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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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The Committee on Communications, Energy, and Public Utilities (Garcia) recommended the following:

Senate Amendment (with title amendment)

Between lines 291 and 292

insert:

Section 8. Section 366.95, Florida Statutes, is created to read:

366.95 Financing for certain nuclear generating asset retirement or abandonment costs.—

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

(a) "Ancillary agreement" means any bond, insurance policy,



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11 letter of credit, reserve account, surety bond, interest rate
12 lock or swap arrangement, hedging arrangement, liquidity or
13 credit support arrangement, or other financial arrangement
14 entered into in connection with nuclear asset-recovery bonds.

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

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

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

28 (e) "Financing costs" means:

29 1. Interest and acquisition, defeasance, or redemption
30 premiums that are payable on nuclear asset-recovery bonds;

31 2. Any payment required under an ancillary agreement and
32 any amount required to fund or replenish a reserve account or
33 other accounts established under the terms of any indenture,
34 ancillary agreement, or other financing documents pertaining to
35 nuclear asset-recovery bonds;

36 3. Any other cost related to issuing, supporting, repaying,
37 refunding, and servicing nuclear asset-recovery bonds,
38 including, but not limited to, servicing fees, accounting and
39 auditing fees, trustee fees, legal fees, consulting fees,



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40 financial advisor fees, administrative fees, placement and
41 underwriting fees, capitalized interest, rating agency fees,
42 stock exchange listing and compliance fees, security
43 registration fees, filing fees, information technology
44 programming costs, and any other costs necessary to otherwise
45 ensure the timely payment of nuclear asset-recovery bonds or
46 other amounts or charges payable in connection with the bonds,
47 including costs related to obtaining the financing order;

48 4. Any taxes and license fees imposed on the revenues
49 generated from the collection of the nuclear asset-recovery
50 charge;

51 5. Any state and local taxes, franchise, gross receipts,
52 and other taxes or similar charges, including, but not limited
53 to, regulatory assessment fees, in any such case whether paid,
54 payable, or accrued; and

55 6. Any costs that are incurred by the commission for any
56 outside consultants or counsel pursuant to subparagraph (2)(c)2.

57 (f) "Financing order" means an order that authorizes the
58 issuance of nuclear asset-recovery bonds; the imposition,
59 collection, and periodic adjustments of the nuclear asset-
60 recovery charge; and the creation of nuclear asset-recovery
61 property.

62 (g) "Financing party" means any and all of the following:
63 holders of nuclear asset-recovery bonds and trustees, collateral
64 agents, any party under an ancillary agreement, or any other
65 person acting for the benefit of holders of nuclear asset-
66 recovery bonds.

67 (h) "Financing statement" has the same meaning as in Art. 9
68 of the Uniform Commercial Code.



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69 (i) "Nuclear asset-recovery bonds" means bonds, debentures,
70 notes, certificates of participation, certificates of beneficial
71 interest, certificates of ownership, or other evidences of
72 indebtedness or ownership that are issued by an electric utility
73 or an assignee pursuant to a financing order, the proceeds of
74 which are used directly or indirectly to recover, finance, or
75 refinance commission-approved nuclear asset-recovery costs and
76 financing costs, and that are secured by or payable from nuclear
77 asset-recovery property. If certificates of participation or
78 ownership are issued, references in this section to principal,
79 interest, or premium shall be construed to refer to comparable
80 amounts under those certificates.

81 (j) "Nuclear asset-recovery charge" means the amounts
82 authorized by the commission to repay, finance, or refinance
83 nuclear asset-recovery costs and financing costs. If determined
84 appropriate by the commission and provided for in a financing
85 order, such amounts are to be imposed on and be a part of all
86 customer bills and be collected by an electric utility or its
87 successors or assignees, or a collection agent, in full through
88 a nonbypassable charge that is separate and apart from the
89 electric utility's base rates, which charge shall be paid by all
90 existing or future customers receiving transmission or
91 distribution service from the electric utility or its successors
92 or assignees under commission-approved rate schedules or under
93 special contracts, even if a customer elects to purchase
94 electricity from an alternative electricity supplier following a
95 fundamental change in regulation of public utilities in this
96 state.

