

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

29 storm recovery property transferred, granted, or pledged,
30 or indicated in a financing statement; subjecting
31 financing statements to certain provisions of law;
32 specifying that storm recovery bonds are not public debt;
33 specifying storm recovery bonds as legal investments for
34 certain entities; specifying certain state pledges
35 relating to bondholders; providing a tax exemption for
36 certain revenues collected by electric utilities under
37 certain circumstances; declaring certain entities as not
38 electric utilities under certain circumstances; specifying
39 effect of certain provisions in situations of conflict;
40 providing for protecting validity of certain bonds under
41 certain circumstances; limiting commission authority to
42 issue certain financing orders after a time certain;
43 providing for section expiration under certain
44 circumstances; providing for continued application under
45 certain circumstances; amending s. 679.1091, F.S.;
46 specifying nonapplication of secured transactions
47 provisions of the Uniform Commercial Code to interests in
48 storm recovery property; providing an effective date.

49
50 WHEREAS, four major hurricanes struck Florida within a span
51 of 6 weeks during the unprecedented 2004 hurricane season, and

52 WHEREAS, the hurricanes resulted in widespread and
53 protracted power outages affecting millions of Florida
54 residents, and

55 WHEREAS, the hurricanes had a destructive impact on the
56 electric infrastructure of Florida's investor-owned electric

57 | utilities, and

58 | WHEREAS, it is in the public interest for Florida's
59 | investor-owned electric utilities to safely and expeditiously
60 | restore electric service following a hurricane or named tropical
61 | storm, and

62 | WHEREAS, given the unprecedented impact of the 2004
63 | hurricane season, the storm reserves and insurance proceeds of
64 | Florida's investor-owned electric utilities were insufficient to
65 | cover the costs of electric restoration following the 2004
66 | hurricanes, and

67 | WHEREAS, it is in the public interest for Florida's
68 | investor-owned electric utilities to replenish their reserves to
69 | provide for costs of electric restoration in the event of a
70 | hurricane or named tropical storm, and

71 | WHEREAS, existing provisions of the Florida Statutes
72 | authorize the Florida Public Service Commission to permit
73 | recovery of deficiencies in and reestablishment of investor-
74 | owned utility storm reserves but do not provide a specific
75 | financing mechanism for doing so, and

76 | WHEREAS, the financing arrangement to be authorized and
77 | enabled by this legislation, which allows for the recovery of
78 | deficiencies in and provides a mechanism for reestablishment of
79 | investor-owned electric utility storm reserves, will facilitate
80 | the expeditious recovery of deficiencies in and reestablishment
81 | of investor-owned utility reserves and is expected to save
82 | investor-owned electric utilities' customers millions of dollars
83 | compared with the traditional method of recovering such costs
84 | from customers and alternative financing methods available to

85 investor-owned electric utilities, and

86 WHEREAS, the provision of adequate and efficient electric
 87 service by financially sound investor-owned electric utilities
 88 is in the public interest, NOW, THEREFORE,

89

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

91

92 Section 1. Section 366.8260, Florida Statutes, is created
 93 to read:

94 366.8260 Storm recovery financing.--

95 (1) DEFINITIONS.--As used in this section:

96 (a) "Ancillary agreement" means any bond, insurance
 97 policy, letter of credit, reserve account, surety bond, swap
 98 arrangement, hedging arrangement, liquidity or credit support
 99 arrangement, or other financial arrangement entered into in
 100 connection with the issuance of storm recovery bonds.

101 (b) "Assignee" means any entity, including, but not
 102 limited to, a corporation, limited liability company,
 103 partnership or limited partnership, public authority, trust,
 104 financing entity, or other legally recognized entity to which an
 105 electric utility assigns, sells, or transfers, other than as
 106 security, all or a portion of its interest in or right to storm
 107 recovery property. The term also includes any entity to which a
 108 direct assignee of an electric utility may assign, sell, or
 109 transfer, other than as security, its interest in or right to
 110 storm recovery property.

111 (c) "Commission" means the Florida Public Service
 112 Commission.

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

115 (e) "Financing costs" means:

116 1. Interest and acquisition, defeasance, or redemption
 117 premiums that are payable on storm recovery bonds;

118 2. Any payment required under an ancillary agreement and
 119 any amount required to fund or replenish a reserve account or
 120 other accounts established under the terms of any indenture,
 121 ancillary agreement, or other financing documents pertaining to
 122 storm recovery bonds;

123 3. Any other cost related to issuing, supporting,
 124 repaying, and servicing storm recovery bonds, including, but not
 125 limited to, servicing fees, accounting and auditing fees,
 126 trustee fees, legal fees, consulting fees, administrative fees,
 127 placement and underwriting fees, capitalized interest, rating
 128 agency fees, stock exchange listing and compliance fees, and
 129 filing fees, including costs related to obtaining the financing
 130 order;

131 4. Costs to finance any deficiency or deficiencies in
 132 storm recovery reserves until such time as storm recovery bonds
 133 are issued;

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

136 6. Any income taxes resulting from the collection of storm
 137 recovery charges; or

138 7. Costs of retiring any existing indebtedness related to
 139 storm recovery costs.

