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# A BILL FOR AN ACT

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RELATING TO ENERGY.

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

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

14           The procurement or purchase of energy from replacement  
15 clean energy resources by a certain investor-owned electric  
16 utility and its electric utility subsidiaries is ongoing in its  
17 Stage 3 request for proposals and further anticipated in its



1 first Integrated Grid Planning request for proposals. These  
2 requests for proposals set forth energy plans that have been  
3 developed through extensive engagement with local stakeholders  
4 and communities and reviewed and approved by the public  
5 utilities commission. The legislature finds that successful  
6 purchase of energy from clean energy resources is in the public  
7 interest and necessary to avoid significant detrimental  
8 reliability and affordability impacts to electric utility  
9 customers.

10 The legislature further finds that the development of clean  
11 energy resources by independent power producers is essential to  
12 achieve the State's goals of one hundred per cent net  
13 electricity sales from renewable sources by 2045, a statewide  
14 target to achieve a zero emissions economy and sequester more  
15 atmospheric carbon and greenhouse gases than emitted by 2045,  
16 and greater energy security and energy diversification, as  
17 established by the Hawaii State Planning Act and existing public  
18 utility laws.

19 The legislature also finds that continued development of  
20 clean energy resources requires adequate assurances that  
21 payments for purchased power will be made to independent power



1 producers as and when due by the utility under power purchase  
2 agreements. The current sub-investment-grade status of a  
3 certain investor-owned electric utility and its subsidiaries,  
4 arising from the tragic events that occurred in the 2023 Maui  
5 wildfires, has led independent power producers, and those who  
6 would otherwise finance renewable energy projects, to raise  
7 concerns about the reliability of payment by the utility and its  
8 subsidiaries under power purchase agreements procured through  
9 the Stage 3 and Integrated Grid Planning requests for proposals.  
10 Those concerns have caused independent power producers to  
11 terminate their renewable energy projects and may continue to  
12 cause remaining independent power producers to cancel renewable  
13 energy projects, increase the prices they would charge for  
14 deliveries to address the inability to obtain financing due to  
15 this perceived credit risk, or choose not to respond to the  
16 electric utility's Integrated Grid Planning request for  
17 proposals. Either outcome would be contrary to the interests of  
18 electric reliability and to electric utility customers in the  
19 State.

20 The legislature further finds that the public interest  
21 would be served if the department of budget and finance enters



1 into step-in agreements with independent power producers,  
2 pursuant to which the department of budget and finance would  
3 agree to make payments to an independent power producer after a  
4 failure by the electric utility to make required payments  
5 pursuant to the terms of a power purchase agreement. The  
6 department of budget and finance's obligation to make payments  
7 pursuant to the terms of a step-in agreement is limited to the  
8 revenues received from power purchase charges associated with  
9 power purchase agreements subject to step-in agreements and  
10 reserve fees that are on deposit in the power purchase costs  
11 trust fund established by the department of budget and finance.  
12 Neither the full faith and credit of the State, nor any other  
13 moneys of the State, will be pledged for any obligations under a  
14 step-in agreement.

15 The legislature finds that step-in agreements may provide  
16 assurances that payments for purchased power will be made to  
17 independent power producers as and when due by the utility under  
18 the covered power purchase agreements. The legislature also  
19 finds that the intent of this Act is further served by  
20 appointing, authorizing, and empowering the electric utility to  
21 serve as the billing, collection, and payment agent of the



1 department of budget and finance. Prior to a payment default  
2 under a covered power purchase agreement by the electric  
3 utility, the electric utility will be authorized to utilize  
4 revenues received from power purchase charges to discharge its  
5 obligations to pay independent power producers for electric  
6 energy and related services and products. The obligations of  
7 the department of budget and finance under this Act are  
8 undertaken for a public purpose, namely, the protection of  
9 public health, safety, and welfare by supporting the development  
10 of clean energy resources that are needed for the reliable  
11 provision of electric supply at a reasonable cost.

