

3329

2009-2010 Regular Sessions

I N S E N A T E

March 16, 2009

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to transfer of franchises or stocks

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 70 of the public service law, as amended by chapter
2 297 of the laws of 1989, is amended to read as follows:
3 S 70. Transfer of franchises or stocks. 1. No gas corporation or elec-
4 tric corporation shall transfer or lease its franchise, works or system
5 or any part of such franchise, works or system to any other person or
6 corporation or contract for the operation of its works and system, with-
7 out the written consent of the commission. Notwithstanding the forego-
8 ing, any transfer or lease with an original cost of (a) less than one
9 hundred thousand dollars proposed by a gas or electric corporation
10 having annual gross revenues in excess of two hundred million dollars or
11 (b) less than twenty-five thousand dollars proposed by a gas or electric
12 corporation having annual gross revenues of less than two hundred
13 million dollars shall be effective without the commission's written
14 consent within ninety days after such corporation notifies the commis-
15 sion that it plans to complete the transfer or lease and submits a
16 description of the transfer or lease[,]; provided, however, that the
17 commission may determine within such ninety days after such notification
18 and submission that the public interest requires its review and written
19 consent.
20 2. The permission and approval of the commission, to the exercise of a
21 franchise under section sixty-eight of this [chapter] ARTICLE, or to the
22 assignment, transfer or lease of a franchise under this section shall
23 not be construed to revive or validate any lapsed or invalid franchise

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 or to enlarge or add to the powers and privileges contained in the grant
2 of any franchise or to waive any forfeiture.

3 3. No [such] GAS CORPORATION OR ELECTRIC corporation shall directly or
4 indirectly acquire the stock or bonds of any other corporation incorpo-
5 rated for, or engaged in, the same or a similar business, in this state
6 or any other state, or proposing to operate or operating under a fran-
7 chise from the same or any other municipality, neither shall any street
8 railroad corporation acquire the stock or bonds of any electric corpo-
9 ration, unless authorized so to do by the commission.

10 4. Save where stock shall be transferred or held for the purpose of
11 collateral security only with the consent of the commission empowered by
12 this chapter to give such consent, no stock corporation of any
13 description, domestic or foreign, COMPANY, INCLUDING, BUT NOT LIMITED
14 TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING A JOINT STOCK
15 ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY PARTNERSHIP, OR
16 PERSON, other than a gas corporation or electric corporation or street
17 railroad corporation, shall purchase or acquire, take or hold, more than
18 ten per centum of the voting capital stock issued by any gas corporation
19 or electric corporation organized or existing under or by virtue of the
20 laws of this state, except that a corporation now lawfully holding a
21 majority of the voting capital stock of any gas corporation or electric
22 corporation may with the consent of the commission acquire and hold the
23 remainder of the voting capital stock of such gas corporation or elec-
24 tric corporation or any portion thereof. Provided, that with the consent
25 of such commission and upon and subject to such terms and conditions as
26 such commission may fix and impose, any such stock corporation, COMPANY,
27 ASSOCIATION, PARTNERSHIP OR PERSON may acquire, take and hold more than
28 ten per centum of the voting capital stock of any gas corporation or
29 electric corporation, organized or existing under or by virtue of the
30 laws of this state.

31 5. No consent shall be given by the commission to the acquisition of
32 any stock in accordance with this section unless it shall have been
33 shown that such acquisition is in the public interest. Nothing herein
34 contained shall be construed to prevent the holding of any stock hereto-
35 fore lawfully acquired, nor to prevent, upon the surrender or exchange
36 of such stock pursuant to a reorganization plan, the purchase, acquisi-
37 tion, taking or holding of a proportionate amount of stock of any new
38 corporation organized to take over, at foreclosure or other sale, the
39 property of any corporation whose stock has been thus surrendered or
40 exchanged; but the proportion of the voting capital stock of the new
41 corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNER-
42 SHIP OR PERSON and acquired by it by any such surrender or exchange of
43 stock shall not without the consent of the commission exceed the propor-
44 tion of the voting capital stock held by it in the former corporation.

45 6. Every contract, assignment, transfer or agreement for transfer of
46 any stock by or through any person or corporation to any corporation,
47 COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON in violation of any
48 provision of this chapter shall be void and of no effect, and no such
49 transfer or assignment shall be made upon the books of any such gas
50 corporation, or electric corporation, or shall be recognized as effec-
51 tive for any purpose.

52 7. No consent, permission or approval otherwise required under this
53 section shall be necessary for the sale of the franchise, works, system,
54 stocks or bonds by a gas or electric corporation to a duly constituted
55 authority of the state.