140 (f) "Financing order" means an order under subsection (2)

141 that allows for the issuance of storm recovery bonds, the
 142 imposition and collection and periodic adjustments of storm
 143 recovery charges, and the creation of storm recovery property.

144 (g) "Financing party" means holders of storm recovery
 145 bonds and trustees, collateral agents, or other persons acting
 146 for the benefit of holders of storm recovery bonds.

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

149 (i) "Pledgee" means a financing party to which an electric
 150 utility or its successors or assignees mortgages, negotiates,
 151 hypothecates, pledges, or creates a security interest or lien on
 152 all or any portion of its interest in or right to storm recovery
 153 property.

154 (j) "Storm" means a named tropical storm or hurricane that
 155 occurred during calendar year 2004.

156 (k) "Storm recovery activity" means any activity or
 157 activities by or on behalf of an electric utility in connection
 158 with the restoration of service associated with electric power
 159 outages affecting customers of an electric utility as the result
 160 of a storm or storms, including, but not limited to,
 161 mobilization, staging, and construction, reconstruction,
 162 replacement, or repair of electric generation, transmission, or
 163 distribution facilities.

164 (l) "Storm recovery bonds" means bonds, debentures, notes,
 165 certificates of participation, certificates of beneficial
 166 interest, certificates of ownership, or other evidences of
 167 indebtedness or ownership that are issued by an electric utility
 168 or an assignee pursuant to a financing order, the proceeds of

169 which are used directly or indirectly to recover, finance, or
170 refinance storm recovery costs and financing costs and that are
171 secured by or payable from storm recovery property.

172 (m) "Storm recovery charge" means the amounts authorized
173 by the commission to recover, finance, or refinance storm
174 recovery costs and financing costs as provided for in a
175 financing order to be imposed on all customer bills and
176 collected by an electric utility or its successors or assignees,
177 or a collection agent, in full through a charge that is separate
178 and apart from the electric utility's base rates, which charge
179 shall be paid by all customers receiving transmission or
180 distribution service from the electric utility or its successors
181 or assignees under commission-approved rate schedules or under
182 special contracts, even if the customer elects to purchase
183 electricity from an alternative electricity supplier following a
184 fundamental change in regulation of public utilities in this
185 state.

186 (n) "Storm recovery costs" means, at the option and
187 request of the electric utility, and as approved by the
188 commission pursuant to sub-subparagraph (2)(b)1.b., costs
189 incurred or to be incurred by an electric utility in undertaking
190 a storm recovery activity, which may include the amount
191 necessary to replenish the storm recovery reserve to the level
192 that existed before the storm or storms, or such other level as
193 the commission may authorize in a financing order.

194 (o) "Storm recovery property" means:

195 1. All rights and interests of an electric utility or
196 successor or assignee of the electric utility under a financing

197 order, including the right to impose, bill, collect, and receive
 198 storm recovery charges authorized in the financing order and to
 199 obtain periodic adjustments to such charges as provided in the
 200 financing order.

201 2. All revenues, collections, claims, rights to payments,
 202 payments, money, or proceeds arising from the rights and
 203 interests specified in subparagraph 1., regardless of whether
 204 such revenues, collections, claims, rights to payment, payments,
 205 money, or proceeds are imposed, billed, received, collected, or
 206 maintained together with or commingled with other revenues,
 207 collections, rights to payment, payments, money, or proceeds.

208 (p) "Storm recovery reserve" means an electric utility
 209 storm reserve or such other similar reserve established by law
 210 or rule or pursuant to order of the commission.

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

213 (2) FINANCING ORDERS.--

214 (a) An electric utility may petition the commission for a
 215 financing order. For each petition, an electric utility shall:

216 1. Describe the storm recovery activities that the
 217 electric utility has undertaken or proposes to undertake and
 218 describe the reasons for undertaking the activities.

219 2. Estimate the storm recovery costs as identified and
 220 requested by the electric utility.

221 3. Indicate whether the electric utility proposes to
 222 finance all or a portion of the storm recovery costs estimated
 223 under subparagraph 2. with storm recovery bonds. If the electric
 224 utility proposes to finance a portion of such costs, the

225 electric utility shall identify that portion in the petition.

226 4. Estimate the financing costs related to the storm
 227 recovery bonds proposed under subparagraph 3.

228 5. Estimate the storm recovery charges necessary to
 229 recover the storm recovery costs and financing costs estimated
 230 in the petition and the period for recovery of such costs.

