

CHAMBER ACTION

1 The Commerce Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to storm infrastructure recovery; creating  
7 s. 366.8260, F.S.; providing definitions; authorizing  
8 electric utilities to petition the Florida Public Service  
9 Commission for certain financing orders for certain storm-  
10 recovery purposes; providing requirements; providing  
11 powers and duties of the commission in issuing such  
12 orders; specifying procedures and requirements for the  
13 commission in issuing financing orders; authorizing  
14 electric utilities to create storm-recovery property;  
15 providing for pledge of storm-recovery property to secure  
16 storm-recovery bonds; providing for retirement of storm-  
17 recovery bonds under certain circumstances; providing for  
18 judicial review of such orders; providing for effect of  
19 such orders; providing exceptions to commission  
20 jurisdiction to issue financing orders; providing  
21 limitations; prohibiting the commission from requiring use  
22 of storm-recovery bonds for certain purposes; specifying  
23 duties of electric utilities; providing penalties for

24 | certain compliance failure; specifying properties,  
25 | requirements, permissible activities, and limitations  
26 | relating to storm-recovery property under certain  
27 | circumstances; providing for security interests in storm-  
28 | recovery property; providing for perfecting security  
29 | interests in storm-recovery property; providing for  
30 | priority and resolution of conflicting interests;  
31 | providing requirements, procedures, and limitations for  
32 | sale, assignment, or transfer of storm-recovery property;  
33 | providing requirements for descriptions or indications of  
34 | storm-recovery property transferred, granted, or pledged  
35 | or indicated in a financing statement; subjecting  
36 | financing statements to certain provisions of law;  
37 | specifying that storm-recovery bonds are not public debt;  
38 | specifying storm-recovery bonds as legal investments for  
39 | certain entities; specifying certain state pledges  
40 | relating to bondholders; declaring certain entities as not  
41 | electric utilities under certain circumstances; specifying  
42 | effect of certain provisions in situations of conflict;  
43 | providing for protecting validity of certain bonds under  
44 | certain circumstances; providing penalties and other  
45 | remedies for certain violations; prohibiting recovery of  
46 | certain costs from taxpayers; prohibiting adjustments to  
47 | storm-recovery charges for such penalties or remedies;  
48 | amending s. 679.1091, F.S.; specifying nonapplication of  
49 | secured transactions provisions of the Uniform Commercial  
50 | Code to interests in storm-recovery property; providing an  
51 | effective date.

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

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

366.8260 Storm-recovery financing.--

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

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

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

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

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

(e) "Financing costs" means:

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

80        2. Any payment required under an ancillary agreement and  
 81 any amount required to fund or replenish a reserve account or  
 82 other accounts established under the terms of any indenture,  
 83 ancillary agreement, or other financing documents pertaining to  
 84 storm-recovery bonds;

85        3. Any other cost related to issuing, supporting,  
 86 repaying, and servicing storm-recovery bonds, including, but not  
 87 limited to, servicing fees, accounting and auditing fees,  
 88 trustee fees, legal fees, consulting fees, administrative fees,  
 89 placement and underwriting fees, capitalized interest, rating  
 90 agency fees, stock exchange listing and compliance fees, and  
 91 filing fees, including costs related to obtaining the financing  
 92 order;

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

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

98        6. Any state and local taxes, franchise, gross receipts,  
 99 and other taxes, or similar charges, including, but not limited  
 100 to, regulatory assessment fees, in any such case whether paid,  
 101 payable, or accrued.

102        (f) "Financing order" means an order under subsection (2)  
 103 that allows for the issuance of storm-recovery bonds, the  
 104 imposition, collection, and periodic adjustments of storm-  
 105 recovery charges, and the creation of storm-recovery property.

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

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

111        (i) "Pledgee" means a financing party to which an electric  
 112 utility or its successors or assignees mortgages, negotiates,  
 113 hypothecates, pledges, or creates a security interest or lien on  
 114 all or any portion of the utility's interest in or right to  
 115 storm-recovery property.

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

118        (k) "Storm-recovery activity" means any activity or  
 119 activities by or on behalf of an electric utility in connection  
 120 with the restoration of service associated with electric power  
 121 outages affecting customers of an electric utility as the result  
 122 of a storm or storms, including, but not limited to,  
 123 mobilization, staging, and construction, reconstruction,  
 124 replacement, or repair of electric generation, transmission, or  
 125 distribution facilities.