97 (k) "Nuclear asset-recovery costs" means:



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98 1. At the option of and upon petition by the electric
99 utility, and as approved by the commission pursuant to sub-
100 subparagraph (2)(c)1.b., pretax costs that an electric utility
101 has incurred or expects to incur which are caused by, associated
102 with, or remain as a result of the early retirement or
103 abandonment of a nuclear generating asset unit that generated
104 electricity and is located in this state where such early
105 retirement or abandonment is deemed to be reasonable and prudent
106 by the commission through a final order approving a settlement
107 or other final order issued by the commission before July 1,
108 2017, and where the pretax costs to be securitized exceed \$750
109 million at the time of the filing of the petition. Costs
110 eligible or claimed for recovery pursuant to s. 366.93 are not
111 eligible for securitization under this section unless they were
112 in the electric utility's rate base and were included in base
113 rates before retirement or abandonment.

114 2. Such pretax costs, where determined appropriate by the
115 commission, include, but are not limited to, the capitalized
116 cost of the retired or abandoned nuclear generating asset unit,
117 other applicable capital and operating costs, accrued carrying
118 charges, deferred expenses, reductions for applicable insurance
119 and salvage proceeds and previously stipulated write-downs or
120 write-offs, if any, and the costs of retiring any existing
121 indebtedness, fees, costs, and expenses to modify existing debt
122 agreements or for waivers or consents related to existing debt
123 agreements.

124 (1) "Nuclear asset-recovery property" means:

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



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127 order, including the right to impose, bill, collect, and receive
128 nuclear asset-recovery charges authorized under the financing
129 order and to obtain periodic adjustments to such charges as
130 provided in the financing order; or

131 2. All revenues, collections, claims, rights to payments,
132 payments, money, or proceeds arising from the rights and
133 interests specified in subparagraph 1., regardless of whether
134 such revenues, collections, claims, rights to payment, payments,
135 money, or proceeds are imposed, billed, received, collected, or
136 maintained together with or commingled with other revenues,
137 collections, rights to payment, payments, money, or proceeds.

138 (m) "Pledgee" means a financing party to which an electric
139 utility or its successors or assignees mortgages, negotiates,
140 hypothecates, pledges, or creates a security interest or lien on
141 all or any portion of its interest in or right to nuclear asset-
142 recovery property.

143 (n) "Uniform Commercial Code" has the same meaning as in
144 chapters 670-680.

145 (2) FINANCING ORDERS.-

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

148 1. Describe the nuclear asset-recovery costs;

149 2. Indicate whether the utility proposes to finance all or
150 a portion of the nuclear asset-recovery costs using nuclear
151 asset-recovery bonds. If the utility proposes to finance a
152 portion of such costs, the utility must identify which specific
153 portion in the petition;

154 3. Estimate the financing costs related to the nuclear
155 asset-recovery bonds;



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156 4. Estimate the nuclear asset-recovery charges necessary to
157 recover the nuclear asset-recovery costs and financing costs and
158 the period for recovery of such costs;

159 5. Estimate any projected cost savings, based on current
160 market conditions, or demonstrate how the issuance of nuclear
161 asset-recovery bonds and the imposition of nuclear asset-
162 recovery charges would avoid or significantly mitigate rate
163 impacts to customers as compared with the traditional method of
164 financing and recovering nuclear asset-recovery costs from
165 customers;

166 6. Demonstrate that securitization has a significant
167 likelihood of resulting in lower overall costs or would avoid or
168 significantly mitigate rate impacts compared to traditional
169 method of cost recovery; and

170 7. File direct testimony supporting the petition.

171 (b) If an electric utility is subject to a settlement
172 agreement that governs the type and amount of principal costs
173 that could be included in nuclear asset-recovery costs, the
174 electric utility must file a petition, or have filed a petition,
175 with the commission for review and approval of those principal
176 costs no later than 60 days before filing a petition for a
177 financing order pursuant to this section. The commission may not
178 authorize any such principal costs to be included or excluded,
179 as applicable, as nuclear asset-recovery costs if such inclusion
180 or exclusion, as applicable, of those costs would otherwise be
181 precluded by such electric utility's settlement agreement.

182 (c)1. Proceedings on a petition submitted pursuant to
183 paragraph (a) begin with the petition by an electric utility,
184 filed subject to the timeframe specified in subparagraph



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185 (1) (k)3., if applicable, and shall be disposed of in accordance
186 with chapter 120 and applicable rules, except that this section,
187 to the extent applicable, controls.

