

By the Committee on Communications and Public Utilities; and  
Senators Constantine and Dockery

579-1737-05

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 declaring certain entities as not electric  
14 utilities under certain circumstances;  
15 specifying effect of certain provisions in  
16 situations of conflict; providing for  
17 protecting validity of certain bonds under  
18 certain circumstances; limiting commission  
19 authority to issue certain financing orders  
20 after a time certain; amending s. 679.1091,  
21 F.S.; specifying nonapplication of secured  
22 transactions provisions of the Uniform  
23 Commercial Code to interests in storm-recovery  
24 property; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Section 366.8260, Florida Statutes, is  
29 created to read:

30 366.8260 Storm-recovery financing.--  
31 (1) DEFINITIONS.--As used in this section, the term:

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

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

15           (c) "Commission" means the Florida Public Service  
16 Commission.

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

19           (e) "Financing costs" means:

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

22           2. Any payment required under an ancillary agreement  
23 and any amount required to fund or replenish a reserve account  
24 or other accounts established under the terms of any  
25 indenture, ancillary agreement, or other financing documents  
26 pertaining to storm-recovery bonds;

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

1 rating agency fees, stock exchange listing and compliance  
2 fees, and filing fees, including costs related to obtaining  
3 the financing order;

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

6 5. Any income taxes resulting from the collection of  
7 storm-recovery charges in any such case whether paid, payable,  
8 or accrued; or

9 6. Any state and local taxes, franchise, gross  
10 receipts, and other taxes or similar charges, including but  
11 not limited to, regulatory assessment fees, in any such case  
12 whether paid, payable, or accrued.

13 (f) "Financing order" means an order under subsection  
14 (2) which allows for the issuance of storm-recovery bonds, the  
15 imposition, collection, and periodic adjustments of  
16 storm-recovery charges, and the creation of storm-recovery  
17 property.

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

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

23 (i) "Pledgee" means a financing party to which an  
24 electric utility or its successors or assignees mortgages,  
25 negotiates, hypothecates, pledges, or creates a security  
26 interest or lien on all or any portion of its interest in or  
27 right to storm-recovery property.

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

30 (k) "Storm-recovery activity" means any activity or  
31 activities by or on behalf of an electric utility in

1 connection with the restoration of service associated with  
2 electric power outages affecting customers of an electric  
3 utility as the result of a storm or storms, including, but not  
4 limited to, mobilization, staging, and construction,  
5 reconstruction, replacement, or repair of electric generation,  
6 transmission, or distribution facilities.

7 (l) "Storm-recovery bonds" means bonds, debentures,  
8 notes, certificates of participation, certificates of  
9 beneficial interest, certificates of ownership, or other  
10 evidences of indebtedness or ownership that are issued by an  
11 electric utility or an assignee pursuant to a financing order,  
12 the proceeds of which are used directly or indirectly to  
13 recover, finance, or refinance commission-approved  
14 storm-recovery costs and financing costs, and that are secured  
15 by or payable from storm-recovery property.

16 (m) "Storm-recovery charge" means the amounts  
17 authorized by the commission to recover, finance, or refinance  
18 storm-recovery costs and financing costs 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. Such costs shall be net  
4 of applicable insurance proceeds and, where determined  
5 appropriate by the commission, shall include adjustments for  
6 normal capital replacement and operating costs, lost revenues,  
7 or other potential offsetting adjustments. Storm-recovery  
8 costs shall include the costs to finance any deficiency or  
9 deficiencies in storm-recovery reserves until such time as  
10 storm-recovery bonds are issued, and costs of retiring any  
11 existing indebtedness relating to storm-recovery activities.