126        (l) "Storm-recovery bonds" means bonds, debentures, notes,  
 127 certificates of participation, certificates of beneficial  
 128 interest, certificates of ownership, or other evidences of  
 129 indebtedness or ownership that are issued by an electric utility  
 130 or an assignee pursuant to a financing order, the proceeds of  
 131 which are used directly or indirectly to recover, finance, or  
 132 refinance commission-approved storm-recovery costs, financing  
 133 costs, or costs to replenish the storm-recovery reserve to the

134 level that existed before the storm or storms, or such other  
135 costs as the commission may authorize in a financing order, and  
136 that are secured by or payable from storm-recovery property.

137 (m) "Storm-recovery charge" means the amounts authorized  
138 by the commission to recover, finance, or refinance storm-  
139 recovery costs, costs to replenish the storm-recovery reserve to  
140 the level that existed before the storm or storms or such other  
141 level as the commission may authorize in a financing order, or  
142 financing costs as provided for in a financing order to be  
143 imposed on all customer bills and collected by an electric  
144 utility or its successors or assignees, or a collection agent,  
145 in full through a charge that is separate and apart from the  
146 electric utility's base rates, which charge shall be paid by all  
147 customers receiving transmission or distribution service from  
148 the electric utility or its successors or assignees under  
149 commission-approved rate schedules or under special contracts,  
150 even if the customer elects to purchase electricity from an  
151 alternative electricity supplier following a fundamental change  
152 in regulation of public utilities in this state.

153 (n) "Storm-recovery costs" means, at the option and  
154 request of the electric utility, and as approved by the  
155 commission pursuant to sub-subparagraph (2)(b)1.b., costs  
156 incurred or to be incurred by an electric utility in undertaking  
157 a storm-recovery activity. Such costs shall be net of applicable  
158 insurance proceeds and, when determined appropriate by the  
159 commission, shall include adjustments for normal capital  
160 replacement and operating costs, lost revenues, or other  
161 potential offsetting adjustments. Storm-recovery costs shall

162 include the costs to finance any deficiency or deficiencies in  
 163 storm-recovery reserves until such time as storm-recovery bonds  
 164 are issued and costs of retiring any existing indebtedness  
 165 relating to storm-recovery activities.

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

167 1. All rights and interests of an electric utility or  
 168 successor or assignee of the electric utility under a financing  
 169 order, including the right to impose, bill, collect, and receive  
 170 storm-recovery charges authorized in the financing order and to  
 171 obtain periodic adjustments to such charges as provided in the  
 172 financing order.

173 2. All revenues, collections, claims, rights to payments,  
 174 payments, money, or proceeds arising from the rights and  
 175 interests specified in subparagraph 1., regardless of whether  
 176 such revenues, collections, claims, rights to payment, payments,  
 177 money, or proceeds are imposed, billed, received, collected, or  
 178 maintained together with or commingled with other revenues,  
 179 collections, rights to payment, payments, money, or proceeds.

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

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

185 (2) FINANCING ORDERS.--

186 (a) An electric utility may petition the commission for a  
 187 financing order. For each petition, the electric utility shall:

- 188        1. Describe the storm-recovery activities that the  
 189 electric utility has undertaken or proposes to undertake and  
 190 describe the reasons for undertaking the activities.
- 191        2. Set forth the known storm-recovery costs and estimate  
 192 the costs of any storm-recovery activities that are not  
 193 completed or for which the costs are not yet known, as  
 194 identified and requested by the electric utility.
- 195        3. Set forth the level of the storm-recovery reserve that  
 196 the utility proposes to establish or replenish and has  
 197 determined would be appropriate to recover through storm-  
 198 recovery bonds and is seeking to make such recovery and such  
 199 level that the utility is funding or will seek to fund through  
 200 other means, together with a description of the factors and  
 201 calculations used in determining the amounts and methods of  
 202 recovery.
- 203        4. Indicate whether the electric utility proposes to  
 204 finance all or a portion of the storm-recovery costs and storm-  
 205 recovery reserve using storm-recovery bonds. If the electric  
 206 utility proposes to finance a portion of such costs, the  
 207 electric utility shall identify that portion in the petition.
- 208        5. Estimate the financing costs related to the storm-  
 209 recovery bonds.
- 210        6. Estimate the storm-recovery charges necessary to  
 211 recover the storm-recovery costs and storm-recovery reserves and  
 212 financing costs and the period for recovery of such costs.
- 213        7. Estimate any cost savings or demonstrate how the  
 214 financing order would avoid or significantly mitigate rate  
 215 impacts to customers resulting from financing storm-recovery



HB 303 CS

2005  
CS

216 costs with storm-recovery bonds as opposed to the traditional  
217 method of recovering such costs from customers and through  
218 alternative financing methods available to the electric utility.

219 8. File with the petition direct testimony supporting the  
220 petition.

