

CHAPTER 2015-129

Committee Substitute for House Bill No. 7109

An act relating to the Florida Public Service Commission; amending s. 350.01, F.S.; providing term limits for commissioners appointed after a specified date; requiring that specified meetings, workshops, hearings, or proceedings of the commission be streamed live and recorded copies be made available on the commission's website; amending s. 350.031, F.S.; requiring a person who lobbies a member of the Florida Public Service Commission Nominating Council to register as a lobbyist; requiring implementation by joint rule; amending s. 350.041, F.S.; requiring public service commissioners to annually complete ethics training; amending s. 350.042, F.S.; revising the prohibition against ex parte communications to include any matter that a commissioner knows or reasonably expects will be filed within a certain timeframe; providing legislative intent; defining terms; applying the prohibition against ex parte communications to specified meetings; specifying conditions under which the Governor must remove from office any commissioner found to have willfully and knowingly violated the ex parte communications law; amending s. 366.05, F.S.; limiting the use of tiered rates in conjunction with extended billing periods; limiting deposit amounts; requiring a utility to notify each customer if it has more than one rate for any customer class; requiring the utility to provide good faith assistance to the customer in determining the best rate; assigning responsibility to the customer for the rate selection; requiring the commission to approve new tariffs and certain changes to existing tariffs; amending s. 366.82, F.S.; requiring that money received by a utility for the development of demand-side renewable energy systems be used solely for that purpose; creating s. 366.95, F.S.; defining terms; authorizing electric utilities to petition the commission for certain financing orders that authorize the issuance of nuclear asset-recovery bonds, authorize the imposition, collection, and periodic adjustments of nuclear asset-recovery charges, and authorize the creation of nuclear asset-recovery property; providing requirements; providing exceptions to the commission's jurisdiction for certain aspects of financing orders; specifying duties of electric utilities that have obtained a financing order and issued nuclear asset-recovery bonds; specifying properties, requirements, and limitations relating to nuclear asset-recovery property; providing requirements as to the sufficiency of the description of certain nuclear asset-recovery property; subjecting financing statements to the Uniform Commercial Code; providing an exception; specifying that nuclear asset-recovery bonds are not public debt; specifying certain state pledges relating to bondholders; declaring that certain entities are 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; providing an effective date.

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

Section 1. Subsection (3) of section 350.01, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.—

(3) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council no later than June 1 prior to the year in which his or her term expires a statement that he or she desires to serve an additional term. A commissioner appointed after July 1, 2015, may not serve more than three consecutive terms.

(8) Each meeting, including each internal affairs meeting, workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or other proceeding where a decision that concerns the rights or obligations of any person is made, shall be streamed live on the Internet and a recorded copy of the meeting, workshop, hearing, or proceeding shall be made available on the commission's website.

Section 2. Subsection (10) is added to section 350.031, Florida Statutes, to read:

350.031 Florida Public Service Commission Nominating Council.—

(10) In keeping with the purpose of the council, which is to select nominees to be appointed to an arm of the legislative branch of government, a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose, must register as a lobbyist pursuant to s. 11.045 and otherwise comply with the requirements of that section. The Legislature shall implement this subsection by joint rule.

Section 3. Subsection (3) of section 350.041, Florida Statutes, is renumbered as subsection(4), and a new subsection (3) is added to that section to read:

350.041 Commissioners; standards of conduct.—

(3) ETHICS TRAINING.—Beginning January 1, 2016, a commissioner must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

Section 4. Subsections (1) and (3) and paragraph (b) of subsection (7) of section 350.042, Florida Statutes, are amended to read:

350.042 Ex parte communications.—

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person’s lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding under s. 120.569 or s. 120.57 that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication, other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. An No individual may not shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within ~~180~~ 90 days. ~~The provisions of~~ This subsection ~~does shall~~ not apply to commission staff.

(3)(a) The Legislature finds that it is important to have commissioners who are educated and informed on regulatory policies and developments in science, technology, business management, finance, law, and public policy which are associated with the industries that the commissioners regulate. The Legislature also finds that it is in the public interest for commissioners to become educated and informed on these matters through active participation in meetings that are scheduled by organizations that sponsor such educational or informational sessions, programs, conferences, and similar events and that are duly noticed and open to the public.

