

FIRST REGULAR SESSION

HOUSE BILL NO. 761

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BOUCHER.

Read 1st time February 13, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1598L.021

AN ACT

To repeal section 393.190, RSMo 2000, relating to the regulation of property transfers by gas, water, electric or sewer corporations, and to enact in lieu thereof one new section relating to the same subject, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 393.190, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 393.190, to read as follows:

393.190. 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. **In considering the request for any such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation, the commission shall require that such activity be in the public interest. The burden of proof for such requests shall be on the gas, electrical, water or sewer corporation requesting approval of such activity.** The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the
17 grant of any franchise or permit, or to waive any forfeiture. Any person seeking any order under
18 this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation or other
19 disposition, direct or indirect, of any gas corporation, electrical corporation, water corporation,
20 or sewer corporation, shall, at the time of application for any such order, file with the
21 commission a statement, in such form, manner and detail as the commission shall require, as to
22 what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other
23 disposition will have on the tax revenues of the political subdivisions in which any structures,
24 facilities or equipment of the corporations involved in such disposition are located. The
25 commission shall send a copy of all information obtained by it as to what, if any, impact such
26 sale, assignment, lease, transfer, merger, consolidation or other disposition will have on the tax
27 revenues of various political subdivisions to the county clerk of each county in which any portion
28 of a political subdivision which will be affected by such disposition is located. Nothing in this
29 subsection contained shall be construed to prevent the sale, assignment, lease or other disposition
30 by any corporation, person or public utility of a class designated in this subsection of property
31 which is not necessary or useful in the performance of its duties to the public, and any sale of its
32 property by such corporation, person or public utility shall be conclusively presumed to have
33 been of property which is not useful or necessary in the performance of its duties to the public,
34 as to any purchaser of such property in good faith for value.

35 **2. Beginning July 1, 2001, the commission shall not approve any newly requested**
36 **or currently pending sale, assignment, lease, transfer, mortgage, disposition, encumbrance,**
37 **merger or consolidation pursuant to subsection 1 of this section, until such time as it has**
38 **promulgated rules that:**

39 **(1) Incorporate the public interest standard created in subsection 1 of this section;**
40 **and**

41 **(2) Determine what information, if any, shall be required of any entity involved in**
42 **any such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or**
43 **consolidation. Such information may include, but is not limited to, any such entity's:**

44 **(a) History of dealings in the gas, water, electric or sewer industry;**

45 **(b) Safety record as it pertains to any gas, water, electric or sewer operations of**
46 **such entity;**

47 **(c) Fitness to perform the work required to deliver utility services to customers.**
48

49 **The rules required pursuant to this subsection shall take effect no later than January 1,**
50 **2002. Beginning on the effective date of such rules, the commission may resume**
51 **consideration of any sale, assignment, lease, transfer, mortgage, disposition, encumbrance,**

52 **merger or consolidation pursuant to subsection 1 of this section.**

53 **3.** No such corporation shall directly or indirectly acquire the stock or bonds of any other
54 corporation incorporated for, or engaged in, the same or a similar business, or proposing to
55 operate or operating under a franchise from the same or any other municipality; neither shall any
56 street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in
57 either case, authorized so to do by the commission. Save where stock shall be transferred or held
58 for the purpose of collateral security, no stock corporation of any description, domestic or
59 foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation
60 or street railroad corporation, shall, without the consent of the commission, purchase or acquire,
61 take or hold, more than ten percent of the total capital stock issued by any gas corporation,
62 electrical corporation, water corporation or sewer corporation organized or existing under or by
63 virtue of the laws of this state, except that a corporation now lawfully holding a majority of the
64 capital stock of any gas corporation, electrical corporation, water corporation or sewer
65 corporation may, with the consent of the commission, acquire and hold the remainder of the
66 capital stock of such gas corporation, electrical corporation, water corporation or sewer
67 corporation, or any portion thereof.

68 **[3.] 4.** Nothing herein contained shall be construed to prevent the holding of stock
69 heretofore lawfully acquired, or to prevent upon the surrender or exchange of said stock pursuant
70 to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount
71 of stock of any new corporation organized to take over, at foreclosure or other sale, the property
72 of any corporation whose stock has been thus surrendered or exchanged. Every contract,
73 assignment, transfer or agreement for transfer of any stock by or through any person or
74 corporation to any corporation in violation of any provision of this chapter shall be void and of
75 no effect, and no such transfer or assignment shall be made upon the books of any such gas
76 corporation, electrical corporation, water corporation or sewer corporation or shall be recognized
77 as effective for any purpose.

Section B. Because immediate action is necessary to ensure proper protection of the
2 utility consumers of this state, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace and safety, and is hereby declared to be an
4 emergency act within the meaning of the constitution, and section A of this act shall be in full
5 force and effect upon its passage and approval.