221 (b)1. Proceedings on a petition submitted pursuant to  
222 paragraph (a) shall begin with a petition by an electric utility  
223 and shall be disposed of in accordance with the provisions of  
224 chapter 120 and applicable rules, except that the provisions of  
225 this section, to the extent applicable, shall control.

226 a. Within 7 days after the filing of a petition, the  
227 commission shall publish a case schedule, which schedule shall  
228 place the matter before the commission on an agenda that will  
229 permit a commission decision no later than 120 days after the  
230 date the petition is filed.

231 b. No later than 135 days after the date the petition is  
232 filed, the commission shall issue a financing order or an order  
233 rejecting the petition. A party to the commission proceeding may  
234 petition the commission for reconsideration of the financing  
235 order within 5 days after the date of its issuance. The  
236 commission shall issue a financing order authorizing financing  
237 of reasonable and prudent storm-recovery costs, the storm-  
238 recovery reserve amount determined appropriate by the  
239 commission, and financing costs if the commission finds that the  
240 issuance of the storm-recovery bonds and the imposition of  
241 storm-recovery charges authorized by the order are reasonably  
242 expected to result in lower overall costs or would avoid or  
243 significantly mitigate rate impacts to customers as compared

Page 9 of 31

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

hb0303-03-c3

244 with alternative methods of financing or recovering storm-  
245 recovery costs and storm-recovery reserves. Any determination of  
246 whether storm-recovery costs are reasonable and prudent shall be  
247 made with reference to the general public interest in, and the  
248 scope of effort required to provide, the safe and expeditious  
249 restoration of electric service.

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

252 a. Except as provided in sub-subparagraph f. and in  
253 subparagraph 4., specify the amount of storm-recovery costs and  
254 the level of storm-recovery reserves, taking into consideration,  
255 to the extent the commission deems appropriate, any other  
256 methods used to recover these costs; describe and estimate the  
257 amount of financing costs that may be recovered through storm-  
258 recovery charges; and specify the period over which such costs  
259 may be recovered.

260 b. Determine that the proposed structuring, expected  
261 pricing, and financing costs of the storm-recovery bonds are  
262 reasonably expected to result in lower overall costs or would  
263 avoid or significantly mitigate rate impacts to customers as  
264 compared with alternative methods of financing or recovering  
265 storm-recovery costs.

266 c. Provide that, for the period specified pursuant to sub-  
267 subparagraph a., the imposition and collection of storm-recovery  
268 charges authorized in the financing order shall be paid by all  
269 customers receiving transmission or distribution service from  
270 the electric utility or its successors or assignees under  
271 commission-approved rate schedules or under special contracts,

272 even if the customer elects to purchase electricity from an  
 273 alternative electric supplier following a fundamental change in  
 274 regulation of public utilities in the state.

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

278 e. Include a formula-based mechanism for making  
 279 expeditious periodic adjustments in the storm-recovery charges  
 280 that customers are required to pay under the financing order and  
 281 for making any adjustments that are necessary to correct for any  
 282 overcollection or undercollection of the charges or to otherwise  
 283 ensure the timely payment of storm-recovery bonds and financing  
 284 costs and other required amounts and charges payable in  
 285 connection with the storm-recovery bonds.

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

290 g. Specify the degree of flexibility to be afforded to the  
 291 electric utility in establishing the terms and conditions of the  
 292 storm-recovery bonds, including, but not limited to, repayment  
 293 schedules, interest rates, and other financing costs.

294 h. Provide that storm-recovery charges be allocated to the  
 295 customer classes using the criteria set out in s. 366.06(1), in  
 296 the manner in which these costs or their equivalent were  
 297 allocated in the cost-of-service study approved in connection  
 298 with the electric utility's last rate case. If the electric  
 299 utility's last rate case was resolved by a settlement agreement,

300 the cost-of-service methodology filed by the electric utility in  
 301 that case shall be used.

302 i Provide that, after the final terms of an issuance of  
 303 storm-recovery bonds have been established and prior to the  
 304 issuance of storm-recovery bonds, the electric utility shall  
 305 determine the resulting initial storm-recovery charge in  
 306 accordance with the financing order and such initial storm-  
 307 recovery charge shall be final and effective upon the issuance  
 308 of such storm-recovery bonds without further commission action.

309 j. Include any other conditions that the commission  
 310 considers appropriate and that are not otherwise inconsistent  
 311 with this section.

312  
 313 In performing the responsibilities of this subparagraph and  
 314 subparagraph 5., the commission may engage outside consultants  
 315 or counsel. Any expenses associated with such services shall be  
 316 included as part of financing costs and included in storm-  
 317 recovery charges.