(b) As used in this subsection, the term “active participation” or “participating in” includes, but is not limited to, attending or speaking at educational sessions, participating in organization governance by attending meetings, serving on committees or in leadership positions, participating in panel discussions, and attending meals and receptions associated with such events that are open to all attendees.

(c) The prohibition in subsection (1) remains in effect at all times at such meetings wherever located. While participating in such meetings, a commissioner shall:

1. Refrain from commenting on or discussing any proceeding under s. 120.569 or s. 120.57 which is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting.

2. Use reasonable care to ensure that the content of the educational session or other session in which the commissioner participates is not designed to address or create a forum to influence the commissioner on any proceeding under s. 120.569 or s. 120.57 which is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting ~~This section shall not~~

~~apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.~~

(7)

(b) If the Commission on Ethics finds that there has been a violation of this section by a public service commissioner, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this section. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this section after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this section in a separate matter.

Section 5. Subsection (1) of section 366.05, Florida Statutes, is amended to read:

366.05 Powers.—

(1)(a) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(b) If the commission authorizes a public utility to charge tiered rates based upon levels of usage and to vary its regular billing period, the utility may not charge a customer a higher rate because of an increase in usage attributable to an extension of the billing period; however, the regular meter reading date may not be advanced or postponed more than 5 days for routine operating reasons without prorating the billing for the period.

(c) Effective January 1, 2016, a utility may not charge or receive a deposit in excess of the following amounts:

1. For an existing account, the total deposit may not exceed 2 months of average actual charges, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by 2. If the account has less than 12 months of actual charges, the deposit shall be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by 2.

2. For a new service request, the total deposit may not exceed 2 months of projected charges, calculated by adding the 12 months of projected charges, dividing this total by 12, and multiplying the result by 2. Once a new customer has had continuous service for a 12-month period, the amount of the deposit shall be recalculated using actual data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

(d) If a utility has more than one rate for any customer class, it must notify each customer in that class of the available rates and explain how the rate is charged to the customer. If a customer contacts the utility seeking assistance in selecting the most advantageous rate, the utility must provide good faith assistance to the customer. The customer is responsible for charges for service provided under the selected rate.

(e) New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by majority vote of the commission, except as otherwise specifically provided by law.

Section 6. Subsection (2) of section 366.82, Florida Statutes, is amended to read:

366.82 Definition; goals; plans; programs; annual reports; energy audits.

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources. The commission may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base. Moneys received by a utility to implement measures to encourage the development of demand-side renewable energy systems shall be used solely for such purposes and related administrative costs.

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

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

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

(a) “Ancillary agreement” means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with nuclear asset-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 nuclear asset-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 nuclear asset-recovery property.

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

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

(e) “Financing costs” means:

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

3. Any other cost related to issuing, supporting, repaying, refunding, and servicing nuclear asset-recovery bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of nuclear asset-recovery bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

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

5. 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; and

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

(f) “Financing order” means an order that authorizes the issuance of nuclear asset-recovery bonds; the imposition, collection, and periodic adjustments of the nuclear asset-recovery charge; and the creation of nuclear asset-recovery property.

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

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

(i) “Nuclear asset-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 nuclear asset-recovery costs and financing costs, and that are secured by or payable from nuclear asset-recovery property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

(j) “Nuclear asset-recovery charge” means the amounts authorized by the commission to repay, finance, or refinance nuclear asset-recovery costs and financing costs. If determined appropriate by the commission and provided for in a financing order, such amounts are to be imposed on and be a part of all customer bills and be collected by an electric utility or its successors or assignees, or a collection agent, in full through a nonbypassable charge that is separate and apart from the electric utility’s base rates, which charge shall be paid by all existing or future 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 a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state.

