SPECIAL ISSUE

Kenya Gazette Supplement No. 122 (National Assembly Bills No. 24)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2018

NAIROBI, 25th September, 2018

CONTENT

Bill for Introduction into the National Assembly—

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL, 2018

ARRANGEMENT OF CLAUSES

Clause

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL, 2018

A Bill for

AN ACT of Parliament to provide for 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—

1. This Act may be cited as the County Governments (Revenue Raising Process) Act, 2018. Short title.

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

"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;

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

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

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

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

"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 or conducting a business;

"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 the 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 under 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(2) of the Constitution.

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

No. 17 of 2012.

(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 Commission shall review the proposal submitted under subsection (1) and submit the same to the National Treasury within a period of one month upon receipt of the proposal.

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

(5) In considering the proposals submitted by county governments, the National Treasury shall take into consideration the recommendations of the Commission under subsection (3), 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, not later than three months after receipt of the proposals under subsection (1).

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 within three months of granting of the waiver.

(3) A 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 in accordance with section 160 of the Public Finance Management Act, 2012 and Regulations made thereunder.

Transitional provisions.

7. 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, waived or varied 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 three months upon commencement of this Act, county governments shall submit a list of all taxes, 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.

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 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, in consultation with the public, review the taxes, charges and fees under section 7 and make recommendations on allowable list of such taxes, charges and fees to the Cabinet Secretary for consideration.

(4) After receipt of the recommendations under subsection (3) above, the Cabinet Secretary may, within thirty days from the date of receipt, approve and publish the list in the Gazette or refer back to the Committee for reconsideration, noting, in writing, any reservations that he or she has concerning the recommendations.

9. The Committee established under subsection 8(1) shall be for transition purpose only and shall cease to exist after a period of two years or any other time as may be determined by the Cabinet Secretary from the time of its establishment. Term of the Committee.

10. (1)The Cabinet Secretary may, by notice in the *Gazette*, make Regulations to provide for— Regulations.

(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.

(2) For the purpose of Article 94(6) of the Constitution–

(a) the purpose and objective of the delegation under this section is to enable the Attorney General to make regulations to provide for the better carrying into effect the provisions of this Act;

(b) the authority of the Attorney General to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;

(c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments 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, feel levy or charge with the Constitution and the provisions of this Bill and to ensure that county government proposals are dealt with in accordance with Article 6(2) 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.

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(2) 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 provides for the process of introduction of county government tax and other revenue raising measures. It requires county 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 in accordance with section 160 of the Public Finance Management Act, 2012.

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.

CLAUSE 8 of the Bill contains provisions for establishment of the Inter-Agency Transitional 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 two years or more as may be determined by the Cabinet Secretary from the time of its establishment.

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

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill may concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 11th September, 2018.

ADEN DUALE,
Leader of Majority.