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SUPPLEMENT***

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THE BUSIA COUNTY ASSEMBLY POWERS AND PRIVILEGES BILL, 2015

A Bill for

AN ACT of the County Assembly of Busia to declare and define certain powers, privileges and immunities of the County Assembly and of the Members of the Busia County Assembly; to secure freedom of speech in the County Assembly; to make provisions regulating admittance to and conduct within the precincts of the County Assembly; to give protection to the persons employed in the publication of the reports and other papers of the County Assembly; and for purposes incidental to or connected thereto

ENACTED by the County Assembly of Busia, as follows—

PART I— PRELIMINARY

1. This Act may be cited as the Busia County Assembly Powers and Privileges Act, 2015 and shall come into operation upon publication in the *County Gazette* or *Kenya Gazette* Short title.

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

“Assembly” means the Busia County Assembly;

“Chamber” means the chamber in which the proceedings of the Assembly are conducted, and includes any galleries and places therein provided for members of the public or representatives of the press, and any lobbies, offices or precincts used exclusively in connection with the proceedings of the House;

“Clerk” means the person appointed to be Clerk to the Assembly pursuant to Section 13 of the County Government Act;

“committee” means any standing, sessional, select or other committee of the Assembly;

“Committee of Powers and privileges” means the

Committee of Powers and Privileges established under section 16 of this Act ;

“County” means Busia County;

“journals” means the minutes of the Assembly or the official record of the votes or proceedings thereof;

“Member” means a member of the County Assembly as defined at Article 177 (1) of the Constitution;

“National security organ” means a national security organ specified under Article 239 (1) of the Constitution;

“Sergeant-at-Arms” means the person appointed to be the Sergeant-at- Arms of the Assembly;

“Speaker” means the person elected to be Speaker of the Assembly under the Constitution, and includes the Deputy Speaker elected under the Constitution or any Member while for the time being presiding at a sitting of the Assembly;

“staff of the Assembly” means any person appointed as a member of staff of the Assembly and includes ward partisan staff;

“Standing Orders” means the Standing Orders of the Assembly for the time being in force;

“stranger” in relation to the Assembly means any person other than the Speaker, a member of the Assembly or staff of the Assembly.

3. The objects and purpose of this Act include—

Object and
Purpose of Act.

- (a) to declare and define certain powers, privileges and immunities of the County Assembly and of the Members of the Busia County Assembly;
- (b) to secure freedom of speech in the County Assembly;
- (c) to regulate admittance to and conduct within the precincts of the County Assembly;
- (d) to give protection to the persons employed in the publication of the reports and other papers of the County Assembly.

PART II—PRECINCTS OF THE COUNTY ASSEMBLY

4. (1) The precincts of the County Assembly shall comprise the area of land and every building or part of a

Description of
precincts of the
County Assembly.

building under the Assembly's control including—

- (a) the chambers in which the proceedings of the Assembly are conducted including the galleries and lobbies of the chambers;
- (b) all the parts of the buildings in which the chambers are situated including the entrances, forecourts, yards, gardens, enclosures or open spaces appurtenant thereto;
- (c) committee rooms and other meeting places provided or used for Assembly's purposes;
- (d) the offices of the Assembly including the places within such offices that are provided for the use of members, members of staff, members of the public and the press;
- (e) places provided for the use or accommodation of the members, members of the public and representatives of the press used in connection with the proceedings of Assembly or its committees; and
- (f) all other buildings or parts of a building provided or used in connection with the proceedings of the Assembly or its committees while so used by the Assembly including such premises as may be leased by the Assembly.

(2) Where the Assembly or a committee convenes outside the premises ordinarily used for its sittings, this Act shall apply as if the premises where the Assembly or the committee is sitting were within the precincts of the County Assembly.

5. An officer of a national security organ may, with the permission and authority of the Speaker of the Assembly—

Presence of an officer of a national security organ within the precincts.

