

SPECIAL ISSUE

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THE BUSIA COUNTY PUBLIC HEALTH BILL, 2015

A Bill for

**AN ACT of the County Assembly of Busia to make provisions
on public health and for connected purposes.**

ENACTED by the County Assembly of Busia as follows—

PART—PRELIMINARY

Short Title

1. This Act may be cited as the Busia County Public Health Act, 2015 and shall come into operation on the fourteenth day after Gazettement.

Interpretation

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

“authorised officer” means a person who is appointed as an authorised officer under this Act;

“Board” means the County Board of Health constituted under section 5 of this Act;

“building” has the same as given in the public health act Cap 242 laws of Kenya;

“Constitution” means the Constitution of Kenya, 2010;

“County *Gazette*” means a *Gazette* published by the authority of the county government or a supplement of such *Gazette*;

“drinking water” means water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption, such as;

- (a) the washing or cooling of food, or
- (b) the making of ice for consumption, or for the preservation of unpackaged food, whether or not the water is used for other purposes;

“Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to Health;

“exercise a function includes perform a duty;

“function” includes a power, authority or duty;

“government” means Busia county government;

“health practitioner” has the same meaning as it has in the national health Act;

“noxious article” means any article or animal that:

- (a) has been in contact with a person who has an infectious disease that is transmissible by contact with the article or animal; or
- (b) is or is likely to be infested with vermin; or
- (c) is likely to be a risk to health as a result of its having been in contact with any article, person or animal that is infested with vermin;

“occupier” of premises or a part of premises including premises that are vacant means—

- (a) except as provided by paragraph (b), the owner of the premises or part, or
- (b) if any other person is entitled to occupy the premises or part to the exclusion of the owner, the person so entitled;

“premises” includes any land, temporary structure, vehicle or vessel;

“public authority” means an incorporated or unincorporated body constituted by or under an Act for a public purpose;

“public health officer” means a public health officer appointed under this Act;

“public place” means a place (including a place in any vehicle or vessel) that the public, or a section of the public, is entitled to use or that is open to, or is used by, the public or a section of the public whether on payment of money, by virtue of membership of a club or other body, or otherwise);

“rules” includes rules and regulations made or deemed to be made under this Act;

“safety water advice” for drinking water means advice to the effect that the water should not be used for human consumption (or for purposes connected with human consumption) until after it has been boiled or otherwise treated;

“temporary structure” includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure;

“town and urban administration” means the administrative person in charge of towns and urban areas;

“treatment” of water means any process or technique used to improve the quality of water;

“unsafe water” means drinking water that the Member of the Executive Committee suspects to be unfit for human consumption, or any other water that the Member of the Executive Committee suspects is, or is likely to be, a risk to public health.

Objectives of the Act

(1) The objects of this Act are as follows—

- (a) to promote, protect and improve public health;
- (b) to control the risks to public health;
- (c) to promote the control of infectious diseases;
- (d) to prevent the spread of infectious diseases; and
- (e) to recognise the role of County government in protecting public health.

(2) The protection of the health and safety of the public is to be the paramount consideration in the exercise of functions under this Act.

Responsibilities of the Public Health Department relating to Public Health

4. (1) The functions of public health shall be, subject to the provisions of this Act—

- (a) to prevent and guard against the introduction of infectious diseases into Busia County;
- (b) to promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable disease within Busia County;
- (c) to advise and direct the county government in regard to matters affecting the public health;
- (d) to promote or carry out researches and investigations in connection with the prevention or treatment of human diseases;
- (e) to prepare reports and publish information relative to the public health; and
- (f) reports and statistical or other generally to carry out in accordance with directions the powers and duties in relation to the public health conferred or imposed by this Act.

(2) It shall be the duty of the department to obtain and publish periodically such information regarding infectious disease and other health matters in Busia County, and such procurable information regarding epidemic diseases in Counties adjacent to Busia or in the neighbouring country, as the interests of public health may require.

