

By the Committees on Government Efficiency Appropriations;
Communications and Public Utilities; and Senators Constantine
and Dockery

593-1900-05

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;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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, financing cost, costs to replenish the
15 storm-recovery reserve to the level that existed before the
16 storm or storms, or such other level as the commission may
17 authorize in a financing order, and which are secured by or
18 payable from storm-recovery property.

19 (m) "Storm-recovery charge" means the amounts
20 authorized by the commission to recover, finance, or refinance
21 storm-recovery costs, financing cost, costs to replenish the
22 storm-recovery reserve to the level that existed before the
23 storm or storms, or such other level as the commission may
24 authorize in a financing order, or as provided for in a
25 financing order to be imposed on all customer bills and
26 collected by an electric utility or its successors or
27 assignees, or a collection agent, in full through a charge
28 that is separate and apart from the electric utility's base
29 rates, which charge shall be paid by all customers receiving
30 transmission or distribution service from the electric utility
31 or its successors or assignees under commission-approved rate

1 schedules or under special contracts, even if the customer
2 elects to purchase electricity from an alternative electricity
3 supplier following a fundamental change in regulation of
4 public utilities in this state.

5 (n) "Storm-recovery costs" means, at the option and
6 request of the electric utility, and as approved by the
7 commission pursuant to sub-subparagraph (2)(b)1.b., costs
8 incurred or to be incurred by an electric utility in
9 undertaking a storm-recovery activity. Such costs shall be net
10 of applicable insurance proceeds and, where determined
11 appropriate by the commission, shall include adjustments for
12 normal capital replacement and operating costs, lost revenues,
13 or other potential offsetting adjustments. Storm-recovery
14 costs shall include the costs to finance any deficiency or
15 deficiencies in storm-recovery reserves until such time as
16 storm-recovery bonds are issued, and costs of retiring any
17 existing indebtedness relating to storm-recovery activities.

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

19 1. All rights and interests of an electric utility or
20 successor or assignee of the electric utility under a
21 financing order, including the right to impose, bill, collect,
22 and receive storm-recovery charges authorized in the financing
23 order and to obtain periodic adjustments to such charges as
24 provided in the financing order.

25 2. All revenues, collections, claims, rights to
26 payments, payments, money, or proceeds arising from the rights
27 and interests specified in subparagraph 1., regardless of
28 whether such revenues, collections, claims, rights to payment,
29 payments, money, or proceeds are imposed, billed, received,
30 collected, or maintained together with or commingled with
31

1 other revenues, collections, rights to payment, payments,
2 money, or proceeds.

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

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

8 (2) FINANCING ORDERS.--

9 (a) An electric utility may petition the commission
10 for a financing order. For each petition, the electric utility
11 shall:

12 1. Describe the storm-recovery activities that the
13 electric utility has undertaken or proposes to undertake and
14 describe the reasons for undertaking the activities.

15 2. Set forth the known storm-recovery costs and
16 estimate the costs of any storm-recovery activities that are
17 not completed, or for which the costs are not yet known, as
18 identified and requested by the electric utility.

19 3. Set forth the level of the storm-recovery reserve
20 that the utility proposes to establish or replenish and has
21 determined would be appropriate to recover through
22 storm-recovery bonds and is seeking to so recover and such
23 level that the utility is funding or will seek to fund through
24 other means, together with a description of the factors and
25 calculations used in determining the amounts and methods of
26 recovery.

27 4. Indicate whether the electric utility proposes to
28 finance all or a portion of the storm-recovery costs and
29 storm-recovery reserve using storm-recovery bonds. If the
30 electric utility proposes to finance a portion of such costs,
31

1 the electric utility shall identify that portion in the
2 petition.

3 5. Estimate the financing costs related to the
4 storm-recovery bonds.

5 6. Estimate the storm-recovery charges necessary to
6 recover the storm-recovery costs, storm-recovery reserve, and
7 financing costs and the period for recovery of such costs.

8 7. Estimate any cost savings or demonstrate how it
9 would avoid or significantly mitigate rate impacts to
10 customers resulting from financing storm-recovery costs with
11 storm-recovery bonds as opposed to the traditional method of
12 recovering such costs from customers and through alternative
13 financing methods available to the electric utility.