231 6. Estimate any cost savings or demonstrate the avoidance
 232 or mitigation of significant rate impacts to customers resulting
 233 from financing storm recovery costs with storm recovery bonds as
 234 opposed to the traditional method of recovering such costs from
 235 customers and through alternative financing methods available to
 236 the electric utility.

237 7. File with the petition direct testimony supporting the
 238 petition.

239 (b)1. Proceedings on a petition submitted pursuant to
 240 paragraph (a) shall begin with a petition by an electric utility
 241 and shall be disposed of in accordance with the provisions of
 242 chapter 120 and applicable rules, except that the provisions of
 243 this section, to the extent applicable, shall control.

244 a. Within 7 days after the filing of a petition, the
 245 commission shall publish a case schedule, which schedule shall
 246 place the matter before the commission on an agenda that will
 247 permit a commission decision no later than 120 days after the
 248 date the petition is filed.

249 b. No later than 135 days after the date the petition is
 250 filed, the commission shall issue a financing order or an order
 251 rejecting the petition. A party to the commission proceeding may
 252 petition the commission for reconsideration of the financing

253 order within 5 days after the date of its issuance. The
254 commission shall issue a financing order authorizing financing
255 of reasonable and prudent storm recovery costs and financing
256 costs if the commission finds that the issuance of the storm
257 recovery bonds and the imposition of storm recovery charges
258 authorized by the order are reasonably expected to result in
259 lower overall costs or would avoid or mitigate more significant
260 rate impacts to customers than would alternative methods of
261 financing or recovering storm recovery costs. Any determination
262 of whether storm recovery costs are reasonable and prudent shall
263 be made with reference to the general public interest in, and
264 the scope of effort required to provide, the safe and
265 expeditious restoration of electric service.

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

268 a. Except as provided in sub-subparagraph d. and in
269 subparagraph 4., specify the amount of storm recovery costs and
270 describe and estimate the amount of financing costs that may be
271 recovered through storm recovery charges and the period over
272 which such costs may be recovered.

273 b. Determine that the proposed structuring, expected
274 pricing, and financing costs of the storm recovery bonds are
275 reasonably expected to result in lower overall costs or would
276 avoid or mitigate more significant rate impacts to customers
277 than would alternative methods of financing or recovering storm
278 recovery costs.

279 c. Provide that, for the period specified pursuant to sub-
280 subparagraph a., the imposition and collection of storm recovery

281 charges authorized in the financing order shall be paid by all
 282 customers receiving transmission or distribution service from
 283 the electric utility or its successors or assignees under
 284 commission-approved rate schedules or under special contracts,
 285 even in the event the customer elects to purchase electricity
 286 from an alternative electric supplier following a fundamental
 287 change in regulation of public utilities in the state.

288 d. Include a formula-based mechanism for making
 289 expeditious periodic adjustments in the storm recovery charges
 290 that customers are required to pay under the financing order and
 291 making any adjustments that are necessary to correct for any
 292 overcollection or undercollection of the charges or to otherwise
 293 ensure the timely payment of storm recovery bonds and financing
 294 costs and other required amounts and charges payable in
 295 connection with the storm recovery bonds.

296 e. Specify the storm recovery property that is, or shall
 297 be, created in favor of an electric utility or its successors or
 298 assignees and that shall be used to pay or secure storm recovery
 299 bonds and financing costs.

300 f. Afford flexibility in establishing the terms and
 301 conditions of the storm recovery bonds, including, but not
 302 limited to, repayment schedules, interest rates, and other
 303 financing costs.

304 g. Provide that storm recovery charges shall be allocated
 305 to the customer classes using the criteria set out in s.
 306 366.06(1), in the manner in which these costs or their
 307 equivalent were allocated in the cost-of-service study approved
 308 in connection with the electric utility's last rate case. If the

309 electric utility's last rate case was resolved by a settlement
310 agreement, the cost-of-service methodology filed by the electric
311 utility in that case shall be used.

312 h. Provide that, after the final terms of an issuance of
313 storm recovery bonds have been established and prior to the
314 issuance of storm recovery bonds, the electric utility shall
315 determine the resulting initial storm recovery charge in
316 accordance with the financing order and such initial storm
317 recovery charge shall be final and effective upon the issuance
318 of such storm recovery bonds without further commission action.

319 i. Include any other conditions that the commission
320 considers appropriate and that are not otherwise inconsistent
321 with this section.

322 3. A financing order issued to an electric utility may
323 provide that the electric utility's storm recovery property
324 created pursuant to sub-subparagraph 2.e. is conditioned upon,
325 and shall be simultaneous with, the sale or other transfer of
326 the storm recovery property to an assignee and the pledge of the
327 storm recovery property to secure storm recovery bonds.

