

**SENATE BILL No. 245**

By Committee on Financial Institutions and Insurance

2-12

Amendments to SB 245  
For Senate Committee on  
Financial Institutions and Insurance  
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Office of Revisor of Statutes  
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1 AN ACT concerning the state corporation commission; relating to electric  
2 public utilities; pertaining to financing therefor; authorizing the  
3 approval and issuance of energy transition bonds; enacting the Kansas  
4 grid resiliency, innovation and dependability act; amending K.S.A. 66-  
5 1239 and K.S.A. 2020 Supp. 84-9-109 and repealing the existing  
6 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 Kansas grid resiliency, innovation  
11 and dependability act.

12 (b) As used in the Kansas grid resiliency, innovation and  
13 dependability act:

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

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

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

32 (4) "Bondholder" means any holder or owner of an energy transition  
33 bond.

34 (5) "Code" means the Kansas uniform commercial code.

35 (6) "Commission" means the state corporation commission.

36 (7) "Electric public utility" means the same as defined in K.S.A. 66-

new strike

subject to timely commission review to confirm compliance,

replace "'Adjustment mechanisms' are' with 'The "adjustment mechanism" is'

1 101a, and amendments thereto, and includes a for-profit electric utility  
2 whose retail rates are subject to the jurisdiction of the commission.  
3 "Electric public utility" does not include a cooperative that has opted to  
4 deregulate pursuant to K.S.A. 66-104d, and amendments thereto.

5 (8) "Energy transition bonds" means bonds, debentures, notes,  
6 certificates of participation, certificates of beneficial interest, certificates  
7 of ownership or other evidences of indebtedness or ownership that have a  
8 scheduled maturity date as determined reasonable by the commission, but  
9 not later than 32 years from the issue date, that are issued by an electric  
10 public utility or an assignee pursuant to a financing order, the proceeds of  
11 which are used directly or indirectly to recover, finance or refinance  
12 commission-approved energy transition costs and financing costs, and that  
13 are secured by or payable from energy transition property. If certificates of  
14 participation or ownership are issued, references in this section to  
15 principal, interest or premium shall be construed to refer to comparable  
16 amounts under those certificates.

17 (9) "Energy transition charge" means the amounts authorized by the  
18 commission to provide a source of revenue solely to repay, finance, or  
19 refinance energy transition costs and financing costs and that are  
20 nonbypassable charges imposed on, and part of all retail customer bills  
21 collected by an electric public utility or its successors or assignees, or a  
22 collection agent, in full, separate and apart from the electric public utility's  
23 base rates. "Energy transition charges" are paid by all existing or future  
24 retail customers receiving electrical service from the electric public utility  
25 or its successors or assignees under commission-approved rate schedules  
26 or under special contracts, even if a retail customer elects to purchase  
27 electricity from an alternative electricity supplier following a fundamental  
28 change in regulation of public utilities in this state.

29 (10) (A) "Energy transition costs" includes:

30 (i) At the option of and upon application by an electric public utility,  
31 and as approved by the commission, any of the pretax costs that the  
32 electric public utility has incurred or will incur that are caused by,  
33 associated with, or remain as a result of a retired, abandoned, to be retired  
34 or to be abandoned electric generating facility that is the subject of an  
35 application for a financing order filed under this section where such early  
36 retirement or abandonment is deemed reasonable and prudent by the  
37 commission through a final order issued by the commission;

38 ~~(ii) "pretax costs,"~~ if determined reasonable by the commission and  
39 not inconsistent with a commission order granting predetermination under  
40 K.S.A. 66-1239, and amendments thereto, regarding retirement or  
41 abandonment of the subject generating facility, includes, but is not limited  
42 to, the undepreciated investment in the retired or abandoned electric  
43 generating facility and any facilities ancillary thereto or used in

. as used in this paragraph, "pretax

1 conjunction therewith, costs of decommissioning and restoring the site of  
 2 the electric generating facility, other applicable capital and operating costs,  
 3 accrued carrying charges and deferred expenses. Such "pretax costs" shall  
 4 be reduced by applicable insurance, scrap and salvage proceeds and  
 5 include the cost of retiring any existing indebtedness, fees, costs and  
 6 expenses to modify existing debt agreements or for waivers or consents  
 7 related to existing debt agreements; and

8 ~~(iii)~~ "pretax costs" that an electric public utility has previously  
 9 incurred related to the retirement of such a ~~coal-fired~~ electric generating  
 10 facility occurring before the effective date of this section.

(ii)

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

15 (11) "Energy transition property" includes:

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

assignee of the electric public utility

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

27 (12) "Financing costs" includes, if authorized by the commission in a  
 28 financing order, costs to issue, service, repay or refinance energy transition  
 29 bonds, whether incurred or paid upon issuance of the energy transition  
 30 bonds or over the life of the energy transition bonds, including:

31 (A) Principal, interest and acquisition, defeasance, or redemption  
 32 premiums payable on energy transition bonds;

33 (B) any payment required under an ancillary agreement and any  
 34 amount required to fund or replenish a reserve account or other accounts  
 35 established under the terms of any indenture, ancillary agreement, or other  
 36 financing documents pertaining to energy transition bonds;

37 (C) any other cost related to issuing, supporting, repaying, refunding  
 38 and servicing energy transition bonds, including, but not limited to,  
 39 servicing fees, accounting and auditing fees, trustee fees, legal fees,  
 40 consulting fees, financial or structuring adviser fees, administrative fees,  
 41 placement and underwriting fees, independent director and manager fees,  
 42 capitalized interest, rating agency fees, stock exchange listing and  
 43 compliance fees, security registration fees, filing fees, information

1 technology programming costs and any other costs necessary to otherwise  
2 ensure the timely payment of energy transition bonds or other amounts or  
3 charges payable in connection with energy transition bonds, including  
4 costs related to obtaining the financing order;

5 (D) any taxes and license fees or other fees imposed on the revenues  
6 generated from the collection of the energy transition charge or otherwise  
7 resulting from the collection of energy transition charges, whether paid,  
8 payable or accrued;

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

12 (F) any costs of the commission needed to perform the commission  
13 responsibilities under this act including costs to engage counsel and a  
14 financial adviser.

15 (13) "Financing order" means:

16 (A) An order from the commission pursuant to this act that authorizes  
17 the issuance of energy transition bonds in one or more series;

18 (B) the imposition, collection and periodic adjustments of an energy  
19 transition charge

20 (C) the creation of energy transition property; and

21 (D) the sale, assignment or transfer of energy transition property to an  
22 assignee.

23 (14) "Financing party" means bondholders and trustees, collateral  
24 agents, any party under an ancillary agreement or any other person acting  
25 for the benefit of bondholders.

26 (15) "Financing statement" means the same as defined in K.S.A. 84-  
27 9-102, and amendments thereto.