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

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

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

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

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

1           (2) FINANCING ORDERS.--

2           (a) An electric utility may petition the commission  
3 for a financing order. For each petition, the electric utility  
4 shall:

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

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

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

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

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

27           6. Estimate the storm-recovery charges necessary to  
28 recover the storm-recovery costs and financing costs and the  
29 period for recovery of such 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 and financing costs if the commission finds that the  
26 issuance of the storm-recovery bonds and the imposition of  
27 storm-recovery charges authorized by the order are reasonably  
28 expected to result in lower overall costs or would avoid or  
29 significantly mitigate rate impacts to customers as compared  
30 with alternative methods of financing or recovering  
31 storm-recovery costs. Any determination of whether



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

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

7 a. Except as provided in sub-subparagraph f. and in  
8 subparagraph 4., specify the amount of storm-recovery costs  
9 and the level of storm-recovery reserves, taking into  
10 consideration, to the extent the commission deems appropriate,  
11 any other methods used to recover these costs, and describe  
12 and estimate the amount of financing costs which may be  
13 recovered through storm-recovery charges; and specify the  
14 period over which such costs may be recovered.

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

21 c. Provide that, for the period specified pursuant to  
22 sub-subparagraph a., the imposition and collection of  
23 storm-recovery charges authorized in the financing order shall  
24 be paid by all customers receiving transmission or  
25 distribution service from the electric utility or its  
26 successors or assignees under commission-approved rate  
27 schedules or under special contracts, even if the customer  
28 elects to purchase electricity from an alternative electric  
29 supplier following a fundamental change in regulation of  
30 public utilities in the state.

31

1           d. Determine what portion, if any, of the  
2 storm-recovery reserves must be held in a funded reserve and  
3 any limitations on how the reserve may be held, accessed, or  
4 used.

5           e. Include a formula-based mechanism for making  
6 expeditious periodic adjustments in the storm-recovery charges  
7 that customers are required to pay under the financing order  
8 and for making any adjustments that are necessary to correct  
9 for any overcollection or undercollection of the charges or to  
10 otherwise ensure the timely payment of storm-recovery bonds  
11 and financing costs and other required amounts and charges  
12 payable in connection with the storm-recovery bonds.

13           f. Specify the storm-recovery property that is, or  
14 shall be, created in favor of an electric utility or its  
15 successors or assignees and that shall be used to pay or  
16 secure storm-recovery bonds and financing costs.

17           g. Specify the degree of flexibility to be afforded to  
18 the electric utility in establishing the terms and conditions  
19 of the storm-recovery bonds, including, but not limited to,  
20 repayment schedules, interest rates, and other financing  
21 costs.

22           h. Provide that storm-recovery charges be allocated to  
23 the customer classes using the criteria set out in s.  
24 366.06(1), in the manner in which these costs or their  
25 equivalent were allocated in the cost-of-service study  
26 approved in connection with the electric utility's last rate  
27 case. If the electric utility's last rate case was resolved by  
28 a settlement agreement, the the cost-of-service methodology  
29 filed by the electric utility in that case shall be used.

30           i. Provide that, after the final terms of an issuance  
31 of storm-recovery bonds have been established and prior to the

1 issuance of storm-recovery bonds, the electric utility shall  
2 determine the resulting initial storm-recovery charge in  
3 accordance with the financing order and such initial  
4 storm-recovery charge shall be final and effective upon the  
5 issuance of such storm-recovery bonds without further  
6 commission action.

7 j. Include any other conditions that the commission  
8 considers appropriate and that are not otherwise inconsistent  
9 with this section.

10  
11 In performing the responsibilities of this subparagraph and  
12 subparagraph 5., the commission may engage outside consultants  
13 or counsel. Any expenses associated with such services shall  
14 be included as part of financing costs and included in  
15 storm-recovery charges.

16 3. A financing order issued to an electric utility may  
17 provide that creation of the electric utility's storm-recovery  
18 property pursuant to sub-subparagraph 2.f. is conditioned  
19 upon, and shall be simultaneous with, the sale or other  
20 transfer of the storm-recovery property to an assignee and the  
21 pledge of the storm-recovery property to secure storm-recovery  
22 bonds.

