

AMENDED IN SENATE JUNE 27, 2005

AMENDED IN ASSEMBLY MAY 23, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

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

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 having either secured an order from the commission authorizing it to do so for qualified transactions valued above \$5,000,000, or for qualified transactions valued at \$5,000,000 or less, having filed an advice letter and ~~obtaining~~ *obtained* a resolution from the commission authorizing it to do so. The bill would require the commission to determine the types of transactions that qualify for advice letter handling and 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 (49 U.S.C. Sec.
5 10101 et seq.) shall sell, lease, assign, mortgage, or otherwise
6 dispose of or encumber the whole or any part of its railroad,
7 street railroad, line, plant, system, or other property necessary or

1 useful in the performance of its duties to the public, or any
2 franchise or permit or any right thereunder, nor by any means
3 whatsoever, directly or indirectly, merge or consolidate its
4 railroad, street railroad, line, plant, system, or other property, or
5 franchises or permits or any part thereof, with any other public
6 utility, without first having either secured an order from the
7 commission authorizing it to do so for qualified transactions
8 valued above five million dollars (\$5,000,000), or for qualified
9 transactions valued at five million dollars (\$5,000,000) or less,
10 filed an advice letter and obtained a resolution from the
11 commission authorizing it to do so. The commission shall
12 determine the types of transactions that qualify for advice letter
13 handling and absent protest or incomplete documentation, the
14 commission shall approve or deny the advice letter within 120
15 days of its filing by the applicant public utility. Every sale, lease,
16 assignment, mortgage, disposition, encumbrance, merger, or
17 consolidation made other than in accordance with the advice
18 letter and resolution from the commission authorizing it is void.
19 The permission and approval of the commission to the exercise
20 of a franchise or permit under Article 1 (commencing with
21 Section 1001) of Chapter 5 of this part, or the sale, lease,
22 assignment, mortgage, or other disposition or encumbrance of a
23 franchise or permit under this article shall not revive or validate
24 any lapsed or invalid franchise or permit, or enlarge or add to the
25 powers or privileges contained in the grant of any franchise or
26 permit, or waive any forfeiture.

27 Nothing in this section shall prevent the sale, lease,
28 encumbrance or other disposition by any public utility of
29 property that is not necessary or useful in the performance of its
30 duties to the public, and any disposition of property by a public
31 utility shall be conclusively presumed to be of property that is not
32 useful or necessary in the performance of its duties to the public,
33 as to any purchaser, lessee or encumbrancer dealing with that
34 property in good faith for value, provided that nothing in this
35 section shall apply to the interchange of equipment in the regular
36 course of transportation between connecting common carriers.

37 SEC. 2. Section 853 of the Public Utilities Code is amended
38 to read:

39 853. (a) This article does not apply to any person or
40 corporation which transacts no business subject to regulation

1 under this part, except performing services or delivering
2 commodities for or to public utilities or municipal corporations
3 or other public agencies primarily for resale or use in serving the
4 public or any portion thereof, but shall apply to any public utility,
5 and any subsidiary or affiliate of, or corporation holding a
6 controlling interest in, a public utility, if the commission finds, in
7 a proceeding to which the public utility is or may become a party,
8 that the application of this article is required by the public
9 interest.

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

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

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

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

35 ~~(2) Following the creation, acquisition, merger, reorganization,~~
36 ~~dissolution, sale, or transfer, the ultimate beneficial owner of the~~
37 ~~public utility continues to hold greater than 50 percent of the~~

- 1 ~~ownership interest in any subsidiary or affiliated entity that is a~~
- 2 ~~direct or indirect owner of the public utility.~~

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