

SENATE BILL No. 198

By Committee on Utilities

2-15

1 AN ACT concerning electric utilities; relating to the state corporation
2 commission; authorizing the approval and issuance of K-EBRA bonds;
3 financing costs of electric generation facilities.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) Sections 1 through 15, and amendments thereto, shall
7 be known and may be cited as the Kansas electricity bill reduction bonds
8 act.

9 (b) The purpose of this act is to authorize the issuance of low-cost
10 securitized ratepayer-backed bonds, the proceeds of which must be used
11 solely:

12 (1) To lower rates paid by electric utility customers by reducing
13 financing costs of certain retired electric generating facilities and related
14 costs;

15 (2) to provide transition assistance to Kansas communities and
16 electric generation facility workers that are directly impacted by the
17 retirement of electric generation facilities;

18 (3) to make available capital investment for renewable facilities and
19 services, including least-cost electric generation facilities and other
20 supply-side and demand-side resources; and

21 (4) for use by the commission and the review by independent credit
22 rating agencies that is necessary to achieve the highest possible bond
23 ratings.

24 (c) The legislature hereby finds and declares that:

25 (1) The use of K-EBRA bond financing will bring substantial benefits
26 to Kansas electric utility customers, Kansas electric generation facility
27 workers and Kansas communities that are directly impacted by the
28 retirement of electric generation facilities; and

29 (2) because the commission's approval of a financing order is
30 irrevocable, typically addresses very large amounts of financing
31 undertaken pursuant to this act and is not reviewable by future
32 commissions, in addition to the commission's other powers and duties, the
33 commission has the duty to perform comprehensive due diligence in the
34 commission's evaluation of an application for a financing order and has the
35 duty and authority to oversee the process used to structure, market and
36 price K-EBRA bonds.

1 Sec. 2. For the purposes of this act, unless the context otherwise
2 requires:

3 (a) "Ancillary agreement" means any bond, insurance policy, letter of
4 credit, reserve account, surety bond, interest rate lock or swap
5 arrangement, hedging arrangement, liquidity or credit support arrangement
6 or other financial arrangement entered into in connection with K-EBRA
7 bonds that is designed to promote the credit quality and marketability of
8 the K-EBRA bonds or to mitigate the risk of an increase in interest rates.

9 (b) "Assignee" means any person to which an interest in K-EBRA
10 property is sold, assigned, transferred or conveyed, other than as security,
11 and any successor to or subsequent assignee of such a person.

12 (c) "Bondholder" means any holder or owner of K-EBRA bonds.

13 (d) "Commission" means the state corporation commission.

14 (e) "Customer" means a person that takes electric distribution or
15 electric transmission service from an investor-owned electric utility for
16 consumption of electricity in the state.

17 (f) "Financing costs" means costs to issue, service, repay or refinance
18 K-EBRA bonds that are approved by the commission in a financing order,
19 whether such costs are incurred or paid upon issuance of the K-EBRA
20 bonds or over the life of the K-EBRA bonds, and include:

21 (1) Principal, interest and redemption premiums that are payable on
22 K-EBRA bonds;

23 (2) any payment required under an ancillary agreement and any
24 amount required to fund or replenish a reserve account or other accounts
25 established under the terms of any indenture, ancillary agreement or other
26 financing document pertaining to K-EBRA bonds;

27 (3) any other demonstrable costs related to issuing, supporting,
28 repaying, refunding and servicing K-EBRA bonds, including, but not
29 limited to, servicing fees, accounting and auditing fees, trustee fees, legal
30 fees, consulting fees, financial advisor fees, administrative fees, placement
31 and underwriting fees, capitalized interest, rating agency fees, stock
32 exchange listing and compliance fees, security registration fees, filing fees,
33 information technology programming costs and any other demonstrable
34 costs necessary to otherwise ensure and guarantee the timely payment of
35 K-EBRA bonds or other amounts or charges payable in connection with K-
36 EBRA bonds;

37 (4) any taxes and license fees imposed on the revenue generated from
38 the collection of a K-EBRA charge;

39 (5) any state and local taxes, including franchise, sales and use and
40 other taxes or similar charges, including, but not limited to, regulatory
41 assessment fees, whether paid, payable or accrued; and

42 (6) any costs incurred by the commission to hire and compensate
43 additional temporary staff needed to perform the commission's

1 responsibilities under this act and engage specialized counsel and expert
2 consultants experienced in securitized investor-owned electric utility
3 ratepayer-backed bond financing similar to K-EBRA bonds.