328 4. If the commission issues a financing order, the
329 electric utility shall file with the commission at least
330 biannually a petition or a letter applying the formula-based
331 mechanism pursuant to sub-subparagraph 2.d. and, based on
332 estimates of consumption for each rate class and other
333 mathematical factors, requesting administrative approval to make
334 the adjustments described in sub-subparagraph 2.d. The review of
335 such a request shall be limited to determining whether there is
336 any mathematical error in the application of the formula-based

337 mechanism relating to the appropriate amount of any
338 overcollection or undercollection of storm recovery charges and
339 the amount of an adjustment. Such adjustments shall ensure the
340 recovery of revenues sufficient to provide for the payment of
341 principal, interest, acquisition, defeasance, financing costs,
342 or redemption premium and other fees, costs, and charges in
343 respect of storm recovery bonds approved under the financing
344 order. Within 60 days after receiving an electric utility's
345 request pursuant to this paragraph, the commission shall either
346 approve the request or inform the electric utility of any
347 mathematical errors in its calculation. If the commission
348 informs the utility of mathematical errors in its calculation,
349 the utility may correct its error and refile its request. The
350 timeframes previously described in this paragraph shall apply to
351 a refiled request.

352 5. Subsequent to the earlier of the transfer of storm
353 recovery property to an assignee and the issuance of storm
354 recovery bonds authorized thereby, a financing order shall be
355 irrevocable and, except as provided in subparagraph 4. and
356 paragraph (c), the commission shall not amend, modify, or
357 terminate the financing order by any subsequent action or
358 reduce, impair, postpone, terminate, or otherwise adjust storm
359 recovery charges approved in the financing order. After the
360 issuance of a financing order, the electric utility shall retain
361 sole discretion regarding whether to assign, sell, or otherwise
362 transfer storm recovery property or to cause the storm recovery
363 bonds to be issued, including the right to defer or postpone
364 such assignment, sale, transfer, or issuance.

365 (c) At the request of an electric utility, the commission
366 may commence a proceeding and issue a subsequent financing order
367 that provides for retiring and refunding storm recovery bonds
368 issued pursuant to the original financing order if the
369 commission finds that the subsequent financing order satisfies
370 all of the criteria specified in paragraph (b). Effective on
371 retirement of the refunded storm recovery bonds and the issuance
372 of new storm recovery bonds, the commission shall adjust the
373 related storm recovery charges accordingly.

374 (d) Within 10 days after the commission issues either an
375 order pursuant to paragraph (b) or a decision denying a request
376 for reconsideration or, if the request for reconsideration is
377 granted, within 10 days after the commission issues its decision
378 on reconsideration, an adversely affected party may petition for
379 judicial review in the Florida Supreme Court. The petition for
380 review shall be served upon the executive director of the
381 commission either personally or by service at the office of the
382 commission. Review on appeal shall be based solely on the record
383 before the commission and briefs to the court and shall be
384 limited to determining whether the order issued pursuant to
385 paragraph (b), or the order on reconsideration, conforms to the
386 constitution and laws of this state and the United States and is
387 within the authority of the commission under this section.
388 Inasmuch as delay in the determination of the appeal of a
389 financing order will delay the issuance of storm recovery bonds,
390 thereby diminishing savings to customers that might be achieved
391 if such bonds were issued as contemplated by a financing order,
392 the Supreme Court shall proceed to hear and determine the action

393 as expeditiously as practicable and give the action precedence
 394 over other matters not accorded similar precedence by law.

395 (e)1. A financing order shall remain in effect until the
 396 storm recovery bonds issued pursuant to the order have been paid
 397 in full and the financing and other costs of such bonds have
 398 been recovered in full.

399 2. A financing order issued to an electric utility shall
 400 remain in effect and unabated notwithstanding the
 401 reorganization, bankruptcy, or other insolvency proceedings of
 402 the electric utility or its successors or assignees.

403 (3) EXCEPTIONS TO COMMISSION JURISDICTION.--

404 (a) If the commission issues a financing order to an
 405 electric utility pursuant to this section, the commission may
 406 not, in exercising its powers and carrying out its duties
 407 regarding any matter within its authority pursuant to this
 408 chapter, consider the storm recovery bonds issued pursuant to
 409 the order to be the debt of the electric utility other than for
 410 federal income tax purposes, the storm recovery charges paid
 411 under the order to be the revenue of the electric utility for
 412 any purpose, or the storm recovery costs or financing costs
 413 specified in the order to be the costs of the electric utility,
 414 nor may the commission determine any action taken by an electric
 415 utility that is consistent with the order to be unjust or
 416 unreasonable.