PART II—INSTITUTIONAL FRAMEWORK

County Board of Health

(1) There shall be established a County Board of Health (hereinafter referred to as the Board), having its offices at Busia, which shall consist of—

the County Director of Health who shall be chairperson,

- (a) a sanitary engineer, or such person as may be appointed by the Executive Committee Member to perform the duties of sanitary engineer;
- (b) a secretary, and such other person or persons not exceeding six (three of whom shall be medical practitioners) as are appointed from time to time by the Executive Committee Member.

(2) In the absence of the County Director of Health the Board shall elect a chairman from the members present.

Appointments to be Gazetted

6. The names of all members appointed to the Board shall be forthwith notified in the County *Gazette* and any number of the *Gazette* containing a notice of any such appointment shall be deemed sufficient evidence thereof for all purposes.

Filling Vacancies

7. The Executive Committee Member shall, as soon as possible, fill up vacancies occurring in the Board, but the Board shall continue to exercise its powers as long as there shall remain on the Board at least five members including the County Director of Health.

Substitute Members

8. If any member of the Board is at any time prevented by absence or other cause from acting, the Executive Committee Member may appoint some other person to replace such member until he returns or is able to resume his functions.

Rules as to Meetings of Board

9. The Executive Committee Member may make rules as to the convening and holding meetings of the Board, the quorum thereof, the procedure thereat, allowances payable to members thereof and the circumstances in which any member shall vacate his membership.

Committees of the Board

10. The board may appoint committees, whether of its own members or otherwise, to carry out general or specific functions as may be specified by the Board and may delegate to any such committee such of its powers as the Board may deem appropriate to run hospitals, health centres, dispensaries and ward public health services.

Establishment of Sub-County Health Management Boards

11. (1) There shall be established a sub-county health management board in each sub-county which shall be charged with responsibility of overseeing the running of Sub-County health services.

(2) The Executive Committee Member may make rules as to the composition of the Sub-County Health Management Boards, the convening and holding of meetings of the boards, the procedure thereat, allowances payable to members thereof and the circumstances in which any member shall vacate his membership.

Functions of the Board

12. The functions of the Board shall be to advise the Executive Committee Member upon all matters affecting the public health, and particularly upon all matters mentioned in subsection (2) of section 14.

Appointment and Duties of Officers

13. (1) There shall, from time to time, be appointed a County Director of Health, Deputy County Directors of Health, assistant directors of health, medical officers, pathologists, health inspectors, public health officers and such other officers as may be deemed necessary.

(2) Notwithstanding subsection (1), any urban, town or city may, with the approval of the Executive Committee Member, and if so directed by the Executive Committee Member for the time being responsible for municipal, urban, town administrations with the approval of the Executive Committee Member, appoint for its area a medical officer of health and such deputy and assistant medical officers of health and public health officers and such health inspectors as it may be necessary.

(3) The Executive Committee Member, in consultation with the Executive Committee Member for the time being responsible for urban, town or city administration may prescribe the qualifications to be held by and in respect of professionals, the mode and terms of engagement of, and the duties to be performed by, all or any of the officers and inspectors referred to in subsection (1).

(4) Every medical officer appointed under this section shall be a medical practitioner.

(5) The officers appointed under this section shall carry out such duties in relation to public health as the County Director of health may respectively assign to them.

(6) The County Director of health or Deputy Director of health or medical officers, public health officers or health inspector acting on his authority and behalf shall also make any necessary inquiries and inspections in regard to or advise urban, town and city administration on any matter incidental to public health.

Functions of the Health Department

14 (1) There shall be a department, to be known as the Health Department, which shall be under the control of the County Director of health.

(2) County health services shall include, in particular—

- (a) county health facilities and pharmacies;
- (b) ambulance services;
- (c) promotion of primary health care;
- (d) licensing and control of undertakings that sell food to the public;
- (e) veterinary services (excluding regulation of the profession
- (f) cemeteries, funeral parlours and crematoria; and
- (g) refuse removal, refuse dumps and solid waste disposal.

Power to Direct Inquiries

15. The Executive Committee Member may, on the advice of the Board or of the Health Department, cause to be made such inquiries as he may see fit in relation to any matters concerning the public health in any place.

