

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 736**

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**Introduced by Assembly Member Jerome Horton**

February 17, 2005

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An act to amend 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.

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 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 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 *or deny* 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: 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 filed an advice letter and obtained a resolution from  
14    the commission authorizing it to do so. Absent protest or  
15    incomplete documentation, the commission shall approve *or*

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

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

27 SEC. 2. Section 853 of the Public Utilities Code is amended  
28 to read:

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

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

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

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

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

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