

**THE COUNTY GOVERNMENTS (REVENUE RAISING
REGULATION PROCESS) BILL, 2017**

ARRANGEMENT OF CLAUSES

Clause

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A Bill for

AN ACT of Parliament to regulate the process to be followed by county governments in the exercise of their power under Articles 209 and 210 of the Constitution to impose, vary or waiver taxes, fees, levies and other charges, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title. **1.** This Act may be cited as the County Governments (Revenue Raising Regulation Process) Act, 2017.

Interpretation. **2.** In this Act, unless the context otherwise requires—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Charge” means a charge for the use of a product or service and apply per use of the good or service or for the bulk or time-limited use of the good or service;

“fee” includes parking fee, market fee, health facility fee or a license fee charged or imposed as a necessary condition for using a public facility;

"Committee" means the Inter-Agency Committee established by the Cabinet Secretary under section 8 of this Act;

No. 16 of 2011. “Commission” has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2011;

No. 18 of 2012. “Council” means the Intergovernmental Budget and Economic Council established under section 187 of the Public Finance Management Act, 2012;

“County Executive Committee Member for finance”

means a County Executive Committee member of a county responsible for finance in that county;

“national economic policy” includes the fiscal policy as determined by the national government, relevant administrative procedures, existing legislation, international treaties, agreements and the plans to implement the mandate of the national government under the Fourth Schedule to the Constitution;

“National Treasury” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; and

“tax” means a compulsory payment that does not involve the use or derivation of direct benefits from services, regulation or goods.

General principles.

3. (1) A county government may not exercise its power in terms of Articles 209 or 210 of the Constitution to impose tax, levy, fee or any other charge in a way that materially and unreasonably prejudices—

- (a) national economic policies;
- (b) economic activities across county boundaries; or
- (c) the national mobility of goods, services, capital or labour.

(2) Before imposing a tax, fee, levy or any other charge, a county government shall follow the process provided for in this Act and shall, in addition—

- (a) ensure compliance with the provisions of subsection (1);
- (b) adhere to the principles of consultation and cooperation set out in Article 6(3) of the Constitution.

No. 17 of 2012.

(c) ensure compliance with the tariff and pricing policy as provided for under section 120 of the County Government Act, 2012; and

(d) where a fee is to be charged for a service, ensure that the fee does not exceed the cost of providing such service.

Introduction of tax, fee or charge.

4. (1) Where a county government intends to impose a tax, fee or charge, the County Executive Member for finance shall, ten months before the commencement of the financial year, submit particulars of the proposal to the National Treasury and the Commission On Revenue Allocation.

(2) The submission under subsection (1) above, shall—

(a) set out the reasons for the imposition of the tax, fee, levy or a charge;

(b) give particulars on the compliance with Article 209(5) of the Constitution and section 3 of this Act;

(c) identify, and where appropriate, describe the persons liable for the tax, fee, levy or charge and any relief measures or exemptions;

(d) specify—

(i) the collecting authority;

(ii) the persons responsible for remitting the collections;

(iii) the methods and likely cost of enforcing compliance; and

- (iv) the compliance burden on taxpayers.
- (e) give particulars of, and describe the estimation methods and assumptions used to determine—
 - (i) the amount of revenue to be collected on an annual basis over the three financial years following the introduction of the tax, fee, levy or any other charge;
 - (ii) the economic impact on individuals and business residing in the county;
 - (iii) the economic impact on individuals and business residing in other counties; and
 - (iv) the impact on economic development in the county;
- (f) give particulars of any consultations conducted by the county, including consultations with affected counties.

(3) The National Treasury and the Commission may consult any other organ of state or interested persons on the submission contemplated in subsection (1).

(4) On receipt of a submission contemplated in subsection (1), the National Treasury and Commission shall not later than three months after receipt, forward their views to the respective county governments.

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(5) In considering the proposals submitted by county governments, the Commission and the National Treasury shall jointly take into consideration the provisions of Article 209 of the Constitution, relevant administrative procedures, existing legislation and international treaties and agreements and shall notify the County Executive Committee Member for finance concerned of the decision, in writing.

Waivers and variations.

5. (1) No tax or licensing fee including a fine or penalty may be waived or varied except as provided by legislation.

(2) Where legislation permits the waiver of any tax or licensing fee as envisaged under subsection (1) above—

- (a) a public record of each waiver shall be maintained together with the reason for the waiver; and
- (b) each waiver, and the reason for it, shall be reported to the Auditor-General.

(3) Waiver or variation of any tax or licensing fee shall—

- (a) indicate reasons or policy objectives of such variation or waiver;
- (b) identify the category of tax payers to benefit or burden from such variation or waiver:

Provided that the waiver or variation shall not apply to the same category of ratepayers in a financial year following a similar variation or waiver in the preceding year;

- (c) outline the impact of the variation or waiver on revenue collection;
- (d) indicate the likely economic impact of the

variation or waiver including potential shifts in tax burden and benefits.

