

SB 173 requires bookkeeping requirements and conduct requirements in the operation of sales. These include:

- The accounting functions related to the product are maintained separately from all other activities of the local government.
- All revenues from the sale of the product shall be kept in a separate account from all other local government funds.
- Sale of the product will not be subsidized by the local government.
- The product shall not be priced below the cost of providing the product for sale to the public. In calculating the cost of the product, the equivalent cost of capital for a private competitor, and an amount that a private competitor would pay in taxes, licenses, fees, and other assessments must be included.

SB 173 requires local governments to pay annually in kind taxes to all taxing jurisdictions in which it operates based on the equivalent of all taxes, fees, and other assessments that private-sector C corporation would pay.

SB 173 requires the preparation of a statement of resource allocation identifying the venture and detailing the shared resources including the monetary value of those resources used by both the local government and the venture selling the product.

SB 173 provides that the requirements regarding the study, public meetings, and accounting, shall be suspended in the event of a gubernatorial declaration of a state of emergency within the boundaries of the local government.

SB 173 defines “commercial product” as any product used by the general public and that has historically been sold, leased, or licensed to the general public by a retail establishment.

“Commercial product” does not include:

- Products authorized by the Kentucky Revised Statutes to be provided by local governments;
- Seasonal products sold for fundraising purposes by local governments;
- Products that generate less than \$25,000 annually;
- Products that are ancillary to or in conjunction with the provisions of a government service;
- Utility services including broadband, information technology, and cable;
- Products with no private alternative available to the general public

SB 173 defines “local government” to be inclusive of all forms of local government including a political subdivision therein or a corporation created by or on behalf of a local government.

SB 173 also provides nearly-identical requirements for state entities selling commercial products. The state impact is outside the scope of this local mandate.

SB 173 SCS retains the major provisions of the measure as introduced and makes the following changes in the bill:

SB 173 SCS provides that the required public hearings may be scheduled at the discretion of the governing body and are not required to be held at a regularly scheduled meeting of the governing body.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of SB 173 SCS on local government is expected to range from no impact to significant, with larger cities - albeit few in number - more likely to be affected negatively. It is expected that very few cities will experience a significant impact. Most cities, particularly smaller cities, will not be impacted.

This bill is similar to last year's version, except it dramatically narrows the definition for commercial products. SB 173 excludes commercial services provided by city governments such as golf course shops, concession stands at public venues like pools and arenas. Furthermore, it specifically excludes commercial products sold by a local government such as those:

- Authorized by the state;
- Generating gross revenues of \$25,000 per year or less;
- Sold at seasonal fundraising sales;
- Sold by a utility service;
- Not available in the private market;
- Traditionally ancillary to or in conjunction with the provision of a government service; or
- Sold prior to January 1, 2013.

Given the above revisions over last year's version, the bill is much narrower in scope, and therefore, would not apply to many cities at all.

In the **rare instances** in which this bill would apply, **there would be a significant negative financial impact on cities.** The bill requires cities to conduct and publish an analysis of the potential commercial sales, make the report available on their website or advertise its availability in the newspaper, and conduct a public hearing on the matter. Additionally, significant costs are associated with the accounting and taxation requirements. The funds must be accounted for separately and no other local government funds can be used to subsidize anything related to the commercial sales.

Cities would also have to calculate the cost of the product sales by imputing 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. Also, they

would have to remit to their own general fund an amount equal to all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity would pay to the city. Beyond that, (and as was part of last year's proposal) they would have to do the same for all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity would pay to the state. Those taxes include:

- Property taxes to the city, county, school district, state, and any special district assessments.
- Insurance premium taxes to the city, county, and state.
- Occupational license taxes (payroll, net profits and/or gross receipts) to the city, county, and school district.
- Income taxes to the state and federal governments.
- Sales and use taxes to the state.

A statement of resource allocation would also have to be prepared each year outlining the individual products, materials, infrastructure, personnel, utilities, and other resources shared by the local government and the commercial venture.

Data Source(s): Kentucky League of Cities, LRC Staff

Preparer: Wendell F. Butler **Reviewer:** JWN **Date:** 3/1/16