14 8. File with the petition direct testimony supporting
15 the petition.

16 (b)1. Proceedings on a petition submitted pursuant to
17 paragraph (a) shall begin with a petition by an electric
18 utility and shall be disposed of in accordance with the
19 provisions of chapter 120 and applicable rules, except that
20 the provisions of this section, to the extent applicable,
21 shall control.

22 a. Within 7 days after the filing of a petition, the
23 commission shall publish a case schedule, which schedule shall
24 place the matter before the commission on an agenda that will
25 permit a commission decision no later than 120 days after the
26 date the petition is filed.

27 b. No later than 135 days after the date the petition
28 is filed, the commission shall issue a financing order or an
29 order rejecting the petition. A party to the commission
30 proceeding may petition the commission for reconsideration of
31 the financing order within 5 days after the date of its

1 issuance. The commission shall issue a financing order
2 authorizing financing of reasonable and prudent storm-recovery
3 costs, the storm-recovery reserve amount determined
4 appropriate by the commission, and financing costs if the
5 commission finds that the issuance of the storm-recovery bonds
6 and the imposition of storm-recovery charges authorized by the
7 order are reasonably expected to result in lower overall costs
8 or would avoid or significantly mitigate rate impacts to
9 customers as compared with alternative methods of financing or
10 recovering storm-recovery costs and storm-recovery reserve.
11 Any determination of whether storm-recovery costs are
12 reasonable and prudent shall be made with reference to the
13 general public interest in, and the scope of effort required
14 to provide, the safe and expeditious restoration of electric
15 service.

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

18 a. Except as provided in sub-subparagraph f. and in
19 subparagraph 4., specify the amount of storm-recovery costs
20 and the level of storm-recovery reserves, taking into
21 consideration, to the extent the commission deems appropriate,
22 any other methods used to recover these costs, and describe
23 and estimate the amount of financing costs which may be
24 recovered through storm-recovery charges; and specify the
25 period over which such costs may be recovered.

26 b. Determine that the proposed structuring, expected
27 pricing, and financing costs of the storm-recovery bonds are
28 reasonably expected to result in lower overall costs or would
29 avoid or significantly mitigate rate impacts to customers as
30 compared with alternative methods of financing or recovering
31 storm-recovery costs.

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

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

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

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

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

1 h. Provide that storm-recovery charges be allocated to
2 the customer classes using the criteria set out in s.
3 366.06(1), in the manner in which these costs or their
4 equivalent were allocated in the cost-of-service study
5 approved in connection with the electric utility's last rate
6 case. If the electric utility's last rate case was resolved by
7 a settlement agreement, the the cost-of-service methodology
8 filed by the electric utility in that case shall be used.

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

17 j. Include any other conditions that the commission
18 considers appropriate and that are not otherwise inconsistent
19 with this section.

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

26 3. A financing order issued to an electric utility may
27 provide that creation of the electric utility's storm-recovery
28 property pursuant to sub-subparagraph 2.f. is conditioned
29 upon, and shall be simultaneous with, the sale or other
30 transfer of the storm-recovery property to an assignee and the
31

1 pledge of the storm-recovery property to secure storm-recovery
2 bonds.

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

28 5. Within 120 days after the issuance of
29 storm-recovery bonds, the electric utility shall file with the
30 commission information on the actual costs of the
31 storm-recovery-bond issuance. The commission shall review such

1 information to determine if such costs incurred in the
2 issuance of the bonds resulted in the lowest overall costs
3 that were reasonably consistent with market conditions at the
4 time of the issuance and the terms of the financing order. The
5 commission may disallow any incremental issuance costs in
6 excess of the lowest overall costs by requiring the utility to
7 make a contribution to the storm reserve in an amount equal to
8 the excess of actual issuance costs incurred, and paid for out
9 of storm recovery bond proceeds, and the lowest overall
10 issuance costs as determined by the commission. The commission
11 may not make adjustments to the storm-recovery charges for any
12 such excess issuance costs.