188 a. Within 7 days after the filing of a petition, the
189 commission shall publish a case schedule, which must place the
190 matter before the commission on an agenda that permits a
191 commission decision no later than 120 days after the date the
192 petition is filed.

193 b. No later than 135 days after the date the petition is
194 filed, the commission shall issue a financing order or an order
195 rejecting the petition. A party to the commission proceeding may
196 petition the commission for reconsideration of the financing
197 order within 5 days after the date of its issuance. The
198 commission shall issue a financing order authorizing financing
199 of reasonable and prudent nuclear asset-recovery costs and
200 financing costs if the commission finds that the issuance of the
201 nuclear asset-recovery bonds and the imposition of nuclear
202 asset-recovery charges authorized by the financing order have a
203 significant likelihood of resulting in lower overall costs or
204 would avoid or significantly mitigate rate impacts to customers
205 as compared with the traditional method of financing and
206 recovering nuclear asset-recovery costs. Any determination of
207 whether nuclear asset-recovery costs are reasonable and prudent
208 shall be made with reference to the general public interest and
209 in accordance with subparagraph (1) (k)3., if applicable.

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

212 a. Except as provided in sub-subparagraph d. and in
213 subparagraph 4., specify the amount of nuclear asset-recovery



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214 costs to be financed using nuclear asset-recovery bonds, taking
215 into consideration, to the extent the commission deems
216 appropriate, any other methods used to recover these costs. The
217 commission shall describe and estimate the amount of financing
218 costs which may be recovered through nuclear asset-recovery
219 charges and specify the period over which such costs may be
220 recovered. Any such determination as to the overall time period
221 for cost recovery must be consistent with a settlement
222 agreement, if any, as referenced in subparagraph (1) (k) 3.;

223 b. Determine if the proposed structuring, expected pricing,
224 and financing costs of the nuclear asset-recovery bonds have a
225 significant likelihood of resulting in lower overall costs or
226 would avoid or significantly mitigate rate impacts to customers
227 as compared with the traditional method of financing and
228 recovering nuclear asset-recovery costs. A financing order must
229 provide detailed findings of fact addressing cost-effectiveness
230 and associated rate impacts upon retail customers and retail
231 customer classes;

232 c. Require, for the period specified pursuant to sub-
233 subparagraph a., that the imposition and collection of nuclear
234 asset-recovery charges authorized under a financing order be
235 nonbypassable and paid by all existing and future customers
236 receiving transmission or distribution service from the electric
237 utility or its successors or assignees under commission-approved
238 rate schedules or under special contracts, even if a customer
239 elects to purchase electricity from an alternative electric
240 supplier following a fundamental change in regulation of public
241 utilities in this state;

242 d. Include a formula-based true-up mechanism for making



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243 expeditious periodic adjustments in the nuclear asset-recovery
244 charges that customers are required to pay pursuant to the
245 financing order and for making any adjustments that are
246 necessary to correct for any overcollection or undercollection
247 of the charges or to otherwise ensure the timely payment of
248 nuclear asset-recovery bonds and financing costs and other
249 required amounts and charges payable in connection with the
250 nuclear asset-recovery bonds;

251 e. Specify the nuclear asset-recovery property that is, or
252 shall be, created in favor of an electric utility or its
253 successors or assignees and that shall be used to pay or secure
254 nuclear asset-recovery bonds and all financing costs;

255 f. Specify the degree of flexibility to be afforded to the
256 electric utility in establishing the terms and conditions of the
257 nuclear asset-recovery bonds, including, but not limited to,
258 repayment schedules, expected interest rates, and other
259 financing costs consistent with sub-subparagraphs a.-e.;

260 g. Require nuclear asset-recovery charges to be allocated
261 to the customer classes using the criteria set out in s.
262 366.06(1), in the manner in which these costs or their
263 equivalent was allocated in the cost-of-service study that was
264 approved in connection with the electric utility's last rate
265 case and that is in effect during the nuclear asset-recovery
266 charge annual billing period. If the electric utility's last
267 rate case was resolved by a settlement agreement, the cost-of-
268 service methodology that was adopted in the settlement agreement
269 in that case and that is in effect during the nuclear asset-
270 recovery charge annual billing period shall be used;

271 h. Require, after the final terms of an issuance of nuclear



272 asset-recovery bonds have been established and before the
273 issuance of nuclear asset-recovery bonds, that the electric
274 utility determine the resulting initial nuclear asset-recovery
275 charge in accordance with the financing order and that such
276 initial nuclear asset-recovery charge be final and effective
277 upon the issuance of such nuclear asset-recovery bonds without
278 further commission action so long as the nuclear asset-recovery
279 charge is consistent with the financing order; and

280 i. Include any other conditions that the commission
281 considers appropriate and that are authorized by this section.
282

283 In performing the responsibilities of this subparagraph and
284 subparagraph 5., the commission may engage outside consultants
285 or counsel. All expenses associated with such services shall be
286 included as part of financing costs and included in the nuclear
287 asset-recovery charge.