4 (g) "Financing order" means an order of the commission issued
5 pursuant to this act that grants, in whole or in part, an application filed
6 pursuant to this act and that authorizes the issuance of K-EBRA bonds in
7 one or more series, the imposition, charging and collection of K-EBRA
8 charges, and the creation of K-EBRA property. In a financing order, the
9 commission may include any conditions that are necessary to promote the
10 public interest and may grant relief that is different from that which was
11 requested in the application, so long as the relief is within the scope of the
12 matters addressed in the commission's notice of the application.

13 (h) "Financing party" means holders of K-EBRA bonds and trustees,
14 collateral agents, any party under an ancillary agreement or any other
15 person acting for the benefit of holders of K-EBRA bonds.

16 (i) "Financing statement" has the same meaning as described in
17 K.S.A. 84-9-102, and amendments thereto.

18 (j) "Least-cost generation resource" means an incremental supply-
19 side or demand-side resource that, when included in an electric utility's
20 generation portfolio, produces the lowest cost among alternative resources,
21 considering both short-term and long-term costs and assessing the
22 likelihood of changes in future fuel prices and future environmental
23 requirements.

24 (k) "Lowest cost objective" means that the structuring, marketing and
25 pricing of K-EBRA bonds results in the lowest K-EBRA charges
26 consistent with prevailing market conditions on or about the time of
27 pricing K-EBRA bonds and the structure and terms of K-EBRA bonds
28 approved pursuant to the financing order.

29 (l) "K-EBRA" means Kansas energy bill reduction assistance.

30 (m) "K-EBRA bonds" means low-cost corporate securities, such as
31 senior secured bonds, debentures, notes, certificates of participation,
32 certificates of beneficial interest, certificates of ownership or other
33 evidences of indebtedness or ownership, the proceeds of which are used to
34 recover, finance or refinance commission-approved K-EBRA costs and
35 financing costs, including assistance to affected workers and communities,
36 and that are secured by or payable from K-EBRA property, that:

37 (1) Have a scheduled maturity of no longer than 30 years and a final
38 legal maturity date that is not later than 32 years from the issue date;

39 (2) are rated AA or AA2 or better by a major independent credit
40 rating agency at the time of issuance; and

41 (3) are issued by an electric utility or an assignee pursuant to a
42 financing order.

43 If certificates of participation or ownership are issued, references in this

1 act to principal, interest or premium refer to comparable amounts under
2 those certificates.

3 (n) "K-EBRA charges" means charges in amounts determined
4 appropriate by the commission and authorized by the commission in a
5 financing order in order to provide a source of revenue solely to repay,
6 finance or refinance K-EBRA costs and financing costs that are imposed
7 on and are a part of all customer bills and are collected in full by the
8 electric utility, or the electric utility's successor or assignee, that the
9 financing order applies to or a collection agent through a non-bypassable
10 charge that is separate and apart from the electric utility's base rates.

11 (o) "K-EBRA costs" means:

12 (1) The pretax costs that the electric corporation has incurred or will
13 incur: (A) That are caused by, associated with or remain as a result of the
14 retirement of an electric generating facility located in the state; (B) in
15 providing transition assistance to Kansas communities and electric
16 generation facility workers that are directly impacted by the retirement of
17 electric generating facilities; and (C) in constructing or acquiring
18 renewable facilities and services, including least-cost electric generating
19 facilities and other supply-side and demand-side resources;

20 (2) any reasonable and necessary administrative and operating costs,
21 as required by a financing order; and

22 (3) do not include any monetary penalty, fine or forfeiture assessed
23 against an electric utility by a governmental agency or court under a
24 federal or state environmental statute, rule or regulation.

25 (p) "K-EBRA property" means all:

26 (1) Rights and interests of an electric utility, or the successor or
27 assignee of such utility, under a financing order for the right to impose,
28 bill, collect and receive K-EBRA charges as it is authorized to do solely
29 under the financing order and to obtain periodic adjustments to such K-
30 EBRA charges as provided in the financing order; and

31 (2) all revenue, collections, claims, rights to payments, payments,
32 money or proceeds arising from the rights and interests established by this
33 act, regardless of whether such revenue, collections, claims, rights to
34 payment, payments, money or proceeds are imposed, billed, received,
35 collected or maintained together with or commingled with other revenue,
36 collections, rights to payment, payments, money or proceeds.

37 (q) "K-EBRA revenue" means all revenue, receipts, collections,
38 payments, money, claims or other proceeds arising from K-EBRA
39 property.

40 (r) "Non-bypassable" means that the payment of a K-EBRA charge
41 required to repay bonds and related costs may not be avoided by any
42 existing or future customer located within an electric utility service area,
43 but must be paid by:

1 (1) All existing and future customers receiving transmission or
2 distribution service from the electric utility, or the successor or assignee of
3 such utility, under commission-approved rate schedules or under special
4 contracts, even if a customer is allowed in the future and elects to purchase
5 electricity from an electric supplier other than the utility; and

6 (2) any person located within the electric utility service area
7 established by the commission and that may subsequently receive electric
8 transmission or distribution service from another electric utility operating
9 in the same service area.