28 (16) "Nonbypassable" means that the payment of an energy transition  
29 charge may not be avoided by any existing or future retail customer  
30 located within an electric public utility service area, as such service area  
31 existed on the date of the financing order, or, if the financing order so  
32 provides, as such service area may be expanded, even if the customer  
33 elects to purchase electricity from a supplier other than the electric utility,  
34 or its successors or assignees, or receives retail electric service from  
35 another electric utility operating in the same service area.

36 (17) "Pledgee" means a financing party to which an electric public  
37 utility, or its successors or assignees, mortgages, negotiates, pledges or  
38 creates a security interest or lien on all or any portion of its interest in or  
39 right to energy transition property.

40 (18) "Successor" means, with respect to any legal entity, another legal  
41 entity that succeeds by operation of law to the rights and obligations of the  
42 first legal entity pursuant to any bankruptcy, reorganization, restricting,  
43 other insolvency proceeding, merger, acquisition, consolidation or sale or

1 transfer of assets, regardless of the reason such event occurs.

2 New Sec. 2. (a) An electric public utility, in its sole discretion, may  
3 apply to the commission for a financing order as authorized by the Kansas  
4 grid resiliency, innovation and dependability act.

5 (1) In applying for the financing order, the electric public utility may  
6 file an application to issue energy transition bonds in one or more series,  
7 impose, charge and collect energy transition charges and create energy  
8 transition property related to the recovery of energy transition costs.

9 (2) Within 45 days after a complete application is filed, the  
10 commission shall establish a procedural schedule that requires the  
11 commission to issue a decision on the application not later than 135 days  
12 from the date a complete application was filed.

13 (3) The commission shall take final action to approve, approve  
14 subject to conditions the commission considers appropriate and that are  
15 authorized by this section or deny any application for a financing order in  
16 a final order issued in accordance with the commission's rules for  
17 addressing applications within 135 days of receiving a complete  
18 application as authorized by this act. Such final order shall be subject to  
19 judicial review in accordance with K.S.A. 66-118a through 66-118o, and  
20 amendments thereto, and shall be deemed as arising from a rate hearing  
21 pursuant to K.S.A. 66-118a(b), and amendments thereto.

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

26 (b) The application shall include the following:

27 (1) A description of the electric generating facility or facilities that  
28 the electric public utility has retired, or proposes to retire, prior to the date  
29 that all undepreciated investment relating thereto has been recovered  
30 through rates and the reasons for undertaking such early retirement or  
31 abandonment. If the electric public utility is subject to a separate  
32 commission order or proceeding relating to such retirement or  
33 abandonment or as described in paragraph (4), the application shall include  
34 a description of the order or other proceeding;

35 (2) a description of the energy transition costs that the applicant  
36 proposes to recover with the proceeds of the energy transition bonds;

37 (3) (A) an indicator of whether the electric public utility proposes to  
38 finance all or a portion of the energy transition costs using energy  
39 transition bonds. If the electric public utility proposes to finance a portion  
40 of the energy transition costs, the electric public utility shall identify the  
41 specific portion in the application;

42 (B) by electing not to finance all or any portion of such energy  
43 transition costs using energy transition bonds, an electric public utility

- 1 shall not be deemed to waive its right to recover or request recovery of  
2 such costs pursuant to a separate proceeding with the commission;
- 3 (4) an estimate of the financing costs related to the energy transition  
4 bonds;
- 5 (5) an estimate of the energy transition charges necessary to recover  
6 the energy transition costs and all financing costs, the period for recovery  
7 of such costs and a description of the proposed financing structure,  
8 including the proposed scheduled and final maturity of the energy  
9 transition bonds;
- 10 (6) the proposed methodology for allocating the revenue requirement  
11 for the energy transition charge among customer classes, including special  
12 contract customers;
- 13 (7) a description of the nonbypassable energy transition charge  
14 required to be paid by all customers within the electric public utility's  
15 service area for recovery of energy transition costs and a proposed  
16 adjustment mechanism reflecting the allocation methodology referred to in  
17 paragraph (6);
- 18 (8) an estimate of the timing of the potential issuance of the energy  
19 transition bonds, or series of bonds;
- 20 (9) a comparison between the net present value of the costs to  
21 customers that are estimated to result from the issuance of energy  
22 transition bonds and the costs that would result from the application of the  
23 traditional method of financing and recovering the undepreciated  
24 investment of facilities that may become energy transition costs from  
25 customers. The comparison shall demonstrate that the issuance of energy  
26 transition bonds and the imposition of energy transition charges are  
27 expected to provide net quantifiable benefits to customers or that would  
28 avoid or mitigate rate impacts to customers;
- 29 (10) (A) specify a future ratemaking process to reconcile any  
30 difference between the energy transition costs financed by energy  
31 transition bonds and the final energy transition costs incurred by the  
32 electric public utility or the assignee;
- 33 (B) the reconciliation may affect the electric public utility's rates or  
34 any rider but shall not affect the amount of the energy transition bonds or  
35 the associated energy transition charges paid by customers; and
- 36 (11) direct testimony and schedules supporting the application.
- 37 (c) Following notice and hearing on an application for a financing  
38 order, as required by rules and regulations adopted by the commission, the  
39 commission may issue a financing order if the commission finds that the:
- 40 (1) Energy transition costs described in the application are just and  
41 reasonable; and
- 42 (2) proposed issuance of energy transition bonds and the imposition  
43 and collection of energy transition charges are expected to provide net

1 quantifiable benefits to customers when compared to the costs that would  
2 result from the application of the traditional method of financing and  
3 recovering the undepreciated investment of facilities or that would avoid  
4 or mitigate rate impacts to customers.

5 (d) A financing order issued by the commission in response to an  
6 application filed by an electric public utility, pursuant to this section, shall  
7 include the following elements:

8 (1) The amount of energy transition costs to be financed using energy  
9 transition bonds. The commission shall describe and estimate the amount  
10 of financing costs and energy transition costs that may be recovered  
11 through energy transition charges and specify the period over which  
12 energy transition costs and financing costs may be recovered, that shall be  
13 no earlier than the date of the final legal maturity of energy transition  
14 bonds to be issued;

15 (2) an approved customer billing mechanism for energy transition  
16 charges, including a specific methodology for allocating the necessary  
17 energy transition charges among the different customer classes including  
18 special contract customers and a finding that the resulting energy transition  
19 charges will be just and reasonable;

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

25 (4) a finding that the structuring, pricing and financing costs of the  
26 energy transition bonds are expected to result in the lowest energy  
27 transition charges, consistent with market conditions at the time the energy  
28 transition bonds are priced and the terms of the financing order;

29 (5) a requirement that, for so long as the energy transition bonds are  
30 outstanding and until all financing costs have been paid in full, the  
31 imposition and collection of energy transition charges authorized under a  
32 financing order shall be nonbypassable;

33 (6) an adjustment mechanism;

