

By Senator Constantine

22-1258C-05

1 A bill to be entitled
2 An act relating to storm infrastructure
3 recovery; creating s. 366.8260, F.S.; providing
4 definitions; authorizing electric utilities to
5 petition the Florida Public Service Commission
6 for certain financing orders for certain
7 storm-recovery purposes; providing
8 requirements; providing powers and duties of
9 the commission in issuing such orders;
10 specifying procedures and requirements for the
11 commission in issuing financing orders;
12 authorizing electric utilities to create
13 storm-recovery property; providing for pledge
14 of storm-recovery property to secure
15 storm-recovery bonds; providing for retirement
16 of storm-recovery bonds under certain
17 circumstances; providing for judicial review of
18 such orders; providing for effect of such
19 orders; providing exceptions to commission
20 jurisdiction to issue financing orders;
21 providing limitations; prohibiting the
22 commission from requiring use of storm-recovery
23 bonds for certain purposes; specifying duties
24 of electric utilities; specifying properties,
25 requirements, permissible activities, and
26 limitations relating to storm-recovery property
27 under certain circumstances; providing for
28 security interests in storm-recovery property;
29 providing for perfecting security interests in
30 storm-recovery property; providing for priority
31 of and resolution of conflicting interests;

1 providing requirements, procedures, and
2 limitations for sale, assignment, or transfer
3 of storm-recovery property; providing
4 requirements for descriptions or indications of
5 storm-recovery property transferred, granted,
6 or pledged, or indicated in a financing
7 statement; subjecting financing statements to
8 certain provisions of law; specifying that
9 storm-recovery bonds are not public debt;
10 specifying storm-recovery bonds as legal
11 investments for certain entities; specifying
12 certain state pledges relating to bondholders;
13 providing a tax exemption for certain revenues
14 collected by electric utilities under certain
15 circumstances; declaring certain entities as
16 not electric utilities under certain
17 circumstances; specifying effect of certain
18 provisions in situations of conflict; providing
19 for protecting validity of certain bonds under
20 certain circumstances; limiting commission
21 authority to issue certain financing orders
22 after a time certain; amending s. 679.1091,
23 F.S.; specifying nonapplication of secured
24 transactions provisions of the Uniform
25 Commercial Code to interests in storm-recovery
26 property; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Section 366.8260, Florida Statutes, is
31 created to read:

1 366.8260 Storm-recovery financing.--

2 (1) DEFINITIONS.--As used in this section, the term:

3 (a) "Ancillary agreement" means any bond, insurance
4 policy, letter of credit, reserve account, surety bond, swap
5 arrangement, hedging arrangement, liquidity or credit support
6 arrangement, or other financial arrangement entered into in
7 connection with the issuance of storm-recovery bonds.

8 (b) "Assignee" means any entity, including, but not
9 limited to, a corporation, limited liability company,
10 partnership or limited partnership, public authority, trust,
11 financing entity, or other legally recognized entity to which
12 an electric utility assigns, sells, or transfers, other than
13 as security, all or a portion of its interest in or right to
14 storm-recovery property. The term also includes any entity to
15 which an assignee assigns, sells, or transfers, other than as
16 security, its interest in or right to storm-recovery property.

17 (c) "Commission" means the Florida Public Service
18 Commission.

19 (d) "Electric utility" or "utility" has the same
20 meaning as that provided in s. 366.8255.

21 (e) "Financing costs" means:

22 1. Interest and acquisition, defeasance, or redemption
23 premiums that are payable on storm-recovery bonds;

24 2. Any payment required under an ancillary agreement;

25 3. Any other cost related to issuing, supporting,
26 repaying, and servicing storm-recovery bonds, including, but
27 not limited to, servicing fees, accounting and auditing fees,
28 trustee fees, legal fees, consulting fees, administrative
29 fees, placement and underwriting fees, capitalized interest,
30 rating agency fees, stock exchange listing and compliance

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1 fees, and filing fees, including costs related to obtaining
2 the financing order;

3 4. Any taxes and license fees imposed on the revenues
4 generated from the collection of storm-recovery charges; or

5 5. Any income taxes resulting from the collection of
6 storm-recovery charges net of tax deductions.

7 (f) "Financing order" means an order under subsection
8 (2) which allows for the issuance of storm-recovery bonds, the
9 imposition, collection, and periodic adjustments of
10 storm-recovery charges, and the creation of storm-recovery
11 property.

12 (g) "Financing party" means holders of storm-recovery
13 bonds and trustees, collateral agents, or other persons acting
14 for the benefit of holders of storm-recovery bonds.

15 (h) "Financing statement" has the same meaning as that
16 provided in Article 9 of the Uniform Commercial Code.

17 (i) "Pledgee" means a financing party to which an
18 electric utility or its successors or assignees mortgages,
19 negotiates, hypothecates, pledges, or creates a security
20 interest or lien on all or any portion of its interest in or
21 right to storm-recovery property.

22 (j) "Storm" means a named tropical storm or hurricane
23 that occurred during calendar year 2004 or thereafter.

24 (k) "Storm-recovery activity" means any activity or
25 activities by or on behalf of an electric utility in
26 connection with the restoration of service associated with
27 electric power outages affecting customers of an electric
28 utility as the result of a storm or storms, including, but not
29 limited to, mobilization, staging, and construction,
30 reconstruction, replacement, or repair of electric generation,
31 transmission, or distribution facilities.