10 (s) "Pretax costs" means only those costs and expenses approved by
11 the commission and include, but are not limited to, the:

12 (1) Unrecovered capitalized cost of a retired electric generation
13 facility;

14 (2) costs of decommissioning and restoring the site of the electric
15 generating facility; and

16 (3) other applicable capital and operating costs, accrued carrying
17 charges, deferred expenses, reductions for applicable insurance and
18 salvage proceeds and the costs of retiring any existing indebtedness, fees,
19 costs and expenses to modify existing debt agreements or for waivers or
20 consents related to existing debt agreements.

21 (t) "Successor" means, with respect to any legal entity, another legal
22 entity that succeeds by operation of law to the rights and obligations of the
23 first legal entity pursuant to any bankruptcy, reorganization, restructuring
24 or other insolvency proceeding, merger, acquisition, consolidation or sale
25 or transfer of assets, whether due to a restructuring of the electric power
26 industry or otherwise.

27 (u) "Transition assistance" means assistance from K-EBRA bond
28 proceeds transferred by an electric utility pursuant to the terms of a
29 financing order to assist Kansas communities that are directly impacted by
30 the retirement of an electric generating facility that is the subject of a
31 financing order and may include, but is not limited to:

32 (1) Payment of retraining costs, including costs of any apprenticeship
33 program or skilled worker training program, for directly displaced electric
34 generating facility workers;

35 (2) financial assistance for directly displaced electric generation
36 facility workers;

37 (3) compensation to local governments for losses of property tax
38 revenue, for a period of no more than five years and that may be reduced
39 annually during the period that it is provided, resulting directly from the
40 retirement of the electric generation facility; and

41 (4) job retraining and education for workers who are Kansas residents
42 who were directly involved in the transport of fuel to a retired Kansas
43 electric generation facility and who are laid off or experience reduced

1 work schedules resulting from the retirement of the electric generating
2 facility.

3 Sec. 3. (a) An electric corporation may apply to the commission for a
4 financing order as authorized by this act. In applying for a financing order,
5 an electric corporation may file an application for approval to:

- 6 (1) Issue K-EBRA bonds in one or more series;
- 7 (2) impose, charge and collect K-EBRA charges; and
- 8 (3) create K-EBRA property related to the retirement of an electric
9 generation facility in Kansas that has previously been approved by the
10 commission or for any other purpose pursuant to this act.

11 (b) The commission shall take final action to approve, deny or modify
12 any application for a financing order in a final order issued in accordance
13 with the commission's rules for addressing applications.

14 (c) In addition to any other information required by the commission,
15 an application for a financing order shall include:

- 16 (1) An estimated schedule for the retirement of any facility that the
17 costs of such facility are financed by the K-EBRA bond financing;
- 18 (2) a proposed methodology for allocating the revenue requirement
19 for the K-EBRA charges among customer classes;
- 20 (3) a description of the non-bypassable K-EBRA charges required to
21 be paid by customers within the electric utility's service area for recovery
22 of K-EBRA costs;
- 23 (4) an estimate of the net present value of electric utility customer
24 savings expected to result if the financing order is issued as determined by
25 a net present value comparison between the costs to customers that are
26 expected to result from the financing with K-EBRA bonds and the costs
27 that would result from the application of traditional electric utility
28 financing mechanisms for the same purposes; and
- 29 (5) one or more alternative financing scenarios, in addition to the
30 preferred scenario contained in the application.

31 Sec. 4. (a) Following notice and hearing on an application for a
32 financing order as required by the commission's rules and regulations, the
33 commission may issue a financing order if the commission finds that:

- 34 (1) The K-EBRA costs described in the application are reasonable;
- 35 (2) the proposed issuance of K-EBRA bonds and the imposition and
36 collection of K-EBRA charges:
 - 37 (A) Are just and reasonable;
 - 38 (B) are consistent with the public interest; and
 - 39 (C) constitute a prudent and reasonable mechanism for the financing
40 of the K-EBRA costs described in the application;
- 41 (3) the proposed structuring, marketing and pricing of the K-EBRA
42 bonds is reasonably expected to:
 - 43 (A) Lower net present value costs to customers or mitigate rate

1 impacts to customers relative to traditional methods of financing; and

2 (B) achieve the maximum net present value customer savings over
3 the specified amortization of K-EBRA bonds, as determined by the
4 commission in a financing order, consistent with market conditions at the
5 time of sale and the terms of the financing order.

