

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 303 CS Storm Recovery Financing  
**SPONSOR(S):** Benson and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1366

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Utilities &amp; Telecommunications Committee</u>	<u>12 Y, 0 N, w/CS</u>	<u>Cater</u>	<u>Holt</u>
2) <u>Finance &amp; Tax Committee</u>	<u>8 Y, 1 N, w/CS</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
3) <u>Commerce Council</u>	<u></u>	<u>Cater</u>	<u>Bohannon</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Over a six week period from August through September, 2004, Florida experienced an unprecedented number and scope of tropical storm and hurricane events across the State. It is estimated that the four investor-owned electric utilities<sup>1</sup> (IOUs) spent more than \$1.4 billion over this time period to repair hurricane damage and restore electric service. The reserve funds for such disasters have been exhausted and deficits in excess of \$900 million have been created. The majority of the damage incurred was to the utilities' transmission and distribution (T&D) facilities. These facilities are self-insured because commercial insurance has not been economically available since Hurricane Andrew.

The bill creates s. 366.8260, F.S. The provisions of the bill grant the Public Service Commission (PSC or commission) and the IOUs another method – securitization -- to replenish reserve accounts which currently contain negative balances as a result of the storms. The definition of “storm” is a named tropical storm or hurricane that occurred during calendar year 2004. The bill allows an electric utility to petition the PSC for a financing order in order to recover the costs of restoring electric service, as a result of storm damage sustained in 2004, including replenishment of the storm-recovery reserve fund and costs incurred beyond the reserve fund balance. If a petition is approved, the PSC is granted the authority to authorize a dedicated revenue stream.<sup>2</sup> Additionally, the state pledges that it will not take certain actions including any action that impairs or would impair storm-recovery property. These bonds do not create a public debt, nor do they require an appropriation from the state.

Securitization is defined as the “creation of a financial security that is backed by a revenue stream that is pledged to pay the principal and interest of that security. Securitization requires the creation of a transferable property right to collect from the utility's ratepayers a ‘nonbypassable’ obligation.” The bill adds the specific language to meet the necessary securitization criteria such as the creation of a property right, and the creation of a revenue stream to recover these costs.

The provisions of the bill expire on January 1 on the second year following payment in full of all issued storm-recovery bonds, all related financing costs, but shall continue to apply to any causes of action timely made.

The bill takes effect upon becoming law.

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<sup>1</sup> The four investor-owned electric utilities in Florida are Florida Power & Light, Progress Energy, Gulf Power, and TECO Energy.

<sup>2</sup> Under s. 364.04(1), F.S., the PSC has the authority to approve an IOU's debt issuance, but not the authority to dedicate a revenue stream.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill gives the PSC temporary authority to allow electric utilities to issue securitized bonds to recover their 2004 storm-recovery costs.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

Prior to Hurricane Andrew in 1992, Florida Power and Light (FP&L) had commercial insurance on its generation, transmission, and distribution facilities. The transmission and distribution ("T&D") insurance limit was \$350 million per occurrence with a premium of \$3.5 million. Following Hurricane Andrew, FP&L sustained T&D damage of approximately \$270 million.

As a result, the insuring company offered new T&D coverage to FP&L which consisted of a \$100 million annual aggregate loss limit with a minimum premium of \$23 million. At the time, FP&L explored other options for T&D coverage, but they proved economically inadequate given the damage caused by Hurricane Andrew.

In 1993, FP&L petitioned the PSC to implement a self-insurance mechanism for storm damage to its T&D system and to address contributions to its Storm and Property Insurance Reserve Fund. The petition was granted June 17, 1993<sup>3</sup>.

A reserve fund is money accrued to recover costs related to storm damage. At the utility's option, the reserve fund may be either funded or unfunded. With a funded reserve, the amount of the reserve is set aside in a special fund to be used in the event of a storm. With an unfunded reserve, the utility books the reserve amount, but is free to use the money to meet its current obligations; however, the utility is still liable for that amount in the event of a storm.

