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PROVISIONS ON THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD OF THE AUTHORITY

**THE BUSIA COUNTY ROADS AND INFRASTRUCTURE BILL,
2016**

A Bill for

AN ACT of the County Assembly of Busia to establish the County Roads and Infrastructure Services Authority and a mechanism for finance and the planning, development, construction and maintenance of roads and roads infrastructure in the County and to provide for other related and connected matters

ENACTED by the County Assembly of Busia as follows—

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the County Roads and Infrastructure Act 2016 and shall come into operation on the fourteenth day of its publication in the gazette

Interpretation

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

“authorised officer”, in relation to this Act means:

- (a) a person serving in the public service in the County as an employee of the Authority and authorized by the Authority to exercise the functions of an authorized officer under this Act; or
- (b) a police officer enforcing the provisions of this Act.

“Authority” means the County Roads and Infrastructure Services Authority established under section 4 of this Act.

“bridge” includes any gate, pier, fender, dolphin or platform or any other thing incidental to the use or protection of the bridge.

“controlled access road” means a road that is declared to be a controlled access road by an order of the Member of the Executive Committee.

“Department” means the County Department for the time being responsible for roads infrastructure;

“footway” means that part of a road as is set aside or formed as a path or way for pedestrian traffic and non-motorized including pedal-cyclists.

“footway restaurant” means a restaurant the subject of an approval in force under this Act

“function” includes power, duty and authority, “confer a function” includes impose a duty and “exercise a function” includes perform a duty.

“interest in land” means an estate, interest, right or power, at law or in equity, in or over or in connection with the land.

“International trunk roads” mean roads linking centers of international importance in Kenya and crossing international boundaries through the County or terminating at international ports in the County.

“land” includes any estate or interest in land.

“land affected by a road widening order” means land that lies between—

- (a) the boundary of a county road as it is before the order is made, and
- (b) the boundary of the road as it is after the order is made.

“National Trunk Road” means a main road—

- (a) directly connecting sub-counties headquarters to the County Headquarters and the sub-county headquarters with one another; or
- (b) directly connecting the County Headquarters or the headquarters of one or more sub-counties to other counties within Kenya; or
- (c) directly interconnecting the entire County in an equitable and well distributed manner.

“owner of land” means any a person who has a registrable interest in the land as an owner.

“person in charge of a vehicle” includes the driver of the vehicle.

“private road” means any road that is not a county road but does not include an international or a national trunk road.

“public gate” means a gate the subject of a public gate permit.

“County transport infrastructure” the collectivity of the county roads as classified under the Roads Act or this Act.

“county road” means:

- (a) any road, other than a road defined under this Act as a international or national trunk road, that is opened or dedicated as county road including any road in the rural or urban areas of the County; and
- (b) any road that is declared to be a county road for the purposes of this Act.

“regulate traffic” means restrict or prohibit the passage of persons,

vehicles or animals along a road.

“Member of the Executive Committee” means the Member of the County Executive Committee responsible for roads and infrastructure;

“restaurant” means premises in which food is regularly supplied on sale to the public for consumption on the premises.

“road” includes—

- (a) the airspace above the surface of the road;
- (b) the soil beneath the surface of the road, and
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.

“road event” means a speed contest or such other activity as may be prescribed by the regulations;

“road work” includes any kind of work, building or structure (such as a roadway, footway, bridge, tunnel, road-ferry, rest area, transitway station or service centre or rail infrastructure) that is constructed, installed or relocated on or in the vicinity of a road for the purpose of facilitating the use of the road as a road, the regulation of traffic on the road or the carriage of utility services across the road, but does not include a traffic control facility, and “carry out road work” includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a road work.

“traffic” includes vehicular, pedestrian and all other kinds of traffic.

“traffic hazard” means a structure or thing that is likely—

- (a) to obscure or limit the view of the driver of a motor vehicle on a county road; or
- (b) to be mistaken for a traffic control device, or
- (c) to cause inconvenience or danger in the use of a county road, or
- (d) to be otherwise hazardous to traffic.

“mechanical and transport equipment” means machinery used in the construction, improvement and maintenance of county roads infrastructure

“unclassified road” means a road that is not classified in accordance with this Act or any other law.

“utility service” includes any water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like service.

Objectives of the Act**3. The objectives of this Act are to—**

- (a) establish the County Roads and Infrastructure Services Authority; create an efficient and effective County roads infrastructure to deliver services to the people and promote social and economic transformation of the County;
- (b) support business opportunities in transport, access to markets and enhanced rural production;
- (c) support population mobility to encourage and enhance County integration, trade and improved security thus maximizing opportunities for rural and inter-urban/rural areas increasing incomes, and addressing poverty;
- (d) help revamp local construction and financial sectors in the County and enhance capacity, facilitate job-creation and economic growth.
- (e) set procedures for opening and closing of a county road;
- (f) provide for the classification of roads in the County;
- (g) provide a mechanism for establishment and enforcement of roads infrastructure standards;
- (h) provide for the establishment of a mechanism for coordination and supervision of management of roads and infrastructure in the County;
- (i) establish a framework and mechanism for mobilization of resources for the development of county roads and infrastructure network;
- (j) set out the rights of members of the public to pass along county roads,
- (k) set out the rights of persons who own land adjoining a county road to have access to the county road;
- (l) to confer certain functions (in particular, the function of carrying out county roads work) on the County Roads and Infrastructure Authority;
- (m) regulate the carrying out of various activities on county roads.

PART II— ADMINISTRATION**Responsibility for policy in the roads sector**

- 4. Subject to the provisions of this Act, the Member of the Executive**

Committee shall be responsible for policy in the roads sector in the County and the implementation of this Act.

