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CONTENT

Bill for Introduction into the Senate—

	PAGE
The County Governments (Revenue Raising Process) Bill, 2023	509

**THE COUNTY GOVERNMENTS (REVENUE
RAISING PROCESS) BILL, 2023**
ARRANGEMENT OF CLAUSES

Clause

- 1 - Short title.
- 2 - Interpretation.
- 3 - General principles.
- 4 - Establishment of the Committee.
- 5 - Introduction of tax, fees, levy, etc.
- 6 - Waivers and variations.
- 7 - Collection of revenue.
- 8 - Transitional provisions.
- 9 - Dispute resolution.
- 10 - Regulations.

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL, 2023

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—

PART I – PRELIMINARY

1. This Act may be cited as the County Governments (Revenue Raising Process) Act, 2023.

Short title.

2. In this Act –

Interpretation.

“Auditor-General” means the Auditor-General appointed in accordance with Article 229 of the Constitution and section 11 of the Public Audit Act;

No. 34 of 2015.

“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 on County Taxes and Charges established under section 4 of this Act;

“Commission” means the Commission on Revenue Allocation established under Article 215 of the Constitution.

“Council of County Governors” Council of County Governors established under section 19 of the Intergovernmental Relations Act;

No. 2 of 2012.

“county executive committee member” means a county executive committee member of a county responsible for finance in that county;

“county treasury” means a County Treasury established under section 103 of the Public Finance Management Act;

No. 18 of 2012.

“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; and

No. 18 of 2012.

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

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-

General principles.

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

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

- (a) ensure compliance with 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; 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.

4. (1) There is established a Committee known as the Inter-Agency Committee on County Taxes and Charges.

Establishment of the Committee.

(2) The Committee shall consist of one person each working and nominated by the following entities, and appointed by the Cabinet Secretary whenever need arises –

- (a) the National Treasury;
- (b) the Commission;
- (c) the Intergovernmental Relations Technical Committee;
- (d) the Council of County Governors; and
- (e) the Kenya Revenue Authority.

(3) The Committee shall be responsible for considering and approving taxes, charges and fees imposed by a county government.

(4) The National Treasury shall provide secretariat services and facilities required by the Committee for the effective performance its functions.

(5) Subject to this Act, the Committee shall determine its own procedure.

5. (1) Where a county government intends to impose a tax, fee or charge, the county executive committee member shall, ten months before the commencement of the financial year, submit particulars of the proposal to the Committee.

Introduction of tax, fees, levy, etc.

(2) In submitting the proposal under subsection (1) above, the county executive committee member 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 mechanisms for enforcing compliance and the 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 of the county;
- (f) give particulars of any consultations undertaken by the county, including consultations with counties likely to be affected.

(3) The Committee shall, within three months from the date of receipt of the proposal under subsection (1), consider the proposal and notify the county executive committee member of its decision in writing.

(4) In considering a proposal submitted by the county executive committee member, the Committee shall take into consideration —

- (a) the provisions of Article 209 of the Constitution; and
- (b) relevant administrative procedures, existing legislation and international treaties and agreements.

(5) The Committee may consult any other organ of State or interested persons on a proposal submitted to it under subsection (1).

(6) Where the Committee fails to notify a county government in accordance with subsection (3), a county government shall be at liberty to implement the proposed tax, fee, levy or charge.

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

Waivers and variations.

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

- (a) the county treasury shall maintain a record of each waiver together with the reason for the waiver; and
- (b) the county executive committee member shall, within three months of granting of the waiver, report the waiver together with reason for the waiver to the Auditor-General.

(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 persons to benefit from or to be burdened by 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 a waiver in the preceding year;

- (c) outline the impact of the variation or waiver on revenue collection; and
- (d) indicate the likely economic impact of the variation or waiver including potential shifts in tax burden and benefits.

7. A county government may engage the Kenya Revenue Authority or any other designated person as the revenue collecting agent of the county government in accordance with section 160 of the Public Finance Management Act.

Collection of revenue.

8. (1) Any county tax or any revenue raising measures including waivers and variations imposed by a

Transitional provisions.

county government prior to commencement of this Act shall be deemed to have been imposed, waived or varied in accordance with this Act.

(2) Notwithstanding subsection (1), the imposition of a waiver or variation shall –

- (a) be in compliance with Article 209(5) of the Constitution, 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 Committee for review.

(3) The Committee shall, within thirty days and in consultation with relevant stakeholders and the public, review the taxes, charges and fees submitted under subsection (2)(b) and approve and publish in the Gazette a list of allowable taxes, charges and fees.

9. Where the National Government and a county government fail to agree on a proposed imposition or revision of a tax, fee or charge, the National Government and the county government shall be guided by Part IV of the Intergovernmental Relations Act on resolution of disputes.

Dispute
resolution.

10. (1) The Cabinet Secretary may, by notice in the Gazette, make Regulations to prescribe for any matter necessary for the effective implementation of this Act.

Regulations.

(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 Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary 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.

Cap. 2.
No. 23 of 2013.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of the Bill is to give effect to the constitutional requirement under Article 209(5) of the Constitution which requires taxation and other revenue raising powers of a county not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

The Bill achieves this by regulating the exercise by county governments of their power to impose taxes, charges, levies and fees by providing that a proposed county government tax, fees, levy or charge be in compliance with the Constitution and the provisions of this Bill. However, the Bill does not set specific taxes that a county government may impose. Responsibility for initiating a county government tax proposal rest with the county government and they may propose any tax in accordance with the Constitution.

Clause 2 of the Bill provides for the definitions of words or expressions used in the Bill.

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, 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 establishment of an Inter-Agency Committee on County Taxes and the functions of the Committee which is reviewing all fees and charges imposed by the county governments.

Clause 5 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 Inter-Agency Committee on County Taxes for approval.

Clause 6 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 7 of the Bill provides that county government may engage the Kenya Revenue Authority or any other person as a collecting agent for a county government tax in accordance with section 160 of the Public Finance Management Act, 2012

Clause 8 of the Bill provides that taxes currently imposed by county governments are deemed to have been imposed in terms of the Bill unless they are not in compliance with Article 209(5) of the Constitution. However, within one year from the date of commencement of this law, county governments shall submit a list of all taxes the Committee for purposes of reviewing such taxes so as to ensure compliance with the Constitution.

Clause 9 of the Bill provides for dispute resolution where the National and county governments fail to agree on a proposed imposition or revision of a tax, fee or charge. Such a dispute shall be resolved in accordance with Part IV of the Intergovernmental Relations Act on resolution of disputes.

Clause 10 of the Bill gives the Cabinet Secretary powers to make regulations for better implementation of the Act.

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

Clause 12 of the Bill confers on the Cabinet Secretary the powers to make regulations for the purposes of carrying into effect the provisions of the Act. The Bill does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The principal object of the Bill is to give effect to the constitutional requirement of Article 209(5) of the Constitution which requires taxation and other revenue raising powers of a county not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour. The Bill is therefore one that concerns county governments in terms of Article 110(1)(a) of the Constitution.

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

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 23rd March, 2023.

AARON CHERUIYOT,
Majority Leader.