34 (7) a description of the energy transition property that is, or shall be,  
35 created in favor of an electric public utility, or its successors and assignees,  
36 and that shall be used to pay and secure the payment of energy transition  
37 bonds and all financing costs authorized in the financing order;

38 (8) a statement specifying the degree of flexibility to be afforded to  
39 the electric public utility in establishing the terms and conditions of the  
40 energy transition bonds, including, but not limited to, repayment  
41 schedules, expected interest rates and other financing costs;

42 (9) authorization for the applicant electric public utility to finance  
43 energy transition costs through the issuance of one or more series of

1 energy transition bonds;  
 2 (10) a requirement that, after the final terms of an issuance of energy  
 3 transition bonds have been established and before the issuance of energy  
 4 transition bonds, the electric public utility determines the resulting initial  
 5 energy transition charge is in accordance with the financing order and that  
 6 such initial energy transition charge be final and effective upon the  
 7 issuance of such energy transition bonds without further commission  
 8 action so long as the energy transition charge is consistent with the  
 9 financing order;  
 10 (11) a method of tracing funds collected as energy transition charges,  
 11 or other proceeds of energy transition property, determining that such  
 12 method shall be deemed the method of tracing such funds and determining  
 13 the identifiable cash proceeds of any energy transition property subject to a  
 14 financing order under applicable law;  
 15 (12) a statement specifying a future ratemaking process to reconcile  
 16 any differences between the actual energy transition costs financed by  
 17 energy transition bonds and the final energy transition costs incurred by  
 18 the utility or assignee; and  
 19 (13) any other conditions that the commission deems appropriate and  
 20 that are authorized by this section.  
 21 (e) A financing order issued to an electric public utility shall permit  
 22 and may require the creation of the electric public utility's energy  
 23 transition property that is conditioned upon the sale or other transfer of the  
 24 energy transition property to an assignee and the pledge of the energy  
 25 transition property to secure energy transition bonds.  
 26 (f) If the electric public utility has been issued a financing order, the  
 27 electric public utility shall file with the commission, at least annually, an  
 28 application or letter applying the adjustment mechanism based on  
 29 estimates of consumption for each rate class and other mathematical  
 30 factors and requesting administrative approval to make the applicable  
 31 adjustments. The commission's review of the filing shall be limited to  
 32 determining if any mathematical or clerical errors are present in the  
 33 application of the adjustment mechanism relating to the appropriate  
 34 amount of any over-collection or under-collection of energy transition  
 35 charges and the amount of an adjustment. The adjustments shall ensure the  
 36 recovery of revenue is sufficient to provide for the payment of principal,  
 37 interest, acquisition, defeasance, financing costs or redemption premium  
 38 and other fees, costs, and charges with respect to the energy transition  
 39 bonds approved under the financing order. Within 30 days after receiving  
 40 an electric public utility's application or letter pursuant to this paragraph,  
 41 the commission shall either approve the application or letter or inform the  
 42 electric public utility of any mathematical or clerical errors present in its  
 43 calculation. If the commission informs the electric public utility of the

provisions that specify the timing of ratemaking and regulatory  
 accounting actions required by the financing order to protect the  
 interests of customers and the utility, which shall be limited to the  
 following requirements that, to the extent that the commission:

(A) has issued an order granting predetermination under K.S.A. 66-1239,  
 and amendments thereto, prescribing ratemaking parameters or  
 regulatory accounting for retirement or abandonment of electric utility  
 generating assets or for the addition of facilities in connection with the  
 retirement or abandonment of the subject electric utility generating  
 assets, the electric utility shall be permitted to implement and effectuate  
 such ratemaking parameters or regulatory accounting mechanisms; and

(B) has not issued an order granting predetermination under K.S.A.  
 66-1239, and amendments thereto, prescribing ratemaking parameters  
 or regulatory accounting to credit customers with the benefits from  
 retirement of the subject electric utility generating assets, then the  
 commission shall address such matters in the financing order and  
 customers shall receive the benefits as determined by commission order  
 simultaneously with the inception of the collection of energy transition  
 charges.

(14)



1 presence of mathematical or clerical errors in its calculation, the electric  
2 public utility may correct its error and refile its request. The time frames  
3 previously described in this paragraph shall apply to a refiled request.

4 (g) (1) Upon the transfer of the energy transition property to an  
5 assignee or the issuance of energy transition bonds authorized thereby,  
6 whichever occurs first, a financing order shall become irrevocable. Except  
7 for changes made pursuant to the adjustment mechanism authorized in this  
8 section, the commission shall not amend, modify or terminate the  
9 financing order by any subsequent action or reduce, impair, postpone,  
10 terminate or otherwise adjust energy transition charges approved in the  
11 financing order.

12 (2) After the issuance of a financing order, the electric public utility  
13 shall retain sole discretion regarding the decision to assign, sell or  
14 otherwise transfer energy transition property or to cause energy transition  
15 bonds to be issued, including the right to defer or postpone such  
16 assignment, sale, transfer or issuance.

17 (3) The commission, in a financing order and subject to the issuance  
18 advice letter process under paragraph (4), shall afford the electric public  
19 utility flexibility in establishing the terms and conditions for the energy  
20 transition bonds to accommodate changes in market conditions, including  
21 repayment schedules, interest rates, financing costs, collateral  
22 requirements, required debt service and other reserves and the ability of  
23 the electric public utility, at its option, to effect a series of issuances of  
24 energy transition bonds and correlated assignments, sales, pledges or other  
25 transfers of energy transition property. Any changes made under this  
26 subsection to terms and conditions for the energy transition bonds shall be  
27 in conformance with the financing order.

28 (4) As the actual structure and pricing of the energy transition bonds  
29 will be unknown at the time the financing order is issued, the electric  
30 public utility that intends to cause the issuance of such bonds shall provide  
31 to the commission, to the extent requested and prior to the issuance of each  
32 series of bonds, an issuance advice letter following the determination of  
33 the final terms of such series of bonds no later than one day after the  
34 pricing of the energy transition bonds. The commission shall have the  
35 authority to designate a representative from commission staff, who may be  
36 advised by a financial adviser contracted with the commission, to observe  
37 all facets of the process undertaken by the electric public utility to place  
38 the energy transition bonds to market so the commission's representative  
39 can be prepared, if requested, to provide the commission with an opinion  
40 on the reasonableness of the pricing, terms and conditions of the energy  
41 transition bonds on an expedited basis. The form of such issuance advice  
42 letter shall be included in the financing order and shall indicate the final  
43 structure of the energy transition bonds and provide the best available

1 estimate of total ongoing costs. The issuance advice letter shall report the  
2 initial energy transition charges and other information specific to the  
3 energy transition bonds to be issued, as the commission may require.  
4 Unless an earlier date is specified in the financing order, the electric public  
5 utility may proceed with the issuance of the energy transition bonds unless,  
6 prior to noon on the fourth business day after the commission receives the  
7 issuance advice letter, the commission issues a disapproval letter directing  
8 that the bonds as proposed shall not be issued and the basis for that  
9 disapproval. The financing order may provide such additional provisions  
10 relating to the issuance advice letter process as the commission considers  
11 appropriate and as are authorized by this section.