During August and September 2004, Hurricanes Charley, Frances, Ivan, and Jeanne, as well as Tropical Storm Bonnie struck Florida, causing power outages and damage throughout the state. In order to restore power, the IOUs were required to expend significantly more than their respective storm damage reserves. The estimated short-falls are as follows:

Utility	Estimated Storm Damage Costs (Net of Insurance)	Estimated Storm Damage Reserve	Estimated Damage Short-Fall	Damaging Storms <sup>4</sup>
Florida Power and Light <sup>5</sup>	\$890 Million	\$357 Million	\$533 Million	Charley, Frances, Jeanne
Gulf Power Company <sup>6</sup>	\$124 Million	\$28 Million	\$97 Million	Ivan
Progress Energy	\$366 Million	\$47 Million	\$319 Million	Charley, Frances, Ivan,

<sup>3</sup> PSC Order No. 93-0918-FOF-EI, issued June 17, 1993. Additional orders were issued for self insurance as follows: Progress Energy, PSC 93-1522-FOF-EI, issued October 15, 1993; Tampa Electric Company PSC-93-1522-FOF-EI, issued March 25, 1994; Gulf PSC 96-0023, issued January 8, 1996; Florida Public Utilities Co. PSC 94-0170-FOF-EI, issued February 10, 1994.

<sup>4</sup> Tropical Storm Bonnie is not included in these damage estimates.

<sup>5</sup> Source: PSC Docket No. 041291-EI, amended petition filed February 4, 2005.

<sup>6</sup> Source: PSC Docket No. 050093-EI, filed February 2, 2005.

Florida <sup>7</sup>				Jeanne
TECO Energy	\$72 Million	\$44 Million	\$28 Million	Charley, Frances, Ivan
Total	\$1,452 Million	\$476 Million	\$977 Million	

Currently, a utility may recover storm damage costs: 1) through its current base rates, 2) through a full evidentiary rate proceeding, or 3) through PSC approval of a surcharge on the customer's bill. Progress Energy Florida (PEF) and FP&L both currently have proceedings pending at the PSC requesting storm-recovery surcharges are added to customer bills to recover the negative storm reserves. On January 18, 2005, the PSC approved FPL's petition to begin collecting the surcharge of approximately \$2.09 per 1000 kWh residential bill, subject to refund. PEF's petition is currently pending. Additionally, Gulf Power Company (Gulf) has entered into a stipulation with the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) concerning Gulf's recovery of costs related to the damage it received in Hurricane Ivan. Gulf's stipulation with OPC and FIPUG was approved by the PSC at its March 1, 2005, Agenda Conference. The utilities' requests are for surcharges to bring each of their storm reserve funds to zero, but do not replenish these reserves.

### Securitization

Securitization is defined as the "creation of a financial security that is backed by a revenue stream that is pledged to pay the principal and interest of that security. Securitization requires the creation of a transferable property right to collect from the utility's ratepayers a 'nonbypassable' obligation." Other utilities have used securitization to recover stranded investment following the restructuring of the electric industries in various states, but this method has not previously been used to recover reserves and storm damages.

In this instance, securitization provides the utility with the up-front funds to replenish their reserve funds for the upcoming hurricane season and recover the amounts prudently incurred above the reserve fund balances. From the sale of bonds, the cost will be paid through a charge to its customers. With other types of storm-recovery, monies are received in increments throughout the recovery period.

In general, securitization gives the bonds a better rating than if there were no secure stream of revenue. The utilities receive a transferable right to collect a specific revenue stream from the rate payers and the bonds are secured by this revenue stream.

Additionally, while securitization requires authorization by the state, it is not a request for an appropriation from the state or a pledge of the state's full faith and credit.

### Proposed Statute Changes

#### Section 1.

The Committee Substitute creates s. 366.8260, F.S., and provides definitions to be used in this section. The provisions of the Committee Substitute permit an electric utility to petition the PSC for a financing order authorizing the financing of reasonable and prudent recovery costs as a result of storm damage sustained in 2004. These storm-recovery costs are net of applicable insurance proceeds and normal capital and operating costs, but may include the replenishment of the storm-recovery reserve. The definition of "storm" is a named tropical storm or hurricane that occurred during calendar year 2004.