23 4. If the commission issues a financing order, the  
24 electric utility shall file with the commission at least  
25 biannually a petition or a letter applying the formula-based  
26 mechanism pursuant to sub-subparagraph 2.e. and, based on  
27 estimates of consumption for each rate class and other  
28 mathematical factors, requesting administrative approval to  
29 make the adjustments described in sub-subparagraph 2.e. The  
30 review of such a request shall be limited to determining  
31 whether there is any mathematical error in the application of

1 the formula-based mechanism relating to the appropriate amount  
2 of any overcollection or undercollection of storm-recovery  
3 charges and the amount of an adjustment. Such adjustments  
4 shall ensure the recovery of revenues sufficient to provide  
5 for the payment of principal, interest, acquisition,  
6 defeasance, financing costs, or redemption premium and other  
7 fees, costs, and charges in respect of storm-recovery bonds  
8 approved under the financing order. Within 60 days after  
9 receiving an electric utility's request pursuant to this  
10 paragraph, the commission shall either approve the request or  
11 inform the electric utility of any mathematical errors in its  
12 calculation. If the commission informs the utility of  
13 mathematical errors in its calculation, the utility may  
14 correct its error and refile its request. The timeframes  
15 previously described in this paragraph shall apply to a  
16 refiled request.

17 5. Within 120 days after the issuance of  
18 storm-recovery bonds, the electric utility shall file with the  
19 commission information on the actual costs of the  
20 storm-recovery-bond issuance. The commission shall review such  
21 information to determine if such costs incurred in the  
22 issuance of the bonds resulted in the lowest overall costs  
23 that were reasonably consistent with market conditions at the  
24 time of the issuance and the terms of the financing order. The  
25 commission may disallow any incremental issuance costs in  
26 excess of the lowest overall costs by requiring the utility to  
27 make a contribution to the storm reserve in an amount equal to  
28 the excess of actual issuance costs incurred, and paid for out  
29 of storm recovery bond proceeds, and the lowest overall  
30 issuance costs as determined by the commission. The commission  
31

1 may not make adjustments to the storm-recovery charges for any  
2 such excess issuance costs.

3 6. Subsequent to the earlier of the transfer of  
4 storm-recovery property to an assignee or the issuance of  
5 storm-recovery bonds authorized thereby, a financing order is  
6 irrevocable and, except as provided in subparagraph 4. and  
7 paragraph (c), the commission may not amend, modify, or  
8 terminate the financing order by any subsequent action or  
9 reduce, impair, postpone, terminate, or otherwise adjust  
10 storm-recovery charges approved in the financing order. After  
11 the issuance of a financing order, the electric utility  
12 retains sole discretion regarding whether to assign, sell, or  
13 otherwise transfer storm-recovery property or to cause the  
14 storm-recovery bonds to be issued, including the right to  
15 defer or postpone such assignment, sale, transfer, or  
16 issuance.

17 (c) At the request of an electric utility, the  
18 commission may commence a proceeding and issue a subsequent  
19 financing order that provides for retiring and refunding  
20 storm-recovery bonds issued pursuant to the original financing  
21 order if the commission finds that the subsequent financing  
22 order satisfies all of the criteria specified in paragraph  
23 (b). Effective on retirement of the refunded storm-recovery  
24 bonds and the issuance of new storm-recovery bonds, the  
25 commission shall adjust the related storm-recovery charges  
26 accordingly.

27 (d) Within 30 days after the commission issues an  
28 order pursuant to paragraph (b) or a decision denying a  
29 request for reconsideration or, if the request for  
30 reconsideration is granted, within 30 days after the  
31 commission issues its decision on reconsideration, an

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

19 (e)1. A financing order remains in effect until the  
20 storm-recovery bonds issued pursuant to the order have been  
21 paid in full and the commission-approved financing costs of  
22 such bonds have been recovered in full.

23 2. A financing order issued to an electric utility  
24 shall remain in effect and unabated notwithstanding the  
25 reorganization, bankruptcy, or other insolvency proceedings of  
26 the electric utility or its successors or assignees.

27 (3) EXCEPTIONS TO COMMISSION JURISDICTION.--

28 (a) If the commission issues a financing order to an  
29 electric utility pursuant to this section, the commission may  
30 not, in exercising its powers and carrying out its duties  
31 regarding any matter within its authority pursuant to this

1 chapter, consider the storm-recovery bonds issued pursuant to  
2 the order to be the debt of the electric utility other than  
3 for federal income tax purposes, consider the storm-recovery  
4 charges paid under the order to be the revenue of the electric  
5 utility for any purpose, or consider the storm-recovery costs  
6 or financing costs specified in the order to be the costs of  
7 the electric utility, nor may the commission determine any  
8 action taken by an electric utility which is consistent with  
9 the order to be unjust or unreasonable.