6 (b) For a financing order to be approved, the order shall:

7 (1) Determine the maximum amount of K-EBRA costs that may be
8 financed from proceeds of K-EBRA bonds authorized to be issued by the
9 financing order;

10 (2) allow for recovery of and on the remaining rate base;

11 (3) to the extent an application requests financing as a result of the
12 retirement of an electric generating facility located in the state, provide
13 that an amount of K-EBRA bond proceeds up to 15% of the net present
14 value of electric utility customer savings estimated to be provided by the
15 electric utility that the financing order applies for use in providing
16 transition assistance and any reasonable and necessary administrative and
17 operating costs;

18 (4) describe the proposed customer billing mechanism for K-EBRA
19 charges and include a finding that the mechanism is just and reasonable;

20 (5) describe the financing costs that may be recovered through K-
21 EBRA charges and the period over which the costs may be recovered that
22 shall end no earlier than the date of final legal maturity of the K-EBRA
23 bonds;

24 (6) describe the K-EBRA property that is created and that may be
25 used to pay and secure the payment of the K-EBRA bonds and financing
26 costs authorized in the financing order;

27 (7) authorize the electric utility to finance K-EBRA costs through the
28 issuance of one or more series of K-EBRA bonds, but shall not require an
29 electric utility to secure a separate financing order for each issuance of K-
30 EBRA bonds or for each scheduled phase of the previously approved
31 retirement of electric generation facilities approved in the financing order;

32 (8) include a mechanism for making expeditious periodic adjustments
33 in the K-EBRA charges that customers are required to pay pursuant to the
34 financing order and for making any adjustments that are necessary to
35 correct for any over collection or under collection of the K-EBRA charges
36 in past periods or otherwise to guarantee the timely payment of K-EBRA
37 bonds and financing costs and other required amounts and charges payable
38 in connection with K-EBRA bonds;

39 (9) include any additional findings or conclusions deemed appropriate
40 by the commission, including those deemed appropriate to achieve the
41 lowest cost objective;

42 (10) specify the degree of flexibility afforded to the electric utility in
43 establishing the terms and conditions of the K-EBRA bonds, including, but

1 not limited to, repayment schedules, expected interest rates and other
2 financing costs, provided that the scheduled final maturity of the K-EBRA
3 bonds shall be the earlier of 30 years from the issue date of the K-EBRA
4 bonds or as late as possible, consistent with obtaining triple A ratings on
5 the K-EBRA bonds while concurrently ensuring that the lowest cost
6 objective is achieved for the K-EBRA bonds;

7 (11) specify the timing of actions required by the order so that:

8 (A) The K-EBRA bonds are issued as soon as feasible following the
9 issuance of the financing order, independent of the schedule of closing and
10 decommissioning of any electric generation facility;

11 (B) any energy assistance funds are made available as soon as
12 feasible, but no later than the date on which the electric generation facility
13 ceases operation;

14 (C) the utility files to adjust such utility's rates simultaneously with
15 the beginning of the K-EBRA charges and independently of the schedule
16 of closing and decommissioning of any electric generation facility; and

17 (D) a future ratemaking process to reconcile any difference between
18 the projected pretax costs included in the amount financed by K-EBRA
19 bonds and the final actual K-EBRA costs approved by the financing order.
20 Such reconciliation may affect the utility's base rates or any rider adopted,
21 but shall not affect the amount of the K-EBRA bonds or the associated K-
22 EBRA charges to be paid by customers.

23 (c) A financing order shall allow and may require the creation of an
24 electric utility's K-EBRA property to be conditioned upon the sale or other
25 transfer of the K-EBRA property to an assignee and the pledge of the K-
26 EBRA property to secure K-EBRA bonds. A financing order shall require
27 the electric utility, simultaneously with the imposition of K-EBRA
28 charges, to reduce the utility's rates through a reduction in base rates or by
29 a negative rider on customer bills in an amount equal to the revenue
30 requirement associated with the utility assets being financed by K-EBRA
31 bonds.

32 (d) Any commission expenses incurred for expert advisors, counsel
33 and consulting services under this act shall be included as part of the
34 financing costs and included in the K-EBRA charges or other such rates as
35 the commission deems appropriate.

36 Sec. 5. (a) A financing order shall remain in effect:

37 (1) Until the K-EBRA bonds and all financing costs authorized by the
38 financing order have been paid in full; and

39 (2) regardless of any bankruptcy, reorganization or insolvency of the
40 electric utility to which the financing order applies or any affiliate,
41 successor or assignee of such utility.