417 (b) The commission may not order or otherwise directly or
 418 indirectly require an electric utility to use storm recovery
 419 bonds to finance any project, addition, plant, facility,
 420 extension, capital improvement, equipment, or any other

421 expenditure, unless the electric utility has filed a petition
 422 under paragraph (2)(a) to finance such expenditure using storm
 423 recovery bonds. The commission may not refuse to allow an
 424 electric utility to recover costs for storm recovery activities
 425 in an otherwise permissible fashion, or refuse or condition
 426 authorization or approval pursuant to s. 366.04 of the issuance
 427 and sale by an electric utility of securities or the assumption
 428 by it of liabilities or obligations, solely because of the
 429 potential availability of storm recovery financing.

430 (4) ELECTRIC UTILITY DUTIES.--

431 (a) The electric bills of an electric utility that has
 432 obtained a financing order and issued storm recovery bonds shall
 433 explicitly reflect that a portion of the charges on such bill
 434 represents storm recovery charges approved in a financing order
 435 issued to the electric utility and, if the storm recovery
 436 property has been transferred to an assignee, a statement to the
 437 effect that the assignee is the owner of the rights to storm
 438 recovery charges and that the electric utility or any other
 439 entity, if applicable, is acting as a collection agent or
 440 servicer for the assignee. The tariff applicable to customers
 441 shall indicate the storm recovery charge and the ownership of
 442 that charge. The commission shall determine whether to require
 443 electric utilities to include such information or amounts owed
 444 with respect to the storm recovery property as a separate line
 445 item on individual electric bills.

446 (b) The failure of an electric utility to comply with this
 447 subsection shall not invalidate, impair, or affect any financing
 448 order, storm recovery property, storm recovery charge, or storm

449 recovery bonds.

450 (5) STORM RECOVERY PROPERTY.--

451 (a)1. All storm recovery property that is specified in a
 452 financing order shall constitute an existing, present property
 453 right or interest therein, notwithstanding that the imposition
 454 and collection of storm recovery charges depends on the electric
 455 utility to which the order is issued performing its servicing
 456 functions relating to the collection of storm recovery charges
 457 and on future electricity consumption. Such property shall exist
 458 whether or not the revenues or proceeds arising from the
 459 property have been billed, have accrued, or have been collected
 460 and notwithstanding the fact that the value or amount of the
 461 property is dependent on the future provision of service to
 462 customers by the electric utility or its successors or
 463 assignees.

464 2. Storm recovery property specified in a financing order
 465 shall continue to exist until the storm recovery bonds issued
 466 pursuant to the order are paid in full and all financing costs
 467 and other costs of the bonds have been recovered in full.

468 3. All or any portion of storm recovery property specified
 469 in a financing order issued to an electric utility may be
 470 transferred, sold, conveyed, or assigned to a successor or
 471 assignee, including an affiliate or affiliates of the electric
 472 utility created for the limited purpose of acquiring, owning, or
 473 administering storm recovery property or issuing storm recovery
 474 bonds under the financing order. All or any portion of storm
 475 recovery property may be pledged to secure storm recovery bonds
 476 issued pursuant to the order, amounts payable to financing

477 parties and to counterparties under any ancillary agreements,
478 and other financing costs. Each such transfer, sale, conveyance,
479 assignment, or pledge by an electric utility or affiliate of an
480 electric utility is considered to be a transaction in the
481 ordinary course of business.

482 4. If an electric utility defaults on any required payment
483 of charges arising from storm recovery property specified in a
484 financing order, a court, upon application by an interested
485 party, and without limiting any other remedies available to the
486 applying party, shall order the sequestration and payment of the
487 revenues arising from the storm recovery property to the
488 financing parties. Any such order shall remain in full force and
489 effect notwithstanding any reorganization, bankruptcy, or other
490 insolvency proceedings with respect to the electric utility or
491 its successors or assignees.

492 5. The interest of a transferee, purchaser, acquirer,
493 assignee, or pledgee in storm recovery property specified in a
494 financing order issued to an electric utility, and in the
495 revenue and collections arising from that property, is not
496 subject to setoff, counterclaim, surcharge, or defense by the
497 electric utility or any other person or in connection with the
498 reorganization, bankruptcy, or other insolvency of the electric
499 utility or any other entity.

500 6. Any successor to an electric utility, whether pursuant
501 to any reorganization, bankruptcy, or other insolvency
502 proceeding or whether pursuant to any merger or acquisition,
503 sale, or other business combination, or transfer by operation of
504 law, as a result of electric utility restructuring or otherwise,

505 shall perform and satisfy all obligations of, and have the same
506 rights under a financing order as, the electric utility under
507 the financing order in the same manner and to the same extent as
508 the electric utility, including collecting and paying to the
509 person entitled to receive the revenues, collections, payments,
510 or proceeds of the storm recovery property.