12 Therefore, the purpose of this Act is to:

- 13 (1) Require the department of budget and finance to enter  
14 into a step-in agreement with an independent power  
15 producer, in which the department of budget and  
16 finance agrees to make required payments to the  
17 independent power producer from revenues received from  
18 power purchase charges and reserve fees after a  
19 failure by the electric utility to make required  
20 payments pursuant to the terms of a power purchase  
21 agreement;



1           (2) Require the department of budget and finance to  
2           establish a trust fund outside the state treasury that  
3           shall be capitalized by money from a surcharge  
4           supporting a reserve account within the trust fund  
5           and, in the event of a default by the electric utility  
6           of its payment obligations under one or more covered  
7           power purchase agreements, by revenues received from  
8           the power purchase charges related to the covered  
9           power purchase agreements, for the fulfillment of  
10          payment obligations arising under the covered power  
11          purchase agreement;

12          (3) Establish that revenues collected from on-bill power  
13          purchase charges associated with covered power  
14          purchase agreements and money from a surcharge  
15          supporting a reserve account that are deposited in the  
16          power purchase costs trust fund shall be held in trust  
17          by the department of budget and finance, and that  
18          independent power producers shall hold a beneficial  
19          interest in the moneys to the extent of the amounts  
20          owed to each independent power producer under the  
21          related covered power purchase agreements; and



(4) Appoint, authorize, and empower the electric utility to serve as the billing, collection, and payment agent of the department of budget and finance to implement the requirements of this Act.

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

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

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

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

"Default" means the failure by an electric utility to pay power purchase costs as and when due to an obligee under a covered power purchase agreement after the expiration of any applicable grace or cure periods and extensions thereto.

"Default" does not mean a bankruptcy filing by an electric utility.

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

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



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

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

8 "Hawaii electric system" has the same meaning as defined in  
9 section 269-141.

10 "Independent power producer" has the same meaning as user,  
11 owner, or operator of the Hawaii electric system.

12 "Investment grade status" means a credit rating for the  
13 electric utility's senior unsecured long-term debt obligations  
14 or an issuer credit rating for the electric utility, in each  
15 case, without regard for third-party credit enhancements, from  
16 at least two out of three of the following:

17 (1) BBB- or higher for S&P Global Ratings, or any  
18 successor by law;

19 (2) BAA3 or higher by Moody's Investor Services, Inc., or  
20 any successor by law; or





(3) BBB- or higher by Fitch Ratings, Inc., or any  
successor by law.

"Obligee" means any user, owner, or operator of the Hawaii  
electric system that does not claim a tax credit for a project  
system under section 235-12.5, and that is owed payment of power  
purchase costs by the electric utility under a power purchase  
agreement.

"Power purchase agreement" means a contract between an  
electric utility and a user, owner, or operator of the Hawaii  
electric system, pursuant to which the electric utility agrees  
to purchase, and the user, owner, or operator of the Hawaii  
electric system agrees to sell, electric energy and related  
products produced by plants or facilities that have not  
provided, sold, or transmitted electricity to the electric  
utility before July 1, 2025.

"Power purchase charges" means the on-bill charges,  
excluding reserve fees, authorized by the public utilities  
commission to be imposed on and collected from all existing and  
future customers of an electric utility or any successor for  
power purchase costs, including but not limited to the energy  
cost recovery clause and the purchased power adjustment clause.



1 "Power purchase costs" means costs incurred by an electric  
2 utility pursuant to the terms of a power purchase agreement,  
3 including but not limited to costs such as termination payments  
4 payable by an electric utility in connection with the  
5 termination of a power purchase agreement as a result of a  
6 default by the electric utility. "Power purchase costs"  
7 includes but is not limited to all categories of costs  
8 recoverable under the energy cost recovery clause and the  
9 purchased power adjustment clause under their respective tariffs  
10 in effect on July 1, 2025.

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

16 "Reserve account" refers to the account for deposit and  
17 accounting of revenues from reserve fees within the fund  
18 established pursuant to section 269-D(a).

19 "Reserve fees" means the surcharge described in  
20 section 269-E(a).



1 "Revenue" means moneys from power purchase charges and  
2 reserve fees net of any applicable taxes or government fees,  
3 including but not limited to the franchise tax, public service  
4 company tax, and public utilities commission fee.

5 "Step-in agreement" means a contract by which the  
6 department undertakes the obligation of payment for power  
7 purchase costs owed to an obligee as and when due by an electric  
8 utility under a power purchase agreement following a default by  
9 the electric utility as described in section 269-B(a); provided  
10 that the department's payment obligation under the step-in  
11 agreement is limited to the revenues from power purchase charges  
12 collected in connection with covered power purchase agreements  
13 and reserve fees that are on deposit in the fund.