10 (b) The commission may not order or otherwise directly  
11 or indirectly require an electric utility to use  
12 storm-recovery bonds to finance any project, addition, plant,  
13 facility, extension, capital improvement, equipment, or any  
14 other expenditure, unless the electric utility has filed a  
15 petition under paragraph (2)(a) to finance such expenditure  
16 using storm-recovery bonds. The commission may not refuse to  
17 allow an electric utility to recover costs for storm-recovery  
18 activities in an otherwise permissible fashion, or refuse or  
19 condition authorization or approval pursuant to s. 366.04 of  
20 the issuance and sale by an electric utility of securities or  
21 the assumption by it of liabilities or obligations, solely  
22 because of the potential availability of storm-recovery  
23 financing.

24 (4) ELECTRIC UTILITY DUTIES.--

25 (a) The electric bills of an electric utility that has  
26 obtained a financing order and issued storm-recovery bonds  
27 must explicitly reflect that a portion of the charges on such  
28 bill represents storm-recovery charges approved in a financing  
29 order issued to the electric utility and, if the  
30 storm-recovery property has been transferred to an assignee,  
31 must include a statement to the effect that the assignee is

1 the owner of the rights to storm-recovery charges and that the  
2 electric utility or any other entity, if applicable, is acting  
3 as a collection agent or servicer for the assignee. The tariff  
4 applicable to customers must indicate the storm-recovery  
5 charge and the ownership of that charge. The commission shall  
6 determine whether to require electric utilities to include  
7 such information or amounts owed with respect to the  
8 storm-recovery property as a separate line item on individual  
9 electric bills.

10 (b) The failure of an electric utility to comply with  
11 this subsection shall not invalidate, impair, or affect any  
12 financing order, storm-recovery property, storm-recovery  
13 charge, or storm-recovery bonds but shall subject the electric  
14 utility to penalties under s. 366.095.

15 (5) STORM-RECOVERY PROPERTY.--

16 (a)1. All storm-recovery property that is specified in  
17 a financing order shall constitute an existing, present  
18 property right or interest therein, notwithstanding that the  
19 imposition and collection of storm-recovery charges depends on  
20 the electric utility to which the order is issued performing  
21 its servicing functions relating to the collection of  
22 storm-recovery charges and on future electricity consumption.  
23 Such property shall exist whether or not the revenues or  
24 proceeds arising from the property have been billed, have  
25 accrued, or have been collected and notwithstanding the fact  
26 that the value or amount of the property is dependent on the  
27 future provision of service to customers by the electric  
28 utility or its successors or assignees.

29 2. Storm-recovery property specified in a financing  
30 order shall continue to exist until the storm-recovery bonds  
31 issued pursuant to the order are paid in full and all



1 financing costs and other costs of the bonds have been  
2 recovered in full.

3 3. All or any portion of storm-recovery property  
4 specified in a financing order issued to an electric utility  
5 may be transferred, sold, conveyed, or assigned to a successor  
6 or assignee, including an affiliate or affiliates of the  
7 electric utility created for the limited purpose of acquiring,  
8 owning, or administering storm-recovery property or issuing  
9 storm-recovery bonds under the financing order. All or any  
10 portion of storm-recovery property may be pledged to secure  
11 storm-recovery bonds issued pursuant to the order, amounts  
12 payable to financing parties and to counterparties under any  
13 ancillary agreements, and other financing costs. Each such  
14 transfer, sale, conveyance, assignment, or pledge by an  
15 electric utility or affiliate of an electric utility is  
16 considered to be a transaction in the ordinary course of  
17 business.

