

Assembly Bill No. 736

CHAPTER 370

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

[Approved by Governor September 29, 2005. Filed with
Secretary of State September 29, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 736, 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 obtained a resolution from the commission authorizing it to do so. The bill would require the commission to determine the types of transactions valued at \$5,000,000 or less that qualify for advice letter handling. The bill would authorize the commission to designate a procedure different than the advice letter procedure if it determines that a particular transaction of a value of \$5,000,000 or less warrants a more comprehensive review. For transactions subject to the advice letter approval procedure, the commission would be required to approve or deny the advice letter within 120 days of its filing absent a protest or incomplete documentation by the applicant public utility. The bill would require the commission to reject an advice letter that seeks to circumvent the \$5,000,000 threshold by dividing

what is a single asset with a value of more than \$5,000,000, into component parts, each valued at less than \$5,000,000. The bill would state the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would trigger the commission's review responsibilities under the California Environmental Quality Act, should not qualify for expedited advice letter review.

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

SECTION 1. Section 851 of the Public Utilities Code is amended to read:

851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it to do so. The commission shall determine the types of transactions valued at five million dollars (\$5,000,000) or less, that qualify for advice letter handling. For a qualified transaction valued at five million dollars (\$5,000,000) or less, the commission may designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. The commission shall reject any advice letter that seeks to circumvent the five million dollars (\$5,000,000) threshold by dividing what is a single asset with a value of more than five million dollars (\$5,000,000), into component parts, each valued at less than five million dollars (\$5,000,000). Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and resolution from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge

or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

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

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

853. (a) This article does not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal corporations or other public agencies primarily for resale or use in serving the public or any portion thereof, but shall apply to any public utility, and any subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, if the commission finds, in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public 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) It is the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base should not qualify for expedited advice letter treatment pursuant to this article. It is the further intent of the Legislature that the commission maintain all of its oversight and review responsibilities subject to the California Environmental Quality Act, and that public utility transactions that

jurisdictionally trigger a review under the act should not qualify for expedited advice letter treatment pursuant to this article.

O