### Financing Orders

An electric utility's petition for a financing order must contain the following:

- Description of the storm-recovery activities that were undertaken along with the reasons for undertaking the activities;
- Known storm-recovery costs and estimates costs yet to be known;

<sup>7</sup> Source: PSC Docket No. 041272-EI, filed November 2, 2004

- Level of storm-recovery reserve the utility proposes to establish or replenish through storm-recovery bonds and the level the utility will fund or seek to fund through other means, along with a description of the factors and calculations used in determining the amounts and methods of recovery;
- Whether the utility proposed to recover all or a portion of the storm-recovery costs it through storm-recovery bonds;
- Estimates of financing costs related to storm-recovery bonds;
- Estimates of the storm-recovery charges necessary to recover storm-recovery costs and financing costs and the period for recovery of such costs;
- Estimates of cost savings of financing through storm-recovery bonds or a demonstration of how it would avoid or significantly mitigate the rate impact to customers;
- Direct testimony supporting the petition.

Proceedings on a petition shall be conducted in accordance with ch. 120, F.S., and applicable rules. If the PSC finds that the issuance of storm-recovery bonds and the imposition of storm-recovery charges will either: (1) reasonably be expected to result in lower overall costs; or (2) avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing, the PSC will issue a financing order. Any determination of whether or not storm-recovery costs are reasonable and prudent shall be made with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service. The PSC has the final determination as to whether or not an electric utility can issue these bonds and the appropriate amount of storm costs to be recovered through the bonds.

The bill requires the PSC to render a decision on the petition within 120 days and issue either a financing order or an order denying the petition within 135 days of filing. Any petitions to the PSC for reconsideration of the financing order must be filed within five days of the issuance of the financing order. The bill also specifies that the financing order shall:

- Specify the amount of storm-recovery costs and level of storm-recovery reserves and estimate the amount of financing costs that may be recovered through storm-recovery charges and specify the period over which such costs may be recovered;
- Determine that the proposed structure, expected pricing, and financing costs is reasonably expected to result in a lower overall cost or significantly mitigate rate impacts to customers;
- Provide that the storm-recovery charges are paid by all customers receiving transmission or distribution service from the utility, even if the customer elects to purchase electricity from an alternative supplier following a fundamental change in public utility regulation in the state;
- Determine what portion of the storm-recovery reserve must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used;
- Include a formula-based mechanism for periodic adjustment of the storm-recovery charge to the customer and making any adjustments necessary to correct any over or under collection of charges or to otherwise ensure timely payment of storm-recovery bonds, financing costs, and other required amounts and charges payable in connection with storm-recovery bonds;
- Specify the storm-recovery property that is, or shall be, created in favor of the electric utility and that it shall be used to pay and/or secure storm-recovery bonds and financing costs;
- Specify the degree of flexibility afforded to the utilities in establishing the terms and conditions of the bonds;
- Provide that storm-recovery charges be allocated among customer classes using the criteria set out in s. 366.06(1), F.S., in the manner in which these costs were allocated in the cost-of-service study approved in the utility's last rate case. If the last rate case was resolved by a settlement agreement, the cost-of-service-methodology filed by the electric utility in that case shall be used;
- Provide that once the final terms of a bond issuance has been established, and prior to them being issued, the utility shall determine the resulting initial storm-recovery charge, which shall be final and effective upon the issuance of the bonds, without further commission action;
- Include any other conditions the commission considers appropriate that are not otherwise inconsistent with this section.

The bill allows the PSC, in performing the responsibilities of this section, to engage outside consultants or counsel, with the associated expenses included as part of the financing costs included in storm-recovery charges.

A financing order may provide that the creation of the utility's storm-recovery property is conditioned upon, or shall be simultaneous, with the sale or other transfer of storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

If the PSC issues a financing order, the bill requires the utility to, at least biannually, file a petition or letter with the PSC for administrative approval of an adjustment (true-up) of the storm-recovery charge. This adjustment is based on the formula contained in the financing order. This request must be approved by the PSC within 60 days, and the PSC's review is limited to determining whether there is a mathematical error in the application of the formula based mechanism relating to the appropriate amount of the over collection or under collection of storm recover charges. Any adjustment shall ensure the recovery of revenue sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges with respect to storm-recovery bonds. If there is a mathematical error, the PSC must inform the utility of any mathematical error discovered and provide it with the opportunity to correct the error.

