

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BUSIA COUNTY ACTS, 2017

NAIROBI, 4th July, 2017

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THE BUSIA COUNTY ENERGY DEVELOPMENT ACT, 2017

No. 5 of 2017

Date of Assent: 29th May, 2017

Date of Commencement: See Section 1

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**THE BUSIA COUNTY ENERGY DEVELOPMENT
ACT, 2017**

AN ACT of the County Assembly of Busia to provide for County Government to promote the production of energy through the use of renewable energy sources in accordance with climate, environment and macroeconomic considerations in order to reduce dependence on fossil fuels, ensure security of supply and reduce emissions of Carbon Dioxide and other greenhouse gases and for connected purposes

ENACTED by the County Assembly of Busia, as follows—

PART I— PRELIMINARIES

1. This Act may be cited as the County Energy Development Act, and shall come into operation upon expiry of fourteen days after gazettment. Short title and commencement

2. In this Act, unless the context otherwise requires— Interpretation
“biomass” means non-fossilized and biodegradable organic material originating from plants, animals and micro-organism and includes bio-ethanol, bio-diesel, biogas, charcoal, fuel-wood and agro-waste;

“Member of the Executive Committee” means the Member of the Executive Committee for the time being responsible for energy;

“conservation” means any reduction in consumption of energy as a result of increase in the efficiency in supply and use of energy;

“consumer” means any person supplied or entitled to be supplied with electrical energy or petroleum, but does not include a person supplied with electrical energy or petroleum for delivery or supply to another person;

“distribution” means the ownership, operation, management or control of facilities for the movement or delivery of energy to enable supply to consumers;

“electrical energy” means energy involving the use of electric current which may be produced either by mechanical, chemical, photovoltaic or any other means;

“electricity” means electrical energy generated, transmitted, supplied or traded for any purpose or used for any purpose except for the transmission of a message;

“energy” means any source of electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, or thermal power for any use; and includes electricity;

“energy conservation” means the efficient, economic and cost effective production and use of energy;

“generate” means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

“greenhouse gases” mean gases present in the atmosphere, which reduce the loss of heat into space and thereby contributing to an increase in global temperatures through a process known as the greenhouse effect;

“Integrated energy planning” means the planning of the energy sector and energy resources as an integrated process used to support evidence-based decision-making.

“licensee” means a holder of any licence or permit issued under this Act or a national legislation;

“local community” means a person or group of persons who are directly affected by a project;

“person” means any company or body corporate or association or public authority or county government or individual or body of individuals or artificial juridical person, whether incorporated or not;

“prescribed” means prescribed by regulation;

“regulation” means any regulation made in terms of this Act;

“renewable energy” means energy generated from natural non-depleting resources including solar energy, wind energy, biomass energy, biological waste energy, hydro energy, geothermal energy and ocean and tidal energy; and

“this Act” includes regulations made in terms of this Act.

“small hydro” means a hydro power plant with a generation capacity greater than five megawatt but not exceeding ten megawatts;

“street” includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or

not, over which the public have a right of way, and also the roadway and footway over any public bridge, or causeway.

3. The objects of this Act are to—

Objectives of the
Act

- (a) ensure uninterrupted supply of energy to the County;
- (b) promote diversity of supply of energy and its sources;
- (c) facilitate effective management of energy demand and its conservation;
- (d) promote energy research;
- (e) promote appropriate standards and specifications for the equipment, systems and processes used for producing, supplying and consuming energy;
- (f) ensure collection of data and information relating to energy supply, transportation and demand;
- (g) provide for optimal supply, transformation, transportation, storage and demand of energy that are planned, organised and implemented in accordance with a balanced consideration of security of supply, economics, consumer protection and a sustainable development;
- (h) provide for certain safety, health and environment matters that pertain to energy;
- (i) facilitate energy access for improvement of the quality of life of the people;
- (j) commercialize energy related technologies;
- (k) ensure effective planning for energy supply, transportation and consumption; and
- (l) contribute to sustainable development of the County's economy.

PART II— REGULATORY FRAMEWORK

4. Subject to the provisions of this Act, the Member of the Executive Committee in consultation with the directorate shall be responsible for policy making in the energy sector in the County and implementation of this Act.

Responsibility for
policy in the
energy sector

5. There is established the County Energy Services Directorate (herein after referred to as 'the Directorate')

Establishment of
the County Energy
Services
Directorate
Functions of the
Directorate

6. Subject to this Act, the functions of the Directorate shall be to—

- (a) advise the County government on matters relating to energy services;
- (b) in accordance with the national policy, existing laws and standards, develop and set guidelines for standards in the energy sector in the County;
- (c) in collaboration with other stake holders, mobilize resources necessary for the development, improvement and maintenance of the County energy sources;
- (d) organize, facilitate or undertake such activities or projects as may be necessary and or incidental to the foregoing; and
- (e) perform such additional functions related to the energy sector as the member of the executive Committee may from time to time assign.

