

FEB 22 2006
COMMERCE, REGULATION & LABOR

HOUSE FILE 2491
BY GASKILL

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the termination of a franchise agreement by a
2 city.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HFC 2491

1 Section 1. Section 364.2, subsection 4, Code Supplement
2 2005, is amended to read as follows:

3 4. a. A city may grant to any person a franchise to
4 erect, maintain, and operate plants and systems for electric
5 light and power, heating, telegraph, cable television,
6 district telegraph and alarm, motor bus, trolley bus, street
7 railway or other public transit, waterworks, or gasworks,
8 within the city for a term of not more than twenty-five years.
9 After a franchise is granted, the city may amend, extend,
10 renew, or terminate a franchise as provided in this section.
11 The city shall not terminate a franchise less than five years
12 after the effective date of the franchise or after the last
13 election which had the effect of retaining the franchise.

14 When considering whether to grant, amend, extend, ~~or~~ renew, or
15 terminate a franchise, a city shall hold a public hearing on
16 the question. Notice of the time and place of the hearing
17 shall be published as provided in section 362.3. The
18 franchise may be granted, amended, extended, ~~or~~ renewed, or
19 terminated only by an ordinance, but no exclusive franchise
20 shall be granted, amended, extended, or renewed.

21 b. Such an ordinance shall not become effective unless
22 approved at an election. The proposal may be submitted by the
23 council on its own motion to the voters at any city election.
24 Upon receipt of a valid petition as defined in section 362.4
25 requesting that a proposal be submitted to the voters, the
26 council shall submit the proposal at the next regular city
27 election or at a special election called for that purpose
28 before the next regular city election. If the proposal is to
29 terminate a franchise, the effective date of the termination
30 is contingent upon voter approval of a new franchise pursuant
31 to this paragraph "b", and the election shall be set not less
32 than ninety days after the council's action to submit the
33 termination proposal to the voters. However, the city council
34 may dispense with such election as to the grant, amendment,
35 extension, or renewal of an electric light and power, heating,

1 or gasworks franchise unless there is a valid petition
2 requesting submission of the proposal to the voters, or the
3 party seeking such franchise, grant, amendment, extension, or
4 renewal requests an election. If a majority of those voting
5 approves the proposal, the city may proceed as proposed. The
6 complete text of the ordinance shall be included on the ballot
7 if paper ballots are used. If an electronic voting system or
8 voting machine is used, the proposal shall be stated on the
9 ballot and the full text of the ordinance posted for the
10 voters pursuant to section 52.25. All absentee voters shall
11 receive the full text of the ordinance.

12 If the proposal is to terminate a franchise and a majority
13 of those voting approves the proposal, the council shall seek
14 another person to provide the service of the terminated
15 franchise pursuant to the requirements of this section to
16 grant a new franchise and shall submit the proposed ordinance
17 to grant the new franchise to the voters at an election to be
18 held within ninety days after the ordinance is adopted by the
19 council. However, the franchise proposed to be terminated
20 shall not be terminated if any of the following occurs:

21 (1) A majority of those voting does not approve the
22 proposal to terminate the franchise.

23 (2) The city fails to find another person to provide the
24 service of the terminated franchise within one hundred eighty
25 days after the election to terminate the franchise.

26 (3) A majority of those voting does not approve the new
27 franchise.

28 c. Notice of the election shall be given by publication as
29 prescribed in section 49.53 in a newspaper of general
30 circulation in the city.

31 d. The person asking for the granting, amending,
32 extension, or renewal, or termination of a franchise shall pay
33 the costs incurred in holding the election, including the
34 costs of the notice. A franchise shall not be finally
35 effective until an acceptance in writing has been filed with

1 the council and payment of the costs has been made.

2 e. The franchise ordinance may regulate the conditions
3 required and the manner of use of the streets and public
4 grounds of the city, and it may, for the purpose of providing
5 electrical, gas, heating, or water service, confer the power
6 to appropriate and condemn private property upon the person
7 franchised.

8 f. If a city franchise fee is assessed to customers of a
9 franchise, the fee shall not be assessed to the city as a
10 customer.

11 g. If a city grants more than one cable television
12 franchise, the material terms and conditions of any additional
13 franchise shall not give undue preference or advantage to the
14 new franchisee. A city shall not grant a new franchise that
15 does not include the same territory as that of the existing
16 franchise. A new franchisee shall be given a reasonable
17 period of time to build the new system throughout the
18 territory.

19 EXPLANATION

20 This bill relates to the termination of a franchise
21 agreement by a city. The bill provides that in addition to a
22 city being able to grant, amend, extend, or renew a franchise,
23 the city may also terminate a franchise after the franchise
24 has been effective for five years. A proposal to terminate a
25 franchise may be submitted by the council on its own motion or
26 shall be submitted upon receipt of a valid petition requesting
27 the proposal be submitted to the voters.

28 The bill requires a city to hold a public hearing on the
29 question of whether to terminate a franchise and requires the
30 city to terminate only after adoption of an ordinance to
31 terminate and approval from a majority of those voting at an
32 election. The election on a proposal to terminate a franchise
33 is required by the bill to be held not less than 90 days after
34 the proposal was submitted for election by the city council.
35 If at the election a majority of those voting approves the

1 proposal to terminate the franchise, the city council shall
2 seek a person to provide those services of the terminated
3 franchise by complying with the same requirements required for
4 granting a new franchise. The election on the new franchise
5 proposal shall be held within 90 days after the proposal is
6 adopted by ordinance by the city council.

7 The bill provides that a franchise shall not be terminated
8 if the proposal to terminate the franchise fails to receive a
9 majority of those voting in the election, or if the city fails
10 to find another person to provide the service of the
11 terminated franchise within 180 days after the election to
12 terminate. The franchise may also not be terminated if a
13 majority of those voting does not approve the new franchise as
14 provided by the bill. The bill provides that the person
15 asking for the termination of a franchise shall pay the costs
16 incurred in holding the election.

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