318 3. A financing order issued to an electric utility may  
 319 provide that creation of the electric utility's storm-recovery  
 320 property pursuant to sub-subparagraph 2.f. is conditioned upon,  
 321 and shall be simultaneous with, the sale or other transfer of  
 322 the storm-recovery property to an assignee and the pledge of the  
 323 storm-recovery property to secure storm-recovery bonds.

324 4. If the commission issues a financing order, the  
 325 electric utility shall file with the commission at least  
 326 biannually a petition or a letter applying the formula-based  
 327 mechanism pursuant to sub-subparagraph 2.e. and, based on

328 estimates of consumption for each rate class and other  
329 mathematical factors, requesting administrative approval to make  
330 the adjustments described in sub-subparagraph 2.e. The review of  
331 such a request shall be limited to determining whether there is  
332 any mathematical error in the application of the formula-based  
333 mechanism relating to the appropriate amount of any  
334 overcollection or undercollection of storm-recovery charges and  
335 the amount of an adjustment. Such adjustments shall ensure the  
336 recovery of revenues sufficient to provide for the payment of  
337 principal, interest, acquisition, defeasance, financing costs,  
338 or redemption premium and other fees, costs, and charges with  
339 respect to storm-recovery bonds approved under the financing  
340 order. Within 60 days after receiving an electric utility's  
341 request pursuant to this paragraph, the commission shall either  
342 approve the request or inform the electric utility of any  
343 mathematical errors in its calculation. If the commission  
344 informs the utility of mathematical errors in its calculation,  
345 the utility may correct its error and refile its request. The  
346 timeframes previously described in this paragraph shall apply to  
347 a refiled request.

348 5. Within 120 days after the issuance of storm-recovery  
349 bonds, the electric utility shall file with the commission  
350 information on the actual costs of the storm-recovery-bond  
351 issuance. The commission shall review such information to  
352 determine if such costs incurred in the issuance of the bonds  
353 resulted in the lowest overall costs that were reasonably  
354 consistent with market conditions at the time of the issuance  
355 and the terms of the financing order. The commission may

356 disallow any incremental issuance costs in excess of the lowest  
357 overall costs by requiring the utility to make a contribution to  
358 the storm reserve in an amount equal to the excess of actual  
359 issuance costs incurred and paid for out of storm-recovery bond  
360 proceeds and the lowest overall issuance costs as determined by  
361 the commission. The commission may not make adjustments to the  
362 storm-recovery charges for any such excess issuance costs.

363 6. Subsequent to the earlier of the transfer of storm-  
364 recovery property to an assignee or the issuance of storm-  
365 recovery bonds authorized thereby, a financing order is  
366 irrevocable and, except as provided in subparagraph 4. and  
367 paragraph (c), the commission may not amend, modify, or  
368 terminate the financing order by any subsequent action or  
369 reduce, impair, postpone, terminate, or otherwise adjust storm-  
370 recovery charges approved in the financing order. After the  
371 issuance of a financing order, the electric utility retains sole  
372 discretion regarding whether to assign, sell, or otherwise  
373 transfer storm-recovery property or to cause the storm-recovery  
374 bonds to be issued, including the right to defer or postpone  
375 such assignment, sale, transfer, or issuance.

376 (c) At the request of an electric utility, the commission  
377 may commence a proceeding and issue a subsequent financing order  
378 that provides for retiring and refunding storm-recovery bonds  
379 issued pursuant to the original financing order if the  
380 commission finds that the subsequent financing order satisfies  
381 all of the criteria specified in paragraph (b). Effective on  
382 retirement of the refunded storm-recovery bonds and the issuance

HB 303 CS

2005  
CS

383 of new storm-recovery bonds, the commission shall adjust the  
384 related storm-recovery charges accordingly.

385 (d) Within 30 days after the commission issues an order  
386 pursuant to paragraph (b) or a decision denying a request for  
387 reconsideration or, if the request for reconsideration is  
388 granted, within 30 days after the commission issues its decision  
389 on reconsideration, an adversely affected party may petition for  
390 judicial review in the Florida Supreme Court. The petition for  
391 review shall be served upon the executive director of the  
392 commission personally or by service at the office of the  
393 commission. Review on appeal shall be based solely on the record  
394 before the commission and briefs to the court and shall be  
395 limited to determining whether the order issued pursuant to  
396 paragraph (b), or the order on reconsideration, conforms to the  
397 constitution and laws of this state and the United States and is  
398 within the authority of the commission under this section.  
399 Inasmuch as delay in the determination of the appeal of a  
400 financing order will delay the issuance of storm-recovery bonds,  
401 thereby diminishing savings to customers that might be achieved  
402 if such bonds were issued as contemplated by a financing order,  
403 the Supreme Court shall proceed to hear and determine the action  
404 as expeditiously as practicable and give the action precedence  
405 over other matters not accorded similar precedence by law.