Within 120 days of the issuance of storm-recovery bonds, the utility shall file with the PSC information on the actual costs of the storm-recovery bond issuance. The PSC shall review the information to determine if the costs incurred in issuing the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of issuance and the terms of the financing order. The PSC may disallow incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a contribution to the storm-recovery reserve in an amount equal to excess of actual issuance costs and the lowest overall issuance costs. The PSC may not make adjustments to the storm-recovery charges for any such excess issuance costs.

Subsequent to the transfer of storm-recovery property pursuant to a financing order, the financing order is irrevocable, except for a utility's request for an adjustment of the storm-recovery charges or request for a subsequent financing order. Therefore, the commission shall not amend, modify, or terminate the financing order by a subsequent action or reduce, impair, postpone, terminate or otherwise adjust storm-recovery charges. The utility retains sole discretion regarding whether to assign, sell, or otherwise transfer the storm-recovery property or to cause storm-recovery bonds to be issued.

At an electric utility's request, the PSC may commence a proceeding to issue a subsequent financing order to retire or refund bonds issued pursuant to the original financing order. Effective on the retirement of the refunded bonds and the issuance of the new bonds, the PSC shall adjust the related storm-recovery charges accordingly.

Any appeal to the Florida Supreme Court must be made within 30 days after the commission issues either a financing order or its decision concerning a request for reconsideration. The appellate review shall be based solely on the record before the commission and the briefs to the court. Since a delay in the issuance of storm-recovery bonds will diminish any savings to customers, the Supreme Court shall proceed as expeditiously as practicable and give it precedence over other matters not accorded similar precedence by law.

A financing order remains in effect until the storm-recovery bonds have been paid in full, and the financing and other costs of the bonds have been recovered in full. The financing order also remains in effect and unabated notwithstanding any reorganization, bankruptcy, or other insolvency proceedings of the utility or its successor or assignees.

#### Exceptions to Commission Jurisdiction

The bill provides exceptions to the PSC's current rate-making jurisdiction<sup>8</sup> where it cannot consider the storm-recovery bonds debt except for federal income tax purposes, cannot consider the storm-recovery charges to be income to the utility, cannot consider the storm-recovery or financing costs as costs of the utility, nor can it determine that any action taken by the utility consistent with the financing order as unjust or unreasonable.

The PSC cannot require the utility to use these bonds unless the purpose is stated in the petitions. The PSC may not refuse to allow an electric utility to recover costs for storm-related activities in an otherwise permissible fashion, or refuse or condition the authorization or approval of the issuance and sale of securities by the electric utility or the assumption by it of liabilities or obligations, solely because storm-recovery financing is potentially available.

### Electric Utility Duties

Once the utility has issued storm-recovery bonds, its bills shall explicitly reflect that a portion of the charges reflect storm-recovery charges approved pursuant to a financing order. If the storm-recovery property has been transferred to an assignee, a statement to the effect that the assignee is the owner of the rights to the storm-recovery property and that the electric utility, or other entity, is acting as a collection agent or servicer must be on the bill. The applicable tariff shall indicate the storm-recovery charge and the ownership of that charge. The PSC will determine whether or not this information and the amounts owed with respect to storm-recovery property are a separate line item on customer bills. Failure of the electric utility to comply with this subsection, does not invalidate the financing order, storm-recovery property, storm-recovery charge, or storm-recovery bonds, but subjects the electric utilities to penalties under s. 366.095, F.S.

### Storm-Recovery Property

The storm-recovery property specified in a financing order consists of an existing, present property right or interest, notwithstanding that the imposition and collection of storm-recovery charges depends on the electric utility performing its servicing functions related to the collection of storm-recovery charges. This storm-recovery property continues to exist until the storm-recovery bonds and associated costs have been paid in full.

