

111TH CONGRESS  
1ST SESSION

# S. 1069

To provide for disaster assistance for power transmission and distribution facilities, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 19, 2009

Ms. LANDRIEU (for herself and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

---

## A BILL

To provide for disaster assistance for power transmission and distribution facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ratepayer Recovery  
5 Act of 2009”.

6 **SEC. 2. DISASTER ASSISTANCE FOR POWER TRANSMISSION**  
7 **AND DISTRIBUTION FACILITIES.**

8 (a) DEFINITIONS.—Section 102 of the Robert T.  
9 Stafford Disaster Relief and Emergency Assistance Act

1 (42 U.S.C. 5122) is amended by adding at the end the  
 2 following:

3 “(11) PRIVATE OR INVESTOR-OWNED POWER  
 4 FACILITY.—The term ‘private or investor-owned  
 5 power facility’—

6 “(A) means a privately-owned or investor-  
 7 owned transmission or distribution facility that  
 8 provides electric or natural gas service to retail  
 9 customers under State or local jurisdiction; and

10 “(B) includes leased facilities.”.

11 (b) CONDITIONS FOR CONTRIBUTIONS.—Section  
 12 406(a) of the Robert T. Stafford Disaster Relief and  
 13 Emergency Assistance Act (42 U.S.C. 5172(a)) is amend-  
 14 ed—

15 (1) in paragraph (1)—

16 (A) in subparagraph (A), by striking  
 17 “and” at the end;

18 (B) in subparagraph (B), by striking the  
 19 period and inserting “; and”; and

20 (C) by adding at the end the following:

21 “(C) subject to paragraph (4), to a person  
 22 that owns a private or investor-owned power fa-  
 23 cility damaged or destroyed by a major disaster  
 24 for the repair, restoration, reconstruction, or re-

1 placement of the facility and for associated ex-  
2 penses incurred by the person.”;

3 (2) by redesignating paragraph (4) as para-  
4 graph (5); and

5 (3) by inserting after paragraph (3) the fol-  
6 lowing:

7 “(4) CONDITIONS FOR ASSISTANCE TO PRIVATE  
8 OR INVESTOR-OWNED POWER FACILITIES.—

9 “(A) DEFINITION.—In this paragraph, the  
10 term ‘previous major disaster’ means a major  
11 disaster—

12 “(i) occurring before the date of the  
13 major disaster for which Federal assist-  
14 ance is sought under this subsection; and

15 “(ii) that was declared by the Presi-  
16 dent not more than 10 years before the  
17 date on which the President declared the  
18 major disaster for which Federal assist-  
19 ance is sought under this subsection.

20 “(B) CONDITIONED ON PREVIOUS  
21 EVENT.—The President may make contribu-  
22 tions to the owner of a private or investor-  
23 owned power facility under paragraph (1)(C)  
24 for the repair, restoration, reconstruction, or re-

1 placement of any facility damaged or destroyed  
2 as a result of a major disaster, only if—

3 “(i) the facility damaged or destroyed  
4 as a result of the major disaster was dam-  
5 aged or destroyed by a previous major dis-  
6 aster;

7 “(ii) the cost of repairing, restoring,  
8 reconstructing, or replacing the private or  
9 investor-owned power facility damaged or  
10 destroyed by the previous major disaster  
11 exceeded \$2,500 for each retail customer  
12 receiving electrical or natural gas service  
13 from the owner on the day before the date  
14 of the previous major disaster;

15 “(iii) the total costs of repair, restora-  
16 tion, reconstruction, or replacement of all  
17 private or investor-owned power facilities  
18 owned by such person and associated ex-  
19 penses incurred by the person as a result  
20 of the previous major disaster exceeded  
21 \$500,000,000; and

22 “(iv) 20 percent or more of the popu-  
23 lation, based on the most recent census  
24 data, of each geographic area in which the  
25 private or investor-owned power facility is

1 located, had income that did not exceed the  
2 poverty line (as defined in section  
3 2110(c)(5) of the Social Security Act (42  
4 U.S.C. 1397jj(c)(5))) during the year be-  
5 fore the previous major disaster.