1 (l) "Storm-recovery bonds" means bonds, debentures,
2 notes, certificates of participation, certificates of
3 beneficial interest, certificates of ownership, or other
4 evidences of indebtedness or ownership that are issued by an
5 electric utility or an assignee pursuant to and in compliance
6 with a financing order, the proceeds of which are used
7 directly or indirectly to recover, finance, or refinance
8 commission-approved storm-recovery costs, financing costs,
9 costs to replenish the storm-recovery reserve to the level
10 that existed before the storm or storms, or such other level
11 as the commission may authorize in a financing order, and that
12 are secured by or payable from storm-recovery property.

13 (m) "Storm-recovery charge" means the amounts
14 authorized by the commission to recover, finance, or refinance
15 storm-recovery costs, financing costs, costs to replenish the
16 storm-recovery reserve to the level that existed before the
17 storm or storms, or such other level as the commission may
18 authorize in a financing order, or as provided for in a
19 financing order to be imposed on all customer bills and
20 collected by an electric utility or its successors or
21 assignees, or a collection agent, in full through a charge
22 that is separate and apart from the electric utility's base
23 rates, which charge shall be paid by all customers receiving
24 transmission or distribution service from the electric utility
25 or its successors or assignees under commission-approved rate
26 schedules or under special contracts, even if the customer
27 elects to purchase electricity from an alternative electricity
28 supplier following a fundamental change in regulation of
29 public utilities in this state.

30 (n) "Storm-recovery costs" means, at the option and
31 request of the electric utility, and as approved by the

1 commission pursuant to sub-subparagraph (2)(b)1.b., costs
2 incurred or to be incurred by an electric utility in
3 undertaking a storm-recovery activity, net of applicable
4 insurance proceeds and normal capital replacement costs, which
5 may include the costs to finance any deficiency or
6 deficiencies in storm-recovery reserves until such time as
7 storm-recovery bonds are issued, and costs of retiring any
8 existing indebtedness relating to storm-recovery activities.

9 (o) "Storm-recovery property" means:

10 1. All rights and interests of an electric utility or
11 successor or assignee of the electric utility under a
12 financing order, including the right to impose, bill, collect,
13 and receive storm-recovery charges authorized in the financing
14 order and to obtain periodic adjustments to such charges as
15 provided in the financing order.

16 2. All revenues, collections, claims, rights to
17 payments, payments, money, or proceeds arising from the rights
18 and interests specified in subparagraph 1., regardless of
19 whether such revenues, collections, claims, rights to payment,
20 payments, money, or proceeds are imposed, billed, received,
21 collected, or maintained together with or commingled with
22 other revenues, collections, rights to payment, payments,
23 money, or proceeds.

24 (p) "Storm-recovery reserve" means an electric utility
25 storm reserve or such other similar reserve established by law
26 or rule or pursuant to order of the commission.

27 (q) "Uniform Commercial Code" has the same meaning as
28 that provided in s. 671.101.

29 (2) FINANCING ORDERS.--
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1 (a) An electric utility may petition the commission
2 for a financing order. For each petition, the electric utility
3 shall:

4 1. Describe the storm-recovery activities that the
5 electric utility has undertaken or proposes to undertake and
6 describe the reasons for undertaking the activities.

7 2. Set forth the known storm-recovery costs and
8 estimate the costs of any storm-recovery activities that are
9 not completed, or for which the costs are not yet known, as
10 identified and requested by the electric utility.

11 3. Set forth the amount of storm-recovery reserve that
12 the utility has determined would be appropriate to recover
13 through storm-recovery bonds and is seeking to so recover and
14 the amount of storm-recovery reserves that the utility is
15 funding or will seek to fund through other means, together
16 with a description of the factors and calculations used in
17 determining the amounts and methods of recovery.

18 4. Indicate whether the electric utility proposes to
19 finance all or a portion of the storm-recovery costs and the
20 storm-recovery reserve with storm-recovery bonds. If the
21 electric utility proposes to finance a portion of such costs,
22 the electric utility shall identify that portion in the
23 petition.

24 5. Estimate the financing costs related to the
25 storm-recovery bonds proposed under subparagraph 4.

26 6. Estimate the storm-recovery charges necessary to
27 recover the storm-recovery costs, financing costs, and
28 storm-recovery reserve and the period for recovery of such
29 costs.

30 7. Estimate any cost savings or demonstrate how it
31 would avoid or significantly mitigate rate impacts to

1 customers resulting from financing storm-recovery costs with
2 storm-recovery bonds as opposed to the traditional method of
3 recovering such costs from customers and through alternative
4 financing methods available to the electric utility.

5 8. File with the petition direct testimony supporting
6 the petition.

7 (b)1. Proceedings on a petition submitted pursuant to
8 paragraph (a) shall begin with a petition by an electric
9 utility and shall be disposed of in accordance with the
10 provisions of chapter 120 and applicable rules, except that
11 the provisions of this section, to the extent applicable,
12 shall control.

13 a. Within 7 days after the filing of a petition, the
14 commission shall publish a case schedule, which schedule shall
15 place the matter before the commission on an agenda that will
16 permit a commission decision no later than 120 days after the
17 date the petition is filed.