Powers of Persons Directed to make Inquiries

16. When an inquiry is directed to be made by the Executive Committee Member, the person directed to make the same shall have free access to all books, plans, maps, documents and other things relevant to the inquiry, and shall, have in relation to witnesses and their examination and the production of documents, similar powers to those conferred upon magistrates by the Criminal Procedure Code and may enter and inspect any building, premises or place the entry or inspection whereof appears to him requisite for the purpose of such inquiry.

General Duties of Health Authorities

17. It shall be the duty of every health authority to take all lawful measures necessary and, under its special circumstances, reasonably practicable measures for preventing the occurrence or dealing with any outbreak or prevalence of any infectious, communicable or preventable disease, to safeguard and promote the public health and to exercise the powers and perform the duties in respect of the public health conferred or imposed on it by this Act or by any other law.

Proceedings on Complaint to Board of Urban, Town or City Administrations

18. (1) Whenever a complaint is made to the Board that the public health in any locality is endangered by the failure or refusal on the part of any municipal urban and town administration to exercise its powers or perform the duties devolving upon it under this Act or any other Act which it is its duty to enforce, the Executive Committee Member, on the recommendation of the board, if satisfied after due inquiry that the urban, town or city administrations has been guilty of the alleged default, may make an order directing the urban, town or city Administration to perform its duty in the matter of such complaint, and prescribing a time for such performance.

(2) If the duty is not performed within the time prescribed in the order, the Executive Committee Member may appoint such other person to perform the duty, and shall by order direct that the expense of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, be paid by the urban, town or city Administrations in default, and any order made for the payment of such expenses and costs may be recovered by a petition to the county inter-departmental conflict and dispute resolutions team for arbitration

(3) Any person appointed under this section to perform the duty of municipal, town and urban Administrations shall, in the performance and for the purposes of that duty, have all the powers of such administrator, other than the powers of levying rates vested in the provisions of other Acts; and the CEC Member may from time to time by order change any person so appointed.

Executive Committee Member to be Consulted over Municipal, town and Urban Areas Rules

19. The Executive Committee Member for the time being responsible for municipal, town and urban areas shall, before approving any regulation made affecting public health, obtain the agreement of the Executive Committee Member for the time being responsible for Health.

PART III—GENERAL PROVISIONS ON PUBLIC HEALTH

Power to Deal with Public Health risks during State of Emergency

20. (1) If the Executive Committee Member considers on reasonable grounds that the emergency is, or is likely to be, a risk to public health the Executive Committee Member—

- (a) may take such action; and
- (b) may by order give such directions as the Executive Committee Member considers necessary to deal with the risk and its possible consequences.

(2) Without limiting subsection (1), an order may direct:

- (a) all persons in a specified group, or
- (b) all persons residing in a specified area, or
- (c) all persons working in a specified area to submit themselves for medical examination in accordance with the order.

(3) An order shall be published in the County Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.

(4) Unless it is earlier revoked, an order expires when the relevant state of emergency.

Power to deal with Public Health risks arising from Conduct of Public Authorities

21. (1) If the Executive Committee Member considers that, because of an act or omission of a public authority, or of any person acting on behalf of a public authority, a situation has arisen that is, or is likely to be, a risk to public health, the Executive Committee Member may cause an order to be written and served on the public authority or the chief executive officer (however described) of the authority, direct the public authority or the chief to take specified executive action to minimise or rectify any adverse consequences of the act or omission.

(2) If a public authority or the chief executive officer (however described) of a public authority considers that, for any reason, a situation has arisen that is, or is likely to be, a risk to public health, the public authority or chief executive officer is to notify the Executive Committee Member of that fact.

Offence not to Comply with Directions of the Health Authority

22. A person who—

- (a) is subject to a direction under section 20 or 21, and
- (b) has notice of the direction, and without reasonable excuse, fails to comply with the direction shall be guilty of an offence.