Collection of revenue.

6. A county government may engage the Kenya Revenue Authority or any other designated person as the revenue collecting agent.

Transitional provisions.

7. (1) Any county tax or any revenue raising measures including waivers and variations imposed by a concerned county prior to commencement of this Act shall be deemed to have been imposed in accordance with this Act:

Provided that—

- (a) such imposition, waiver or variation is in compliance with Article 209(5) of the Constitution, provisions of the Fourth Schedule to the Constitution and any relevant national legislation; and
- (b) within one year upon commencement of this Act, county governments shall submit a list of all fees and charges imposed in the period prior to the commencement of this Act to the Cabinet Secretary for onward transmission to the Inter-Agency Transitional Committee established under section 8 for review.

Establishment and functions of Inter-Agency Transitional Committee.

8. (1) Upon the commencement of this Act, the Cabinet Secretary shall establish and constitute an Inter-Agency Transitional Committee to review the taxes, charges and fees envisaged under section 7(b) of this Act.

(2) The Committee shall consist of—

- (a) the National Treasury;
- (b) the Commission on Revenue Allocation;
- (c) Intergovernmental Relations Technical

Committee;

- (d) Council of Governors; and
- (e) the Kenya Revenue Authority.

(3) The Committee shall review the taxes, charges and fees and make recommendations to the Cabinet Secretary for consideration.

(4) After receipt of the recommendations under subsection (2) above, the Cabinet Secretary may, within fourteen days from the date of receipt, approve or refer back to the Committee for reconsideration, noting, in writing, any reservations that he or she has concerning the recommendations.

Duration of the Committee.

9. The Committee established under subsection (1) above shall be for transition purpose only and shall cease to exist after a period of one year from the time of its establishment.

Making of Regulations.

10. The Cabinet Secretary may, by notice in the *Gazette*, make Regulations regarding—

- (a) anything which shall or may be prescribed in terms of this Act; and
- (b) any matter which is necessary to prescribe for the effective implementation of the provisions and objects of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The Bill gives effect to the constitutional requirement of Article 209(5) of the Constitution by defining the manner in which the national government, through the National Treasury may exercise its policy oversight role and it establishes the process whereby the county governments may exercise their taxation authority.

The Bill further regulates the exercise by county governments of their power to impose taxes, levies and duties by providing for the compliance by a proposed county government tax, with the Constitution and the provisions of this Bill and to ensure that county government proposals are dealt with in accordance with Article 6(3) of the Constitution

The Bill does not set specific taxes that a county government may enact. Responsibility for initiating a county government tax proposal rests with county government and they may propose any tax in accordance with the Constitution. Rather, the Bill regulates the process by which county government taxes are imposed.

BRIEF SUMMARY OF THE BILL

CLAUSE 2 of the Bill provides for the definitions of words or expressions used in the Bill in technical sense.

CLAUSE 3 of the Bill restates Article 209(5) of the Constitution, noting that a county government tax shall not materially or unreasonably prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour. It also requires county government taxes to be consistent with co-operative governance as outlined in Article 6(3) of the Constitution, tariff and pricing as provided for under section 120 of the County Government Act, 2012 and that where a fee is proposed to be introduced for a service, it does not exceed the cost of providing such service.

CLAUSE 4 of the Bill regulates the process for the introduction of county government tax and other revenue raising measures. It requires county

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governments to submit tax proposals to the National Treasury and Commission On Revenue Allocation for approval.

CLAUSE 5 of the Bill contains provisions relating to waivers and variations. It states that a tax or a licensing fee including a fine or a penalty may not be varied except by legislation.

CLAUSE 6 of the Bill states that the Kenya Revenue Authority may be the collecting agent for a county government tax.

CLAUSE 7 of the Bill clarifies that current county government taxes are exempt from the Bill, and are deemed to have been imposed in terms of the Bill unless they are not in compliance with Article 209(5) of the Constitution:

Provided that—

- (a) such imposition, waiver or variation is in compliance with Article 209(5) of the Constitution, provisions of the Fourth Schedule to the Constitution and any relevant national legislation; and
- (b) within one year upon commencement of this Act, the county governments shall submit a list of all fees and charges imposed in the period prior to the commencement of this Act to the Cabinet Secretary for review.

CLAUSE 8 of the Bill contains provisions for establishment of the Inter-Agency Committee by the Cabinet Secretary for the purpose of reviewing the all fees and charges imposed by the county governments prior to commencement of the Act.

CLAUSE 9 of the Bill provides for the duration of the Committee which shall be for a period of one year from the time of its establishment.

CLAUSE 10 of the Bill further empowers the Cabinet Secretary to make Regulations for implementation of the Act.

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Dated on the....., 2017.

**HENRY ROTICH, EGH
Cabinet Secretary for
the National Treasury.**

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