

## Senate Substitute for HOUSE BILL No. 2072

By Committee on Financial Institutions and Insurance

3-22

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1 AN ACT concerning the state corporation commission; relating to certain  
2 public utilities; authorizing the securitization of certain generating  
3 facilities and qualified extraordinary costs; providing for the approval  
4 and issuance of securitized utility tariff bonds; enacting the utility  
5 financing and securitization act; amending K.S.A. 66-1239 and K.S.A.  
6 2020 Supp. 84-9-109 and repealing the existing sections.  
7

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

9 New Section 1. (a) Sections 1 through 14, and amendments thereto,  
10 shall be known and may be cited as the utility financing and securitization  
11 act.

12 (b) As used in sections 1 through 14, and amendments thereto:

13 (1) "Act" means the utility financing and securitization act.

14 (2) "Adjustment mechanism" means a formula-based rate adjustment,  
15 or true-up process approved by the commission for making, at least  
16 annually, expeditious periodic adjustments to securitized utility tariff  
17 charges, subject to timely commission review to confirm compliance, that  
18 customers are required to pay, as authorized in a financing order. The  
19 "adjustment mechanism" is utilized to make necessary corrections to  
20 adjust for over-collection or under-collection of such securitized utility  
21 tariff charges or otherwise to ensure the timely and complete payment of  
22 the securitized utility tariff bonds and all other financing costs and other  
23 required amounts and charges payable in connection with the securitized  
24 utility tariff bonds.

25 (3) "Ancillary agreement" means any bond, insurance policy, letter of  
26 credit, reserve account, surety bond, interest rate lock or swap  
27 arrangement, hedging arrangement, liquidity or credit support.

28 (4) "Assignee" means a corporation, limited liability company,  
29 general partnership, limited partnership, public authority, trust, financing  
30 entity or other entity to which a public utility assigns, sells or transfers,  
31 other than as security, all or a portion of its interest in, or right to,  
32 securitized utility tariff property.

33 (5) "Bondholder" means any holder or owner of a securitized utility  
34 tariff bond.

35 (6) "Code" means the Kansas uniform commercial code.

36 (7) "Commission" means the state corporation commission.

1 (8) "Electric public utility" means the same as defined in K.S.A. 66-  
2 101a, and amendments thereto, and includes a for-profit electric utility  
3 whose retail rates are subject to the jurisdiction of the commission.  
4 "Electric public utility" does not include a cooperative that has opted to  
5 deregulate pursuant to K.S.A. 66-104d, and amendments thereto, or an  
6 electric utility owned by one or more such cooperatives.

7 (9) (A) "Energy transition costs," at the option of and upon  
8 application by an electric public utility, and as approved by the  
9 commission, includes:

10 (i) Any of the pretax costs that the electric public utility has incurred  
11 or will incur that are caused by, associated with or remain as a result of a  
12 retired, abandoned, to be retired or to be abandoned electric generating  
13 facility that is the subject of an application for a financing order filed  
14 under this act where such early retirement or abandonment is deemed  
15 reasonable and prudent by the commission through a final order issued by  
16 the commission. As used in this paragraph, "pretax costs," if determined  
17 reasonable by the commission and not inconsistent with a commission  
18 order granting predetermination under K.S.A. 66-1239, and amendments  
19 thereto, regarding retirement or abandonment of the subject generating  
20 facility, include, but are not limited to, the undepreciated investment in the  
21 retired or abandoned electric generating facility and any facilities ancillary  
22 thereto or used in conjunction therewith, costs of decommissioning and  
23 restoring the site of the electric generating facility, other applicable capital  
24 and operating costs, accrued carrying charges and deferred expenses. Such  
25 "pretax costs" shall be reduced by applicable tax benefits of accumulated  
26 and excess deferred income taxes, insurance, scrap and salvage proceeds  
27 and include the cost of retiring any existing indebtedness, fees, costs and  
28 expenses to modify existing debt agreements or for waivers or consents  
29 related to existing debt agreements; and

30 (ii) "pretax costs" that an electric public utility has previously  
31 incurred related to the retirement of such an electric generating facility  
32 occurring before the effective date of this act.

33 (B) "Energy transition costs" does not include any monetary penalty,  
34 fine or forfeiture assessed against an electric public utility by a  
35 governmental agency or court under a federal or state statute or rule or  
36 regulation.

37 (10) "Financing costs" includes, if authorized by the commission in a  
38 financing order, costs to issue, service, repay or refinance securitized  
39 utility tariff bonds, whether incurred or paid upon issuance of the  
40 securitized utility tariff bonds or over the life of the securitized utility tariff  
41 bonds, including:

42 (A) Principal, interest and acquisition, defeasance or redemption  
43 premiums payable on securitized utility tariff bonds;

1 (B) any payment required under an ancillary agreement and any  
2 amount required to fund or replenish a reserve account or other accounts  
3 established under the terms of any indenture, ancillary agreement or other  
4 financing documents pertaining to securitized utility tariff bonds;

5 (C) any other cost related to issuing, supporting, repaying, refunding  
6 and servicing securitized utility tariff bonds, including, but not limited to,  
7 servicing fees, accounting and auditing fees, trustee fees, legal fees,  
8 consulting fees, financial or structuring adviser fees, administrative fees,  
9 placement and underwriting fees, independent director and manager fees,  
10 capitalized interest, rating agency fees, stock exchange listing and  
11 compliance fees, security registration fees, filing fees, information  
12 technology programming costs and any other costs necessary to otherwise  
13 ensure the timely payment of securitized utility tariff bonds or other  
14 amounts or charges payable in connection with securitized utility tariff  
15 bonds, including costs related to obtaining the financing order;

16 (D) any taxes and license fees or other fees imposed on the revenues  
17 generated from the collection of the securitized utility tariff charges or  
18 otherwise resulting from the collection of securitized utility tariff charges,  
19 whether paid, payable or accrued;

20 (E) any state and local taxes, franchise fees, gross receipts and other  
21 taxes or similar charges, including commission assessment fees, whether  
22 paid, payable or accrued; and

23 (F) any costs of the commission needed to perform the commission's  
24 responsibilities under this act, including costs to engage counsel and a  
25 financial adviser.

26 (11) "Financing order" means an order from the commission pursuant  
27 to this act that authorizes the:

28 (A) Issuance of securitized utility tariff bonds in one or more series;

29 (B) imposition, collection and periodic adjustments of a securitized  
30 utility tariff charge;

31 (C) creation of securitized utility tariff property; and

32 (D) sale, assignment or transfer of securitized utility tariff property to  
33 an assignee.

34 (12) "Financing party" means bondholders and trustees, collateral  
35 agents, any party under an ancillary agreement or any other person acting  
36 for the benefit of bondholders.

37 (13) "Financing statement" means the same as defined in K.S.A. 84-  
38 9-102, and amendments thereto.

39 (14) "Natural gas public utility" means the same as defined in K.S.A.  
40 66-1,200, and amendments thereto.

41 (15) "Nonbypassable" means that the payment of a securitized utility  
42 tariff charge may not be avoided by any existing or future retail customer  
43 including special contract customers as provided in section 2, and

1 amendments thereto, located within a public utility service area, as such  
2 service area existed on the date of the financing order, or, if the financing  
3 order so provides, as such service area may be expanded, even if the  
4 customer elects to purchase electricity or natural gas from a supplier other  
5 than the electric or natural gas utility, or its successors or assignees, or  
6 receives retail electric or natural gas service from another electric or  
7 natural gas service from another electric or natural gas utility operating in  
8 the same service area.

9 (16) "Pledgee" means a financing party to which an electric or natural  
10 gas public utility, or its successors or assignees, mortgages, negotiates,  
11 pledges or creates a security interest or lien on all or any portion of its  
12 interest in or right to securitized utility tariff property.

13 (17) "Public utility" means an electric public utility or a natural gas  
14 public utility whose rates are subject to the jurisdiction of the commission.

15 (18) "Qualified extraordinary costs" includes, at the option of and  
16 upon application by a public utility and as approved by the commission,  
17 costs that the public utility has incurred before, on or after the effective  
18 date of this act of an extraordinary nature that would cause extreme  
19 customer rate impacts if recovered through customary rate-making,  
20 including, but not limited to, purchases of gas supplies, transportation  
21 costs, fuel and power costs, including carrying charges incurred during  
22 anomalous weather events.