406 (e)1. A financing order remains in effect until the storm-  
407 recovery bonds issued pursuant to the order have been paid in  
408 full and the commission-approved financing costs of such bonds  
409 have been recovered in full.

410        2. A financing order issued to an electric utility shall  
 411 remain in effect and unabated notwithstanding the  
 412 reorganization, bankruptcy, or other insolvency proceedings of  
 413 the electric utility or its successors or assignees.

414        (3) EXCEPTIONS TO COMMISSION JURISDICTION.--

415        (a) If the commission issues a financing order to an  
 416 electric utility pursuant to this section, the commission may  
 417 not, in exercising its powers and carrying out its duties  
 418 regarding any matter within its authority pursuant to this  
 419 chapter, consider the storm-recovery bonds issued pursuant to  
 420 the order to be the debt of the electric utility other than for  
 421 federal income tax purposes, consider the storm-recovery charges  
 422 paid under the order to be the revenue of the electric utility  
 423 for any purpose, or consider the storm-recovery costs or  
 424 financing costs specified in the order to be the costs of the  
 425 electric utility, nor may the commission determine any action  
 426 taken by an electric utility that is consistent with the order  
 427 to be unjust or unreasonable.

428        (b) The commission may not order or otherwise directly or  
 429 indirectly require an electric utility to use storm-recovery  
 430 bonds to finance any project, addition, plant, facility,  
 431 extension, capital improvement, equipment, or any other  
 432 expenditure, unless the electric utility has filed a petition  
 433 under paragraph (2)(a) to finance such expenditure using storm-  
 434 recovery bonds. The commission may not refuse to allow an  
 435 electric utility to recover costs for storm-recovery activities  
 436 in an otherwise permissible fashion, or refuse or condition  
 437 authorization or approval pursuant to s. 366.04 of the issuance



438 and sale by an electric utility of securities or the assumption  
 439 by it of liabilities or obligations, solely because of the  
 440 potential availability of storm-recovery financing.

441 (4) ELECTRIC UTILITY DUTIES.--

442 (a) The electric bills of an electric utility that has  
 443 obtained a financing order and issued storm-recovery bonds must  
 444 explicitly reflect that a portion of the charges on such bill  
 445 represents storm-recovery charges approved in a financing order  
 446 issued to the electric utility and, if the storm-recovery  
 447 property has been transferred to an assignee, must include a  
 448 statement to the effect that the assignee is the owner of the  
 449 rights to storm-recovery charges and that the electric utility  
 450 or any other entity, if applicable, is acting as a collection  
 451 agent or servicer for the assignee. The tariff applicable to  
 452 customers must indicate the storm-recovery charge and the  
 453 ownership of that charge. The commission shall determine whether  
 454 to require electric utilities to include such information or  
 455 amounts owed with respect to the storm-recovery property as a  
 456 separate line item on individual electric bills.

457 (b) The failure of an electric utility to comply with this  
 458 subsection shall not invalidate, impair, or affect any financing  
 459 order, storm-recovery property, storm-recovery charge, or storm-  
 460 recovery bonds but shall subject the electric utility to  
 461 penalties under s. 366.095.

462 (5) STORM-RECOVERY PROPERTY.--

463 (a)1. All storm-recovery property that is specified in a  
 464 financing order shall constitute an existing, present property  
 465 right or interest therein, notwithstanding that the imposition

466 and collection of storm-recovery charges depends on the electric  
467 utility to which the order is issued performing its servicing  
468 functions relating to the collection of storm-recovery charges  
469 and on future electricity consumption. Such property shall exist  
470 whether or not the revenues or proceeds arising from the  
471 property have been billed, have accrued, or have been collected  
472 and notwithstanding the fact that the value or amount of the  
473 property is dependent on the future provision of service to  
474 customers by the electric utility or its successors or  
475 assignees.

476 2. Storm-recovery property specified in a financing order  
477 shall continue to exist until the storm-recovery bonds issued  
478 pursuant to the order are paid in full and all financing costs  
479 and other costs of the bonds have been recovered in full.

480 3. All or any portion of storm-recovery property specified  
481 in a financing order issued to an electric utility may be  
482 transferred, sold, conveyed, or assigned to a successor or  
483 assignee, including an affiliate or affiliates of the electric  
484 utility created for the limited purpose of acquiring, owning, or  
485 administering storm-recovery property or issuing storm-recovery  
486 bonds under the financing order. All or any portion of storm-  
487 recovery property may be pledged to secure storm-recovery bonds  
488 issued pursuant to the order, amounts payable to financing  
489 parties and to counterparties under any ancillary agreements,  
490 and other financing costs. Each such transfer, sale, conveyance,  
491 assignment, or pledge by an electric utility or affiliate of an  
492 electric utility is considered to be a transaction in the  
493 ordinary course of business.