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

16 **§269-B Step-in agreements.** (a) Within ninety days of  
17 receiving notice of the filing of an application to the public  
18 utilities commission for approval of a power purchase agreement,  
19 or if an application has already been filed as of July 1, 2025,  
20 within ninety days of receiving notice of the pending  
21 application, the department shall execute a step-in agreement



1 related to the power purchase agreement with the obligee;  
2 provided that, before the expiration of the ninety-day period,  
3 the department completes a due diligence investigation of the  
4 obligee and the proposed step-in agreement and finds the obligee  
5 and proposed step-in agreement to be satisfactory; and further  
6 provided that if the public utilities commission denies the  
7 application, the step-in agreement shall be deemed void. The  
8 step-in agreement shall require the department to make payments  
9 for power purchase costs owed by an electric utility to the  
10 obligee in the event of a default under the related covered  
11 power purchase agreement. Pursuant to the step-in agreement and  
12 upon a default by the electric utility under the covered power  
13 purchase agreement related to the step-in agreement, the  
14 department shall make payments to the obligee for power purchase  
15 costs with revenues received from power purchase charges from  
16 covered power purchase agreements and reserve fees that are on  
17 deposit in the fund as and when due by the electric utility  
18 under the related covered power purchase agreement; provided  
19 that any step-in agreement entered into by the department shall  
20 provide that the department's payment obligation thereunder  
21 shall be limited to the revenues received from power purchase



1 charges from covered power purchase agreements and reserve fees  
2 that are on deposit in the fund. Each step-in agreement shall  
3 include a clause stating that neither the full faith and credit  
4 of the State nor any other moneys of the State will be pledged  
5 for any obligations pursuant to the terms of the step-in  
6 agreement and that in any action concerning a failure by the  
7 department to comply with the terms of a step-in agreement, the  
8 sole and exclusive remedy available to an obligee and the  
9 electric utility under the step-in agreement against the  
10 department shall be a court order directing specific performance  
11 by the department of the step-in agreement, and that under no  
12 circumstances shall the department be liable for any costs,  
13 expenses, or other monetary relief or compensatory damages. An  
14 obligee of a covered power purchase agreement shall have no  
15 claim or lien on any moneys of the State. An obligee of a  
16 covered power purchase agreement shall only have a claim or lien  
17 on those revenues from power purchase charges and reserve fees  
18 that are transferred by the electric utility and on deposit in  
19 the fund. An obligee shall remain entitled to all payments for  
20 power purchase costs owed under its covered power purchase  
21 agreement, whether or not the revenues from power purchase



1 charges attributable to its covered power purchase agreement are  
2 timely collected. Notwithstanding anything to the contrary in  
3 this part, a step-in agreement shall also obligate the  
4 department to pay claims of an obligee from revenues received  
5 from power purchase charges and reserve fees on deposit in the  
6 fund arising out of a termination of the covered power purchase  
7 agreement by the electric utility under bankruptcy law. In  
8 determining any amounts owed, the department shall have a right,  
9 but not an obligation, to rely on an invoice from an obligee  
10 describing amounts owed to make that determination. The  
11 department shall not be deemed in breach of the step-in  
12 agreement by sole reason of having relied or failed to rely on  
13 the invoice. Notwithstanding any law to the contrary, the  
14 department shall not be bound to make any independent  
15 calculation, verification, or investigation into the invoice  
16 from an obligee.

17 (b) The department shall enter into a step-in agreement  
18 only if the power purchase agreement that is subject to the  
19 step-in agreement arises from the Stage 3 request for proposals  
20 under docket number 2017-0352 before the public utilities  
21 commission or the first Integrated Grid Planning request for



1 proposals issued under docket number 2024-0258 before the public  
2 utilities commission. The department shall enter into a step-in  
3 agreement related to a power purchase agreement subject to the  
4 department completing its due diligence review and finding both  
5 the obligee and the contract to be satisfactory as provided in  
6 subsection (a).

7 (c) The payment obligation of the department under a  
8 step-in agreement shall commence not later than two days after  
9 the date of a notice given by the department to the electric  
10 utility pursuant to section 269-C(a).