12 (5) In performing the responsibilities of this section, the commission  
13 may engage a financial adviser and counsel as the commissions deems  
14 necessary. All expenses associated with such services shall be included as  
15 part of the financing costs of the energy transition bonds and shall be  
16 included in the energy transition charge.

17 (6) If an electric public utility's application for a financing order is  
18 denied or withdrawn, or for any reason energy transition bonds are not  
19 issued, any costs of retaining a financial adviser and counsel on behalf of  
20 the commission shall be paid by the applicant electric utility and shall be  
21 eligible for full recovery by the electric public utility, including carrying  
22 costs, in the electric public utility's future rates.

23 (7) An adversely affected party may petition for judicial review in  
24 accordance with K.S.A. 66-118a and 77-607, and amendments thereto.

25 (h) At the request of an electric public utility, the commission may  
26 commence a proceeding and issue a subsequent financing order that  
27 provides for refinancing, retiring or refunding energy transition bonds  
28 issued pursuant to the original financing order if the commission finds that  
29 the subsequent financing order satisfies all of the criteria specified in this  
30 section for a financing order. Effective upon retirement of the refunded  
31 energy transition bonds and the issuance of new energy transition bonds,  
32 the commission shall adjust the related energy transition charges  
33 accordingly.

34 (1) A financing order remains in effect and energy transition property  
35 under the financing order continues to exist until energy transition bonds  
36 issued pursuant to the financing order have been paid in full or defeased  
37 and, in each case, all commission-approved financing costs of such energy  
38 transition bonds have been recovered in full.

39 (2) A financing order issued to an electric public utility remains in  
40 effect and unabated notwithstanding the reorganization, bankruptcy or  
41 other insolvency proceedings, merger or sale of the electric public utility  
42 or its successors or assignees.

43 New Sec. 3. (a) The commission shall not, in exercising its powers

1 and carrying out its duties regarding any matter within its authority,  
2 consider the:

3 (1) Energy transition bonds issued pursuant to a financing order to be  
4 the debt of the electric public utility other than for federal and state income  
5 tax purposes;

6 (2) energy transition charges paid under the financing order to be the  
7 revenue of the electric public utility for any purpose; or

8 (3) energy transition costs or financing costs specified in the  
9 financing order to be the costs of the electric public utility.

10 (b) The commission shall not determine any action taken by an  
11 electric public utility that is consistent with the financing order to be unjust  
12 or unreasonable, and K.S.A. 66-1a01, and amendments thereto, shall not  
13 apply to the issuance of energy transition bonds.

14 (c) No electric public utility shall be required to file an application for  
15 a financing order under this section or otherwise utilize this section. The  
16 commission shall not order or otherwise directly or indirectly require an  
17 electric public utility to use energy transition bonds to recover energy  
18 transition costs or to finance any project, addition, plant, facility,  
19 extension, capital improvement, equipment or any other expenditure. After  
20 the issuance of a financing order, the electric public utility shall retain sole  
21 discretion regarding the decision to cause the energy transition bonds to be  
22 issued, including the right to defer or postpone such sale, assignment,  
23 transfer or issuance. Nothing shall prevent the electric public utility from  
24 abandoning the issuance of energy transition bonds under the financing  
25 order by filing with the commission a statement of abandonment and the  
26 reasons therefor.

27 (d) Energy transition bonds authorized under the Kansas grid  
28 resiliency, innovation and dependability act shall not be subject to K.S.A.  
29 66-125, and amendments thereto.

30 (e) The commission shall not refuse to allow an electric public utility  
31 to recover energy transition costs in an otherwise permissible fashion, or  
32 refuse or condition authorization or approval of the issuance and sale by an  
33 electric public utility of securities or the assumption by the electric public  
34 utility of liabilities or obligations, solely because of the potential  
35 availability of energy transition bond financing.

36 (f) The commission shall not, directly or indirectly, utilize or consider  
37 the debt reflected by the energy transition bonds in establishing the electric  
38 public utility's capital structure used to determine any regulatory matter,  
39 including, but not limited to, the electric public utility's revenue  
40 requirement used to set its rates.

41 (g) The commission shall not, directly or indirectly, consider the  
42 existence of energy transition bonds or the potential use of energy  
43 transition bond financing in determining the electric public utility's

1 authorized rate of return used to determine the electric public utility's  
2 revenue requirement used to set its rates.

3 New Sec. 4. The electric bills of an electric public utility that has  
4 obtained a financing order and caused energy transition bonds to be issued  
5 shall comply with the provisions of this section, except the failure of an  
6 electric public utility to comply with this section shall not invalidate,  
7 impair or otherwise affect any financing order, energy transition property,  
8 energy transition charge or energy transition bond. The electric public  
9 utility shall:

10 (a) Explicitly reflect that a portion of the charges on such bill  
11 represents energy transition charges approved in a financing order issued  
12 to the electric public utility and, if the energy transition property has been  
13 transferred to an assignee, such bill shall include a statement to the effect  
14 that the assignee is the owner of the rights to the energy transition charges  
15 and that the electric public utility or other entity, if applicable, is acting as  
16 a collection agent or servicer for the assignee. The tariff applicable to  
17 customer shall indicate the energy transition charge and the ownership of  
18 the charge; and

19 (b) include the energy transition charge on each customer's bill as a  
20 separate line item and include both the rate and the amount of the charge  
21 on each bill.

22 New Sec. 5. (a) All energy transition property specified in a financing  
23 order constitutes an existing, present intangible property right or interest  
24 therein, notwithstanding that the imposition and collection of energy  
25 transition charges depends on the electric public utility to which the  
26 financing order is issued performing its servicing functions relating to the  
27 collection of energy transition charges and on future electricity  
28 consumption. The property exists:

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

31 (2) notwithstanding the fact that the value or amount of the property  
32 is dependent on the future provision of service to customers by the electric  
33 public utility or its successors or assignees and the future consumption of  
34 electricity by customers.

35 (b) Energy transition property specified in a financing order shall  
36 exist until energy transition bonds issued pursuant to the financing order  
37 have been paid in full and all financing costs and other costs of such  
38 energy transition bonds have been recovered in full.

39 (c) All or any portion of energy transition property specified in a  
40 financing order issued to an electric public utility may be transferred, sold,  
41 conveyed or assigned to a successor or assignee that is wholly owned,  
42 directly or indirectly, by the electric public utility and created for the  
43 limited purpose of acquiring, owning or administering energy transition

1 property or issuing energy transition bonds under the financing order. All  
2 or any portion of energy transition property may be pledged to secure  
3 energy transition bonds issued pursuant to the financing order, amounts  
4 payable to financing parties and to counterparties under any ancillary  
5 agreements and other financing costs. Any transfer, sale, conveyance,  
6 assignment, grant of a security interest in or pledge of energy transition  
7 property by an electric public utility, or an affiliate of the electric public  
8 utility, to an assignee to the extent previously authorized in a financing  
9 order shall not require the prior consent and approval of the commission.