Establishment of the County Roads and Infrastructural Services Authority

5. There is established the County Roads and Infrastructural Services Authority (hereinafter called "the Authority") which shall be a body corporate with capacity to sue and to be sued, to own and dispose of property and enter into contracts.

Powers of the Authority

6. (1) In the discharge of its functions, the Authority shall have all powers necessary or incidental to achievement of the objectives of this Act.

(2) Without limiting the generality of subsection (1), the Authority shall have powers to—

- (a) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;
- (b) with the approval of the Member of the Executive Committee, pay such remuneration, allowances and other benefits to such employees as may be reasonable in the circumstances; and
- (c) establish, as it may deem fit, such committees, departments or agencies for the better carrying out of its functions under this Act.

(2) The Authority shall establish offices in all sub-counties in County for the purpose of decentralizing service delivery.

Functions of the Authority

7. (1) Subject to this Act, the functions of the Authority shall be to—

- (a) make proposals for the classification of County roads;
- (b) advise the County Government on matters relating to roads and infrastructure, funding and standards;
- (c) in accordance with the national policy and standards develop and set guidelines for standards in the construction and maintenance of roads infrastructure in the County;
- (d) under the general supervision and guidance of the Member of the Executive Committee, develop and prepare the County Roads Master Plan;
- (e) in collaboration with other stake-holders under an agreed mechanism, mobilize resources necessary for the development, improvement and maintenance of the County roads infrastructure;

- (f) implement the County Roads Master Plan;
- (g) construct, maintain and rehabilitate county roads;
- (h) organize, facilitate or undertake such activities or projects as may be necessary and or incidental to the foregoing; and
- (i) perform such additional functions related to roads and infrastructure as the Member of the Executive Committee may from time to time assign.

(2) In the execution of its functions under this Act the Authority shall ensure that—

- (a) the development, improvement, rehabilitation and maintenance of the county road infrastructure network is consistent with the economic needs of the County;
- (b) its operations are conducted efficiently, economically and with due regard to safety; and
- (c) financial administration is conducted in accordance with the provisions of this Act and regulations.

Establishment and Constitution of the Board of the Authority

8. The Authority shall have a Board consisting of—

- (a) a Chairperson appointed by the Member of Executive Committee with the approval of the County Assembly;
- (b) Six other members appointed by the Member of the Executive Committee with the approval of the County Assembly;
- (c) the Chief Officer in the Department or his or her representative;
- (d) the Chief officer in the County Department for the time being responsible for finance or his or her representative; and
- (e) a Chief Executive Officer appointed under section 15 who shall also be the Secretary of the Board; and

Qualifications for the Chairperson and members of the Board

9. (1) A person shall be appointed as the Chairperson or member of the Board if, and shall not be appointed unless, that person—

- (a) is a citizen of Kenya;
- (b) has relevant qualifications from a university or universities recognized in Kenya in either civil engineering, law, environmental science, agriculture, agricultural economics, economics, finance, management, administration or other

relevant field;

- (c) has at least seven years working experience with demonstrable achievements in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution of Kenya, 2010.

(2) Any person charged with an offence of corruption, fraud or other economic crimes, abuse of office or any other offence under the Anti-corruption and Economic Crimes Act shall immediately cease to perform his or her functions as the chairperson or member of the Board pending determination of the case against him or her.

The functions of to the Board

10. The Board shall be responsible for the day to day management of the affairs of the Authority, and shall, on behalf of the Authority, perform the functions referred to under section 7 of this Act

Conduct of business and affairs of the Board

11. Subject to this Act, the provisions contained in the Schedule shall apply to the affairs of the Board.

Remuneration of Board members

12. The Chairperson and members of the Board shall be paid such remuneration, fees, or allowances as the County Public Service Board may prescribe on the advice of the Salaries and Remuneration Commission.

Term of office

13. (1) Members of the Board other than *ex officio* members shall hold office for a term of three years and shall be eligible for re-appointment for only one further term of three years.

(2) Members of the Board shall be appointed in a manner that ensures the expiry dates of their respective terms of office fall at different times.

Termination of appointment

14. (1) A member of the Board shall vacate office and the office shall become vacant otherwise than on expiration of his or her term—

- (a) three days after the date on which the member gives notice to the Member of the Executive Committee of the member's intention to resign;
- (b) if the member takes up, or becomes a member of Parliament, County Assembly or statutory commission established by any other written law;
- (c) if the member ceases to be a citizen of Kenya or ordinarily resident in Kenya;

- (d) on the date the member begins to serve a sentence of imprisonment imposed in Kenya or in any other country;
- (e) if the member has been adjudged or otherwise declared insolvent or bankrupt and has not been or discharged;
- (f) upon being convicted of any offence the punishment for which is a term of imprisonment exceeding six months; or
- (g) if, being an *ex-officio* member, the member ceases to hold their primary office

Appointment of Chief Executive Officer of the Authority

15. There shall be a Chief Executive Officer of the Authority appointed in accordance with this Act who shall be—

- (a) the secretary to the Board; and
- (b) an *ex officio* member of the Board with no right to vote.

Process of appointment of the Chief Executive Officer

16. (1) The Chief Executive Officer shall be appointed through competitive recruitment, on such terms and conditions as the Board may fix

(2) A person shall be appointed as the Chief Executive Officer of the Board if, and shall cease to hold that office unless, that person—

- (a) is a citizen of Kenya;
- (b) has at least a degree from a university recognized in Kenya and is a certified public secretary of good professional standing;
- (c) has at least five years working experience with demonstrable achievements in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution of Kenya, 2010.

