

By Senator Fasano

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1 A bill to be entitled
2 An act relating to the financing of nuclear plants;
3 creating s. 366.8270, F.S.; providing legislative
4 finding and intent; defining terms; providing that
5 after the Public Service Commission grants a petition
6 for determination of need, an electric utility may
7 petition the commission for a financing order for
8 developing a nuclear plant; requiring the electric
9 utility to provide specified information in the
10 petition for a financing order; requiring that the
11 proceedings to consider a petition for a financing
12 order be completed in accordance with the provisions
13 of ch. 120, F.S., and other specified rules; requiring
14 the commission to include specified information in the
15 financing order issued to the electric utility;
16 requiring the electric utility to file with the
17 commission an annual letter that applies the formula-
18 based mechanism applicable to nuclear plant
19 development charges; authorizing an adversely affected
20 party to petition for judicial review in the Supreme
21 Court under certain circumstances; providing that a
22 financing order remains in effect until the nuclear
23 plant development bonds issued pursuant to the order
24 have been paid in full and the commission-approved
25 financing costs of such bonds have been recovered in
26 full; providing for exceptions to commission
27 jurisdiction; specifying duties for an electric
28 utility that has obtained a financing order; requiring
29 the electric utility to include specified information

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30 in electric bills; providing that intangible property
31 of a nuclear plant development constitutes a property
32 right or interest; providing that intangible property
33 of the nuclear plant development continues to exist
34 until the nuclear plant development bonds issued under
35 a financing order, and all financing costs and other
36 costs of the bonds, are paid in full; providing that
37 the Uniform Commercial Code does not apply to
38 intangible property of the nuclear plant development;
39 providing exceptions; providing that intangible
40 property of the nuclear plant development may be sold,
41 assigned, or transferred; requiring that all
42 referenced financing statements are subject to the
43 Uniform Commercial Code; providing an exception;
44 providing that the state law governs nuclear plant
45 developments; providing that nuclear plant development
46 bonds are not a debt or a general obligation of the
47 state or any of its political subdivisions; providing
48 that certain designated entities may legally invest in
49 nuclear plant development bonds; providing that the
50 state pledges to and agrees with specified parties
51 that the state will refrain from taking certain
52 actions; providing that an assignee or financing party
53 is not an electric utility or person providing
54 electric service when it engages in the transactions
55 described in this section; providing that certain
56 occurrences do not affect the validity of any action
57 taken by an electric utility, assignee, or financing
58 party; providing for penalties if the utility violates

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59 the financing order or applicable provisions of the
60 act; providing an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Section 366.8270, Florida Statutes, is created
65 to read:

66 366.8270 Nuclear plant financing.—

67 (1) LEGISLATIVE FINDINGS.—The Legislature finds and
68 declares that:

69 (a) The construction of nuclear power plants will result in
70 public health and economic benefits to the State of Florida and
71 its residents, including, but not limited to, reduction of
72 emissions, economic development, and job growth.

73 (b) Electric utilities in this state face the need to
74 construct nuclear power plants, including new, expanded, or
75 relocated electrical transmission lines or facilities that are
76 necessary in order to meet the need for increased generation
77 capacity, reduce dependence on fuel oil and natural gas, reduce
78 the costs of complying with air-emission standards, and
79 contribute to the long-term stability and reliability of the
80 electric grid.

81 (c) The capital costs associated with the construction of
82 nuclear power plants are significant.

83 (d) Electric utilities may find it difficult to use
84 traditional utility financing mechanisms to finance the
85 construction of nuclear power plants, which may cause the
86 utilities to defer construction of nuclear power plants, to
87 incur higher financing costs, or to use other financing

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88 approaches that are less favorable to the state and its
89 residents.

90 (e) Customers of electric utilities have an interest in the
91 construction of nuclear power plants in the state using new
92 financing mechanisms that reduce the volatility of costs
93 associated with traditional utility financing mechanisms.

94 (f) Alternative financing mechanisms exist which may result
95 in lower costs or mitigate rate impacts to customers.

96 (g) In order to use such alternative financing mechanisms,
97 the Public Service Commission must be authorized to adopt a
98 financing order that advances these goals. The Legislature,
99 therefore, finds that it is in the interest of the state and the
100 public to encourage and facilitate the use of alternative
101 financing mechanisms that will enable certain electric utilities
102 to finance the construction of nuclear power plants in this
103 state to help lower costs or mitigate rate impacts to customers,
104 and to authorize the commission to review and approve such
105 alternative financing mechanisms as being consistent with the
106 public interest, as set forth in this section.

107 (2) DEFINITIONS.—As used in this section, the term:

108 (a) "Adjustment mechanism" means a formula-based mechanism
109 as described in a financing order for making annual or more
110 frequent adjustments to the amount of the nuclear plant
111 development charges which are necessary to correct for any
112 overcollection or undercollection of nuclear plant development
113 charges or to otherwise ensure the timely and complete payment
114 of nuclear plant development bonds and associated financing
115 costs.

116 (b) "Ancillary agreement" means any bond, insurance policy,

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117 letter of credit, reserve account arrangement, surety bond, swap
118 arrangement, hedging arrangement, liquidity or credit support
119 arrangement, or other financial arrangement entered into in
120 connection with the issuance of nuclear plant development bonds.