494        4. If an electric utility defaults on any required payment  
 495 of charges arising from storm-recovery property specified in a  
 496 financing order, a court, upon application by an interested  
 497 party, and without limiting any other remedies available to the  
 498 applying party, shall order the sequestration and payment of the  
 499 revenues arising from the storm-recovery property to the  
 500 financing parties. Any such order shall remain in full force and  
 501 effect notwithstanding any reorganization, bankruptcy, or other  
 502 insolvency proceedings with respect to the electric utility or  
 503 its successors or assignees.

504        5. The interest of a transferee, purchaser, acquirer,  
 505 assignee, or pledgee in storm-recovery property specified in a  
 506 financing order issued to an electric utility, and in the  
 507 revenue and collections arising from that property, is not  
 508 subject to setoff, counterclaim, surcharge, or defense by the  
 509 electric utility or any other person or in connection with the  
 510 reorganization, bankruptcy, or other insolvency of the electric  
 511 utility or any other entity.

512        6. Any successor to an electric utility, whether pursuant  
 513 to any reorganization, bankruptcy, or other insolvency  
 514 proceeding or whether pursuant to any merger or acquisition,  
 515 sale, or other business combination, or transfer by operation of  
 516 law, as a result of electric utility restructuring or otherwise,  
 517 shall perform and satisfy all obligations of, and have the same  
 518 rights under a financing order as, the electric utility under  
 519 the financing order in the same manner and to the same extent as  
 520 the electric utility, including collecting and paying to the

521 person entitled to receive the revenues, collections, payments,  
 522 or proceeds of the storm-recovery property.

523 (b)1. Except as specified in this section, the Uniform  
 524 Commercial Code does not apply to storm-recovery property or any  
 525 right, title, or interest of a utility or assignee described in  
 526 subparagraph (1)(o)1., whether before or after the issuance of  
 527 the financing order. In addition, such right, title, or interest  
 528 pertaining to a financing order, including, but not limited to,  
 529 the associated storm-recovery property and any revenues,  
 530 collections, claims, rights to payment, payments, money, or  
 531 proceeds of or arising from storm-recovery charges pursuant to  
 532 such order, shall not be deemed proceeds of any right or  
 533 interest other than in the financing order and the storm-  
 534 recovery property arising from the order.

535 2. The creation, attachment, granting, perfection,  
 536 priority, and enforcement of liens and security interests in  
 537 storm-recovery property to secure storm-recovery bonds is  
 538 governed solely by this section and not by the Uniform  
 539 Commercial Code.

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

543 a. The issuance of a financing order;

544 b. The execution and delivery of a security agreement with  
 545 a financing party in connection with the issuance of storm-  
 546 recovery bonds; or

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

548

HB 303 CS

2005  
CS

549 A valid, enforceable, and attached security interest shall be  
550 perfected against third parties as of the date of filing of a  
551 financing statement in the Florida Secured Transaction Registry,  
552 as such registry is defined in Article 9 of the Uniform  
553 Commercial Code, in accordance with subparagraph 4., and shall  
554 thereafter be a continuously perfected lien; and such security  
555 interest in the storm-recovery property and all proceeds of such  
556 storm-recovery property, whether or not billed, accrued, or  
557 collected, and whether or not deposited into a deposit account  
558 and however evidenced, shall have priority in accordance with  
559 subparagraph 8. and take precedence over any subsequent judicial  
560 or other lien creditor. No continuation statement need be filed  
561 to maintain such perfection.

562 4. Financing statements required to be filed pursuant to  
563 this section shall be filed, maintained, and indexed in the same  
564 manner and in the same system of records maintained for the  
565 filing of financing statements in the Florida Secured  
566 Transaction Registry under Article 9 of the Uniform Commercial  
567 Code. The filing of such a financing statement shall be the only  
568 method of perfecting a lien or security interest on storm-  
569 recovery property.

570 5. The priority of a lien and security interest perfected  
571 under this paragraph is not impaired by any later modification  
572 of the financing order or storm-recovery property or by the  
573 commingling of funds arising from storm-recovery property with  
574 other funds, and any other security interest that may apply to  
575 those funds shall be terminated as to all funds transferred to a

576 segregated account for the benefit of an assignee or a financing  
577 party or to an assignee or financing party directly.