- (a) enter upon or remain in the precincts of the Assembly for the purpose of performing any function of that national security organ; or
- (b) perform any other function within the precincts of the Assembly.

6. A member of the public may, subject to this Act, the Standing Orders and such orders and directions as may be issued by the Speaker, access such places within

Access to precincts of the County Assembly.

the precincts of the Assembly as may be specified.

7. (1) No process issued by any court in Kenya in the exercise of its civil jurisdiction shall be served or executed—

Service of civil process.

- (a) within the precincts of the Assembly while the Assembly is sitting; or
- (b) through the Speaker, or any officer of the Assembly unless it relates to a person employed within the precincts of Assembly or to the attachment of a member's salary.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of the business and the affairs of the Assembly.

8. (1) The Speaker may designate areas within or outside the precincts of the Assembly where members of the public may, pursuant to Article 37 of the Constitution, assemble, demonstrate, picket or present petitions or memoranda to the Assembly.

Assembling, Demonstrating and Picketing.

(2) Any assembling, demonstration, picketing and presentation of petitions or memoranda to the Assembly under subsection (1) shall be in accordance with such guidelines as the Speaker may issue.

(3) A person who assembles demonstrates or pickets contrary to the provisions of this section may be removed from the precincts of the Assembly on the direction of the Speaker, a duly authorized member of staff or a police officer.

(4) The right of assembly, demonstration, picketing and petition under Article 37 of the Constitution shall be limited as specified under this section for the purposes of facilitating the orderly conduct of business and affairs of the Assembly.

PART III—PRIVILEGES AND IMMUNITIES

9. (1) There shall be freedom of speech and debate in the Assembly.

Freedom of Speech.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this Part—

- (a) for the purposes of facilitating the immunities of

the Assembly and the committees of the Assembly;

- (b) for facilitating the freedom of speech and debate as set out in section 16 of the County Government Act, 2012.

10. Where any Member has been sentenced to an imprisonment for a period of at least six months, adjudged to be of unsound mind, adjudged bankrupt, or is found in accordance with any law to have misused or abused a State office or a public office or in any way to have contravened Chapter six of the Constitution, the decision shall not have effect for the purposes of Article 194 (1) (g) of the Constitution until all possibility of appeal or review of the relevant decision or sentence has been exhausted.

Postponement of disqualification to enable appeal.

11. No proceedings or decision of the Assembly or a committee of powers and Privileges acting in accordance with this Act shall be questioned in any Court.

Proceedings not to be questioned in court.

12. (1) No civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to the Assembly or a Committee, or by reason of any matter or thing brought by him or her therein by a report, petition, Bill, resolution, motion or other document written to the Assembly.

Immunity from Legal Proceedings.

(2) No civil suit shall be commenced against the Speaker, the Leader of the Majority Party, the Leader of the Minority Party, the Chairperson of Committees or any Member for any act done or ordered by them in the discharge of the functions of their office.

(3) The Clerk or other members of staff shall not be liable to be sued in a civil court or joined in any civil proceedings for an act done or ordered to be done in the discharge of their functions relating to proceedings of the Assembly or committee of the Assembly.

13. A Member shall not be liable to arrest for a civil debt while the Member is going to, attending or returning from a sitting of the Assembly or a committee of the Assembly.

Freedom from arrest for civil debt during session.

14. (1) No Member or member of staff, and no person employed to take minutes of evidence before the

Funds to be retained in the Fund Account.

Assembly or any committee, shall give evidence in any court, tribunal or elsewhere in respect of the contents of those minutes of evidence or of the contents of any document laid before the Assembly or that committee or in respect of any proceedings or examination held before the Assembly or that committee without special leave first obtained from the Assembly.

(2) The special leave referred to in subsection (1) may be granted during a recess or adjournment by the Speaker, or in the absence or other incapacity of the Speaker, the Clerk.