Power to close Public Premises on Public Health Grounds

23. (1) If the Health Authority considers that access to any premises on which the public, or sections of the public, are required, permitted or accustomed to congregate should be restricted or prohibited in order to protect public health, the Health Authority may, by order, direct that access to the premises be restricted or prohibited as specified in the order.

(2) An order shall be published in the County Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.

(3) Any person who—

- (a) controls, or is involved in the control of, the premises; and
- (b) has notice of the direction;

shall take such reasonably practicable action as is necessary to comply with the direction.

Power to direct Disinfection or Destruction of Noxious Articles

24. (1) If the Health Authority suspects that there is a noxious article on any premises, the Executive Committee Member may, by order in writing, authorise public health officers to enter the premises, seize anything that appears to be a noxious article and, there or elsewhere, disinfect or destroy it.

(2) A person (other than a public authority) shall not—

- (a) transfer possession of an article to another

- (b) expose an article to another person, or
- (c) remove an article from any premises the subject of an order under subsection (1), if the person knows it to be a noxious article.

(3) A person who suffers damage as a result of the disinfection or destruction of an article is entitled to reasonable compensation unless the condition of the article that necessitated its disinfection or destruction was attributable to that person's act or default.

(4) Any such compensation is payable out of money to be provided by the County Assembly.

PART IV—WATER, PUBLIC HEALTH NUISANCES, SANITATION OF TOWNS AND URBAN AREAS

Drinking Water shall be fit for Human Consumption

25. A person shall not, by means of a reticulated water system, supply any other person with drinking water that is not fit for human consumption.

Power to take Action with Respect to Unsafe Water

26. (1) The Executive Committee Member shall authorise public health officers and by order give such directions, as the Executive Committee Member considers necessary—

- (a) to restrict or prevent the use of unsafe water, and
- (b) to bring unsafe water to such a condition that it is no longer unsafe water

(2) Before giving a direction to a supplier of drinking water constituted under an Act, the Member of the Executive Committee shall consult with the Member of the Executive Committee responsible for the Act under which the supplier is constituted or registered

Offence not to Comply with Member of the Executive Committee's Direction

27. A person who—

- (a) is subject to a direction under section 26, and
- (b) has notice of the direction,

shall not, without reasonable excuse, fail to comply with the direction.

(2) If a direction under section 26 is not complied with, the Executive Committee Member may take the action referred to in the direction and: may recover an amount equal to the cost of doing so as a debt owed by the person to the government.

Power to Direct Testing of Drinking Water

28. (1) The Health Authority may, by notice in writing, direct a supplier of drinking water to carry out such tests on the drinking water that it has available for supply, or on any substance used in or produced by the treatment of any such water, as the Health Authority considers appropriate.

(2) Any such direction may specify that the test to be carried out on water is to be carried out in any one or more of the following ways—

- (a) on the water in its raw state;
- (b) while the water is undergoing treatment;
- (c) after the water has been treated or partly treated.

Power to Direct Production of Information

29. (1) The Executive Committee Member may, by notice in writing, direct a supplier of drinking water to produce such information as the Executive Committee Member may specify concerning—

- (a) the quality of the drinking water that the supplier has made available for supply; and
- (b) the methods by which the water is treated.

(2) The information to be produced may include but is not limited to) the following—

- (a) copies of relevant records of the supplier;
- (b) the results of any tests required under this Act.

The information is to be provided in such form and manner as the Member of the Executive Committee may direct.

Offence not to Comply with Member of the Executive Committee's Direction

30. (1) A supplier of drinking water to which a direction is given under section 13 or 14 shall not, without reasonable excuse, fail to comply with the direction.

(2) If a direction under section 28 or 29 is not complied with, the Member of the Executive Committee may take the action referred to in the direction.

The County Chief Health Officer Responsible for Determining Necessity for Water Safety Advices

31. The County Chief Health Officer may from time to time decide, in relation to any supplier of drinking water—

- (a) whether or not it should issue safe water advice for the drinking water it supplies or has available for supply
- (b) whether or not it should provide additional information to the public in connection with any safe water advice it issues, and
- (c) whether or not safe water advice is to be retracted or corrected.