23 (19) (A) "Securitized utility tariff bonds" means bonds, debentures,  
24 notes, certificates of participation, certificates of beneficial interest,  
25 certificates of ownership or other evidences of indebtedness or ownership  
26 that have a maturity date as determined reasonable by the commission, but  
27 not later than 32 years from the issue date, that are issued by an:

28 (i) Electric public utility or an assignee pursuant to a financing order,  
29 the proceeds of which are used directly or indirectly to recover, finance or  
30 refinance commission-approved energy transition costs and financing costs  
31 and that are secured by or payable from securitized utility tariff property;  
32 or

33 (ii) electric or natural gas public utility or assignee pursuant to a  
34 financing order, the proceeds of which are used directly or indirectly to  
35 recover, finance or refinance commission-approved qualified extraordinary  
36 costs and financing costs that are secured by or payable from securitized  
37 utility tariff property.

38 (B) If certificates of participation or ownership are issued, references  
39 in this section to principal, interest or premium shall be construed to refer  
40 to comparable amounts under those certificates.

41 (20) "Securitized utility tariff charge" means the amounts authorized  
42 by the commission to provide a source of revenue solely to repay, finance  
43 or refinance securitized utility tariff bonds and financing costs and that are

1 nonbypassable charges imposed on, and part of all retail customer bills,  
2 including bills to special contract customers as provided in section 2, and  
3 amendments thereto, collected by an electric or natural gas public utility or  
4 its successors or assignees, or a collection agent, in full, separate and apart  
5 from the electric or natural gas public utility's base rates. "Securitized  
6 utility tariff charges" are paid by all existing or future retail customers  
7 receiving electrical or natural gas service from the public utility or its  
8 successors or assignees under commission-approved rate schedules or  
9 under special contracts, as provided in section 2, and amendments thereto,  
10 even if a retail customer elects to purchase electricity or natural gas from  
11 an alternative electricity or natural gas supplier following a fundamental  
12 change in regulation of public utilities in this state.

13 (21) "Securitized utility tariff costs" means either energy transition  
14 costs or qualified extraordinary costs.

15 (22) "Securitized utility tariff property" includes:

16 (A) All rights and interests of a public utility, its successor or  
17 assignee under a financing order, including the right to impose, bill,  
18 charge, collect and receive securitized utility tariff charges authorized  
19 under the financing order and to obtain periodic adjustments to such  
20 charges authorized under this section and as provided in the financing  
21 order; and

22 (B) all revenues, collections, claims, rights to payments, payments,  
23 money or proceeds arising from the rights and interests specified in the  
24 financing order, regardless of whether such revenues, collections, claims,  
25 rights to payment, payments, money or proceeds are imposed, billed,  
26 received, collected or maintained together with or commingled with other  
27 revenues, collections, rights to payment, payments, money or proceeds.

28 (23) "Special contract" means the terms of a contract governing the  
29 supply of electricity that has been approved by the commission that is not  
30 included in generally applicable rate schedules.

31 (24) "Successor" means, with respect to any legal entity, another legal  
32 entity that succeeds by operation of law to the rights and obligations of the  
33 first legal entity pursuant to any bankruptcy, reorganization, restricting,  
34 other insolvency proceeding, merger, acquisition, consolidation or sale or  
35 transfer of assets, regardless of the reason such event occurs.

36 New Sec. 2. (a) (1) An electric public utility, in its sole discretion,  
37 may apply to the commission for a financing order as authorized by this  
38 act for the recovery of energy transition costs.

39 (2) In applying for the financing order, the electric public utility may  
40 file an application to issue securitized utility tariff bonds in one or more  
41 series, impose, charge and collect securitized utility tariff charges and  
42 create securitized utility tariff property related to the recovery of energy  
43 transition costs.

1 (3) Within 25 days after a complete application is filed, the  
2 commission shall establish a procedural schedule that requires the  
3 commission to issue a decision on the application not later than 135 days  
4 from the date a complete application was filed.

5 (4) The commission shall take final action to approve, approve  
6 subject to conditions the commission considers appropriate and that are  
7 authorized by this section or deny any application for a financing order in  
8 a final order issued in accordance with the commission's rules for  
9 addressing applications within 135 days of receiving a complete  
10 application as authorized by this act. Such final order shall be subject to  
11 judicial review in accordance with K.S.A. 66-118a through 66-118o, and  
12 amendments thereto, and shall be deemed as arising from a rate hearing  
13 pursuant to K.S.A. 66-118a(b), and amendments thereto.

14 (5) As a prerequisite of filing an application, an electric public utility  
15 shall have obtained an order from the commission under K.S.A. 66-1239,  
16 and amendments thereto, finding retirement or abandonment of the subject  
17 generating facility to be reasonable.

18 (b) (1) A public utility, in its sole discretion, may apply to the  
19 commission for a financing order as authorized by this act for the recovery  
20 of qualified extraordinary costs.

21 (2) In applying for the financing order, the public utility may file an  
22 application to issue securitized utility tariff bonds in one or more series, to  
23 impose, charge and collect securitized utility tariff charges and create  
24 securitized utility tariff property related to the recovery of qualified  
25 extraordinary costs.

26 (3) Within 25 days after a complete application is filed, the  
27 commission shall establish a procedural schedule that requires the  
28 commission to issue a decision on the application not later than 180 days  
29 from the date a complete application was filed.

30 (4) The commission shall take final action to approve, approve  
31 subject to conditions the commission considers appropriate and that are  
32 authorized by this section or deny any application for the recovery of  
33 qualified extraordinary costs and a financing order in a final order issued  
34 in accordance with the commission's rules for addressing applications  
35 within 180 days of receiving a complete application as authorized by this  
36 act. Such final order shall be subject to judicial review in accordance with  
37 K.S.A. 66-118a through 66-118o, and amendments thereto, and shall be  
38 deemed as arising from a rate hearing pursuant to K.S.A. 66-118a(b), and  
39 amendments thereto.

40 (c) The application shall include:

41 (1) (A) A description of the electric generating facility or facilities  
42 that the electric public utility has retired or abandoned, or proposes to  
43 retire or abandon, prior to the date that all undepreciated investment

1 relating thereto has been recovered through rates and the reasons for  
2 undertaking such early retirement or abandonment. If the electric public  
3 utility is subject to a separate commission order or proceeding relating to  
4 such retirement or abandonment or as described in subsection (a)(5), the  
5 application shall include a description of the order or other proceeding; or

6 (B) a description of the qualified extraordinary costs that the public  
7 utility proposes to recover and how customary rate-making treatment of  
8 such costs would result in extreme customer rate impacts;

9 (2) a description of the securitized utility tariff costs that the applicant  
10 proposes to recover with the proceeds of the securitized utility tariff bonds;

11 (3) (A) an indicator of whether the public utility proposes to finance  
12 all or a portion of the securitized utility tariff costs using securitized utility  
13 tariff bonds. If the public utility proposes to finance a portion of the  
14 securitized utility tariff costs, the public utility shall identify the specific  
15 portion in the application;

16 (B) by electing not to finance all or any portion of such securitized  
17 utility tariff costs using securitized utility tariff bonds, a public utility shall  
18 not be deemed to waive its right to recover or request recovery of such  
19 costs pursuant to a separate proceeding with the commission;

20 (4) an estimate of the financing costs related to the securitized utility  
21 tariff bonds;

22 (5) an estimate of the securitized utility tariff charges necessary to  
23 recover the securitized utility tariff costs and all financing costs, the period  
24 for recovery of such costs and a description of the proposed financing  
25 structure, including the proposed scheduled final payment dates and final  
26 maturity of the securitized utility tariff bonds;

27 (6) the proposed methodology for allocating the revenue requirement  
28 for the securitized utility tariff charge among customer classes, including  
29 special contract customers, as provided in this section;

30 (7) a description of the nonbypassable securitized utility tariff charge  
31 required to be paid by all customers within the public utility's service area  
32 for recovery of securitized utility tariff costs and a proposed adjustment  
33 mechanism reflecting the allocation methodology referred to in paragraph  
34 (6);

35 (8) an estimate of the timing of the potential issuance of the  
36 securitized utility tariff bonds or series of bonds;

37 (9) (A) in an application relating to energy transition costs, a  
38 comparison between the net present value of the costs to customers that  
39 are estimated to result from the issuance of securitized utility tariff bonds  
40 and the costs that would result from the application of the traditional  
41 method of financing and recovering the undepreciated investment of  
42 facilities that may become energy transition costs from customers. The  
43 comparison shall demonstrate that the issuance of securitized utility tariff

1 bonds and the imposition of securitized utility tariff charges are expected  
2 to provide net quantifiable rate benefits to customers or would avoid or  
3 mitigate rate impacts to customers; or

4 (B) in an application relating to qualified extraordinary costs, a  
5 comparison between the net present value of the costs to customers that  
6 are estimated to result from the issuance of securitized utility tariff bonds  
7 and the costs that would result from the application of traditional methods  
8 of financing and recovery of such qualified extraordinary costs. The  
9 comparison shall demonstrate that the issuance of securitized utility tariff  
10 bonds and the imposition of securitized utility tariff charges are expected  
11 to provide net quantifiable rate benefits to customers or would avoid or  
12 mitigate rate impacts to customers;

13 (10) (A) specify a future rate-making process to reconcile any  
14 difference between the securitized utility tariff costs financed by  
15 securitized utility tariff bonds and the final securitized utility tariff costs  
16 incurred by the public utility or the assignee;

17 (B) a statement that the reconciliation may affect the public utility's  
18 rates or any rider but shall not affect the securitized utility tariff bonds, the  
19 securitized utility tariff property or the associated securitized utility tariff  
20 charges paid by customers; and

21 (11) direct testimony and schedules supporting the application.

