

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

DAILY

HANSARD

WEDNESDAY 9TH FEBRUARY, 2022

Afternoon Sitting

COUNTY ASSEMBLY OF BUNGOMA

HANSARD OFFICIAL REPORT

WEDNESDAY 9TH FEBRUARY, 2022

The House met at 2:30 p.m.

(Mr. Deputy Speaker [Hon. Stephen Wamalwa] in the Chair)

PRAYER

Thank you very much honorable members. You are welcome to this 9th February, 2022, 2:30 p.m. session straight away we move to our Order Paper.

MOTION

REPORT BY IMPLEMENTATION COMMITTEE, ON THE IMPLEMENTATION STATUS OF THE BUNGOMA COUNTY ALCOHOLIC DRINKS CONTROL ACT 2015, THE BUNGOMA COUNTY TRADE LICENSING ACT 2017, THE BUNGOMA COUNTY PARKING MANAGEMENT ACT 2017, THE BUNGOMA COUNTY PROPERTY HIRE AND LEASE ACT 2017, AND THE BUNGOMA COUNTY AGRICULTURAL PRODUCE CESS ACT, 2017.

Hon. Sospeter Nyongesa (Member, Implementation): Thank you, Mr. Speaker. I seem to be the chair of so many committees. As you're aware my colleagues who are vying for parliamentary seats, I am in their shoes.

I am on my feet to move the motion on behalf of the Implementation Committee and this is the report on the implementation status of the Bungoma County Alcoholic Drinks Control Act 2015, The Bungoma County Trade Licensing Act 2017, The Bungoma County Parking and Management Act 2017, The Bungoma County Property Hire And Lease Act 2017, and The Bungoma County Agricultural Produce CESS Act 2017.

Members as you can see, page two is the table of contents which I beg not to read, I come to the preface,

Mr. Speaker Sir, the County Assembly Standing Order number 191 (2) provides interalia that the Committee on Implementation shall scrutinize House resolutions which includes; adopted committee reports and examine whether or not legislation passed by the Assembly has been operationalized and where operationalized; the extent to which such operationalization has taken place within the minimum time necessary.

In accordance with this mandate, the committee scrutinized the implementation of various county legislations and compiled a comprehensive report. What follows is committee's mandate which is obvious; I also beg not to go through.

COMMITTEE MEMBERSHIP

The Committee membership comprises -

1. Hon. Bethwell Mwambu -Chairperson
2. Hon. Francis Chemion -Member
3. Hon. Ali Machani -Member
4. Hon. Elly Tindi -Member
5. Hon. Ben Kipkut -Member
6. Hon. Humphrey Sifuna -Member
7. Hon. Frankline Simotwo -Member
8. Hon. Sospeter Nyongesa -Member
9. Hon. Sophie Marumbu -Member
10. Hon. Luke Opwora -Member
11. Hon. Christine Ng'elech -Member

I wish to acknowledge with gratitude the offices of the Speaker and the Clerk of the assembly for the support extended to it in the execution of its mandate.

I also thank the executive committee members of Finance and Economic Planning, Transport, Roads, Infrastructure and Public Works, Gender, Culture Youth and Sports and the Secretary to the County Public Service Board for submission before the committee that enabled the compilation of this report.

Finally, much thanks to the members of the committee on implementation and the secretariat for their dedication and untiring commitment and valuable contributions which has enabled them to focus on their oversight role.

It is therefore my pleasant duty and privilege on behalf of committee on Implementation to present to the House the committee's report for consideration by this Honorable House. The report is dully signed by the Hon. Bethwell Mwambu MCA Mbakalo Ward as the chair.

Examination / analysis of the Implementation status of various county legislations,

This chapter provides for the examination and the analysis of implementation status for various county legislations passed by the county assembly as follows:

1. The Bungoma County Alcoholic Drinks Control Act of 2015.
2. The Bungoma County Trade License Act of 2017.
3. The Bungoma County Parking Management Act of 2017.
4. Bungoma County Property Hire and Lease Act of 2017,
5. Bungoma County Agricultural Produce CESS Act of 2017.
6. Bungoma County Alcoholic Drinks Control Act of 2015.

The act provides for licensing and regulation of production, sale, distribution, consumption and outdoor advertising of alcoholic drinks and connected purposes.

The object and purpose for this act is to provide for licensing of alcoholic drinks by the county government pursuant to part two of the fourth schedule of the constitution.

The object and purpose of the act includes controlling the production, sale, distribution, and promotion, use of alcoholic drinks and promotion of research, treatment and rehabilitation of person's dependent on alcoholic drinks.

