

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Peters offered the following:

**Amendment (with title amendment)**

6 Between lines 238 and 239, insert:

7 Section 7. Section 366.95, Florida Statutes, is created to  
8 read:

9 366.95 Financing for certain nuclear generating asset  
10 retirement or abandonment costs.—

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

12 (a) "Ancillary agreement" means any bond, insurance  
13 policy, letter of credit, reserve account, surety bond, interest  
14 rate lock or swap arrangement, hedging arrangement, liquidity or  
15 credit support arrangement, or other financial arrangement  
16 entered into in connection with nuclear asset-recovery bonds.

17 (b) "Assignee" means any entity, including, but not

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18 limited to, a corporation, limited liability company,  
19 partnership or limited partnership, public authority, trust,  
20 financing entity, or other legally recognized entity to which an  
21 electric utility assigns, sells, or transfers, other than as  
22 security, all or a portion of its interest in or right to  
23 nuclear asset-recovery property. The term also includes any  
24 entity to which an assignee assigns, sells, or transfers, other  
25 than as security, its interest in or right to nuclear asset-  
26 recovery property.

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

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

31 (e) "Financing costs" means:

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

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

39 3. Any other cost related to issuing, supporting,  
40 repaying, refunding, and servicing nuclear asset-recovery bonds,  
41 including, but not limited to, servicing fees, accounting and  
42 auditing fees, trustee fees, legal fees, consulting fees,  
43 financial advisor fees, administrative fees, placement and

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

51 4. Any taxes and license fees imposed on the revenues  
52 generated from the collection of the nuclear asset-recovery  
53 charge;

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

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

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

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

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70 (h) "Financing statement" has the same meaning as in Art.  
71 9 of the Uniform Commercial Code.

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

85 (j) "Nuclear asset-recovery charge" means the amounts  
86 authorized by the commission to repay, finance, or refinance  
87 nuclear asset-recovery costs and financing costs. If determined  
88 appropriate by the commission and provided for in a financing  
89 order, such amounts are to be imposed on and be a part of all  
90 customer bills and be collected by an electric utility or its  
91 successors or assignees, or a collection agent, in full through  
92 a nonbypassable charge that is separate and apart from the  
93 electric utility's base rates, which charge shall be paid by all  
94 existing or future customers receiving transmission or  
95 distribution service from the electric utility or its successors

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96 or assignees under commission-approved rate schedules or under  
97 special contracts, even if a customer elects to purchase  
98 electricity from an alternative electricity supplier following a  
99 fundamental change in regulation of public utilities in this  
100 state.

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

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

118 2. Such pretax costs, where determined appropriate by the  
119 commission, include, but are not limited to, the capitalized  
120 cost of the retired or abandoned nuclear generating asset unit,  
121 other applicable capital and operating costs, accrued carrying

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122 charges, deferred expenses, reductions for applicable insurance  
123 and salvage proceeds and previously stipulated write-downs or  
124 write-offs, if any, and the costs of retiring any existing  
125 indebtedness, fees, costs, and expenses to modify existing debt  
126 agreements or for waivers or consents related to existing debt  
127 agreements.

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

129 1. All rights and interests of an electric utility or  
130 successor or assignee of the electric utility under a financing  
131 order, including the right to impose, bill, collect, and receive  
132 nuclear asset-recovery charges authorized under the financing  
133 order and to obtain periodic adjustments to such charges as  
134 provided in the financing order; or

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

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

147 (n) "Uniform Commercial Code" has the same meaning as in

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148 chapters 670-680.

149 (2) FINANCING ORDERS.—

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

152 1. Describe the nuclear asset-recovery costs;

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

158 3. Estimate the financing costs related to the nuclear  
159 asset-recovery bonds;

160 4. Estimate the nuclear asset-recovery charges necessary  
161 to recover the nuclear asset-recovery costs and financing costs  
162 and the period for recovery of such costs;

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

170 6. Demonstrate that securitization has a significant  
171 likelihood of resulting in lower overall costs or would avoid or  
172 significantly mitigate rate impacts compared to traditional  
173 method of cost recovery; and

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174 7. File direct testimony supporting the petition.

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

186 (c)1. Proceedings on a petition submitted pursuant to  
187 paragraph (a) begin with the petition by an electric utility,  
188 filed subject to the timeframe specified in subparagraph  
189 (1)(k)3., if applicable, and shall be disposed of in accordance  
190 with chapter 120 and applicable rules, except that this section,  
191 to the extent applicable, controls.