578 6. If a default or termination occurs under the terms of  
579 the storm-recovery bonds, the financing parties or their  
580 representatives may foreclose on or otherwise enforce their lien  
581 and security interest in any storm-recovery property as if they  
582 were a secured party under Article 9 of the Uniform Commercial  
583 Code; and a court may order that amounts arising from storm-  
584 recovery property be transferred to a separate account for the  
585 financing parties' benefit, to which their lien and security  
586 interest shall apply. On application by or on behalf of the  
587 financing parties to a circuit court of this state, such court  
588 shall order the sequestration and payment to the financing  
589 parties of revenues arising from the storm-recovery property.

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

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

596 a. Conflicting perfected interests or rights of pledgees  
597 rank according to priority in time of perfection. Priority dates  
598 from the time a filing covering the interest or right is made in  
599 accordance with this paragraph.

600 b. A perfected interest or right of a pledgee has priority  
601 over a conflicting unperfected interest or right of a pledgee.

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

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

608 1. The sale, conveyance, assignment, or other transfer of  
 609 storm-recovery property by an electric utility to an assignee  
 610 that the parties have in the governing documentation expressly  
 611 stated to be a sale or other absolute transfer is an absolute  
 612 transfer and true sale of, and not a pledge of or secured  
 613 transaction relating to, the transferor's right, title, and  
 614 interest in, to, and under the storm-recovery property, other  
 615 than for federal and state income and franchise tax purposes.  
 616 After such a transaction, the storm-recovery property is not  
 617 subject to any claims of the transferor or the transferor's  
 618 creditors, other than creditors holding a prior security  
 619 interest in the storm-recovery property perfected under  
 620 paragraph (b).

621 2. The characterization of the sale, conveyance,  
 622 assignment, or other transfer as a true sale or other absolute  
 623 transfer under subparagraph 1. and the corresponding  
 624 characterization of the transferee's property interest is not  
 625 affected by:

626 a. Commingling of amounts arising with respect to the  
 627 storm-recovery property with other amounts.

628 b. The retention by the transferor of a partial or  
 629 residual interest, including an equity interest, in the storm-

630 recovery property, whether direct or indirect, or whether  
631 subordinate or otherwise.

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

637 d. Any indemnifications, obligations, or repurchase rights  
638 made or provided by the transferor, other than indemnity or  
639 repurchase rights based solely upon a transferor's customers'  
640 inability to timely pay all or a portion of the storm-recovery  
641 charge.

642 e. The responsibility of the transferor to collect storm-  
643 recovery charges.

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

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

650 3. Any right that an electric utility has in the storm-  
651 recovery property prior to its pledge, sale, or transfer or any  
652 other right created under this section or created in the  
653 financing order and assignable under this section or assignable  
654 pursuant to a financing order shall be property in the form of a  
655 contract right. Transfer of an interest in storm-recovery  
656 property to an assignee is enforceable only upon the later of  
657 the issuance of a financing order, the execution and delivery of



658 transfer documents to the assignee in connection with the  
659 issuance of storm-recovery bonds, and the receipt of value. An  
660 enforceable transfer of an interest in storm-recovery property  
661 to an assignee shall be perfected against all third parties,  
662 including subsequent judicial or other lien creditors, when a  
663 notice of that transfer has been given by the filing of a  
664 financing statement in accordance with subparagraph 4. The  
665 transfer shall be perfected against third parties as of the date  
666 of filing.

667 4. Financing statements required to be filed under this  
668 section shall be maintained and indexed in the same manner and  
669 in the same system of records maintained for the filing of  
670 financing statements in the Florida Secured Transaction Registry  
671 under Article 9 of the Uniform Commercial Code. The filing of  
672 such a financing statement shall be the only method of  
673 perfecting a transfer of storm-recovery property.

674 5. The priority of a transfer perfected under this section  
675 is not impaired by any later modification of the financing order  
676 or storm-recovery property or by the commingling of funds  
677 arising from storm-recovery property with other funds, and any  
678 other security interest that may apply to those funds shall be  
679 terminated when they are transferred to a segregated account for  
680 the assignee or a financing party. If storm-recovery property  
681 has been transferred to an assignee or financing party, any  
682 proceeds of that property shall be held in trust for the  
683 assignee or financing party.

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

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

691        b. A perfected interest or right of an assignee has  
 692 priority over a conflicting unperfected interest or right of an  
 693 assignee.