Advice to Public

32. (1) The County Public Health Officer may from time to time prepare advice, for the benefit of the public, concerning the safety of available drinking water (or drinking water available from a particular supplier of drinking water) and any possible risks to health involved in the consumption of that water.

(2) The County Public Health Officer is to provide the advice in writing to the relevant supplier of drinking water.

(3) The supplier of drinking water to whom the advice is provided shall issue the advice to the public in such form and manner as the County Public Health Officer may direct by notice in writing.

(4) The County Public Health Officer may also issue the advice to the public as the County Chief Health Officer sees fit.

Correction of Misleading Information

33. (1) The County chief Health officer may, by notice in writing, direct a supplier of drinking water to retract or correct any information or advice issued, by or on behalf of the supplier, to the public in relation to the safety of the supplier's drinking water if the County chief Health officer is of the opinion that the information or advice is inaccurate, incomplete or otherwise misleading.

(2) The County chief Health officer may specify any one or more of the form, content and manner of the retraction or correction and of its publication.

(3) A supplier of drinking water to which a direction is given under this section shall not, without reasonable excuse, fail to comply with the direction.

(4) If a direction given to a supplier of drinking water is not complied with, the County chief Health officer may take the action referred to in the direction and may recover an amount equal to the cost of doing so as a debt owed by the person to the government.

Protection from Liability

34. (1) The provision of any information or advice concerning drinking water by the County Chief Health Officer exercising any function under this Act, or by a supplier of drinking water pursuant to a direction under this Act in good faith for the purpose of executing this Act is not subject to any action, liability, claim or demand.

(2) A reference in this section to the exercise by the County chief of Health of a function includes a reference to a decision by the County chief of Health not to exercise that function.

Quality Assurance Programs

35. (1) A supplier of drinking water shall establish, and adhere to, a quality assurance program that complies with the requirements prescribed by the regulations.

(2) The regulations may make provision for or with respect to any of the following—

- (a) the tests on water and other substances to be carried out by a supplier of drinking water pursuant to this Act, or
- (b) the records to be maintained by a supplier.

(3) The County Public Health Officer may, by notice in writing, exempt a supplier of drinking water or class of suppliers from subsection (1) if the County Public Health Officer is satisfied that the supplier, or class of suppliers, is subject to other appropriate licensing or other regulatory requirements.

PART V—GENERAL PROVISIONS

Dead to be buried in Appointed Cemeteries

36. (1) It shall be lawful for the Executive Committee Member to select and appoint and to notify in the *Gazette* sufficient and proper places to be the sites of and to be used as cemeteries; and it shall be obligatory where such cemeteries exist to bury the dead in such cemeteries.

(2) The Executive Committee Member shall make rules and regulations governing burials, cremations, exhumations and any other actions pertaining to the internment of the dead.

Appointment of Public Health Officers

37. The County Public Service Board shall appoint a qualified officer duly registered with Public Health Officers Council to be the public health officer for a part of the County or for the purpose of exercising particular public health functions.

Functions of Public Health Officers

38. (1) The public health officer for a part of the County has the following functions:

- (a) to investigate, and furnish reports to the Member of the Executive Committee on, matters affecting public health in that part of the County
- (b) to co-ordinate activities in relation to the reduction of any risks to public health in that part of the County;
- (c) to co-ordinate the activities of authorised officers in relation to the enforcement of this Act and the regulations within that part of the County;
- (d) such other functions as are conferred or under this Act. imposed on the public health officer by or

Exercise by Public Health Officers of functions of Authorised Officers

39. The public health officer for a part of the County may exercise any of the functions of an authorised officer.

General Penalty

40. Where person is convicted of an offence under this Act for which no penalty is expressly provided, the person shall be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

Regulations

41. (1) The Executive Committee Member shall make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to any of the following:

- (a) the prevention, mitigation and eradication of risks to public health;
- (b) the places at which, and the conditions subject to which, a person may be detained under a public health order;
- (c) regulating public health standards for public swimming pools and spa pools and premises where skin penetration procedures are carried out, including standards for cleanliness, hygiene and infection control;
- (d) the closure of public swimming pools to public health;
- (e) the installation, operation, maintenance and inspection of a regulated system;