Duties and responsibilities of the Secretary

17. The Secretary to the Board shall, subject to the direction of the Board, be—

- (a) be responsible for administration and the day to day management of the programmes and activities of the Authority;
- (b) supervise and manage the Authority's staff, activities, funds and property;
- (c) perform any other functions and duties as the Board may delegate to him or her

Staff of the Authority

18. The Chief Officer responsible for roads infrastructure shall, on request by the Authority, deploy such number and cadre of public officers in the Department as may be necessary for the effective and efficient performance by the Authority of its functions under this Act

Protection from personal liability

19. A member of the Board or an employee of the Authority or any person acting on behalf of the Authority 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.

PART III—FINANCING OF THE ROAD INFRASTRUCTURE

Funds of the Authority

20. The funds of the Authority shall consist of monies that—

- (a) the County Assembly shall appropriate annually for purposes of this Act;
- (b) revenue receivable by the Authority from fees and other charge;
- (c) the Authority may lawfully obtain by way of donations, gifts or grants.

Measures to encourage investment in the roads sector

21. The Authority shall in consultation with the Member of the Executive Committee formulate and implement immediate, medium-term and long-term administrative or policy measures to encourage the participation development partners and the private sector in the development, maintenance and rehabilitation of roads and infrastructural facilities in the County.

County Roads and Transport Infrastructure Master Plan and Implementation Strategy

22. (1) The Authority shall, consult with relevant County Departments, institutions and agencies and cooperate with the public in the County and such national institutions and agencies as may be relevant and necessary and—

- (a) develop the County Roads and Transport Infrastructure Master Plan;
- (b) based on the County Roads and Transport Infrastructure Master Plan, develop the County Roads and Transport Infrastructure Plan Implementation Strategy which shall contain strategies for mobilization of resources to fund County roads infrastructure financing;

- (c) whenever necessary, periodically review both the County Roads and Transport Infrastructure Master Plan and County Roads and Transport Infrastructure Implementation Strategy or any of them.

The objective of the County Roads and Transport Infrastructure Implementation Strategy

23. The County Roads and Transport Infrastructure Implementation Strategy developed and implemented under this Act shall have the objective of, among other things—

- (a) identifying alternative sources for the development, planning, construction, improvement and maintenance of the County infrastructure network;
- (b) identifying and adopting the most suitable technology for the construction, improvement and maintenance of the County infrastructure network; and
- (c) reducing unit costs per kilometer for the construction, improvement and maintenance;

Approval of the Master Plan and County and Strategy

24. (1) Upon developing the County Roads and Transport Infrastructure Master Plan and County Roads and Transport Infrastructure Implementation Strategy, the Authority shall submit the Plan and Strategy to the Member of the County Executive Committee for his or her consideration.

(2) The Member may make amendments to the Plan or Strategy and table the same before the County Executive Committee for approval.

(3) The County Executive Committee shall consider the Plan and Strategy for implementation thereof and approve the same with or without amendments

(4) Where the Plan or Strategy is approved by the Executive Committee in accordance with sub-section (2), the Executive Member shall transmit the same to the County Assembly

(5) On receipt of the County Roads and Transport Infrastructure Master Plan and County Roads and Transport Infrastructure Implementation Strategy or any of them in accordance with subsection (3), the Clerk of the County shall cause the same to be tabled before the County Assembly for deliberation thereon and approval

Resource Mobilization Strategy for roads infrastructure

25. (1) Based on the approved County Roads and Transport Infrastructure Master Plan and County Roads and Transport Infrastructure

Implementation Strategy, the Board shall, in each financial year, in consultation with the Executive Committee Member develop, for the following financial year, a resource Mobilization Strategy for the planning, development, improvement and maintenance of roads infrastructure in the County.

(2) The resource Mobilization Strategy under subsection (1) shall be for the purpose of mobilizing funds to supplement County resources for roads infrastructure development and shall contain a mechanism for its monitoring and evaluation.

Collaboration in Resource Mobilization

26. As the Board may consider appropriate with regard to funding pursuant to and in accordance with this Act, the Mobilization Strategy may, include:- collaboration strategies and arrangements with the national Government, private sector and or other persons envisaged under section 6 (3) of the County Governments Act with regard to roads infrastructure planning, development, construction, improvement and maintenance—

- (a) a mechanism to operate and manage a mechanical and transport equipment fund;
- (b) public and private partnership arrangements;
- (c) privatization and concessioning of county roads;
- (d) establishment of distance travelled tolls and road cess collection points;
- (e) mobility rate tolls charged for the use of roads as cars enter fee-payment gateways; and
- (f) proposals for investment in the roads infrastructure sector.

Approval of the Resource Mobilization Strategy

27. (1) The Executive Committee Member shall submit the Resource Mobilization Strategy to the County Executive Committee for its approval not later than 31st January in each year.

(2) The Executive Committee Member shall submit the Resource Mobilization Strategy to the County Assembly for its approval not later than 28th February in each year.

(3) Upon approval of the Mobilization Strategy by the County Assembly, the Board shall—

- (a) implement and continually monitor and evaluate its implementation; and

- (b) on quarterly basis, make a report thereon to the Member of Executive Committee.

(4) The Mobilization Strategy shall not be implemented by the Board prior to its approval by the County Assembly.

Establishment and sources of the County Mechanical and Transport Equipment Fund

28. (1) There is hereby established for the County the Mechanical and Transport Equipment Fund as a further strategy for the implementation of the County Roads and Transport Infrastructure Master Plan.