All or part of the storm-recovery property specified in the financing order may be transferred, sold, conveyed, or assigned to a successor or assignee, including an affiliate of the electric utility created for this purpose. All or a portion of the storm-recovery property may be pledged to secure storm recovery bonds, amounts payable to financing parties and to counterparties under ancillary agreements, and other financing costs. Each such transfer by an electric utility or affiliate is considered to be a transaction in the ordinary course of business.

If the utility defaults on charges arising from the storm-recovery property, a court, upon the application of an interested party, and without limiting any other available remedies, shall order the sequestration and payments of the revenues arising from the storm-recovery property to the financing party. Any such order shall remain in full force and in effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

In the event of reorganization, bankruptcy, or other insolvency of the electric utility or any other entity, the interest of a transferee, purchaser, acquirer, assignee, or pledgee of storm-recovery property is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person. Any successor to the electric utility shall perform and satisfy all obligations of, and have the same rights under the financing order in the same manner and to the same extent as the electric utility.

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<sup>8</sup> In a standard PSC rate proceeding, any debt is included in the utility's capital structure, and costs associated with the debt are factored into the utility's revenue requirements.

Except as specified in that section, the Uniform Commercial Code does not apply to storm-recovery property or any right, title, or interest of a utility or assignee of such property, whether before or after the issuance of a financing order.

Additionally, the bill provides that any liens and security interests in storm-recovery property to secure storm-recovery bonds are covered by this section and not by the Uniform Commercial Code. A valid, enforceable, and attached lien and security interest in storm-recovery property can only be created upon the: 1) issuance of the financing order, 2) the execution and delivery of a security agreement with a financing party in connection with the issuance of storm-recovery bonds, or 3) the receipt of value for the storm-recovery bonds. The security interest shall be perfected against third parties as of the date of filing a financing statement in the Florida Secured Transactions Registry. It shall be a continually perfected lien, and the security interest in storm-recovery property and all proceeds of such property shall have priority in accordance to this section and take precedence over subsequent judicial or other lien creditor. To maintain such perfection, no continuation statements need be filed.

Any financing statements required to be filed shall be filed, maintained, and indexed in the same manner and system or records maintained in the Florida Secured Transaction Registry under Article 9 of the Uniform Commercial Code. The filing of these statements is the only method of perfecting a lien or security interest in storm-recovery property.

The priority of any lien and perfected security interest is not impaired by a later modification of the financing order or storm-recovery property or by commingling funds from storm-recovery property with other funds. Any other security interest that may apply to those funds shall be terminated and all funds transferred to a segregated account to benefit the assignee or financing party, or giving directly to that party.

In the event of default or termination occurs, the financing party may foreclose or otherwise enforce their lien or security interest in storm-recovery property, as if it were a secured party under Article 9 of the Uniform Commercial Code. A court may order that amounts arising from storm-recovery property be transferred to a separate account to benefit the financing party. An application by a financing party to a circuit court of this state shall order the sequestration and payment of revenues arising from storm-recovery property to the financing party.

Provisions relating to the priority of conflicting interests or rights in storm-recovery property are also included in the bill.

#### Sale, Assignment, or Transfer of Storm-Recovery Property

The documents concerning the sale, assignment, or transfer of storm-recovery property by an electric utility must expressly state that the sale or other absolute transfer is an absolute transfer and true sale of the transferor's right, title, and interest in, to and under the storm-recovery property except for federal and state income tax and franchise tax purposes. After this transaction, the storm-recovery property is not subject to any claims of the transferor or its creditors, except for other creditors holding a prior perfected security interest in the storm-recovery property. The characterization of the sale as a true sale is not affected by the following:

- Commingling of amounts with respect to storm-recovery property with other amounts;
- The transferor retaining a partial or residual interest in storm-recovery property;
- Any recourse that the transferee may have in the transformer other than recourses related to one or more of the transferor's customers' inability to timely pay all or a portion of the storm-recovery charge;
- Any indemnifications, obligations, or repurchase rights made or provided by the transferor other than those based solely upon a transferor's customers' inability to timely pay all or a portion of the storm-recovery charge;
- The responsibility of the transferor to collect storm-recovery charges;
- Treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes;

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

Any right an electric utility has in storm-recovery property prior to its pledge, sale, or transfer, or any other right created under this section or a financing order and assignable under this section or pursuant to a financing order shall be property in the form of a contract right. The transfer of interest in storm-recovery property is only enforceable upon the later of the issuance of a financing order, the transfer of documents to the assignee in connection with the issuance of storm-recovery bonds, and the receipt of value. An enforceable transfer of storm-recovery property shall be perfected, as of the date of filing, against all third parties, including subsequent judicial and other lien creditors.