22 (d) Following notice and hearing on an application for a financing  
23 order, as required by rules and regulations adopted by the commission, the  
24 commission may issue a financing order if the commission finds that the:

25 (1) Securitized utility tariff costs described in the application are just  
26 and reasonable; and

27 (2) proposed issuance of securitized utility tariff bonds and the  
28 imposition and collection of securitized utility tariff charges are expected  
29 to provide net quantifiable rate benefits to customers when compared to  
30 the costs that would result from the application of the traditional method of  
31 financing and recovering the securitized utility tariff costs with respect to  
32 energy transition costs or that would avoid or mitigate rate impacts to  
33 customers.

34 (e) A financing order issued by the commission in response to an  
35 application filed by a public utility shall include the following elements:

36 (1) The amount of securitized utility tariff costs to be financed using  
37 securitized utility tariff bonds. The commission shall describe and estimate  
38 the amount of financing costs and securitized utility tariff costs that may  
39 be recovered through securitized utility tariff charges and specify the  
40 period over which securitized utility tariff costs and financing costs may  
41 be recovered, that shall not be earlier than the date of the final legal  
42 maturity of securitized utility tariff bonds to be issued;

43 (2) (A) an approved customer billing mechanism for securitized



1 utility tariff charges, including a specific methodology for allocating the  
2 necessary securitized utility tariff charges among the different customer  
3 classes including special contract customers and a finding that the  
4 resulting securitized utility tariff charges will be just and reasonable,  
5 except that the amount of securitized utility tariff charges allocated to  
6 special contract customers in connection with the securitization of energy  
7 transition costs shall not exceed the rate benefits from the retirement or  
8 abandonment of the subject electric utility generating assets that are  
9 assigned or allocated to special contract customers. The securitized utility  
10 tariff charges allocated to special contract customers as a result of a  
11 financing order regarding a retirement or abandonment shall be offset by  
12 net quantifiable rate benefits of at least the same amount. The initial  
13 allocation of securitized utility tariff charges shall remain in effect until the  
14 public utility files a general base rate proceeding; and

15 (B) once the commission's order regarding the general base rate  
16 proceeding becomes final, all subsequent applications of an adjustment  
17 mechanism regarding securitized utility tariff charges shall incorporate  
18 changes in the allocation of costs to customers as detailed in the  
19 commission's order from the public utility's most recent general base rate  
20 proceeding;

21 (3) a finding that the proposed issuance of securitized utility tariff  
22 bonds and the imposition and collection of a securitized utility tariff charge  
23 are expected to provide net quantifiable rate benefits to customers as  
24 compared to the traditional methods of financing and recovering  
25 securitized utility tariff costs from customers or would avoid or mitigate  
26 rate impacts to customers;

27 (4) an approved plan for the public utility, by means other than on the  
28 monthly bill, to provide information regarding the benefits of  
29 securitization obtained for customers through the financing order;

30 (5) a finding that the structuring, pricing and financing costs of the  
31 securitized utility tariff bonds are expected to result in the lowest  
32 securitized utility tariff charges, consistent with market conditions at the  
33 time the securitized utility tariff bonds are priced and the terms of the  
34 financing order;

35 (6) a requirement that, for so long as the securitized utility tariff  
36 bonds are outstanding and until all financing costs have been paid in full,  
37 the imposition and collection of securitized utility tariff charges authorized  
38 under a financing order shall be nonbypassable;

39 (7) an adjustment mechanism;

40 (8) a description of the securitized utility tariff property that is, or  
41 shall be, created in favor of a public utility, or its successors and assignees,  
42 and that shall be used to pay and secure the payment of securitized utility  
43 tariff bonds and all financing costs authorized in the financing order;

1 (9) a statement specifying the degree of flexibility to be afforded to  
2 the public utility in establishing the terms and conditions of the securitized  
3 utility tariff bonds, including, but not limited to, repayment schedules,  
4 expected interest rates and other financing costs;

5 (10) authorization for the applicant public utility to finance  
6 securitized utility tariff costs through the issuance of one or more series of  
7 securitized utility tariff bonds;

8 (11) a requirement that, after the final terms of an issuance of  
9 securitized utility tariff bonds have been established and before the  
10 issuance of securitized utility tariff bonds, the public utility determines the  
11 resulting initial securitized utility tariff charge is in accordance with the  
12 financing order and that such initial securitized utility tariff charge be final  
13 and effective upon the issuance of such securitized utility tariff bonds  
14 without further commission action so long as the securitized utility tariff  
15 charge is consistent with the financing order;

16 (12) a method of tracing funds collected as securitized utility tariff  
17 charges, or other proceeds of securitized utility tariff property,  
18 demonstrating that such method shall be deemed the method of tracing  
19 such funds and determining the identifiable cash proceeds of any  
20 securitized utility tariff property subject to a financing order under  
21 applicable law;

22 (13) a statement specifying a future rate-making process to reconcile  
23 any differences between the actual securitized utility tariff costs financed  
24 by securitized utility tariff bonds and the final securitized utility tariff costs  
25 incurred by the utility or assignee provided that any such reconciliation  
26 shall not affect the amount of securitized utility tariff bonds or the  
27 associated security tariff charges paid by customers;

28 (14) a procedure that allows the public utility to earn a return, at the  
29 cost of capital authorized from time to time by the commission in the  
30 public utility's rate proceedings, on any moneys advanced by the public  
31 utility to fund reserves, if any, or capital accounts established under the  
32 terms of any indenture, ancillary agreement or other financing documents  
33 pertaining to the securitized utility tariff bonds;

34 (15) in a financing order granting authorization to recover energy  
35 transition costs by issuing securitized utility tariff bonds, a procedure for  
36 the treatment of accumulated deferred income taxes and excess deferred  
37 income taxes in connection with the retired or abandoned, or to be retired  
38 or abandoned, electric generating facility. The accumulated deferred  
39 income taxes, including excess deferred income taxes, shall be excluded  
40 from the rate base in future rate cases and the net tax benefits relating to  
41 amounts that will be recovered through issuance of securitized utility tariff  
42 bonds shall be credited to retail customers by reducing the amount of such  
43 securitized utility tariff bonds that would otherwise be issued. The

1 customer credit shall include the net present value of the tax benefits  
2 calculated using a discount rate equal to the expected interest rate of the  
3 securitized utility tariff bonds for the estimated accumulated and excess  
4 deferred income taxes at the time of securitization, including timing  
5 differences created by the issuance of securitized utility tariff bonds  
6 amortized over the period of the bonds multiplied by the expected interest  
7 rate on such securitized utility tariff bonds;

8 (16) in the case of securitized utility tariff bonds issued to recover  
9 energy transition costs, provisions that specify the timing of rate-making  
10 and regulatory accounting actions required by the financing order to  
11 protect the interests of customers and the electric public utility, limited to  
12 the following requirements that, to the extent that the commission:

13 (A) Has issued an order granting predetermination under K.S.A. 66-  
14 1239, and amendments thereto, prescribing rate-making parameters or  
15 regulatory accounting for retirement or abandonment of the subject electric  
16 public utility generating assets, the electric public utility shall be permitted  
17 to implement and effectuate such rate-making parameters or regulatory  
18 accounting mechanisms; and

19 (B) has not issued an order granting predetermination under K.S.A.  
20 66-1239, and amendments thereto, prescribing rate-making parameters or  
21 regulatory accounting to credit customers with the benefits from retirement  
22 of the subject electric public utility generating assets, and the commission  
23 shall address such matters in the financing order and customers shall  
24 receive the benefits as determined by the commission order simultaneously  
25 with the inception of the collection of securitized utility tariff charges;

26 (17) a date, not earlier than one year after the date that the financing  
27 order is no longer subject to appeal, when the authority to issue securitized  
28 utility tariff bonds granted in such financing order shall expire; and

29 (18) any other conditions that the commission deems appropriate and  
30 that are consistent with this section.