11 (d) A step-in agreement shall terminate when the credit  
12 rating of the electric utility or its successor achieves  
13 investment grade status for at least thirty days, or may be  
14 terminated by express agreement of the obligee, department, and  
15 electric utility. Following the termination of a step-in  
16 agreement, the department shall have no obligation to the  
17 electric utility or the obligee upon a continuing or future  
18 default by the electric utility under the related power purchase  
19 agreement.

20 (e) Following a default of a covered power purchase  
21 agreement and any payment by the department from revenues in the



1 fund, the electric utility, through explicit agreement with the  
2 respective obligee of its covered power purchase agreement, may  
3 elect to resume payments owed by the electric utility for power  
4 purchase costs related to the covered power purchase agreement  
5 in default, regardless of the credit rating of the electric  
6 utility at that time, in which case the electric utility shall  
7 cease to transfer revenues received from power purchase charges  
8 in connection with the covered power purchase agreement in  
9 default to the department for deposit into the fund as described  
10 in section 269-C(a), and may use the revenues received from  
11 power purchase charges related to the covered power purchase  
12 agreement in default through the vesting of title in the  
13 electric utility as described in subsection (h); provided that  
14 any election by the electric utility to continue making payments  
15 shall not terminate the step-in agreement that is related to the  
16 covered power purchase agreement in default, the related step-in  
17 agreement shall remain in effect until terminated pursuant to  
18 subsection (d), and the department shall remain obligated to pay  
19 the obligee of the covered power purchase agreement in default  
20 upon a subsequent default by the electric utility solely from  
21 revenues on deposit in the fund; provided further that no





1 election by the electric utility shall be permitted if the  
2 department has made payment for any power purchase costs with  
3 revenues from the reserve account.

4 (f) The department may impose other conditions, and may  
5 include other terms, in a step-in agreement that the department  
6 deems necessary to implement the requirements of this part;  
7 provided that the conditions and terms shall not adversely  
8 affect the obligation of the department as set forth in this  
9 part, including but not limited to the obligation to make  
10 payments under the step-in agreement, but only to the extent  
11 that there are moneys in the fund, for power purchase costs owed  
12 by an electric utility to an obligee under a covered power  
13 purchase agreement related to the step-in agreement as and when  
14 due in the event of a default as required under subsection (a)  
15 or otherwise be inconsistent with the related covered power  
16 purchase agreement.

17 (g) As consideration for the department entering into a  
18 step-in agreement, the electric utility or its successor shall  
19 enter into an agreement to assign and transfer title to the  
20 revenues from power purchase charges and reserve fees  
21 attributable to the covered power purchase agreement to the



1 department to be held in trust for the benefit of the obligees  
2 under the covered power purchase agreements to the extent of the  
3 amounts owed to the obligees. The assignment and transfer of  
4 title to the revenues from the power purchase charges by the  
5 electric utility shall be made and remain for the term of the  
6 step-in agreement free and clear of any prior lien, pledge,  
7 security interest, or encumbrance of any kind, and shall be  
8 exempt from section 269-19. The revenues from power purchase  
9 charges and reserve fees shall not be subject to appropriation  
10 for any other purpose. The revenues shall be exempt from the  
11 requirements of chapters 36 and 38. The electric utility or its  
12 successor shall be and remain at all times, even upon the  
13 occurrence and during the continuance of a default by the  
14 electric utility or its successor, obligated to bill and collect  
15 the power purchase charges and reserve fees as an agent for the  
16 department to effectuate the purposes of this part.

17 (h) Before default or an entry of an order of relief with  
18 respect to the electric utility pursuant to title 11 of the  
19 United States Code, if any payment obligation of the electric  
20 utility under a covered power purchase agreement for power  
21 purchase costs becomes owed and due, any title held in trust by



1 the department to the revenues from power purchase charges for  
2 the payment obligation owed and due shall divest from the  
3 department and vest in the electric utility or its successor at  
4 the time the payment by the electric utility or its successor is  
5 made to the obligee. Any vesting of revenues from power  
6 purchase charges to the electric utility at the time of payment  
7 may be made without appropriation by the legislature or  
8 allotment. The department, except as permitted pursuant to  
9 section 269-C(a), shall not otherwise assign, sell, or transfer  
10 any title to, or any claim or right to, the revenues from power  
11 purchase charges or reserve fees.