121 (c) "Assignee" means any entity, including, but not limited
122 to, a corporation, limited liability company, partnership or
123 limited partnership, public authority, trust, financing entity,
124 financing party, or other legally recognized entity to which an
125 electric utility assigns, sells, or transfers, other than as
126 security, all or a portion of its interest in or right to
127 intangible property of a nuclear plant development. The term
128 also includes any entity or financing party to which an assignee
129 assigns, sells, or transfers, other than as security, its
130 interest in or right to intangible property of a nuclear plant
131 development.

132 (d) "Commission" means the Florida Public Service
133 Commission.

134 (e) "Electric utility" or "utility" has the same meaning as
135 in s. 366.8255.

136 (f) "Financing costs" means:

137 1. Interest and acquisition, defeasance, or redemption
138 premiums that are payable on nuclear plant development bonds;

139 2. Any payment required under an ancillary agreement and
140 any amount required to fund or replenish a reserve account or
141 other accounts established under the terms of any indenture,
142 ancillary agreement, or other financing documents pertaining to
143 nuclear plant development bonds;

144 3. Any other costs related to issuing, supporting,
145 repaying, and servicing nuclear plant development bonds,

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146 including, but not limited to, servicing fees, accounting and
147 auditing fees, trustee fees, legal fees, consulting fees,
148 administrative fees, placement and underwriting fees,
149 capitalized interest, rating agency fees, stock exchange listing
150 and compliance fees, and filing fees, including costs related to
151 obtaining the financing order;

152 4. Any taxes and license fees imposed on the revenues
153 generated from the collection of nuclear plant development
154 charges;

155 5. Any income taxes resulting from the collection of
156 nuclear plant development charges in any such case whether paid,
157 payable, or accrued;

158 6. Any state and local taxes or franchise, gross receipts,
159 and other similar taxes or charges, including, but not limited
160 to, regulatory assessment fees, in any such case whether paid,
161 payable, or accrued; or

162 7. Any other costs, charges, and amounts approved by the
163 commission in a financing order.

164 (g) "Financing order" means an irrevocable order under
165 subsection (3) which allows for the issuance of nuclear plant
166 development bonds; the imposition, collection, and periodic
167 adjustments of nuclear plant development charges; recovery of
168 financing costs; and the creation of intangible property of a
169 nuclear plant development.

170 (h) "Financing party" means holders of nuclear plant
171 development bonds and trustees, collateral agents, or other
172 persons acting for the benefit of holders of nuclear plant
173 development bonds.

174 (i) "Financing statement" has the same meaning as in

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175 Article 9 of the Uniform Commercial Code.

176 (j) "Intangible property of a nuclear plant development"
177 means:

178 1. All rights and interests of an electric utility or
179 successor or assignee of the electric utility under a financing
180 order, including the right to impose, bill, collect, and receive
181 nuclear plant development charges authorized in the financing
182 order and to obtain periodic adjustments to such charges as
183 provided in the financing order.

184 2. All revenues, collections, claims, rights to payments,
185 payments, money, or proceeds arising from the rights and
186 interests specified in subparagraph 1., regardless of whether
187 such revenues, collections, claims, rights to payment, payments,
188 money, or proceeds are imposed, billed, received, collected, or
189 maintained together with or commingled with other revenues,
190 collections, rights to payment, payments, money, or proceeds.

191 (k) "Pledgee" means a financing party to which an electric
192 utility or its successors or assignees mortgage, negotiate,
193 hypothecate, pledge, or create a security interest or lien on
194 all or any portion of their interests in or rights to intangible
195 property of a nuclear plant development.

196 (l) "Nuclear plant" or "plant" means an electrical power
197 plant, as defined in s. 403.503, which uses nuclear materials
198 for fuel.

199 (m) "Nuclear plant development activity" means any activity
200 or activities that an electric utility has taken or will take in
201 connection with the development of a nuclear plant in the state,
202 including, but not limited to, the siting, licensing, design,
203 construction, or operation of the nuclear plant, including any

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204 necessary new, expanded, or relocated electrical transmission
205 lines or facilities of any size.

206 (n) "Nuclear plant development bonds" means bonds,
207 debentures, notes, interim financing arrangements, certificates
208 of participation, certificates of beneficial interest,
209 certificates of ownership, or other evidences of indebtedness or
210 ownership which are issued by an electric utility or an assignee
211 pursuant to a financing order, the proceeds of which are used
212 directly or indirectly to recover, finance, or refinance
213 commission-approved nuclear plant development costs and
214 financing costs and which are secured by or payable from
215 intangible property of the nuclear plant development.

216 (o) "Nuclear plant development charge" means the amounts
217 authorized by the commission to recover, finance, or refinance
218 nuclear plant development costs and financing costs, or as
219 provided for in a financing order to be imposed on all customer
220 bills and collected by an electric utility or its successors or
221 assignees, or a collection agent, in full through a charge that
222 is separate and apart from the electric utility's base rates.
223 Such charge shall be adjusted periodically pursuant to an
224 adjustment mechanism and paid by all existing and future
225 customers in the electric utility's historic service territory
226 or as such service territory may be expanded, receiving
227 transmission or distribution services from the electric utility
228 or its successors or assignees under commission-approved rate
229 schedules or under special contracts, even if the customer
230 elects to purchase electricity from an alternative electricity
231 supplier following a fundamental change in regulation of public
232 utilities in this state. Such nuclear plant development charges

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233 shall remain in effect until all associated nuclear plant
234 development bonds and financing costs are paid in full.