511 (b)1. Except as specified in this section, the Uniform
512 Commercial Code shall not apply to storm recovery property or
513 any right, title, or interest of a utility or assignee described
514 in subparagraph (1)(o)1., whether before or after the issuance
515 of the financing order. In addition, such right, title, or
516 interest pertaining to a financing order, including, but not
517 limited to, the associated storm recovery property and any
518 revenues, collections, claims, rights to payment, payments,
519 money, or proceeds of or arising from storm recovery charges
520 pursuant to such order, shall not be deemed proceeds of any
521 right or interest other than in the financing order and the
522 storm recovery property arising from the order.

523 2. The creation, attachment, granting, perfection, and
524 enforcement of liens and security interests in storm recovery
525 property to secure storm recovery bonds is governed solely by
526 this section and not by the Uniform Commercial Code.

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

530 a. The issuance of a financing order;

531 b. The execution and delivery of a security agreement with
532 a financing party in connection with the issuance of storm

533 recovery bonds; or

534 c. The receipt of value for the storm recovery bonds.

535

536 A valid, enforceable, and attached security interest shall be
537 perfected against third parties as of the date of filing of a
538 financing statement in the Florida Secured Transaction Registry,
539 as such registry is defined in Article 9 of the Uniform
540 Commercial Code, in accordance with subparagraph 4., and shall
541 thereafter be a continuously perfected lien; and such security
542 interest in the storm recovery property and all proceeds of such
543 storm recovery property, whether or not billed, accrued, or
544 collected, and whether or not deposited into a deposit account
545 and however evidenced, shall have priority in accordance with
546 subparagraph 8. and take precedence over any subsequent judicial
547 or other lien creditor. No continuation statement need be filed
548 to maintain such perfection.

549 4. Financing statements required to be filed pursuant to
550 this section shall be filed, maintained, and indexed in the same
551 manner and in the same system of records maintained for the
552 filing of financing statements in the Florida Secured
553 Transaction Registry under Article 9 of the Uniform Commercial
554 Code. The filing of such a financing statement shall be the only
555 method of perfecting a lien or security interest on storm
556 recovery property.

557 5. The priority of a lien and security interest perfected
558 under this paragraph is not impaired by any later modification
559 of the financing order or storm recovery property or by the
560 commingling of funds arising from storm recovery property with

561 other funds, and any other security interest that may apply to
562 those funds shall be terminated as to all funds transferred to a
563 segregated account for the benefit of an assignee or a financing
564 party or to an assignee or financing party directly.

565 6. If a default or termination occurs under the terms of
566 the storm recovery bonds, the financing parties or their
567 representatives may foreclose on or otherwise enforce their lien
568 and security interest in any storm recovery property as if they
569 were a secured party under Article 9 of the Uniform Commercial
570 Code; and a court may order that amounts arising from storm
571 recovery property be transferred to a separate account for the
572 financing parties' benefit, to which their lien and security
573 interest shall apply. On application by or on behalf of the
574 financing parties to a circuit court of this state, such court
575 shall order the sequestration and payment to the financing
576 parties of revenues arising from the storm recovery property.

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

580 8. The priority of the conflicting interests of pledgees
581 in the same interest or rights in any storm recovery property is
582 determined as follows:

583 a. Conflicting perfected interests or rights of pledgees
584 rank according to priority in time of perfection. Priority dates
585 from the time a filing covering the interest or right is made in
586 accordance with this paragraph.

587 b. A perfected interest or right of a pledgee has priority
588 over a conflicting unperfected interest or right of a pledgee.

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

592 (c) The sale, assignment, or transfer of storm recovery
593 property is governed by this paragraph. All of the following
594 apply to a sale, assignment, or transfer under this paragraph:

595 1. The sale, conveyance, assignment, or other transfer of
596 storm recovery property by an electric utility to an assignee
597 that the parties have in the governing documentation expressly
598 stated to be a sale or other absolute transfer is an absolute
599 transfer and true sale of, and not a pledge of or secured
600 transaction relating to, the transferor's right, title, and
601 interest in, to, and under the storm recovery property, other
602 than for federal and state income and franchise tax purposes.
603 After such a transaction, the storm recovery property is not
604 subject to any claims of the transferor or the transferor's
605 creditors, other than creditors holding a prior security
606 interest in the storm recovery property perfected under
607 paragraph (b).

608 2. The characterization of the sale, conveyance,
609 assignment, or other transfer as a true sale or other absolute
610 transfer under subparagraph 1. and the corresponding
611 characterization of the transferee's property interest is not
612 affected by:

613 a. Commingling of amounts arising with respect to the
614 storm recovery property with other amounts.

615 b. The retention by the transferor of a partial or
616 residual interest, including an equity interest, in the storm

617 recovery property, whether direct or indirect, or whether
 618 subordinate or otherwise.

