

**SENATE BILL No. 437**

By Committee on Ways and Means

2-13

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 utility property.  
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 property of Kansas electric utilities 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 new, cost-effective  
19 facilities and services needed to reliably serve electric utility customers,  
20 including least-cost electric generation facilities, storage and other clean  
21 supply-side and demand-side resources; and

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

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

26 (1) The use of K-EBRA bond financing will bring substantial benefits  
27 to Kansas electric utility customers by reducing retail rates for electric  
28 service, and assisting Kansas electric generation facility workers and  
29 Kansas communities that are directly impacted by the retirement of  
30 electric generation facilities, all while maintaining reliable electricity  
31 service; and

32 (2) the use of K-EBRA bond financing will benefit the shareholders  
33 of Kansas electric utilities by reducing financial risk associated with  
34 ownership of certain utility property; and

35 (3) because the commission's approval of a financing order is  
36 irrevocable, typically addresses very large amounts of financing

1 undertaken pursuant to this act and is not reviewable by future  
2 commissions, in addition to the commission's other powers and duties, the  
3 commission has the duty to perform comprehensive due diligence in the  
4 commission's evaluation of an application for a financing order and has the  
5 duty and authority to oversee the process used to structure, market and  
6 price K-EBRA bonds.

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

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

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

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

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

20 (e) "Customer" means a person that receives retail electric service  
21 from an investor-owned electric utility for consumption of electricity in the  
22 state.

23 (f) "Electric utility" means a for-profit electric public utility, as  
24 defined in K.S.A. 66-101a, and amendments thereto, whose retail rates are  
25 subject to the jurisdiction of the commission.

26 (g) "Financing costs" means costs to issue, service, repay or refinance  
27 K-EBRA bonds that are approved by the commission in a financing order,  
28 whether such costs are incurred or paid upon issuance of the K-EBRA  
29 bonds or over the life of the K-EBRA bonds, and include:

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

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

36 (3) any other demonstrable costs related to issuing, supporting,  
37 repaying, refunding and servicing K-EBRA bonds, including, but not  
38 limited to, servicing fees, accounting and auditing fees, trustee fees, legal  
39 fees, consulting fees, financial advisor fees, administrative fees, placement  
40 and underwriting fees, capitalized interest, rating agency fees, stock  
41 exchange listing and compliance fees, security registration fees, filing fees,  
42 information technology programming costs and any other demonstrable  
43 costs necessary to otherwise ensure and guarantee the timely payment of

1 K-EBRA bonds or other amounts or charges payable in connection with K-  
2 EBRA bonds;

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

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

8 (6) any costs incurred by the commission to hire and compensate  
9 additional temporary staff needed to perform the commission's  
10 responsibilities under this act and engage specialized counsel and expert  
11 consultants experienced in securitized investor-owned electric utility  
12 ratepayer-backed bond financing similar to K-EBRA bonds.

13 (h) "Financing order" means an order of the commission issued  
14 pursuant to this act that grants, in whole or in part, an application filed  
15 pursuant to this act and that authorizes the issuance of K-EBRA bonds in  
16 one or more series, the imposition, charging and collection of K-EBRA  
17 charges, and the creation of K-EBRA property. In a financing order, the  
18 commission may include any conditions that are necessary to promote the  
19 public interest and may grant relief that is different from that which was  
20 requested in the application, so long as the relief is within the scope of the  
21 matters addressed in the commission's notice of the application.

22 (i) "Financing party" means holders of K-EBRA bonds and trustees,  
23 collateral agents, any party under an ancillary agreement or any other  
24 person acting for the benefit of holders of K-EBRA bonds.

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

27 (k) "Least-cost generation resource" means an incremental supply-  
28 side or demand-side resource that, when included in an electric utility's  
29 generation portfolio, produces the lowest cost among alternative resources,  
30 considering both short-term and long-term costs and assessing the  
31 likelihood of changes in future fuel prices and future environmental  
32 requirements.

