

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 736**

**Introduced by Assembly Member Jerome Horton**

February 17, 2005

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An act to amend ~~Section 851~~ *Sections 851 and 853* of the Public Utilities Code, relating to the regulation of public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 736, as amended, Jerome Horton. Public utilities: regulation.

~~Existing~~

*Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. Existing law prohibits, with certain exemptions, any public utility other than a common carrier by railroad, as defined, from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public, among other requirements without first having obtained an authorizing order from the commission. Existing law, with certain exemptions, makes void every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it.*

~~This bill would make technical, nonsubstantive changes to that provision prohibit, with certain exemptions, any public utility other than a common carrier by railroad, from selling, leasing, assigning,~~

*mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public, without first filing an advice letter and obtaining a resolution from the commission authorizing it to do so. The bill would require the commission to approve the advice letter within 120 days of its filing absent a protest or incomplete documentation by the applicant public utility.*

*Existing law prohibits, with certain exemptions, a public utility and a subsidiary, an affiliate, or a corporation holding a controlling interest in a public utility, from acquiring, taking, or holding any part of the capital stock of any other public utility without first having obtained an authorizing order from the commission. Existing law prohibits, with certain exemptions, any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, without first having obtained an authorizing order from the commission.*

*This bill would additionally exempt the creation, acquisition, merger, reorganization, dissolution, sale, or transfer of an affiliate, subsidiary, or partnership directly or indirectly controlling a public utility from the above described requirements, when certain conditions are met.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 851 of the Public Utilities Code is  
2     amended to read:  
3     851. No public utility other than a common carrier by railroad  
4     subject to Part I of the Interstate Commerce Act (Title 49,  
5     U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose  
6     of or encumber the whole or any part of its railroad, street  
7     railroad, line, plant, system, or other property necessary or useful  
8     in the performance of its duties to the public, or any franchise or  
9     permit or any right thereunder, nor by any means whatsoever,  
10    directly or indirectly, merge or consolidate its railroad, street  
11    railroad, line, plant, system, or other property, or franchises or  
12    permits or any part thereof, with any other public utility, without  
13    first having secured from the commission an order authorizing it  
14    ~~so to do~~ *filed an advice letter and obtained a resolution from the*

1 *commission authorizing it to do so. Absent protest or incomplete*  
2 *documentation, the commission shall approve the advice letter*  
3 *within 120 days of its filing by the applicant public utility. Every*  
4 *sale, lease, assignment, mortgage, disposition, encumbrance,*  
5 *merger, or consolidation made other than in accordance with the*  
6 ~~*order of advice letter and resolution from the commission*~~  
7 *authorizing it is void. The permission and approval of the*  
8 *commission to the exercise of a franchise or permit under Article*  
9 *1 (commencing with Section 1001) of Chapter 5 of this part, or*  
10 *the sale, lease, assignment, mortgage, or other disposition or*  
11 *encumbrance of a franchise or permit under this article shall not*  
12 *revive or validate any lapsed or invalid franchise or permit, or*  
13 *enlarge or add to the powers or privileges contained in the grant*  
14 *of any franchise or permit, or waive any forfeiture.*

15 *Nothing in this section shall prevent the sale, lease,*  
16 *encumbrance or other disposition by any public utility of*  
17 *property that is not necessary or useful in the performance of its*  
18 *duties to the public, and any disposition of property by a public*  
19 *utility shall be conclusively presumed to be of property that is not*  
20 *useful or necessary in the performance of its duties to the public,*  
21 *as to any purchaser, lessee or encumbrancer dealing with that*  
22 *property in good faith for value, provided that nothing in this*  
23 *section shall apply to the interchange of equipment in the regular*  
24 *course of transportation between connecting common carriers.*  
25 *This section does not prevent the sale, lease, encumbrance or*  
26 *other disposition by a public utility of property used to provide*  
27 *service when the public utility has been authorized by the*  
28 *commission to charge market-based rates.*

29 *SEC. 2. Section 853 of the Public Utilities Code is amended*  
30 *to read:*

31 *853. (a) This article does not apply to any person or*  
32 *corporation which transacts no business subject to regulation*  
33 *under this part, except performing services or delivering*  
34 *commodities for or to public utilities or municipal corporations*  
35 *or other public agencies primarily for resale or use in serving the*  
36 *public or any portion thereof, but shall apply to any public utility,*  
37 *and any subsidiary or affiliate of, or corporation holding a*  
38 *controlling interest in, a public utility, if the commission finds, in*  
39 *a proceeding to which the public utility is or may become a party,*

1 that the application of this article is required by the public  
2 interest.

3 (b) The commission may from time to time by order or rule,  
4 and subject to those terms and conditions as may be prescribed  
5 therein, exempt any public utility or class of public utility from  
6 this article if it finds that the application thereof with respect to  
7 the public utility or class of public utility is not necessary in the  
8 public interest. The commission may establish rules or impose  
9 requirements deemed necessary to protect the interest of the  
10 customers or subscribers of the public utility or class of public  
11 utility exempted under this subdivision. These rules or  
12 requirements may include, but are not limited to, notification of a  
13 proposed sale or transfer of assets or stock and provision for  
14 refunds or credits to customers or subscribers.

15 (c) The provisions of Sections 851 and 854 that prohibit any  
16 assignment, acquisition, or change of control without advance  
17 authorization from the commission, do not apply to the transfer  
18 of the ownership interest in a water utility, with 10,000 or fewer  
19 service connections, from a decedent to a member of the  
20 decedent's family in the manner provided in Section 240 of the  
21 Probate Code or by a will, trust, or other instrument.

22 (d) *This article does not apply to the creation, acquisition,*  
23 *merger, reorganization, dissolution, sale, or transfer of an*  
24 *affiliate, subsidiary, or partnership directly or indirectly*  
25 *controlling a public utility, where both of the following are true:*

26 (1) *There is no change in ownership of any of the shares of the*  
27 *capital stock of the public utility.*

28 (2) *Following the creation, acquisition, merger,*  
29 *reorganization, dissolution, sale, or transfer, the beneficial*  
30 *owner of the public utility continues to hold greater than 50*  
31 *percent of the ownership interest in any subsidiary or affiliated*  
32 *entity that is a direct or indirect owner of the public utility.*