

**136.660 Prohibitions -- Local franchise fee or tax defined.**

- (1) Except as provided in subsection (3) of this section, to the extent legally permissible, every political subdivision of this state shall be prohibited from the following:
  - (a) Levying any franchise fee or tax on multichannel video programming service or communications service, or collecting any franchise fee or tax from providers or purchasers of multichannel video programming service or communications service;
  - (b) Requiring any provider to enter into or extend the term of any provision of a franchise or other agreement that requires the payment of a franchise fee or tax; or
  - (c) Enforcing any provision of any ordinance or agreement to the extent that the provision obligates a provider to pay to the political subdivision a franchise fee or tax.
- (2) For purposes of this section, "franchise fee or tax" means:
  - (a) Any tax, charge, or fee, that is required by ordinance or agreement to be paid to a political subdivision by or through a provider, in its capacity as a provider, regardless of whether the tax, charge, or fee, is:
    1. Designated as a franchise fee, sales tax, excise tax, user fee, occupancy fee, subscriber charge, license fee, or otherwise;
    2. Measured by the amounts charged for services, the type or amount of equipment or facilities deployed, or otherwise;
    3. Intended as compensation for the use of public or private rights-of-way, the right to conduct business, or otherwise; or
    4. Permitted or required to be separately stated on the purchaser's bill; or
  - (b) Any in-kind payment of property or services that is required to be furnished by a provider by any ordinance that is enacted or agreement that is entered into after January 1, 2006.
- (3) The prohibitions in this section shall not apply to:
  - (a) Ad valorem taxes levied under KRS 132.020;
  - (b) Emergency telephone surcharges;
  - (c) Surety bonds;
  - (d) In-kind payments of property or services provided under contracts or agreements in existence prior to January 1, 2006;
  - (e) Letters of credit designed to protect against damages to public rights-of-way for violations of regulatory requirements;
  - (f) Permit or inspection fees of general applicability that are:
    1. Related to construction in the rights-of-way; and
    2. Levied solely to defray the actual costs of administering the permitting process or inspection program;
  - (g) Pole attachment fees;

- (h) Fees for the placement of antennas, towers, and other similar devices on publicly owned property that are imposed by a political subdivision pursuant to a written agreement;
  - (i) Any charge or fee that is imposed on a provider by a political subdivision for the use of property or facilities owned by the political subdivision, if that provider is imposing similar charges or fees on other providers for the use of property or facilities owned or controlled by that provider;
  - (j) Any requirement by a political subdivision that a provider designate or set aside channel capacity for public, educational, or governmental use; or construct institutional networks; or provide similar services or facilities for public use and benefit that political subdivisions are specifically authorized to require by federal telecommunications laws; and
  - (k) Gross revenues utility taxes imposed under KRS 160.613 and 160.614.
- (4) Notwithstanding any provision of law to the contrary, if a political subdivision imposes or otherwise attempts to require the payment of a franchise fee or tax, the political subdivision shall not receive any share of the proceeds of the tax levied by KRS 136.604 or 136.616 for the period that the imposition or attempt occurs.
  - (5) To the extent that a provider actually pays a franchise fee or tax with respect to multichannel video programming service or communications service that is also subject to the taxes imposed by KRS 136.604 or 136.616, the provider shall be entitled to a credit against the amount payable to the department under KRS 136.604 and 136.616 in the amount of the franchise fee or tax, up to the amount of the total tax due with respect to the multichannel video programming service and communications service provided in that political subdivision, school district, or special district.
  - (6) Nothing in this section shall prohibit a provider from donating property or services to a political subdivision, school district, or special district or prohibit a political subdivision, school district, or special district from receiving donated property or services.
  - (7) Nothing in this section shall prohibit a political subdivision from requiring communications service providers or cable service providers to obtain a franchise as required by Section 163 of the Constitution of Kentucky and from regulating to the fullest extent authorized by state and federal law the use of local rights-of-way by communications service providers or cable service providers.

**Effective:** January 1, 2006

**History:** Created 2005 Ky. Acts ch. 168, sec. 118, effective January 1, 2006.

**Legislative Research Commission Note (1/01/2006).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.