12 (i) To meet the requirements of the State and the public  
13 utilities commission as they pertain to electric reliability,  
14 energy security, and energy diversification under this chapter  
15 and any rules adopted pursuant thereto, the electric utility  
16 shall ensure that it maintains sufficient availability of  
17 electric energy and related products, to the extent provided by  
18 an obligee in accordance with a covered power purchase  
19 agreement. The public utilities commission shall exercise its  
20 regulatory powers to ensure that the electric utility complies  
21 with its obligations under a covered power purchase agreement.



1 (j) Notwithstanding any other law to the contrary, the  
2 electric utility shall file with the public utilities  
3 commission, and the public utilities commission shall allow to  
4 become effective, monthly rate adjustments provided under the  
5 energy cost recovery clause and purchased power adjustment  
6 clause to establish or adjust power purchase charges in a manner  
7 designed to:

8 (1) Generate sufficient revenues from power purchase  
9 charges to timely and fully pay amounts when owed and  
10 due under covered power purchase agreements;

11 (2) Ensure that in no event shall revenues from power  
12 purchase charges fall below the amounts owed and due  
13 under covered power purchase agreements by a sum that  
14 exceeds the amounts in the reserve account established  
15 under section 269-E; and

16 (3) Recover any applicable taxes and government fees and  
17 any incremental administrative costs of the electric  
18 utility or the department incurred to implement the  
19 requirements of this part.

20 To achieve the objectives established pursuant to this  
21 subsection, unless the public utilities commission otherwise



1 directs, before a default, the electric utility may retain  
2 revenues collected from power purchase charges in excess of  
3 amounts owed and due under the covered power purchase  
4 agreements. Any moneys in the reserve account established under  
5 the fund shall remain with the department at all times, subject  
6 to section 269-C(a). The obligations of the electric utility  
7 and of the public utilities commission under this section shall  
8 survive any default by the electric utility and shall terminate  
9 only upon the termination of the step-in agreement as provided  
10 in subsection (d).

11       **§269-C Default of electric utility; successor**  
12 **requirements.** (a) After an obligee provides notice to the  
13 department of a default of a covered power purchase agreement,  
14 the department shall promptly provide the electric utility with  
15 a copy of the notice. No later than twenty-four hours from the  
16 time the electric utility receives the notice, the electric  
17 utility shall record a journal entry accounting for the transfer  
18 of all revenues from the power purchase charges arising from any  
19 covered power purchase agreements identified in the notice,  
20 regardless of when collected, then in its possession, to the  
21 fund established pursuant to section 269-D(a). No later than



1 forty-eight hours from the time the electric utility receives  
2 the notice, the electric utility shall transfer all revenues  
3 from the power purchase charges arising from any covered power  
4 purchase agreements identified in the notice, regardless of when  
5 collected, then in its possession, and, subject to section  
6 269-B(e), all future revenues from the power purchase charges  
7 arising from the covered power purchase agreement identified in  
8 the notice and reserve fees thereafter collected to the fund  
9 established pursuant to section 269-D(a). These amounts shall  
10 include all revenues from power purchase charges and reserve  
11 fees received by the electric utility after a default for the  
12 power purchase charges and reserve fees billed before the  
13 default. Following a default, the department shall use the  
14 revenues collected from the power purchase charges and reserve  
15 fees on deposit in the fund, only in the order as follows:

16 (1) To pay power purchase costs pursuant to step-in  
17 agreements, subject to the appointment, authorization,  
18 and empowerment of the electric utility as an agent as  
19 described in section 269-F(e); provided that, for  
20 purposes of complying with the requirements of this  
21 part, the department shall have a right, but not an



1 obligation, in determining the amounts owed to an  
2 obligee, to rely on an invoice from an obligee  
3 describing amounts owed, and the department shall not  
4 be deemed to have breached the step-in agreement by  
5 sole reason of having relied or failed to rely on the  
6 invoice; and notwithstanding any law to the contrary,  
7 the department shall not be bound to make any  
8 independent calculation, verification, or  
9 investigation into the invoice from an obligee;

10 (2) To recover any incremental administrative costs of the  
11 electric utility or the department incurred to  
12 implement the requirements of this part; and

13 (3) To implement a rate credit to customers.

