the revenue as an agent for
15 the department, and, if applicable, to remit the collected
16 revenue to the fund, shall terminate.

17 **§269-D Power purchase costs trust fund.** (a) There is
18 established in the state treasury the power purchase costs trust
19 fund into which shall be deposited all proceeds of the power
20 purchase charges to be paid in the event of a default of a
21 covered power purchase agreement by the electric utility.



(b) Moneys in the fund shall be administered and held by the department in trust for the benefit of obligees of covered power purchase agreements to the extent the obligees are owed.

(c) If the credit rating of the electric utility or its successor achieves investment grade status, the fund shall cease to receive any revenue from the power purchase charges collected by that electric utility and shall pay to the electric utility or its successor the remainder of any moneys in the fund; provided that the moneys in the fund shall be considered revenue of the electric utility.

§269-E Power purchase costs reserve fee; establishment.

(a) By August 1, 2025, the public utilities commission shall authorize a surcharge proposed by an electric utility, referred to as the power purchase costs reserve fee, the revenue from which shall be accorded the same treatment as revenue from power purchase charges as described in section 269-B(g). The power purchase costs reserve fee may be included in the purchased power adjustment clause on customer bills.

(b) The power purchase costs reserve fee shall be collected and maintained to establish a reserve in an amount not



1 to exceed fifteen per cent of the forecasted monthly power
2 purchase costs of all covered power purchase agreements.

3 (c) In the event of default pursuant to section 269-C(a),
4 all previously collected revenues and all future revenues from
5 the power purchase costs reserve fee shall be accorded the same
6 treatment as revenues from power purchase charges as described
7 in section 269-C.

8 (d) Notwithstanding subsection (c), if the credit rating
9 of the electric utility or its successor achieves investment
10 grade status and the step-in agreement terminates pursuant to
11 section 269-B(d), all moneys remaining in the reserve collected
12 from the power purchase costs reserve fee shall be returned,
13 together with any associated interest earned, to customers
14 through a rate credit.

15 (e) In the special circumstances of this part, the
16 legislature finds and declares that the reasonable reserve
17 requirement of article VII, section 13, clause 8 of the Hawaii
18 State Constitution, to the extent applicable, has been
19 satisfied.

20 **§269-F Electric utility; agent of the department.** (a) To
21 implement the requirements of this part, the department may



1 contract with an electric utility or its successor to act as an
2 agent of the department to provide billing, collection, payment,
3 management, and other related services on terms and conditions
4 that reasonably compensate the electric utility or its successor
5 for its incremental cost to provide services, and adequately
6 secure payment to the department.

7 (b) At the request of the department, the public utilities
8 commission shall order an electric utility or its successor to
9 perform the duties pursuant to a contract under subsection (a).

10 (c) The act of serving as an agent to bill and to collect
11 the power purchase charges shall not cause any electric utility
12 to be subject to the laws that regulate financial institutions,
13 escrow depositories, or collection agencies. An electric
14 utility shall not be responsible for lending, underwriting, and
15 credit determinations in respect to these billing and collection
16 activities.

17 (d) To the extent any moneys are received by an electric
18 utility pursuant to subsection (a) or section 269-B(g), in the
19 process of collection, and pending their transfer to the
20 department, those moneys shall be held in trust for the
21 department's exercise of its obligations pursuant to this part.



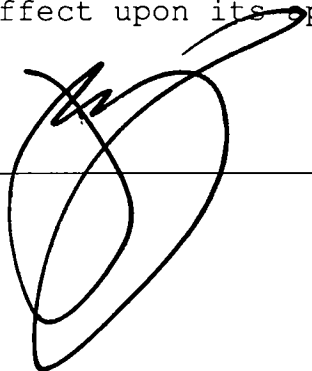
(e) To implement the requirements of this part, the director of finance may appoint, authorize, and empower the electric utility, as agent for and on behalf of the State, to manage and pay out moneys, including from the fund, for fulfillment of payment obligations of the State arising from covered power purchase agreements. The appointment shall terminate when the step-in agreement for the covered power purchase agreements terminates pursuant to section 269-B(d)."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

S.B. NO. 1501

Report Title:

BNF; Public Utilities Commission; Energy; Step-In Agreements;
Power Purchase Agreements; Power Purchasing Costs Trust Fund

Description:

Allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchasing Costs Trust Fund. Establishes that revenues from on-bill charges for power purchase agreements and accompanying reserves shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the revenue and reserve to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers an electric utility to serve as the billing, collection, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