(k) “Nuclear asset-recovery costs” means:

1. At the option of and upon petition by the electric utility, and as approved by the commission pursuant to sub-subparagraph (2)(c)1.b., pretax costs that an electric utility has incurred or expects to incur which are caused

by, associated with, or remain as a result of the early retirement or abandonment of a nuclear generating asset unit that generated electricity and is located in this state where such early retirement or abandonment is deemed to be reasonable and prudent by the commission through a final order approving a settlement or other final order issued by the commission before July 1, 2017, and where the pretax costs to be securitized exceed \$750 million at the time of the filing of the petition. Costs eligible or claimed for recovery pursuant to s. 366.93 are not eligible for securitization under this section unless they were in the electric utility's rate base and were included in base rates before retirement or abandonment.

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

(l) "Nuclear asset-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 nuclear asset-recovery charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order; or

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.

(m) "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 nuclear asset-recovery property.

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

(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 nuclear asset-recovery costs;

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

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

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

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

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

7. File direct testimony supporting the petition.

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

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

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

financing of reasonable and prudent nuclear asset-recovery costs and financing costs if the commission finds that the issuance of the nuclear asset-recovery bonds and the imposition of nuclear asset-recovery charges authorized by the financing order have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. Any determination of whether nuclear asset-recovery costs are reasonable and prudent shall be made with reference to the general public interest and in accordance with paragraph (b), if applicable.

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

a. Except as provided in sub-subparagraph d. and subparagraph 4., specify the amount of nuclear asset-recovery costs to be financed using nuclear asset-recovery bonds, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs. The commission shall describe and estimate the amount of financing costs which may be recovered through nuclear asset-recovery charges and specify the period over which such costs may be recovered. Any such determination as to the overall time period for cost recovery must be consistent with a settlement agreement, if any, under paragraph (b);

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

c. Require, for the period specified pursuant to sub-subparagraph a., that the imposition and collection of nuclear asset-recovery charges authorized under a financing order be nonbypassable and paid by all existing and future 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 a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state;

d. Include a formula-based true-up mechanism for making expeditious periodic adjustments in the nuclear asset-recovery charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or under-collection of the charges or to otherwise ensure the timely payment of nuclear asset-recovery bonds and financing costs and other required amounts and charges payable in connection with the nuclear asset-recovery bonds;

e. Specify the nuclear asset-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 nuclear asset-recovery bonds and all financing costs;

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

g. Require nuclear asset-recovery charges to 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 was allocated in the cost-of-service study that was approved in connection with the electric utility's last rate case and that is in effect during the nuclear asset-recovery charge annual billing period. If the electric utility's last rate case was resolved by a settlement agreement, the cost-of-service methodology that was adopted in the settlement agreement in that case and that is in effect during the nuclear asset-recovery charge annual billing period shall be used;

h. Require, after the final terms of an issuance of nuclear asset-recovery bonds have been established and before the issuance of nuclear asset-recovery bonds, that the electric utility determine the resulting initial nuclear asset-recovery charge in accordance with the financing order and that such initial nuclear asset-recovery charge be final and effective upon the issuance of such nuclear asset-recovery bonds without further commission action so long as the nuclear asset-recovery charge is consistent with the financing order; and

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

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

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

4. If the commission issues a financing order and nuclear asset-recovery bonds are issued, the electric utility or assignee must file with the commission at least biannually a petition or a letter applying the formula-based true-up mechanism pursuant to subparagraph 2.d. and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the adjustments described in subparagraph 2.d. The review of such a request is limited to determining

whether there is any mathematical error in the application of the formula-based mechanism relating to the amount of any overcollection or undercollection of nuclear asset-recovery charges and the amount of any adjustment. Such adjustments shall ensure the recovery of revenues sufficient to provide for the timely payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges relating to nuclear asset-recovery bonds approved under the financing order. Within 60 days after receiving an electric utility's request pursuant to this paragraph, the commission must 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 the error and refile the request. The timeframes previously described in this paragraph apply to a refiled request.