42 (b) A financing order is irrevocable and the commission shall not
43 reduce, impair, postpone or terminate K-EBRA charges approved in a

1 financing order or impair K-EBRA property or the collection or recovery
2 of K-EBRA revenue.

3 (c) Notwithstanding the provisions of this section, upon motion by
4 the commission or at the request of an electric utility or any other person,
5 the commission may commence a proceeding and issue a subsequent
6 financing order that provides for refinancing, retiring or refunding K-
7 EBRA bonds issued pursuant to the original financing order if:

8 (1) The commission makes all of the findings specified with respect
9 to the subsequent financing order; and

10 (2) the modification provided for in the subsequent financing order
11 does not impair the covenants and terms of the K-EBRA bonds to be
12 refinanced, retired or refunded.

13 Sec. 6. (a) Except as further provided in subsection (b), if the
14 commission issues a financing order to an electric utility, the commission
15 shall not:

16 (1) Consider the K-EBRA bonds issued pursuant to the financing
17 order to be debt of the electric utility other than for income tax purposes,
18 unless it is necessary to consider the K-EBRA bonds to be such debt to
19 achieve consistency with prevailing utility debt rating methodologies;

20 (2) consider the K-EBRA charges paid under the financing order to
21 be revenue of the electric utility;

22 (3) consider the K-EBRA costs or financing costs specified in the
23 financing order to be the regulated costs or assets of the electric utility; or

24 (4) determine any prudent action taken by an electric utility that is
25 consistent with the financing order to be unjust or unreasonable.

26 (b) Nothing in subsection (a) shall:

27 (1) Affect the authority of the commission to apply or modify any
28 billing mechanism designed to recover K-EBRA charges;

29 (2) prevent the commission from investigating the compliance of an
30 electric utility with the terms and conditions of a financing order and
31 requiring compliance with the financing order; or

32 (3) prevent the commission from imposing regulatory sanctions
33 against an electric utility for failure to comply with the terms and
34 conditions of a financing order or the requirements of this act.

35 (c) The commission shall not refuse to allow the recovery of any
36 costs associated with the retirement of electric generation facilities by an
37 electric utility solely because the electric utility has elected to finance
38 those activities through a financing mechanism other than K-EBRA bonds.

39 Sec. 7. (a) In addition to any other power and duties, the commission:

40 (1) May attach such conditions to the approval of a financing order as
41 the commission deems appropriate to maximize the financial benefits or
42 minimize the financial risks of the transaction to customers and to directly
43 impacted Kansas workers and communities;

1 (2) may specify details of the process used to structure, market and
2 price K-EBRA bonds, including the selection of the underwriter or
3 underwriters;

4 (3) shall review and determine the reasonableness of all proposed up-
5 front and ongoing financing costs; and

6 (4) shall ensure that the structuring, marketing and pricing of K-
7 EBRA bonds maximizes net present value customer savings, consistent
8 with market conditions and the terms of the financing order.

9 (b) Within 120 days after the issuance of K-EBRA bonds, the
10 applicant electric utility shall file with the commission information
11 regarding the actual up-front and ongoing financing costs of the K-EBRA
12 bonds. The commission shall review the prudence of the electric utility's
13 action to determine whether the costs resulted in the lowest overall costs
14 that were reasonably consistent with both market conditions at the time of
15 the sale of the K-EBRA bonds and the terms of the financing order. If the
16 commission determines that the electric utility's actions were not prudent,
17 were not designed to result in the lowest overall costs that were reasonably
18 consistent with both market conditions at the time of the sale of the K-
19 EBRA bonds and the terms of the financing order or were inconsistent
20 with the financing order, the commission may apply any remedies within
21 the commission's authority that do not have the effect, directly or
22 indirectly, of impairing the security for the K-EBRA bonds.

23 (c) In performing the commission's responsibilities under this act, the
24 commission shall engage outside financial advisors and other consultants
25 and counsel with substantial experience representing regulatory bodies in
26 securitized investor-owned electric utility ratepayer-backed bond financing
27 similar to K-EBRA bonds.

28 (1) The expenses associated with such engagement shall:

29 (A) Be included as financing costs and included in the K-EBRA
30 charge;

31 (B) not be an obligation of the state; and

32 (C) be assigned solely to the transaction.

33 (2) Any expenses incurred by the commission to hire and compensate
34 additional temporary staff needed to perform such responsibilities shall be
35 included as financing costs and included in the K-EBRA charge. If an
36 electric utility's application for a financing order is denied or withdrawn or
37 for any reason no K-EBRA bonds are issued, the commission's costs of
38 retaining expert consultants and counsel shall be paid by the electric utility
39 and shall be considered by the commission as a prudent deferred expense
40 for recovery in the electric utility's future rates.