1 S 2. Section 83 of the public service law, as amended by chapter 787
2 of the laws of 1930, is amended to read as follows:

3 S 83. Transfer of franchises, property or stocks. 1. No steam corpo-
4 ration shall transfer or lease its franchise, works or system or any
5 part of such franchise, works or system to any other person or corpo-
6 ration or contract for the operation of its works and system, without
7 the written consent of the commission.

8 2. The permission and approval of the commission to the exercise of a
9 franchise under section eighty-one of this [chapter] ARTICLE, or to the
10 assignment, transfer or lease of a franchise under this section shall
11 not be construed to revive or validate any lapsed or invalid franchise
12 or to enlarge or add to the powers and privileges contained in the grant
13 of any franchise or to waive any forfeiture.

14 3. No [such] STEAM corporation shall directly or indirectly acquire
15 the stock or bonds of any other corporation incorporated for, or engaged
16 in, the same or a similar business, or proposing to operate or operating
17 under a franchise from the same or any other municipality, unless
18 authorized so to do by the commission.

19 4. Save where stock shall be transferred or held for the purpose of
20 collateral security only with the consent of the commission, no stock
21 corporation of any description, domestic or foreign, COMPANY, INCLUDING,
22 BUT NOT LIMITED TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING
23 A JOINT STOCK ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY
24 PARTNERSHIP, OR PERSON, other than a steam corporation, a street rail-
25 road corporation, a gas corporation, an electric corporation, or a gas
26 and electric corporation, shall purchase or acquire, take or hold, more
27 than ten per centum of the voting capital stock issued by any steam
28 corporation organized or existing under or by virtue of the laws of this
29 state, except that a corporation now lawfully holding a majority of the
30 voting capital stock of any steam corporation may with the consent of
31 the commission acquire and hold the remainder of the voting capital
32 stock of such steam corporation or any portion thereof.

33 5. No consent shall be given by the commission to the acquisition of
34 any stock in accordance with this section unless it shall have been
35 shown that such acquisition is in the public interest. Nothing herein
36 contained shall be construed to prevent the holding of any stock hereto-
37 fore lawfully acquired, nor to prevent, upon the surrender or exchange
38 of such stock pursuant to a reorganization plan, the purchase, acquisi-
39 tion, taking or holding of a proportionate amount of stock of any new
40 corporation organized to take over, at foreclosure or other sale, the
41 property of any corporation whose stock has been thus surrendered or
42 exchanged; but the proportion of the voting capital stock of the new
43 corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNER-
44 SHIP OR PERSON and acquired by it by any such surrender or exchange of
45 stock shall not without the consent of the commission exceed the propor-
46 tion of the voting capital stock held by it in the former corporation.

47 6. Every contract, assignment, transfer or agreement for transfer of
48 any stock by or through any person or corporation to any corporation,
49 COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON, in violation of any
50 provision of this chapter, shall be void and of no effect, and no such
51 transfer or assignment shall be made upon the books of any such steam-
52 heating corporation, or shall be recognized as effective for any
53 purpose.

54 S 3. Section 89-h of the public service law, as added by chapter 715
55 of the laws of 1931, is amended to read as follows:

1 S 89-h. Transfer of franchises or stocks. 1. No water-works corpo-
2 ration shall transfer or lease its franchise, works or system or any
3 part of such franchise, works or system to any other person or corpo-
4 ration or contract for the operation of its works and system, without
5 the written consent of the commission.

6 2. The permission and approval of the commission to the assignment,
7 transfer or lease of a franchise under this section shall not be
8 construed to revive or validate any lapsed or invalid franchise or to
9 enlarge or add to the powers and privileges contained in the grant of
10 any franchise or to waive any forfeiture.

11 3. No [such] WATER-WORKS corporation shall directly or indirectly
12 acquire the stock or bonds of any other corporation incorporated for, or
13 engaged in, the same or a similar business, or proposing to operate or
14 operating under a franchise from the same or any other municipality,
15 unless authorized so to do by the commission.

16 4. Save where stock shall be transferred or held for the purpose of
17 collateral security only with the consent of the commission empowered by
18 this chapter to give such consent, no stock corporation of any
19 description, domestic or foreign, COMPANY, INCLUDING, BUT NOT LIMITED
20 TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING A JOINT STOCK
21 ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY PARTNERSHIP, OR
22 PERSON, other than a water-works corporation, shall purchase or acquire,
23 take or hold, more than ten per centum of the voting capital stock
24 issued by any water-works corporation organized or existing under or by
25 virtue of the laws of this state, except that a corporation now lawfully
26 holding a majority of the voting capital stock of any water-works corpo-
27 ration may with the consent of the commission acquire and hold the
28 remainder of the voting capital stock of such water-works corporation or
29 any portion thereof. Provided, that with the consent of such commission
30 and upon and subject to such terms and conditions as such commission may
31 fix and impose, any such stock corporation, COMPANY, ASSOCIATION, PART-
32 NERSHIP OR PERSON may acquire, take and hold more than ten per centum of
33 the voting capital stock of any water-works corporation, organized or
34 existing under or by virtue of the laws of this state.