619 c. Any recourse that the transferee may have against the
 620 transferor other than any such recourse created, contingent
 621 upon, or otherwise occurring or resulting from one or more of
 622 the transferor's customers' inability to timely pay all or a
 623 portion of the storm recovery charge.

624 d. Any indemnifications, obligations, or repurchase rights
 625 made or provided by the transferor, other than indemnity or
 626 repurchase rights based solely upon a transferor's customers'
 627 inability to timely pay all or a portion of the storm recovery
 628 charge.

629 e. The responsibility of the transferor to collect storm
 630 recovery charges.

631 f. The treatment of the sale, conveyance, assignment, or
 632 other transfer for tax, financial reporting, or other purposes.

633 g. Granting or providing to holders of the storm recovery
 634 bonds a preferred right to the storm recovery property or credit
 635 enhancement by the electric utility or its affiliates with
 636 respect to the storm recovery bonds.

637 3. Any right that an electric utility has in the storm
 638 recovery property prior to its pledge, sale, or transfer or any
 639 other right created under this section or created in the
 640 financing order and assignable under this section or assignable
 641 pursuant to a financing order shall be property in the form of a
 642 contract right. Transfer of an interest in storm recovery
 643 property to an assignee is enforceable only upon the later of
 644 the issuance of a financing order, the execution and delivery of

645 transfer documents to the assignee in connection with the
646 issuance of storm recovery bonds, and the receipt of value. An
647 enforceable transfer of an interest in storm recovery property
648 to an assignee shall be perfected against all third parties,
649 including subsequent judicial or other lien creditors, when a
650 notice of that transfer has been given by the filing of a
651 financing statement in accordance with subparagraph 4. The
652 transfer shall be perfected against third parties as of the date
653 of filing.

654 4. Financing statements required to be filed under this
655 section shall be maintained and indexed in the same manner and
656 in the same system of records maintained for the filing of
657 financing statements in the Florida Secured Transaction Registry
658 under Article 9 of the Uniform Commercial Code. The filing of
659 such a financing statement shall be the only method of
660 perfecting a transfer of storm recovery property.

661 5. The priority of a transfer perfected under this section
662 is not impaired by any later modification of the financing order
663 or storm recovery property or by the commingling of funds
664 arising from storm recovery property with other funds, and any
665 other security interest that may apply to those funds shall be
666 terminated when they are transferred to a segregated account for
667 the assignee or a financing party. If storm recovery property
668 has been transferred to an assignee or financing party, any
669 proceeds of that property shall be held in trust for the
670 assignee or financing party.

671 6. The priority of the conflicting interests of assignees
672 in the same interest or rights in any storm recovery property is

673 determined as follows:

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

678 b. A perfected interest or right of an assignee has
679 priority over a conflicting unperfected interest or right of an
680 assignee.

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

684 (6) DESCRIPTION OR INDICATION OF PROPERTY.--The
685 description of storm recovery property being transferred to an
686 assignee in any sale agreement, purchase agreement, or other
687 transfer agreement, granted or pledged to a pledgee in any
688 security agreement, pledge agreement, or other security
689 document, or indicated in any financing statement is only
690 sufficient if such description or indication describes the
691 financing order that created the storm recovery property and
692 states that such agreement or financing statement covers all or
693 part of such property described in such financing order. This
694 subsection applies to all purported transfers of, and all
695 purported grants or liens or security interests in, storm
696 recovery property, regardless of whether the related sale
697 agreement, purchase agreement, other transfer agreement,
698 security agreement, pledge agreement, or other security document
699 was entered into, or any financing statement was filed, before
700 or after the effective date of this section.

701 (7) FINANCING STATEMENTS.--All financing statements
 702 referenced in this section shall be subject to Part 5 of Article
 703 9 of the Uniform Commercial Code except the requirement as to
 704 continuation statements shall not apply.

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

711 (9) STORM RECOVERY BONDS NOT PUBLIC DEBT.--The state or
 712 its political subdivisions are not liable on any storm recovery
 713 bonds, and the bonds are not a debt or a general obligation of
 714 the state or any of its political subdivisions, agencies, or
 715 instrumentalities. An issue of storm recovery bonds does not,
 716 directly or indirectly or contingently, obligate the state or
 717 any agency, political subdivision, or instrumentality of the
 718 state to levy any tax or make any appropriation for payment of
 719 the bonds, other than in their capacity as consumers of
 720 electricity. This subsection shall in no way preclude bond
 721 guarantees or enhancements pursuant to this section. All bonds
 722 shall contain on the face thereof a statement to the following
 723 effect: "Neither the full faith and credit nor the taxing power
 724 of the State of Florida is pledged to the payment of the
 725 principal of, or interest on, this bond."