31 (f) A financing order issued to a public utility shall permit and may  
32 require the creation of the public utility's securitized utility tariff property  
33 that is conditioned upon the sale or other transfer of the securitized utility  
34 tariff property to an assignee and the pledge of the securitized utility tariff  
35 property to secure securitized utility tariff bonds.

36 (g) If the public utility has been issued a financing order, the public  
37 utility shall file with the commission, at least annually, an application or  
38 letter applying the adjustment mechanism based on estimates of  
39 consumption for each rate class and other mathematical factors and  
40 requesting administrative approval to make the applicable adjustments.  
41 The commission's review of the filing shall be limited to determining if  
42 any mathematical or clerical errors are present in the application of the  
43 adjustment mechanism relating to the appropriate amount of any over-

1 collection or under-collection of securitized utility tariff charges and the  
2 amount of an adjustment. The adjustments shall ensure the recovery of  
3 revenue is sufficient to provide for the payment of principal, interest,  
4 acquisition, defeasance, financing costs or redemption premium and other  
5 fees, costs and charges with respect to the securitized utility tariff bonds  
6 approved under the financing order. Within 30 days after receiving a  
7 public utility's application or letter pursuant to this subsection, the  
8 commission shall either approve the application or letter or inform the  
9 public utility of any mathematical or clerical errors present in its  
10 calculation. If the commission informs the public utility of the presence of  
11 mathematical or clerical errors in its calculation, the public utility may  
12 correct its error and refile its request. The time frames previously  
13 described in this subsection shall apply to a refiled request.

14 (h) (1) Upon the transfer of the securitized utility tariff property to an  
15 assignee or the issuance of securitized utility tariff bonds authorized  
16 thereby, whichever occurs first, a financing order shall become  
17 irrevocable. Except for changes made pursuant to the adjustment  
18 mechanism authorized in this section, the commission shall not amend,  
19 modify or terminate the financing order by any subsequent action or  
20 reduce, impair, postpone, terminate or otherwise adjust securitized utility  
21 tariff charges approved in the financing order.

22 (2) After the issuance of a financing order, the public utility shall  
23 retain sole discretion regarding the decision to cause securitized utility  
24 tariff bonds to be issued.

25 (3) The commission, in a financing order and subject to the issuance  
26 advice letter process under paragraph (4), shall afford the public utility  
27 flexibility in establishing the terms and conditions for the securitized  
28 utility tariff bonds to accommodate changes in market conditions,  
29 including repayment schedules, interest rates, financing costs, collateral  
30 requirements, required debt service and other reserves and the ability of  
31 the public utility, at its option, to effect a series of issuances of securitized  
32 utility tariff bonds and correlated assignments, sales, pledges or other  
33 transfers of securitized utility tariff property. Any changes made under this  
34 subsection to terms and conditions for the securitized utility tariff bonds  
35 shall be in conformance with the financing order.

36 (4) As the actual structure and pricing of the securitized utility tariff  
37 bonds will be unknown at the time the financing order is issued, the public  
38 utility that intends to cause the issuance of such bonds shall provide to the  
39 commission, prior to the issuance of each series of bonds, an issuance  
40 advice letter following the determination of the final terms of such series  
41 of bonds not later than one day after the pricing of the securitized utility  
42 tariff bonds. The commission shall have the authority to designate a  
43 representative from commission staff, who may be advised by a financial

1 adviser contracted with the commission, to observe all facets of the  
2 process undertaken by the public utility to place the securitized utility  
3 tariff bonds to market so the commission's representative can be prepared,  
4 if requested, to provide the commission with an opinion on the  
5 reasonableness of the pricing, terms and conditions of the securitized  
6 utility tariff bonds on an expedited basis. The form of such issuance advice  
7 letter shall be included in the financing order and shall indicate the final  
8 structure of the securitized utility tariff bonds and provide the best  
9 available estimate of total ongoing financing costs. The issuance advice  
10 letter shall report the initial securitized utility tariff charges and other  
11 information specific to the securitized utility tariff bonds to be issued, as  
12 the commission may require. Unless an earlier date is specified in the  
13 financing order, the public utility may proceed with the issuance of the  
14 securitized utility tariff bonds unless, prior to noon on the fourth business  
15 day after the commission receives the issuance advice letter, the  
16 commission issues a disapproval letter directing that the bonds as proposed  
17 shall not be issued and the basis for that disapproval. The financing order  
18 may provide such additional provisions relating to the issuance advice  
19 letter process as the commission considers appropriate and as are  
20 authorized by this section.

21 (5) In performing the responsibilities of this section, the commission  
22 may engage a financial adviser and counsel as the commission deems  
23 necessary. All expenses associated with such services shall be included as  
24 part of the financing costs of the securitized utility tariff bonds and shall be  
25 included in the securitized utility tariff charge.

26 (6) If a public utility's application for a financing order is denied or  
27 withdrawn, or for any reason securitized utility tariff bonds are not issued,  
28 any costs of retaining a financial adviser and counsel on behalf of the  
29 commission shall be paid by the applicant public utility and shall be  
30 eligible for full recovery by the public utility, including carrying costs, in  
31 the public utility's future rates.

32 (7) An adversely affected party may petition for judicial review of a  
33 financing order in accordance with K.S.A. 66-118a and 77-607, and  
34 amendments thereto.

35 (i) At the request of a public utility, the commission may commence a  
36 proceeding and issue a subsequent financing order that provides for  
37 refinancing, retiring or refunding securitized utility tariff bonds issued  
38 pursuant to the original financing order if the commission finds that the  
39 subsequent financing order satisfies all of the criteria specified in this  
40 section for a financing order. Effective upon retirement of the refunded  
41 securitized utility tariff bonds and the issuance of new securitized utility  
42 tariff bonds, the commission shall adjust the related securitized utility tariff  
43 charges accordingly.

1 (j) (1) A financing order remains in effect and securitized utility tariff  
2 property under the financing order continues to exist until securitized  
3 utility tariff bonds issued pursuant to the financing order have been paid in  
4 full or defeased and, in each case, all commission-approved financing  
5 costs of such securitized utility tariff bonds have been recovered in full.

6 (2) A financing order issued to a public utility remains in effect and  
7 unabated notwithstanding the reorganization, bankruptcy or other  
8 insolvency proceedings, merger or sale of the electric public utility or its  
9 successors or assignees.

10 New Sec. 3. (a) The commission shall not, in exercising its powers  
11 and carrying out its duties regarding any matter within its authority,  
12 consider the:

13 (1) Securitized utility tariff bonds issued pursuant to a financing order  
14 to be the debt of the public utility other than for federal and state income  
15 tax purposes;

16 (2) securitized utility tariff charges paid under the financing order to  
17 be the revenue of the public utility for any purpose; or

18 (3) securitized utility tariff costs or financing costs specified in the  
19 financing order to be the costs of the public utility.

20 (b) The commission shall not determine any action taken by a public  
21 utility that is consistent with the financing order to be unjust or  
22 unreasonable, and K.S.A. 66-1a01, and amendments thereto, shall not  
23 apply to the issuance of securitized utility tariff bonds.

24 (c) No public utility shall be required to file an application for a  
25 financing order under this section or otherwise utilize this section. The  
26 commission shall not order or otherwise directly or indirectly require a  
27 public utility to use securitized utility tariff bonds to recover securitized  
28 utility tariff costs or to finance any project, addition, plant, facility,  
29 extension, capital improvement, equipment or any other expenditure. After  
30 the issuance of a financing order, the public utility shall retain sole  
31 discretion regarding the decision to cause the securitized utility tariff  
32 bonds to be issued, including the right to defer or postpone such sale,  
33 assignment, transfer or issuance. Nothing shall prevent the public utility  
34 from abandoning the issuance of securitized utility tariff bonds under the  
35 financing order by filing with the commission a statement of abandonment  
36 and the reasons therefor.