(2) The Sources of the money for the Fund may include—

- (a) Any money appropriated annually by the County Assembly for maintenance of mechanical and transport equipment in the County;
- (b) fees and other charges imposed by the Authority for use of the County mechanical and transport equipment; and
- (c) other donations, gifts or grants lawfully given to the Fund.

29. (1) The equipment shall accessible to both government and private contractors at such rates and on such terms and conditions as may be prescribed by regulations

(2) The Fund shall be used for the purpose of providing additional funds for the administration, planning, management, operation and maintenance of mechanical and transport equipment in the County

PART IV— CONSTRUCTION AND MAINTENANCE OF ROADS

Opening of county roads

30. A county road may not be opened otherwise than in accordance with the provisions of this Act.

County road created by registration of plan

31. (1) A person may open a road by causing a plan of subdivision or other plan that bears a statement of intention to dedicate that land as a county road.

(2) A sub-division of any land shall provide an access thereto and a road of access to such sub-division shall be dedicated as a county road.

(3) Where a person dedicates a sub-division of or access to land as a county road (including a temporary county road), that person shall cause that sub-division or access to be registered by the National Land Commission.

(4) Upon registration of the plan, the land shall be dedicated as a county road.

(5) A plan dedicated as a county road shall be of such specifications and standards as may be prescribed by regulation

Land held by the county government

32. (1) In consultation with the Department, the Authority may, by notice published in the County Gazette, after public participation, dedicate any land held by the County Government as a county road.

(2) Where the Authority dedicates land under subsection (1), it shall cause that sub-division or access to be registered by the National Land Commission on behalf of the County Government.

(3) Upon the registration, the land shall be dedicated as a county road.

Short-term leases of unused county roads

33. (1) The Authority may lease land comprising a county road to the owner or lessee of land adjoining the county road if, in its opinion, the road is not being used by the public.

(2) A lease granted under this Act may be terminated by the Authority at any time and for any reason.

Public notice to be given of proposed lease

34. (1) Before granting a lease under this Act, the Authority shall cause notice of the proposed lease—

- (a) to be published in a newspaper of national circulation, and
- (b) to be served on the owner of each parcel of land adjoining the length of county road concerned.

(2) The notice—

- (a) shall identify the county road concerned,
- (b) shall state that any person is entitled to make submissions to the Authority with respect to the proposed lease, and
- (c) shall indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

Public submissions

35. Any person may make submissions to the Authority with respect to the proposed lease.

Decision on proposed lease

36. (1) After considering any submissions that have been duly made with respect to the proposed lease, the Authority may grant the lease, either with or without alteration, or may refuse to grant the lease.

(2) If the Authority grants a lease, the Authority shall cause notice of that fact to be published in a newspaper of national circulation.

Special provisions with respect to short-term leases

37. (1) In accordance with the law applying to grants on public land in the County, Authority may grant term of a lease, together with any option to renew for the development, construction, improvement and maintenance of a county road

(2) A grant made under this section shall not exceed—

(a) except as provided by paragraph (b), 5 years, or

(b) in the case of a lease of land that has been acquired by the Authority, 10 years.

(3) A person shall not erect any structure on land the subject of a lease under this Act otherwise than in accordance with the consent of the Authority.

(4) Consent shall not be given under this section unless the Authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.

Naming of county roads

38. The Authority shall name and number all county roads in the County in accordance with the regulations and guidelines as may be prescribed by the Member of the Executive Committee.

Roads authorities to keep records

39. (1) The Authority shall keep a record of the county roads.

(2) The record shall indicate with respect to each county road—

(a) its location,

(b) the name and number (if any) given to it by the Authority,

(c) the reference of any plan in accordance with which its boundaries or levels have been fixed or varied by the Authority, and

(d) such other particulars as may be prescribed by the regulations.

(3) The record shall be available for inspection by members of the public, free of charge, during the normal business hours of the Authority.

(4) The record shall indicate with respect to each classified county road—

- (a) its location,
- (b) its classification,
- (c) the reference of any plan in accordance with which its boundaries or levels have been fixed, and
- (d) such other particulars as may be prescribed by the regulations.

(5) The record shall be available for inspection by members of the public, free of charge, during the normal business hours.

Surveys may be carried out to identify boundaries of county road

40. (1) Where boundaries of a county road have not been previously properly identified or if the survey marks used to identify them cannot be located or ascertained, the Authority may cause surveys to be carried out to identify those boundaries.

(2) If a survey under subsection (1) is conducted on the application of a person other than the Authority, the applicant shall be liable for the costs thereby incurred

Public notice to be given of proposed boundaries

41. (1) On completing the surveys, the Authority shall cause notice of the proposed boundaries to be—

- (a) published in a newspaper widely circulating in the County and ensure wide publication in accordance with the Busia County Publicity and Public participation Act; and
- (b) served on the owner of each parcel of land affected by the proposed boundaries.

(2) The notice—

- (a) shall identify the survey plan that indicates the proposed boundaries of the road concerned;
- (b) shall indicate the place at which, and the times during which, the survey plan is available for inspection by members of the public;
- (c) shall state that any person is entitled to make submissions to the Authority with respect to the proposed boundaries indicated by the survey plan; and
- (d) shall indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

(3) The Authority shall ensure that copies of the survey plan are available for inspection by members of the public at the place, and during the times, specified in the notice.

Public submissions

42. Any person affected or likely to be affected by the proposed boundaries indicated by the survey plan may make submissions with respect thereto to a special complaints committee to be constituted in accordance with the regulations by the Member of the Executive Committee.

Decision on proposed boundaries

43. (1) After considering any submissions made with respect to the proposed boundaries, the special complaints committee may approve the survey plan, either with or without alteration or reject the proposal

(2) If the special complaints committee approves the plan, the Authority shall lodge the survey plan with the National Land Commission for registration and, on registration, the boundaries identified by the survey plan become the boundaries of the county road.