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

197 b. No later than 135 days after the date the petition is  
198 filed, the commission shall issue a financing order or an order  
199 rejecting the petition. A party to the commission proceeding may



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200 petition the commission for reconsideration of the financing  
201 order within 5 days after the date of its issuance. The  
202 commission shall issue a financing order authorizing financing  
203 of reasonable and prudent nuclear asset-recovery costs and  
204 financing costs if the commission finds that the issuance of the  
205 nuclear asset-recovery bonds and the imposition of nuclear  
206 asset-recovery charges authorized by the financing order have a  
207 significant likelihood of resulting in lower overall costs or  
208 would avoid or significantly mitigate rate impacts to customers  
209 as compared with the traditional method of financing and  
210 recovering nuclear asset-recovery costs. Any determination of  
211 whether nuclear asset-recovery costs are reasonable and prudent  
212 shall be made with reference to the general public interest and  
213 in accordance with subparagraph (1)(k)3., if applicable.

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

216 a. Except as provided in sub-subparagraph d. and in  
217 subparagraph 4., specify the amount of nuclear asset-recovery  
218 costs to be financed using nuclear asset-recovery bonds, taking  
219 into consideration, to the extent the commission deems  
220 appropriate, any other methods used to recover these costs. The  
221 commission shall describe and estimate the amount of financing  
222 costs which may be recovered through nuclear asset-recovery  
223 charges and specify the period over which such costs may be  
224 recovered. Any such determination as to the overall time period  
225 for cost recovery must be consistent with a settlement

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226 agreement, if any, as referenced in subparagraph (1)(k)3.;

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

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

246 d. Include a formula-based true-up mechanism for making  
247 expeditious periodic adjustments in the nuclear asset-recovery  
248 charges that customers are required to pay pursuant to the  
249 financing order and for making any adjustments that are  
250 necessary to correct for any overcollection or undercollection  
251 of the charges or to otherwise ensure the timely payment of

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252 nuclear asset-recovery bonds and financing costs and other  
253 required amounts and charges payable in connection with the  
254 nuclear asset-recovery bonds;

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

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

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

275 h. Require, after the final terms of an issuance of  
276 nuclear asset-recovery bonds have been established and before  
277 the issuance of nuclear asset-recovery bonds, that the electric

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278 utility determine the resulting initial nuclear asset-recovery  
279 charge in accordance with the financing order and that such  
280 initial nuclear asset-recovery charge be final and effective  
281 upon the issuance of such nuclear asset-recovery bonds without  
282 further commission action so long as the nuclear asset-recovery  
283 charge is consistent with the financing order; and

284 i. Include any other conditions that the commission  
285 considers appropriate and that are authorized by this section.  
286

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

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

299 4. If the commission issues a financing order and nuclear  
300 asset-recovery bonds are issued, the electric utility or  
301 assignee must file with the commission at least biannually a  
302 petition or a letter applying the formula-based true-up  
303 mechanism pursuant to sub-subparagraph 2.d. and, based on

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

324 5. Within 120 days after the issuance of nuclear asset-  
325 recovery bonds, the electric utility shall file with the  
326 commission information on the actual costs of the nuclear asset-  
327 recovery bonds issuance. The commission shall review, on a  
328 reasonably comparable basis, such information to determine if  
329 such costs incurred in the issuance of the bonds resulted in the

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330 lowest overall costs that were reasonably consistent with market  
331 conditions at the time of the issuance and the terms of the  
332 financing order. The commission may disallow all incremental  
333 issuance costs in excess of the lowest overall costs by  
334 requiring the electric utility to make a credit to the capacity  
335 cost recovery clause in an amount equal to the excess of actual  
336 issuance costs incurred, and paid for out of nuclear asset-  
337 recovery bonds proceeds, and the lowest overall issuance costs  
338 as determined by the commission. The commission may not make  
339 adjustments to the nuclear asset-recovery charges for any such  
340 excess issuance costs.

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

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356 utility may not recover financing costs as defined in paragraph  
357 (1) (e) from customers.

358 (d) At the request of an electric utility, the commission  
359 may commence a proceeding and issue a subsequent financing order  
360 that provides for refinancing, retiring, or refunding nuclear  
361 asset-recovery bonds issued pursuant to the original financing  
362 order if the commission finds that the subsequent financing  
363 order satisfies all of the criteria specified in paragraph (c).  
364 Effective upon retirement of the refunded nuclear asset-recovery  
365 bonds and the issuance of new nuclear asset-recovery bonds, the  
366 commission shall adjust the related nuclear asset-recovery  
367 charges accordingly.