235 (p) "Nuclear plant development costs" means costs as
236 defined in s. 366.93(1), including, but not limited to, any
237 interim financing costs accrued at the electric utility's
238 weighted cost-of-capital as determined by the commission in the
239 utility's most recent base rate proceeding; and costs of
240 retiring any existing debt or equity relating to nuclear plant
241 development activities.

242 (q) "Uniform Commercial Code" has the same meaning as in s.
243 671.101.

244 (3) FINANCING ORDERS.—

245 (a) After a petition for determination of need is granted,
246 an electric utility or any party to a previous years proceeding
247 brought pursuant to s. 366.96, may petition the commission for a
248 financing order as authorized by this section. Each petition
249 must contain the following information:

250 1. Describe the nuclear plant development activities that
251 the electric utility has undertaken or proposes to undertake and
252 describe the reasons for undertaking the activities.

253 2. Set forth the known nuclear plant development costs.

254 3. Estimate the costs of any nuclear plant development
255 activities that are not completed, or for which the costs are
256 not yet known, as identified and requested by the electric
257 utility.

258 4. Indicate whether the electric utility proposes to
259 finance all or a portion of the nuclear plant development costs
260 using nuclear plant development bonds. If the electric utility
261 proposes to finance a portion of the costs, the electric utility

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262 shall identify that portion in the petition.

263 5. Estimate the financing costs related to the nuclear
264 plant development bonds.

265 6. Estimate the nuclear plant development charges necessary
266 to recover the nuclear plant development costs and financing
267 costs and the period for recovery of the costs.

268 7. Estimate any cost savings or mitigation of rate impacts
269 to customers resulting from financing nuclear plant development
270 costs with nuclear plant development bonds as opposed to the
271 traditional utility financing methods or traditional methods of
272 recovering such costs from customers.

273 8. Describe the adjustment mechanism.

274 9. File direct testimony supporting the petition.

275
276 This paragraph does not prohibit the commission, after
277 determining that the best interests of the utility and the
278 ratepayers will be served, from directing the utility to file a
279 petition. If the commission so orders the utility, all other
280 provisions of this section apply and the commission's order does
281 not eliminate the need for the commission to make all other
282 determinations as required by this section.

283 (b)1. Proceedings on a petition submitted pursuant to
284 paragraph (a) shall begin with a petition and shall be disposed
285 of in accordance with the provisions of chapter 120 and
286 applicable rules, except that the provisions of this section, to
287 the extent applicable, shall control.

288 a. Within 7 days after the filing of a petition, the
289 commission shall publish a case schedule, which must place the
290 matter before the commission on an agenda that will permit a

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291 commission decision no later than 180 days after the date the
292 petition is filed.

293 b. No later than 200 days after the date the petition is
294 filed, the commission shall issue a financing order or an order
295 rejecting the petition. A party to the commission proceeding may
296 petition the commission for reconsideration of the financing
297 order within 5 days after the date of its issuance. The
298 commission shall issue a financing order authorizing financing
299 of reasonable and prudent nuclear plant development costs and
300 financing costs if the commission finds that the issuance of the
301 nuclear plant development bonds and the imposition of nuclear
302 plant development charges authorized by the order are reasonably
303 expected to result in lower costs or mitigation of rate impacts
304 to customers as compared with traditional utility methods of
305 financing or recovering nuclear plant development costs. Any
306 determination of whether nuclear plant development costs are
307 reasonable and prudent must be made with reference to the public
308 interest.

309 2. In a financing order issued to the electric utility, the
310 commission shall:

311 a. Except as provided in sub-subparagraph d. and in
312 subparagraph 5., specify the amount of nuclear plant development
313 costs, taking into consideration to the extent the commission
314 deems appropriate any other methods used to recover these costs;
315 describe and estimate the amount of financing costs which may be
316 recovered through nuclear plant development charges; and specify
317 the period over which such costs may be recovered.

318 b. Determine that the proposed structuring, expected
319 pricing, and financing costs of the nuclear plant development

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320 bonds are reasonably expected to result in lower costs or
321 mitigation of rate impacts to customers as compared with
322 traditional utility methods of financing or recovering nuclear
323 plant development costs.

324 c. Provide that, for the periods specified pursuant to sub-
325 subparagraph a., the imposition and collection of nuclear plant
326 development charges authorized in the financing order may not be
327 bypassed and must be paid by all existing and future customers
328 in the electric utility's historic service territory, or as such
329 service territory may be expanded, receiving transmission or
330 distribution service from the electric utility or its successors
331 or assignees under commission-approved rate schedules or under
332 special contracts, even if the customer elects to purchase
333 electricity from an alternative electric supplier following a
334 fundamental change in regulation of public utilities in the
335 state.

336 d. Include and describe an adjustment mechanism for making
337 expeditious annual or more frequent adjustments in the nuclear
338 plant development charges that customers are required to pay
339 under the financing order, and any adjustments that are
340 necessary to correct for any overcollection or undercollection
341 of the charges or to otherwise ensure the timely payment of
342 nuclear plant development bonds and financing costs and other
343 required amounts and charges payable in connection with the
344 nuclear plant development bonds.

345 e. Specify that the adjustment mechanism included in the
346 order is reasonable and just.

