
A BILL FOR AN ACT

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



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

9 The legislature further 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 also finds that continued development of
17 clean energy resources requires adequate assurances that
18 payments for purchased power will be made to independent power
19 producers as and when due by the utility under power purchase
20 agreements. The current sub-investment-grade status of a
21 certain investor-owned electric utility and its subsidiaries,



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

12 The legislature further finds that the public interest
13 would be served if the department of budget and finance enters
14 into step-in agreements with independent power producers,
15 pursuant to which the department of budget and finance would
16 agree to make payments to the independent power producers after
17 a failure by an electric utility to make required payments
18 pursuant to the terms of the power purchase agreements. The
19 department of budget and finance's obligation to make payments
20 pursuant to the terms of a step-in agreement is limited solely
21 to the revenues associated with a power purchase agreement



1 subject to a step-in agreement. Neither the full faith and
2 credit of the State, nor any other moneys of the State, will be
3 pledged for any obligations under a step-in agreement.

4 The legislature finds that step-in agreements may provide
5 assurances that payments for purchased power will be made to
6 independent power producers as and when due by the utility under
7 the covered power purchase agreements. The legislature also
8 finds that the intent of this Act is further served by
9 appointing, authorizing, and empowering the electric utility to
10 serve as the billing, collection, payment, and management agent
11 of the department of budget and finance. Prior to a payment
12 default by the electric utility, the electric utility will be
13 authorized to utilize such revenues to discharge its obligations
14 to pay independent power producers for electric energy and
15 related products. The obligations of the department of budget
16 and finance under this Act are undertaken for a public purpose,
17 namely, the protection of public health, safety, and welfare by
18 supporting the development of clean energy resources that are
19 needed for the reliable provision of electric supply at a
20 reasonable cost.

21 Therefore, the purpose of this Act is to:



- 1 (1) Require the department of budget and finance to enter
2 into a step-in agreement with an independent power
3 producer under which the department of budget and
4 finance will agree to make required payments to the
5 independent power producer after a failure by the
6 electric utility to make required payments pursuant to
7 the terms of a power purchase agreement;
- 8 (2) Establish a trust fund outside the state treasury that
9 shall be capitalized by revenues from a surcharge
10 supporting a reserve account and, in the event of a
11 default, by revenues from power purchase charges, in
12 each case associated with covered power purchase
13 agreements, for the fulfillment of payment obligations
14 arising from the power purchase agreement;
- 15 (3) Establish that revenues collected from on-bill charges
16 associated with covered power purchase agreements and
17 revenues from a surcharge supporting a reserve account
18 shall be held in trust by the State, and that
19 independent power producers shall hold a beneficial
20 interest in the revenues to the extent of the amounts



1 owed to such independent power producers under the
2 covered power purchase agreements; and
3 (4) Appoint, authorize, and empower the electric utility
4 to serve as the billing, collection, payment, and
5 management agent of the department of budget and
6 finance to implement the requirements of this Act.

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

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

11 **§269-A Definitions.** As used in this part:

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

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

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

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



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

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

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

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

- 15 (1) BBB- or higher for S&P Global Ratings, or any
16 successor by law;
- 17 (2) BAA3 or higher by Moody's Investor Services, Inc., or
18 any successor by law; or
- 19 (3) BBB- or higher by Fitch Ratings, Inc., or any
20 successor by law.



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

4 "Power purchase agreement" means a contract between an
5 electric utility and a user, owner, or operator of the Hawaii
6 electric system, approved by the public utilities commission,
7 pursuant to which the electric utility agrees to purchase, and
8 the user, owner, or operator of the Hawaii electric system
9 agrees to sell, electric energy and related products produced by
10 plants or facilities that have not provided, sold, or
11 transmitted electricity to the electric utility before July 1,
12 2025.

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

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

21 "Power purchase costs" includes all categories of costs



1 recoverable under the energy cost recovery clause and the
2 purchased power adjustment clause under its respective tariffs
3 in effect on July 1, 2025.

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

9 "Reserve fees" means the surcharges described in section
10 269-E(a).

11 "Revenue" means moneys from power purchase charges and
12 reserve fees net of any applicable taxes or government fees,
13 including but not limited to the franchise tax, public service
14 company tax, and public utility commission fee.

15 "Step-in agreement" means a contract by which the
16 department undertakes the obligation of payment for power
17 purchase costs owed to an obligee as and when due by an electric
18 utility under a power purchase agreement following a default, as
19 described in section 269-B(a); provided that the department's
20 payment obligation under such step-in agreement is limited
21 solely to the revenues from power purchase charges and reserve



1 fees collected in connection with the covered power purchase
2 agreements.