(3) As soon as practicable after the survey plan is registered, the Authority shall:

- (a) give a notice to the owner of the land and all person whose interest in the land is affected indicating the effect of the survey plan with respect to the boundaries of any land to, and
- (b) lodge a copy of the survey plan with the County Director of Survey

(4) The Authority shall pay any person who has suffered any loss or damage arising from the operation of this section a just and prompt compensation in accordance with the relevant law.

Preparation of road widening plan

44. (1) If the Authority considers it necessary that a county road should be widened, it shall submit to the Member of the Executive Committee the proposed plan and, if the Member of the Executive Committee approves the plan to widen the road, cause a notice of the proposed plan to be—

- (a) published in a newspaper with county-wide circulation,;
- (b) served on the owner of any land to which the proposed plan applies and any other person that may be affected by the plan.

(2) The notice shall—

- (a) specify the plan;
- (b) indicate the place at which, and the times during which, the plan is available for inspection by members of the public;
- (c) invite the public or any person affected or likely to be affected by the proposal to raise any complaint with regard thereto;
- (d) state that any person is entitled to make submissions to the Authority with respect to the proposed plan; and
- (e) indicate the manner and period within which, (not being less than 28 days) any such submissions should be made.

(4) The Authority shall ensure that copies of the proposed plan are available for inspection by members of the public at the place and during the times specified in the notice.

Public submissions

45. (1) Any person may make submissions to the special complaints committee with respect to the proposed plan.

(2) The Authority shall ensure that any submissions received by it with respect to the proposed plan are forwarded to the special complaints committee.

Decision on proposal

46. After hearing the submissions in a public participation meeting to be held in the affected area or areas, the special complaints committee may approve the proposed plan, either with or without alteration, or may refuse approval.

Making of road widening order

47. (1) If the special complaints committee approves the plan, the Authority may give effect to the plan by means of an order published in the County Gazette (in this Act referred to as a "Road Widening Order").

(2) The order shall describe the land to which it applies by reference to a survey plan and shall take effect on the date on which it is published in the Gazette.

(3) The Authority shall—

- (a) give a notice to the owner of the land and all persons whose interest in the land is affected indicating the effect of the order;
- (b) lodge the survey plan referred to in the order with the National Land Commission for registration; and
- (c) lodge a copy of the survey plan with the County Director of

Survey.

No constructions on land affected by road widening order

48. (1) Unless repairs or improvements to a building on land to which a road widening order applies are minor or designed merely to enable the reasonable preservation of a building for temporary use, a person shall not construct, replace or repair a building affected by a road widening order.

(2) Where a person contravenes subsection (1), the Authority may direct such a person to restore the land to the state in which it was in before the contravention occurred.

Variation and revocation of road widening orders

49. The Authority may, by order published in the Gazette—

- (a) vary a road widening order, but only by excluding land from the operation of the order, or
- (b) revoke a road widening order.

Fixing the levels of county road

50. (1) The Authority may prepare a proposal—

- (a) to fix the levels of a county road, or
- (b) to vary the existing levels of a county road.

(2) Before making an order to give effect to the plan, the Authority shall cause notice of the proposal—

- (a) to be published in newspaper of nationwide circulation, and
- (b) to be conspicuously displayed at regular intervals along the road concerned.

(3) The notice shall—

- (a) indicate the place at which, and the times during which, a plan of the proposed levels is available for inspection by members of the public;
- (b) state that adjoining landowners are entitled to make submissions to the Authority with respect to the proposal;
- (c) indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

(4) The Authority shall ensure that copies of the plan of proposed levels are available for inspection by members of the public at the place, and during the times, specified in the notice.

Public submissions

51. An owner of land adjoining such part of a county road as is affected by the proposed order may make submissions to the Authority with respect to the proposed levels of the road.

Decision on proposal

52. (1) After considering any submissions that have been duly made concerning the proposal, the Authority may decide to proceed with the proposal, either with or without alteration, or to abandon the proposal.

(2) On deciding to proceed with the proposal, the Authority may give effect to it by means of an order published in the County Gazette.

(3) The order shall fix or vary the levels of a county road by reference to a plan of levels held by the Authority.

(4) The order takes effect on the date on which it is published in the County Gazette.

(5) The Authority shall cause a notice of the effect of the order to be published in a newspaper with nationwide circulation.

Excavations and utility services

53. (1) Whenever the Authority or the Department deems it necessary or appropriate so to do, it may carry out any excavation works upon or in the vicinity of the county road

(2) Before carrying out the excavations under subsection (1), the Authority shall consult and cooperate with relevant national and county institutions or agencies regarding any utilities infrastructure that may be existing or reasonably expected to be under or near the area of intended excavation with a view to—

- (a) ascertain the presence and location of utility infrastructure;
- (b) determine the need for relocating such infrastructure and the cost of doing so; and
- (c) determine who may bear such cost.

(3) The utility infrastructure as is referred to in subsection (2) may include underground water and sewerage piping and electric and telecommunications cables and conduits

Liability for damage to county road

54. (1) No person may cause damage to—

- (a) a county road including classified toll-ways and private roads in the County; or

- (b) any road work on a county road; or
- (c) any traffic control facility on a road or road related area in the County

(2) A person who contravenes subsection (1) commits and shall be liable to pay to the Authority, in addition to any other liability, the cost incurred by the Authority in making good the damage

(3) If damage referred to in this section is caused by a motor vehicle or vessel, both the owner and the driver of the motor vehicle or the owner and the master of the vessel are jointly and severally liable for the damage.