(3) Subject to the provision of Article 35 of the Constitution and to any written law relating to data protection and freedom of information for the time being in force, the special leave referred to in subsection (1) may be declined where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage in the Assembly or in a committee;
- (c) there is failure to pay such fee as may be reasonably required in the circumstances; or
- (d) the applicant fails to satisfy any confidentiality requirements of the Assembly.

(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section for purposes of facilitating freedom of speech and debate as contemplated under Section 16 of the County government Act, 2012.

15. Where at any time any question arises in the Assembly or in a committee with regard to—

- (a) the right or power of the Assembly or a committee to hear, admit or receive oral evidence;
- (b) the right or power of the Assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before the Assembly or committee; or

Determination of a question arising in the House on admission of evidence.

- (c) the right or privilege of any person (including a member of the Assembly or committee) to refuse to produce a paper, book, record or document or to lay any paper, book, record or document before Assembly or committee, that question shall, where no express provision is made in this Act for the determination of that question, be determined in accordance with the usages, forms, precedence, customs, procedures and traditions of the County Assembly of Busia and other jurisdictions to the extent that these are applicable to Kenya.

16. (1) There shall be established a committee, to be known as the Powers and Privileges Committee, consisting of the Speaker, the Deputy Speaker and not less than three and not more than seven other Members under the chairmanship of the Speaker.

Committee of
Powers and
Privileges.

(2) The Members of the Powers and Privileges Committee other than the Speaker and the Deputy Speaker shall be nominated by the Selection Committee of the Assembly.

(3) The quorum of the Powers and Privileges Committee established under subsection (1) shall not be less than half of the membership, but otherwise, subject to this Act, the Committee shall regulate its own meetings and its own procedure.

(4) The Powers and Privileges Committee shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any Member of the Assembly of the Code of Conduct issued under section 44, or into any conduct of any Member of the Assembly within the precincts of the Assembly other than the chamber which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Member thereof, or to be contrary to the best interests of the Assembly or the Members thereof.

(5) The Powers and Privileges Committee shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.

(6) The Assembly shall, in accordance with rules made by it (which rules need not be published in the Gazette), consider the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules.

(7) Any disciplinary action such as is referred to in subsection (6) may include suspension from the service of the Assembly.

17. The Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member—

Conduct
constituting breach
of privilege

- (a) contravenes sections 25, 26(l), 27 or 29;
- (b) commits an act mentioned in section 28(l)(a), (b) or (2) and (3)(d), (e), (f) or (g);
- (c) willfully fails or refuses to obey any rule, order or resolution of the Assembly;
- (d) contravenes any provision of the Speaker's orders issued under section 43 of this Act; or
- (e) conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of the Assembly, or of the Members or to be contrary to the best interests of Assembly or its Members

18. (1) The Assembly shall have all the powers necessary for inquiring into and pronouncing upon any act or matter constituting breach of privilege in terms of section 17.

Determination of
breach of
privilege.

(2) An enquiry by the Assembly into a matter shall not preclude criminal investigations or criminal proceedings against a Member in connection with the matter concerned.

(3) Where the Assembly finds that a Member has committed a breach of privilege, the relevant committee may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose any or more of the following penalties—

- (a) a formal warning;
- (b) a reprimand;

- (c) an order to apologize to the Assembly or a person in a manner to be recommended by the Committee of Powers and Privileges;
 - (d) the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by the Assembly;
 - (e) the removal or suspension for a specified period of time of the Member from any Assembly position occupied by the Member;
 - (f) such fine in terms of the Member's monthly salary and allowances as the Assembly may determine;
 - (g) the suspension of the Member for such period as the Assembly may decide, whether or not the Assembly or any of its committees is scheduled to meet during that period;
 - (h) vacation of seat pursuant to Articles 75(2) (b) and 194 (1) (c) of the Constitution.
- (4) Where the Assembly finds a Member has committed a breach of privilege, the Assembly may, where appropriate, instead of or in addition to the imposition of a penalty under subsection (3), refer the matter to the Director of Public Prosecutions.
- (5) A fine imposed under subsection (3) shall—
- (a) be paid by the Member into such bank account of the Assembly as shall be specified by the accounting officer of the Assembly;
 - (b) be deducted from the Member's salary; or
 - (c) where it is not recovered under paragraphs (a) or (b), be recovered by means of a civil action in court.
- (6) The protection of the right of access to justice under Article 48 of the Constitution shall be limited as specified under this Part—
- (a) for the purposes of protecting the privileges and immunities of the Assembly and committees of the Assembly conferred by this Act in accordance with Article 117 of the