347 f. Specify the intangible property of the nuclear plant
348 development which is, or shall be, created in favor of an

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349 electric utility or its successors or assignees and which shall
350 be used to pay or secure nuclear plant development bonds and
351 financing costs.

352 g. Provide sufficient flexibility to the electric utility
353 in establishing the terms and conditions of the nuclear plant
354 development bonds, including, but not limited to, repayment
355 schedules, interest rates, and other financing costs.

356 h. Provide that nuclear plant development charges be
357 allocated to customer classes, using the criteria set out in s.
358 366.06(1), in the manner in which these costs or their
359 equivalent were allocated in the utility's most recently
360 approved the cost-of-service study used.

361 i. Provide that, after the final terms of an issuance of
362 nuclear plant development bonds have been established, and
363 before the issuance of nuclear plant development bonds, the
364 electric utility shall determine the resulting initial nuclear
365 plant development charge in accordance with the financing order,
366 and such initial nuclear plant development charge shall be final
367 and effective upon the issuance of such nuclear plant
368 development bonds without further commission action.

369 j. Include any other provisions not otherwise inconsistent
370 with this section which the commission considers appropriate.

371
372 In performing the responsibilities of this subparagraph and
373 subparagraph 5., the commission may engage outside consultants
374 or counsel. Any expense associated with such services must be
375 included as part of financing costs and included in the nuclear
376 plant development charges.

377 3. A financing order issued to an electric utility may

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378 provide that creation of the electric utility's intangible
379 property of the nuclear plant development pursuant to sub-
380 subparagraph 2.f. is conditioned upon, and shall be simultaneous
381 with, the sale or other transfer of the intangible property to
382 an assignee and the pledge of the intangible property of the
383 nuclear plant development to secure nuclear plant development
384 bonds.

385 4. A financing order issued to an electric utility may
386 authorize the electric utility to issue more than one series of
387 nuclear plant development bonds. In this case, the electric
388 utility is not subsequently required to secure a separate
389 financing order for each issuance of nuclear plant development
390 bonds.

391 5. If the commission issues a financing order, the electric
392 utility or its successor or assignee shall file with the
393 commission at least annually a petition or a letter applying the
394 formula-based mechanism pursuant to sub-subparagraph 2.d. and,
395 based on estimates of consumption for each rate class and other
396 mathematical factors, requesting administrative approval to make
397 the adjustments described in sub-subparagraph 2.d. The review of
398 such a request shall be limited to determining whether there is
399 any mathematical error in the application of the formula-based
400 mechanism relating to the appropriate amount of any
401 overcollection or undercollection of nuclear plant development
402 charges and the amount of an adjustment. Such adjustments shall
403 ensure the collection of revenues sufficient to provide for the
404 timely payment of principal, interest, acquisition, defeasance,
405 financing costs, or redemption premium and other fees, costs,
406 and charges in respect of nuclear plant development bonds

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407 approved under the financing order. Within 45 days after
408 receiving an electric utility's request pursuant to this
409 paragraph, the commission shall approve the request or inform
410 the electric utility of any mathematical errors in its
411 calculation. If the commission informs the utility of
412 mathematical errors in its calculation, the utility may correct
413 its error and refile its request. The timeframes previously
414 described in this paragraph apply to a refiled request.

415 6. Within 120 days after issuing the nuclear plant
416 development bonds, the electric utility shall file with the
417 commission information on the actual costs of the nuclear plant
418 development bond issuance. The commission shall review this
419 information to determine if the costs incurred when issuing the
420 bonds resulted in the lowest overall costs that were reasonably
421 consistent with market conditions at the time the bonds were
422 issued and the terms of the financing order. The commission may
423 disallow any incremental issuing cost in excess of the lowest
424 overall costs by requiring the utility to make a contribution in
425 aid of construction for the nuclear plant in an amount equal to
426 the excess of actual issuance costs incurred, and paid for out
427 of nuclear plant development bond proceeds, and the lowest
428 overall issuance costs as determined by the commission. The
429 commission may not make adjustments to the nuclear plant
430 development bond charges for any such excess issuance costs.

431 7. Subsequent to the earlier of the transfer of intangible
432 property of the nuclear plant development to an assignee or the
433 issuance of nuclear plant development bonds authorized thereby,
434 a financing order is irrevocable and, except as provided in
435 subparagraph 4. and paragraph (c), the commission may not amend,

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436 modify, or terminate the financing order by any subsequent
437 action or reduce, impair, postpone, terminate, or otherwise
438 adjust nuclear plant development charges approved in the
439 financing order. After the issuance of a financing order, the
440 electric utility retains sole discretion regarding whether to
441 assign, sell, or otherwise transfer intangible property of the
442 nuclear plant development or to cause the nuclear plant
443 development bonds to be issued, including the right to defer or
444 postpone such assignment, sale, transfer, or issuance.

445 (c) At the request of an electric utility, the commission
446 may commence a proceeding and issue a subsequent financing order
447 that provides for retiring and refunding nuclear plant
448 development bonds issued pursuant to the original financing
449 order if the commission finds that the subsequent financing
450 order satisfies all of the criteria specified in paragraph (b).
451 Effective on retirement of the refunded nuclear plant
452 development bonds and the issuance of new nuclear plant
453 development bonds, the commission shall adjust the related
454 nuclear plant development charges accordingly.