Utility services to be located in conduits

55. (1) Every person entitled to place or placing utility services in, on or over a County road shall use conduits for carriage of the services across the road

(2) The Authority shall require and ensure that all such services as are referred to in subsection (1) are carried in conduits of approved standards and may direct that any person who is entitled to place such conduits does so:

- (a) in any such conduit, and
- (b) pays the Authority such fees as may be prescribed by the regulations as the costs in connection with the construction of the conduit.

(3) No utility services in the County may be placed in, on or over a County road in contravention of this Act.

Restoration of county road following excavation

56. (1) The Authority may:

(2) If a county road is damaged as a result of a leakage from, or breaking or bursting of, any object or work placed in, on or over the road, the Authority may direct the person—

- (a) who was responsible for placing the object or work in, on or over the road,
- (b) who has the care or control of the object or work, or
- (c) whose act or omission caused the leakage, breaking or bursting,

to restore the road to its previous condition.

(3) A direction under this section may specify—

- (a) the manner in which or the standard to which; and

- (b) the period (not being more 14 days) within which, the direction shall be complied with.

(4) Instead of giving a direction under this section, the Authority may take such action as is necessary to restore the road to its previous condition and charge the cost thereof on the person liable.

(5) The costs incurred by a Authority in taking action under this section are recoverable from the person referred to in subsection (1) or (2), as a debt, in a court of competent jurisdiction. (6) Nothing in this section authorizes the Authority to recover an amount greater than that necessary to restore the road to its previous condition.

Liability in respect of application of tar on a County road

57. (1) The Authority shall not be liable for any damage caused by moist or liquid tar applied to any portion of a road in the course of carrying out road work if—

- (a) that portion of the road is closed to traffic while the tar is being applied and for thereafter; and
(b) the tarred portion of the road is covered with sand or road metal before it is re-opened to traffic.

(2) In this section, “tar” includes bitumen and bituminous compounds.

PART V—ACCESS TO AND USE OF COUNTY ROADS INFRASTRUCTURE

Passage along county road by members of the public

59. (1) A member of the public is entitled, as of right, to pass along a county road (whether on foot, in a vehicle or otherwise) and to drive stock or other animals along the county road.

(2) The right conferred by this section extends to the right of passage of members of the public in a light rail or other railway vehicle.

(3) The right conferred by this section does not derogate from any right of passage that is conferred by any other written law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law.

Right of access to county road by owners of adjoining land

60. (1) The owner of land adjoining a county road is entitled, as of right, to access (whether on foot, in a vehicle or otherwise) across the boundary between the land and the county road. (2) The right conferred by this section does not derogate from any right of access that is conferred by

any other written law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law

Rights of adjoining landowners in relation to the fixing of levels

61. (1) If the fixing of the levels of a county road results in loss of access across the boundary between the road and land adjoining the road, the Authority shall restore access between the road and that land.

(2) If the varying of levels so fixed results in loss of access across the boundary between a county road and land adjoining the road, the Authority shall pay just and prompt compensation to the owner of the land for any loss or damage arising from the loss of access.

PART VI—INTERVENTIONS FOR SAFETY

Traffic Controls Facilities

62. Despite sections 51, 52 and 53 of this Act or any other law, the Authority, in conjunction with the County Department responsible for transport and safety may—

- (a) carry out traffic control work on all county roads or on any part of transit-ways or road related areas within the County that are not county roads; or
- (b) carry out traffic control work such other traffic controls under the Transport and Safety Act

Tree felling

63. The Authority may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a county road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard.

Prevention of Damage to the road infrastructure

64. (1) In cooperation and collaboration with other relevant national and County agencies and institutions, and in order to prevent damage to and protect the County roads infrastructure, the Authority—

- (a) may erect and install weigh bridges to control weight load on the County roads;
- (b) may erect and install road speed control rumps and road blocks;
- (c) may require alteration of works located in, on or over a county road;
- (d) may carry out or require another person, agency or institution in the County to carry out drainage work in or on any land in the

vicinity of the road;

- (e) may direct the owner of any land adjoining a county road to fill in any excavation;
- (f) may direct the occupier of land from which sand, soil or other such matter has been washed or blown onto a county road to take such action as is necessary to remove the obstruction and prevent its recurrence;
- (g) direct any other relevant entity or person concerned to carry out specified works;
- (h) alter a fence (including a rabbit proof fence) on the land, to provide floodgates in any such fence, or to repair any such fence or floodgates;
- (i) direct the person having control of any work or structure that is situated in, on or over a county road to alter the work or structure or the location of the work or structure;
- (j) direct any person by whom a county road is dug up to restore the road to its previous condition;
- (k) in order to stabilize a road, alter the landform of land adjoining a county road;
- (l) for the purpose of preventing obstruction to the free flow of surface drainage from a county road or to the free flow of a watercourse that crosses a county road, direct the occupier of any land in the vicinity of the county road to clear blockages or obstructions:

(2) In acting accordance with and pursuant to subsection (1), the Authority—

- (a) shall specify the period within which such works or standards shall be carried out or direction complied with;
- (b) pay to the owner or owners of the land for any loss or damage arising from the exercise of any powers under this section just and prompt compensation, if any.

Installation of fences, lights around dangerous premises

65. (1) If the Authority considers that conditions existing on any part of a County road constitute a dangerous situation that threatens the safety of persons or property in the vicinity, it may direct the owner or occupier of land where the conditions exist erect or install fences, lights or other equipment in the place.

- (2) A direction under this section may specify—
- (a) the conditions and nature of the danger constituted;
 - (b) the required mitigation; and
 - (c) the period within which, the direction shall be complied with.