288 3. A financing order issued to an electric utility may
289 provide that creation of the electric utility's nuclear asset-
290 recovery property pursuant to sub-subparagraph e. is conditioned
291 upon, and simultaneous with, the sale or other transfer of the
292 nuclear asset-recovery property to an assignee and the pledge of
293 the nuclear asset-recovery property to secure nuclear asset-
294 recovery bonds.

295 4. If the commission issues a financing order and nuclear
296 asset-recovery bonds are issued, the electric utility or
297 assignee must file with the commission at least biannually a
298 petition or a letter applying the formula-based true-up
299 mechanism pursuant to sub-subparagraph 2.d. and, based on
300 estimates of consumption for each rate class and other



301 mathematical factors, requesting administrative approval to make
302 the adjustments described in sub-subparagraph 2.d. The review of
303 such a request is limited to determining whether there is any
304 mathematical error in the application of the formula-based
305 mechanism relating to the amount of any overcollection or
306 undercollection of nuclear asset-recovery charges and the amount
307 of any adjustment. Such adjustments shall ensure the recovery of
308 revenues sufficient to provide for the timely payment of
309 principal, interest, acquisition, defeasance, financing costs,
310 or redemption premium and other fees, costs, and charges
311 relating to nuclear asset-recovery bonds approved under the
312 financing order. Within 60 days after receiving an electric
313 utility's request pursuant to this paragraph, the commission
314 must approve the request or inform the electric utility of any
315 mathematical errors in its calculation. If the commission
316 informs the utility of mathematical errors in its calculation,
317 the utility may correct its error and refile its request. The
318 timeframes previously described in this paragraph apply to a
319 refiled request.

320 5. Within 120 days after the issuance of nuclear asset-
321 recovery bonds, the electric utility shall file with the
322 commission information on the actual costs of the nuclear asset-
323 recovery bonds issuance. The commission shall review, on a
324 reasonably comparable basis, such information to determine if
325 such costs incurred in the issuance of the bonds resulted in the
326 lowest overall costs that were reasonably consistent with market
327 conditions at the time of the issuance and the terms of the
328 financing order. The commission may disallow all incremental
329 issuance costs in excess of the lowest overall costs by



330 requiring the electric utility to make a credit to the capacity
331 cost recovery clause in an amount equal to the excess of actual
332 issuance costs incurred, and paid for out of nuclear asset-
333 recovery bonds proceeds, and the lowest overall issuance costs
334 as determined by the commission. The commission may not make
335 adjustments to the nuclear asset-recovery charges for any such
336 excess issuance costs.

337 6. Subsequent to the transfer of nuclear asset-recovery
338 property to an assignee or the issuance of nuclear asset-
339 recovery bonds authorized thereby, whichever is earlier, a
340 financing order is irrevocable and, except as provided in
341 subparagraph (c)4. and paragraph (d), the commission may not
342 amend, modify, or terminate the financing order by any
343 subsequent action or reduce, impair, postpone, terminate, or
344 otherwise adjust nuclear asset-recovery charges approved in the
345 financing order. After the issuance of a financing order, the
346 electric utility retains sole discretion regarding whether to
347 assign, sell, or otherwise transfer nuclear asset-recovery
348 property or to cause nuclear asset-recovery bonds to be issued,
349 including the right to defer or postpone such assignment, sale,
350 transfer, or issuance. If the electric utility decides not to
351 cause nuclear asset-recovery bonds to be issued, the electric
352 utility may not recover financing costs as defined in paragraph
353 (1) (e) from customers.