455 (d) Within 30 days after the commission issues an order
456 pursuant to paragraph (b) or a decision denying a request for
457 reconsideration or, if the request for reconsideration is
458 granted, within 30 days after the commission issues its decision
459 on reconsideration, an adversely affected party may petition for
460 judicial review in the Supreme Court. The petition for review
461 shall be served upon the executive director of the commission
462 personally or by service at the office of the commission. Review
463 on appeal shall be based solely on the record before the
464 commission and briefs to the court and shall be limited to

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465 determining whether the order issued pursuant to paragraph (b),
466 or the order on reconsideration, conforms to the State
467 Constitution and laws of this state and the United States and is
468 within the authority of the commission under this section.
469 Inasmuch as delay in the determination of the appeal of a
470 financing order will delay the issuance of nuclear plant
471 development bonds, thereby diminishing the savings or rate
472 mitigation benefits to customers which might be achieved if such
473 bonds were issued as contemplated by a financing order, the
474 Supreme Court shall proceed to hear and determine the action as
475 expeditiously as practicable and give the action precedence over
476 other matters not accorded similar precedence by law.

477 (e)1. A financing order remains in effect until the nuclear
478 plant development bonds issued pursuant to the order have been
479 paid in full and the commission-approved financing costs of such
480 bonds have been recovered in full.

481 2. A financing order issued to an electric utility shall
482 remain in effect and unabated notwithstanding the
483 reorganization, bankruptcy, or other insolvency proceedings of
484 the electric utility or its successors or assignees.

485 (4) EXCEPTIONS TO COMMISSION JURISDICTION.—If the
486 commission issues a financing order to an electric utility
487 pursuant to this section, the commission may not, other than for
488 federal income tax purposes, in exercising its powers and
489 carrying out its duties regarding any matter within its
490 authority under this chapter, consider the nuclear plant
491 development bonds issued under the order or any debt associated
492 with the issuance of the bonds to be the debt of the electric
493 utility, consider the nuclear plant development charges paid

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494 under the order to be the revenue of the electric utility for
495 any purpose, or consider the nuclear plant development costs or
496 financing costs specified in the order to be the costs of the
497 electric utility, nor may the commission determine any action
498 taken by an electric utility which is consistent with the order
499 to be unjust or unreasonable.

500 (5) ELECTRIC UTILITY DUTIES.-

501 (a) The electric bills of an electric utility that has
502 obtained a financing order and sponsored nuclear plant
503 development bonds must reflect that a portion of the charges on
504 such bills represents nuclear plant development charges approved
505 in a financing order and, if the intangible property of the
506 nuclear plant development has been transferred to an assignee,
507 must include a statement to the effect that the assignee is the
508 owner of the intangible property and of the rights to the
509 nuclear plant development charges, and that the electric utility
510 or any other entity, if applicable, is acting as a billing and
511 collection agent or servicer for the assignee. The tariff
512 applicable to customers must indicate the nuclear plant
513 development and the ownership of that charge.

514 (b) An electric utility for which a financing order has
515 been issued shall place the proceeds of any nuclear plant
516 development bonds issued under a financing order in a separate
517 account. An electric utility may use the proceeds of the nuclear
518 plant development bonds only for the purposes of paying nuclear
519 plant development and financing costs and retiring any existing
520 debt or equity used to finance the costs.

521 (c) The failure of an electric utility to comply with this
522 subsection does not invalidate, impair, or affect any financing

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523 order, intangible property of the nuclear plant development,
524 nuclear plant development charge, or nuclear plant development
525 bonds, but shall subject the electric utility to penalties under
526 s. 366.095.

527 (6) INTANGIBLE PROPERTY OF A NUCLEAR PLANT DEVELOPMENT.—

528 (a)1. All intangible property of a nuclear plant
529 development which is specified in a financing order constitutes
530 an existing, present property right or interest therein,
531 notwithstanding that the imposition and collection of nuclear
532 plant development charges depends on the electric utility to
533 which the order is issued performing its servicing functions
534 relating to the collection of nuclear plant development charges
535 and on future electricity consumption. The intangible property
536 exists whether or not the revenues or proceeds arising from the
537 property have been billed, have accrued, or have been collected,
538 and notwithstanding the fact that the value or amount of the
539 property is dependent on the future provision of service to
540 customers by the electric utility or its successors or
541 assignees.

542 2. Intangible property of a nuclear plant development
543 specified in a financing order shall continue to exist until the
544 nuclear plant development bonds issued pursuant to the order,
545 and all financing costs and other costs of the bonds, have been
546 paid in full.

547 3. All or any portion of intangible property of the nuclear
548 plant development specified in a financing order issued to an
549 electric utility may be transferred, sold, conveyed, or assigned
550 to a successor or assignee, which is wholly owned, directly or
551 indirectly, by the electric utility, and is created for the

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552 limited purpose of acquiring, owning, or administering
553 intangible property of the nuclear plant development or issuing
554 nuclear plant development bonds under the financing order. All
555 or any portion of intangible property of the nuclear plant
556 development may be pledged to secure nuclear plant development
557 bonds issued pursuant to the order, amounts payable to financing
558 parties and to counterparties under any ancillary agreements,
559 and other financing costs. Each such transfer, sale, conveyance,
560 assignment, or pledge by an electric utility or affiliate of an
561 electric utility is considered to be a transaction in the
562 ordinary course of business.