Financing statements required in the sale and transfer of storm-recovery property shall be maintained in the same manner and in the same system of records maintained for the filing of financing statements in the Florida Secured Transactions Registry under Article 9 of the Uniform Commercial Code.

The priority of a transfer of perfected interest and the conflicting interests of assignees in the sale of storm-recovery property are the same as those in the creation of storm-recovery property.

#### Description or Indication of Property

The description of the storm-recovery property being transferred is only sufficient if the description describes the financing order that created the storm-recovery property and states that such agreement or financing statement covers all or part of such property detailed in the financing order.

#### Financing Statements

The bill provides that all financing statements referenced in this section are subject to Part 5 of Article 9 or the Uniform Commercial Code except that the requirement as to continuation statements shall not apply.

#### Choice of Law

In the event there is a conflict between this section and another section concerning attachment, assignment, transfer, or security interest, to the extent there is a conflict, this section governs.

#### Storm-Recovery Bonds Not Public Debt

The storm-recovery bonds issued pursuant to this section are not considered public debt and neither the state nor its political subdivisions are liable on any storm-recovery bonds. Nor may the state or any of its political subdivisions levy any tax or make a payment on the bonds, except in their capacity as consumers of electricity.

#### Storm-Recovery Bonds as Legal Investments with Respect to Investors that Require Statutory Authority Regarding Legal Investment

The bill provides that the following entities may legally invest in storm-recovery bonds:

- The state and its political subdivisions and public officers except for members of the commission;
- Banks, insurance companies, and other persons carrying on a banking or insurance business;
- Personal representatives, guardians, trustees, and other fiduciaries;
- All other persons who are now or may hereafter be authorized to invest in bonds or similar obligations.

#### State Pledge



With this bill, the state pledges that it will neither: 1) alter the section which impacts the irrevocability and nonbypassability of the financing charges; 2) take or permit any action that impairs the value of the storm-recovery property; or 3) reduce, alter, or impair the recovery charges in connection with the bonds until paid and performed in full. The state also pledges that it will not take or permit any action that impairs or would impair the value of the storm-recovery property, or impair the collection of the storm-recovery charges, except if full compensation is made by law.

#### Not an Electric Utility

The bill provides that any assignee or financing party of storm-recovery property is not considered an electric utility.

#### Conflicts

The bill provides that in the event of a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in, storm-recovery property, this section shall govern to the extent of the conflict.

#### Effect of Invalidity of Actions

The bill contains an effect of invalidity of action clause where, effective the on date that storm-recovery bonds are first issued, if any provision of this section is held invalid, is invalidated, superseded, replaced, repealed, or expired, that occurrence will not affect the validity of any action taken under this section prior to the date where the provision is held to be invalid, invalidated, superseded, replaced, repealed, or expired or that expires for any reason.

#### Authority

The bill only gives the PSC the authority to issue financing orders on petitions that are filed within 12 months of the effective date of this section.

#### Expiration

This statute also expires on January 1 of the second year following the full payment of all storm-recovery bonds and related financing cost as noticed by the PSC to the Joint Administrative Procedures Committee with a copy published in the Florida Administrative Weekly. Also these provisions continue to apply for any timely filed cause of action.

#### Section 2.

The bill also amends s. 679.1091, F.S. to show that certain provisions of Article 9 of the Uniform Commercial Code do not apply to the transfer or pledge of, or creation of a security interest or right or portion of interest or right in any storm-recovery property.

#### Section 3.

#### Effective Date

The bill takes effect upon becoming law.

### C. SECTION DIRECTORY:

Section 1. Creates s. 366.8260, F.S., to allow investor owned electric utilities to recover storm related costs through the issuance of bonds, following the approval of the PSC.