5. Within 120 days after the issuance of nuclear asset-recovery bonds, the electric utility shall file with the commission information on the actual costs of the nuclear asset-recovery bonds issuance. The commission shall review, on a reasonably comparable basis, 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 all incremental issuance costs in excess of the lowest overall costs by requiring the electric utility to make a credit to the capacity cost recovery clause in an amount equal to the excess of actual issuance costs incurred, and paid for out of nuclear asset-recovery bonds proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the nuclear asset-recovery charges for any such excess issuance costs.

6. Subsequent to the transfer of nuclear asset-recovery property to an assignee or the issuance of nuclear asset-recovery bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except as provided in subparagraph 4. and paragraph (d), the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust nuclear asset-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 nuclear asset-recovery property or to cause nuclear asset-recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance. If the electric utility decides not to cause nuclear asset-recovery bonds to be issued, the electric utility may not recover financing costs, as defined in paragraph (1)(e), from customers.

(d) At the request of an electric utility, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding nuclear asset-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 (c). Effective upon retirement of the refunded nuclear asset-recovery bonds

and the issuance of new nuclear asset-recovery bonds, the commission shall adjust the related nuclear asset-recovery charges accordingly.

(e) Within 30 days after the commission issues a financing order 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 must 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 is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and state and federal law 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 nuclear asset-recovery bonds, thereby diminishing savings to customers which might be achieved if such nuclear asset-recovery bonds were issued as contemplated by a financing order, the Florida 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.

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

2. A financing order issued to an electric utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale 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 nuclear asset-recovery bonds issued pursuant to the financing order to be the debt of the electric utility other than for federal income tax purposes, consider the nuclear asset-recovery charges paid under the financing order to be the revenue of the electric utility for any purpose, or consider the nuclear asset-recovery costs or financing costs specified in the financing 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 financing order to be unjust or unreasonable.

(b) The commission may not order or otherwise directly or indirectly require an electric utility to use nuclear asset-recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure, unless that expenditure is a nuclear asset-recovery

cost and the electric utility has filed a petition pursuant to paragraph (2)(a) to finance such expenditure using nuclear asset-recovery bonds. The commission may not refuse to allow an electric utility to recover nuclear asset-recovery costs 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 the utility of liabilities or obligations, solely because of the potential availability of nuclear asset-recovery cost financing.

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

(a) Explicitly reflect that a portion of the charges on such bill represents nuclear asset-recovery charges approved in a financing order issued to the electric utility and, if the nuclear asset-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 nuclear asset-recovery charges and that the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the nuclear asset-recovery charge and the ownership of that charge.

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

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

(5) NUCLEAR ASSET-RECOVERY PROPERTY.—

(a)1. All nuclear asset-recovery property that is specified in a financing order constitutes an existing, present property right or interest therein, notwithstanding that the imposition and collection of nuclear asset-recovery charges depends on the electric utility, to which the financing order is issued, performing its servicing functions relating to the collection of nuclear asset-recovery charges and on future electricity consumption. Such property exists regardless of whether 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. Nuclear asset-recovery property specified in a financing order exists until nuclear asset-recovery bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such nuclear asset-recovery bonds have been recovered in full.

3. All or any portion of nuclear asset-recovery property specified in a financing order issued to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee, that is wholly owned, directly or indirectly, by the electric utility, created for the limited purpose of acquiring, owning, or administering nuclear asset-recovery property or issuing nuclear asset-recovery bonds under the financing order. All or any portion of nuclear asset-recovery property may be pledged to secure nuclear asset-recovery bonds issued pursuant to the financing 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 nuclear asset-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 nuclear asset-recovery property to the financing parties. Any such financing order remains 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 nuclear asset-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, must 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 nuclear asset-recovery property.

(b)1. Except as provided in this section, the Uniform Commercial Code does not apply to nuclear asset-recovery property or any right, title, or interest of an electric utility or assignee described in subparagraph (1)(1)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 nuclear asset-recovery property and any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from nuclear asset-recovery charges pursuant to such order, is not deemed proceeds of any right or interest other than in the financing order and the nuclear asset-recovery property arising from the order.