563 4. If an electric utility or its successor defaults on any
564 required payment of charges arising from intangible property of
565 the nuclear plant development and specified in a financing
566 order, a court, upon application by an interested party, and
567 without limiting any other remedies available to the applying
568 party, shall order the sequestration and payment of the revenues
569 arising from the intangible property of the nuclear plant
570 development to the financing parties or assignees. Any such
571 order must remain in full force and effect notwithstanding any
572 reorganization, bankruptcy, or other insolvency proceedings with
573 respect to the electric utility or its successors or assignees.

574 5. The interest of a transferee, purchaser, acquirer,
575 assignee, financing party, or pledgee in intangible property of
576 the nuclear plant development property specified in a financing
577 order issued to an electric utility, and in the revenue and
578 collections arising from that intangible property, is not
579 subject to setoff, counterclaim, surcharge, or defense by the
580 electric utility or any other person or in connection with the

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581 reorganization, bankruptcy, or other insolvency of the electric
582 utility or any other entity.

583 6. Any successor to an electric utility, whether pursuant
584 to any reorganization, bankruptcy, or other insolvency
585 proceeding; any municipalization, merger or acquisition, sale,
586 or other business combination; or transfer by operation of law,
587 as a result of electric utility restructuring or otherwise,
588 shall perform and satisfy all obligations of, and have the same
589 rights to the same extent under a financing order as, the
590 electric utility, including collecting and paying to the person,
591 assignee, or financing party the revenues, collections,
592 payments, or proceeds of the intangible property of the nuclear
593 plant development.

594 (b)1. Except as specified in this section, the Uniform
595 Commercial Code does not apply to intangible property of the
596 nuclear plant development or to any right, title, or interest of
597 a utility, assignee, or financing party described in paragraph
598 (2) (h), whether before or after the issuance of the financing
599 order. In addition, such right, title, or interest pertaining to
600 a financing order, including, but not limited to, the associated
601 intangible property of the nuclear plant development, and any
602 revenues, collections, claims, rights to payment, payments,
603 money, or proceeds of or arising from nuclear plant development
604 charges pursuant to such order, shall not be deemed proceeds of
605 any right or interest other than in the financing order and the
606 intangible property of the nuclear plant development arising
607 from the order.

608 2. The creation, attachment, granting, perfection,
609 priority, and enforcement of liens and security interests in

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610 intangible property of a nuclear plant development to secure
611 nuclear plant development bonds shall be governed solely by this
612 section and not by the Uniform Commercial Code.

613 3. A valid, enforceable, and attached lien and security
614 interest in intangible property of a nuclear plant development
615 may be created only upon the later of:

616 a. The issuance of a financing order;

617 b. The execution and delivery of a security agreement with
618 a financing party in connection with the issuance of nuclear
619 plant development bonds; or

620 c. The receipt of value for the nuclear plant development
621 bonds.

622
623 A valid, enforceable, and attached security interest shall be
624 perfected against third parties as of the date of filing of a
625 financing statement in the Florida Secured Transaction Registry,
626 as such registry is defined in Article 9 of the Uniform
627 Commercial Code, in accordance with subparagraph 4., and shall
628 thereafter be a continuously perfected lien. Such security
629 interest in the intangible property of the nuclear plant
630 development, and all proceeds, whether billed, accrued, or
631 collected, however evidenced, shall have priority in accordance
632 with subparagraph 8. and take precedence over any subsequent
633 judicial or other lien creditor. A continuation statement need
634 not be filed to maintain such perfection.

635 4. Financing statements required to be filed under this
636 section shall be filed, maintained, and indexed in the same
637 manner and in the same system of records maintained for the
638 filing of financing statements in the Florida Secured

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639 Transaction Registry under Article 9 of the Uniform Commercial
640 Code. The filing of such a financing statement is the only
641 method of perfecting a lien or security interest on intangible
642 property of the nuclear plant development.

643 5. The priority of a lien and security interest perfected
644 under this paragraph is not impaired by any later modification
645 of the financing order or intangible property of the nuclear
646 plant development or by the commingling of funds arising from
647 intangible property with other funds. Any other security
648 interest that may apply to those funds shall be terminated as to
649 all funds transferred to a segregated account for the benefit of
650 an assignee or a financing party or to an assignee or financing
651 party directly.

652 6. If a default or termination occurs under the terms of
653 the nuclear plant development bonds, the financing parties or
654 their representatives may foreclose on or otherwise enforce
655 their lien and security interest in any intangible property of
656 the nuclear plant development as if they were a secured party
657 under Article 9 of the Uniform Commercial Code. A court may
658 order that amounts arising from intangible property of the
659 nuclear plant development be transferred to a separate account
660 for the financing parties' benefit, to which their lien and
661 security interest apply. On application by or on behalf of the
662 financing parties to a circuit court of this state, such court
663 shall order the sequestration and payment to the financing
664 parties of revenues arising from the intangible property of the
665 nuclear plant development.

666 7. The interest of a pledgee of an interest or any rights
667 in any intangible property of a nuclear plant development is not

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668 perfected until filing as provided in subparagraph 4.