33 (l) "Lowest cost objective" means that the structuring, marketing and  
34 pricing of K-EBRA bonds results in the lowest K-EBRA charges  
35 consistent with prevailing market conditions on or about the time of  
36 pricing K-EBRA bonds and the structure and terms of K-EBRA bonds  
37 approved pursuant to the financing order.

38 (m) "K-EBRA" means Kansas energy bill reduction assistance.

39 (n) "K-EBRA bonds" means low-cost corporate securities, such as  
40 senior secured bonds, debentures, notes, certificates of participation,  
41 certificates of beneficial interest, certificates of ownership or other  
42 evidences of indebtedness or ownership, the proceeds of which are used to  
43 recover, finance or refinance commission-approved K-EBRA costs and

1 financing costs, including assistance to affected workers and communities,  
2 that are secured by or payable from K-EBRA property, and that:

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

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

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

9 If certificates of participation or ownership are issued, references in this  
10 act to principal, interest or premium refer to comparable amounts under  
11 those certificates.

12 (o) "K-EBRA charges" means charges in amounts determined  
13 appropriate by the commission and authorized by the commission in a  
14 financing order in order to provide a source of revenue solely to repay,  
15 finance or refinance K-EBRA costs and financing costs that are imposed  
16 on and are a part of all customer bills and are collected in full by the  
17 electric utility, or the electric utility's successor or assignee, that the  
18 financing order applies to or a collection agent through a non-bypassable  
19 charge that is separate and apart from the electric utility's base rates.

20 (p) (1) "K-EBRA costs" means:

21 (A) The pretax costs that the electric utility has incurred or will incur:  
22 (i) That are caused by or associated with electric utility property currently  
23 included in the rate base of an electric utility or remain as a result of the  
24 retirement of an electric generating facility located in the state; (ii) in  
25 providing transition assistance to Kansas communities and electric  
26 generation facility workers that are directly impacted by the retirement of  
27 electric generation facilities; and (iii) in constructing or acquiring  
28 renewable facilities and services, including least-cost electric generation  
29 facilities and other supply-side and demand-side resources; and

30 (B) any reasonable and necessary administrative and operating costs,  
31 as required by a financing order.

32 (2) "K-EBRA costs" does not include any monetary penalty, fine or  
33 forfeiture assessed against an electric utility by a governmental agency or  
34 court under a federal or state environmental statute, rules or regulations.

35 (q) "K-EBRA property" means all:

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

41 (2) revenue, collections, claims, rights to payments, payments, money  
42 or proceeds arising from the rights and interests established by this act,  
43 regardless of whether such revenue, collections, claims, rights to payment,

1 payments, money or proceeds are imposed, billed, received, collected or  
2 maintained together with or commingled with other revenue, collections,  
3 rights to payment, payments, money or proceeds.

4 (r) "K-EBRA revenue" means all revenue, receipts, collections,  
5 payments, money, claims or other proceeds arising from K-EBRA  
6 property.

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

11 (1) All existing and future customers receiving retail electric service  
12 from the electric utility, or the successor or assignee of such utility, under  
13 commission-approved rate schedules or under special contracts, even if a  
14 customer is allowed in the future and elects to purchase electricity from an  
15 electric supplier other than the utility; and

16 (2) any person located within the electric utility service area  
17 established by the commission and that may subsequently receive retail  
18 electric service from another electric utility operating in the same service  
19 area.

20 (t) "Pretax costs" means only those costs and expenses approved by  
21 the commission and include, but are not limited to, the:

22 (1) Unrecovered capitalized cost of electric utility property;

23 (2) costs of decommissioning and restoring the site of a retired  
24 electric generation facility; and

25 (3) other applicable capital and operating costs, accrued carrying  
26 charges, deferred expenses, reductions for applicable insurance and  
27 salvage proceeds and the costs of retiring any existing indebtedness, fees,  
28 costs and expenses to modify existing debt agreements or for waivers or  
29 consents related to existing debt agreements.

30 (u) "Successor" means, with respect to any legal entity, another legal  
31 entity that succeeds by operation of law to the rights and obligations of the  
32 first legal entity pursuant to any bankruptcy, reorganization, restructuring  
33 or other insolvency proceeding, merger, acquisition, consolidation or sale  
34 or transfer of assets, whether due to a restructuring of the electric power  
35 industry or otherwise.