368 (e) Within 30 days after the commission issues a financing  
369 order or a decision denying a request for reconsideration or, if  
370 the request for reconsideration is granted, within 30 days after  
371 the commission issues its decision on reconsideration, an  
372 adversely affected party may petition for judicial review in the  
373 Florida Supreme Court. The petition for review must be served  
374 upon the executive director of the commission personally or by  
375 service at the office of the commission. Review on appeal shall  
376 be based solely on the record before the commission and briefs  
377 to the court and is limited to determining whether the financing  
378 order, or the order on reconsideration, conforms to the state  
379 constitution and laws of this state and federal law and is  
380 within the authority of the commission under this section.  
381 Inasmuch as delay in the determination of the appeal of a

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382 financing order will delay the issuance of nuclear asset-  
383 recovery bonds, thereby diminishing savings to customers which  
384 might be achieved if such nuclear asset-recovery bonds were  
385 issued as contemplated by a financing order, the Florida Supreme  
386 Court shall proceed to hear and determine the action as  
387 expeditiously as practicable and give the action precedence over  
388 other matters not accorded similar precedence by law.

389 (f)1. A financing order remains in effect and all such  
390 nuclear asset-recovery property continues to exist until nuclear  
391 asset-recovery bonds issued pursuant to the financing order have  
392 been paid in full and all commission-approved financing costs of  
393 such nuclear asset-recovery bonds have been recovered in full.

394 2. A financing order issued to an electric utility remains  
395 in effect and unabated notwithstanding the reorganization,  
396 bankruptcy, or other insolvency proceedings, or merger, or sale  
397 of the electric utility or its successors or assignees.

398 (3) EXCEPTIONS TO COMMISSION JURISDICTION.—

399 (a) If the commission issues a financing order to an  
400 electric utility pursuant to this section, the commission may  
401 not, in exercising its powers and carrying out its duties  
402 regarding any matter within its authority pursuant to this  
403 chapter, consider the nuclear asset-recovery bonds issued  
404 pursuant to the financing order to be the debt of the electric  
405 utility other than for federal income tax purposes, consider the  
406 nuclear asset-recovery charges paid under the financing order to  
407 be the revenue of the electric utility for any purpose, or



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408 consider the nuclear asset-recovery costs or financing costs  
409 specified in the financing order to be the costs of the electric  
410 utility, nor may the commission determine any action taken by an  
411 electric utility which is consistent with the financing order to  
412 be unjust or unreasonable.

413 (b) The commission may not order or otherwise directly or  
414 indirectly require an electric utility to use nuclear asset-  
415 recovery bonds to finance any project, addition, plant,  
416 facility, extension, capital improvement, equipment, or any  
417 other expenditure, unless that expenditure is a nuclear asset-  
418 recovery cost and the electric utility has filed a petition  
419 pursuant to paragraph (2) (a) to finance such expenditure using  
420 nuclear asset-recovery bonds. The commission may not refuse to  
421 allow an electric utility to recover nuclear asset-recovery  
422 costs in an otherwise permissible fashion, or refuse or  
423 condition authorization or approval pursuant to s. 366.04 of the  
424 issuance and sale by an electric utility of securities or the  
425 assumption by it of liabilities or obligations, solely because  
426 of the potential availability of nuclear asset-recovery cost  
427 financing.

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

431 (a) Explicitly reflect that a portion of the charges on  
432 such bill represents nuclear asset-recovery charges approved in  
433 a financing order issued to the electric utility and, if the

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434 nuclear asset-recovery property has been transferred to an  
435 assignee, must include a statement to the effect that the  
436 assignee is the owner of the rights to nuclear asset-recovery  
437 charges and that the electric utility or other entity, if  
438 applicable, is acting as a collection agent or servicer for the  
439 assignee. The tariff applicable to customers must indicate the  
440 nuclear asset-recovery charge and the ownership of that charge.

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

445  
446 The failure of an electric utility to comply with this  
447 subsection does not invalidate, impair, or affect any financing  
448 order, nuclear asset-recovery property, nuclear asset-recovery  
449 charge, or nuclear asset-recovery bonds, but does subject the  
450 electric utility to penalties under s. 366.095.