10 (d) If an electric public utility defaults on any required remittance of  
11 energy transition charges arising from energy transition property specified  
12 in a financing order, a court, upon application by an interested party, and  
13 without limiting any other remedies available to the applying party, shall  
14 order the sequestration and payment of the revenues arising from the  
15 energy transition property to the financing parties or their assignees. Any  
16 such financing order shall remain in full force and effect notwithstanding  
17 any reorganization, bankruptcy or other insolvency proceedings with  
18 respect to the electric public utility or its successors or assignees.

19 (e) The interest of a transferee, purchaser, acquirer, assignee or  
20 pledgee in energy transition property specified in a financing order issued  
21 to an electric public utility, and in the revenue and collections arising from  
22 that property, is not subject to setoff, counterclaim, surcharge or defense  
23 by the electric public utility or any other person or in connection with the  
24 reorganization, bankruptcy or other insolvency of the electric public utility  
25 or any other entity.

26 (f) Any successor to an electric public utility, whether pursuant to any  
27 reorganization, bankruptcy or other insolvency proceeding or whether  
28 pursuant to any merger or acquisition, sale or other business combination,  
29 or transfer by operation of law, as a result of electric public utility  
30 restructuring or otherwise, shall perform and satisfy all obligations of, and  
31 have the same rights under a financing order as, the electric public utility  
32 under the financing order in the same manner and to the same extent as the  
33 electric public utility, including collecting and paying to the person entitled  
34 to receive the revenues, collections, payments or proceeds of the energy  
35 transition property. Nothing in this section shall be construed to limit or  
36 impair any authority of the commission concerning the transfer or  
37 succession of interests of public utilities.

38 (g) Energy transition bonds shall be nonrecourse to the credit or any  
39 assets of the electric public utility other than the energy transition property  
40 specified in the financing order and any rights under any ancillary  
41 agreement.

42 New Sec. 6. (a) The creation, perfection and enforcement of any  
43 security interest in energy transition property to secure the repayment of

1 the principal and interest and other amounts payable in respect of energy  
2 transition bonds, amounts payable under any ancillary agreement and other  
3 financing costs are governed by this subsection and not by the provisions  
4 of the code, except as otherwise provided in this section.

5 (b) A security interest in energy transition property is created, valid  
6 and binding at the latest of the time:

7 (1) The financing order is issued;

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

10 (3) the debtor has rights in such energy transition property or the  
11 power to transfer rights in such energy transition property; or

12 (4) when value is received for the energy transition property.

13 The description of energy transition property in a security agreement is  
14 sufficient if the description refers to this section and the financing order  
15 creating the energy transition property.

16 (c) A security interest shall attach as provided in subsection (b)  
17 without physical delivery of collateral or other act and, upon the filing of a  
18 financing statement with the office of the secretary of state, the lien of the  
19 security interest shall be perfected against all parties having claims of any  
20 kind in tort, contract or otherwise against the person granting the security  
21 interest, regardless of whether the parties have notice of the lien. Upon  
22 such filing, a security interest or other transfer of an interest in the energy  
23 transition property shall be perfected against all parties having claims of  
24 any kind, including any judicial lien or other lien creditors or any claims of  
25 the seller or creditors of the seller, and shall have priority over all  
26 competing claims other than any prior perfected security interest,  
27 ownership interest or assignment in the property previously perfected in  
28 accordance with this section.

29 (d) The secretary of state shall maintain any financing statement filed  
30 to perfect a security interest under this section in the same manner that the  
31 secretary maintains financing statements filed to perfect security interests  
32 in collateral owned by transmitting utilities under the code. The filing of a  
33 financing statement under this section shall be governed by the provisions  
34 regarding the filing of financing statements in the code.

35 ~~(e) The priority of a security interest in energy transition property is~~  
36 ~~not affected by the commingling of energy transition charges with other~~  
37 ~~amounts. A pledgee or secured party shall have a perfected security~~  
38 ~~interest in the amount of all energy transition charges that are deposited in~~  
39 ~~any cash or deposit account of the qualifying electric public utility in~~  
40 ~~which energy transition charges have been commingled with other funds,~~  
41 ~~and any other security interest that may apply to those funds shall be~~  
42 ~~terminated when they are transferred to a segregated account for the~~  
43 ~~assignee or a financing party.~~

1 ~~(f) No application of the adjustment mechanism pursuant to section 2,~~  
2 ~~and amendments thereto, shall affect the validity, perfection or priority of a~~  
3 ~~security interest in or transfer of energy transition property.~~

4 ~~(g) If a default or termination occurs under the energy transition~~  
5 ~~bonds, the financing parties or their representatives may foreclose on or~~  
6 ~~otherwise enforce such parties' lien and security interest in any energy~~  
7 ~~transition property as if they were secured parties with a perfected and~~  
8 ~~prior lien under the code, and the commission may order amounts arising~~  
9 ~~from energy transition charges be transferred to a separate account for the~~  
10 ~~financing parties' benefit, to which their lien and security interest shall~~  
11 ~~apply. On application by or on behalf of the financing parties, the district~~  
12 ~~court of the county where the electric public utility's headquarters is~~  
13 ~~located shall order the sequestration and payment to them of revenues~~  
14 ~~arising from the energy transition charges.~~

15 ~~New Sec. 7. (a) Any sale, assignment or other transfer of energy~~  
16 ~~transition property shall be an absolute transfer and true sale of, and not a~~  
17 ~~pledge of or secured transaction relating to, the seller's right, title and~~  
18 ~~interest in, to and under the energy transition property if the documents~~  
19 ~~governing the transaction expressly state that the transaction is a sale or~~  
20 ~~other absolute transfer other than for federal and state income tax~~  
21 ~~purposes. For all purposes other than federal and state income tax~~  
22 ~~purposes, the parties' characterization of a transaction as a sale of an~~  
23 ~~interest in energy transition property shall be conclusive that the~~  
24 ~~transaction is a true sale and that ownership has passed to the party~~  
25 ~~characterized as the purchaser, regardless of whether the purchaser has~~  
26 ~~possession of any documents evidencing or pertaining to such interest in~~  
27 ~~energy transition property. A transfer of an interest in energy transition~~  
28 ~~property may occur only when:~~

29 ~~(1) The financing order creating the energy transition property has~~  
30 ~~become effective;~~

31 ~~(2) the documents evidencing the transfer of energy transition~~  
32 ~~property have been executed by the assignor and delivered to the assignee;~~  
33 ~~and~~