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

697        (6) DESCRIPTION OR INDICATION OF PROPERTY.--The  
 698 description of storm-recovery property being transferred to an  
 699 assignee in any sale agreement, purchase agreement, or other  
 700 transfer agreement, granted or pledged to a pledgee in any  
 701 security agreement, pledge agreement, or other security  
 702 document, or indicated in any financing statement is only  
 703 sufficient if such description or indication describes the  
 704 financing order that created the storm-recovery property and  
 705 states that such agreement or financing statement covers all or  
 706 part of such property described in such financing order. This  
 707 subsection applies to all purported transfers of, and all  
 708 purported grants or liens or security interests in, storm-  
 709 recovery property, regardless of whether the related sale  
 710 agreement, purchase agreement, other transfer agreement,  
 711 security agreement, pledge agreement, or other security document

712 was entered into, or any financing statement was filed, before  
 713 or after the effective date of this section.

714 (7) FINANCING STATEMENTS.--All financing statements  
 715 referenced in this section shall be subject to Part 5 of Article  
 716 9 of the Uniform Commercial Code except the requirement as to  
 717 continuation statements shall not apply.

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

724 (9) STORM-RECOVERY BONDS NOT PUBLIC DEBT.--The state or  
 725 its political subdivisions are not liable on any storm-recovery  
 726 bonds, and the bonds are not a debt or a general obligation of  
 727 the state or any of its political subdivisions, agencies, or  
 728 instrumentalities. An issue of storm-recovery bonds does not,  
 729 directly or indirectly or contingently, obligate the state or  
 730 any agency, political subdivision, or instrumentality of the  
 731 state to levy any tax or make any appropriation for payment of  
 732 the bonds, other than in the entities' capacity as consumers of  
 733 electricity. This subsection shall in no way preclude bond  
 734 guarantees or enhancements pursuant to this section. All bonds  
 735 must contain on the face thereof a statement to the following  
 736 effect: "Neither the full faith and credit nor the taxing power  
 737 of the State of Florida is pledged to the payment of the  
 738 principal of, or interest on, this bond."

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

744           (a) The state, the investment board, municipal  
 745 corporations, political subdivisions, public bodies, and public  
 746 officers except for members of the commission.

747           (b) Banks and bankers, savings and loan associations,  
 748 credit unions, trust companies, savings banks and institutions,  
 749 investment companies, insurance companies, insurance  
 750 associations, and other persons carrying on a banking or  
 751 insurance business.

752           (c) Personal representatives, guardians, trustees, and  
 753 other fiduciaries.

754           (d) All other persons who are now or may hereafter be  
 755 authorized to invest in bonds or other obligations of a similar  
 756 nature.

757           (11) STATE PLEDGE.--

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

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

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

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

768        3. Except as allowed under this section, reduce, alter, or  
 769 impair storm-recovery charges that are to be imposed, collected,  
 770 and remitted for the benefit of the bondholders and other  
 771 financing parties until any and all principal, interest,  
 772 premium, financing costs and other fees, expenses, or charges  
 773 incurred, and any contracts to be performed, in connection with  
 774 the related storm-recovery bonds have been paid and performed in  
 775 full.

776  
 777 Nothing in this paragraph shall preclude limitation or  
 778 alteration if full compensation is made by law for the full  
 779 protection of the storm-recovery charges collected pursuant to a  
 780 financing order and of the holders of storm-recovery bonds and  
 781 any assignee or financing party entering into a contract with  
 782 the electric utility.

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

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

790        (13) CONFLICTS.--In the event of conflict between this  
 791 section and any other law regarding the attachment, assignment,  
 792 or perfection, or the effect of perfection, or priority of,  
 793 assignment or transfer of, or security interest in storm-

794 recovery property, this section shall govern to the extent of  
 795 the conflict.

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

809 (15) PENALTIES.--A violation of this section or of a  
 810 financing order issued under this section subjects the utility  
 811 that obtained the order to penalties under s. 366.095 and to any  
 812 other penalties or remedies that the commission determines are  
 813 necessary to achieve the intent of this section and the intent  
 814 and terms of the financing order and to prevent any increase in  
 815 financial impact to the utility's ratepayers above that set  
 816 forth in the financing order. If the commission orders a penalty  
 817 or a remedy for a violation, the monetary penalty or remedy and  
 818 the costs of defending against the proposed penalty or remedy  
 819 may not be recovered from the ratepayers. The commission may not  
 820 make adjustments to storm-recovery charges for any such  
 821 penalties or remedies.

HB 303 CS

2005  
CS

822 Section 2. Paragraphs (m) and (n) of subsection (4) of  
823 section 679.1091, Florida Statutes, are amended, and paragraph  
824 (o) is added to said subsection, to read:

825 679.1091 Scope.--

826 (4) This chapter does not apply to:

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

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

832 (o) A transfer or pledge of, or creation of a security  
833 interest in, any interest or right or portion of any interest or  
834 right in any storm-recovery property as defined in s. 366.8260.

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