

AN ACT relating to commercial activities of local governments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Commercial product" means any product of a type customarily used by the general public, or by nongovernmental entities, for purposes other than governmental purposes and has been historically sold, leased, or licensed, or offered for sale, lease, or license to the general public by retail establishments;

(b) "Commercial service" means any service offered and sold competitively, in substantial quantities, in the commercial marketplace under standard commercial terms and conditions;

(c) "Commercial product" and "commercial service" do not include the following:

1. Any governmental service or product specifically authorized pursuant to a provision of the Kentucky Revised Statutes. For the purposes of this subparagraph, a statutory authorization for a particular unit or class of local government to provide a governmental service or product shall serve as an authorization for all units and classes of local governments to provide that governmental service or product;

2. Seasonal fundraising activities conducted by special purpose governmental entities as defined by KRS 65A.010; or

3. Any commercial product or commercial service generating gross revenues of no more than five thousand dollars (\$5,000) annually for the local government; and

(d) "Local government" means a city, county, urban-county government,

charter county government, consolidated local government, unified local government or any political subdivision of a local government, or corporation created by, or on behalf of, a local government.

(2) (a) Prior to commencing or continuing the retail or wholesale sale of a commercial product or a commercial service, the local government legislative body shall conduct a study to determine what effects the sale of that product or service likely will have on the:

1. Local government;
2. Citizens of the local government;
3. Entities already providing that product or service in the jurisdiction of the local government.

(b) The study shall, in addition, include an analysis that itself identifies:

1. The commercial products or commercial services that the local government proposes to sell;
2. The potential customer base;
3. The pricing of the commercial products or commercial services;
4. Competitors in the marketplace;
5. A plan for selling the commercial products or commercial services, including the infrastructure, equipment, and personnel to be used;
and
6. Any other information the local government may wish to include

(c) The study, upon completion, shall be deemed a "public record" as defined in KRS 61.870, and shall be subject to full disclosure notwithstanding any exemption in KRS 61.878.

(d) The study shall be completed and shall be available for inspection on or before the day the advertisement is published as set out in subsection (3) of this section.

(e) If the local government is planning to commence or continue retail or wholesale sale of a commercial product or a commercial service through the use of a political subdivision of a local government, or corporation created by, or on behalf of, a local government, all analysis required by this subsection shall, in addition to the immediate effects on the subdivision or corporation, take into account the effects of the sale on the entirety of the city, county, urban-county government, consolidated local government, charter county government or unified local government in which the subdivision or corporation operates.

(3) Prior to commencing or continuing the retail or wholesale sale of a commercial product or a commercial service, the local government legislative body shall have a public hearing on the proposed retail or wholesale sale of the commercial product or the commercial service. The public hearing shall be held at a regularly-scheduled meeting of the legislative body or board immediately governing the local government. The local government shall place an advertisement either on an Internet Web site that is affiliated with the local government and contains other information about the local government, or shall otherwise publish it in a newspaper of general circulation pursuant to KRS Chapter 424. Regardless of which option of publication the local government chooses, the advertisement shall be published at least four (4) weeks but not earlier than twelve (12) weeks prior to the date of the public hearing, and shall contain the following information:

(a) A statement that the local government plans to sell a commercial product or commercial service and shall specifically identify that product or service;

(b) The reasons that the local government will enter the market for the sale of the commercial product or commercial service;

(c) A statement that the local government has performed a study relating to the

sale of that commercial product or commercial service to determine the effects on the local government, the citizens of the local government, and the entities selling that product or service; and

(d) The date, time, and place of a public hearing to receive public comment on the proposed sale of the commercial product or commercial service and upon the study performed relating to the sale of the product or service.

(4) A local government that commences or continues retail or wholesale sales of any commercial product or commercial service, not previously sold by the local government before January 1, 2013, shall be subject to the following conditions in the sale of the commercial products or commercial services:

(a) 1. The revenues, expenses, and all other matters relating to the venture in which the commercial products or commercial services are sold, shall be accounted for separately from all other activities of the local government; and

2. All revenues derived from the venture shall be maintained in an account separate and unique from all other funds and revenues collected by the local government;

(b) Commercial products or commercial services sold shall not be subsidized with funds from any other governmental operation or revenue source of the local government;

(c) The local government shall not price the commercial product or commercial service below the cost of providing the product or service. In calculating the cost of the product or service, the local government shall impute the equivalent cost of capital for a private competitor, and an amount equal to all taxes, licenses, fees and other assessments that a private competitor would pay;

(d) For the purposes of calculating the taxes, licenses, fees and other

assessments that a private competitor would pay, the finances and business affairs of the venture shall be evaluated as if the venture were a separate, independent C corporation;

(e) The local government shall:

1. Annually remit to its general fund from the separate account of the venture the equivalent of all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity operating as a separate, independent C corporation would pay while operating within the local government's boundaries, as a result of taxes, licenses, fees, and other assessments levied by the local government itself; and

2. a. Make payments in lieu of taxes from the separate venture to the county when the local government itself is not a county, to the state, and to any other taxing jurisdiction, other than the federal government, for property taxes that would otherwise be paid for the property wherein the venture is operating as if it were a separate, independent C corporation; and

b. Make payments in lieu of taxes, licenses, fees, and other assessments that are the equivalent of all taxes, licenses, fees and other assessments that a nongovernmental commercial entity operating as a separate, independent C corporation would pay to any other taxing jurisdiction while operating within the local government's boundaries; and

(f) The local government shall annually prepare and publish pursuant to KRS Chapter 424 a statement of resource allocation that specifically identifies the venture and shows individual products, materials, infrastructure, personnel, utilities, and other resources that are shared by both the local government and by the venture. This statement of resource allocation shall

identify the monetary value of the individual shared resources used by the venture in proportion to its use by the venture. The records required in this paragraph shall be deemed "public records" as defined in KRS 61.870, and shall be subject to full disclosure notwithstanding any exemption in KRS 61.878.

(5) The requirements of subsections (2), (3), and (4) of this section shall be suspended in the event of a gubernatorial declaration of a state of emergency pursuant to KRS Chapter 39A in the boundaries of a local government. If the declaration of emergency has no concluding date, subsections (2), (3), and (4) shall be suspended until one hundred eighty (180) days following the date of the issuance of the declaration of emergency, or until the declaration of emergency is otherwise concluded, whichever is earlier.