35 [2.] 5. No consent shall be given by the commission to the acquisition
36 of any stock in accordance with this section unless it shall have been
37 shown that such acquisition is in the public interest. Nothing contained
38 in this section shall be construed to prevent the holding of any stock
39 heretofore lawfully acquired, nor to prevent, upon the surrender or
40 exchange of such stock pursuant to a reorganization plan, the purchase,
41 acquisition, taking or holding of a proportionate amount of stock of any
42 new corporation organized to take over, at foreclosure or other sale,
43 the property of any corporation whose stock has been thus surrendered or
44 exchanged; but the proportion of the voting capital stock of the new
45 corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNER-
46 SHIP OR PERSON and acquired by it by any such surrender or exchange of
47 stock shall not without the consent of the commission exceed the propor-
48 tion of the voting capital stock held by it in the former corporation.

49 6. Every contract, assignment, transfer or agreement for transfer of
50 any stock by or through any person or corporation to any corporation,
51 COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON, in violation of any
52 provision of this chapter shall be void and of no effect, and no such
53 transfer or assignment shall be made upon the books of any such water-
54 works corporation, or shall be recognized as effective for any purpose.

55 S 4. Section 100 of the public service law, as amended by chapter 446
56 of the laws of 1998, is amended to read as follows:

1 S 100. Transfer and ownership of stock. 1. No telegraph corporation or
2 telephone corporation, domestic or foreign, shall hereafter purchase or
3 acquire, take or hold any part of the capital stock of any telegraph
4 corporation or telephone corporation organized or existing under the
5 laws of this state unless authorized so to do by the commission.

6 2. Save where stock shall be transferred or held for the purpose of
7 collateral security, no stock corporation, domestic or foreign, COMPANY,
8 INCLUDING, BUT NOT LIMITED TO, A LIMITED LIABILITY COMPANY, ASSOCIATION,
9 INCLUDING A JOINT STOCK ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED
10 LIABILITY PARTNERSHIP, OR PERSON, other than a telegraph corporation or
11 telephone corporation, shall, without the consent of the commission,
12 purchase or acquire, take or hold more than ten per centum of the voting
13 capital stock issued by any telegraph corporation or telephone corpo-
14 ration organized or existing under or by virtue of the laws of this
15 state. Any corporation now lawfully holding a majority of the voting
16 capital stock of any telegraph corporation or telephone corporation may,
17 without the consent of the commission, acquire and hold the remainder of
18 the voting capital stock of such telegraph corporation or telephone
19 corporation, or any portion thereof.

20 3. No consent shall be given by the commission to the acquisition of
21 any stock in accordance with this section unless it shall have been
22 shown that such acquisition is in the public interest; provided, howev-
23 er, that any such consent shall be deemed to be granted by the commis-
24 sion ninety days after such corporation applies to the commission for
25 its consent, unless the commission, or its designee, determines and
26 informs the applicant in writing within such ninety day period that the
27 public interest requires the commission's review and its written
28 consent. Nothing herein contained shall be construed to prevent the
29 holding of any stock heretofore lawfully acquired, nor to prevent, upon
30 the surrender or exchange of such stock pursuant to a reorganization
31 plan, the purchase, acquisition, taking or holding of a proportionate
32 amount of stock of any new corporation organized to take over, at fore-
33 closure or other sale the property of any corporation whose stock has
34 been thus surrendered or exchanged; but the proportion of the voting
35 capital stock of the new corporation held by a stock corporation, COMPA-
36 NY, ASSOCIATION, PARTNERSHIP OR PERSON and acquired by it by any such
37 surrender or exchange of stock shall not without the consent of the
38 commission exceed the proportion of the voting capital stock held by it
39 in the former corporation.

40 4. Every contract, assignment, transfer or agreement for transfer of
41 any stock by or through any person or corporation to any corporation,
42 COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON, in violation of any
43 provision of this chapter shall be void and of no effect, and no such
44 transfer or assignment shall be made upon the books of any such tele-
45 graph corporation or telephone corporation, or shall be recognized as
46 effective for any purpose.

47 S 5. This act shall take effect immediately.