669 8. The priority of the conflicting interests of pledgees in
670 the same interest or rights in any intangible property of the
671 nuclear plant development shall be determined as follows:

672 a. Conflicting perfected interests or rights of pledgees
673 rank according to priority in time of perfection. Priority dates
674 from the time a filing covering the interest or right is made in
675 accordance with this paragraph.

676 b. A perfected interest or right of a pledgee has priority
677 over a conflicting unperfected interest or right of a pledgee.

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

681 (c) The sale, assignment, or transfer of intangible
682 property of a nuclear plant development shall be governed by
683 this paragraph. All of the following apply to a sale,
684 assignment, or transfer under this paragraph:

685 1. The sale, conveyance, assignment, or other transfer of
686 intangible property of the nuclear plant development by an
687 electric utility to an assignee or financing party which the
688 parties have, in the governing documentation, expressly stated
689 to be a sale or other absolute transfer is an absolute transfer
690 and true sale of, and not a pledge of or secured transaction
691 relating to, the transferor's right, title, and interest in, to,
692 and under the intangible property of the nuclear plant
693 development, other than for federal and state income and
694 franchise tax purposes. After such a transaction, the intangible
695 property of the nuclear plant development is not subject to any
696 claims of the transferor or the transferor's creditors, other

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697 than creditors holding a prior security interest in the
698 intangible property of the nuclear plant development perfected
699 under paragraph (b).

700 2. The characterization of the sale, conveyance,
701 assignment, or other transfer as a true sale or other absolute
702 transfer under subparagraph 1., and the corresponding
703 characterization of the transferee's property interest, is not
704 affected by:

705 a. Commingling of funds associated with the intangible
706 property of the nuclear plant development with other funds.

707 b. The retention by the transferor of a partial or residual
708 interest, including an equity interest, in the intangible
709 property of the nuclear plant development, whether direct or
710 indirect, or whether subordinate or otherwise.

711 c. Any recourse that the transferee may have against the
712 transferor other than a recourse created which is contingent
713 upon, or otherwise occurring or resulting from, the inability of
714 one or more of the transferor's customers to timely pay all or a
715 portion of the nuclear plant development charge.

716 d. Any indemnifications, obligations, or repurchase rights
717 made or provided by the transferor, other than indemnity or
718 repurchase rights based solely upon the inability of a
719 transferor's customers to timely pay all or a portion of the
720 nuclear plant development charge.

721 e. The responsibility of the transferor to collect nuclear
722 plant development charges.

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

725 g. Granting or providing to holders of the nuclear plant

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726 development bonds a preferred right to the intangible property
727 of the nuclear plant development, or credit enhancement by the
728 electric utility or its affiliates with respect to the nuclear
729 plant development bonds.

730 3. Any right that an electric utility has in the intangible
731 property of the nuclear plant development before its pledge,
732 sale, or transfer, or any other right created under this section
733 or created in the financing order and assignable under this
734 section or assignable pursuant to a financing order shall be
735 property in the form of a contract right. Transfer of an
736 interest in intangible property of the nuclear plant development
737 to an assignee is enforceable only upon the later of the
738 issuance of a financing order, the execution and delivery of
739 transfer documents to the assignee in connection with the
740 issuance of nuclear plant development bonds, and the receipt of
741 value. An enforceable transfer of an interest in intangible
742 property of the nuclear plant development to an assignee shall
743 be perfected against all third parties, including subsequent
744 judicial or other lien creditors, when a notice of that transfer
745 has been given by the filing of a financing statement in
746 accordance with subparagraph 4. The transfer shall be perfected
747 against third parties as of the date of filing.

748 4. Financing statements required to be filed under this
749 section shall be maintained and indexed in the same manner and
750 in the same system of records maintained for the filing of
751 financing statements in the Florida Secured Transaction Registry
752 under Article 9 of the Uniform Commercial Code. The filing of
753 such a financing statement is the only method of perfecting a
754 transfer of intangible property of the nuclear plant

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755 development.

756 5. The priority of a transfer perfected under this section
757 is not impaired by any later modification of the financing order
758 or intangible property of the nuclear plant development or by
759 the commingling of funds arising from intangible property of the
760 nuclear plant development with other funds. Any other security
761 interest that may apply to those funds shall be terminated when
762 they are transferred to a segregated account for the assignee or
763 a financing party. If intangible property of the nuclear plant
764 development is transferred to an assignee or financing party,
765 any proceeds of that property shall be held in trust for the
766 assignee or financing party.

767 6. The priority of the conflicting interests of assignees
768 in the same interest or rights in any intangible property of the
769 nuclear plant development shall be determined as follows:

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

774 b. A perfected interest or right of an assignee has
775 priority over a conflicting unperfected interest or right of an
776 assignee.

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

780 (7) DESCRIPTION OR INDICATION OF PROPERTY.—In any sale
781 agreement, purchase agreement, or other transfer agreement,
782 granted or pledged to a pledgee in any security agreement,
783 pledge agreement, or other security document, or indicated in

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784 any financing statement, the description of intangible property
785 of the nuclear plant development being transferred to an
786 assignee or financing party is sufficient only if it describes
787 the financing order that created the intangible property of the
788 nuclear plant development and states that such agreement or
789 financing statement covers all or part of such property
790 described in the financing order. This subsection applies to all
791 purported transfers of, and all purported grants or liens or
792 security interests in, intangible property of the nuclear plant
793 development, regardless of whether the related sale agreement,
794 purchase agreement, other transfer agreement, security
795 agreement, pledge agreement, or other security document was
796 entered into, or any financing statement was filed, before or
797 after July 1, 2009.