726 (10) STORM RECOVERY BONDS AS LEGAL INVESTMENTS WITH
 727 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY REGARDING
 728 LEGAL INVESTMENT.--The following entities may legally invest any

729 sinking funds, moneys, or other funds belonging to them or under
 730 their control in storm recovery bonds:

731 (a) The state, the investment board, municipal
 732 corporations, political subdivisions, public bodies, and public
 733 officers except for members of the commission.

734 (b) Banks and bankers, savings and loan associations,
 735 credit unions, trust companies, savings banks and institutions,
 736 investment companies, insurance companies, insurance
 737 associations, and other persons carrying on a banking or
 738 insurance business.

739 (c) Personal representatives, guardians, trustees, and
 740 other fiduciaries.

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

744 (11) STATE PLEDGE.--

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

747 (b) The state pledges to and agrees with bondholders, the
 748 owners of the storm recovery property, and other financing
 749 parties that the state will not:

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

753 2. Take or permit any action that impairs or would impair
 754 the value of storm recovery property; or

755 3. Except as allowed under this section, reduce, alter, or
 756 impair storm recovery charges that are to be imposed, collected,

757 and remitted for the benefit of the bondholders and other
 758 financing parties until any and all principal, interest,
 759 premium, financing costs and other fees, expenses, or charges
 760 incurred, and any contracts to be performed, in connection with
 761 the related storm recovery bonds have been paid and performed in
 762 full.

763
 764 Nothing in this paragraph shall preclude limitation or
 765 alteration if full compensation is made by law for the full
 766 protection of the storm recovery charges collected pursuant to a
 767 financing order and of the holders of storm recovery bonds and
 768 any assignee or financing party entering into a contract with
 769 the electric utility.

770 (c) Any person or entity that issues storm recovery bonds
 771 may include the pledge specified in paragraph (b) in the bonds
 772 and related documentation.

773 (12) TAX EXEMPTION.--Revenues collected pursuant to a
 774 financing order and transactions involving the transfer and
 775 ownership of storm recovery property and the receipt of storm
 776 recovery charges by an electric utility, or its successors,
 777 assignees, or financing parties, shall not be deemed to be
 778 income for purposes of chapter 220 or any local income taxes,
 779 and shall be exempt from state and local sales, franchise, gross
 780 receipts, and other taxes or similar charges.

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

785 (14) CONFLICTS.--In the event of conflict between this
 786 section and any other law regarding the attachment, assignment,
 787 or perfection, or the effect of perfection, or priority of,
 788 assignment or transfer of, or security interest in storm
 789 recovery property, this section shall govern to the extent of
 790 the conflict.

791 (15) EFFECT OF INVALIDITY ON ACTIONS.--Effective on the
 792 date that storm recovery bonds are first issued under this
 793 section, if any provision of this section is held to be invalid
 794 or is invalidated, superseded, replaced, repealed, or expires
 795 for any reason, that occurrence shall not affect the validity of
 796 any action allowed under this section that is taken by an
 797 electric utility, an assignee, a financing party, a collection
 798 agent, or a party to an ancillary agreement; and any such action
 799 shall remain in full force and effect with respect to all storm
 800 recovery bonds issued or authorized in a financing order to be
 801 issued under this section prior to the date that such provision
 802 is held to be invalid or is invalidated, superseded, replaced,
 803 or repealed, or that expires for any reason.

804 (16) AUTHORITY.--Commission authority to issue financing
 805 orders pursuant to this section shall apply only to petitions
 806 filed pursuant to paragraph (2)(a) within 12 months after the
 807 effective date of this section. The expiration of the authority
 808 shall have no effect upon financing orders adopted by the
 809 commission pursuant to this section; any storm recovery property
 810 arising therefrom; any charges authorized to be levied
 811 thereunder; any rights, interests, and obligations of the
 812 electric utility, an assignee, or a financing party, holders of

813 storm recovery bonds, or parties to ancillary agreements
 814 pursuant to the financing order; or the authority of the
 815 commission to monitor, supervise, or take further action with
 816 respect to the order in accordance with the terms of this
 817 section and of the order.

818 (17) EXPIRATION.--This section shall expire on January 1
 819 of the second year following payment in full of all storm
 820 recovery bonds issued pursuant to this section and all related
 821 financing costs as noticed by the commission to the Joint
 822 Administrative Procedures Committee of the Legislature with a
 823 copy of such notice published in the Florida Administrative
 824 Weekly, but shall continue to apply to any causes of action
 825 timely made arising from or relating to matters addressed in
 826 this section.

827 Section 2. Paragraphs (m) and (n) of subsection (4) of
 828 section 679.1091, Florida Statutes, are amended, and new
 829 paragraph (o) is added to said subsection, to read:

830 679.1091 Scope.--

831 (4) This chapter does not apply to:

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

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

837 (o) A transfer or pledge of, or creation of a security
 838 interest in, any interest or right or portion of any interest or
 839 right in any storm recovery property as defined in s. 366.8260.

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