14 (b) Any step-in agreement shall remain in effect  
15 notwithstanding any bankruptcy, reorganization, or other  
16 insolvency proceedings with respect to the electric utility.

17 (c) The obligation of the electric utility to collect and  
18 remit the revenues from power purchase charges and reserve fees  
19 pursuant to the requirements of this part shall not be subject  
20 to any setoff, counterclaim, surcharge, or defense by the



1 electric utility, or in connection with a bankruptcy of any  
2 electric utility.

3 (d) Any successor to an electric utility shall be bound by  
4 the requirements of this part. The successor shall perform and  
5 satisfy all obligations of the electric utility in the same  
6 manner and to the same extent as the electric utility, including  
7 the obligations upon a default.

8 (e) If a step-in agreement is terminated as described in  
9 section 269-B(d), then by operation of law, any title to the  
10 revenues related to power purchase charges attributable to the  
11 related covered power purchase agreement shall immediately cease  
12 to be held in trust and the electric utility or its successor  
13 shall thereafter be the sole holder of title or beneficial and  
14 equitable interest in, and any claim or right to, the revenues  
15 related to power purchase charges attributable to the related  
16 covered power purchase agreement, and the obligation of the  
17 electric utility or its successor to bill and collect the power  
18 purchase charges and reserve fees for the covered power purchase  
19 agreement as an agent for the department, and, if applicable, to  
20 remit the collected revenues for the covered power purchase  
21 agreement to the fund, shall terminate.





1       **\$269-D Power purchase costs trust fund.** (a) There is  
2 established outside the state treasury the power purchase costs  
3 trust fund to be administered by the department. The department  
4 shall establish and maintain two separate accounts within the  
5 fund, the first account to be utilized for the deposit of all  
6 revenues received from power purchase charges transferred by the  
7 electric utility and the second account to be utilized for the  
8 deposit of revenues received from reserve fees transferred by  
9 the electric utility. The electric utility shall transfer to  
10 the department for deposit into the applicable account in the  
11 fund all revenues collected in connection with a covered power  
12 purchase agreement from:

13       (1) Power purchase charges following a default of the  
14       covered power purchase agreement; and

15       (2) Reserve fees.

16       (b) Moneys in the fund shall be held by the department in  
17 trust for the benefit of the obligees of covered power purchase  
18 agreements to the extent of the amounts owed to the obligees.  
19 The department's payments from the fund shall be made without  
20 appropriation or allotment, as provided in section 37-40.



1 (c) If a step-in agreement is terminated as described in  
2 section 269-B(d), the fund shall cease to receive any revenues  
3 from the power purchase charges collected by the electric  
4 utility or its successor related to the terminated covered power  
5 purchase agreement and the department, as directed by the  
6 electric utility, shall pay to the electric utility or its  
7 successor the remainder of any revenues in the fund attributable  
8 to power purchase charges associated with the terminated covered  
9 power purchase agreement related to the step-in agreement, which  
10 shall be considered moneys of the electric utility or its  
11 successor.

12 (d) The department shall be under no obligation to make  
13 payment to any obligee in excess of the moneys in the fund. Any  
14 default or failure by the department to make payments pursuant  
15 to the terms of a step-in agreement under this part shall not  
16 result in any recourse by the electric utility or an obligee to  
17 any funds of the State. An obligee of a covered power purchase  
18 agreement shall have only the benefit of revenues derived from  
19 power purchase charges and the reserve fees collected and on  
20 deposit in the fund. In any action concerning a breach by the  
21 department of a step-in agreement, the sole and exclusive remedy



1 available to an obligee and the electric utility against the  
2 department shall be a court order directing specific performance  
3 by the department of the step-in agreement, and under no  
4 circumstances shall the department be liable for any costs,  
5 expenses, or any other monetary relief or compensatory damages  
6 for a failure to comply with the terms of a step-in agreement.

