

4904

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. JEFFRIES -- read once and referred to the Committee on Corporations, Authorities and Commissions

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

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

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

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

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

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

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

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

1 S 83. Transfer of franchises, property or stocks. 1. No steam 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 exercise of a
7 franchise under section eighty-one of this [chapter] ARTICLE, or to the
8 assignment, transfer or lease of a franchise under this section shall
9 not be construed to revive or validate any lapsed or invalid franchise
10 or to enlarge or add to the powers and privileges contained in the grant
11 of any franchise or to waive any forfeiture.

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

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

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 steam-
50 heating corporation, or shall be recognized as effective for any
51 purpose.

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

54 S 89-h. Transfer of franchises or stocks. 1. No water-works corpo-
55 ration shall transfer or lease its franchise, works or system or any
56 part of such franchise, works or system to any other person or corpo-

1 ration or contract for the operation of its works and system, without
2 the written consent of the commission.

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

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

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

32 [2.] 5. No consent shall be given by the commission to the acquisition
33 of any stock in accordance with this section unless it shall have been
34 shown that such acquisition is in the public interest. Nothing contained
35 in this section shall be construed to prevent the holding of any stock
36 heretofore lawfully acquired, nor to prevent, upon the surrender or
37 exchange of such stock pursuant to a reorganization plan, the purchase,
38 acquisition, taking or holding of a proportionate amount of stock of any
39 new corporation organized to take over, at foreclosure or other sale,
40 the property of any corporation whose stock has been thus surrendered or
41 exchanged; but the proportion of the voting capital stock of the new
42 corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNER-
43 SHIP OR PERSON and acquired by it by any such surrender or exchange of
44 stock shall not without the consent of the commission exceed the propor-
45 tion of the voting capital stock held by it in the former corporation.

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

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

54 S 100. Transfer and ownership of stock. 1. No telegraph corporation or
55 telephone corporation, domestic or foreign, shall hereafter purchase or
56 acquire, take or hold any part of the capital stock of any telegraph

1 corporation or telephone corporation organized or existing under the
2 laws of this state unless authorized so to do by the commission.

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

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

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

44 S 5. This act shall take effect immediately.