Obstructions and encroachments

66. (1) No person in the County may encroach upon or otherwise obstruct a County road.

(2) The Authority may direct—

- (a) any person who encroaches upon or obstructs or causes an obstruction or encroachment to be put or remain on a county road, or
- (b) the owner of any land that is used, or is able to be used, in connection with an obstruction or encroachment on a county road,

to remove the obstruction or encroachment within a specified period

(2) In the case of an obstruction or encroachment that was created before the alignment of the road, or that is situated on a road that has not been aligned, the period specified in the direction shall be at least 60 days.

(3) This section does not apply to an obstruction or encroachment on a county road if its presence on the road is authorized by or under this or any other legislation unless such authority has ceased

Consequence of failure to comply with notice

67. (1) If a person fails to comply with a direction under section 46, the Authority—

- (a) may take the required action; and
- (b) any necessary consequential alteration to any connecting branch work.

(2) In taking action under this section, the Authority shall ensure that it does not do anything that might cause permanent damage to the work or structure concerned or that might prejudicially affect its use.

(3) Subject to an existing law to the contrary or an agreement between the Authority and the person having control of the work or structure, the cost of an alteration made by, or at the direction of, the Authority shall be borne by the Authority and charged to the person or institution upon whom or which the responsibility to take that action lies

(4) The powers conferred by section 46 and this section shall not be exercised in or on land on which rail, electricity and or water infrastructure facilities owned by Kenya Railways Corporation, Kenya Power or Busia Water and Sewerage Company respectively are situated.

Power to regulate traffic in connection with road work

68. (1) Subject to any other national or county legislation, the Authority may consult and cooperate with relevant national and County agencies and institutions to—

- (a) regulate traffic on a county road by means of barriers or by means of notices conspicuously displayed on or adjacent to the county road;
- (b) plan, develop and construct side non-motorized traffic paths;
- (c) dedicate lanes or roads for heavy or other specified traffic; and
- (d) unless clear side tracks have been provided for their passage, restrict the passage of heavy vehicles or animals along the roadway of an earth road

(2) A person shall not—

- (a) willfully contravene a notice or disregard a barrier and pass along or cause any vehicle or animal to pass along a length of county road affected by the notice or barrier; or
- (b) damage, remove or otherwise interfere with a notice or barrier erected for the purposes of this section.

(3) The Authority shall, as soon as the need for such a barrier on or regulation, forthwith remove the notice and or the barrier under this section of traffic along a county road under this section cease, remove such barrier or regulation

The Authority may regulate traffic in certain circumstances

69. Whether or not a regulation empowers the Authority to regulate traffic in the manner specified in the order, the Member of the Executive Committee may direct the Authority to take such action or refrain and forbear from taking such action with respect to the regulation of traffic on a county road as may be specified in the order.

PART VIII— REGULATION OF WORKS, STRUCTURES AND ACTIVITIES ON COUNTY ROADS

Regulations for erection and construction of structures and conduct of business on road reserves

70. (1) In consultation with the relevant national and County agencies

and institutions, stake-holders and with the participation of the people in the County, the Member of the Executive Committee may develop and make regulations regarding—

- (a) the erection and construction of structures on county road reserves and side tracks; and
 - (b) conduct of business and other activities on County road reserves and side tracks;
- (2) The regulations shall specify the locations where such—
- (a) structures may be erected and constructed;
 - (b) the business conducted or activities undertaken; and
 - (c) set standards for the structures and activities

Approvals for construction and conduct of activities

71. Subject to the regulations made in accordance with section 57 and any other applicable legislation, the Authority may grant an approval to a person to conduct a business or undertake other activity adjacent to a footway of a county road on such terms and conditions as the approval may specify.

(2) The conditions of approval shall be for a temporary period and shall include safety precautions and the fees and other charges payable in respect of the grant.

Works and structures

72. A person shall not—

- (a) erect a structure or carry out a work in, on or over a county road,
- (b) dig up or disturb the surface of a county road,
- (c) remove or interfere with a structure, work or tree on a county road,
- (d) pump water into a county road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified county road,
- (f) otherwise than with the approval of the appropriate Authority.

Nature of consent

73. (1) A consent under this Act—

- (a) may be granted on the Authority's initiative or on the application of

any person, and

- (b) may be granted generally or for a particular case,
- (c) may relate to a specific structure, work or tree or to structures, works or trees of a specified class, and
- (d) may be granted on such conditions as the appropriate Authority thinks fit.

(2) In particular, consent under this Act with respect to the construction of a utility service in, on or over a county road may require the service to be located—

- (a) in such position as may be indicated in that regard in a plan of subAct or other plan registered in the office of the National Land Commission with respect to the road; or
- (b) in such other position as the Authority may direct.

(4) In particular, consent under this Act with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes.

Maintenance of works and structures

74. (1) A person in the County who has a right to the control or use of or benefit in a structure or work in, on or over a county road shall—

- (a) maintain the structure or work in a satisfactory state of repair;
- (b) in the case of a structure (such as a grating or inspection cover) located on the surface of the road, ensure that the structure is kept flush with the surrounding road surface; and
- (c) ensure that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,

(2) Subsection (1) applies to all structures and works in, on or over a county road, including structures and works for which there is no consent in force under this Act.

(3) Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land.

Procedure where consent is granted

75. If the Authority has granted a consent under this Act to the doing of anything; and that thing has been or is being done otherwise than in

accordance with the consent, the Authority may direct the holder of the consent to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

Authority to erect structures

76. (1) The Authority—

- (a) may authorize the holder of an approval to erect and maintain structures in, on or over any part of the footway the subject of the approval, or
- (b) may, at the request and cost of the holder of the approval, erect and maintain any such structure.

