Bill for Introduction into the County Assembly of Kakamega—

The Kakamega County Agricultural Produce Cess Bill, 2017

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THE KAKAMEGA COUNTY AGRICULTURAL PRODUCE CESS BILL, 2017

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THE KAKAMEGA COUNTY AGRICULTURAL PRODUCE CESS BILL, 2017
A Bill For
AN ACT of the County Assembly of Kakamega County to provide for the imposition of Cess on agricultural produce within the County and for connected purposes
ENACTED by the County Assembly of Kakamega County, as follows—

PART I—PRELIMINARY

Short title and commencement
1. This Act may be cited as the Kakamega County Agricultural Produce Cess Act, 2017 and shall come into operation upon publication.

Interpretation
2. In this Act, unless the context otherwise requires—
   "agricultural producer" means a producer of agricultural produce and includes any marketing organization acting on behalf of producers;
   "authorized officer" means any person prescribed and authorized in writing by the Executive Committee Member to act as an authorized officer under this Act;
   "County Government" means the County Government of Kakamega;
   "Executive Committee Member" means the Executive Committee Member responsible for agriculture;
   "processing plant" means premises where agricultural produce is processed mainly by machines;
   "produce cess" means charges imposed under this Act and payable to the county government;
   "scheduled produce" means any produce for the time being specified in the First Schedule.

Object and purpose of the Act
3. The object and purpose of this Act is to impose charges on agricultural produce grown in the county pursuant to the provisions of Article 209 (3) of the Constitution of Kenya, 2010.

PART II—AGRICULTURAL PRODUCE CESSES

Agricultural produce cesses
4. (1) The County Government shall collect cess on agricultural produce within the County in accordance with the Second Schedule of this Act.
(2) The Executive Committee Member may impose cess on any other agricultural produce not already provided for under the Second Schedule of this Act by Regulations, and may make such incidental provisions as are necessary or expedient for the collection of the cess by the receiver of revenue.

Declaration of scheduled produce

5. The Executive Committee Member may, by notice in the Gazette, declare any agricultural produce to be a scheduled produce for purposes of this Act.

PART III—PAYMENT OF CESS

Payment of Cess

6. (1) The cess imposed under this Act shall be payable by the agricultural producer to the County Government through the processing plant at the time when the plant takes delivery of the produce or product of the produce.

(2) Any person whether within or outside the county who buys or markets on behalf of an agricultural producer, agricultural produce on which cess is payable and on which no cess has been paid shall deduct from the money payable to the agricultural producer an amount equal to the cess payable on the produce and remit the amount to the County Government.

(3) The processing plant shall ensure that all the amounts deducted as cess are remitted to the County Government by the 20th day of the next month.

(4) The County Government may deploy inspectors to processing plants and barriers to ensure compliance with provisions of this Act.

(5) In any proceedings it shall be presumed, where agricultural produce on which cess is brought in regard to failure to pay or remit cess, that no cess has been paid on that produce until the contrary is proved.

(6) Any processing plant which fails to comply with the provisions of sub-section (3) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

(7) Notwithstanding the provisions of sub-section (6) the County Government may impose a penalty for late remittance of the cess due and owing.

(8) The County Government shall recover cess remittable by the plant whether or not the plant collected the cess from the agricultural producer and the cess owing shall be a civil debt recoverable summarily.
Obligation to keep records

7. (1) The processing plant shall make and keep such up to date books, accounts and records as are reasonably necessary to determine the mass of agricultural produce supplied to it and cess deductions made thereof for a period of at least seven years after the completion of the transactions to which they relate.

(2) The receiver of revenue may by notice in writing given to the processing plant, direct the plant as to the books, accounts and records the processing plant is required to make and keep.

(3) An authorized officer shall be allowed access, within working hours to the records referred to in sub-section (1).

(4) Any processing plant which fails to comply with the requirements of this section commits an offence and shall on conviction be liable to a fine not exceeding three million shillings.

Payment of Cess of Agricultural Produce on Transit

8. The authorized officer shall ensure that cess on agricultural produce from the county on transit to other counties is collected at barriers set up at the points of entry as per Regulations made by the Executive Committee Member and shall ensure that all the amounts collected are accounted for and remitted to the County Government on agricultural produce on transit.

PART IV—MISCELLANEOUS

Agreement In relation to Revenue Collection

9. The County Government may enter into an agreement authorizing a person or entity to collect cess payable to the County Government on such terms and conditions as are specified in the agreement.

Offences by an authorized officer

10. An authorized officer having a duty to perform under this Act and who—

(a) interferes with any 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 favor 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;

(f) commits an offence and shall be liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

Variation of cess

11. (1) The Executive Committee Member may from time to time vary cess payable under this Act.

(2) The variation of cess shall be in writing and published in the Gazette.

Regulations

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

Personal liability

13. Neither the Executive Committee Member nor any other person shall be personally liable to any action or proceedings for or in respect of any act or thing done or omitted to be done in good faith in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act.

Saving Clause

14. Nothing contained in this Act or any rules or regulations made pursuant thereto shall prejudice or affect collection of cess under the previous by-laws of the defunct local authority of the county, and where anything in this Act or any rule is inconsistent with any such provision of the by-law, the provisions of this Act shall prevail.

Saving of rules and orders under the By-laws

15. All directions, resolutions, orders and authorizations given by-laws made and licences, receipts or permits issued by local authorities for payment of cess within the county under the Local Governments Act (now repealed) and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made under this Act.

Prosecution of Matters under this Act

16. The County Government shall liaise with the Director of Public Prosecutions for the appointment of a special prosecutor for purposes of offences committed under this Act.
Agricultural produce Cess Bill

SCHEDULES

FIRST SCHEDULE (Section 2)

SCHEDULED PRODUCE

1. Bananas
2. Sugarcane
3. Beans
4. Carrots
5. Cassava
6. Coffee
7. Tomatoes
8. Cucumber
9. Egg plants
10. Fruits
11. Ground nuts
12. Maize
13. Mangoes
14. Milk
15. Onions
16. Pawpaw
17. Peas
18. Potatoes
19. Processed fresh milk
20. Sugar cane
21. Sweet potatoes
22. Tea leaves
23. Eggs
24. Vegetables
25. Animals and animal products
**SECOND SCHEDULE (Section 4 (1)**

**SCHEDULED AGRICULTURAL PRODUCE CESSES**

**ITEMS WITHIN KAKAMEGA**

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<tr>
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MEMORANDUM OF OBJECTS AND REASON

The Bill seeks provide for a framework to provide for the imposition of Cess on agricultural produce within the County.

This Bill is divided into three parts as follows—

Part I provides for preliminaries including short title, interpretation, object and purpose as well as principles of the Act while Part II gives the County the obligation to collect Cess and declare scheduled crops.

Part III provides for modalities of payment of Cess and obligations to keep records.

Part IV contains miscellaneous provisions including Agreement in relation to revenue collection, variation of cess, rules of procedure, protection against personal liability, as well as saving and transitional provisions.

The Bill respects the separation of powers of national and county governments and recognizes the critical role assigned to the County with regard to agriculture.

The Bill shall not occasion additional expense.

GEOFFREY OMMATERA,
Chairperson, Agriculture, Livestock,
Fisheries and Co-operatives Committee.