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

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

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

6 (d) Within 30 days after the commission issues an
7 order pursuant to paragraph (b) or a decision denying a
8 request for reconsideration or, if the request for
9 reconsideration is granted, within 30 days after the
10 commission issues its decision on reconsideration, an
11 adversely affected party may petition for judicial review in
12 the Florida Supreme Court. The petition for review shall be
13 served upon the executive director of the commission
14 personally or by service at the office of the commission.
15 Review on appeal shall be based solely on the record before
16 the commission and briefs to the court and shall be limited to
17 determining whether the order issued pursuant to paragraph
18 (b), or the order on reconsideration, conforms to the
19 constitution and laws of this state and the United States and
20 is within the authority of the commission under this section.
21 Inasmuch as delay in the determination of the appeal of a
22 financing order will delay the issuance of storm-recovery
23 bonds, thereby diminishing savings to customers which might be
24 achieved if such bonds were issued as contemplated by a
25 financing order, the Supreme Court shall proceed to hear and
26 determine the action as expeditiously as practicable and give
27 the action precedence over other matters not accorded similar
28 precedence by law.

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

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,
10 priority, and enforcement of liens and security interests in
11 storm-recovery property to secure storm-recovery bonds is
12 governed solely by this section and not by the Uniform
13 Commercial Code.

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

17 a. The issuance of a financing order;

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

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

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

1 into a deposit account and however evidenced, shall have
2 priority in accordance with subparagraph 8. and take
3 precedence over any subsequent judicial or other lien
4 creditor. No continuation statement need be filed to maintain
5 such perfection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30
31

1 f. The treatment of the sale, conveyance, assignment,
2 or other transfer for tax, financial reporting, or other
3 purposes.

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

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

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

1 only method of perfecting a transfer of storm-recovery
2 property.

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

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

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

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

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

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

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

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

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

22 (9) STORM-RECOVERY BONDS NOT PUBLIC DEBT.--The state
23 or its political subdivisions are not liable on any
24 storm-recovery bonds, and the bonds are not a debt or a
25 general obligation of the state or any of its political
26 subdivisions, agencies, or instrumentalities. An issue of
27 storm-recovery bonds does not, directly or indirectly or
28 contingently, obligate the state or any agency, political
29 subdivision, or instrumentality of the state to levy any tax
30 or make any appropriation for payment of the bonds, other than
31 in their capacity as consumers of electricity. This subsection

1 shall in no way preclude bond guarantees or enhancements
2 pursuant to this section. All bonds must contain on the face
3 thereof a statement to the following effect: "Neither the full
4 faith and credit nor the taxing power of the State of Florida
5 is pledged to the payment of the principal of, or interest on,
6 this bond."

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

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

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

21 (c) Personal representatives, guardians, trustees, and
22 other fiduciaries.

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

26 (11) STATE PLEDGE.--

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

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

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) NOT AN ELECTRIC UTILITY.--An assignee or
25 financing party shall not be considered an electric utility or
26 person providing electric service by virtue of engaging in the
27 transactions described in this section.

28 (13) CONFLICTS.--In the event of conflict between this
29 section and any other law regarding the attachment,
30 assignment, or perfection, or the effect of perfection, or
31 priority of, assignment or transfer of, or security interest

1 in storm-recovery property, this section shall govern to the
2 extent of the conflict.

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

17 (15) PENALTIES.--A violation of this section or of a
18 financing order issued under this section subjects the utility
19 that obtained the order to penalties under s. 366.095 and to
20 any other penalties or remedies that the commission determines
21 are necessary to achieve the intent of this section and the
22 intent and terms of the financing order and to prevent any
23 increase in financial impact to the utility's ratepayers above
24 that set forth in the financing order. If the commission
25 orders a penalty or a remedy for a violation, the monetary
26 penalty or remedy and the costs of defending against the
27 proposed penalty or remedy may not be recovered from the
28 ratepayers. The commission may not make adjustments to
29 storm-recovery charges for any such penalties or remedies.

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

4 679.1091 Scope.--

5 (4) This chapter does not apply to:

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

10 (n) Any transfer by a government or governmental unit;
11 or

12 (o) A transfer or pledge of, or creation of a security
13 interest in, any interest or right or portion of any interest
14 or right in any storm-recovery property as defined in s.
15 366.8260.

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

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 CS/SB 1366

22 The Public Service Commission may not make adjustments to
23 storm-recovery charges for any penalties or remedies imposed
24 on utilities for violating this act or any financing order
25 issued under this act.
26
27
28
29
30
31