34 ~~(3) value is received for the energy transition property. After such a~~  
35 ~~transaction, the energy transition property shall not be subject to any~~  
36 ~~claims of the transferor or the transferor's creditors, other than creditors~~  
37 ~~holding a prior security interest in the energy transition property perfected~~  
38 ~~in accordance with section 6, and amendments thereto.~~

39 ~~(b) The characterization of the sale, assignment or other transfer as an~~  
40 ~~absolute transfer and true sale and the corresponding characterization of~~  
41 ~~the property interest of the purchaser shall not be affected or impaired by~~  
42 ~~the:~~

43 ~~(1) Commingling of funds from energy transition charges with other~~

1 amounts;

2 ~~(2) The retention by the seller of:~~

3 ~~(A) A partial or residual interest, including an equity interest, in the~~

4 ~~energy transition property, whether direct or indirect or whether~~

5 ~~subordinate or otherwise; or~~

6 ~~(B) the right to recover costs associated with taxes, franchise fees or~~

7 ~~license fees imposed on the collection of energy transition charges;~~

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

9 ~~(4) any indemnification rights, obligations, or repurchase rights made~~

10 ~~or provided by the seller;~~

11 ~~(5) the obligation of the seller to collect energy transition charges on~~

12 ~~behalf of an assignee;~~

13 ~~(6) the transferor acting as the servicer of the energy transition~~

14 ~~charges or the existence of any contract that authorizes or requires the~~

15 ~~electric public utility, to the extent that any interest in energy transition~~

16 ~~property is sold or assigned, to contract with the assignee or any financing~~

17 ~~party so that the electric public utility will continue to operate the electric~~

18 ~~public utility system to provide service to the assignee's customers, collect~~

19 ~~amounts relating to the energy transition charges for the benefit and~~

20 ~~account of such assignee or financing party, and will account for and remit~~

21 ~~such amounts to or for the account of such assignee or financing party;~~

22 ~~(7) the treatment of the sale, conveyance, assignment, or other~~

23 ~~transfer for tax, financial reporting, or other purposes;~~

24 ~~(8) the granting or providing to bondholders a preferred right to the~~

25 ~~energy transition property or credit enhancement by the electric public~~

26 ~~utility or its affiliates with respect to such energy transition bonds; or~~

27 ~~(9) any application of the adjustment mechanism as provided in~~

28 ~~section 2, and amendments thereto.~~

29 ~~(c) Any right that an electric public utility has in the energy transition~~

30 ~~property before its pledge, sale or transfer or any other right created under~~

31 ~~this section or created in the financing order and assignable under this~~

32 ~~section or assignable pursuant to a financing order is property in the form~~

33 ~~of a contract right or a chose in action. Transfer of an interest in energy~~

34 ~~transition property to an assignee is enforceable only upon the latest of:~~

35 ~~(1) The issuance of a financing order;~~

36 ~~(2) the assignor having rights in such energy transition property or the~~

37 ~~power to transfer rights in such energy transition property to an assignee;~~

38 ~~(3) the execution and delivery by the assignor of transfer documents~~

39 ~~in connection with the issuance of energy transition bonds; and~~

40 ~~(4) the receipt of value for the energy transition property.~~

41 ~~An enforceable transfer of an interest in energy transition property to an~~

42 ~~assignee is perfected against all third parties, including subsequent judicial~~

43 ~~or other lien creditors, when a notice of that transfer has been given by the~~



1 ~~filing of a financing statement in accordance with section 6, and~~  
2 ~~amendments thereto. The transfer is perfected against third parties as of the~~  
3 ~~date of filing.~~

4 ~~(d) The secretary of state shall maintain any financing statement filed~~  
5 ~~to perfect any sale, assignment or transfer of energy transition property~~  
6 ~~under this section in the same manner that the secretary maintains~~  
7 ~~financing statements filed to perfect security interest in collateral owned~~  
8 ~~by transmitting utilities under the code. The filing of any financing~~  
9 ~~statement under this section shall be governed by the provisions regarding~~  
10 ~~the filing of financing statements in the code. The filing of such a~~  
11 ~~financing statement shall be the only method of perfecting a transfer of~~  
12 ~~energy transition property.~~

13 ~~(f)~~ ¶ The priority of a security interest in energy transition property (a)  
14 shall not be affected by the commingling of energy transition charges with  
15 other amounts. Any pledgee or secured party shall have a perfected  
16 security interest in the amount of all energy transition charges that are  
17 deposited in any cash or deposit account of the qualifying electric public  
18 utility in which energy transition charges have been commingled with  
19 other funds and any other security interest that may apply to those funds  
20 shall be terminated when they are transferred to a segregated account for  
21 the assignee or a financing party.

22 ~~(g)~~ ¶ No application of the adjustment mechanism as provided in (b)  
23 section 2, and amendments thereto, shall affect the validity, perfection or  
24 priority of a security interest in or transfer of energy transition property.

25 ~~(h)~~ ¶ If a default or termination occurs under the energy transition (c)  
26 bonds, the financing parties or their representatives may foreclose on or  
27 otherwise enforce their lien and security interest in any energy transition  
28 property as if they were secured parties with a perfected and prior lien  
29 under the code. The commission may order amounts arising from energy  
30 transition charges be transferred to a separate account for the financing  
31 parties' benefit, and the lien and security interest shall apply to such  
32 separate account. On application by or on behalf of the financing parties,  
33 the district court of the county where the electric public utility's  
34 headquarters is located shall order the sequestration and payment to them  
35 of revenues arising from the energy transition charges.

36 New Sec. 8. The description of energy transition property being  
37 transferred to an assignee in a sales agreement, purchase agreement or  
38 other transfer agreement, granted or pledged to a pledgee in a security  
39 agreement, pledge agreement or other security document, or indicated in  
40 any financing statement is only sufficient if such description or indication  
41 refers to the financing order that created the energy transition property and  
42 states that the agreement or financing statement covers all or part of the  
43 property described in the financing order. This section applies to all

1 purported transfers of, and all purported grants or liens or security interests  
2 in, energy transition property, regardless of whether the related sale  
3 agreement, purchase agreement, other transfer agreement, security  
4 agreement, pledge agreement or other security document was entered into  
5 or any financing statement was filed.

6 New Sec. 9. All financing statements referenced in this section are  
7 subject to K.S.A. 84-9-501 through K.S.A. 84-9-527, and amendments  
8 thereto, except that, notwithstanding any provision in such sections to the  
9 contrary, such financing statements shall be effective from filing until  
10 formally terminated of record, and no continuation statements need be  
11 filed to maintain the effectiveness of such financing statements.

12 New Sec. 10. The law governing validity, enforceability, attachment,  
13 perfection, priority and exercise of remedies with respect to the transfer of  
14 an interest or right or the pledge or creation of security interest in any  
15 energy transition property shall be the laws of this state.