18 4. If an electric utility defaults on any required  
19 payment of charges arising from storm-recovery property  
20 specified in a financing order, a court, upon application by  
21 an interested party, and without limiting any other remedies  
22 available to the applying party, shall order the sequestration  
23 and payment of the revenues arising from the storm-recovery  
24 property to the financing parties. Any such order shall remain  
25 in full force and effect notwithstanding any reorganization,  
26 bankruptcy, or other insolvency proceedings with respect to  
27 the electric utility or its successors or assignees.

28 5. The interest of a transferee, purchaser, acquirer,  
29 assignee, or pledgee in storm-recovery property specified in a  
30 financing order issued to an electric utility, and in the  
31 revenue and collections arising from that property, is not

1 subject to setoff, counterclaim, surcharge, or defense by the  
2 electric utility or any other person or in connection with the  
3 reorganization, bankruptcy, or other insolvency of the  
4 electric utility or any other entity.

5 6. Any successor to an electric utility, whether  
6 pursuant to any reorganization, bankruptcy, or other  
7 insolvency proceeding or whether pursuant to any merger or  
8 acquisition, sale, or other business combination, or transfer  
9 by operation of law, as a result of electric utility  
10 restructuring or otherwise, shall perform and satisfy all  
11 obligations of, and have the same rights under a financing  
12 order as, the electric utility under the financing order in  
13 the same manner and to the same extent as the electric  
14 utility, including collecting and paying to the person  
15 entitled to receive the revenues, collections, payments, or  
16 proceeds of the storm-recovery property.

17 (b)1. Except as specified in this section, the Uniform  
18 Commercial Code does not apply to storm-recovery property or  
19 any right, title, or interest of a utility or assignee  
20 described in subparagraph (1)(o)1., whether before or after  
21 the issuance of the financing order. In addition, such right,  
22 title, or interest pertaining to a financing order, including,  
23 but not limited to, the associated storm-recovery property and  
24 any revenues, collections, claims, rights to payment,  
25 payments, money, or proceeds of or arising from storm-recovery  
26 charges pursuant to such order, shall not be deemed proceeds  
27 of any right or interest other than in the financing order and  
28 the storm-recovery property arising from the order.

29 2. The creation, attachment, granting, perfection,  
30 priority, and enforcement of liens and security interests in  
31 storm-recovery property to secure storm-recovery bonds is

1 governed solely by this section and not by the Uniform  
2 Commercial Code.

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

6 a. The issuance of a financing order;

7 b. The execution and delivery of a security agreement  
8 with a financing party in connection with the issuance of  
9 storm-recovery bonds; or

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

11  
12 A valid, enforceable, and attached security interest shall be  
13 perfected against third parties as of the date of filing of a  
14 financing statement in the Florida Secured Transaction  
15 Registry, as such registry is defined in Article 9 of the  
16 Uniform Commercial Code, in accordance with subparagraph 4.,  
17 and shall thereafter be a continuously perfected lien; and  
18 such security interest in the storm-recovery property and all  
19 proceeds of such storm-recovery property, whether or not  
20 billed, accrued, or collected, and whether or not deposited  
21 into a deposit account and however evidenced, shall have  
22 priority in accordance with subparagraph 8. and take  
23 precedence over any subsequent judicial or other lien  
24 creditor. No continuation statement need be filed to maintain  
25 such perfection.

26 4. Financing statements required to be filed pursuant  
27 to this section shall be filed, maintained, and indexed in the  
28 same manner and in the same system of records maintained for  
29 the filing of financing statements in the Florida Secured  
30 Transaction Registry under Article 9 of the Uniform Commercial  
31 Code. The filing of such a financing statement shall be the

1 only method of perfecting a lien or security interest on  
2 storm-recovery property.

3 5. The priority of a lien and security interest  
4 perfected under this paragraph is not impaired by any later  
5 modification of the financing order or storm-recovery property  
6 or by the commingling of funds arising from storm-recovery  
7 property with other funds, and any other security interest  
8 that may apply to those funds shall be terminated as to all  
9 funds transferred to a segregated account for the benefit of  
10 an assignee or a financing party or to an assignee or  
11 financing party directly.

