

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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300 SW TENTH AVENUE • SUITE 24-E • TOPEKA, KS 66612 • (785) 296-2321

**MEMORANDUM**

To: Chairman Masterson and Members of Committee on Utilities  
From: Office of Revisor of Statutes  
Date: March 12, 2020  
RE: Senate Bill 437

SB 437 would create the Kansas Electricity Bill Reduction Bonds Act and give the Kansas Corporation Commission the authority to authorize the issuance of electric ratepayer-backed securitized bonds in order to finance the retirement of existing generating assets and any necessary replacement generation facilities for any for-profit electric public utility whose retail rates are subject to KCC jurisdiction.

**Section 1** of the bill states that the purpose of the act is to authorize the issuance of low-cost securitized ratepayer-backed bonds, the proceeds of which must be used solely:

- (1) To lower rates paid by electric utility customers by reducing financing costs of certain property of Kansas electric utilities;
- (2) to provide transition assistance to Kansas communities and electric generation facility workers that are directly impacted by the retirement of electric generation facilities;
- (3) to make available capital investment for new cost-effective facilities and services needed to reliably serve electric utility customers, including least-cost electric generation facilities, storage, and other supply-side and demand-side resources; and
- (4) for use by the commission and the review by independent credit rating agencies that is necessary to achieve the highest possible bond ratings.

**Section 2** of the bill provides definitions used in the Act.

- “Electric utility” means a for-profit electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, whose retail rates are subject to the jurisdiction of the commission.
- Financing order” means an order of the commission issued pursuant to this act that grants, in whole or in part, an application filed pursuant to this act and that authorizes the issuance of K-EBRA bonds in one or more series, the imposition, charging and collection of K-EBRA charges, and the creation of K-EBRA property. In a financing order, the commission may include any conditions that are necessary to promote the public interest and may grant relief that is different from that which was requested in the application, so long as the relief is within the scope of the matters addressed in the commission's notice of the application.

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- K-EBRA bonds" means low-cost corporate securities, such as senior secured bonds, debentures, notes, certificates of participation certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership, the proceeds of which are used to recover, finance or refinance commission-approved K-EBRA costs and financing costs, including assistance to affected workers and communities, that are secured by or payable from K-EBRA property, and that: (1) Have a scheduled maturity of no longer than 30 years and a final legal maturity date that is not later than 32 years from the issue date; (2) are rated AA or AA2 or better by a major independent credit rating agency at the time of issuance; and (3) are issued by an electric utility or an assignee pursuant to a financing order. If certificates of participation or ownership are issued, references in this act to principal, interest or premium refer to comparable amounts under those certificates.

**Section 3** of the bill allows an electric utility to apply to the Kansas Corporation Commission for a financing order as authorized by this act and for approval to: (1) Issue K-EBRA bonds; (2) impose and collect K-EBRA charges; and (3) create K-EBRA property related to the retirement of property of an electric utility that is currently included in the rate base of utility.

**Section 4** of the bill provides for the KCC to issue a financing order if the KCC finds that the:

- (1) K-EBRA costs described in the application are reasonable;
- (2) proposed issuance of K-EBRA bonds and the collection of K-EBRA charges will result in just and reasonable electric rates, are consistent with the public interest, constitute a reasonable mechanism for the financing of the K-EBRA costs described in the application, and will result in lower retail electric rates when also considering new electric utility investments using K-EBRA bond proceeds; and
- (3) proposed K-EBRA bonds are reasonably expected to lower costs to customers or mitigate rate impacts to customers relative to traditional methods of financing.

For the KCC to approve a financing order, the order shall:

- (1) Determine the maximum amount of K-EBRA costs that may be financed;
- (2) remove the electric utility property proposed to be financed by K-EBRA bonds from the electric utility's rate base;
- (3) allow for recovery on the remaining rate base;
- (4) describe the proposed customer billing mechanism for K-EBRA charges;
- (5) describe the financing costs that may be recovered and the K-EBRA property that is created;
- (6) authorize the electric utility to finance K-EBRA costs through the issuance of K-EBRA bonds;
- (7) include a mechanism for making adjustments in the K-EBRA charges;
- (8) include any additional findings or conclusions deemed appropriate by the KCC;
- (9) specify the degree of flexibility afforded to the electric utility in establishing the terms and conditions of the K-EBRA bonds; and
- (10) specify the timing of actions required by the order.

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Any KCC expenses incurred for expert advisors, counsel and consulting services under the act would be included as part of the financing costs and included in the K-EBRA charges or other rates the KCC deems appropriate.