36 (v) "Transition assistance" means assistance from K-EBRA bond  
37 proceeds transferred by an electric utility pursuant to the terms of a  
38 financing order to assist Kansas communities that are directly impacted by  
39 the retirement of an electric generation facility that is the subject of a  
40 financing order and may include, but is not limited to:

41 (1) Payment of retraining costs, including costs of any apprenticeship  
42 program or skilled worker training program, for directly displaced electric  
43 generation facility workers;

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

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

7 (4) job retraining and education for workers who are Kansas residents  
8 who were directly involved in the transport of fuel to a retired Kansas  
9 electric generation facility and who are laid off or experience reduced  
10 work schedules resulting from the retirement of the electric generating  
11 facility.

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

15 (1) Issue K-EBRA bonds in one or more series;

16 (2) impose, charge and collect K-EBRA charges; and

17 (3) create K-EBRA property related to electric utility property  
18 currently included in the rate base of an electric utility or for any other  
19 purpose pursuant to this act.

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

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

25 (1) An estimated schedule for the retirement of any facility that the  
26 costs of such facility are financed by the K-EBRA bond financing;

27 (2) a proposed methodology for allocating the revenue requirement  
28 for the K-EBRA charges among customer classes;

29 (3) a description of the non-bypassable K-EBRA charges required to  
30 be paid by customers within the electric utility's service area for recovery  
31 of K-EBRA costs;

32 (4) an estimate of the net present value of electric utility customer  
33 savings expected to result if the financing order is issued as determined by  
34 a net present value comparison between the costs to customers that are  
35 expected to result from the financing with K-EBRA bonds and the costs  
36 that would result from the application of traditional electric utility  
37 financing mechanisms for the same purposes;

38 (5) an analysis evaluating one or more alternative financing scenarios,  
39 in addition to the preferred scenario contained in the application; and

40 (6) a narrative description of the electric utility's planned use of K-  
41 EBRA bond proceeds, including any plans for new investment which may  
42 diminish the net retail rate savings produced by K-EBRA financing.

43 Sec. 4. (a) Following notice and hearing on an application for a

1 financing order as required by the commission's rules and regulations, the  
2 commission may issue a financing order, if the commission finds that:

3 (1) The K-EBRA costs described in the application are reasonable;  
4 (2) the proposed issuance of K-EBRA bonds and the imposition and  
5 collection of K-EBRA charges:

6 (A) Result in just and reasonable rates;

7 (B) are consistent with the public interest, including system  
8 reliability;

9 (C) constitute a prudent and reasonable mechanism for the financing  
10 of the K-EBRA costs described in the application; and

11 (D) will result in lower retail electric rates, when also considering  
12 new electric utility investments using K-EBRA bond proceeds;

13 (3) the proposed structuring, marketing and pricing of the K-EBRA  
14 bonds is reasonably expected to:

15 (A) Reduce costs to customers on a net present value basis or  
16 mitigate rate impacts to customers relative to traditional methods of  
17 financing; and

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

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

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

26 (2) remove the electric utility property proposed to be financed by K-  
27 EBRA bonds from the electric utility's rate base;

28 (3) allow for recovery of and on the remaining rate base;

29 (4) to the extent an application requests financing as a result of the  
30 retirement of an electric generating facility located in the state, provide  
31 that an amount of K-EBRA bond proceeds up to 15% of the net present  
32 value of electric utility customer savings estimated to be provided by the  
33 electric utility that the financing order applies for use in providing  
34 transition assistance and any reasonable and necessary administrative and  
35 operating costs;

36 (5) describe the proposed customer billing mechanism for K-EBRA  
37 charges and include a finding that the mechanism is just and reasonable;

38 (6) describe the financing costs that may be recovered through K-  
39 EBRA charges and the period over which the costs may be recovered,  
40 which shall end no earlier than the date of final legal maturity of the K-  
41 EBRA bonds;