18 b. No later than 135 days after the date the petition
19 is filed, the commission shall issue a financing order or an
20 order rejecting the petition. A party to the commission
21 proceeding may petition the commission for reconsideration of
22 the financing order within 5 days after the date of its
23 issuance. The commission shall issue a financing order
24 authorizing financing of reasonable and prudent storm-recovery
25 costs, financing costs, and the storm-recovery reserve amount
26 determined appropriate by the commission if the commission
27 finds that the issuance of the storm-recovery bonds and the
28 imposition of storm-recovery charges authorized by the order
29 are reasonably expected to result in lower overall costs or
30 would avoid or significantly mitigate rate impacts to
31 customers as compared with alternative methods of financing or

1 recovering storm-recovery costs and storm-recovery reserves.
2 Any determination of whether storm-recovery costs are
3 reasonable and prudent shall be made with reference to the
4 general public interest in, and the scope of effort required
5 to provide, the safe and expeditious restoration of electric
6 service.

7 2. In a financing order issued to an electric utility,
8 the commission shall:

9 a. Except as provided in sub-subparagraph f. and in
10 subparagraphs 4. and 5., specify the amount of storm-recovery
11 costs and the level of storm-recovery reserves, taking into
12 consideration any other methods used to recover these costs,
13 and describe and estimate the amount of financing costs which
14 may be recovered through storm-recovery charges; specify
15 whether these costs should be allocated among the utility and
16 its ratepayers and, if so, the amount of each cost to be
17 recovered through the financing order; and specify the period
18 over which such costs may be recovered.

19 b. Determine that the proposed structuring, expected
20 pricing, and financing costs of the storm-recovery bonds are
21 reasonably expected to result in lower overall costs or would
22 avoid or significantly mitigate rate impacts to customers as
23 compared with alternative methods of financing or recovering
24 storm-recovery costs.

25 c. Ensure that the marketing, structuring, pricing,
26 and financing costs of the storm-recovery bonds will result in
27 the lowest cost funds and the lowest storm-recovery charges
28 that are consistent with market conditions and the terms of
29 the financing order.

30 d. Provide that, for the period specified pursuant to
31 sub-subparagraph a., the imposition and collection of

1 storm-recovery charges authorized in the financing order shall
2 be paid by all customers receiving transmission or
3 distribution service from the electric utility or its
4 successors or assignees under commission-approved rate
5 schedules or under special contracts, even if the customer
6 elects to purchase electricity from an alternative electric
7 supplier following a fundamental change in regulation of
8 public utilities in the state.

9 e. Determine what portion, if any, of the
10 storm-recovery reserves must be held in a funded reserve and
11 any limitations on how the reserve may be held, accessed, or
12 used.

13 f. Include a formula-based mechanism for making
14 expeditious periodic adjustments in the storm-recovery charges
15 that customers are required to pay under the financing order
16 and for making any adjustments that are necessary to correct
17 for any overcollection or undercollection of the charges or to
18 otherwise ensure the timely payment of storm-recovery bonds
19 and financing costs and other required amounts and charges
20 payable in connection with the storm-recovery bonds.

21 g. Specify the storm-recovery property that is, or
22 shall be, created in favor of an electric utility or its
23 successors or assignees and that shall be used to pay or
24 secure storm-recovery bonds and financing costs.

25 h. Specify the degree of flexibility to be afforded to
26 the electric utility in establishing the terms and conditions
27 of the storm-recovery bonds, including, but not limited to,
28 repayment schedules, interest rates, and other financing
29 costs.

30 i. Provide that storm-recovery charges be allocated to
31 the customer classes using the criteria set out in s.

1 366.06(1), in the manner in which these costs or their
2 equivalent were allocated in the cost-of-service study
3 approved in connection with the electric utility's last rate
4 case. If the electric utility's last rate case was resolved by
5 a settlement agreement, the cost-of-service methodology filed
6 by the electric utility in that case may be used.

7 j. Provide that, after the final terms of an issuance
8 of storm-recovery bonds have been established and prior to the
9 issuance of storm-recovery bonds, the electric utility shall
10 determine the resulting initial storm-recovery charge in
11 accordance with the financing order and such initial
12 storm-recovery charge shall be final and effective upon the
13 issuance of such storm-recovery bonds without further
14 commission action.

15 k. Include any other conditions that the commission
16 considers appropriate and that are not otherwise inconsistent
17 with this section.

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19 In performing the responsibilities of this subparagraph and
20 subparagraph 5., the commission may engage outside consultants
21 or counsel. Any expenses associated with such services shall
22 be included as part of financing costs and included in
23 storm-recovery charges.

24 3. A financing order issued to an electric utility may
25 provide that creation of the electric utility's storm-recovery
26 property pursuant to sub-subparagraph 2.g. is conditioned
27 upon, and shall be simultaneous with, the sale or other
28 transfer of the storm-recovery property to an assignee and the
29 pledge of the storm-recovery property to secure storm-recovery
30 bonds.