7. (1) The Directorate shall be headed by a Director.

Staff of the
Directorate

(2) The Director shall be an officer in the County public service competitively sourced from persons with knowledge in the field of engineering.

(3) The Member of the Executive Committee shall on request by the Director and in consultation with the County Public Service Board deploy such number and cadre of public officers in the Directorate as may be necessary for the effective and efficient performance by the Directorate of its functions under this Act.

8. An employee of the Directorate or any person acting on behalf of the Directorate in discharging duties or functions provided by the Act shall not be liable to any civil action or other proceedings for damages on account of or in respect of any act or omission committed in good faith.

Protection from
personal liability

9. The Directorate shall in consultation with the Member of the Executive Committee formulate and implement immediate and long term administrative or

Measures to
encourage
investment in the
energy sector

policy measures to encourage the participation of development partners and the private sector in the development and maintenance of energy sources in the County.

PART III— PROVISIONS ON PERFORMANCE

10. The County Government, through the County department responsible for energy, shall implement the national energy policy and plan in the County to achieve the following objectives—

Implementation of
the National
Energy Policy and
Plan.

- (a) sustainable energy supply, taking into account protection and conservation of the environment;
- (b) access to energy services and supply;
- (c) efficient functioning of energy markets;
- (d) fair competition in the energy sector;
- (e) secure and reliable supply of energy;
- (f) energy efficiency and conservation;
- (g) adequate attention to all forms of energy;
- (h) development of renewable and indigenous forms of energy;
- (i) targets for clean energy;
- (j) interconnection and integration of energy networks;
- (k) regional and international co-operation in energy trade, investments and development;
- (l) enhance research, development and demonstration;
- (m) facilitation of local manufacture of energy plant, equipment and appliances;
- (n) protection of consumer interests;
- (o) elaborate disaster response and management strategy;
- (p) involvement of citizens, communities and county governments in policy formulation integrated national energy plan.

11.(1) The County Government shall facilitate provision of affordable energy services to all areas in the County in accordance to the energy Plan.

Obligation to
provide energy in
all areas

(2) Where the County government determines that a supply of energy in any area is necessary and upon assessment it is established to be uneconomical or commercially inexpedient to provide for the necessary reticulation by any licensee, the Member of the Executive Committee, may undertake the provision of any such works or provide the funds necessary for the development of such works.

(3) In endeavoring to provide affordable energy services to all, the County government shall support the development and use of modern and efficient emerging technologies.

(4) The County government shall endeavor to provide and facilitate the acquisition of necessary facilities for research and adoption of these new and emerging technologies.

12. (1) The Member of the Executive Committee shall adopt measures that provide for the universal access to appropriate forms of energy or energy services for all the people of the County at affordable prices.

Energy access by
households

(2) The measures contemplated in subsection (1) must take into account—

- (a) the safety, health and environmental suitability of such energy;
- (b) the availability of energy resources;
- (c) the optimization of existing energy infrastructure;
- (d) the need for new infrastructure;
- (e) the provision of information and training regarding energy and its optimal utilization;
- (f) the sustainability of the energy provision;
- (g) affordability;
- (h) cost effectiveness; and
- (i) the County's commitment to provide free basic electricity to poor households.

13. The member of the Executive Committee, may, after consultation with the Members of the Executive Committees of the relevant departments adopt measures not

Safety, health and
environment

contemplated in any other legislation to minimize the negative safety, health and environmental impacts of energy carriers.

14. (1) The Member of the Executive Committee shall develop and, on an annual basis, review and publish the Integrated Energy Plan in the *County Gazette*. Integrated energy planning

(2) The Integrated Energy Plan shall deal with issues relating to the supply, transformation, transport, storage and demand of energy in a way that accounts for—

- (a) security of supply;
- (b) economically available energy resources;
- (c) affordability;
- (d) universal accessibility and free basic electricity;
- (e) social equity;
- (f) employment;
- (g) the environment;
- (h) international commitments;
- (i) consumer protection; and
- (j) contribution of energy supply to socio-economic development.

(3) The Integrated Energy Plan shall—

- (a) take account of plans relating to transport, electricity, petroleum, water, trade, macro-economy energy infrastructure development, housing, air quality management, greenhouse gas mitigation within the energy sector and integrated development plans of sub-counties and villages;
- (b) inform and be informed by plans from all supply, production and demand sectors whose plans impact on or are impacted by the Integrated Energy Plan; and
- (c) be based on the results of the energy analysis.

(4) The development of the Integrated Energy Plan shall take into account—

- (a) sustainable development;

- (b) optimal use of indigenous and regional energy resources;
- (c) balance between supply and demand;
- (d) economic viability;
- (e) environmental, health, safety and socio-economic impacts; and
- (f) developmental requirements of the county government.

(5) The Integrated Energy Plan shall have a planning horizon of no less than 20 years.