16 New Sec. 11. Neither the state nor any of its political subdivisions,  
17 agencies or instrumentalities shall be liable on any energy transition bonds,  
18 and the bonds shall not be considered a debt or a general obligation of the  
19 state nor any political subdivisions, agencies or instrumentalities, nor shall  
20 they be considered a special obligation or indebtedness of the state or any  
21 state agency or political subdivision. An issue of energy transition bonds  
22 does not, directly, indirectly or contingently, obligate the state, nor any  
23 political subdivisions, agencies or instrumentalities of the state, to levy any  
24 tax or make any appropriation for payment of the energy transition bonds,  
25 other than in their capacity as consumers of electricity. All energy  
26 transition bonds shall contain on the face thereof a statement to the  
27 following effect: "Neither the full faith and credit nor the taxing power of  
28 the State of Kansas is pledged to the payment of the principal of, or  
29 interest on, this bond."

30 New Sec. 12. The following entities may legally invest any sinking  
31 funds, moneys or other funds in energy transition bonds:

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

37 (b) banks and bankers, savings and loan associations, credit unions,  
38 trust companies, savings banks and institutions, investment companies,  
39 insurance companies, insurance associations, and other persons carrying  
40 on a banking or insurance business;

41 (c) personal representatives, guardians, trustees, and other fiduciaries;  
42 or

43 (d) all other persons authorized to invest in bonds or other obligations

1 of a similar nature.

2 New Sec. 13. (a) The state and its agencies, including the  
3 commission, hereby pledge and agree with bondholders, the owners of the  
4 energy transition property and other financing parties that the state and its  
5 agencies shall not take any action listed in this section. This subsection  
6 does not preclude limitation or alteration if full compensation is made by  
7 law for the full protection of the energy transition charges collected  
8 pursuant to a financing order and of the bondholders and any assignee or  
9 financing party entering into a contract with the electric public utility. The  
10 prohibited actions are as follows:

11 (1) Altering the provisions of this section that authorize the  
12 commission to create an irrevocable contract right or chose in action by  
13 the issuance of a financing order, to create energy transition property and  
14 to make the energy transition charges imposed by a financing order  
15 irrevocable, binding or nonbypassable charges for all existing and future  
16 retail customers within the service area of the electric public utility;

17 (2) taking or permitting any action that impairs or would impair the  
18 value of energy transition property or the security for the energy transition  
19 bonds or revises the energy transition costs for which recovery is  
20 authorized;

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

23 (4) except for changes made pursuant to the adjustment mechanism  
24 authorized under this section, reducing altering, or impairing energy  
25 transition charges that are to be imposed, billed, charged, collected and  
26 remitted for the benefit of the bondholders, any assignee and any other  
27 financing parties until any and all principal, interest, premium, financing  
28 costs and other fees, expenses or charges incurred and any contracts to be  
29 performed in connection with the related energy transition bonds have  
30 been paid and performed in full.

31 (b) Any person or entity that issues energy transition bonds may  
32 include the language specified in this section in the energy transition bonds  
33 and related documentation.

34 (c) An assignee or financing party shall not be considered a public  
35 utility, an electric public utility or person providing electric service by  
36 virtue of engaging in the transactions described in this section.

37 (d) If there is a conflict between this section and any other law  
38 regarding the attachment, assignment, perfection, effect of perfection or  
39 priority of, assignment or transfer of or security interest in energy  
40 transition property, this section shall govern.

41 (e) If any provision of this section is held invalid or is invalidated,  
42 superseded, replaced, repealed or expires for any reason, such occurrence  
43 does not affect the validity of any action allowed under this section that is

1 taken by an electric public utility, an assignee, a financing party, a  
2 collection agent or a party to an ancillary agreement, and any such action  
3 remains in full force and effect with respect to all energy transition bonds  
4 issued or authorized in a financing order issued under this section before  
5 the date that such provision is held invalid or is invalidated, superseded,  
6 replaced, repealed or expires for any reason.

7 New Sec. 14. An electric public utility has sole discretion to  
8 determine the method in which it expends or invests the proceeds received  
9 from the issuance of energy transition bonds. Nothing in the Kansas grid  
10 resiliency, innovation and dependability act shall be construed to restrict  
11 the ability of the electric public utility from investing the proceeds in  
12 electric infrastructure as the utility deems necessary for it to continue to  
13 meet its obligations of providing reasonably efficient and sufficient service  
14 pursuant to K.S.A. 66-101b, and amendments thereto. If the electric  
15 public utility invests in electric infrastructure, the commission shall review  
16 these investments using its regular processes for consideration and  
17 ratemaking determination of electric infrastructure investments. This  
18 review may take place as part of an application for predetermination filed  
19 pursuant to K.S.A. 66-1239, and amendments thereto, or as part of any  
20 other ratemaking process established by the commission pursuant to  
21 chapter 66 of the Kansas Statutes Annotated, and amendments thereto.

22  
23 Sec. 15. K.S.A. 66-1239 is hereby amended to read as follows: 66-  
24 1239. (a) As used in this section:

- 25 (1) "Commission" means the state corporation commission;  
26 (2) "contract" means a public utility's contract for the purchase of  
27 electric power in the amount of at least \$5,000,000 annually;  
28 (3) "generating facility" means any electric generating plant or  
29 improvement to existing generation facilities;  
30 (4) "stake" means a public utility's whole or fractional ownership  
31 share or leasehold or other proprietary interest in a generating facility or  
32 transmission facility;  
33 (5) "public utility" has the meaning provided by K.S.A. 66-104, and  
34 amendments thereto; and  
35 (6) "transmission facility" means:  
36 (A) Any existing line, and supporting structures and equipment, being  
37 upgraded for the transfer of electricity with an operating voltage of 34.5  
38 kilovolts or more of electricity; or  
39 (B) any new line, and supporting structures and equipment, being  
40 constructed for the transfer of electricity with an operating voltage of 230  
41 kilovolts or more of electricity.  
42 (b) (1) Prior to undertaking the construction of, or participation in, a  
43 transmission facility, a public utility may file with the commission a

1 petition for a determination of the rate-making principles and treatment, as  
2 proposed by the public utility, that will apply to the recovery in wholesale  
3 or retail rates of the cost to be incurred by the public utility to acquire such  
4 public utility's stake in the transmission facility during the expected useful  
5 life of the transmission facility.

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

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

14 (4) If the commission fails to issue a determination within 180 days  
15 of the date a petition for a determination of rate-making principles and  
16 treatment is filed, the rate-making principles and treatment proposed by  
17 the petitioning public utility will be deemed to have been approved by the  
18 commission and shall be binding for rate-making purposes during the  
19 useful life of the transmission facility.

20 (5) If the commission does not have jurisdiction to set wholesale rates  
21 for use of the transmission facility the commission need not consider rate-  
22 making principles and treatment for wholesale rates for the transmission  
23 facility.