354 (d) At the request of an electric utility, the commission
355 may commence a proceeding and issue a subsequent financing order
356 that provides for refinancing, retiring, or refunding nuclear
357 asset-recovery bonds issued pursuant to the original financing
358 order if the commission finds that the subsequent financing



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359 order satisfies all of the criteria specified in paragraph (c).
360 Effective upon retirement of the refunded nuclear asset-recovery
361 bonds and the issuance of new nuclear asset-recovery bonds, the
362 commission shall adjust the related nuclear asset-recovery
363 charges accordingly.

364 (e) Within 30 days after the commission issues a financing
365 order or a decision denying a request for reconsideration or, if
366 the request for reconsideration is granted, within 30 days after
367 the commission issues its decision on reconsideration, an
368 adversely affected party may petition for judicial review in the
369 Florida Supreme Court. The petition for review must be served
370 upon the executive director of the commission personally or by
371 service at the office of the commission. Review on appeal shall
372 be based solely on the record before the commission and briefs
373 to the court and is limited to determining whether the financing
374 order, or the order on reconsideration, conforms to the state
375 constitution and laws of this state and federal law and is
376 within the authority of the commission under this section.
377 Inasmuch as delay in the determination of the appeal of a
378 financing order will delay the issuance of nuclear asset-
379 recovery bonds, thereby diminishing savings to customers which
380 might be achieved if such nuclear asset-recovery bonds were
381 issued as contemplated by a financing order, the Florida Supreme
382 Court shall proceed to hear and determine the action as
383 expeditiously as practicable and give the action precedence over
384 other matters not accorded similar precedence by law.

385 (f)1. A financing order remains in effect and all such
386 nuclear asset-recovery property continues to exist until nuclear
387 asset-recovery bonds issued pursuant to the financing order have



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388 been paid in full and all commission-approved financing costs of
389 such nuclear asset-recovery bonds have been recovered in full.

390 2. A financing order issued to an electric utility remains
391 in effect and unabated notwithstanding the reorganization,
392 bankruptcy, or other insolvency proceedings, or merger, or sale
393 of the electric utility or its successors or assignees.

394 (3) EXCEPTIONS TO COMMISSION JURISDICTION.-

395 (a) If the commission issues a financing order to an
396 electric utility pursuant to this section, the commission may
397 not, in exercising its powers and carrying out its duties
398 regarding any matter within its authority pursuant to this
399 chapter, consider the nuclear asset-recovery bonds issued
400 pursuant to the financing order to be the debt of the electric
401 utility other than for federal income tax purposes, consider the
402 nuclear asset-recovery charges paid under the financing order to
403 be the revenue of the electric utility for any purpose, or
404 consider the nuclear asset-recovery costs or financing costs
405 specified in the financing order to be the costs of the electric
406 utility, nor may the commission determine any action taken by an
407 electric utility which is consistent with the financing order to
408 be unjust or unreasonable.

409 (b) The commission may not order or otherwise directly or
410 indirectly require an electric utility to use nuclear asset-
411 recovery bonds to finance any project, addition, plant,
412 facility, extension, capital improvement, equipment, or any
413 other expenditure, unless that expenditure is a nuclear asset-
414 recovery cost and the electric utility has filed a petition
415 pursuant to paragraph (2) (a) to finance such expenditure using
416 nuclear asset-recovery bonds. The commission may not refuse to



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417 allow an electric utility to recover nuclear asset-recovery
418 costs in an otherwise permissible fashion, or refuse or
419 condition authorization or approval pursuant to s. 366.04 of the
420 issuance and sale by an electric utility of securities or the
421 assumption by it of liabilities or obligations, solely because
422 of the potential availability of nuclear asset-recovery cost
423 financing.

424 (4) ELECTRIC UTILITY DUTIES.—The electric bills of an
425 electric utility that has obtained a financing order and caused
426 nuclear asset-recovery bonds to be issued must:

427 (a) Explicitly reflect that a portion of the charges on
428 such bill represents nuclear asset-recovery charges approved in
429 a financing order issued to the electric utility and, if the
430 nuclear asset-recovery property has been transferred to an
431 assignee, must include a statement to the effect that the
432 assignee is the owner of the rights to nuclear asset-recovery
433 charges and that the electric utility or other entity, if
434 applicable, is acting as a collection agent or servicer for the
435 assignee. The tariff applicable to customers must indicate the
436 nuclear asset-recovery charge and the ownership of that charge.

437 (b) Include the nuclear asset-recovery charge on each
438 customer's bill as a separate line item titled "Asset
439 Securitization Charge" and include both the rate and the amount
440 of the charge on each bill.

