Local Government Mandate Statement
Kentucky Legislative Research Commission
2018 Regular Session

Part I: Measure Information

Bill Request #: 1654

Bill #: 521

Document ID #: 5548

Bill Subject/Title: AN ACT relating to exempting property used in the deployment of advanced broadband technologies from state and local ad valorem taxation and declaring an emergency.

Sponsor: Representative St. Onge

Unit of Government: **X** City **X** County **X** Urban-County Unified Local Government

X Charter County **X** Consolidated Local

Office(s) Impacted: ______

Requirement: **X** Mandatory ____ Optional

Effect on Powers & Duties: ____ Modifies Existing ____ Adds New ____ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

Section 1: Creates a new section of KRS Chapter 132 to exempt property used in the deployment of advanced broadband technologies from ad valorem taxation for tax years beginning on or after January 1, 2018, but prior to January 1, 2022.

Section 2: Amends KRS 132.010 to define property used in deployment of advanced broadband as property used in the business of transmitting information such as images, text, voice, video, or data to end users and consumers for compensation at a rate, prior to taking into account the effects of any signal degradation, that is not less than fifty megabits per second in at least one direction.

Section 3: Provides an emergency clause for the bill.

Fiscal Explanation
HB 521 creates a new exemption of local ad valorem taxation and is expected to have a negative, indeterminable fiscal impact.

The property used in deployment of advanced broadband, as defined by HB 521, is mostly used by communication service and multichannel video programming service providers and is taxed at full local tax rates. The Kentucky Department of Revenue estimates that communication service and multichannel video programming service providers have an annual local property tax impact of $35.6 million dollars.

It is unknown how much of the property currently reported for tangible personal property tax would be exempted under HB 521. The tax return for reporting this property does not provide the information needed to determine if the property qualifies for the exemption. Therefore, the Kentucky Department of Revenue cannot track the property or the tax receipts generated from it in order to determine the tax implications of HB 521.

Historical Information on the Property Tax Assessment Methods
Property used in the business of transmitting information has not always been taxed using the tangible personal property tax return. Prior to January 1, 2006, cable and telephone companies were taxed as public service companies under KRS 136.120. Under those taxing provisions, property tax was not assessed solely on the property, but on the value of the company, which included intangible assets like franchise value.

During the 2005 regular session, HB 272 was enacted to change the taxing method. It removed telephone and cable companies from taxation as a public service company, which resulted in the companies' real property being locally assessed and the companies' tangible personal property being centrally assessed by the Kentucky Department of Revenue on a tangible personal property tax return. KRS 136.660 was established to prohibit the levying of any franchise fee or tax on communication service and multichannel video programming service. Thus, the companies were no longer assessed tax on the value of the company or the intangible assets.

HB 272 also created a new telecommunications tax, as a 3% excise tax on multichannel video programming services, and a new gross revenues tax, assed at rates of 2.4% on multichannel video programming services and 1.3% on communication services. Revenues from the new telecommunication tax were distributed to the local governments with the intent to hold the local governments harmless of the tax method changes made by HB 272.

The City of Florence disagreed that the distribution amount from the new tax was enough to cover the revenue lost from prohibiting cities from collecting franchise fees and filed suit. On June 15, 2017, in *Kentucky CATV Association Inc. v. City of Florence, 520 S.W.3d 355, (Ky. 2017)*, the Kentucky Supreme Court determined that under Section 181 of the Kentucky Constitution the General Assembly did not have the power to prohibit municipalities from collecting franchise fees. As a result of this ruling, municipalities

can now opt-in to the telecommunications tax administered by the Kentucky Department of Revenue or opt-out and impose a local franchise fee on telecommunication companies.

The tangible personal property tax return used to report property of communication service and multichannel video programming service providers has also changed since its creation in 2006. During the 2013 regular session, HB 440 altered KRS 132.010, 132.020, and 132.200 related to the definition of broadcast and altering the type of equipment that qualified for a local tax exemption. As a result, the Schedule B form used to report this property was removed from the tax return and all property is taxed on a Schedule A form at full local tax rates.

More recently, as a tax administration change, the tangible personal property tax return for communication service and multichannel video programming service providers was altered for property assessed on January 1, 2018. The Kentucky Department of Revenue revised the classes of property to reflect shorter economic lives of the equipment; revised the conversion factors used to calculate the fair cash value of the tangible personal property; reduced the salvage value on the return from 20 percent to 10 percent; separated the wireless telephone companies from the wireline telephone companies and provided different conversion factors for each; deleted the requirement that following a merger the value of tangible property should be reported as if it were newly acquired at the restated cost, instead of historical age and depreciated value; and added prewritten software to the classes of property subject to tax.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The Part II section above pertains to the bill as introduced and there are not any prior introduced versions of the bill to complete the Part III section.

Data Source(s): LRC A&R staff; Kentucky Department of Revenue; Kentucky League of Cities

Preparer: Cynthia Brown **Reviewer:** KHC **Date:** 3/12/18