

STAND. COM. REP. NO. 1348

Honolulu, Hawaii

MAR 21 2025

RE: H.B. No. 974
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Third State Legislature
Regular Session of 2025
State of Hawaii

Sir:

Your Committees on Energy and Intergovernmental Affairs and
Commerce and Consumer Protection, to which was referred H.B.
No. 974, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO ENERGY,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements;
- (2) Establish the Power Purchase Costs Trust Fund;
- (3) Require:
 - (A) Revenues collected from on-bill charges associated with covered power purchase agreements and revenues from a surcharge supporting a reserve account to be held in trust by the State; and
 - (B) Independent power producers to hold a beneficial interest in the revenues to the extent of the amounts owed under the covered power purchase agreements; and



- (4) Permit the Department of Budget and Finance to contract with an electric utility to serve as an agent of the Department of Budget and Finance for the purposes of billing, collection, payment, and management in the service of performing step-in agreements.

Your Committees received testimony in support of this measure from the Public Utilities Commission, Plus Power, Longroad Energy, Clearway Energy Group LLC, Hawaiian Electric, Ulupono Initiative, Ameresco, Chamber of Commerce Hawaii, AES Hawai'i, General Contractors Association of Hawaii, Climate Hawai'i, Blue Planet Foundation, and Nexamp.

Your Committees received testimony in opposition to this measure from one individual.

Your Committees received comments on this measure from the Department of the Attorney General, Department of Budget and Finance, and Department of Commerce and Consumer Affairs.

Your Committees find that there is a need to secure affordable and reliable clean energy resources as the State faces the retirement of aging power plants and increasing pressure to meet its ambitious decarbonization goals. Your Committees further find that it is in the public interest to further safeguard the development of renewable energy by requiring the State to provide limited credit support through step-in agreements to ensure proper payment to independent power producers in the State, should an electric utility default in its obligations. This measure provides financial assistance necessary to protect renewable energy investments, thereby ensuring energy reliability and a timely and cost-effective transition away from fossil fuels.

Your Committees note that interested stakeholders have had an opportunity to discuss potential amendments to this measure to address various concerns of state agencies and independent power purchasers. Amendments to this measure are therefore necessary to incorporate this consensus language.

Accordingly, your Committees have amended this measure by:



- (1) Broadening the scope of the measure to require step-in agreements for purchased energy from any purchase power agreements, rather than only purchase power agreements relating to Stage 3 and the Integrated Grid Plan and broadening the definition of "power purchase costs";
- (2) Requiring the Department of Budget and Finance (Department) to, before entering into any step-in agreement, conduct due diligence on the obligee, including through communication with the prospective obligee within thirty days of the effective date of this measure;
- (3) Requiring each step-in agreement to contain language stating that, in any action concerning a failure by the Department to comply with the terms of the step-in agreement, the sole and exclusive remedy available to the obligee and the electric utility against the Department shall be an order directing specific performance of the step-in agreement and that under no circumstances shall the Department be liable for any costs, expenses, other monetary relief, or compensatory damages;
- (4) Clarifying that an obligee shall remain entitled to all payments for power purchase costs under the covered power purchase agreement, whether or not the moneys from power purchase charges attributable to the covered power purchase agreement are timely collected;
- (5) Requiring step-in agreements to obligate the Department to pay claims of the obligee from moneys on deposit in the Power Purchase Costs Trust Fund (Fund) arising out of termination of a power purchase agreement by the electric utility under bankruptcy law;
- (6) Prohibiting an electric utility from electing to resume payments for power purchase costs owed by the electric utility following a default of a covered power purchase agreement if the Department has made payment for power purchase costs with moneys from the reserve fees;



- (7) Prohibiting the Department from imposing terms and conditions in a step-in agreement that adversely affect the obligation of the Department to make payments, but only to the extent that there are moneys in the Fund for power purchase costs owed by an electric utility to the obligee as and when due in the event of a default;
- (8) Clarifying that the assignment and transfer of title to the revenues by the electric utility shall be made and remain for the term of the step-in agreement free and clear of any prior lien, pledge, security interest, or encumbrance of any kind, and shall be exempt from laws relating to the merger and consolidation of public utilities;
- (9) Deleting language that would have allowed an appointed and authorized electric utility to serve as a management agent of the Department in the service of performing step-in agreements;
- (10) Clarifying that, before an entry of an order of relief with respect to the electric utility under federal bankruptcy laws, if any obligation of the electric utility becomes due, any title held by the Department in trust to the revenues for the obligation due shall divest from the Department and vest in the electric utility or its successor;
- (11) Allowing, rather than requiring, the Public Utilities Commission to exercise its regulatory powers to ensure that the electric utility complies with its obligations under the covered power purchase agreement;
- (12) Allowing, rather than requiring, the Public Utilities Commission to make monthly rate adjustments to establish or adjust power purchase charges;
- (13) Clarifying that an electric utility may retain revenues collected from power purchase charges in excess of amounts owed and due under the covered power purchase agreement and that any moneys in the reserve account established under the Fund shall remain with the Department;



- (14) Clarifying that, if an obligee provides notice to the Department that the electric utility has failed to timely file certain monthly rate adjustments with the Public Utilities Commission, the Department shall promptly file, or direct the electric utility to file, and the Public Utilities Commission shall allow to become effective, a substitute filing as if the filing had been submitted by the electric utility, and requiring the electric utility to implement the power purchase charges in the substitute filing from the Department;
- (15) Clarifying that the Department shall promptly provide the electric utility with a copy of the notice of the default if the obligee provides notice to the Department of a default of a covered power purchase agreement;
- (16) Requiring an electric utility to transfer its revenues and reserve fees one day, rather than two days, after it receives notice from the Department of its default of a covered purchase power agreement;
- (17) Requiring the Department to establish and maintain two separate accounts within the Fund: one for power purchase charges, and the other for reserve fees;
- (18) Clarifying that, in regards to the Fund:
 - (A) The Department shall be under no obligation to make payment to any obligee in excess of the moneys in the Fund;
 - (B) Any default or failure by the Department to make payments pursuant to the terms of a step-in agreement shall not result in any recourse by the electric utility or obligee to any funds of the State;
 - (C) The only moneys an obligee shall have the benefit of are moneys derived from power purchase charges and the reserve fees collected and on deposit in the Fund;