- (f) the functions (including powers of entry and inspection) of local government authorities and authorised officers in relation to a regulated system;
- (g) the provision of information by the owner or occupier of premises in relation to a regulated system which is installed on the premises;
- (h) the provision and keeping of operation manuals, and maintenance manuals, for a regulated system;
- (j) the keeping of records, and the making of reports, in relation to a regulated system;
- (k) the provision of information by the owner or occupier of premises at which a public swimming pool or spa pool is situated;
- (l) the provision of information by persons who carry out skin penetration procedures;
- (m) the cases in which, the manner in which, and the conditions under which, cremations of human remains may take place;
- (n) matters preliminary to, and consequential of human remains;
- (o) other public health matters relating to the disposal and handling of human remains;
- (p) the registration of cremations and burials and (with any necessary modifications) the application to the registration of cremations of the provisions of any other Act, or of any law, in force in relation to the registration of a burial of the body of a deceased person;
- (q) the embalming, interment, disposal and exhumation of the

bodies of deceased persons;

- (r) the preparation rooms, equipment and apparatus in mortuaries, crematories and cemeteries, and any other matter relating to mortuaries, crematories and cemeteries that is for the protection of the health of the public;
- (s) the inspection of mortuaries, crematories and cemeteries and of premises that may reasonably be suspected of being mortuaries, crematories or cemeteries;
- (t) the records to be kept in relation to mortuaries, crematories and cemeteries, and the inspection of records (including the making of copies or extracts from such records by or for authorised officers and the public), equipment and apparatus in mortuaries, crematories and cemeteries or premises that may reasonably be suspected of being mortuaries, crematories or cemeteries;
- (u) the fees that may be charged for the cremation of human remains, for the preservation or disposal of the ashes and for related services;
- (v) the payment of specified fees in relation to applications made, approvals given, improvement notices and prohibition orders given, and other matters arising, under this Act.

MEMORANDUM OF REASONS

This Bill seeks to give effect to paragraph 2 of Part 2 of the Fourth schedule and in particular paragraph (d) thereof.

Part I deals with preliminary provisions of the Bill. Clause 4 provides for the responsibilities and functions of the public health department in relation to public health.

Part II deals with the establishment of a County Board of health and its membership.

Clauses 6, 8 and 9 provides for gazettelement of the appointees, substitution of members of the board, board meeting rules and the functions of the committees of the board.

Clauses 11, 12 and 13 establish the Sub-County health management Boards, their functions, appointment of officers of the boards and the duties of those officers. The functions of the Health Department are clearly stipulated at Clause 14.

At Part III, clause 20 provides for powers to deal with public health risks arising from conduct of public health authorities and creates an offence for non compliance with directions of the said health authority under Clause 22.

Part IV under clauses 25 and 26 deals with drinking water fit for human consumption, unsafe water, powers of the Executive Committee Member with regard to drinking water, right to information and under Clause 30, the Bill creates an offence for non compliance of the said rule.

Clauses 31 and 32 provides for the responsibilities of the chief health officer in determining safe water for drinking.

Part V deals with the burying of the dead in appointed cemeteries, and bestows upon the Executive Member to come up with rules governing burials, cremation and exhumation.

Pursuant to standing order 114 of the Busia county Assembly Standing Orders, at Clause 41 of the Bill, the Executive Committee Member is given delegatory powers to make regulations for the proper achievement of the objectives of the Bill.

The Bill does not limit any fundamental rights and freedoms of members of the public.

This Bill concerns the County Government and is under the ambit of County Government functions as stipulated at paragraph 2 of part 2 of the fourth schedule of the Constitution and as earlier stated at paragraph 1 hereof.

The enactment of this Bill shall not occasion further expenditure of public funds.

Dated the 17th February, 2015.

HON. ISHMAEL ORODI,
*Chairman of the Health Services and
Sanitation Committee.*