24 (c) (1) Prior to undertaking the construction of, or participation in, a  
25 generating facility or prior to entering into a new contract, a public utility  
26 may file with the commission ~~a petition~~ *an application* for a determination  
27 of the rate-making principles and treatment, as proposed by the public  
28 utility, that will apply to:

or prior to retiring or abandoning a generating facility or within a reasonable  
time after retirement or abandonment if filing before retirement or  
abandonment is not possible under the circumstances,

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

33 (B) *reflection in wholesale or retail rates of the costs to be incurred*  
34 *and the cost savings to be achieved by the public utility in retiring* such  
35 *public utility's stake in the generating facility, including, but not limited to,*  
36 *the reasonableness of such retirement!*

or abandoning

or abandonment

37 (2) Any utility seeking a determination of rate-making principles and  
38 treatment under subsection (c)(1) shall as a part of its filing submit the  
39 following information:

- 40 (A) A description of the public utility's conservation measures;
- 41 (B) a description of the public utility's demand side management
- 42 efforts;
- 43 (C) the public utility's ten-year generation and load forecasts; and

1 (D) a description of all power supply alternatives considered to meet  
2 the public utility's load requirements.

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

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

12 (A) The generating facility is placed in service or the term of the  
13 contract commences; *or*

or abandoned

14 (B) ~~the generating facility is retired.~~

15 (5) The commission in all proceedings in which the cost of the public  
16 utility's stake in the generating facility or the cost of the purchased power  
17 under the contract is considered shall utilize the rate-making principles and  
18 treatment applicable to the generating facility or contract *or retired*  
19 *generating facility.*

or abandoned

20 (6) If the commission fails to issue a determination within 180 days  
21 of the date a petition for a determination of rate-making principles and  
22 treatment is filed, the rate-making principles and treatment proposed by  
23 the petitioning public utility will be deemed to have been approved by the  
24 commission and shall be binding for rate-making purposes during the  
25 useful life of the generating facility or during the term of the contract *or*  
26 *during the period when the cost of the retired* ~~generating facility is~~  
27 *reflected in customer rates.*

or abandoned

28 (d) The public utility shall have one year from the effective date of  
29 the determination of the commission to notify the commission whether it  
30 will construct or participate in the construction of the generating or  
31 transmission facility or whether it will perform under terms of the contract.

or whether it will retire or abandon the generating facility

32 (e) If the public utility notifies the commission within the one-year  
33 period that the public utility will not construct or participate in the  
34 construction of the generating or transmission facility or that it will not  
35 perform under the terms of the contract, then the determination of rate-  
36 making principles pursuant to subsection (b) or (c) shall be of no further  
37 force or effect, shall have no precedential value in any subsequent  
38 proceeding, and there shall be no adverse presumption applied in any  
39 future proceeding as a result of such notification.

or that it will not retire or abandon the generating facility

40 (f) If the public utility notifies the commission under subsection (d)  
41 that it will construct or participate in a generating facility or purchase  
42 power contract and subsequently does not, it will be required to notify the  
43 commission immediately and file an alternative supply plan with the

or that it will retire or abandon a generating facility and subsequently does not

1 commission per subsection (c) within 90 days.

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

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

7 (2) an agricultural lien;

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

10 (4) a consignment;

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

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

17 (b) **Security interest in secured obligation.** The application of this  
18 article to a security interest in a secured obligation is not affected by the  
19 fact that the obligation is itself secured by a transaction or interest to which  
20 this article does not apply.

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

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

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

28 (3) a statute of another state, a foreign country, or a governmental unit  
29 of another state or a foreign country, other than a statute generally  
30 applicable to security interests, expressly governs creation, perfection,  
31 priority, or enforcement of a security interest created by the state, country,  
32 or governmental unit; or

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

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

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

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

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

43 (4) a sale of accounts, chattel paper, payment intangibles, or

- 1 promissory notes as part of a sale of the business out of which they arose;
- 2 (5) an assignment of accounts, chattel paper, payment intangibles, or  
3 promissory notes which is for the purpose of collection only;
- 4 (6) an assignment of a right to payment under a contract to an  
5 assignee that is also obligated to perform under the contract;
- 6 (7) an assignment of a single account, payment intangible, or  
7 promissory note to an assignee in full or partial satisfaction of a  
8 preexisting indebtedness;
- 9 (8) a transfer of an interest in or an assignment of a claim under a  
10 policy of insurance, other than an assignment by or to a health-care  
11 provider of a health-care-insurance receivable and any subsequent  
12 assignment of the right to payment, but K.S.A. 2020 Supp. 84-9-315 and  
13 84-9-322, and amendments thereto, apply with respect to proceeds and  
14 priorities in proceeds;
- 15 (9) an assignment of a right represented by a judgment, other than a  
16 judgment taken on a right to payment that was collateral;
- 17 (10) a right of recoupment or set-off, but:
- 18 (A) K.S.A. 2020 Supp. 84-9-340, and amendments thereto, applies  
19 with respect to the effectiveness of rights of recoupment or set-off against  
20 deposit accounts; and
- 21 (B) K.S.A. 2020 Supp. 84-9-404, and amendments thereto, applies  
22 with respect to defenses or claims of an account debtor;
- 23 (11) the creation or transfer of an interest in or lien on real property,  
24 including a lease or rents thereunder, except to the extent that provision is  
25 made for:
- 26 (A) Liens on real property in K.S.A. 2020 Supp. 84-9-203 and 84-9-  
27 308, and amendments thereto;
- 28 (B) fixtures in K.S.A. 2020 Supp. 84-9-334, and amendments thereto;
- 29 (C) fixture filings in K.S.A. 2020 Supp. 84-9-501, 84-9-502, 84-9-  
30 512, 84-9-516 and 84-9-519, and amendments thereto; and
- 31 (D) security agreements covering personal and real property in  
32 K.S.A. 2020 Supp. 84-9-604, and amendments thereto;
- 33 (12) an assignment of a claim arising in tort, other than a commercial  
34 tort claim, but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and  
35 amendments thereto, apply with respect to proceeds and priorities in  
36 proceeds;
- 37 (13) an assignment of a deposit account in a consumer transaction,  
38 but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and amendments thereto,  
39 apply with respect to proceeds and priorities in proceeds;
- 40 (14) an assignment of rights in or under:
- 41 (A) A claim or right to receive benefits under any workers  
42 compensation, industrial accident or similar statute or regulation which  
43 provides benefits for occupational injury or illness; or



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

4 (15) a transfer by a government ~~or, governmental agency or~~  
5 subdivision *or agency; or*

6 (16) *the creation, perfection, priority or enforcement of any sale,*  
7 *assignment of, pledge of, security interest in or other transfer of any*  
8 *interest in, right or portion of any interest or right in any energy transition*  
9 *property as defined in section 1, and amendments thereto, of the Kansas*  
10 *grid resiliency, innovation and dependability act except as otherwise*  
11 *expressly provided in such act.*

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

14 Sec. 18. This act shall take effect and be in force from and after its  
15 publication in the statute book.