6 “(C) APPLICATION FOR FUNDS.—A person  
7 that owns a private or investor-owned power fa-  
8 cility that meets the requirements under sub-  
9 paragraph (B) may apply for Federal assistance  
10 on or before the earlier of—

11 “(i) 30 days after the date on which  
12 the President declares the major disaster  
13 for which the person requests Federal as-  
14 sistance; and

15 “(ii) the date upon which person has  
16 incurred costs of more than the greater of  
17 \$10,000,000 and  $\frac{2}{3}$  of the average annual  
18 net income of the person for the previous  
19 3 fiscal years relating to the repair, res-  
20 toration, reconstruction, or replacement of  
21 all private or investor-owned power facili-  
22 ties owned by the person that were dam-  
23 aged or destroyed as a result of the major  
24 disaster for which the person requests Fed-  
25 eral assistance.

1           “(D) AMOUNT OF FEDERAL ASSISTANCE  
2           FOR DISASTER RELIEF.—The owner of a pri-  
3           vate or investor-owned power facility may re-  
4           ceive assistance under paragraph (1)(C) for the  
5           costs of repair, restoration, reconstruction, or  
6           replacement of the facility and associated ex-  
7           penses incurred by the person that exceed the  
8           greater of \$10,000,000 and the amount equal  
9           to  $\frac{2}{3}$  of the average annual net income of the  
10          person for the previous 3 fiscal years.

11          “(E) AGGREGATION FOR PURPOSES OF DE-  
12          TERMINING COSTS.—For purposes of deter-  
13          mining the costs of a previous major disaster  
14          under this paragraph, the owner of the private  
15          or investor-owned power facility may aggregate  
16          the costs of all previous major disasters de-  
17          clared during any 12-month period.

18          “(F) APPROVAL OR DISAPPROVAL OF AP-  
19          PLICATIONS.—The President shall approve or  
20          disapprove an application for assistance sub-  
21          mitted by a person under paragraph (1)(C) for  
22          a private or investor-owned power facility not  
23          later than 30 days after the date of receipt of  
24          the application.”.

1           (c) FEDERAL SHARE.—Section 406(b)(2) of the Rob-  
2 ert T. Stafford Disaster Relief and Emergency Assistance  
3 Act (42 U.S.C. 5172(b)(2)) is amended by striking “public  
4 facility or private nonprofit facility” and inserting “public  
5 facility, private nonprofit facility, or private or investor-  
6 owned power facility”.

7           (d) LARGE IN-LIEU CONTRIBUTIONS.—Section  
8 406(e) of the Robert T. Stafford Disaster Relief and  
9 Emergency Assistance Act (42 U.S.C. 5172(e)) is amend-  
10 ed by adding at the end the following:

11                   “(3) FOR PRIVATE OR INVESTOR-OWNED  
12 POWER FACILITIES.—

13                           “(A) IN GENERAL.—If a person that owns  
14 a private or investor-owned power facility deter-  
15 mines that the public welfare would not best be  
16 served by repairing, restoring, reconstructing,  
17 or replacing the facility, the person may elect to  
18 receive, in lieu of a contribution under sub-  
19 section (a)(1)(C), a contribution in an amount  
20 equal to 75 percent of the Federal share of the  
21 Federal estimate of the cost of repairing, re-  
22 storing, reconstructing, or replacing the facility  
23 and of associated expenses, under the condi-  
24 tions described in subsection (a)(4).

1           “(B) USE OF FUNDS.—Funds contributed  
2           to a person under this paragraph may be used  
3           only within the area affected as a result of the  
4           major disaster for which the person requests  
5           Federal assistance to—

6                   “(i) repair, restore, or expand other  
7                   private or investor-owned power facilities  
8                   owned by the person;

9                   “(ii) construct a new private or inves-  
10                  tor-owned power facility owned by the per-  
11                  son; or

12                  “(iii) fund hazard mitigation meas-  
13                  ures that the person determines to be nec-  
14                  essary to meet a need for the services and  
15                  functions of the person in the area affected  
16                  by the major disaster.”.

17           (e) ELIGIBLE COST.—Section 406(e)(1)(A) of the  
18 Robert T. Stafford Disaster Relief and Emergency Assist-  
19 ance Act (42 U.S.C. 5172(e)(1)(A)) is amended by strik-  
20 ing “public facility or private nonprofit facility” and in-  
21 serting “public facility, private nonprofit facility, or pri-  
22 vate or investor-owned power facility”.

23 **SEC. 3. REGULATIONS.**

24           Not later than 180 days after the date of enactment  
25 of this Act, the Administrator of the Federal Emergency



1 Management Agency shall promulgate regulations nec-  
2 essary to implement this Act and the amendments made  
3 by this Act.

○