- (D) The sole and exclusive remedy available to an obligee and the electric utility against the Department in any action concerning a breach by the Department of a step-in agreement shall be an order directing specific performance of the step-in agreement; and
 - (E) Under no circumstances shall the Department be liable for any costs, expenses, any monetary relief, or compensatory damages;
- (19) Deleting language that would have required the Public Utilities Commission to, by August 1, 2025, authorize surcharges proposed by an electric utility and replacing it with language that allows the Public Utilities Commission to create an utility-wide, nonbypassable surcharge by August 1, 2025;
- (20) Requiring the utility-wide, nonbypassable surcharge (referred to as reserve fees) to be:
- (A) Deposited into an account within the Fund;
 - (B) Pledged to secure and be applied to the repayment of payment obligations under a covered power purchase agreement to the extent that there is a shortfall in the amount of power purchase charges on deposit in the Fund; and
 - (C) Collected by the electric utility as a surcharge separate from its rates and transferred into the account within one day of receipt;
- (21) Clarifying that, in regards to the reserve account:
- (A) The electric utility shall not access the reserve account or utilize the revenues deposited therein, except as directed by the Department;
 - (B) The Public Utilities Commission may require, in the financing order creating the surcharge, that, if a default occurs by the electric utility in



remittance of the reserve fee collected, the Public Utilities Commission, upon the application by the Department, and without limiting any other remedies available to the Department by reason of the default, shall order the sequestration and payment to the Department of the reserve fee; and

- (C) Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility;
- (22) Clarifying that reserve fees shall be collected and maintained, and if necessary, reinstated, to establish and replenish a reserve account;
- (23) Deleting language that would have, in the special circumstances of this measure, found and declared that the reasonable reserve requirement of Article VII, Section 13, Clause 8 of the Hawaii State Constitution, to the extent applicable, has been satisfied;
- (24) Clarifying that, in any action concerning a breach by the Department of the agency agreement:
 - (A) The sole remedy available to an electric utility against the Department shall be an order directing specific performance of the agency agreement; and
 - (B) Under no circumstances shall the Department be liable for any costs, expenses, any monetary relief, or compensatory damages in connection with a breach of any agency agreement;
- (25) Allowing, rather than requiring, the Public Utilities Commission to order an electric utility, at the request of the Department, to perform its duties as an agent of the Department to perform step-in agreements;
- (26) Requiring contracts with an electric utility to serve as the billing, collection, and payment agent of the Department to perform step-in agreements to be exempt from the Hawaii Procurement Code;



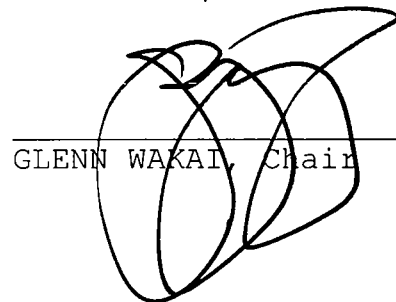
- (27) Amending section 1 to reflect its amended purpose;
- (28) Making it effective upon its approval; and
- (29) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Energy and Intergovernmental Affairs and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 974, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 974, H.D. 1, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Energy and
Intergovernmental Affairs and
Commerce and Consumer
Protection,



JARRETT KEOHOKALOLE, Chair



GLENN WAKAI, Chair



The Senate
Thirty-Third Legislature
State of Hawai'i

Record of Votes
Committee on Energy and Intergovernmental Affairs
EIG

Bill / Resolution No.:*	Committee Referral:	Date:		
HB974 HD1	EIG/CPN, WAM	3/20/25		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended 2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments 2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold 2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit 2313</div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
WAKAI, Glenn (C)	✓			
CHANG, Stanley (VC)	✓			
DECOITE, Lynn	✓			
RICHARDS, III, Herbert M. "Tim"	✓			
FEVELLA, Kurt				✓
TOTAL	4			1
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="text-align: center; margin-top: 10px;"> </div>				
<div style="display: flex; justify-content: space-between; font-size: small;"> <div>Distribution:</div> <div>Original</div> <div>Yellow</div> <div>Pink</div> <div>Goldenrod</div> </div> <div style="display: flex; justify-content: space-between; font-size: x-small;"> <div>File with Committee Report</div> <div>Clerk's Office</div> <div>Drafting Agency</div> <div>Committee File Copy</div> </div>				

*Only one measure per Record of Votes

The Senate
Thirty-Third Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 974 HD1	Committee Referral: ELA/CPN, WAM	Date: 3/20/25		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
KEOHOKALOLE, Jarrett (C)	✓			
FUKUNAGA, Carol (VC)		✓		
MCKELVEY, Angus L.K.		✓		
RICHARDS, III, Herbert M. "Tim"	✓			
AWA, Brenton			✓	
TOTAL	2	2	1	
Recommendation: <div style="display: flex; justify-content: space-around; align-items: center;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="text-align: center; margin-top: 10px;"> </div>				
<div style="display: flex; justify-content: space-between; font-size: small;"> <div> Distribution: Original File with Committee Report </div> <div> Yellow Clerk's Office </div> <div> Pink Drafting Agency </div> <div> Goldenrod Committee File Copy </div> </div>				

*Only one measure per Record of Votes