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1 4. If the commission issues a financing order, the
2 electric utility shall file with the commission at least
3 biannually a petition or a letter applying the formula-based
4 mechanism pursuant to sub-subparagraph 2.f. and, based on
5 estimates of consumption for each rate class and other
6 mathematical factors, requesting administrative approval to
7 make the adjustments described in sub-subparagraph 2.f. The
8 review of such a request shall be limited to determining
9 whether there is any mathematical error in the application of
10 the formula-based mechanism relating to the appropriate amount
11 of any overcollection or undercollection of storm-recovery
12 charges and the amount of an adjustment. Such adjustments
13 shall ensure the recovery of revenues sufficient to provide
14 for the payment of storm-recovery costs, financing costs, and
15 costs of replenishing the storm-recovery reserve. Within 60
16 days after receiving an electric utility's request pursuant to
17 this paragraph, the commission shall either approve the
18 request or inform the electric utility of any mathematical
19 errors in its calculation. If the commission informs the
20 utility of mathematical errors in its calculation, the utility
21 may correct its error and refile its request. The timeframes
22 previously described in this paragraph shall apply to a
23 refiled request.

24 5. If the commission issues a financing order, after
25 all actual storm-recovery costs and financing costs have been
26 incurred and totaled, the commission must review these actual
27 costs and adjust the amount of storm-recovery charges
28 accordingly. If actual costs are less than estimated costs,
29 the commission must reduce the amount of storm-recovery
30 charges accordingly. If the electric utility seeks to recover
31 actual storm-recovery costs or financing costs in excess of

1 the estimated costs, the commission must review each element
2 of the actual costs to ensure that the cost was prudent and
3 reasonable and, as to financing costs, results in the lowest
4 cost funds and the lowest storm-recovery charges that are
5 consistent with market conditions and the terms of the
6 financing order. The commission must then increase the amount
7 of storm-recovery charges to include actual storm-recovery
8 costs and financing costs that meet these approval criteria.
9 This review shall be done at the time of the next regularly
10 scheduled adjustment in storm-recovery charges. If the
11 commission incurs any costs for outside consultants or counsel
12 in conducting this review, these costs shall be included in
13 the storm-recovery charges as well.

14 6. Subsequent to the earlier of the transfer of
15 storm-recovery property to an assignee or the issuance of
16 storm-recovery bonds authorized thereby, a financing order is
17 irrevocable and, except as provided in subparagraphs 4. and 5.
18 and paragraph (c), the commission may not amend, modify, or
19 terminate the financing order by any subsequent action or
20 reduce, impair, postpone, terminate, or otherwise adjust
21 storm-recovery charges approved in the financing order. After
22 the issuance of a financing order, the electric utility
23 retains sole discretion regarding whether to assign, sell, or
24 otherwise transfer storm-recovery property or to cause the
25 storm-recovery bonds to be issued, including the right to
26 defer or postpone such assignment, sale, transfer, or
27 issuance.

28 (c) At the request of an electric utility, the
29 commission may commence a proceeding and issue a subsequent
30 financing order that provides for retiring and refunding
31 storm-recovery bonds issued pursuant to the original financing

1 order if the commission finds that the subsequent financing
2 order satisfies all of the criteria specified in paragraph
3 (b). Effective on retirement of the refunded storm-recovery
4 bonds and the issuance of new storm-recovery bonds, the
5 commission shall adjust the related storm-recovery charges
6 accordingly.

7 (d) Within 10 days after the commission issues an
8 order pursuant to paragraph (b) or a decision denying a
9 request for reconsideration or, if the request for
10 reconsideration is granted, within 10 days after the
11 commission issues its decision on reconsideration, an
12 adversely affected party may petition for judicial review in
13 the Florida Supreme Court. The petition for review shall be
14 served upon the executive director of the commission
15 personally or by service at the office of the commission.
16 Review on appeal shall be based solely on the record before
17 the commission and briefs to the court and shall be limited to
18 determining whether the order issued pursuant to paragraph
19 (b), or the order on reconsideration, conforms to the
20 constitution and laws of this state and the United States and
21 is within the authority of the commission under this section.
22 Inasmuch as delay in the determination of the appeal of a
23 financing order will delay the issuance of storm-recovery
24 bonds, thereby diminishing savings to customers which might be
25 achieved if such bonds were issued as contemplated by a
26 financing order, the Supreme Court shall proceed to hear and
27 determine the action as expeditiously as practicable and give
28 the action precedence over other matters not accorded similar
29 precedence by law.

30 (e)1. A financing order remains in effect until the
31 storm-recovery bonds issued pursuant to the order have been

1 paid in full and the commission-approved financing costs of
2 such bonds have been recovered in full.

3 2. A financing order issued to an electric utility
4 shall remain in effect and unabated notwithstanding the
5 reorganization, bankruptcy, or other insolvency proceedings of
6 the electric utility or its successors or assignees.

7 (3) EXCEPTIONS TO COMMISSION JURISDICTION.--

8 (a) If the commission issues a financing order to an
9 electric utility pursuant to this section, the commission may
10 not, in exercising its powers and carrying out its duties
11 regarding any matter within its authority pursuant to this
12 chapter, consider the storm-recovery bonds issued pursuant to
13 the order to be the debt of the electric utility other than
14 for federal income tax purposes, consider the storm-recovery
15 charges paid under the order to be the revenue of the electric
16 utility for any purpose, or consider the storm-recovery costs
17 or financing costs specified in the order to be the costs of
18 the electric utility, nor may the commission determine any
19 action taken by an electric utility which is consistent with
20 the order to be unjust or unreasonable.