Constitution; and

- (b) for facilitating the orderly conduct of the business and the affairs of the Assembly.

19. (1) Where any Member of the Assembly is, under the Standing Orders or under section 18 (3) (g) suspended from the service of the Assembly, he or she shall, during the period of suspension and for the purposes of this Act, be deemed to be a stranger and in addition, shall not enter the precincts of the Assembly without the written consent of the Speaker.

Suspended member deemed to be stranger.

(2) The protection of the right of freedom of movement under Article 39 of the Constitution shall be limited as specified under this section—

- (a) for the purposes of protecting the privileges and immunities of the Assembly and committees of the Assembly conferred by this Act in accordance with Article 117 of the Constitution; and
- (b) for facilitating the orderly conduct of the business and the affairs of the Assembly.

20. The Speaker, the Sergeant -at- Arms and any other officer authorized in that behalf by orders issued under section 43, may at any time order any stranger to withdraw from the chamber or the precincts of the Assembly.

Power to order withdrawal of strangers.

PART IV—SUMMONING OF WITNESSES

21. (1) The Assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, the Assembly and its committees shall have the same powers as the High Court as specified under Article 195 of the Constitution.

Invitation and summoning.

(2) Summons issued under subsection (1) shall be issued by the Clerk on the direction of—

- (a) the Speaker; or
- (b) the chairperson of a committee acting in accordance with a resolution of the committee.

(3) The general form of summons to witnesses shall

be as set out in the First Schedule.

(4) The summon shall be served by a member of staff or a police officer who is duly authorized by the Clerk by delivering a copy of the summons—

- (a) to the person mentioned in the summons; or
- (b) at that person's usual or last known place of residence, employment or business or left with a person who is over the age of eighteen years and who resides or is employed at that place.

(5) Where the summon is to be served on a corporation the summons shall be served—

- (a) on the secretary, director or other officer authorized by the corporation; or
- (b) if the officer serving the summon is unable to find any of the persons mentioned in paragraph (a)—
 - (i) by leaving it at the registered office of the corporation;
 - (ii) by sending it by prepaid registered post or by licensed courier service provider approved by the committee to the registered postal address of the corporation;
 - (iii) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or
 - (iv) by sending it by registered post to the last known postal address of the corporation.

(6) The serving officer in all cases in which summons have been served under this section shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons were served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons.

(7) The affidavit of service shall be in the form set out in the Second Schedule with such variations as circumstances may require.

(8) Any person who knowingly swears a false affidavit of service commits the offence of perjury and may be subject to such disciplinary action as the County Assembly Service Board may determine.

(9) A return by a person who serves a summons under this section shall be prima facie proof of the service of the summons.

(10) A person invited or summoned in terms of this section by the Assembly or a committee to attend a sitting of the Assembly or committee shall be paid such amount of money as shall be approved by the Clerk as reimbursement for the expenses incurred.

22. (1) Every person who is summoned to give evidence or to produce a document before the Assembly or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a court of law.

Witnesses may be examined on oath.

(2) A person who is being examined under oath or affirmation in terms of section 21 shall be required to answer any question put to the person in connection with the subject of the inquiry and to produce any document or information that the person is requested to produce despite the fact that the answer or the document would incriminate or expose the person to criminal or civil proceedings in a court of law.

(3) Evidence given under oath or affirmation by a person before the Assembly or a committee shall not be used against the person in a court or other place outside the Assembly except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated under section 27 (1) (c) or (3) (g) or (h).