(6) The Integrated Energy Plan shall—

- (a) serve as a guide for energy infrastructure investments;
- (b) take into account all viable energy supply options; and
- (c) guide the selection of the appropriate technology to meet energy demand.

(7) Before finalizing the Integrated Energy Plan, the Member of the Executive Committee shall—

- (a) invite public comments; and
- (b) duly consider such comments.

15. The Member of the Executive Committee may, for the purposes of ensuring security of supply, direct any state-owned entity, in a prescribed manner, to—

Investment in and
maintenance of
Energy
Infrastructure

- (a) undertake security of supply measures;
- (b) provide for adequate investment in energy infrastructure;
- (c) invest in critical energy infrastructure; and
- (d) ensure upkeep of all critical energy infrastructure.

PART IV— MISCELLANEOUS

16. (1) The County Department of Energy shall accelerate the exploration and development of renewable energy resources in the County to—

Exploration of
renewable energy
sources and fiscal
and non-fiscal
incentives

- (a) achieve energy self-reliance;

- (b) reduce the county's dependence on fossil fuels;
- (c) minimize the county's exposure to price fluctuations;
- (d) ensure the adoption of clean energy to mitigate climate change; and
- (e) promote socio-economic development in rural areas.

(2) The Member of the Executive Committee shall liaise with the Cabinet Secretary responsible for energy to adopt short-term, medium-term and long-term measures to increase the utilization of renewable energy in the County by providing fiscal and non-fiscal incentives to investors.

17. The County Department of Energy shall oversee the implementation of the Large-scale Renewable Energy and the Small-scale Renewable Energy Schemes to encourage generation of electricity from renewable energy sources in the County.

Implementation of renewable projects in the County.

18. The County Department of Energy shall take appropriate legal and administrative measures to implement in the County national government standards and guidelines on—

Obligation to implement national standards and guidelines

- (a) Portfolio Standard;
- (b) Feed-In-Tariff;
- (c) Net Metering;
- (d) Green Energy Option; and
- (e) such other prescribed standards for the development of renewable energy.

19. The County Department of Energy shall adopt legal regulatory measures to ensure good governance and transparency in the exploitation of renewable energy resources through:

Good governance and transparency in the exploitation of renewable energy resources.

- (a) establishment of multi-sectoral partnerships;
- (b) community-level participation; and
- (c) country-side development.

20. (1) The Member of the Executive Committee may, after consultation with those Members of the Executive Committee whose areas of responsibility will be affected by the proposed regulations, without derogating from his or her general regulatory powers, by notice in the *County Gazette* make regulations with respect to renewable energy development regarding—

Regulations

- (a) the publication of energy statistics or information;
- (b) the type, manner and form of energy data and information that must be provided by any person;
- (c) the form and manner of the link between the energy database and information system to any other system within the public administration;
- (d) minimum contributions to national energy supply from renewable energy sources;
- (e) the nature of the sources that may be used for renewable energy contributions to the county energy supply;
- (f) measures and incentives designed to promote the production, consumption, investment, research and development of renewable energy;
- (g) minimum levels of energy efficiency in each sector of the economy;
- (h) steps and procedures necessary for the application of energy efficiency technologies and procedures;
- (i) labelling for energy efficiency purposes of household appliances, devices and motor vehicles;
- (j) prohibition of the manufacture, or importation or sale of electrical and electronic products and fuel burning appliances for reasons of poor energy efficiency;
- (k) standards and specifications for energy carriers;
- (l) energy efficiency standards for specific technologies, processes, appliances, devices, motor vehicles and buildings;

- (m) holding of strategic energy feedstocks and carriers, including financing mechanisms for such stocks;
- (n) energy conservation measures to be used during energy shortage, which may include but not limited to the amount of energy to be saved, the duration for such measures and penalties associated with non-compliance to such measures;
- (o) measures to ensure adequate provision of energy-related infrastructure;
- (p) measures to ensure operating reliability of all key energy infrastructure, to the minimum standards as may be determined by the Member of the Executive Committee;
- (q) measures to promote security of supply through access to common infrastructure by any party, where not provided for under any other legislation;
- (r) the prohibition of disposal methods of certain fuels or post-combustion residues;
- (s) the safe, healthy and sustainable use of energy, standards and specifications, not elsewhere legislated or regulated, for—
 - (i) the composition, colouring, labelling and form of energy carriers;
 - (ii) low-smoke fuels;
 - (iii) the prohibition of the sale or combustion of polluting fuels;
 - (iv) cooking, heating, lighting and other energy consuming household appliances;
 - (v) transport of energy carriers;
 - (vi) the storage and packaging of energy carriers; and
 - (vii) any other energy-consuming appliance in all sectors of the economy.
- (t) any other matter that may or has to be prescribed, determined or provided for by regulation in terms of this Act.

(2) Before promulgating regulations, the Member of the Executive Committee shall—

- (a) invite public comments on such regulations; and
- (b) duly consider such comments.

(3) The regulations prescribed under subsection (1) shall be approved by the County Assembly before they take effect.