42 (7) describe the K-EBRA property that is created and that may be  
43 used to pay and secure the payment of the K-EBRA bonds and financing

1 costs authorized in the financing order;

2 (8) authorize the electric utility to finance K-EBRA costs through the  
3 issuance of one or more series of K-EBRA bonds, but shall not require an  
4 electric utility to secure a separate financing order for each issuance of K-  
5 EBRA bonds;

6 (9) include a mechanism for making expeditious periodic adjustments  
7 in the K-EBRA charges that customers are required to pay pursuant to the  
8 financing order and for making any adjustments that are necessary to  
9 correct for any over-collection or under-collection of the K-EBRA charges  
10 in past periods or otherwise to guarantee the timely payment of K-EBRA  
11 bonds and financing costs and other required amounts and charges payable  
12 in connection with K-EBRA bonds;

13 (10) include any additional findings or conclusions deemed appropriate  
14 by the commission, including those deemed appropriate to achieve the  
15 lowest cost objective;

16 (11) specify the degree of flexibility afforded to the electric utility in  
17 establishing the terms and conditions of the K-EBRA bonds, including, but  
18 not limited to, repayment schedules, expected interest rates and other  
19 financing costs, provided that the scheduled final maturity of the K-EBRA  
20 bonds shall be the earlier of 30 years from the issue date of the K-EBRA  
21 bonds or as late as possible, consistent with obtaining triple A ratings on  
22 the K-EBRA bonds while concurrently ensuring that the lowest cost  
23 objective is achieved for the K-EBRA bonds; and

24 (12) specify the timing of actions required by the order so that:

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

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

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

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

40 (c) A financing order shall allow and may require the creation of an  
41 electric utility's K-EBRA property to be conditioned upon the sale or other  
42 transfer of the K-EBRA property to an assignee and the pledge of the K-  
43 EBRA property to secure K-EBRA bonds. A financing order shall require

1 the electric utility, simultaneously with the imposition of K-EBRA  
2 charges, to reduce the utility's retail rates through a reduction in base rates  
3 or by a negative rider on customer bills in an amount equal to the revenue  
4 requirement associated with the utility assets being financed by K-EBRA  
5 bonds.

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

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

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

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

16 (b) A financing order is irrevocable and the commission shall not  
17 reduce, impair, postpone or terminate K-EBRA charges approved in a  
18 financing order or impair K-EBRA property or the collection or recovery  
19 of K-EBRA revenue.

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

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

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

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

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

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

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

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

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

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

3 (2) prevent the commission from investigating the compliance of an  
4 electric utility with the terms and conditions of a financing order and  
5 requiring compliance with the financing order; or

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

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

13 Sec. 7. (a) In addition to any other powers and duties, the  
14 commission:

15 (1) May attach such conditions to the approval of a financing order as  
16 the commission deems appropriate to maximize the financial benefits or  
17 minimize the financial risks of the transaction to customers;

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

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

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

26 (b) Within 120 days after the issuance of K-EBRA bonds, the  
27 applicant electric utility shall file with the commission information  
28 regarding the actual up-front and ongoing financing costs of the K-EBRA  
29 bonds. The commission shall review the prudence of the electric utility's  
30 action to determine whether the costs resulted in the lowest overall costs  
31 that were reasonably consistent with both market conditions at the time of  
32 the sale of the K-EBRA bonds and the terms of the financing order. If the  
33 commission determines that the electric utility's actions were not prudent,  
34 were not designed to result in the lowest overall costs that were reasonably  
35 consistent with both market conditions at the time of the sale of the K-  
36 EBRA bonds and the terms of the financing order or were inconsistent  
37 with the financing order, the commission may apply any remedies within  
38 the commission's authority that do not have the effect, directly or  
39 indirectly, of impairing the security for the K-EBRA bonds.

40 (c) In performing the commission's responsibilities under this act, the  
41 commission shall engage outside financial advisors and other consultants  
42 and counsel with substantial experience representing regulatory bodies in  
43 securitized investor-owned electric utility ratepayer-backed bond financing

1 similar to K-EBRA bonds.

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

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

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

6 (C) be assigned solely to the transaction.