23. (1) Where any person ordered to attend to give evidence or to produce any paper, book, record or document before the Assembly or a committee refuses to answer any question or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the Speaker may excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

Privileges of witnesses.

(2) Where any person ordered to attend or to give

evidence or to produce any paper, book, record or document before any committee refuses to answer any question or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the chairperson of the committee may report the refusal to the Speaker with the reasons thereof, and the Speaker may thereupon excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

24. (1) No public officer shall refuse to—

Duty of public officers to give evidence.

- (a) produce before the Assembly or a committee any paper, book, record or document, or
- (b) give evidence before the Assembly or Committee, relating to the correspondence of any national security organs as set out under Article 239 of the Constitution, or any independent Commission set out under Article 248 of the Constitution or any public office as defined under Article 260 of the Constitution.

(2) Any public officer who contravenes subsection (1) commits an offence.

(3) Where the Assembly passes a resolution that a public officer has contravened subsection (1), the resolution of the Assembly shall constitute a ground for removal from office of the public officer in accordance with the Constitution or any applicable law.

PART V—PUBLICATIONS AND BROADCASTING

26. (1) A person shall not be liable to civil or criminal proceedings in respect of the publication of any journal by order or under the authority of the Assembly or a committee.

Protection in respect of publications

(2) A Member or a member of staff shall not be liable to civil or criminal proceedings in respect of—

- (a) the publication of a document that has been submitted to or is before the Assembly or a committee;
- (b) any publication or information given out within the course of duty as a Member or member of staff.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating—

- (a) the conduct of business and the affairs of Assembly;
- (b) the attainment of freedom of speech and debate in the Assembly in accordance with Article 117 of the Constitution.

27. (1) A person shall not publish or tender in evidence—

Unauthorized publishing.

- (a) any journal if the publication of that journal is prohibited by or in terms of the Standing Orders or an order or resolution of the Assembly;
- (b) any journal purporting that it has been published under the authority of the Assembly or a committee or the Speaker while it has not been published under such authority;
- (c) any journal purporting that it is a verbatim account of the proceedings of the Assembly or a committee while it is not such account.

(2) In any civil or criminal proceedings instituted for publishing any extract from or abstract of any journal referred to in subsection (1), if the court is satisfied that the extract or abstract was published bona fide and without malice, judgment or verdict, as the case may be, shall be entered for the Defendant or Accused.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating—

- (a) the conduct of business and the affairs of the Assembly;
- (b) the attainment of freedom of speech and debate in the Assembly in accordance with Article 117 of the Constitution.

28. (1) A person shall not broadcast, televise or otherwise transmit by electronic means the proceedings of the Assembly or a committee or any part of those proceedings except by order or under the authority of Speaker or chairperson of a committee of the Assembly and in accordance with the Standing Orders and the conditions and directions determined by the Speaker.

Broadcasting
proceedings of

(2) A person shall not be liable to civil or criminal proceedings in respect of the broadcasting, televising or electronic transmission of proceedings of the Assembly or a committee if it has been authorized under subsection (1) and complies with the conditions, if any, determined under that subsection.

(3) The right of access to information under Article 35 and freedom of the media under Article 34 of the Constitution shall be limited as specified under this section—

- (a) for the purposes of facilitating the immunities of the Assembly and the committees;
- (b) for facilitating the freedom of speech and debate as set out in Article 117 of the Constitution.

PART VI—OFFENCES AND PENALTIES

29. (1) A person shall not—

Prohibited acts.