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

3. A valid, enforceable, and attached lien and security interest in nuclear asset-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 nuclear asset-recovery bonds; or
- c. The receipt of value for nuclear asset-recovery bonds.

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

4. Financing statements required to be filed pursuant to this section must 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, as defined in s. 679.527. The filing of such a financing statement is the only method of perfecting a lien or security interest on nuclear asset-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 nuclear asset-recovery property or by the commingling of funds arising from nuclear asset-recovery property with other funds, and any other security interest that may apply to those funds is 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 nuclear asset-recovery bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any nuclear asset-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 nuclear asset-recovery property be transferred to a separate account for the financing parties' benefit, to which their lien and security interest applies. Upon application by or on behalf of the financing parties to a circuit court of

this state, the court shall order the sequestration and payment to the financing parties of revenues arising from the nuclear asset-recovery property.

7. The interest of a pledgee of an interest or any rights in any nuclear asset-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 nuclear asset-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 nuclear asset-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 nuclear asset-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 nuclear asset-recovery property, other than for federal and state income and franchise tax purposes. After such a transaction, the nuclear asset-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 nuclear asset-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 are not affected by:

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

b. The retention by the transferor of a partial or residual interest, including an equity interest, in the nuclear asset-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 or failure to timely pay all or a portion of the nuclear asset-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 or failure to timely pay all or a portion of the nuclear asset-recovery charge;

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

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

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

3. Any right that an electric utility has in the nuclear asset-recovery property before 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 is property in the form of a contract right. Transfer of an interest in nuclear asset-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 nuclear asset-recovery bonds, and the receipt of value. An enforceable transfer of an interest in nuclear asset-recovery property to an assignee is 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 (b)4. The transfer is perfected against third parties as of the date of filing.

4. Financing statements required to be filed under this section must 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, as defined in s. 679.527. The filing of such a financing statement is the only method of perfecting a transfer of nuclear asset-recovery property.

5. The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or nuclear asset-recovery property or by the commingling of funds arising from nuclear asset-recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under paragraph (b), is terminated when they are transferred to a segregated account for the assignee or a financing party. If nuclear asset-recovery property has been transferred to an assignee or financing party, any proceeds of that property must 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 nuclear asset-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 (b)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 nuclear asset-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 nuclear asset-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, nuclear asset-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 are subject to Part V of Art. 9 of the Uniform Commercial Code, except that the requirement as to continuation statements does 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 nuclear asset-recovery property shall be the laws of this state, and exclusively, the laws of this section.

(9) NUCLEAR ASSET-RECOVERY BONDS NOT PUBLIC DEBT.—The state or its political subdivisions are not liable on any nuclear asset-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 nuclear asset-recovery bonds does not, directly, 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 nuclear asset-recovery bonds, other than in their capacity as consumers of electricity. This subsection does not preclude bond guarantees or enhancements pursuant to this section. All nuclear asset-recovery 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) NUCLEAR ASSET-RECOVERY BONDS AS LEGAL INVESTMENTS WITH RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY REGARDING LEGAL INVESTMENT.—All of the following entities may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in nuclear asset-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 nuclear asset-recovery bond.

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

1. Alter the provisions of this section which make the nuclear asset-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 nuclear asset-recovery property or revises the nuclear asset-recovery costs for which recovery is authorized; or

3. Except as authorized under this section, reduce, alter, or impair nuclear asset-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 nuclear asset-recovery bonds have been paid and performed in full.

This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the nuclear asset-recovery

charges collected pursuant to a financing order and of the holders of nuclear asset-recovery bonds and any assignee or financing party entering into a contract with the electric utility.

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

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

(13) CONFLICTS.—If there is a 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 nuclear asset-recovery property, this section shall govern.

(14) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the date that nuclear asset-recovery bonds are first issued under this section, if any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does 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 remains in full force and effect with respect to all nuclear asset-recovery bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or 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 customers 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 customers. The commission may not make adjustments to nuclear asset-recovery charges for any such penalties or remedies.

Section 8. This act shall take effect July 1, 2015.

Approved by the Governor June 10, 2015.

Filed in Office Secretary of State June 10, 2015.