21 (b) The commission may not order or otherwise directly
22 or indirectly require an electric utility to use
23 storm-recovery bonds to finance any project, addition, plant,
24 facility, extension, capital improvement, equipment, or any
25 other expenditure, unless the electric utility has filed a
26 petition under paragraph (2)(a) to finance such expenditure
27 using storm-recovery bonds. The commission may not refuse to
28 allow an electric utility to recover costs for storm-recovery
29 activities in an otherwise permissible fashion, or refuse or
30 condition authorization or approval pursuant to s. 366.04 of
31 the issuance and sale by an electric utility of securities or

1 the assumption by it of liabilities or obligations, solely
2 because of the potential availability of storm-recovery
3 financing.

4 (4) ELECTRIC UTILITY DUTIES.--

5 (a) The electric bills of an electric utility that has
6 obtained a financing order and issued storm-recovery bonds
7 must explicitly reflect that a portion of the charges on such
8 bill represents storm-recovery charges approved in a financing
9 order issued to the electric utility and, if the
10 storm-recovery property has been transferred to an assignee,
11 must include a statement to the effect that the assignee is
12 the owner of the rights to storm-recovery charges and that the
13 electric utility or any other entity, if applicable, is acting
14 as a collection agent or servicer for the assignee. The tariff
15 applicable to customers must indicate the storm-recovery
16 charge and the ownership of that charge. The commission shall
17 determine whether to require electric utilities to include
18 such information or amounts owed with respect to the
19 storm-recovery property as a separate line item on individual
20 electric bills.

21 (b) The failure of an electric utility to comply with
22 this subsection shall not invalidate, impair, or affect any
23 financing order, storm-recovery property, storm-recovery
24 charge, or storm-recovery bonds but shall subject the electric
25 utility to penalties under s. 366.095.

26 (5) STORM-RECOVERY PROPERTY.--

27 (a)1. All storm-recovery property that is specified in
28 a financing order shall constitute an existing, present
29 property right or interest therein, notwithstanding that the
30 imposition and collection of storm-recovery charges depends on
31 the electric utility to which the order is issued performing

1 its servicing functions relating to the collection of
2 storm-recovery charges and on future electricity consumption.
3 Such property shall exist whether or not the revenues or
4 proceeds arising from the property have been billed, have
5 accrued, or have been collected and notwithstanding the fact
6 that the value or amount of the property is dependent on the
7 future provision of service to customers by the electric
8 utility or its successors or assignees.

9 2. Storm-recovery property specified in a financing
10 order shall continue to exist until the storm-recovery bonds
11 issued pursuant to the order are paid in full and all
12 financing costs and other costs of the bonds have been
13 recovered in full.

14 3. All or any portion of storm-recovery property
15 specified in a financing order issued to an electric utility
16 may be transferred, sold, conveyed, or assigned to a successor
17 or assignee, including an affiliate or affiliates of the
18 electric utility created for the limited purpose of acquiring,
19 owning, or administering storm-recovery property or issuing
20 storm-recovery bonds under the financing order. All or any
21 portion of storm-recovery property may be pledged to secure
22 storm-recovery bonds issued pursuant to the order, amounts
23 payable to financing parties and to counterparties under any
24 ancillary agreements, and other financing costs. Each such
25 transfer, sale, conveyance, assignment, or pledge by an
26 electric utility or affiliate of an electric utility is
27 considered to be a transaction in the ordinary course of
28 business.

29 4. If an electric utility defaults on any required
30 payment of charges arising from storm-recovery property
31 specified in a financing order, a court, upon application by

1 an interested party, and without limiting any other remedies
2 available to the applying party, shall order the sequestration
3 and payment of the revenues arising from the storm-recovery
4 property to the financing parties. Any such order shall remain
5 in full force and effect notwithstanding any reorganization,
6 bankruptcy, or other insolvency proceedings with respect to
7 the electric utility or its successors or assignees.

8 5. The interest of a transferee, purchaser, acquirer,
9 assignee, or pledgee in storm-recovery property specified in a
10 financing order issued to an electric utility, and in the
11 revenue and collections arising from that property, is not
12 subject to setoff, counterclaim, surcharge, or defense by the
13 electric utility or any other person or in connection with the
14 reorganization, bankruptcy, or other insolvency of the
15 electric utility or any other entity.

16 6. Any successor to an electric utility, whether
17 pursuant to any reorganization, bankruptcy, or other
18 insolvency proceeding or whether pursuant to any merger or
19 acquisition, sale, or other business combination, or transfer
20 by operation of law, as a result of electric utility
21 restructuring or otherwise, shall perform and satisfy all
22 obligations of, and have the same rights under a financing
23 order as, the electric utility under the financing order in
24 the same manner and to the same extent as the electric
25 utility, including collecting and paying to the person
26 entitled to receive the revenues, collections, payments, or
27 proceeds of the storm-recovery property.

28 (b)1. Except as specified in this section, the Uniform
29 Commercial Code does not apply to storm-recovery property or
30 any right, title, or interest of a utility or assignee
31 described in subparagraph (1)(o)1., whether before or after

1 the issuance of the financing order. In addition, such right,
2 title, or interest pertaining to a financing order, including,
3 but not limited to, the associated storm-recovery property and
4 any revenues, collections, claims, rights to payment,
5 payments, money, or proceeds of or arising from storm-recovery
6 charges pursuant to such order, shall not be deemed proceeds
7 of any right or interest other than in the financing order and
8 the storm-recovery property arising from the order.