- (a) assault, obstruct, molest or insult any Member proceeding to, being within or leaving the precincts of Parliament, or endeavour to compel any member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before the Assembly or any committee;
- (b) assault, interfere with, molest, resist or obstruct any member of staff while in the execution of his or her duty;
- (c) assault or threaten a Member or unlawfully deprive a Member of any benefit on account of the Member's conduct in the Assembly;
- (d) while the Assembly or a committee is sitting, create or take part in any unlawful disturbance

which interrupts or is likely to interrupt the proceedings of the Assembly or any committee while the Assembly or the committee is sitting; or

- (e) fail or refuse to comply with an instruction by a duly authorized member of staff or a police officer regarding—
 - (i) the presence of the public in the precincts of the Assembly including a meeting within the precincts of the Assembly; or
 - (ii) the possession of any article, including a firearm, within the precincts.

(2) A person, including a member who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

30. (1) A person commits an offence where the person—

Offences relating
to witnesses

- (a) having been duly summoned in terms of section 21 fails, without sufficient cause to—
 - (i) attend at the time and place specified in the summons; or
 - (ii) remain in attendance until excused from further attendance by the person presiding at the inquiry;
- (b) when called upon under section 21, refuses to be sworn in or to make an affirmation as a witness;
- (c) fails or disobeys without sufficient cause to—
 - (i) answer fully and satisfactorily all questions lawfully put to the person under section 21;
 - (ii) produce any document, paper, book or record in the person's possession or custody which the person has been required to produce under section 21.

(2) A person who commits an offence under subsection (1) is liable on conviction, to a fine not

exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(3) A person commits an offence where the person—

- (a) threatens, obstructs, assaults or insults a member of staff or police officer carrying out services of summons issued under this Act;
- (b) uses abusive language directed at member, a committee or the Assembly;
- (c) threatens or obstructs another person in respect of evidence to be given before the Assembly or a committee;
- (d) induces another person to—
 - (i) refrain from giving evidence to or to produce a document before the Assembly or a committee or;
 - (ii) give false evidence before or the Assembly or a committee;
- (e) assaults or penalizes or threatens another person or deprives that person of any benefit on account of the giving or proposed giving of evidence before the Assembly or a committee;
- (f) with intent to deceive or mislead or the Assembly or a committee, produces a false, untrue, fabricated or falsified document; or
- (g) wilfully furnishes the Assembly or a committee with information which is false or misleading or makes a statement before the Assembly or a committee that is false or misleading.

(4) A person who commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment.

31. (1) A person shall not, by fraud, intimidation, force, insult or threat of any kind, or by the offer or

Improper
influence of
members.

promise of any inducement or benefit of any kind, or by any other improper means—

- (a) influence a Member in the performance of the Member's functions as a Member;
- (b) induce a member to be absent from the Assembly or a committee at a particular time; or
- (c) attempt to compel a member to declare himself or herself in favour or against a matter pending before or proposed or expected to be submitted to the Assembly or a committee.

(2) A Member shall not solicit, receive or accept any fee, compensation, gift, reward, favour or benefit of any kind for the Member or another person for in respect of—

- (a) voting in any particular manner or not voting on a matter before the Assembly;
- (b) promoting or opposing anything pending before or proposed or expected to be submitted to the Assembly; or
- (c) making a representation to the Assembly.

(3) A person who contravenes this sections commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment..

32. Any person who prints or causes to be printed a copy of any Act now or hereafter in force, or a copy of any report, paper, minutes or votes and proceedings of the Assembly as purporting to have been printed by the Government Printer or by or under the authority of the Assembly, or by the Speaker, and it is not so printed, or tenders in evidence any copy purporting to be so printed knowing that it was not so printed, shall be guilty of an offence and liable, on conviction before a Magistrate's Court, to imprisonment for a term not exceeding three years.

Printing of false material.

33. Where a Member has been convicted of an offence and sentenced to a period of imprisonment of

Duty of Court Registrar.

six months or more without the option of a fine, the Registrar of the relevant Court shall inform the Speaker of—

- (a) the nature of the offence and the sentence imposed; and
- (b) any appeal that is lodged against the conviction or the sentence and the outcome of the appeal.

34. A State officer who is convicted of an offence under this Act shall be deemed to have committed an act of gross misconduct within the meaning of Standing Order 106 of the Standing Orders

Breach to constitute gross misconduct.