12 6. If a default or termination occurs under the terms  
13 of the storm-recovery bonds, the financing parties or their  
14 representatives may foreclose on or otherwise enforce their  
15 lien and security interest in any storm-recovery property as  
16 if they were a secured party under Article 9 of the Uniform  
17 Commercial Code; and a court may order that amounts arising  
18 from storm-recovery property be transferred to a separate  
19 account for the financing parties' benefit, to which their  
20 lien and security interest shall apply. On application by or  
21 on behalf of the financing parties to a circuit court of this  
22 state, such court shall order the sequestration and payment to  
23 the financing parties of revenues arising from the  
24 storm-recovery property.

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

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

31

1           a. Conflicting perfected interests or rights of  
2 pledgees rank according to priority in time of perfection.  
3 Priority dates from the time a filing covering the interest or  
4 right is made in accordance with this paragraph.

5           b. A perfected interest or right of a pledgee has  
6 priority over a conflicting unperfected interest or right of a  
7 pledgee.

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

11           (c) The sale, assignment, or transfer of  
12 storm-recovery property is governed by this paragraph. All of  
13 the following apply to a sale, assignment, or transfer under  
14 this paragraph:

15           1. The sale, conveyance, assignment, or other transfer  
16 of storm-recovery property by an electric utility to an  
17 assignee that the parties have in the governing documentation  
18 expressly stated to be a sale or other absolute transfer is an  
19 absolute transfer and true sale of, and not a pledge of or  
20 secured transaction relating to, the transferor's right,  
21 title, and interest in, to, and under the storm-recovery  
22 property, other than for federal and state income and  
23 franchise tax purposes. After such a transaction, the  
24 storm-recovery property is not subject to any claims of the  
25 transferor or the transferor's creditors, other than creditors  
26 holding a prior security interest in the storm-recovery  
27 property perfected under paragraph (b).

28           2. The characterization of the sale, conveyance,  
29 assignment, or other transfer as a true sale or other absolute  
30 transfer under subparagraph 1. and the corresponding  
31

1 characterization of the transferee's property interest is not  
2 affected by:

3       a. Commingling of amounts arising with respect to the  
4 storm-recovery property with other amounts.

5       b. The retention by the transferor of a partial or  
6 residual interest, including an equity interest, in the  
7 storm-recovery property, whether direct or indirect, or  
8 whether subordinate or otherwise.

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

14       d. Any indemnifications, obligations, or repurchase  
15 rights made or provided by the transferor, other than  
16 indemnity or repurchase rights based solely upon a  
17 transferor's customers' inability to timely pay all or a  
18 portion of the storm-recovery charge.

19       e. The responsibility of the transferor to collect  
20 storm-recovery charges.

21       f. The treatment of the sale, conveyance, assignment,  
22 or other transfer for tax, financial reporting, or other  
23 purposes.

24       g. Granting or providing to holders of the  
25 storm-recovery bonds a preferred right to the storm-recovery  
26 property or credit enhancement by the electric utility or its  
27 affiliates with respect to the storm-recovery bonds.

28       3. Any right that an electric utility has in the  
29 storm-recovery property prior to its pledge, sale, or transfer  
30 or any other right created under this section or created in  
31 the financing order and assignable under this section or

1 assignable pursuant to a financing order shall be property in  
2 the form of a contract right. Transfer of an interest in  
3 storm-recovery property to an assignee is enforceable only  
4 upon the later of the issuance of a financing order, the  
5 execution and delivery of transfer documents to the assignee  
6 in connection with the issuance of storm-recovery bonds, and  
7 the receipt of value. An enforceable transfer of an interest  
8 in storm-recovery property to an assignee shall be perfected  
9 against all third parties, including subsequent judicial or  
10 other lien creditors, when a notice of that transfer has been  
11 given by the filing of a financing statement in accordance  
12 with subparagraph 4. The transfer shall be perfected against  
13 third parties as of the date of filing.

14 4. Financing statements required to be filed under  
15 this section shall be maintained and indexed in the same  
16 manner and in the same system of records maintained for the  
17 filing of financing statements in the Florida Secured  
18 Transaction Registry under Article 9 of the Uniform Commercial  
19 Code. The filing of such a financing statement shall be the  
20 only method of perfecting a transfer of storm-recovery  
21 property.