9 2. The creation, attachment, granting, perfection, and
10 enforcement of liens and security interests in storm-recovery
11 property to secure storm-recovery bonds is governed solely by
12 this section and not by the Uniform Commercial Code.

13 3. A valid, enforceable, and attached lien and
14 security interest in storm-recovery property may be created
15 only upon the later of:

16 a. The issuance of a financing order;

17 b. The execution and delivery of a security agreement
18 with a financing party in connection with the issuance of
19 storm-recovery bonds; or

20 c. The receipt of value for the storm-recovery bonds.

21
22 A valid, enforceable, and attached security interest shall be
23 perfected against third parties as of the date of filing of a
24 financing statement in the Florida Secured Transaction
25 Registry, as such registry is defined in Article 9 of the
26 Uniform Commercial Code, in accordance with subparagraph 4.,
27 and shall thereafter be a continuously perfected lien; and
28 such security interest in the storm-recovery property and all
29 proceeds of such storm-recovery property, whether or not
30 billed, accrued, or collected, and whether or not deposited
31 into a deposit account and however evidenced, shall have

1 priority in accordance with subparagraph 8. and take
2 precedence over any subsequent judicial or other lien
3 creditor. No continuation statement need be filed to maintain
4 such perfection.

5 4. Financing statements required to be filed pursuant
6 to this section shall be filed, maintained, and indexed in the
7 same manner and in the same system of records maintained for
8 the filing of financing statements in the Florida Secured
9 Transaction Registry under Article 9 of the Uniform Commercial
10 Code. The filing of such a financing statement shall be the
11 only method of perfecting a lien or security interest on
12 storm-recovery property.

13 5. The priority of a lien and security interest
14 perfected under this paragraph is not impaired by any later
15 modification of the financing order or storm-recovery property
16 or by the commingling of funds arising from storm-recovery
17 property with other funds, and any other security interest
18 that may apply to those funds shall be terminated as to all
19 funds transferred to a segregated account for the benefit of
20 an assignee or a financing party or to an assignee or
21 financing party directly.

22 6. If a default or termination occurs under the terms
23 of the storm-recovery bonds, the financing parties or their
24 representatives may foreclose on or otherwise enforce their
25 lien and security interest in any storm-recovery property as
26 if they were a secured party under Article 9 of the Uniform
27 Commercial Code; and a court may order that amounts arising
28 from storm-recovery property be transferred to a separate
29 account for the financing parties' benefit, to which their
30 lien and security interest shall apply. On application by or
31 on behalf of the financing parties to a circuit court of this

1 state, such court shall order the sequestration and payment to
2 the financing parties of revenues arising from the
3 storm-recovery property.

4 7. The interest of a pledgee of an interest or any
5 rights in any storm-recovery property is not perfected until
6 filing as provided in subparagraph 4.

7 8. The priority of the conflicting interests of
8 pledgees in the same interest or rights in any storm-recovery
9 property is determined as follows:

10 a. Conflicting perfected interests or rights of
11 pledgees rank according to priority in time of perfection.
12 Priority dates from the time a filing covering the interest or
13 right is made in accordance with this paragraph.

14 b. A perfected interest or right of a pledgee has
15 priority over a conflicting unperfected interest or right of a
16 pledgee.

17 c. A perfected interest or right of a pledgee has
18 priority over a person who becomes a lien creditor after the
19 perfection of such pledgee's interest or right.

20 (c) The sale, assignment, or transfer of
21 storm-recovery property is governed by this paragraph. All of
22 the following apply to a sale, assignment, or transfer under
23 this paragraph:

24 1. The sale, conveyance, assignment, or other transfer
25 of storm-recovery property by an electric utility to an
26 assignee that the parties have in the governing documentation
27 expressly stated to be a sale or other absolute transfer is an
28 absolute transfer and true sale of, and not a pledge of or
29 secured transaction relating to, the transferor's right,
30 title, and interest in, to, and under the storm-recovery
31 property, other than for federal and state income and

1 franchise tax purposes. After such a transaction, the
2 storm-recovery property is not subject to any claims of the
3 transferor or the transferor's creditors, other than creditors
4 holding a prior security interest in the storm-recovery
5 property perfected under paragraph (b).

6 2. The characterization of the sale, conveyance,
7 assignment, or other transfer as a true sale or other absolute
8 transfer under subparagraph 1. and the corresponding
9 characterization of the transferee's property interest is not
10 affected by:

11 a. Commingling of amounts arising with respect to the
12 storm-recovery property with other amounts.

13 b. The retention by the transferor of a partial or
14 residual interest, including an equity interest, in the
15 storm-recovery property, whether direct or indirect, or
16 whether subordinate or otherwise.

17 c. Any recourse that the transferee may have against
18 the transferor other than any such recourse created,
19 contingent upon, or otherwise occurring or resulting from one
20 or more of the transferor's customers' inability to timely pay
21 all or a portion of the storm-recovery charge.

22 d. Any indemnifications, obligations, or repurchase
23 rights made or provided by the transferor, other than
24 indemnity or repurchase rights based solely upon a
25 transferor's customers' inability to timely pay all or a
26 portion of the storm-recovery charge.

27 e. The responsibility of the transferor to collect
28 storm-recovery charges.