37 (d) Securitized utility tariff bonds authorized under this act shall not  
38 be subject to K.S.A. 66-125, and amendments thereto.

39 (e) The commission shall not refuse to allow a public utility to  
40 recover securitized utility tariff costs in an otherwise permissible fashion,  
41 or refuse or condition authorization or approval of the issuance and sale by  
42 a public utility of securities or the assumption by the public utility of  
43 liabilities or obligations, solely because of the potential availability of

1 securitized utility tariff bond financing.

2 (f) The commission shall not, directly or indirectly, utilize or consider  
3 the debt reflected by the securitized utility tariff bonds in establishing the  
4 public utility's capital structure used to determine any regulatory matter,  
5 including, but not limited to, the public utility's revenue requirement used  
6 to set its rates.

7 (g) The commission shall not, directly or indirectly, consider the  
8 existence of securitized utility tariff bonds or the potential use of  
9 securitized utility tariff bond financing in determining the public utility's  
10 authorized rate of return used to determine the public utility's revenue  
11 requirement used to set its rates.

12 (h) The commission shall not approve an application for a financing  
13 order associated with an asset retirement or abandonment if the application  
14 does not establish that the securitization of the specified retired or  
15 abandoned generating facility provides net quantifiable rate benefits to  
16 customers as required under this act.

17 New Sec. 4. The bills of a public utility that has obtained a financing  
18 order and caused securitized utility tariff bonds to be issued shall comply  
19 with the provisions of this section, except the failure of a public utility to  
20 comply with this section shall not invalidate, impair or otherwise affect  
21 any financing order, securitized utility tariff property, securitized utility  
22 tariff charge or securitized utility tariff bonds. The public utility shall:

23 (a) Explicitly reflect that a portion of the charges on such bill  
24 represents securitized utility tariff charges approved in a financing order  
25 issued to the public utility and, if the securitized utility tariff property has  
26 been transferred to an assignee, such bill shall include a statement to the  
27 effect that the assignee is the owner of the rights to the securitized utility  
28 tariff charges and that the public utility or other entity, if applicable, is  
29 acting as a collection agent or servicer for the assignee. The tariff  
30 applicable to the customer shall indicate the securitized utility tariff charge  
31 and the ownership of the charge; and

32 (b) include the securitized utility tariff charge on each customer's bill  
33 as a separate line item and include both the rate and the amount of the  
34 charge on each bill.

35 New Sec. 5. (a) All securitized utility tariff property specified in a  
36 financing order constitutes an existing, present intangible property right or  
37 interest therein, notwithstanding that the imposition and collection of  
38 securitized utility tariff charges depends on the public utility to which the  
39 financing order is issued performing its servicing functions relating to the  
40 collection of securitized utility tariff charges and on future electricity or  
41 natural gas consumption. Such property exists:

42 (1) Regardless of whether revenues or proceeds arising from the  
43 property have been billed, have accrued or have been collected; and

1 (2) notwithstanding the fact that the value or amount of the property  
2 is dependent on the future provision of service to customers by the public  
3 utility or its successors or assignees and the future consumption of  
4 electricity or natural gas by customers.

5 (b) Securitized utility tariff property specified in a financing order  
6 shall exist until securitized utility tariff bonds issued pursuant to the  
7 financing order have been paid in full and all financing costs and other  
8 costs of such securitized utility tariff bonds have been recovered in full.

9 (c) All or any portion of securitized utility tariff property specified in  
10 a financing order issued to a public utility may be transferred, sold,  
11 conveyed or assigned to a successor or assignee that is wholly owned,  
12 directly or indirectly, by the public utility and created for the limited  
13 purpose of acquiring, owning or administering securitized utility tariff  
14 property or issuing securitized utility tariff bonds under the financing  
15 order. All or any portion of securitized utility tariff property may be  
16 pledged to secure securitized utility tariff bonds issued pursuant to the  
17 financing order, amounts payable to financing parties and to counterparties  
18 under any ancillary agreements and other financing costs. Any transfer,  
19 sale, conveyance, assignment, grant of a security interest in or pledge of  
20 securitized utility tariff property by a public utility, or an affiliate of the  
21 public utility, to an assignee to the extent previously authorized in a  
22 financing order shall not require the prior consent and approval of the  
23 commission.

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

33 (e) The interest of a transferee, purchaser, acquirer, assignee or  
34 pledgee in securitized utility tariff property specified in a financing order  
35 issued to a public utility, and in the revenue and collections arising from  
36 that property, is not subject to setoff, counterclaim, surcharge or defense  
37 by the public utility or any other person or in connection with the  
38 reorganization, bankruptcy or other insolvency of the public utility or any  
39 other entity.

40 (f) Any successor to a public utility, whether pursuant to any  
41 reorganization, bankruptcy or other insolvency proceeding or whether  
42 pursuant to any merger or acquisition, sale or other business combination,  
43 or transfer by operation of law, as a result of the public utility restructuring



1 or otherwise, shall perform and satisfy all obligations of, and have the  
2 same rights under a financing order as, the public utility under the  
3 financing order in the same manner and to the same extent as the public  
4 utility, including collecting and paying to the person entitled to receive the  
5 revenues, collections, payments or proceeds of the securitized utility tariff  
6 property. Nothing in this section shall be construed to limit or impair any  
7 authority of the commission concerning the transfer or succession of  
8 interests of public utilities.

9 (g) Securitized utility tariff bonds shall be nonrecourse to the credit or  
10 any assets of the public utility other than the securitized utility tariff  
11 property specified in the financing order and any rights under any ancillary  
12 agreement.

13 New Sec. 6. (a) The creation, perfection, priority and enforcement  
14 of any security interest in securitized utility tariff property to secure the  
15 repayment of the principal and interest and other amounts payable in  
16 respect of securitized utility tariff bonds, amounts payable under any  
17 ancillary agreement and other financing costs are governed by this section  
18 and sections 8 and 9, and amendments thereto, and not by the provisions of  
19 the code, except as otherwise provided in this section and sections 8 and 9,  
20 and amendments thereto.

21 (b) A security interest in securitized utility tariff property is created,  
22 valid and binding at the latest of the time:

23 (1) The financing order is issued;

24 (2) a security agreement is executed and delivered by the debtor  
25 granting such security interest;

26 (3) the debtor has rights in such securitized utility tariff property or  
27 the power to transfer rights in such securitized utility tariff property; or

28 (4) when value is received for the securitized utility tariff property.

29 (c) The description of securitized utility tariff property in a security  
30 agreement is sufficient if the description refers to this section and the  
31 financing order creating the securitized utility tariff property. A security  
32 interest shall attach as provided in subsection (b) without physical delivery  
33 of collateral or other act.

34 (d) Upon filing of a financing statement with the office of the  
35 secretary of state, as provided in section 9, and amendments thereto, the  
36 security interest in securitized utility tariff property shall be perfected  
37 against all parties having claims of any kind in tort, contract or otherwise  
38 against the person granting the security interest and regardless of whether  
39 the parties have notice of the security interest. Without limitation, upon  
40 such filing, a security interest in the securitized utility tariff property shall  
41 be perfected against all claims of lien creditors and shall have priority over  
42 all competing security interests and other claims other than any security  
43 interest previously perfected in accordance with this section.

1 (e) The priority of a security interest in securitized utility tariff  
2 property is not affected by the commingling of securitized utility tariff  
3 charges with other amounts. A pledgee or secured party shall have a  
4 perfected security interest in the amount of all securitized utility tariff  
5 charges that are deposited in any cash or deposit account of the qualifying  
6 public utility in which securitized utility tariff charges have been  
7 commingled with other funds, and any other security interest that may  
8 apply to those funds shall be terminated when they are transferred to a  
9 segregated account for the assignee or a financing party.

10 (f) No application of the adjustment mechanism pursuant to section 2,  
11 and amendments thereto, shall affect the validity, perfection or priority of a  
12 security interest in or transfer of securitized utility tariff property.

13 (g) If a default occurs under securitized utility tariff bonds that are  
14 secured by a security interest in securitized utility tariff property, the  
15 financing parties or their representatives may exercise the rights and  
16 remedies available to a secured party under the code, including the rights  
17 and remedies available under part 6 of article 9 of the code, and  
18 amendments thereto, as if they were secured parties with a perfected and  
19 prior lien under the code. The commission may also order amounts arising  
20 from securitized utility tariff charges be transferred to a separate account  
21 for the financing parties' benefit, to which their lien and security interest  
22 shall apply. On application by or on behalf of the financing parties, the  
23 district court of the county where the public utility's headquarters is  
24 located shall order the sequestration and payment to such financing parties  
25 of revenues arising from the securitized utility tariff charges.

