

SPECIAL ISSUE

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REPUBLIC OF KENYA

***BUSIA COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2016

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THE BUSIA COUNTY CESS BILL, 2016

A Bill for

AN ACT of the County Assembly of Busia to provide for the imposition of charges levies or fees on any certain kind of products produced and/or transported within the County, and for related and connected purposes

ENACTED by the County Assembly of Busia, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Busia County Cess Act, 2016 and shall come into operation on the date of publication in the County *Gazette* or Kenya *Gazette*, whichever comes earlier.

Short title and commencement.

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

Interpretation.

“Producer” includes a primary manufacturer or processor, maker, farmer and excavator of the products or any of the products in the schedule of products;

“Authorized Officer” means any person prescribed and/or authorized in writing by the County Executive Committee Member for Finance and Economic Planning, to act in a certain capacity as envisaged under this Act;

“County Executive Committee Member” means the executive committee member for the time being responsible for matters relating to Finance;

“County Government” means the County Government of Busia County;

“County Receiver of Revenue” means the person designated as the county receiver of revenue pursuant to and in accordance with Section 157 of the Public Finance Management Act in the County Government of Busia.

“Scheduled products” means any product for the time being specified in the Schedule.

3. The object and purpose of this Act is, pursuant to and in accordance with provisions of Article 209 (3) of the Constitution of Kenya, 2010, to impose a charge levy or fee on scheduled products grown, harvested, produced or transported within the county.

Object and purpose of the Act

PART II—CHARGES, FEES AND LEVIES ON SCHEDULED PRODUCTS

4. (1) The County executive committee Member shall from time to time determine and publish in the gazette a schedule of products on which the county government may impose a cess, levy, charge or fees in accordance with this act.

Charges, fees and levies on scheduled products.

(2) No fee, charge or levy may be imposed on any product transported within the county unless such product is listed in the schedule.

5. For each financial year the county government shall impose in the Finance Act such fees, charges or levies as may be collected by the county government as cess in respect of the scheduled products produced, transported and delivered in the county.

Cess to be determined in the Annual County Finance Act.

PART III—PAYMENT

6. (1) The levy, charge or fees imposed as cess in accordance with Section 5 shall be paid to and collected by an authorized officer of the County Government—

Payment of cess to be made in designated places.

- (a) in the case of products produced within the county, at the place of production, delivery within the county or at any other place where the Executive Committee Member may designate in accordance with the rules;
- (b) in the case of products brought into the county from outside, at the place of delivery of the product or where the Executive Committee Member may designate in accordance with the rules, and;
- (c) in the case of goods on transit at such other place as the Executive Committee Member may determine in accordance with the rules.

(2) All payments due and payable to the county government in respect of cess under this Act shall be remitted to the County Receiver of Revenue within a period of fourteen days from the date such payments become due.

(3) Any money due and payable which is not remitted to the County Receiver of Revenue within the

time specified in subsection (2) shall attract a penalty of three percent per day until it is fully paid.

(4) Any person, who, without a lawful excuse fails to remit monies payable to the County Receiver of Revenue within the time stated under this Act commits an offence and, on conviction shall be liable to imprisonment for a term not exceeding five years or to a fine not less than five times the amount due. Provided that such term of imprisonment or fine shall not discharge the person from liability to pay the amount due in accordance with subsection 2.

7. (1) For purposes of this Act, a producer, transporter and/or receiver of products in the schedule shall keep and maintain a proper and accurate record of all products in the schedule produced, transported, delivered and/or received by them and each one of them. Records of products.

(2) The producer, transporter and/or receiver of the products in the schedule shall avail such record for inspection by an authorized officer whenever required to do so.

(3) Any person as stated in subsection (1) who—

- (a) fails to keep the records as stated in subsection (1); or
- (b) refuses or fails to avail such records to an authorized officer when required to do so, commits an offence.

PART IV—OFFENCES AND PENALTIES

8. Except as provided for in this Act, a person who contravenes any of the provisions of this Act shall be guilty of an offence and is liable to a fine not exceeding three hundred thousand Kenya shillings or imprisonment for a term of two years or both. General Offences.

9. An Authorized Officer of the County Government having a duty to perform under this Act who— Offences by an Authorized Officer.

- (a) interferes with any other process or person under this Act, so as to defeat the provisions, requirements or purposes of this Act;
- (b) where required under this Act to do anything, or

to give effect to the provisions of this Act, fails to do such thing;

- (c) without reasonable cause omits to do something in breach of his or her duty under this Act;
- (d) willfully contravenes the provisions of this Act to give undue advantage or favour to another person;
- (e) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act;

Shall be guilty of an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

PART V – MISCELLANEOUS

10. (1) Without prejudice to Section 5, the County Executive Committee Member may, after a prior resolution of the County Executive Committee, vary a charge, levy or fee payable as cess under this Act. Variation of cess.

(2) The said variation of charge, levy or fee shall be in writing and published in the Gazette and shall, as soon as possible not later than thirty days be presented to the County Assembly for approval or otherwise.

11. The County Executive Committee Member may make Regulations for the better carrying out of the purposes and provisions of this Act. Regulations.

SCHEDULES
FIRST SCHEDULE
(Section 2)
SCHEDULE OF PRODUCTS

1. Banana
2. Carrots
3. Cassava
4. Cereals and their products
5. Charcoal
6. Coffee
7. Cucumber
8. Eggs
9. Fruits
10. Ground nuts
11. Logs
12. Timber
13. Maize
14. Mangoes
15. Milk
16. Onions
17. Pawpaw
18. Passion Fruits
19. Peas
20. Potatoes
21. Processed milk
22. Sugar cane
23. Sweet potatoes
24. Tea
25. Tobacco
26. Tomatoes

27. Vegetables
28. Sand
29. Quarry stone
30. Murram
31. Fish
32. Livestock and livestock products
33. Watermelons
34. Pulses
35. Pineapples

MEMORANDUM OF OBJECTS AND REASONS

Article 209 (2) of the Constitution reserves to county governments the power to impose the taxes stated in Article 209 (3). Further, Article 209 (4) of the Constitution of Kenya, read together with Part 2 of the Fourth Schedule thereto, gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities.

The taxes, fees and charges imposed and levied ought to be prudently used for service delivery through a transparent and accountable process.

This bill establishes a mechanism to collect fees, charges and levies to help the County to collect revenue for purposes of improving its infrastructure and other facilities to promote market accessibility and increased production and it therefore concerns the County Government.

This Bill does not infringe on any fundamental rights and freedoms of the people of Busia County.

The enactment of this Bill into law does not occasion additional expenditure of public funds.

Dated the 20th July, 2016

SYLVESTER OYULA,
Chairman, Budget and Appropriations Committee.