29 f. The treatment of the sale, conveyance, assignment,
30 or other transfer for tax, financial reporting, or other
31 purposes.

1 g. Granting or providing to holders of the
2 storm-recovery bonds a preferred right to the storm-recovery
3 property or credit enhancement by the electric utility or its
4 affiliates with respect to the storm-recovery bonds.

5 3. Any right that an electric utility has in the
6 storm-recovery property prior to its pledge, sale, or transfer
7 or any other right created under this section or created in
8 the financing order and assignable under this section or
9 assignable pursuant to and in compliance with a financing
10 order shall be property in the form of a contract right.
11 Transfer of an interest in storm-recovery property to an
12 assignee is enforceable only upon the later of the issuance of
13 a financing order, the execution and delivery of transfer
14 documents to the assignee in connection with the issuance of
15 storm-recovery bonds, and the receipt of value. An enforceable
16 transfer of an interest in storm-recovery property to an
17 assignee shall be perfected against all third parties,
18 including subsequent judicial or other lien creditors, when a
19 notice of that transfer has been given by the filing of a
20 financing statement in accordance with subparagraph 4. The
21 transfer shall be perfected against third parties as of the
22 date of filing.

23 4. Financing statements required to be filed under
24 this section shall be maintained and indexed in the same
25 manner and in the same system of records maintained for the
26 filing of financing statements in the Florida Secured
27 Transaction Registry under Article 9 of the Uniform Commercial
28 Code. The filing of such a financing statement shall be the
29 only method of perfecting a transfer of storm-recovery
30 property.

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1 5. The priority of a transfer perfected under this
2 section is not impaired by any later modification of the
3 financing order or storm-recovery property or by the
4 commingling of funds arising from storm-recovery property with
5 other funds, and any other security interest that may apply to
6 those funds shall be terminated when they are transferred to a
7 segregated account for the assignee or a financing party. If
8 storm-recovery property has been transferred to an assignee or
9 financing party, any proceeds of that property shall be held
10 in trust for the assignee or financing party.

11 6. The priority of the conflicting interests of
12 assignees in the same interest or rights in any storm-recovery
13 property is determined as follows:

14 a. Conflicting perfected interests or rights of
15 assignees rank according to priority in time of perfection.
16 Priority dates from the time a filing covering the transfer is
17 made in accordance with subparagraph 4.

18 b. A perfected interest or right of an assignee has
19 priority over a conflicting unperfected interest or right of
20 an assignee.

21 c. A perfected interest or right of an assignee has
22 priority over a person who becomes a lien creditor after the
23 perfection of such assignee's interest or right.

24 (6) DESCRIPTION OR INDICATION OF PROPERTY.--The
25 description of storm-recovery property being transferred to an
26 assignee in any sale agreement, purchase agreement, or other
27 transfer agreement, granted or pledged to a pledgee in any
28 security agreement, pledge agreement, or other security
29 document, or indicated in any financing statement is only
30 sufficient if such description or indication describes the
31 financing order that created the storm-recovery property and

1 states that such agreement or financing statement covers all
2 or part of such property described in such financing order.
3 This subsection applies to all purported transfers of, and all
4 purported grants or liens or security interests in,
5 storm-recovery property, regardless of whether the related
6 sale agreement, purchase agreement, other transfer agreement,
7 security agreement, pledge agreement, or other security
8 document was entered into, or any financing statement was
9 filed, before or after the effective date of this section.

10 (7) FINANCING STATEMENTS.--All financing statements
11 referenced in this section shall be subject to Part 5 of
12 Article 9 of the Uniform Commercial Code except that the
13 requirement as to continuation statements shall not apply.

14 (8) CHOICE OF LAW.--The law governing the validity,
15 enforceability, attachment, perfection, priority, and exercise
16 of remedies with respect to the transfer of an interest or
17 right or the pledge or creation of a security interest in any
18 storm-recovery property shall be the laws of this state, and
19 exclusively, the laws of this section.

20 (9) STORM-RECOVERY BONDS NOT PUBLIC DEBT.--The state
21 or its political subdivisions are not liable on any
22 storm-recovery bonds, and the bonds are not a debt or a
23 general obligation of the state or any of its political
24 subdivisions, agencies, or instrumentalities. An issue of
25 storm-recovery bonds does not, directly or indirectly or
26 contingently, obligate the state or any agency, political
27 subdivision, or instrumentality of the state to levy any tax
28 or make any appropriation for payment of the bonds, other than
29 in their capacity as consumers of electricity. This subsection
30 shall in no way preclude bond guarantees or enhancements
31 pursuant to this section. All bonds must contain on the face

1 thereof a statement to the following effect: "Neither the full
2 faith and credit nor the taxing power of the State of Florida
3 is pledged to the payment of the principal of, or interest on,
4 this bond."

5 (10) STORM-RECOVERY BONDS AS LEGAL INVESTMENTS WITH
6 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY
7 REGARDING LEGAL INVESTMENT.--The following entities may
8 legally invest any sinking funds, moneys, or other funds
9 belonging to them or under their control in storm-recovery
10 bonds:

11 (a) The state, the investment board, municipal
12 corporations, political subdivisions, public bodies, and
13 public officers except for members of the commission.