The County Department of Gender, Culture, Youth and Sports submitted the implementation status of the Bungoma County Alcoholic Drinks Control Board 2017 as follows;

Members, may I take you through that chart, indicating the item and the implementation status. Section four of the act establishes the County Alcoholic Drinks Control Directorate which shall be an office in the county public service. Under implementation the directorate has not been established because the department foresaw the need to operationalize sub-county committees first.

The prioritization was informed by limited resources available to operationalize the Act. On appearance before the committee, the secretary to the County Public Service Board acknowledged the intent from the department of Gender, Culture, Youth and Sports to recruit the director of county alcoholic drinks control.

The board advertised the position with others on 24th June, 2020. However, the department didn't have the budgetary provision to fill the position and thus the advert for recruitment process was put on hold, until the department confirm the availability of funds. To date the board is contemplating to cancel the advert since; the advertised position needs to be filled within one year after an advert.

Section five of the Act that requires the directorate with other county and national agency to establish treatment and rehabilitation facilities with necessary human resource for effective service delivery.

On implementation, it is not implemented as directorate in section four of the act has not been established.

Section six of the act obligates the department to establish a fund, known as The Alcoholic Drinks Control Fund. On implementation the department in a letter, dated 3rd May, 2018, wrote to County Executive Committee Member Finance and Economic Planning for the authority to open Alcoholic Drinks Control Fund. That the department is waiting for further guidance and communication from the County Executive Committee Member Finance and Economic Planning.

On appearance before the committee, the County Executive Committee Member Finance and Economic Planning stated that: the opening of the fund is dependent on the enactment of the Alcoholics Drinks Control Regulations and dully approved by the County Assembly. To date there were no regulations approved and thus, we will not grant authority to the department until and when the regulations are dully approved by the county assembly. However, the County Executive Committee Member Gender, Culture, Youth and Sports acknowledged that the regulations were formulated and validated back in 2016 and await public participation and further endorsement by the county assembly.

Section nine of the Act establishes for every Sub-County a committee to be known as the Sub-County Alcoholics' Drinks Regulations Committee whose role is to issue licenses. On implementation for every Sub-County there exists a Sub-County Alcoholic Drinks Regulations Committee that was appointed in December 2017, whose terms were three years and non-renewable for the community members, the section has been implemented.

Section 59 of the Act requires the county executive member upon recommendations by the Sub-County committee appoint for each sub-county or any person or class of persons to be authorized officers for the purpose of this act. Under implementation the section has not been implemented.

Section58 of the act requires the Governor to establish a County Alcoholic Drinks Control Enforcement and Coordinating Committee for the purposes of enforcing this Act, it has not been implemented.

Section 74 of the Act obligates the County Executive Committee Member on recommendation of the relevant department make regulations for the better carrying out of the objectives of this Act.

Under recommendation, the Bungoma County regulations were formulated and validated but are however awaiting public participation and endorsement by the county assembly but is partially implemented. That was the Bungoma County Alcoholics Drinks Control Act of 2015.

BUNGOMA COUNTY PROPERTY HIRE AND LEASE ACT OF 2017.

The Act provides for hiring and leasing of property items, facilities and services belonging to the County Government for the hiring and leasing charges and for the connected purposes. The object and the purpose of the act include;

- a. To control the hiring and leasing of County properties and services.
- b. To encourage the residents of Bungoma to make use of the available public properties to better their livelihood.

IMPLEMENTATION STATUS

Section 9 (2) the Act provides that the County Executive Committee Member responsible shall maintain records of hired and leased items and submit the copies of those records to the county assembly in not less than ninety days from the end of each financial year, not implemented.

BUNGOMA COUNTY TRADE LICENSING ACT, 2017.

The Act establishes a mechanism for the imposition of certain taxes, charges fees and the grant of trade and related licenses and for connected matters and incidental purposes. The objective and purpose of the act is to:

- a. Provide a frame work, within which the county government may perform its functions and exercise its powers and the constitution to license certain business activities.
- b. To establish a framework for the conduct and regulation of business in the County.
- c. Establish a mechanism to reliably raise revenue in the County to enable the County Government to govern and deliver services effectively.

Implementation Status

Section 4 of the act provides for the establishment in public service of the county an officer designated as the county licensing officer who shall be responsible for administration of this act in respect whereof shall be answerable to CECM Trade.

On implementation, it is not implemented. While appearing before the committee, the CECM Finance and Economic Planning informed the committee that there is a high county wage bill and thus an officer had been deployed to perform the functions of the county trade license officer. In response to the committee the CECM Trade, Energy and Industrialization indicated that the mandate of the trade licensing is not a function under the department but rather domiciled under the county revenue directorate and thus, not responsible in regard to the implementation.