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

5 **§269-B Step-in agreements.** (a) The department shall
6 enter into a step-in agreement with an obligee that requires the
7 department to make payments for power purchase costs owed by an
8 electric utility to the obligee in the event of a default.
9 Pursuant to such step-in agreement and upon the default, the
10 department shall make payments to the obligee for power purchase
11 costs with moneys from the fund as and when due by the electric
12 utility under the covered power purchase agreement; provided
13 that any such step-in agreement shall provide that the
14 department's payment obligation thereunder shall be solely
15 limited to the revenues from power purchase charges and reserve
16 fees collected in connection with the covered power purchase
17 agreements. Each step-in agreement shall include a clause
18 stating that neither the full faith and credit of the State nor
19 any other moneys of the State will be pledged for any
20 obligations pursuant to the terms of a step-in agreement. An
21 obligee of a covered power purchase agreement shall have no



1 claim or lien on any moneys of the State, except for those
2 revenues from the power purchase charges and reserve fees
3 attributable to covered power purchase agreements.

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

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

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



1 department, and electric utility. Upon termination of a step-in
2 agreement, the department shall have no obligation to the
3 electric utility or the obligee upon a default by the electric
4 utility.

5 (e) Following a default of a covered power purchase
6 agreement and any payment by the department, the electric
7 utility, through agreement with all obligees of its covered
8 power purchase agreements, may elect to resume payments for
9 power purchase costs owed by the electric utility, regardless of
10 the credit rating of the electric utility at that time, in which
11 case the electric utility shall cease to turn over revenues from
12 power purchase charges collected in connection with the covered
13 power purchase agreement to the power purchase costs trust fund
14 as described in section 269-C(a), and may use the revenues from
15 power purchase charges through the vesting of title in the
16 electric utility as described in subsection (h); provided that
17 the payments shall not terminate the step-in agreement, which
18 shall remain in effect until terminated pursuant to subsection
19 (d), and the department shall remain obligated to pay the
20 obligee upon a subsequent default by the electric utility.



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

6 (g) As consideration for the department entering into the
7 step-in agreement, the electric utility or its successor shall
8 enter into an agreement to assign and transfer title to the
9 revenues from power purchase charges and reserve fees
10 attributable to the covered power purchase agreement to the
11 department to be held in trust for the benefit of the obligees
12 under the covered power purchase agreements to the extent of the
13 amounts owed to such obligees. The revenues shall not be
14 subject to appropriation for any other purpose. The revenues
15 shall be exempt from the requirements of chapters 36 and 38.
16 The electric utility or its successor shall be and remain at all
17 times, even upon the occurrence and during the continuance of a
18 default by the electric utility or its successor, obligated to
19 bill and collect the power purchase charges and reserve fees and
20 manage the revenues as an agent for the department to effectuate
21 the purposes of this part.



1 (h) Prior to default, if any payment obligation of the
2 electric utility under a covered power purchase agreement for
3 power purchase costs becomes owed and due, any title held by the
4 department in trust to the revenues from power purchase charges
5 for the payment obligation owed and due shall divest from the
6 department and vest in the electric utility or its successor at
7 the time the payment by the electric utility or its successor is
8 made to the obligee. Any vesting of revenues to the electric
9 utility at the time of payment may be made without appropriation
10 by the legislature or allotment. The department shall not
11 otherwise assign, sell, or transfer any title to, or any claim
12 or right to, the revenues from power purchase charges or reserve
13 fees.

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



1 regulatory powers to ensure that the electric utility complies
2 with its obligations under the covered power purchase agreement.

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

10 (1) Generate sufficient revenues to timely and fully pay
11 amounts when owed and due under covered power purchase
12 agreements;

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

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



1 To achieve the objectives established pursuant to this
2 subsection, unless the public utilities commission otherwise
3 directs, the electric utility may retain revenues collected in
4 excess of amounts owed and due under the covered power purchase
5 agreements. The obligations of the electric utility and of the
6 public utilities commission under this section shall survive any
7 default by the electric utility and shall terminate only upon
8 the termination of the step-in agreement as provided in
9 subsection (d).

10 (k) If the electric utility fails to timely file any
11 submission as described in subsection (j), the department shall
12 promptly file, and the public utilities commission shall allow
13 to become effective, a substitute submission as if the
14 submission had been filed by the electric utility under
15 subsection (j). The electric utility shall implement the power
16 purchase charges in the substitute submission from the
17 department.