14 (b) Banks and bankers, savings and loan associations,
15 credit unions, trust companies, savings banks and
16 institutions, investment companies, insurance companies,
17 insurance associations, and other persons carrying on a
18 banking or insurance business.

19 (c) Personal representatives, guardians, trustees, and
20 other fiduciaries.

21 (d) All other persons whatsoever who are now or may
22 hereafter be authorized to invest in bonds or other
23 obligations of a similar nature.

24 (11) STATE PLEDGE.--

25 (a) For purposes of this subsection, the term
26 "bondholder" means a person who holds a storm-recovery bond.

27 (b) The state pledges to and agrees with bondholders,
28 the owners of the storm-recovery property, and other financing
29 parties that the state will not:

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1 1. Alter the provisions of this section which make the
2 storm-recovery charges imposed by a financing order
3 irrevocable, binding, and nonbypassable charges;

4 2. Take or permit any action that impairs or would
5 impair the value of storm-recovery property; or

6 3. Except as allowed under this section, reduce,
7 alter, or impair storm-recovery charges that are to be
8 imposed, collected, and remitted for the benefit of the
9 bondholders and other financing parties until any and all
10 principal, interest, premium, financing costs and other fees,
11 expenses, or charges incurred, and any contracts to be
12 performed, in connection with the related storm-recovery bonds
13 have been paid and performed in full.

14
15 Nothing in this paragraph shall preclude limitation or
16 alteration if full compensation is made by law for the full
17 protection of the storm-recovery charges collected pursuant to
18 a financing order and of the holders of storm-recovery bonds
19 and any assignee or financing party entering into a contract
20 with the electric utility.

21 (c) Any person or entity that issues storm-recovery
22 bonds may include the pledge specified in paragraph (b) in the
23 bonds and related documentation.

24 (12) TAX EXEMPTION.--Revenues collected pursuant to a
25 financing order and transactions involving the transfer and
26 ownership of storm-recovery property and the receipt of
27 storm-recovery charges by an electric utility, or its
28 successors, assignees, or financing parties, shall not be
29 deemed to be income for purposes of chapter 220 or any local
30 income taxes, and shall be exempt from state and local sales,
31 franchise, gross receipts, and other taxes or similar charges.

1 (13) NOT AN ELECTRIC UTILITY.--An assignee or
2 financing party shall not be considered an electric utility or
3 person providing electric service by virtue of engaging in the
4 transactions described in this section.

5 (14) CONFLICTS.--In the event of conflict between this
6 section and any other law regarding the attachment,
7 assignment, or perfection, or the effect of perfection, or
8 priority of, assignment or transfer of, or security interest
9 in storm-recovery property, this section shall govern to the
10 extent of the conflict.

11 (15) EFFECT OF INVALIDITY ON ACTIONS.--Effective on
12 the date that storm-recovery bonds are first issued under this
13 section, if any provision of this section is held to be
14 invalid or is invalidated, superseded, replaced, repealed, or
15 expires for any reason, that occurrence shall not affect the
16 validity of any action allowed under this section which is
17 taken by an electric utility, an assignee, a financing party,
18 a collection agent, or a party to an ancillary agreement; and
19 any such action shall remain in full force and effect with
20 respect to all storm-recovery bonds issued or authorized in a
21 financing order to be issued under this section prior to the
22 date that such provision is held to be invalid or is
23 invalidated, superseded, replaced, or repealed, or that
24 expires for any reason.

25 (16) AUTHORITY.--Commission authority to issue
26 financing orders pursuant to this section shall apply only to
27 petitions filed pursuant to paragraph (2)(a) within 12 months
28 after the effective date of this section. The expiration of
29 the authority shall have no effect upon financing orders
30 adopted by the commission pursuant to this section; any
31 storm-recovery property arising therefrom; any charges

1 authorized to be levied thereunder; any rights, interests, and
2 obligations of the electric utility, an assignee, or a
3 financing party, holders of storm-recovery bonds, or parties
4 to ancillary agreements pursuant to the financing order; or
5 the authority of the commission to monitor, supervise, or take
6 further action with respect to the order in accordance with
7 the terms of this section and of the order.

8 Section 2. Paragraphs (m) and (n) of subsection (4) of
9 section 679.1091, Florida Statutes, are amended, and paragraph
10 (o) is added to that subsection, to read:

11 679.1091 Scope.--

12 (4) This chapter does not apply to:

13 (m) An assignment of a deposit account, other than a
14 nonnegotiable certificate of deposit, in a consumer
15 transaction, but ss. 679.3151 and 679.322 apply with respect
16 to proceeds and priorities in proceeds; ~~or~~

17 (n) Any transfer by a government or governmental unit;
18 or

19 (o) A transfer or pledge of, or creation of a security
20 interest in, any interest or right or portion of any interest
21 or right in any storm-recovery property as defined in s.
22 366.8260.

23 Section 3. This act shall take effect upon becoming a
24 law.

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SENATE SUMMARY

Authorizes electric utilities to petition the Florida Public Service Commission for financing orders to recover the costs of the 2004 hurricanes through storm-recovery charges. Requires that the storm-recovery charges be reflected on the electric bill. Provides for the issuance of storm-recovery bonds secured by storm-recovery property. Provides requirements, procedures, and limitations on the sale, assignment, or transfer of storm-recovery property. Provides a tax exemption for certain revenues collected by electric utilities. (See bill for details.)