451 (5) NUCLEAR ASSET-RECOVERY PROPERTY.—

452 (a)1. All nuclear asset-recovery property that is  
453 specified in a financing order constitutes an existing, present  
454 property right or interest therein, notwithstanding that the  
455 imposition and collection of nuclear asset-recovery charges  
456 depends on the electric utility, to which the financing order is  
457 issued, performing its servicing functions relating to the  
458 collection of nuclear asset-recovery charges and on future  
459 electricity consumption. Such property exists whether or not the

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460 revenues or proceeds arising from the property have been billed,  
461 have accrued, or have been collected and notwithstanding the  
462 fact that the value or amount of the property is dependent on  
463 the future provision of service to customers by the electric  
464 utility or its successors or assignees.

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

470 3. All or any portion of nuclear asset-recovery property  
471 specified in a financing order issued to an electric utility may  
472 be transferred, sold, conveyed, or assigned to a successor or  
473 assignee, that is wholly owned, directly or indirectly, by the  
474 electric utility, created for the limited purpose of acquiring,  
475 owning, or administering nuclear asset-recovery property or  
476 issuing nuclear asset-recovery bonds under the financing order.  
477 All or any portion of nuclear asset-recovery property may be  
478 pledged to secure nuclear asset-recovery bonds issued pursuant  
479 to the financing order, amounts payable to financing parties and  
480 to counterparties under any ancillary agreements, and other  
481 financing costs. Each such transfer, sale, conveyance,  
482 assignment, or pledge by an electric utility or affiliate of an  
483 electric utility is considered to be a transaction in the  
484 ordinary course of business.

485 4. If an electric utility defaults on any required payment

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

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

503 6. Any successor to an electric utility, whether pursuant  
504 to any reorganization, bankruptcy, or other insolvency  
505 proceeding or whether pursuant to any merger or acquisition,  
506 sale, or other business combination, or transfer by operation of  
507 law, as a result of electric utility restructuring or otherwise,  
508 must perform and satisfy all obligations of, and have the same  
509 rights under a financing order as, the electric utility under  
510 the financing order in the same manner and to the same extent as  
511 the electric utility, including collecting and paying to the

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512 person entitled to receive the revenues, collections, payments,  
513 or proceeds of the nuclear asset-recovery property.

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

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

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

536 a. The issuance of a financing order;

537 b. The execution and delivery of a security agreement with

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538 a financing party in connection with the issuance of nuclear  
539 asset-recovery bonds; or

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

541

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

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

561 5. The priority of a lien and security interest perfected  
562 under this paragraph is not impaired by any later modification  
563 of the financing order or nuclear asset-recovery property or by

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564 the commingling of funds arising from nuclear asset-recovery  
565 property with other funds, and any other security interest that  
566 may apply to those funds is terminated as to all funds  
567 transferred to a segregated account for the benefit of an  
568 assignee or a financing party or to an assignee or financing  
569 party directly.

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

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

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

589 a. Conflicting perfected interests or rights of pledgees

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590 rank according to priority in time of perfection. Priority dates  
591 from the time a filing covering the interest or right is made in  
592 accordance with this paragraph.

593 b. A perfected interest or right of a pledgee has priority  
594 over a conflicting unperfected interest or right of a pledgee.

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

598 (c) The sale, assignment, or transfer of nuclear asset-  
599 recovery property is governed by this paragraph. All of the  
600 following apply to a sale, assignment, or transfer under this  
601 paragraph:

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

615 2. The characterization of the sale, conveyance,



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616 assignment, or other transfer as a true sale or other absolute  
617 transfer under subparagraph 1. and the corresponding  
618 characterization of the transferee's property interest are not  
619 affected by:

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

622 b. The retention by the transferor of a partial or  
623 residual interest, including an equity interest, in the nuclear  
624 asset-recovery property, whether direct or indirect, or whether  
625 subordinate or otherwise;

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

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

636 e. The responsibility of the transferor to collect nuclear  
637 asset-recovery charges;

638 f. The treatment of the sale, conveyance, assignment, or  
639 other transfer for tax, financial reporting, or other purposes;  
640 or

641 g. The granting or providing to holders of nuclear asset-

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642 recovery bonds a preferred right to the nuclear asset-recovery  
643 property or credit enhancement by the electric utility or its  
644 affiliates with respect to such nuclear asset-recovery bonds.