798 (8) FINANCING STATEMENTS.—All financing statements
799 referenced in this section are subject to Part 5 of Article 9 of
800 the Uniform Commercial Code except that the requirement as to
801 continuation statements does not apply.

802 (9) CHOICE OF LAW.—The law governing the validity,
803 enforceability, attachment, perfection, priority, and exercise
804 of remedies with respect to the transfer of an interest or right
805 or the pledge or creation of a security interest in any
806 intangible property of a nuclear plant development shall be the
807 laws of this state, and exclusively, the provisions of this
808 section.

809 (10) NUCLEAR PLANT DEVELOPMENT BONDS NOT PUBLIC DEBT.—The
810 state or its political subdivisions are not liable for any
811 nuclear plant development bonds, and the bonds are not a debt or
812 a general obligation of the state or any of its political

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813 subdivisions, agencies, or instrumentalities. An issue of
814 nuclear plant development bonds does not, directly, indirectly
815 or contingently, obligate the state or any agency, political
816 subdivision, or instrumentality of the state to levy any tax or
817 make any appropriation for payment of the bonds, other than in
818 its capacity as a consumer of electricity. This subsection does
819 not preclude bond guarantees or enhancements pursuant to this
820 section. All bonds must contain on the face thereof a statement
821 to the following effect: "Neither the full faith and credit nor
822 the taxing power of the State of Florida is pledged to the
823 payment of the principal of, or interest on, this bond."

824 (11) NUCLEAR PLANT DEVELOPMENT BONDS AS LEGAL INVESTMENTS
825 WITH RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY
826 REGARDING LEGAL INVESTMENT.—The following entities may legally
827 invest in nuclear plant development bonds:

828 (a) The state, the investment board, municipal
829 corporations, political subdivisions, public bodies, and public
830 officers, except for members of the commission.

831 (b) Banks and bankers, savings and loan associations,
832 credit unions, trust companies, savings banks and institutions,
833 investment companies, insurance companies, insurance
834 associations, and other persons carrying on a banking or
835 insurance business.

836 (c) Personal representatives, guardians, trustees, and
837 other fiduciaries.

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

841 (12) STATE PLEDGE.—

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842 (a) For purposes of this subsection, the term "bondholder"
843 means a person who holds a nuclear plant development bond.

844 (b) The state pledges to and agrees with bondholders, the
845 owners of the intangible property of a nuclear plant
846 development, and other financing parties that the state will
847 not:

848 1. Alter the provisions of this section which make the
849 nuclear plant development charges imposed by a financing order
850 irrevocable, binding, and nonbypassable charges;

851 2. Take or permit any action that impairs or would impair
852 the value of intangible property of the nuclear plant
853 development; or

854 3. Except as allowed under this section, reduce, alter, or
855 impair nuclear plant development charges that are to be imposed,
856 collected, and remitted for the benefit of the bondholders and
857 other financing parties until any and all principal, interest,
858 premium, financing costs and other fees, expenses, or charges
859 incurred, and any contracts to be performed, in connection with
860 the related nuclear plant development bonds have been paid and
861 performed in full.

862
863 This paragraph does not preclude limitation or alteration if
864 full compensation is made for the protection of the nuclear
865 plant development charges collected under a financing order.

866 (c) Any person or entity that issues nuclear plant
867 development bonds may include the pledge specified in paragraph
868 (b) in the bonds and related documentation.

869 (13) NOT AN ELECTRIC UTILITY.—An assignee or financing
870 party is not an electric utility or person providing electric

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871 service by virtue of engaging in the transactions described in
872 this section.

873 (14) CONFLICTS.—In the event of conflict between this
874 section and any other law regarding the attachment, assignment,
875 or perfection, the effect of perfection, or the priority or
876 transfer of assignment or security interest in intangible
877 property of a nuclear plant development, this section governs to
878 the extent of the conflict.

879 (15) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the date
880 that nuclear plant development bonds are first issued under this
881 section, if any provision of this section is held to be invalid,
882 is invalidated, superseded, replaced, or repealed, or expires
883 for any reason, that occurrence shall not affect the validity of
884 any action allowed under this section which is taken by an
885 electric utility, an assignee, a financing party, a collection
886 agent, or a party to an ancillary agreement. Any such action
887 shall remain in full force and effect with respect to all
888 nuclear plant development bonds issued or authorized in a
889 financing order issued under this section before the date that
890 such provision is held to be invalid; is invalidated,
891 superseded, replaced, or repealed; or expires for any reason.

892 (16) PENALTIES.—A violation of this section or of a
893 financing order issued under this section subjects the utility
894 that obtained the order to penalties under s. 366.095 and to any
895 other penalties or remedies that the commission determines are
896 necessary to achieve the intent of this section and the intent
897 and terms of the financing order, and to prevent any increase in
898 financial impact to the utility's ratepayers above that set
899 forth in the financing order. If the commission orders a penalty

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900 or a remedy for a violation, the monetary penalty or remedy and
901 the costs of defending against the proposed penalty or remedy
902 may not be recovered from ratepayers. The commission may not
903 make adjustments to nuclear plant development charges for any
904 such penalties or remedies.

905 Section 2. This act shall take effect July 1, 2009.