26 New Sec. 7. (a) Any sale, assignment or other transfer of securitized  
27 utility tariff property shall be an absolute transfer and true sale of, and not  
28 a pledge of or secured transaction relating to, the seller's right, title and  
29 interest in, to and under the securitized utility tariff property if the  
30 documents governing the transaction expressly state that the transaction is  
31 a sale or other absolute transfer other than for federal and state income tax  
32 purposes. For all purposes other than federal and state income tax  
33 purposes, the parties' characterization of a transaction as a sale of an  
34 interest in securitized utility tariff property shall be conclusive that the  
35 transaction is a true sale and that ownership has passed to the party  
36 characterized as the purchaser, regardless of whether the purchaser has  
37 possession of any documents evidencing or pertaining to such interest in  
38 securitized utility tariff property. A sale or similar transfer of an interest in  
39 securitized utility tariff property may occur only when:

40 (1) The financing order creating the securitized utility tariff property  
41 has become effective;

42 (2) the documents evidencing the transfer of securitized utility tariff  
43 property have been executed by the assignor and delivered to the assignee;

1 and

2 (3) value is received for the securitized utility tariff property. After  
3 such a transaction, the securitized utility tariff property shall not be subject  
4 to any claims of the transferor or the transferor's creditors, other than  
5 creditors holding a prior security interest in the securitized utility tariff  
6 property perfected in accordance with section 6, and amendments thereto.

7 (b) The characterization of the sale, assignment or other transfer as an  
8 absolute transfer and true sale and the corresponding characterization of  
9 the property interest of the purchaser shall not be affected or impaired by  
10 the:

11 (1) Commingling of funds from securitized utility tariff charges with  
12 other amounts;

13 (2) the retention by the seller of:

14 (A) A partial or residual interest, including an equity interest, in the  
15 securitized utility tariff property, whether direct or indirect or whether  
16 subordinate or otherwise; or

17 (B) the right to recover costs associated with taxes, franchise fees or  
18 license fees imposed on the collection of securitized utility tariff charges;

19 (3) any recourse that the purchaser may have against the seller;

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

22 (5) the obligation of the seller to collect securitized utility tariff  
23 charges on behalf of an assignee;

24 (6) the transferor acting as the servicer of the securitized utility tariff  
25 charges or the existence of any contract that authorizes or requires the  
26 public utility, to the extent that any interest in securitized utility tariff  
27 property is sold or assigned, to contract with the assignee or any financing  
28 party so that the public utility will continue to operate the public utility  
29 system to provide service to the assignee's customers, collect amounts  
30 relating to the securitized utility tariff charges for the benefit and account  
31 of such assignee or financing party and account for and remit such  
32 amounts to or for the account of such assignee or financing party;

33 (7) the treatment of the sale, conveyance, assignment or other transfer  
34 for tax, financial reporting or other purposes;

35 (8) the granting or providing to bondholders a preferred right to the  
36 securitized utility tariff property or credit enhancement by the public utility  
37 or its affiliates with respect to such securitized utility tariff bonds; or

38 (9) any application of the adjustment mechanism as provided in  
39 section 2, and amendments thereto.

40 (c) Any right that a public utility has in the securitized utility tariff  
41 property before its pledge, sale or transfer or any other right created under  
42 this section or created in the financing order and assignable under this  
43 section or assignable pursuant to a financing order is property in the form

1 of a contract right or a chose in action. Transfer of an interest in securitized  
2 utility tariff property to an assignee is enforceable only upon the latest of:

3 (1) The issuance of a financing order;

4 (2) the assignor having rights in such securitized utility tariff property  
5 or the power to transfer rights in such securitized utility tariff property to  
6 an assignee;

7 (3) the execution and delivery by the assignor of transfer documents  
8 in connection with the issuance of securitized utility tariff bonds; and

9 (4) the receipt of value for the securitized utility tariff property.

10 (d) An enforceable transfer of an interest in securitized utility tariff  
11 property to an assignee is perfected against all third parties, including  
12 subsequent judicial or other lien creditors, when a notice of that transfer  
13 has been given by the filing of a financing statement in accordance with  
14 section 9, and amendments thereto. The transfer is perfected against third  
15 parties as of the date of filing.

16 (e) The priority of a transfer perfected under this section is not  
17 impaired by any later modification of the financing order or securitized  
18 utility tariff property or by the commingling of funds arising from the  
19 securitized utility tariff property with other funds. Any other security  
20 interest that may apply to those funds, other than a security interest  
21 perfected under section 6, and amendments thereto, is terminated when  
22 they are transferred to a segregated account for the assignee or a financing  
23 party. If securitized utility tariff property has been transferred to an  
24 assignee or financing party, any proceeds of such property shall be held in  
25 trust for the assignee or financing party.

26 (f) The priority of conflicting interests of assignees in the same  
27 interest or rights in any securitized utility tariff property is determined as  
28 follows:

29 (1) Conflicting perfected security interests or rights of assignees rank  
30 according to priority in time of perfection. Priority dates from the time a  
31 filing covering the transfer is made in accordance with section 6, and  
32 amendments thereto;

33 (2) a perfected security interest or right of an assignee has priority  
34 over a conflicting unperfected security interest or right of an assignee; and

35 (3) a perfected security interest or right of an assignee has priority  
36 over a person who becomes a lien creditor after the perfection of such  
37 assignee's interest or right.

38 New Sec. 8. The description of securitized utility tariff property being  
39 transferred to an assignee in a sales agreement, purchase agreement or  
40 other transfer agreement, granted or pledged to a pledgee in a security  
41 agreement, pledge agreement or other security document or indicated in  
42 any financing statement is only sufficient if such description or indication  
43 refers to the financing order that created the securitized utility tariff

1 property and states that the agreement or financing statement covers all or  
2 part of the property described in the financing order. This section applies  
3 to all purported transfers of, and all purported grants or liens or security  
4 interests in, securitized utility tariff property, regardless of whether the  
5 related sale agreement, purchase agreement, other transfer agreement,  
6 security agreement, pledge agreement or other security document was  
7 entered into or any financing statement was filed.

8 New Sec. 9. The secretary of state shall maintain any financing  
9 statement filed to perfect a sale or other transfer of securitized utility tariff  
10 property and any security interest in securitized utility tariff property in the  
11 same manner that the secretary of state maintains financing statements  
12 filed under the code to perfect a security interest in collateral owned by a  
13 transmitting utility. Except as otherwise provided in this section, all  
14 financing statements filed pursuant to this section shall be governed by the  
15 provisions regarding financing statements and the filing thereof under the  
16 code, including part 5 of article 9 of the code, and amendments thereto. A  
17 security interest in securitized utility tariff property may be perfected only  
18 by the filing of a financing statement in accordance with this section, and  
19 no other method of perfection shall be effective. Notwithstanding any  
20 provision of the code to the contrary, a financing statement filed pursuant  
21 to this section is effective until a termination statement is filed under the  
22 code, and no continuation statement is required to be filed to maintain its  
23 effectiveness. A financing statement filed pursuant to this section may  
24 indicate that the debtor is a transmitting utility, and without regard to  
25 whether the debtor is a public utility, an assignee or otherwise qualifies as  
26 a transmitting utility under the code. The failure to make such indication  
27 shall not impair the duration and effectiveness of the financing statement.

28 New Sec. 10. The law governing validity, enforceability, attachment,  
29 perfection, priority and exercise of remedies with respect to the transfer of  
30 an interest or right or the pledge or creation of a security interest in any  
31 securitized utility tariff property shall be the laws of this state.

32 New Sec. 11. Neither the state nor any of its political subdivisions,  
33 agencies or instrumentalities shall be liable on any securitized utility tariff  
34 bonds, and the bonds shall not be considered a debt or a general obligation  
35 of the state nor any political subdivisions, agencies or instrumentalities nor  
36 shall they be considered a special obligation or indebtedness of the state  
37 nor any of its political subdivisions, agencies or instrumentalities. An issue  
38 of securitized utility tariff bonds does not, directly, indirectly or  
39 contingently, obligate the state, nor any political subdivisions, agencies or  
40 instrumentalities of the state, to levy any tax or make any appropriation for  
41 payment of the securitized utility tariff bonds, other than in their capacity  
42 as consumers of electricity or natural gas. All securitized utility tariff  
43 bonds shall contain on the face thereof a statement to the following effect:

1 "Neither the full faith and credit nor the taxing power of the State of  
2 Kansas is pledged to the payment of the principal of, or interest on, this  
3 bond."