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

15 (d) The issuance of the financing bond shall be administered by the  
16 commission. The commission may consult with other state agencies for  
17 expertise in implementing the policy goals established in this act,  
18 particularly the need to address transition costs for communities and  
19 workers.

20 Sec. 8. A financing order is a final order of the commission.  
21 Notwithstanding the provisions of any other law specifying proper venue  
22 for petition filings, a party aggrieved by the issuance of a financing order  
23 may petition for suspension and review of the financing order in district  
24 court. In the case of any petition for suspension and review, the court shall  
25 proceed to hear and determine the action as expeditiously as practicable  
26 and shall give the action precedence over other matters not accorded  
27 similar precedence by law.

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

30 (1) Explicitly reflect that a portion of the charges on the bill  
31 represents K-EBRA charges approved in a financing order issued to the  
32 electric utility and, if the K-EBRA property has been transferred to an  
33 assignee or successor, shall include a statement that the assignee or  
34 successor is the owner of the rights to K-EBRA charges and that the  
35 electric utility or other entity is acting as a collection agent or servicer for  
36 the assignee or successor;

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

1 (3) explain to customers in an annual filing with the commission the  
2 rate impact on customer rates from financing electric utility property with  
3 K-EBRA bonds.

4 (b) An electric utility that has obtained a financing order and caused  
5 K-EBRA bonds to be issued shall demonstrate in an annual filing with the  
6 commission that K-EBRA revenues are applied solely to the repayment of  
7 K-EBRA bonds and other financing costs.

8 Sec. 10. (a) K-EBRA property that is described in a financing order  
9 constitutes an existing present property right or interest in an existing  
10 present property right, even though the imposition and collection of K-  
11 EBRA charges depends on the electric utility to which the financing order  
12 is issued performing the utility's servicing functions relating to the  
13 collection of K-EBRA charges and on future electricity consumption.  
14 Notwithstanding that the value or amount of such property right or interest  
15 is dependent on the future provision of service to customers by the electric  
16 utility or a successor or assignee of the electric utility, the property right or  
17 interest exists regardless of whether the revenues or proceeds arising from  
18 the K-EBRA property have been billed, accrued or collected.

19 (b) K-EBRA property described in a financing order shall exist until  
20 all K-EBRA bonds issued pursuant to the financing order are paid in full  
21 and all financing costs and other costs of the K-EBRA bonds have been  
22 recovered in full. Any portion of K-EBRA property:

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

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

34 (c) If an electric utility defaults on any required remittance of charges  
35 arising from K-EBRA property described in a financing order, upon  
36 application by an interested party and without limiting any other remedies  
37 available to the applying party, a court shall order the sequestration and  
38 payment of the revenues arising from the K-EBRA property to the  
39 financing parties. Any such financing order shall remain in full force and  
40 effect regardless of any reorganization, bankruptcy or other insolvency  
41 proceedings with respect to the electric utility or its successors or  
42 assignees.

43 (d) The interest of a transferee, purchaser, acquirer, assignee or

1 pledgee in K-EBRA property specified in a financing order issued to an  
2 electric utility and in the revenue and collections arising from that property  
3 is not subject to setoff, counterclaim, surcharge or defense by the electric  
4 utility or any other person or in connection with the reorganization,  
5 bankruptcy or other insolvency of the electric utility or any other entity.

6 (e) A successor to an electric utility, whether pursuant to any  
7 reorganization, bankruptcy or other insolvency proceeding, merger or  
8 acquisition, sale, other business combination or transfer by operation of  
9 law as a result of electric utility restructuring or otherwise, shall perform  
10 and satisfy all obligations of, and shall have the same duties and rights  
11 under a financing order as the electric utility to which the financing order  
12 applies and shall perform the duties and exercise the rights in the same  
13 manner and to the same extent as the electric utility, including collecting  
14 and paying to any person entitled to receive the revenues, collections,  
15 payments or proceeds of K-EBRA property described in the financing  
16 order.