35. (1) A person commits an offence where the person—

Offences relating to access of the precincts.

- (a) enters or attempts to enter a Chamber of the Assembly or the precincts of the Assembly in contravention of section 6 of this Act;
- (b) fails or refuses to withdraw from the precincts of Assembly when ordered to do so; or
- (c) contravenes any order made under this Act regulating the admittance of the public or the conduct of the public within the precincts of the Assembly.

(2) A person who commits an offence under subsection (1) 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 to both.

36. A person commits an offence if the person —

Defamation against the Assembly.

- (a) publishes any false or scandalous libel in the Assembly, its committees or its proceedings; or
- (b) speaks words defamatory of the Assembly, its committees or its proceedings.

37. A person convicted of an offence under this Act for which no penalty is provided shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

General penalty.

38. (1) Where an offence is suspected to have been Committed under this Act, the Clerk shall, on the

Request to the Director of Public Prosecutions.

directions of the Speaker, make a request to the Director of Public Prosecutions to take such actions as may be appropriate.

(2) The Director of Public Prosecutions shall, within thirty days from the date of receipt of a request from the Clerk under subsection (1), and within such other subsequent period as the Speaker may determine, submit a report to the Clerk stating the action taken on the matter.

39. Every offence under this Act shall be cognizable to the police.

Offences
cognizable.

PART VII—MISCELLANEOUS

40. (1) A person, other than a Member, who is aggrieved by a statement or a remark made by a Member or a witness in or before the Assembly or a committee about that person may submit a written request to the Clerk to have a response by the person to the statement or remark recorded and published in a journal or record of the Assembly.

Protection of
persons
responsible for
publications
authorized by the
Assembly

(2) The Committee of Powers and Privileges shall, subject to the Standing Orders, consider the request and recommend such measures as may be necessary to comply with Article 35 (2) of the Constitution

41. Any person, being a defendant in any civil or criminal proceedings instituted for or on account or in respect of the publication by him or by his servant, by order or under the authority of the Assembly, of any reports, papers, minutes, votes or proceedings, may, on giving to the plaintiff or prosecutor twenty-four hours' written notice of his intention, bring before the court in which the proceedings are being held a certificate under the hand of the Speaker stating that the reports, papers, minutes, votes or proceedings in respect whereof the proceedings have been instituted were published by him or by his servant by order or under the authority of the Assembly together with an affidavit verifying the certificate, and the court shall thereupon immediately stay the proceedings, and every process issued therein shall be deemed to be finally determined.

Protection of
members of the
public.

42. (1) Despite the provisions of any other written law, where in a written law a time is prescribed for doing

Extension of time.

an act or taking a proceeding by the Assembly, the House may, by resolution, extend that time by a period not exceeding fourteen days.

(2) Where an extension of time is granted under subsection (1), the doing of all other acts consequential thereto shall be deemed to have been extended accordingly.

(3) The power of the Assembly contemplated under subsection (1), may be exercised—

- (a) only once in a session of the Assembly in respect of a particular matter; and
- (b) only in exceptional circumstances to be certified by the Speaker of the Assembly.

43. (1) The Speaker may, from time to time, issue such Orders as may be necessary or expedient for the better carrying out of the purposes of this Act.

Speaker's Orders.

(2) Without prejudice to the generality of the foregoing, the orders may provide for—

- (a) the admittance of members of the public to the precincts of the Assembly;
- (b) the deduction of any monies due to a member in respect of refreshments or other facilities made available to members within the precincts of the Assembly; and
- (c) the appropriate dress code for members.

44. (1) The Speaker may, from time to time as may be expedient, issue a Code of Conduct regulating the conduct of members of the Assembly whilst within the precincts of that House other than the Chamber.

Code of conduct.