THE BUNGOMA COUNTY PARKING MANAGEMENT ACT, 2017.

The Act provides for the general management of parking within Bungoma parking, to prescribe the fees payable for packing within the county and for connected purposes. The object and the purpose of this act is to provide for a legislative framework for regulating parking and management activities and in particular to:

- a. Require the licensing of packing activities.
- b. Designate packing stations.
- c. Provide the additional framework regulating packing stations.

On implementation,

Section 5 and 6 of the Act obligates the County Executive Committee Member responsible for Fiscal Planning by notice in the gazette to designate parking places within the county, determine the number and situations of parking spaces and the limits of each parking places and the space in it shall be marked on the road by line stats or other indications.

Under implementation, no implementation. Despite the invitations to appear before the committee the County Executive Committee for Lands, Urban Physical Planning and Housing did not appear before the committee to indicate the efforts being undertaken by the department in implementing this law.

THE BUNGOMA COUNTY AGRICULTURAL PRODUCE CESS ACT, 2017.

The object and purposes of this act is to impose tax and / or levies on crop and animal produce grown in and on transit within the county pursuant to the provisions of Article 209 (3) of the Constitution of Kenya 2010.

On implementation, the Act in section 7 provides for the establishment of county CESS committee. Under implementation, it is implemented as the committee was provided with the appointment letters of the CESS committee dated 13th January, 2020.

Section two of the act requires an authorized officer to ensure cess on agricultural produce on transit outside the county is collected at various sector per county exit points and be remitted to county revenue account and maintain and keep records of all cess collected.

Under implementation, this is partially implemented as there are few barriers set up across the county, however the county executive committee member finance and economic planning indicated that efforts are being done by the department to ensure compliance with the act to have barriers set up to all county exit points to ensure the county does not lose revenue.

The act in section 12 provides on the use of cess collected as ninety percent of all agricultural produce and products shall be used in maintaining agricultural infrastructure and provide other services related to agricultural areas where produce are produced in the county and three percent deposited in the county revenue account shall be used for cess, this however has not been implemented.

However, The County Executive Committee Member Finance and Economic Planning indicated that, once regulations which are underway are endorsed by the County Assembly, the cess account would be operationalized.

Sorry, I left out something. 33% deposited in the County Revenue Account shall be used for cess, committee's administrative purposes while remaining 7% shall be credited to county

revenue account. The 90% shall be administered under separate roads maintenance in the ministry of Roads And Public Works as I had indicated it is not yet implemented.

The committee general findings, the committee noted the following:

1). The regulations for better carrying out of the purposes and provisions of the under listed acts have not been submitted to the County Assembly for approval; that is the Bungoma County Alcoholics' drinks act of 2015, the Bungoma County Trade License Act of 2017, the Bungoma County Parking Management Act of 2017, the Bungoma County Property Hire And Lease act of 2017 and the Bungoma County Agricultural Produce Cess Act of 2017.

THE BUNGOMA COUNTY ALCOHOLIC DRINKS ACT, 2017.

The department indeed submitted intent to County Public Service Board to recruit the county director alcoholic drinks control which was dated 5th September, 2017. In response the county public service board in a letter dated 8th October, 2020 and 7th January, 2021 confirmed that funds have not been acted upon by the department of gender, culture, youth and sports in conjunction with the county treasury.

Another observation, the alcoholic drinks control fund account has not been opened for lack of approved regulations.

4). The committee noted laxity, in the Department of Gender, Culture, Youths and Sports evidenced by the delay in processing of the Bungoma Alcoholic Drinks Regulation. The regulations were formulated and validated back in 2016 but have never been finalized to date.

5). The committee was made aware that the Department of Gender, Culture, Youth and Sports had initially placed an officer to act on the capacity of director. County alcoholics drink control without approval and authorization by the county public service board in accordance with Section 59 (b) of the County Governments Act of 2012.

6). The Secretary to the County Public Service Board raised a red flag on the wage bill and thus recommended through circulars to county departments reference to County Public Service Board, d. volume 1 (9) dated 8th October, 2020 and further volume 151 dated 17th January, 2021 that departments to consider use of existing staff within the establishment, train them on relevant fields to curb the increase of the wage bill.

7). The committee observed disparity in the content of the appointment letters for sub-county committees dispatched in January, 2018. The letters were anchored in the provisions of the regulations which had not been endorsed and thus, not operational.

Observations on the County Trade Licensing Act of 2017

That, there was no letter of deploying an officer to perform the roles of the county licensing provided before the committee by CECM Finance and Economic Planning for consumption.