441
442 The failure of an electric utility to comply with this
443 subsection does not invalidate, impair, or affect any financing
444 order, nuclear asset-recovery property, nuclear asset-recovery
445 charge, or nuclear asset-recovery bonds, but does subject the



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446 electric utility to penalties under s. 366.095.

447 (5) NUCLEAR ASSET-RECOVERY PROPERTY.—

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

461 2. Nuclear asset-recovery property specified in a financing
462 order exists until nuclear asset-recovery bonds issued pursuant
463 to the financing order are paid in full and all financing costs
464 and other costs of such nuclear asset-recovery bonds have been
465 recovered in full.

466 3. All or any portion of nuclear asset-recovery property
467 specified in a financing order issued to an electric utility may
468 be transferred, sold, conveyed, or assigned to a successor or
469 assignee, that is wholly owned, directly or indirectly, by the
470 electric utility, created for the limited purpose of acquiring,
471 owning, or administering nuclear asset-recovery property or
472 issuing nuclear asset-recovery bonds under the financing order.
473 All or any portion of nuclear asset-recovery property may be
474 pledged to secure nuclear asset-recovery bonds issued pursuant



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

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

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

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



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

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

523 2. The creation, attachment, granting, perfection,
524 priority, and enforcement of liens and security interests in
525 nuclear asset-recovery property to secure nuclear asset-recovery
526 bonds is governed solely by this section and, except to the
527 extent provided in this section, not by the Uniform Commercial
528 Code.

529 3. A valid, enforceable, and attached lien and security
530 interest in nuclear asset-recovery property may be created only
531 upon the later of:

532 a. The issuance of a financing order;



533 b. The execution and delivery of a security agreement with
534 a financing party in connection with the issuance of nuclear
535 asset-recovery bonds; or

536 c. The receipt of value for nuclear asset-recovery bonds.
537

538 A valid, enforceable, and attached security interest is
539 perfected against third parties as of the date of filing of a
540 financing statement in the Florida Secured Transaction Registry,
541 as defined in s. 679.527, in accordance with subparagraph 4.,
542 and is thereafter a continuously perfected lien; and such
543 security interest in the nuclear asset-recovery property and all
544 proceeds of such nuclear asset-recovery property, whether or not
545 billed, accrued, or collected, and whether or not deposited into
546 a deposit account and however evidenced, has priority in
547 accordance with subparagraph 8. and takes precedence over any
548 subsequent judicial or other lien creditor. A continuation
549 statement does not need to be filed to maintain such perfection.

550 4. Financing statements required to be filed pursuant to
551 this section must be filed, maintained, and indexed in the same
552 manner and in the same system of records maintained for the
553 filing of financing statements in the Florida Secured
554 Transaction Registry, as defined in s. 679.527. The filing of
555 such a financing statement is the only method of perfecting a
556 lien or security interest on nuclear asset-recovery property.

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



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562 may apply to those funds is terminated as to all funds
563 transferred to a segregated account for the benefit of an
564 assignee or a financing party or to an assignee or financing
565 party directly.

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

579 7. The interest of a pledgee of an interest or any rights
580 in any nuclear asset-recovery property is not perfected until
581 filing as provided in subparagraph 4.

582 8. The priority of the conflicting interests of pledgees in
583 the same interest or rights in any nuclear asset-recovery
584 property is determined as follows:

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

589 b. A perfected interest or right of a pledgee has priority
590 over a conflicting unperfected interest or right of a pledgee.



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

594 (c) The sale, assignment, or transfer of nuclear asset-
595 recovery property is governed by this paragraph. All of the
596 following apply to a sale, assignment, or transfer under this
597 paragraph:

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

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

616 a. Commingling of amounts arising with respect to the
617 nuclear asset-recovery property with other amounts;

618 b. The retention by the transferor of a partial or residual
619 interest, including an equity interest, in the nuclear asset-



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620 recovery property, whether direct or indirect, or whether
621 subordinate or otherwise;

622 c. Any recourse that the transferee may have against the
623 transferor other than any such recourse created, contingent
624 upon, or otherwise occurring or resulting from one or more of
625 the transferor's customers' inability or failure to timely pay
626 all or a portion of the nuclear asset-recovery charge;

627 d. Any indemnifications, obligations, or repurchase rights
628 made or provided by the transferor, other than indemnity or
629 repurchase rights based solely upon a transferor's customers'
630 inability or failure to timely pay all or a portion of the
631 nuclear asset-recovery charge;

632 e. The responsibility of the transferor to collect nuclear
633 asset-recovery charges;

634 f. The treatment of the sale, conveyance, assignment, or
635 other transfer for tax, financial reporting, or other purposes;
636 or

637 g. The granting or providing to holders of nuclear asset-
638 recovery bonds a preferred right to the nuclear asset-recovery
639 property or credit enhancement by the electric utility or its
640 affiliates with respect to such nuclear asset-recovery bonds.