(2) The Clerk shall authenticate copies of orders and Code of Conduct made pursuant to this section and shall ensure that such orders are made available to each member and are conspicuously exhibited for the benefit of the public within the precincts of the Assembly.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Speaker to



give directions for the orderly conduct of Members, members of staff and the public generally within the precincts of the Assembly;

- (b) the orders made under this section shall be of such nature, scope and within the limits as specified under this section;
- (c) the principles and standards applicable to the order and Code of Conduct made under this section are the usages, forms, precedence, customs, procedures and traditions of the Assembly and other jurisdictions to the extent that these are applicable to Kenya.

45. No prosecution for an offence under this Act shall be instituted except with the written sanction of the Director of Public Prosecutions.

Director of Public
Prosecutions to
sanction
prosecutions.

FIRST SCHEDULE

s. 14 (1)

FIRST SCHEDULE

SUMMONS TO WITNESSES (s. 21 (3))

To.....

Whereas your attendance is required to..... (state whether assembly or committee) in relation to (state subject matter), you are hereby required (personally) to appear before the..... (state whether Assembly or a Committee) on the..... day of, 20....., at o'clock in the forenoon and to bring with you (specify the information/ document required to be produced) Your reasonable travelling and subsistence allowance for one day will be reimbursed upon production of sufficient proof of expenditure. If you fail to comply with this summons without lawful excuse, you will be subject to the consequences of non-attendance laid down in section 30 of the Busia county Assembly Powers and Privileges Act.

Given under my hand this....., day of 20.....

Clerk of the Busia County Assembly.

NOTICE: *If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be delivered to the Clerk on or before the day and hour aforesaid.*

SECOND SCHEDULE

AFFIDAVIT OF SERVICE OR SUMMONS

s. 22 (7))

I.....of.....an officer of the Assembly
/police officer make oath and state as follows:

On..... 20..... at (time) I served the summons in this
matter on at.....(place) by tendering a copy thereof to him/her
and requiring a signature on the original. He/She signed/refused to sign
the summons. She/he was personally known to me/ was identified to me
byand admitted that he/she was the witness.

Not being able to find.....the witness on
.....20.....at.....(time) I served the summons
on.....(name) an adult member of the family of the witness who is
residing with him/her.

Not being able to find the witness or any person on
whom service could be made, on 20..... at..... (time), I
affixed a copy of the summons to the outer door of.....being the
house in which he/she ordinarily resides/carries on business/personally
works for gain. I was accompanied by who identified the house
to me.

.....(otherwise specify the manner in which the summons
was served).

SWORN by the said.....

On this..... day of..... 20.....

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to Article 196 of the Constitution that provides for the powers, privileges and immunities of County Assemblies. It is important to provide for the privileges and immunities of the Assembly, its committees and its Members in order to protect Assembly's authority, dignity and independence so as to enable it to effectively carry out its constitutional functions.

Part I of the Bill contains preliminary provisions.

Part II of the Bill describes the precincts of the Assembly and regulates the control of the precincts.

Part III of the Bill provides for privileges and immunities of members of the Assembly including the freedom of speech and debate in the Assembly. The Part also proposes various measures to ensure the independence and protection of the Assembly and its members.

Part IV of the Bill provides for the establishment of a committee of privileges, for the Assembly. The mandate of this committee includes inquiring into the conduct of a Member whose conduct is alleged to constitute a breach of the Assembly privileges.

Part V of the Bill deals with summoning of witnesses before a House or committee of the Assembly.

Part VI of the Bill contains provisions relating to the publication and broadcasting of the proceedings of the Assembly.

Part VII of the Bill sets out the enforcement procedures, including the creation of certain offences.

Part VIII contains miscellaneous provisions, Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms.

This Bill delegates legislative powers to the Speaker of the County Assembly in terms of Section 44 of the Act and it limits certain fundamental rights and freedoms in order to attain the objectives of Article 196 of the Constitution.

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

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

Dated 24th September, 2015

STEPHEN O. MUKANGA,
Chairperson, Committee on Legal Affairs and Human Rights.