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MEMORANDUM

To: Senate Committee on Financial Institutions and Insurance

From: Office of Revisor of Statutes

Date: February 18, 2021

Subject: Bill Brief for SB 245

SB 245 would enact the Kansas Grid Resiliency Innovation and Dependability Act, which would allow the Kansas Corporation Commission to authorize the approval and issuance of energy transition bonds in order to recoup certain costs related to a retired, abandoned or soon-to-be abandoned energy generating facility. SB 245 would enact 14 new provisions of law and amend K.S.A. 66-1239, and K.S.A. 2020 Supp. 84-9-109.

Section 1 of the bill provides the citation to the act and defines the key terms and phrases used throughout the act.

Section 2 of the bill enumerates the specific requirements and information that flow between the Commission and the electric public utility during the electric public utility's application process for the financing order. The section describes the information that must be included with the application, the criteria that the Commission uses to determine whether to issue a financing order, and the elements that must be included in a financing order. Section 2 also discusses the Commission's actions that go into effect once the energy transition bonds have been issued and the duties and responsibilities that fall upon the public energy utility after the Commission issues the financing order. Section 2 also specifies that the Commission may engage a financial advisor and counsel as the Commission deems necessary, with the attendant expenses associated with retaining such advisor and counsel added to the financing costs of the energy transition bonds. Finally, Section 2 provides for judicial review for any adversely affected party.

Section 3 states the limitations placed on the Commission with regard to matters relating to the financing order, energy transition charges, and energy transition bonds.

Section 4 specifies how energy transition charges are shown on customer electric bills.

Section 5 states that the nature of energy transition property specified in a financing order constitutes a present intangible property right, or interest therein. The section also provides that all or any portion of energy transition property specified in a financing order issued to an electric public utility may be transferred, sold, conveyed or assigned to a successor or assignee that is wholly owned by the electric public utility and created for the limited purpose of acquiring, owning or administering energy transition property or issuing energy transition bonds under the financing order. The bill also provides that if an electric public utility defaults on any required remittance of energy transition property specified in a financing order, a court shall order the sequestration and payment of the revenues arising from the energy transition property to the financing parties or other insolvency proceedings with respect to the electric public utility or its successors or assignees.

Section 6 describes the security interest that is created, perfected and enforced in the energy transition property to secure the principal and interest and other amounts payable with respect to energy transition bonds, amounts payable under other ancillary agreements and other financing costs. The section lists the conditions under which the security interest may be created, and states that the security interest will attach without physical delivery of collateral or other act, and upon filing of a financing statement with the office of the Secretary of State, the lien of the security interest becomes perfected against all parties having claims of any kind in tort, contract or otherwise.

Section 7 states that any sale, assignment or other transfer of energy transition property shall be an absolute transfer and true sale of such property, and not a pledge of or secured transaction relating to the seller's right, title and interest in, to and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes. The section lists the conditions under which a transfer of an interest in energy transition property may only occur, the factors that will not affect the characterization of the sale, assignment or other transfer as an absolute transfer and true sale, and the conditions under which a transfer of an interest in energy transition property may be enforced.

Section 8 states what must be included in the description of energy transition property.

Section 9 states that financing statements are subject to certain provisions of the UCCC, and that financing statements shall be effective from filing until termination without the need for continuation statements to be filed.

Section 10 is a choice of law clause, stating that the laws of the State of Kansas shall govern over the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any energy transition property.

Section 11 provides that energy transition bonds shall not be considered debts of the State and neither the state nor any political subdivision thereof shall be liable for such bonds.

Section 12 provides for who may invest in energy transition bonds.

Section 13 states that the State shall not take any of the actions listed in the section, essentially pledging not to impair the value of the energy transition property, the energy transition charges, or the rights and remedies of bondholders, assignees or other financing parties.

Section 14 states that the electric public utility has sole discretion to determine how it expands or invests the proceeds received from the issuance of energy transition bonds.

Section 15 amends K.S.A. 66-1239, pertaining to electric generating or transmission facilities and the determination of rate-making principles and treatments. SB 245 would amend subsection (c) of the statute to require that, prior to undertaking the construction of, or participation in, a generating facility or prior to entering into a new contract, a public utility may file an application with the Commission for a determination of the rate-making principles and treatment, as proposed by the public utility that will apply to reflection in wholesale or retail rates of the costs to be incurred and the cost savings to be achieved by the public utility in retiring such public utility's stake in the generating facility, including, but not limited to, the reasonableness of such retirement. The Commission will then issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the generating facility or to the contract in all rate-making proceedings on and after such time that the generating facility is retired.

Section 16 amends K.S.A. 84-9-109, pertaining to the scope of Article 9 of the Uniform Commercial Code. The amendment to this statute would add the creation, perfection, priority, or enforcement of any sale, assignment of, pledge of, security interest in or other transfer of any interest

in, right or portion of any interest or right in any energy transition property under the Kansas grid resilience, innovation and dependability act.