22 5. The priority of a transfer perfected under this  
23 section is not impaired by any later modification of the  
24 financing order or storm-recovery property or by the  
25 commingling of funds arising from storm-recovery property with  
26 other funds, and any other security interest that may apply to  
27 those funds shall be terminated when they are transferred to a  
28 segregated account for the assignee or a financing party. If  
29 storm-recovery property has been transferred to an assignee or  
30 financing party, any proceeds of that property shall be held  
31 in trust for the assignee or financing party.

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

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

8           b. A perfected interest or right of an assignee has  
9 priority over a conflicting unperfected interest or right of  
10 an assignee.

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

14           (6) DESCRIPTION OR INDICATION OF PROPERTY.--The  
15 description of storm-recovery property being transferred to an  
16 assignee in any sale agreement, purchase agreement, or other  
17 transfer agreement, granted or pledged to a pledgee in any  
18 security agreement, pledge agreement, or other security  
19 document, or indicated in any financing statement is only  
20 sufficient if such description or indication describes the  
21 financing order that created the storm-recovery property and  
22 states that such agreement or financing statement covers all  
23 or part of such property described in such financing order.  
24 This subsection applies to all purported transfers of, and all  
25 purported grants or liens or security interests in,  
26 storm-recovery property, regardless of whether the related  
27 sale agreement, purchase agreement, other transfer agreement,  
28 security agreement, pledge agreement, or other security  
29 document was entered into, or any financing statement was  
30 filed, before or after the effective date of this section.  
31



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

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

11           (9) STORM-RECOVERY BONDS NOT PUBLIC DEBT.--The state  
12 or its political subdivisions are not liable on any  
13 storm-recovery bonds, and the bonds are not a debt or a  
14 general obligation of the state or any of its political  
15 subdivisions, agencies, or instrumentalities. An issue of  
16 storm-recovery bonds does not, directly or indirectly or  
17 contingently, obligate the state or any agency, political  
18 subdivision, or instrumentality of the state to levy any tax  
19 or make any appropriation for payment of the bonds, other than  
20 in their capacity as consumers of electricity. This subsection  
21 shall in no way preclude bond guarantees or enhancements  
22 pursuant to this section. All bonds must contain on the face  
23 thereof a statement to the following effect: "Neither the full  
24 faith and credit nor the taxing power of the State of Florida  
25 is pledged to the payment of the principal of, or interest on,  
26 this bond."

27           (10) STORM-RECOVERY BONDS AS LEGAL INVESTMENTS WITH  
28 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY  
29 REGARDING LEGAL INVESTMENT.--The following entities may  
30 legally invest any sinking funds, moneys, or other funds  
31

1 belonging to them or under their control in storm-recovery  
2 bonds:  
3       (a) The state, the investment board, municipal  
4 corporations, political subdivisions, public bodies, and  
5 public officers except for members of the commission.  
6       (b) Banks and bankers, savings and loan associations,  
7 credit unions, trust companies, savings banks and  
8 institutions, investment companies, insurance companies,  
9 insurance associations, and other persons carrying on a  
10 banking or insurance business.  
11       (c) Personal representatives, guardians, trustees, and  
12 other fiduciaries.  
13       (d) All other persons whatsoever who are now or may  
14 hereafter be authorized to invest in bonds or other  
15 obligations of a similar nature.  
16       (11) STATE PLEDGE.--  
17       (a) For purposes of this subsection, the term  
18 "bondholder" means a person who holds a storm-recovery bond.  
19       (b) The state pledges to and agrees with bondholders,  
20 the owners of the storm-recovery property, and other financing  
21 parties that the state will not:  
22           1. Alter the provisions of this section which make the  
23 storm-recovery charges imposed by a financing order  
24 irrevocable, binding, and nonbypassable charges;  
25           2. Take or permit any action that impairs or would  
26 impair the value of storm-recovery property; or  
27           3. Except as allowed under this section, reduce,  
28 alter, or impair storm-recovery charges that are to be  
29 imposed, collected, and remitted for the benefit of the  
30 bondholders and other financing parties until any and all  
31 principal, interest, premium, financing costs and other fees,

1 expenses, or charges incurred, and any contracts to be  
2 performed, in connection with the related storm-recovery bonds  
3 have been paid and performed in full.