41 (d) The issuance of the financing bond shall be administered by the
42 commission. The commission may consult with other state agencies for
43 expertise in implementing the policy goals established in this act,

1 particularly the need to address transition costs for communities and
2 workers.

3 Sec. 8. A financing order is a final order of the commission.
4 Notwithstanding the provisions of any other law specifying proper venue
5 for petition filings, a party aggrieved by the issuance of a financing order
6 may petition for suspension and review of the financing order only in the
7 Kansas western district court of appeals. In the case of any petition for
8 suspension and review, the court shall proceed to hear and determine the
9 action as expeditiously as practicable and shall give the action precedence
10 over other matters not accorded similar precedence by law.

11 Sec. 9. (a) The electric bills of an electric utility that has obtained a
12 financing order and caused K-EBRA bonds to be issued shall:

13 (1) Explicitly reflect that a portion of the charges on the bill
14 represents K-EBRA charges approved in a financing order issued to the
15 electric utility and, if the K-EBRA property has been transferred to an
16 assignee or successor, shall include a statement that the assignee or
17 successor is the owner of the rights to K-EBRA charges and that the
18 electric utility or other entity is acting as a collection agent or servicer for
19 the assignee or successor;

20 (2) include the K-EBRA charges on each customer's bill as a separate
21 line item titled "energy bill reduction assistance charge" and may include
22 both the rate and the amount of the charge on each bill. The failure of an
23 electric utility to comply with this subsection does not invalidate, impair or
24 affect any financing order, K-EBRA property, K-EBRA charges or K-
25 EBRA bonds, but does subject the electric utility to penalties under
26 applicable commission rules and regulations; and

27 (3) explain to customers in an annual filing with the
28 commission the rate impact on customer rates from:

29 (A) Financing the retirement of electric generation facilities;

30 (B) providing transition assistance to Kansas communities and
31 electric generation facility workers that are directly impacted by the
32 retirement of electric generation facilities; and

33 (C) making capital investment for renewable facilities and
34 services, including least-cost electric generation facilities and other
35 supply-side and demand-side resources.

36 (b) An electric utility that has obtained a financing order and caused
37 K-EBRA bonds to be issued must demonstrate in an annual filing with the
38 commission that K-EBRA revenues are applied solely to the repayment of
39 K-EBRA bonds and other financing costs.

40 Sec. 10. (a) K-EBRA property that is described in a financing order
41 constitutes an existing present property right or interest in an existing
42 present property right, even though the imposition and collection of K-
43 EBRA charges depends on the electric utility to which the financing order

1 is issued performing the utility's servicing functions relating to the
2 collection of K-EBRA charges and on future electricity consumption.
3 Notwithstanding the fact that the value or amount of such property right or
4 interest is dependent on the future provision of service to customers by the
5 electric utility or a successor or assignee of the electric utility, the property
6 right or interest exists regardless of whether the revenues or proceeds
7 arising from the K-EBRA property have been billed, accrued or collected.

8 (b) K-EBRA property described in a financing order exists until all
9 K-EBRA bonds issued pursuant to the financing order are paid in full and
10 all financing costs and other costs of the K-EBRA bonds have been
11 recovered in full. Any portion of K-EBRA property:

12 (1) Described in a financing order issued to an electric utility may be
13 transferred, sold, conveyed or assigned to a successor or assignee that is
14 wholly owned, directly or indirectly, by the electric utility and is created
15 for the limited purpose of acquiring, owning or administering K-EBRA
16 property or issuing K-EBRA bonds as authorized by the financing order;
17 and

18 (2) may be pledged to secure K-EBRA bonds issued pursuant to a
19 financing order, amounts payable to financing parties and to counterparties
20 under any ancillary agreements or other financing costs. Each transfer,
21 sale, conveyance, assignment or pledge by an electric utility or an affiliate
22 of an electric utility is a transaction in the ordinary course of business.

23 (c) If an electric utility defaults on any required remittance of charges
24 arising from K-EBRA property described in a financing order, upon
25 application by an interested party and without limiting any other remedies
26 available to the applying party, a court shall order the sequestration and
27 payment of the revenues arising from the K-EBRA property to the
28 financing parties. Any such financing order remains in full force and effect
29 notwithstanding any reorganization, bankruptcy or other insolvency
30 proceedings with respect to the electric utility or its successors or
31 assignees.

32 (d) The interest of a transferee, purchaser, acquirer, assignee or
33 pledgee in K-EBRA property specified in a financing order issued to an
34 electric utility and in the revenue and collections arising from that property
35 is not subject to setoff, counterclaim, surcharge or defense by the electric
36 utility or any other person or in connection with the reorganization,
37 bankruptcy or other insolvency of the electric utility or any other entity.

