

Committee Substitute for Committee Substitute for  
Committee Substitute for Senate Bill No. 1366

An act relating to storm infrastructure recovery; creating s. 366.8260, F.S.; providing definitions; authorizing electric utilities to petition the Florida Public Service Commission for certain financing orders for certain storm-recovery purposes; providing requirements; providing powers and duties of the commission in issuing such orders; specifying procedures and requirements for the commission in issuing financing orders; authorizing electric utilities to create storm-recovery property; providing for pledge of storm-recovery property to secure storm-recovery bonds; providing for retirement of storm-recovery bonds under certain circumstances; providing for judicial review of such orders; providing for effect of such orders; providing exceptions to commission jurisdiction to issue financing orders; providing limitations; prohibiting the commission from requiring use of storm-recovery bonds for certain purposes; specifying duties of electric utilities; specifying properties, requirements, permissible activities, and limitations relating to storm-recovery property under certain circumstances; providing for security interests in storm-recovery property; providing for perfecting security interests in storm-recovery property; providing for priority of and resolution of conflicting interests; providing requirements, procedures, and limitations for sale, assignment, or transfer of storm-recovery property; providing requirements for descriptions or indications of storm-recovery property transferred, granted, or pledged, or indicated in a financing statement; subjecting financing statements to certain provisions of law; specifying that storm-recovery bonds are not public debt; specifying storm-recovery bonds as legal investments for certain entities; specifying certain state pledges relating to bondholders; declaring certain entities as not electric utilities under certain circumstances; specifying effect of certain provisions in situations of conflict; providing for protecting validity of certain bonds under certain circumstances; providing penalties; amending s. 679.1091, F.S.; specifying nonapplication of secured transactions provisions of the Uniform Commercial Code to interests in storm-recovery property; providing an effective date.

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

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

366.8260 Storm-recovery financing.—

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

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

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

(c) “Commission” means the Florida Public Service Commission.

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

(e) “Financing costs” means:

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

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

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

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

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

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

(f) “Financing order” means an order under subsection (2) which allows for the issuance of storm-recovery bonds, the imposition, collection, and periodic adjustments of storm-recovery charges, and the creation of storm-recovery property.

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

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

(i) “Pledgee” means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, hypothecates, pledges, or

creates a security interest or lien on all or any portion of its interest in or right to storm-recovery property.

(j) “Storm” means a named tropical storm or hurricane that occurred during calendar year 2004 or thereafter.

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

(l) “Storm-recovery bonds” means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electric utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance commission-approved storm-recovery costs, financing cost, costs to replenish the storm-recovery reserve to the level that existed before the storm or storms, or such other level as the commission may authorize in a financing order, and which are secured by or payable from storm-recovery property.

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

(n) “Storm-recovery costs” means, at the option and request of the electric utility, and as approved by the commission pursuant to subparagraph (2)(b)1.b., costs incurred or to be incurred by an electric utility in undertaking a storm-recovery activity. Such costs shall be net of applicable insurance proceeds and, where determined appropriate by the commission, shall include adjustments for normal capital replacement and operating costs, lost revenues, or other potential offsetting adjustments. Storm-recovery costs shall include the costs to finance any deficiency or deficiencies in storm-recovery reserves until such time as storm-recovery bonds are issued, and costs of retiring any existing indebtedness relating to storm-recovery activities.

(o) “Storm-recovery property” means:

1. All rights and interests of an electric utility or successor or assignee of the electric utility under a financing order, including the right to impose,

bill, collect, and receive storm-recovery charges authorized in the financing order and to obtain periodic adjustments to such charges as provided in the financing order.

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

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

(q) “Uniform Commercial Code” has the same meaning as that provided in s. 671.101.

## (2) FINANCING ORDERS.—

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

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

2. Set forth the known storm-recovery costs and estimate the costs of any storm-recovery activities that are not completed, or for which the costs are not yet known, as identified and requested by the electric utility.

3. Set forth the level of the storm-recovery reserve that the utility proposes to establish or replenish and has determined would be appropriate to recover through storm-recovery bonds and is seeking to so recover and such level that the utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery.