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

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

24 (b) No K-EBRA bond issued under the provisions of this act shall  
25 ever become a debt or obligation of the state of Kansas or any political  
26 subdivision thereof, nor shall the faith and credit of the state or any  
27 political subdivision thereof be pledged in whole or in part, directly or  
28 indirectly, for the payment of such bonds, or interest thereon. Such bonds  
29 shall contain a statement that neither the state nor any political subdivision  
30 thereof shall be obligated to pay such bonds, or the interest thereon, and  
31 that neither the faith and credit nor the taxing power of the state or any  
32 political subdivision thereof is pledged or may hereafter be pledged to the  
33 payment of principal or interest on such bonds.

34 (c) With respect to the holders of K-EBRA bonds, any assignee,  
35 successor and financing parties, the state hereby pledges and covenants  
36 with the holders of any bonds issued pursuant to this act that the state shall  
37 not:

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

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

1 (A) Any principal, interest and redemption premium payable on K-  
2 EBRA bonds;

3 (B) all financing costs; and

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

6 (d) A person who issues K-EBRA bonds may include the limitation  
7 specified in subsection (c) in the K-EBRA bonds, ancillary agreements and  
8 documentation related to the issuance and marketing of the K-EBRA  
9 bonds.

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

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

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

25 (1) A subsequent financing order amending such financing order; or

26 (2) approval of the issuance of K-EBRA bonds to refund all or a  
27 portion of an outstanding series of K-EBRA bonds.

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

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

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

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

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

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

43 (b) Once a security interest in K-EBRA property is created pursuant

1 to this section, the security interest attaches without any physical delivery  
2 of collateral or any other act. Upon the filing of a financing statement with  
3 the secretary of state, the lien of the security interest is valid, binding and  
4 perfected against all parties having claims of any kind in tort, contract or  
5 otherwise against the person granting the security interest, regardless of  
6 whether such parties have notice of the lien. The secretary of state shall  
7 maintain a financing statement filed pursuant to this section in the same  
8 manner in which the secretary maintains financing statements.

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

14 (d) The priority of a security interest in K-EBRA property is not  
15 affected by the commingling of K-EBRA property or K-EBRA revenue  
16 with other money. An assignee, bondholder or financing party has a  
17 perfected security interest in the amount of all K-EBRA property or K-  
18 EBRA revenue that is pledged for the payment of K-EBRA bonds, even if  
19 the K-EBRA property or K-EBRA revenue is deposited in a cash or  
20 deposit account of the electric utility in which the K-EBRA revenue is  
21 commingled with other moneys and any other security interest that applies  
22 to the other moneys shall not apply to the K-EBRA revenue.

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

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

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

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

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

41 (3) value is received.

42 (b) Upon the filing of a financing statement with the secretary of  
43 state, a transfer of an interest in K-EBRA property is perfected against all

1 third persons, including any judicial lien or other lien creditors or any  
2 claims of the seller or creditors of the seller, other than creditors holding a  
3 prior security interest, ownership interest or assignment in the K-EBRA  
4 property previously perfected pursuant to this act. The secretary of state  
5 shall maintain a financing statement filed pursuant to this section in the  
6 same manner in which the secretary maintains financing statements.

7 (c) The characterization of a sale, assignment or transfer as an  
8 absolute transfer and true sale and the corresponding characterization of  
9 the property interest of the assignee is not affected or impaired by the  
10 existence or occurrence of:

11 (1) Commingling of K-EBRA revenue with other moneys;

12 (2) the retention by the seller of a partial or residual interest,  
13 including an equity interest, in the K-EBRA property, regardless of  
14 whether the interest is direct, indirect, subordinate or otherwise, or the  
15 right to recover costs is associated with taxes, franchise fees or license fees  
16 imposed on the collection of K-EBRA revenue;

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

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

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

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

24 (7) any application of an adjustment mechanism.

25 Sec. 15. (a) Subject to commission approval as required by  
26 subsection (b) as provided in a financing order, an electric utility may  
27 expend or invest K-EBRA bond proceeds in a manner that demonstrably  
28 benefits ratepayer interests and helps maintain system reliability to:

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

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

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

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

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

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

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