38 (e) A successor to an electric utility, whether pursuant to any
39 reorganization, bankruptcy or other insolvency proceeding or whether
40 pursuant to any merger or acquisition, sale, other business combination or
41 transfer by operation of law as a result of electric utility restructuring or
42 otherwise, shall perform and satisfy all obligations of, and has the same
43 duties and rights under a financing order, as the electric utility to which the

1 financing order applies and shall perform the duties and exercise the rights
2 in the same manner and to the same extent as the electric utility, including
3 collecting and paying to any person entitled to receive the revenues,
4 collections, payments or proceeds of K-EBRA property described in the
5 financing order.

6 (f) An assignee or financing party that is not already regulated by the
7 commission shall not become subject to commission regulation solely as a
8 result of engaging in any transaction authorized by or described in this act.

9 Sec. 11. (a) Banks, trust companies, savings and loan associations,
10 insurance companies, executors, administrators, guardians, trustees and
11 other fiduciaries may legally invest any money within the control of such
12 entities in K-EBRA bonds.

13 (b) K-EBRA bonds issued as authorized by a financing order are not
14 debt of or a pledge of the faith and credit or taxing power of the state, any
15 agency of the state or any county, municipality or other political
16 subdivision of the state. Holders of K-EBRA bonds have no right to have
17 taxes levied by the state or by any county, municipality or other political
18 subdivision of the state for the payment of the principal or interest on K-
19 EBRA bonds. The issuance of K-EBRA bonds does not directly, indirectly
20 or contingently obligate the state or a political subdivision of the state to
21 levy any tax or make any appropriation for payment of principal or interest
22 on the K-EBRA bonds.

23 (c) With respect to the holders of K-EBRA bonds, any assignee,
24 successor and financing parties, the state shall not:

25 (1) Take or permit any action that impairs the value of K-EBRA
26 property; or

27 (2) reduce, alter or impair K-EBRA charges that are imposed,
28 collected and remitted for the benefit of holders of K-EBRA bonds, any
29 assignee, successor and financing parties until the following are paid in
30 full:

31 (A) Any principal, interest and redemption premium payable on K-
32 EBRA bonds; (B) all financing costs; and

33 (C) all amounts to be paid to an assignee, successor or financing
34 party under an ancillary agreement.

35 (d) A person who issues K-EBRA bonds may include the limitation
36 specified in subsection (c) in the K-EBRA bonds, ancillary agreements and
37 documentation related to the issuance and marketing of the K-EBRA
38 bonds.

39 Sec. 12. (a) Notwithstanding any provision of law, to the extent any
40 provision of this act conflicts with any other law regarding the attachment,
41 assignment, perfection, effect of perfection or priority of any security
42 interest in or transfer of K-EBRA property, the provisions of this act shall
43 govern.

1 (b) If any provision of this act is held to be invalid or is invalidated,
2 superseded, replaced, repealed or expires after any K-EBRA bonds have
3 been issued, that occurrence shall not affect any action allowed under this
4 act that was lawfully taken by the commission, an electric utility, an
5 assignee, a collection agent, a financing party, a bondholder or a party to
6 an ancillary agreement before such occurrence and any such action shall
7 remain in full force and effect.

8 (c) Nothing in this act shall preclude an electric utility for which the
9 commission has initially issued a financing order from applying to the
10 commission for:

- 11 (1) A subsequent financing order amending such financing order; or
12 (2) approval of the issuance of K-EBRA bonds to refund all or a
13 portion of an outstanding series of K-EBRA bonds.

14 Sec. 13. (a) The creation, perfection and enforcement of any security
15 interest in K-EBRA property to secure the repayment of the principal of
16 and interest on K-EBRA bonds, amounts payable under any ancillary
17 agreement and other financing costs are governed by this act and all of the
18 following shall apply:

19 (1) The description or indication of K-EBRA property in a transfer or
20 security agreement and a financing statement shall be sufficient only if the
21 description or indication refers to sections in this act and the financing
22 order creating the K-EBRA property; and

23 (2) a security interest in K-EBRA property shall be created and be
24 valid and binding as soon as:

25 (A) The financing order that describes the K-EBRA property is
26 issued;

27 (B) a security agreement is executed and delivered; and

28 (C) value is received for the K-EBRA bonds.

29 (b) Once a security interest in K-EBRA property is created pursuant
30 to this section, the security interest attaches without any physical delivery
31 of collateral or any other act. Upon the filing of a financing statement with
32 the secretary of state, the lien of the security interest is valid, binding and
33 perfected against all parties having claims of any kind in tort, contract or
34 otherwise against the person granting the security interest, regardless of
35 whether such parties have notice of the lien. The secretary of state shall
36 maintain a financing statement filed pursuant to this section in the same
37 manner in which the secretary maintains financing statements.