9). The officer deployed by the Office of Economic Planning to perform the roles of the county licensing officer was not sanctioned and authorized by the county public service board in accordance with Section 59 (b) of the County Governments Act of 2012.

THE BUNGOMA COUNTY PROPERTY HIRE AND LEASE ACT, 2017.

Observations

That, there was no effort made by the executive in maintaining records of hired and leased items and submit the copies of records to the County Assembly not later than ninety days from the end of each financial year.

11). The County Executive Committee Member for Lands, Urban, Physical Planning and Housing failed to appear before the committee despite, being invited. This was contrary to section 39 (2) of the county government act of 2012 which stipulates that a committee of the county assembly may require a member of the executive committee to;

- a. Appear and attend before the committee.
- b. Answer any question relating to the members responsibilities.

12). The cess account has not been operationalized due to lack of approved regulations which will provide further guidance on the usage of the 90% of all the assets and cess collected on agricultural produce or products in maintaining agricultural infrastructure in areas where the produce are produced in the county.

The committee's recommendations:

The committee hereby recommends as follows;

1. That within thirty days from the date of adoption of this report the department responsible for implementation of various acts to develop and submit to the county assembly the regulations for better carrying of the purposes and provisions of the under listed acts. The ones that we have discussed.
2. That the County Public Service Board to immediately within thirty days in accordance to Section 59 (b) of the County Governments Act of 2012 to designate officers to work on the capacity of director county alcoholic drink control and county license officer as per section four of the Bungoma County Alcoholic Drinks Control Act of 2015, and section four of The Trade Licensing Act of 2017 by use of the existing staff within the establishment to curb the increase of the county wage bill.
3. That, The County Executive Committee Member For Gender, Culture, Youth and Sports and the Chief Officer Gender and Culture jointly are individually warned and directed

that the department fourth with puts on hold the operationalization of the regulations that has not undergone public participation and approved by the county assembly compliance with the law.

4. That in compliance with Section 9 (2) of the Bungoma County Property Hire and Lease Act of 2017, The County Executive Committee Member For Finance And Economic Planning County Executive Member For Transport Roads, Infrastructure And Public Works And County Executive Committee Member For Agriculture, Livestock, Fisheries And Irrigation to jointly provide before the committee. All records of hired and leased items in the county within sixty days from the date of adoption.
5. That within thirty days from the adoption of this report, the Executive Committee Member For Lands, Urban Physical Planning And Housing to submit before the committee the implementation status of Section 4, (5) and 6 of the Bungoma County Parking Management Act of 2017, failure to which the committee in compliance with the Bungoma County Assembly Standing Order 191 (3) shall propose to the county assembly sanctions against the member of the County Executive for failing to provide the implementation status as required by the law.

Conclusion;

The committee shall endeavor follow up on the implementation of all house resolutions and ensure they are implemented.

I urge this Honorable House to adopt the report. Behind there is the adoption page of members and what follows are the annexure members.

May I call upon Hon. Sophie Marumbu an able vice chair of this committee to second this report for adoption. Thank you.

(Applause)

Mr. Deputy Speaker: Thank you, Hon. Sospeter Erastus Nyongesa.

Hon. Sophie Marumbu: Thank you, Honorable Speaker. First, I want to thank the chair for having gone through the report very elaborately and I believe we have all followed.

Secondly, I stand to second the report and urge this House to support the report with or without amendments.

Mr. Deputy Speaker: Thank you, Hon. Sophie for that precise secondment. Honorable members, a motion having been moved and dully seconded, I now propose the question that, this House adopts the report by Implementation Committee on the implementation status of the Bungoma County Alcoholic Drinks Control Act 2015, The Bungoma County Trade Licensing

Act 2017, The Bungoma County Packing Management Act 2017, The Bungoma County Property Hire And Lease Act 2017, The Bungoma County Agricultural Produce Cess Act 2017.

I propose.

(Question Proposed)

Very well Honorable members, I now put a question that a motion having been moved and duly seconded, I put a question that this House adopts the report by implementation committee on the implementation status of the Bungoma County Alcoholic Drinks Control Act 2015, The Bungoma County Trade Licensing Act 2017, The Bungoma County Packing Management Act 2017, The Bungoma County Property Hire and Lease Act 2017, and the Bungoma County Agricultural Produce Cess Act 2017.

(Question put and agreed to)

The Ayes have it! The report is adopted accordingly.

(Applause)

Honorable members, there being no any other business on the Order Paper that being the last item, this House adjourns to tomorrow 2:30 p.m.

(House Adjourns)