4. Indicate whether the electric utility proposes to finance all or a portion of the storm-recovery costs and storm-recovery reserve using storm-recovery bonds. If the electric utility proposes to finance a portion of such costs, the electric utility shall identify that portion in the petition.

5. Estimate the financing costs related to the storm-recovery bonds.

6. Estimate the storm-recovery charges necessary to recover the storm-recovery costs, storm-recovery reserve, and financing costs and the period for recovery of such costs.

7. Estimate any cost savings or demonstrate how it would avoid or significantly mitigate rate impacts to customers resulting from financing storm-recovery costs with storm-recovery bonds as opposed to the traditional method of recovering such costs from customers and through alternative financing methods available to the electric utility.

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

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

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

b. No later than 135 days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition. A party to the commission proceeding may petition the commission for reconsideration of the financing order within 5 days after the date of its issuance. The commission shall issue a financing order authorizing financing of reasonable and prudent storm-recovery costs, the storm-recovery reserve amount determined appropriate by the commission, and financing costs if the commission finds that the issuance of the storm-recovery bonds and the imposition of storm-recovery charges authorized by the order are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs and storm-recovery reserve. Any determination of whether storm-recovery costs are reasonable and prudent shall be made with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service.

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

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

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

c. Provide that, for the period specified pursuant to sub-subparagraph a., the imposition and collection of storm-recovery charges authorized in the financing order shall be paid by all customers receiving transmission or distribution service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the state.

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

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

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

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

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

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

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

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

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

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

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

5. Within 120 days after the issuance of storm-recovery bonds, the electric utility shall file with the commission information on the actual costs of the storm-recovery-bond issuance. The commission shall review such information to determine if such costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The commission may disallow any incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a contribution to the storm reserve in an amount equal to the excess of actual issuance costs incurred, and paid for out of storm recovery bond proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the storm-recovery charges for any such excess issuance costs.

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

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

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

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

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

### (3) EXCEPTIONS TO COMMISSION JURISDICTION.—

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

(b) The commission may not order or otherwise directly or indirectly require an electric utility to use storm-recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure, unless the electric utility has filed a petition under paragraph (2)(a) to finance such expenditure using storm-recovery bonds. The commission may not refuse to allow an electric utility to recover costs for storm-recovery activities in an otherwise permissible fashion, or refuse or condition authorization or approval pursuant to s. 366.04 of the issuance and sale by an electric utility of securities or the assumption by it of liabilities or obligations, solely because of the potential availability of storm-recovery financing.



(4) ELECTRIC UTILITY DUTIES.—

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

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

(5) STORM-RECOVERY PROPERTY.—

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

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

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

4. If an electric utility defaults on any required payment of charges arising from storm-recovery property specified in a financing order, a court, upon application by an interested party, and without limiting any other

remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the storm-recovery property to the financing parties. Any such order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

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

6. Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the storm-recovery property.

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

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

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

a. The issuance of a financing order;

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

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

A valid, enforceable, and attached security interest shall be perfected against third parties as of the date of filing of a financing statement in the Florida Secured Transaction Registry, as such registry is defined in Article 9 of the Uniform Commercial Code, in accordance with subparagraph 4., and

shall thereafter be a continuously perfected lien; and such security interest in the storm-recovery property and all proceeds of such storm-recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced, shall have priority in accordance with subparagraph 8. and take precedence over any subsequent judicial or other lien creditor. No continuation statement need be filed to maintain such perfection.

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

5. The priority of a lien and security interest perfected under this paragraph is not impaired by any later modification of the financing order or storm-recovery property or by the commingling of funds arising from storm-recovery property with other funds, and any other security interest that may apply to those funds shall be terminated as to all funds transferred to a segregated account for the benefit of an assignee or a financing party or to an assignee or financing party directly.

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

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

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

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

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

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

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

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

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

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

b. The retention by the transferor of a partial or residual interest, including an equity interest, in the storm-recovery property, whether direct or indirect, or whether subordinate or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) STATE PLEDGE.—

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

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

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

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

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

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

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

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

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

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

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

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

679.1091 Scope.—

(4) This chapter does not apply to:

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

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

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

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

Approved by the Governor June 1, 2005.

Filed in Office Secretary of State June 1, 2005.