4  
5 Nothing in this paragraph shall preclude limitation or  
6 alteration if full compensation is made by law for the full  
7 protection of the storm-recovery charges collected pursuant to  
8 a financing order and of the holders of storm-recovery bonds  
9 and any assignee or financing party entering into a contract  
10 with the electric utility.

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

14 (12) NOT AN ELECTRIC UTILITY.--An assignee or  
15 financing party shall not be considered an electric utility or  
16 person providing electric service by virtue of engaging in the  
17 transactions described in this section.

18 (13) CONFLICTS.--In the event of conflict between this  
19 section and any other law regarding the attachment,  
20 assignment, or perfection, or the effect of perfection, or  
21 priority of, assignment or transfer of, or security interest  
22 in storm-recovery property, this section shall govern to the  
23 extent of the conflict.

24 (14) EFFECT OF INVALIDITY ON ACTIONS.--Effective on  
25 the date that storm-recovery bonds are first issued under this  
26 section, if any provision of this section is held to be  
27 invalid or is invalidated, superseded, replaced, repealed, or  
28 expires for any reason, that occurrence shall not affect the  
29 validity of any action allowed under this section which is  
30 taken by an electric utility, an assignee, a financing party,  
31 a collection agent, or a party to an ancillary agreement; and

1 any such action shall remain in full force and effect with  
2 respect to all storm-recovery bonds issued or authorized in a  
3 financing order to be issued under this section prior to the  
4 date that such provision is held to be invalid or is  
5 invalidated, superseded, replaced, or repealed, or that  
6 expires for any reason.

7 (15) PENALTIES.--A violation of this section or of a  
8 financing order issued under this section subjects the utility  
9 that obtained the order to penalties under s. 366.095 and to  
10 any other penalties or remedies that the commission determines  
11 are necessary to achieve the intent of this section and the  
12 intent and terms of the financing order and to prevent any  
13 increase in financial impact to the utility's ratepayers above  
14 that set forth in the financing order. If the commission  
15 orders a penalty or a remedy for a violation, the monetary  
16 penalty or remedy and the costs of defending against the  
17 proposed penalty or remedy may not be recovered from the  
18 ratepayers.

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

22 679.1091 Scope.--

23 (4) This chapter does not apply to:

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

28 (n) Any transfer by a government or governmental unit;  
29 or

30 (o) A transfer or pledge of, or creation of a security  
31 interest in, any interest or right or portion of any interest

1 or right in any storm-recovery property as defined in s.  
2 366.8260.

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

5  
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 SB 1366

9 The Committee Substitute for Senate Bill 1366 makes the  
10 following changes:

11 -The definition of the term storm-recovery costs is amended to  
12 allow adjustment of these costs by normal capital replacement  
13 and operating costs, lost revenues, or other potential  
14 offsetting adjustments where determined appropriate by the  
15 commission.

16 -A penalty is created for any violation of the section or of a  
17 financing order issued under the section.

18 -The language requiring that the commission's order set forth  
19 any allocation of costs among the utility and its ratepayers  
20 is deleted.

21 -The language on true up of estimated versus actual financing  
22 costs is deleted and replaced with language requiring the same  
23 review, but prohibiting an adjustment to the storm-recovery  
24 charge as a result of the review and providing instead for a  
25 deposit by the utility into storm reserves of any excess  
26 amount.

27 -The 10-day period for an appeal is changed to 30 days to  
28 conform to Florida Supreme Court rules and avoid a potential  
29 problem of interference with the court's constitutional  
30 authority to set these time periods.

31 -The exemption from state and local taxes is deleted and these  
taxes, and other taxes or similar charges, including  
regulatory assessment fees, are included in the definition of  
financing costs, and thus would be recoverable in the  
storm-recovery charge.