18 **§269-C Default of electric utility; successor**
19 **requirements.** (a) If the obligee provides notice to the
20 department of a default of a covered power purchase agreement,
21 the department shall provide the electric utility notice of the



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

- 15 (1) To pay power purchase costs pursuant to step-in
16 agreements, subject to the appointment, authorization,
17 and empowerment of the electric utility as an agent as
18 described in section 269-F(e), and for revenues in
19 excess of amounts owed under covered power purchase
20 agreements;



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

(3) To implement a rate credit to customers.

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

(c) The obligation of the electric utility to collect and remit the revenues from power purchase charges and reserve fees pursuant to the requirements of this part shall not be subject to any setoff, counterclaim, surcharge, or defense by the electric utility, or in connection with a bankruptcy of any electric utility.

(d) Any successor to an electric utility shall be bound by the requirements of this part. The successor shall perform and satisfy all obligations of the electric utility in the same manner and to the same extent as the electric utility, including the obligation upon default to bill and collect the power purchase charges and reserve fees and remit to the fund the revenues collected in connection with any covered power purchase



1 agreement, unless and until the step-in agreement is terminated
2 as described in section 269-B(d).

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

15 **§269-D Power purchase costs trust fund.** (a) There is
16 established outside the state treasury the power purchase costs
17 trust fund to be administered by the department. The electric
18 utility shall deposit into the fund all revenues collected in
19 connection with covered power purchase agreements from:

20 (1) Power purchase charges in the event of a default of
21 covered power purchase agreements; and



1 (2) Reserve fees.

2 (b) Moneys in the fund shall be held by the department in
3 trust for the benefit of obligees of covered power purchase
4 agreements to the extent of the amounts owed to such obligees.
5 The department's payments from the fund shall be made without
6 appropriation or allotment, as provided in section 37-40.

7 (c) If the step-in agreement is terminated as described in
8 section 269-B(d), the fund shall cease to receive any revenues
9 from the power purchase charges collected by the electric
10 utility or its successor and the department shall pay to the
11 electric utility or its successor the remainder of any moneys in
12 the fund attributable to power purchase charges. Those moneys
13 shall be considered revenues of the electric utility or its
14 successor.

15 **§269-E Reserve account; establishment.** (a) By August 1,
16 2025, the public utilities commission shall authorize surcharges
17 proposed by an electric utility, referred to as reserve fees.
18 Reserve fees may be included in the purchased power adjustment
19 clause on customer bills. The department shall establish and
20 maintain a separate account to accept and account for revenues
21 from reserve fees as part of the fund established under section



1 269-D, and the electric utility shall promptly deposit all
2 revenues collected from reserve fees into the account. The
3 utility shall not otherwise assign, sell, or transfer any title
4 to, or any claim or right to, the revenues from reserve fees,
5 except as provided under this part.

6 (b) Reserve fees shall be collected and maintained to
7 establish a reserve account in an amount not to exceed the total
8 of fifteen per cent of the forecasted monthly power purchase
9 costs of all covered power purchase agreements plus an amount
10 sufficient to recover costs related to administration of the
11 reserve account and any applicable taxes and fees.

12 (c) If the step-in agreement terminates pursuant to
13 section 269-B(d), reserve fees collected in connection with the
14 covered power purchase agreement shall cease to be collected,
15 and all moneys remaining in the fund attributable to the reserve
16 fees shall be returned in full, together with any associated
17 interest earned, to customers through a rate credit.

18 (d) In the special circumstances of this part, the
19 legislature finds and declares that the reasonable reserve
20 requirement of article VII, section 13, clause 8 of the Hawaii



1 State Constitution, to the extent applicable, has been
2 satisfied.

3 **§269-F Electric utility; agent of the department.** (a) To
4 implement the requirements of this part, the department may
5 contract with an electric utility or its successor to act as an
6 agent of the department to provide billing, collection, payment,
7 management, and other related services.

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

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

18 (d) To the extent any revenues are received by an electric
19 utility pursuant to subsection (a) in the process of collection
20 and pending their transfer to the fund pursuant to section 269-
21 D(a), those moneys necessary to timely and fully pay amounts



1 when owed and due under covered power purchase agreements shall
2 be held in trust for the department's exercise of its
3 obligations pursuant to this part.

4 (e) To implement the requirements of this part, the
5 director of finance may appoint, authorize, and empower the
6 electric utility, as agent for and on behalf of the department,
7 to manage and pay out moneys, including from the fund, for
8 fulfillment of payment obligations of the department arising
9 from covered power purchase agreements. The appointment shall
10 terminate when the step-in agreement is terminated as described
11 in section 269-B(d)."

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

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



1 SECTION 5. This Act shall take effect on July 1, 3000.



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 revenues from a surcharge supporting a reserve account shall be held in trust by the State, 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, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements. Effective 7/1/3000. (HD1)

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