**Section 5** of the bill provides that a financing order would remain in effect until the K-EBRA bonds had been paid in full. A financing order would be irrevocable and the KCC could not reduce, impair, postpone or terminate K-EBRA charges approved in an order or impair K-EBRA property or the collection or recovery of K-EBRA revenue. However, upon motion by the KCC, or at the request of an electric utility or any other person, the KCC could commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring or refunding K-EBRA bonds issued pursuant to the original financing order if the KCC makes all of the findings specified with respect to the subsequent financing order and the modification provided for in the subsequent financing order does not impair the K-EBRA bonds to be refinanced, retired or refunded.

**Section 6** of the bill provides that the KCC shall not: Consider the K-EBRA bonds issued pursuant to the financing order to be debt of the electric utility other than for income tax purposes, consider the K-EBRA charges paid under the financing order to be revenue of the electric utility, consider the K-EBRA costs or financing costs specified in the financing order to be the regulated costs or assets of the electric utility, or determine any prudent action taken by an electric utility that is consistent with the financing order to be unjust or unreasonable.

The KCC would still have the authority to: Apply or modify any billing mechanism designed to recover K-EBRA charges, investigate an electric utility for compliance with the financing order, and to impose regulatory sanctions against an electric utility for failure to comply with a financing order or the requirements of this act.

The KCC could not refuse to allow the recovery of any costs associated with the retirement of electric generation facilities by an electric utility solely because the electric utility has elected to finance those activities through a financing mechanism other than K-EBRA bonds.

**Section 7** of the bill would provide that the KCC could: Attach conditions to a financing order to maximize the financial benefits, specify details of the process used to market and price the K-EBRA bonds, review and determine the reasonableness of all proposed up-front and ongoing financing costs, and ensure that the marketing and pricing of K-EBRA bonds maximizes customer savings.

The bill would require that within 120 days of the issuance of K-EBRA bonds, the applicant would file with the KCC information regarding the financing costs of the K-EBRA bonds. The KCC would review the prudence of the electric utility's action to determine whether the costs resulted in the lowest overall costs that were reasonably consistent with both market conditions at the time of the sale of the K-EBRA bonds and the terms of the financing order. If the KCC determined that the electric utility's actions were not prudent, the KCC could apply any remedies within the KCC's authority that would not impair the security of the K-EBRA bonds. In performing the KCC's responsibilities under the act, the Commission would be required to engage outside financial advisors and other consultants and counsel with substantial experience representing regulatory bodies in securitized investor-owned electric utility ratepayer-backed bond financing similar to K-EBRA bonds.

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If an electric utility's application for a financing order is denied or withdrawn or for any reason no K-EBRA bonds are issued, the KCC's costs of consultants and counsel shall be paid by the electric utility and shall be considered by the KCC as a prudent deferred expense for recovery in the electric utility's future rates. The issuance of the financing bond shall be administered by the KCC and they may consult with other state agencies for expertise in implementing the policy goals of the act.

**Section 8** of the bill provides that a financing order is a final order of the KCC. A party aggrieved by the issuance of a financing order may petition for suspension and review of the financing order only in the Kansas western district court of appeals. In the case of any petition for suspension and review, the court would determine the action as expeditiously as practicable and would give the action precedence over other matters.

**Section 9** of the bill provides that the electric bills of an electric utility that has obtained a financing order and caused K-EBRA bonds to be issued would: Include the K-EBRA charges on each customer's bill as a separate line item titled "energy bill reduction assistance charge" and may include both the rate and the amount of the charge on each bill, and explain to customers in an annual filing with the KCC the rate impact on customer rates. An electric utility that has obtained a financing order and caused K-EBRA bonds to be issued must demonstrate in an annual filing with the KCC that K-EBRA revenues are applied solely to the repayment of K-EBRA bonds and other financing costs.

**Section 10** of the bill provides that K-EBRA property that is described in a financing order constitutes an existing present property right or interest in an existing present property right. K-EBRA property described in a financing order exists until all K-EBRA bonds issued pursuant to the financing order are paid in full. The interest in K-EBRA property specified in a financing order issued to an electric utility and in the revenue and collections arising from that property would not be subject to setoff. A successor to an electric utility shall perform and satisfy all obligations of and has the same duties and rights under a financing order, as the electric utility to which the financing order applies.

**Sections 11, 13, and 14** of the bill concern the investment, creation and securitization, sale or transfer, of K-EBRA bonds and property.

**Section 12** states that if the provisions of this act conflict with other provisions of law, this act governs.

**Section 15** of the bill provides that an electric utility may expend or invest K-EBRA bond proceeds in a manner that benefits ratepayer interests to: Purchase power to replace electricity generated by the electric generation facilities that were retired, build and own generation facilities that are least-cost generation resources as determined by the KCC, build or own electricity storage capacity to the extent that such investment is either required by law or is needed to increase the amount of least-cost generation resources that the electric utility is able to add to such utility's generation portfolio, help customers invest in energy efficiency, and invest in network modernization.