4 New Sec. 12. The following entities may legally invest any sinking  
5 funds, moneys or other funds in securitized utility tariff bonds:

6 (a) Subject to applicable statutory restrictions on state or local  
7 investment authority, the state, units of local government, political  
8 subdivisions, public bodies and public officers, except for members of the  
9 commission and the commission's technical advisory and other staff, or  
10 board members and employees of the citizens' utility ratepayer board;

11 (b) banks and bankers, savings and loan associations, credit unions,  
12 trust companies, savings banks and institutions, investment companies,  
13 insurance companies, insurance associations and other persons carrying on  
14 a banking or insurance business;

15 (c) personal representatives, guardians, trustees and other fiduciaries;  
16 or

17 (d) all other persons authorized to invest in bonds or other obligations  
18 of a similar nature.

19 New Sec. 13. (a) The state and its agencies, including the  
20 commission, hereby pledge and agree with bondholders, the owners of the  
21 securitized utility tariff property and other financing parties that the state  
22 and its agencies shall not take any action listed in this section. This  
23 subsection does not preclude limitation or alteration if full compensation is  
24 made by law for the full protection of the securitized utility tariff charges  
25 collected pursuant to a financing order and of the bondholders and any  
26 assignee or financing party entering into a contract with the public utility.  
27 The prohibited actions are as follows:

28 (1) Altering the provisions of this section that authorize the  
29 commission to create an irrevocable contract right or chose in action by  
30 the issuance of a financing order, to create securitized utility tariff property  
31 and to make the securitized utility tariff charges imposed by a financing  
32 order irrevocable, binding or nonbypassable charges for all existing and  
33 future retail customers within the service area of the public utility;

34 (2) taking or permitting any action that impairs or would impair the  
35 value of securitized utility tariff property or the security for the securitized  
36 utility tariff bonds or revises the securitized utility tariff costs for which  
37 recovery is authorized;

38 (3) impairing the rights and remedies of the bondholders, assignees  
39 and other financing parties in any way; or

40 (4) except for changes made pursuant to the adjustment mechanism  
41 authorized under this section, reducing, altering or impairing securitized  
42 utility tariff charges that are to be imposed, billed, charged, collected and  
43 remitted for the benefit of the bondholders, any assignee and any other

1 financing parties until any and all principal, interest, premium, financing  
2 costs and other fees, expenses or charges incurred and any contracts to be  
3 performed in connection with the related securitized utility tariff bonds  
4 have been paid and performed in full.

5 (b) Any person or entity that issues securitized utility tariff bonds  
6 may include the language specified in this section in the securitized utility  
7 tariff bonds and related documentation.

8 (c) An assignee or financing party shall not be considered a public  
9 utility, an electric public utility, a natural gas public utility or person  
10 providing electric or natural gas service by virtue of engaging in the  
11 transactions described in this act.

12 (d) If there is a conflict between this act and any other law regarding  
13 the attachment, assignment, perfection, effect of perfection or priority of,  
14 assignment or transfer of or security interest in securitized utility tariff  
15 property, this section shall govern.

16 (e) If any provision of this act is held invalid or is invalidated,  
17 superseded, replaced, repealed or expires for any reason, such occurrence  
18 does not affect the validity of any action allowed under this section that is  
19 taken by a public utility, an assignee, a financing party, a collection agent  
20 or a party to an ancillary agreement, and any such action remains in full  
21 force and effect with respect to all securitized utility tariff bonds issued or  
22 authorized in a financing order issued under this section before the date  
23 that such provision is held invalid or is invalidated, superseded, replaced,  
24 repealed or expires for any reason.

25 New Sec. 14. A public utility has sole discretion to determine the  
26 method by which it expends or invests the proceeds received from the  
27 issuance of securitized utility tariff bonds. Nothing in this act shall be  
28 construed to restrict the ability of a public utility from investing the  
29 proceeds in infrastructure as the utility deems necessary for it to continue  
30 to meet its obligations of providing reasonably efficient and sufficient  
31 service pursuant to K.S.A. 66-101b and 66-1,201, and amendments  
32 thereto. If the public utility invests in infrastructure, the commission shall  
33 review these investments using its regular processes for consideration and  
34 rate-making determination of infrastructure investments. For electric  
35 public utilities, this review may take place as part of an application for  
36 predetermination filed pursuant to K.S.A. 66-1239, and amendments  
37 thereto, or for electric and natural gas public utilities, as part of any other  
38 rate-making process established by the commission pursuant to chapter 66  
39 of the Kansas Statutes Annotated, and amendments thereto.

40 Sec. 15. K.S.A. 66-1239 is hereby amended to read as follows: 66-  
41 1239. (a) As used in this section:

- 42 (1) "Commission" means the state corporation commission;  
43 (2) "contract" means a public utility's contract for the purchase of

1 electric power in the amount of at least \$5,000,000 annually;

2 (3) "generating facility" means any electric generating plant or  
3 improvement to existing generation facilities;

4 (4) "stake" means a public utility's whole or fractional ownership  
5 share or leasehold or other proprietary interest in a generating facility or  
6 transmission facility;

7 (5) "public utility" ~~has the meaning provided by~~ *means the same as*  
8 *defined in K.S.A. 66-104, and amendments thereto;* and

9 (6) "transmission facility" means: (A) Any existing line, and  
10 supporting structures and equipment, being upgraded for the transfer of  
11 electricity with an operating voltage of 34.5 kilovolts or more of  
12 electricity; or (B) any new line, and supporting structures and equipment,  
13 being constructed for the transfer of electricity with an operating voltage  
14 of 230 kilovolts or more of electricity.

15 (b) (1) Prior to undertaking the construction of, or participation in, a  
16 transmission facility, a public utility may file with the commission a  
17 petition for a determination of the rate-making principles and treatment, as  
18 proposed by the public utility, that will apply to the recovery in wholesale  
19 or retail rates of the cost to be incurred by the public utility to acquire such  
20 public utility's stake in the transmission facility during the expected useful  
21 life of the transmission facility.

22 (2) The commission shall issue an order setting forth the rate-making  
23 principles and treatment that will be applicable to the public utility's stake  
24 in the transmission facility in all rate-making proceedings on and after  
25 such time as the transmission facility is placed in service or the term of the  
26 contract commences.

27 (3) The commission in all proceedings in which the cost of the public  
28 utility's stake in the transmission facility is considered shall utilize the rate-  
29 making principles and treatment applicable to the transmission facility.

30 (4) If the commission fails to issue a determination within 180 days  
31 of the date a petition for a determination of rate-making principles and  
32 treatment is filed, the rate-making principles and treatment proposed by  
33 the petitioning public utility will be deemed to have been approved by the  
34 commission and shall be binding for rate-making purposes during the  
35 useful life of the transmission facility.

36 (5) If the commission does not have jurisdiction to set wholesale rates  
37 for use of the transmission facility the commission need not consider rate-  
38 making principles and treatment for wholesale rates for the transmission  
39 facility.

40 (c) (1) Prior to undertaking the construction of, or participation in, a  
41 generating facility ~~or~~, prior to entering into a new contract; *or prior to*  
42 *retiring or abandoning a generating facility, or within a reasonable time*  
43 *after retirement or abandonment if filing before retirement or*



1 *abandonment is not possible under the circumstances*, a public utility may  
2 file with the commission ~~a petition~~ *an application* for a determination of  
3 the rate-making principles and treatment, as proposed by the public utility,  
4 that will apply to:

5 (A) Recovery in wholesale or retail rates of the cost to be incurred by  
6 the public utility to acquire such public utility's stake in the generating  
7 facility during the expected useful life of the generating facility or the  
8 recovery in rates of the contract during the term thereof; *or*

9 (B) *reflection in wholesale or retail rates of the costs to be incurred*  
10 *and the cost savings to be achieved by the public utility in retiring or*  
11 *abandoning such public utility's stake in the generating facility, including,*  
12 *but not limited to, the reasonableness of such retirement or abandonment.*

13 (2) Any utility seeking a determination of rate-making principles and  
14 treatment under subsection (c)(1) shall as a part of its filing submit the  
15 following information: (A) A description of the public utility's  
16 conservation measures; (B) a description of the public utility's demand  
17 side management efforts; (C) the public utility's ten-year generation and  
18 load forecasts; and (D) a description of all power supply alternatives  
19 considered to meet the public utility's load requirements.