7 **\$269-E Reserve account; establishment.** (a) By August 1,  
8 2025, the public utilities commission shall create a surcharge,  
9 referred to as reserve fees, which shall be deposited into an  
10 account within the fund and be pledged to secure and be applied  
11 to the repayment of payment obligations under a covered power  
12 purchase agreement to the extent that there is a shortfall in  
13 the amount of revenues received from power purchase charges on  
14 deposit in the fund. Reserve fees shall be collected in full by  
15 the electric utility or its successors, as collection agents for  
16 the department, through a surcharge that is separate and apart  
17 from the electric utility's rates. Reserve fees may be included  
18 in the purchased power adjustment clause on customer bills. The  
19 department shall establish and maintain a separate account  
20 within the fund to accept and account for revenues from reserve  
21 fees, and the electric utility shall, within twenty-four hours



1 of receipt, transfer all revenues collected from the surcharge  
2 related to the reserve fees directly to the department for  
3 deposit into the account. The electric utility shall not  
4 otherwise assign, sell, or transfer any title to, or any claim  
5 or right to, the revenues from reserve fees, except as provided  
6 under this part. The electric utility shall not access the  
7 reserve account or utilize the revenues from the reserve fees  
8 deposited therein, except as directed by the department pursuant  
9 to section 269-F(e). The public utilities commission may  
10 require, in the financing order creating the surcharge, that, if  
11 a default occurs by the electric utility in remittance of the  
12 reserve fees collected, the public utilities commission, upon  
13 the application by the department, and without limiting any  
14 other remedies available to the department by reason of the  
15 default, shall order the sequestration and payment to the  
16 department of the reserve fees. Any order shall remain in full  
17 force and effect notwithstanding any bankruptcy, reorganization,  
18 or other insolvency proceedings with respect to the electric  
19 utility.

20 (b) Reserve fees shall be collected and maintained and if  
21 necessary, reinstated, to establish or replenish a reserve



1 account in an amount not to exceed the total of fifteen per cent  
2 of the forecasted monthly power purchase costs of all covered  
3 power purchase agreements plus an amount sufficient to recover  
4 costs related to administration by the department of the reserve  
5 account and any applicable taxes and fees.

6 (c) If a step-in agreement terminates pursuant to section  
7 269-B(d), reserve fees collected in connection with the related  
8 covered power purchase agreement shall cease to be collected.

9 Upon the termination of all step-in agreements, all moneys  
10 remaining in the reserve account shall be returned in full,  
11 together with any associated interest earned, to customers  
12 through a rate credit.

13 **§269-F Electric utility; agent of the department.** (a) To  
14 implement the requirements of this part, the department shall  
15 designate the electric utility or its successor to act as an  
16 agent of the department to provide billing, collection, payment,  
17 and other related services. In any action concerning a breach  
18 by the department of an agency agreement entered into in  
19 connection with the billing, collection, payment, and other  
20 related services, the sole remedy available to an electric  
21 utility against the department shall be a court order directing



1 specific performance by the department of the agency agreement.  
2 Under no circumstances shall the department be liable for any  
3 costs, expenses, or other monetary relief or compensatory  
4 damages in connection with a breach of any agency agreement.

5 (b) At the request of the department, the public utilities  
6 commission shall order the electric utility or its successor to  
7 perform the duties designated under subsection (a).

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

15 (d) To the extent any revenues are received by the  
16 electric utility pursuant to subsection (a) in the process of  
17 collection and pending their transfer to the fund pursuant to  
18 section 269-D(a), those revenues shall be held in trust for the  
19 department's exercise of its obligations pursuant to this part.

20 (e) To implement the requirements of this part, the  
21 director of finance may appoint, authorize, and empower the



1 electric utility, as agent for and on behalf of the department,  
2 to collect and pay out moneys, including from the fund, for  
3 fulfillment of payment obligations of the department arising  
4 from step-in agreements related to covered power purchase  
5 agreements. The appointment shall terminate when all step-in  
6 agreements are terminated as described in section 269-B(d) or as  
7 otherwise directed by the director of finance.

8 (f) The department's designation of the electric utility  
9 for services pursuant to subsections (a) and (e) shall be exempt  
10 from chapter 103D."

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

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

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



**Report Title:**

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

**Description:**

Requires the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchase Costs Trust Fund. Establishes that revenues from on-bill charges for power purchase agreements and money from a surcharge supporting a reserve account shall be held in trust by the Department of Budget and Finance, and that independent power producers shall hold a beneficial interest in the revenues to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers the electric utility to serve as the billing, collection, and payment agent of the Department of Budget and Finance in the service of performing step-in agreements. (CD1)

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