641 3. Any right that an electric utility has in the nuclear
642 asset-recovery property before its pledge, sale, or transfer or
643 any other right created under this section or created in the
644 financing order and assignable under this section or assignable
645 pursuant to a financing order is property in the form of a
646 contract right. Transfer of an interest in nuclear asset-
647 recovery property to an assignee is enforceable only upon the
648 later of the issuance of a financing order, the execution and



649 delivery of transfer documents to the assignee in connection
650 with the issuance of nuclear asset-recovery bonds, and the
651 receipt of value. An enforceable transfer of an interest in
652 nuclear asset-recovery property to an assignee is perfected
653 against all third parties, including subsequent judicial or
654 other lien creditors, when a notice of that transfer has been
655 given by the filing of a financing statement in accordance with
656 subparagraph (b)4. The transfer is perfected against third
657 parties as of the date of filing.

658 4. Financing statements required to be filed under this
659 section must be maintained and indexed in the same manner and in
660 the same system of records maintained for the filing of
661 financing statements in the Florida Secured Transaction
662 Registry, as defined in s. 679.527. The filing of such a
663 financing statement is the only method of perfecting a transfer
664 of nuclear asset-recovery property.

665 5. The priority of a transfer perfected under this section
666 is not impaired by any later modification of the financing order
667 or nuclear asset-recovery property or by the commingling of
668 funds arising from nuclear asset-recovery property with other
669 funds. Any other security interest that may apply to those
670 funds, other than a security interest perfected under paragraph
671 (b), is terminated when they are transferred to a segregated
672 account for the assignee or a financing party. If nuclear asset-
673 recovery property has been transferred to an assignee or
674 financing party, any proceeds of that property must be held in
675 trust for the assignee or financing party.

676 6. The priority of the conflicting interests of assignees
677 in the same interest or rights in any nuclear asset-recovery



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678 property is determined as follows:

679 a. Conflicting perfected interests or rights of assignees
680 rank according to priority in time of perfection. Priority dates
681 from the time a filing covering the transfer is made in
682 accordance with subparagraph (b)4.

683 b. A perfected interest or right of an assignee has
684 priority over a conflicting unperfected interest or right of an
685 assignee.

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

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

706 (7) FINANCING STATEMENTS.—All financing statements



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707 referenced in this section are subject to Part V of Art. 9 of
708 the Uniform Commercial Code, except that the requirement as to
709 continuation statements does not apply.

710 (8) CHOICE OF LAW.—The law governing the validity,
711 enforceability, attachment, perfection, priority, and exercise
712 of remedies with respect to the transfer of an interest or right
713 or the pledge or creation of a security interest in any nuclear
714 asset-recovery property shall be the laws of this state, and
715 exclusively, the laws of this section.

716 (9) NUCLEAR ASSET-RECOVERY BONDS NOT PUBLIC DEBT.—The state
717 or its political subdivisions are not liable on any nuclear
718 asset-recovery bonds, and the bonds are not a debt or a general
719 obligation of the state or any of its political subdivisions,
720 agencies, or instrumentalities. An issue of nuclear asset-
721 recovery bonds does not, directly or indirectly or contingently,
722 obligate the state or any agency, political subdivision, or
723 instrumentality of the state to levy any tax or make any
724 appropriation for payment of the nuclear asset-recovery bonds,
725 other than in their capacity as consumers of electricity. This
726 subsection does not preclude bond guarantees or enhancements
727 pursuant to this section. All nuclear asset-recovery bonds must
728 contain on the face thereof a statement to the following effect:
729 “Neither the full faith and credit nor the taxing power of the
730 State of Florida is pledged to the payment of the principal of,
731 or interest on, this bond.”