Section 2. Amends s. 679.1091, F.S., to show that ch. 679, F.S., does not apply to transactions pertaining to storm-recovery property.

Section 3. Provides that the bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

According to the PSC, it can handle these proceedings with its existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a means for the electric utilities, upon the issuance of storm-recovery bonds, to recover their prudently incurred 2004 hurricane recovery expenses and replenish their storm damage reserves. This allows the utilities to have the financial capability to respond to future storms.

### D. FISCAL COMMENTS:

If all eligible utilities fully fund the permitted bonds and the reserve accounts to the level of reserve present in August 2004, then the total issuance will be approximately \$1.4 billion, exclusive of the costs of issuance.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because the bill does not require the counties or municipalities to spend funds of to take any action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with municipalities or counties.

2. Other:

The bill contains a pledge from the state that it will not alter certain provisions of this section, take or permit any action that would impair the value of storm-recovery property or reduce, alter, or impair storm-recovery charges until the storm-recovery bonds and all related charges have been paid in full. With this pledge, there is a concern that this Legislature may bind future Legislatures by pledging that certain statutes will not be changed.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The amendment adopted by the Finance and Tax Committee calls for reserves to be fully funded. However at least one reference remains in the bill which might be construed to allow non-fully funded reserves. (See lines 272 – 273.) This inconsistency should be addressed.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 22, 2004, the Utilities & Telecommunications Committee adopted the following 12 amendments, resulting in the bill becoming a committee substitute:

- Amendment 1. Clarified that in the definition of “financing costs” any income taxes resulting from the collection of storm-recovery charges, that are included in the financing costs are net of tax deductions.
- Amendment 2. Clarified that “storm-recovery costs” are net of applicable insurance proceeds and normal capital replacement and operating costs.
- Amendment 3. Clarified that a “storm-recovery reserve” may be either funded or unfunded.
- Amendment 4. Clarified the language to say that the utility’s petition must estimate any cost savings or demonstrate how it would avoid or significantly mitigate rate impacts as opposed to traditional methods of recovering these costs.
- Amendment 5. Clarified that the PSC shall issue storm-recovery bonds if the storm-recovery charges are reasonably expected result in a lower overall cost or would avoid or significantly mitigate rate impacts as opposed to other methods of storm-recovery financing.
- Amendment 6. Clarified that the financing order shall determine that the proposed costs structuring, expected pricing and financing costs are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts as opposed to other methods of storm-recovery financing.
- Amendment 7. Inserted language to clarify that the financing order shall ensure that the marketing, structuring, pricing, and financing costs of the storm-recovery bonds will result in the lowest costs of the funds and the lowest storm-recovery charges that are consistent with market conditions and the terms of the financing order.
- Amendment 8. Inserted language to clarify that in the financing order, the PSC will determine what portion, if any, of the storm-recovery reserve must be held in a funded storm-recovery reserve.
- Amendment 9. Allowed the PSC, in the financing order, to specify the degree of flexibility the electric utility has in establishing the terms and conditions of the storm-recovery bonds and added maturity date to the list of terms and conditions of storm-recovery costs.
- Amendment 10. The word “shall” was changed to “may” in order to give the PSC discretions as to the most appropriate cost of service methodology to use.
- Amendment 11. Inserted language to allow the PSC, in performing its responsibilities of this section, to engage in outside consultants or counsel with the associated expenses included and

part of the financing costs and appropriate remuneration made from storm-recovery bonds.

Amendment 12. Clarified that securitization is expected to minimize the rate impact to the utilities' customers.

On March 18, 2005 the Committee on Finance and Tax met and adopted a strike-all which conformed the bill to the Senate legislation with 5 differences: (1) only taxes paid by the utilities are included in financing costs; (2) makes clear that storm-recovery bonds will only be issued for the 2004 hurricanes; (3) requires that the reserve accounts of the utilities be fully funded; (4) deletes an unclear standard for Supreme Court review; and (5) provides a time limitation for a utility to apply for securitization financing and provides for the expiration of the securitization financing authorization.