20 (3) In considering the public utility's supply plan, the commission  
21 may consider if the public utility issued a request for proposal from a wide  
22 audience of participants willing and able to meet the needs identified under  
23 the public utility's generating supply plan, and if the plan selected by the  
24 public utility is reasonable, reliable and efficient.

25 (4) The commission shall issue an order setting forth the rate-making  
26 principles and treatment that will be applicable to the public utility's stake  
27 in the generating facility or to the contract in all rate-making proceedings  
28 on and after such time as the generating facility is:

29 (A) Placed in service or the term of the contract commences; *or*

30 (B) *retired or abandoned.*

31 (5) The commission in all proceedings in which the cost of the public  
32 utility's stake in the generating facility or the cost of the purchased power  
33 under the contract is considered shall utilize the rate-making principles and  
34 treatment applicable to the generating facility ~~or, contract~~ *or retired or*  
35 *abandoned generating facility.*

36 (6) If the commission fails to issue a determination within 180 days  
37 of the date a petition for a determination of rate-making principles and  
38 treatment is filed, the rate-making principles and treatment proposed by  
39 the petitioning public utility will be deemed to have been approved by the  
40 commission and shall be binding for rate-making purposes during the  
41 useful life of the generating facility ~~or, during the term of the contract~~ *or*  
42 *during the period when the cost of the retired or abandoned generating*  
43 *facility is reflected in customer rates.*

1 (d) The public utility shall have one year from the effective date of  
 2 the determination of the commission to notify the commission whether it  
 3 will construct or participate in the construction of the generating or  
 4 transmission facility~~or~~, whether it will perform under terms of the contract  
 5 *or whether it will retire or abandon the generating facility.*

6 (e) If the public utility notifies the commission within the one-year  
 7 period that the public utility will not construct or participate in the  
 8 construction of the generating or transmission facility~~or~~, that it will not  
 9 perform under the terms of the contract *or that it will not retire or*  
 10 *abandon the generating facility*, then the determination of rate-making  
 11 principles pursuant to subsection (b) or (c) shall be of no further force or  
 12 effect, shall have no precedential value in any subsequent proceeding, and  
 13 there shall be no adverse presumption applied in any future proceeding as  
 14 a result of such notification.

15 (f) If the public utility notifies the commission under subsection (d)  
 16 that it will construct or participate in a generating facility or purchase  
 17 power contract and subsequently does not, *or that it will retire or abandon*  
 18 *a generating facility and subsequently does not*, it will be required to  
 19 notify the commission immediately and file an alternative supply plan with  
 20 the commission ~~per~~ *pursuant to* subsection (c) within 90 days.

21 Sec. 16. K.S.A. 2020 Supp. 84-9-109 is hereby amended to read as  
 22 follows: 84-9-109. (a) **General scope of article.** Except as otherwise  
 23 provided in subsections (c) and (d), this article applies to:

24 (1) A transaction, regardless of its form, that creates a security  
 25 interest in personal property or fixtures by contract;

26 (2) an agricultural lien;

27 (3) a sale of accounts, chattel paper, payment intangibles, or  
 28 promissory notes;

29 (4) a consignment;

30 (5) a security interest arising under K.S.A. 84-2-401, 84-2-505,  
 31 ~~subsection (3) of 84-2-711(3) or subsection (5) of 84-2a-508(5)~~, and  
 32 amendments thereto, as provided in K.S.A. 2020 Supp. 84-9-110, and  
 33 amendments thereto; and

34 (6) a security interest arising under K.S.A. 84-4-201 or 84-5-118, and  
 35 amendments thereto.

36 (b) **Security interest in secured obligation.** The application of this  
 37 article to a security interest in a secured obligation is not affected by the  
 38 fact that the obligation is itself secured by a transaction or interest to which  
 39 this article does not apply.

40 (c) **Extent to which article does not apply.** This article does not  
 41 apply to the extent that:

42 (1) A statute, regulation, or treaty of the United States preempts this  
 43 article;

1 (2) another statute of this state expressly governs the creation,  
2 perfection, priority or enforcement of a security interest created by this  
3 state or a governmental unit of this state;

4 (3) a statute of another state, a foreign country, or a governmental unit  
5 of another state or a foreign country, other than a statute generally  
6 applicable to security interests, expressly governs creation, perfection,  
7 priority, or enforcement of a security interest created by the state, country,  
8 or governmental unit; or

9 (4) the rights of a transferee beneficiary or nominated person under a  
10 letter of credit are independent and superior under K.S.A. 84-5-114, and  
11 amendments thereto.

12 (d) **Inapplicability of article.** This article does not apply to:

13 (1) A landlord's lien, other than an agricultural lien;

14 (2) a statutory lien, or a lien given by statute or other rule of law for  
15 services or materials, but K.S.A. 2020 Supp. 84-9-333, and amendments  
16 thereto, applies with respect to priority of the lien;

17 (3) an assignment of a claim for wages, salary, or other compensation  
18 of an employee;

19 (4) a sale of accounts, chattel paper, payment intangibles, or  
20 promissory notes as part of a sale of the business out of which they arose;

21 (5) an assignment of accounts, chattel paper, payment intangibles, or  
22 promissory notes which is for the purpose of collection only;

23 (6) an assignment of a right to payment under a contract to an  
24 assignee that is also obligated to perform under the contract;

25 (7) an assignment of a single account, payment intangible, or  
26 promissory note to an assignee in full or partial satisfaction of a  
27 preexisting indebtedness;

28 (8) a transfer of an interest in or an assignment of a claim under a  
29 policy of insurance, other than an assignment by or to a health-care  
30 provider of a health-care-insurance receivable and any subsequent  
31 assignment of the right to payment, but K.S.A. 2020 Supp. 84-9-315 and  
32 84-9-322, and amendments thereto, apply with respect to proceeds and  
33 priorities in proceeds;

34 (9) an assignment of a right represented by a judgment, other than a  
35 judgment taken on a right to payment that was collateral;

36 (10) a right of recoupment or set-off, but:

37 (A) K.S.A. 2020 Supp. 84-9-340, and amendments thereto, applies  
38 with respect to the effectiveness of rights of recoupment or set-off against  
39 deposit accounts; and

40 (B) K.S.A. 2020 Supp. 84-9-404, and amendments thereto, applies  
41 with respect to defenses or claims of an account debtor;

42 (11) the creation or transfer of an interest in or lien on real property,  
43 including a lease or rents thereunder, except to the extent that provision is

1 made for:

2 (A) Liens on real property in K.S.A. 2020 Supp. 84-9-203 and 84-9-  
3 308, and amendments thereto;

4 (B) fixtures in K.S.A. 2020 Supp. 84-9-334, and amendments thereto;

5 (C) fixture filings in K.S.A. 2020 Supp. 84-9-501, 84-9-502, 84-9-  
6 512, 84-9-516 and 84-9-519, and amendments thereto; and

7 (D) security agreements covering personal and real property in  
8 K.S.A. 2020 Supp. 84-9-604, and amendments thereto;

9 (12) an assignment of a claim arising in tort, other than a commercial  
10 tort claim, but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and  
11 amendments thereto, apply with respect to proceeds and priorities in  
12 proceeds;

13 (13) an assignment of a deposit account in a consumer transaction,  
14 but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and amendments thereto,  
15 apply with respect to proceeds and priorities in proceeds;

16 (14) an assignment of rights in or under:

17 (A) A claim or right to receive benefits under any workers  
18 compensation, industrial accident or similar statute or regulation which  
19 provides benefits for occupational injury or illness; or

20 (B) a deferred payment or benefit arrangement that enables a  
21 participant to exclude or defer recognition of income for purposes of  
22 federal or state income taxation; ~~or~~

23 (15) a transfer by a government or governmental agency or  
24 subdivision; *or*

25 *(16) the creation, attachment, perfection, priority or enforcement of*  
26 *any sale, assignment of, pledge of, security interest in or other transfer of*  
27 *any interest in, right or portion of any interest or right in any securitized*  
28 *utility tariff property, as defined in section 1, and amendments thereto,*  
29 *except as otherwise provided in the utility financing and securitization act.*

30 Sec. 17. K.S.A. 66-1239 and K.S.A. 2020 Supp. 84-9-109 are hereby  
31 repealed.

32 Sec. 18. This act shall take effect and be in force from and after its  
33 publication in the Kansas register.