732 (10) NUCLEAR ASSET-RECOVERY BONDS AS LEGAL INVESTMENTS WITH
733 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY REGARDING
734 LEGAL INVESTMENT.—All of the following entities may legally
735 invest any sinking funds, moneys, or other funds belonging to



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736 them or under their control in nuclear asset-recovery bonds:

737 (a) The state, the investment board, municipal
738 corporations, political subdivisions, public bodies, and public
739 officers, except for members of the commission.

740 (b) Banks and bankers, savings and loan associations,
741 credit unions, trust companies, savings banks and institutions,
742 investment companies, insurance companies, insurance
743 associations, and other persons carrying on a banking or
744 insurance business.

745 (c) Personal representatives, guardians, trustees, and
746 other fiduciaries.

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

750 (11) STATE PLEDGE.—

751 (a) For purposes of this subsection, the term "bondholder"
752 means a person who holds a nuclear asset-recovery bond.

753 (b) The state pledges to and agrees with bondholders, the
754 owners of the nuclear asset-recovery property, and other
755 financing parties that the state will not:

756 1. Alter the provisions of this section which make the
757 nuclear asset-recovery charges imposed by a financing order
758 irrevocable, binding, and nonbypassable charges;

759 2. Take or permit any action that impairs or would impair
760 the value of nuclear asset-recovery property or revises the
761 nuclear asset-recovery costs for which recovery is authorized;
762 or

763 3. Except as authorized under this section, reduce, alter,
764 or impair nuclear asset-recovery charges that are to be imposed,



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765 collected, and remitted for the benefit of the bondholders and
766 other financing parties until any and all principal, interest,
767 premium, financing costs and other fees, expenses, or charges
768 incurred, and any contracts to be performed, in connection with
769 the related nuclear asset-recovery bonds have been paid and
770 performed in full.

771
772 This paragraph does not preclude limitation or alteration if
773 full compensation is made by law for the full protection of the
774 nuclear asset-recovery charges collected pursuant to a financing
775 order and of the holders of nuclear asset-recovery bonds and any
776 assignee or financing party entering into a contract with the
777 electric utility.

778 (c) Any person or entity that issues nuclear asset-recovery
779 bonds may include the pledge specified in paragraph (b) in the
780 nuclear asset-recovery bonds and related documentation.

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

785 (13) CONFLICTS.—If there is a conflict between this section
786 and any other law regarding the attachment, assignment, or
787 perfection, or the effect of perfection, or priority of,
788 assignment or transfer of, or security interest in nuclear
789 asset-recovery property, this section governs.

790 (14) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the date
791 that nuclear asset-recovery bonds are first issued under this
792 section, if any provision of this section is held to be invalid
793 or is invalidated, superseded, replaced, repealed, or expires



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794 for any reason, that occurrence does not affect the validity of
795 any action allowed under this section which is taken by an
796 electric utility, an assignee, a financing party, a collection
797 agent, or a party to an ancillary agreement; and any such action
798 remains in full force and effect with respect to all nuclear
799 asset-recovery bonds issued or authorized in a financing order
800 issued under this section before the date that such provision is
801 held to be invalid or is invalidated, superseded, replaced, or
802 repealed, or that expires for any reason.

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

816
817 ===== T I T L E A M E N D M E N T =====

818 And the title is amended as follows:

819 Between lines 42 and 43

820 insert:

821 creating s. 366.95, F.S.; defining terms; authorizing
822 electric utilities to petition the Florida Public



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823 Service Commission for certain financing orders that
824 authorize the issuance of nuclear asset-recovery
825 bonds, the imposition, collection, and periodic
826 adjustments of nuclear asset-recovery charges, and the
827 creation of nuclear asset-recovery property; providing
828 requirements; providing exceptions to the commission's
829 jurisdictions as it relates to financing orders;
830 specifying duties of electric utilities that have
831 obtained a financing order and issued nuclear asset-
832 recovery bonds; specifying properties, requirements
833 and limitations relating to nuclear asset-recovery
834 property; providing requirements as to the sufficiency
835 of the description of certain nuclear asset-recovery
836 property; subjecting financing statements to the
837 Uniform Commercial Code; providing an exception;
838 specifying that nuclear asset-recovery bonds are not
839 public debt; specifying certain state pledges relating
840 to bondholders; declaring certain entities as not
841 electric utilities under certain circumstances;
842 specifying effect of certain provisions in situations
843 of conflict; providing for protecting validity of
844 certain bonds under certain circumstances; providing
845 penalties;