38 (c) A security interest in K-EBRA property is a continuously
39 perfected security interest and has priority over any other lien, created by
40 operation of law or otherwise, that may subsequently attach to the K-
41 EBRA property unless the holder of the security interest has agreed in
42 writing otherwise.

43 (d) The priority of a security interest in K-EBRA property is not

1 affected by the commingling of K-EBRA property or K-EBRA revenue
2 with other money. An assignee, bondholder or financing party has a
3 perfected security interest in the amount of all K-EBRA property or K-
4 EBRA revenue that is pledged for the payment of K-EBRA bonds, even if
5 the K-EBRA property or K-EBRA revenue is deposited in a cash or
6 deposit account of the electric utility in which the K-EBRA revenue is
7 commingled with other money and any other security interest that applies
8 to the other money shall not apply to the K-EBRA revenue.

9 (e) An application of an adjustment mechanism or a subsequent order
10 of the commission amending a financing order shall not affect the validity,
11 perfection or priority of a security interest in or transfer of K-EBRA
12 property.

13 (f) The laws of the state of Kansas shall govern the validity,
14 enforceability, attachment, perfection, priority and exercise of remedies
15 with respect to the transfer of an interest or right or creation of a security
16 interest in any K-EBRA property, K-EBRA charges or financing order.

17 Sec. 14. (a) A sale, assignment or transfer of K-EBRA property is an
18 absolute transfer and true sale of, and not a pledge of or secured
19 transaction relating to, the seller's right, title and interest in the K-EBRA
20 property if the documents governing the transaction expressly state that the
21 transaction is a sale or other absolute transfer. A transfer of an interest in
22 K-EBRA property may be created only if:

23 (1) The financing order creating and describing the K-EBRA property
24 has become effective;

25 (2) the documents evidencing the transfer of the K-EBRA property
26 have been executed and delivered to the assignee; and

27 (3) value is received.

28 (b) Upon the filing of a financing statement with the secretary of
29 state, a transfer of an interest in K-EBRA property is perfected against all
30 third persons, including any judicial lien or other lien creditors or any
31 claims of the seller or creditors of the seller, other than creditors holding a
32 prior security interest, ownership interest or assignment in the K-EBRA
33 property previously perfected pursuant to this act. The secretary of state
34 shall maintain a financing statement filed pursuant to this section in the
35 same manner in which the secretary maintains financing statements.

36 (c) The characterization of a sale, assignment or transfer as an
37 absolute transfer and true sale and the corresponding characterization of
38 the property interest of the assignee is not affected or impaired by the
39 existence or occurrence of:

40 (1) Commingling of K-EBRA revenue with other money;

41 (2) the retention by the seller of a partial or residual interest,
42 including an equity interest, in the K-EBRA property, regardless of
43 whether the interest is direct, indirect, subordinate or otherwise, or the

1 right to recover costs is associated with taxes, franchise fees or license fees
2 imposed on the collection of K-EBRA revenue;

3 (3) any indemnification rights, obligations or repurchase rights made
4 or provided by the seller;

5 (4) an obligation of the seller to collect K-EBRA revenues on behalf
6 of an assignee;

7 (5) the treatment of the sale, assignment or transfer for tax, financial
8 reporting or other purposes;

9 (6) any subsequent financing order amending a financing order; or

10 (7) any application of an adjustment mechanism.

11 Sec. 15. (a) Subject to commission approval as required by
12 subsection (b) as provided in a financing order, an electric utility may
13 expend or invest K-EBRA bond proceeds in a manner that demonstrably
14 benefits ratepayer interests to:

15 (1) Purchase power to replace electricity generated by the electric
16 generation facilities that were retired, if the commission determines that
17 the purchased power is a least-cost generation resource;

18 (2) build and own generation facilities that are least-cost generation
19 resources as determined by the commission;

20 (3) build, own or purchase electricity storage capacity to the extent
21 that such investment is either required by law or is needed to increase the
22 amount of least-cost generation resources that the electric utility is able to
23 add to such utility's generation portfolio;

24 (4) help customers invest in energy efficiency, including possible
25 financing assistance; and

26 (5) invest in network modernization, not including new transmission
27 facilities, to the extent that the modernization is necessary to increase the
28 amount of least-cost generation resources able to be added to the electric
29 utility's system.

30 (b) In considering any application for approval of the use of K-EBRA
31 bond proceeds, the commission shall use the commission's regular process
32 for consideration of applications pursuant to this act.

33 Sec. 16. This act shall take effect and be in force from and after its
34 publication in the statute book.