645 3. Any right that an electric utility has in the nuclear  
646 asset-recovery property before its pledge, sale, or transfer or  
647 any other right created under this section or created in the  
648 financing order and assignable under this section or assignable  
649 pursuant to a financing order is property in the form of a  
650 contract right. Transfer of an interest in nuclear asset-  
651 recovery property to an assignee is enforceable only upon the  
652 later of the issuance of a financing order, the execution and  
653 delivery of transfer documents to the assignee in connection  
654 with the issuance of nuclear asset-recovery bonds, and the  
655 receipt of value. An enforceable transfer of an interest in  
656 nuclear asset-recovery property to an assignee is perfected  
657 against all third parties, including subsequent judicial or  
658 other lien creditors, when a notice of that transfer has been  
659 given by the filing of a financing statement in accordance with  
660 subparagraph (b)4. The transfer is perfected against third  
661 parties as of the date of filing.

662 4. Financing statements required to be filed under this  
663 section must be maintained and indexed in the same manner and in  
664 the same system of records maintained for the filing of  
665 financing statements in the Florida Secured Transaction  
666 Registry, as defined in s. 679.527. The filing of such a  
667 financing statement is the only method of perfecting a transfer

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668 of nuclear asset-recovery property.

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

680 6. The priority of the conflicting interests of assignees  
681 in the same interest or rights in any nuclear asset-recovery  
682 property is determined as follows:

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

687 b. A perfected interest or right of an assignee has  
688 priority over a conflicting unperfected interest or right of an  
689 assignee.

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

693 (6) DESCRIPTION OR INDICATION OF PROPERTY.—The description

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

710 (7) FINANCING STATEMENTS.—All financing statements  
711 referenced in this section are subject to Part V of Art. 9 of  
712 the Uniform Commercial Code, except that the requirement as to  
713 continuation statements does not apply.

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

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

736 (10) NUCLEAR ASSET-RECOVERY BONDS AS LEGAL INVESTMENTS  
737 WITH RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY  
738 REGARDING LEGAL INVESTMENT.—All of the following entities may  
739 legally invest any sinking funds, moneys, or other funds  
740 belonging to them or under their control in nuclear asset-  
741 recovery bonds:

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

745 (b) Banks and bankers, savings and loan associations,

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746 credit unions, trust companies, savings banks and institutions,  
747 investment companies, insurance companies, insurance  
748 associations, and other persons carrying on a banking or  
749 insurance business.

750 (c) Personal representatives, guardians, trustees, and  
751 other fiduciaries.

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

755 (11) STATE PLEDGE.—

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

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

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

764 2. Take or permit any action that impairs or would impair  
765 the value of nuclear asset-recovery property or revises the  
766 nuclear asset-recovery costs for which recovery is authorized;

767 or

768 3. Except as authorized under this section, reduce, alter,  
769 or impair nuclear asset-recovery charges that are to be imposed,  
770 collected, and remitted for the benefit of the bondholders and  
771 other financing parties until any and all principal, interest,

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772 premium, financing costs and other fees, expenses, or charges  
773 incurred, and any contracts to be performed, in connection with  
774 the related nuclear asset-recovery bonds have been paid and  
775 performed in full.

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

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

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

790 (13) CONFLICTS.—If there is a conflict between this  
791 section and any other law regarding the attachment, assignment,  
792 or perfection, or the effect of perfection, or priority of,  
793 assignment or transfer of, or security interest in nuclear  
794 asset-recovery property, this section governs.

795 (14) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the  
796 date that nuclear asset-recovery bonds are first issued under  
797 this section, if any provision of this section is held to be

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

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

821 -----  
822  
823 **T I T L E A M E N D M E N T**



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824           Remove line 35 and insert:  
825   used solely for that purpose; creating s. 366.95, F.S.; defining  
826   terms; authorizing electric utilities to petition the Florida  
827   Public Service Commission for certain financing orders that  
828   authorize the issuance of nuclear asset-recovery bonds, the  
829   imposition, collection, and periodic adjustments of nuclear  
830   asset-recovery charges, and the creation of nuclear asset-  
831   recovery property; providing requirements; providing exceptions  
832   to the commission's jurisdictions as it relates to financing  
833   orders; specifying duties of electric utilities that have  
834   obtained a financing order and issued nuclear asset-recovery  
835   bonds; specifying properties, requirements and limitations  
836   relating to nuclear asset-recovery property; providing  
837   requirements as to the sufficiency of the description of certain  
838   nuclear asset-recovery property; subjecting financing statements  
839   to the Uniform Commercial Code; providing an exception;  
840   specifying that nuclear asset-recovery bonds are not public  
841   debt; specifying certain state pledges relating to bondholders;  
842   declaring certain entities as not electric utilities under  
843   certain circumstances; specifying effect of certain provisions  
844   in situations of conflict; providing for protecting validity of  
845   certain bonds under certain circumstances; providing penalties;  
846   providing an effective