(2) The council may erect and maintain structures in, on or over any part of the footway the subject of an approval for the protection of public health and safety.

Permits for road events

77. The Authority may grant a permit to any person to conduct a road event on a county road.

Authority may use county road in exercise of functions

78. Nothing in this Act prevents the Authority from using a county road in the exercise of a function conferred by this Act so long as the function is exercised in a way that will not unduly interfere with the rights of passage and access that exist with respect to the county road.

Effect of approval

79. While an approval is in force—

- (a) the use of the footway for the purposes of a restaurant, and
- (b) the erection and maintenance of structures on the footway in accordance with an authorization given in respect of the approval, are taken not to constitute a public nuisance and do not give rise to an offence against this or any other Act.

Authority may grant permit to erect a gate

80. (1) The Authority may permit the occupier of any land through which an unfenced county road passes to erect a gate across the road at any place at which the road intersects a boundary fence.

(2) The Authority shall publish in a newspaper circulating in the County a notice of the granting of the permit.

(3) The occupier for the time being of the land to which a permit relates shall be taken to be the holder of the permit.

Erection and maintenance of public gates

81. (1) The holder of a public gate permit may, at any time after one month from the publication of the notice of the granting of the permit, erect a gate in accordance with the permit.

(2) The holder of a public gate permit shall ensure that—

- (a) a notice is attached to both sides of the gate bearing the words "PUBLIC GATE" in letters at least 75 millimeters high, and
- (b) both the gate and the notice are maintained in good condition.

Revocation of permit

82. (1) The Authority may at any time revoke a public gate permit.

(2) The occupier of the land the subject of a public gate permit that has been revoked shall remove the gate within one month after notice of the revocation is served

Effect of permit

83. While a public gate permit is in force, the public gate to which it relates is taken not to constitute a public nuisance and does not give rise to an offence against this or any other Act.

Offences with respect to public gates

84. (1) A person shall not cause any damage to a public gate or to any notice attached to the gate in accordance with this Act.

(2) A person who opens a public gate shall cause it to be closed again immediately after it has been used.

(3) A person who fails to cause a public gate to be closed is liable for any loss or damage suffered by the occupier of the land adjoining the county road on which the gate is situated as a result of the gate having been left open.

Construction of by-pass around road gate

85. (1) An occupier of land adjoining an unfenced county road across which a public gate is situated at the point where the road intersects a boundary fence shall not, without the permission of the Authority erect or construct a gate and

(2) An occupier under subsection (1) may be required by the Authority to construct a by-pass for vehicles at the intersection of the road with the boundary fence. Provided that, except with the concurrence of the County department responsible for livestock health and pest control, the Authority shall not permit or require the construction of a by-pass if the

public gate is part of a rabbit proof, dog proof or marsupial proof fence.

(3) A by-pass shall be constructed in accordance with such specifications as may be approved by the Authority and consist of—

(a) a ramp to allow vehicles to be driven over the top of the boundary fence; or

(b) a cattle grid or sheep grid located beside the gate

(4) If the appropriate Authority so requires, the person permitted or required to construct a by-pass shall—

(a) construct the by-pass along the line of the road, and

(b) re-locate the gate beside the by-pass.

(5) The occupier for the time being of land to which a permit relates shall be deemed to be the holder of the permit.

Notice board to be erected at by-pass

86. (1) The occupier of land on which a by-pass is constructed shall ensure that—

(a) a notice, in the form required by the Authority, is exhibited on a conspicuous notice board near each end of the by-pass, and

(b) both the by-pass and the notice are maintained in good condition.

(2) A notice may prohibit vehicles exceeding a specified laden weight from being driven over the by-pass.

(3) If the appropriate Authority requires a person to construct a by-pass, that authority may contribute to the cost of construction and erection of the notices.

Closing of by-pass

87. (1) A by-pass may be closed and the notices relating to the by-pass may be removed—

(a) if the public gate in connection with which the by-pass was constructed is removed, or

(b) if the fence of which the by-pass forms part is made rabbit proof, dog proof or marsupial proof.

(2) A person who closes a by-pass—

(a) shall give notice of the closure to the appropriate Authority before or immediately after the closure, and

(b) shall take such steps as the appropriate Authority directs to ensure

the safety of persons using the road.

Revocation of by-pass permit

88. (1) The Authority may revoke a permit given with respect to a by-pass by means of a notice served on the holder of the permit.

(2) The occupier of the land the subject of the permit shall, within the time specified in the notice—

- (a) remove the by-pass and its notices, and
- (b) take such steps as are specified in the notice to ensure the safety of persons using the road.

Offences

89. (1) A person shall not—

- (a) drive a vehicle over a by-pass in contravention of a notice displayed in connection with the by-pass,
- (b) willfully damage or remove a notice displayed in connection with a by-pass, or
- (c) willfully obstruct or damage a by-pass.

(2) A person who causes damage to a by-pass as a result of driving a vehicle over the by-pass in contravention of such a notice is liable for—

- (a) the cost of any repairs to the by-pass necessary as a result of the contravention, and
- (b) any loss or damage suffered by any other person as a result of the damage to the by-pass.

Nature of ownership of county roads

90. (1) Except as otherwise provided by this Act, the dedication of land as a county road—

- (a) does not impose any liability on the owner of the road that the owner would not have if the owner were merely a person having the care, control and management of the road,
- (b) does not affect the rights or liabilities of any person under any easement or under any Act or law,
- (c) does not affect any rights of any person with respect to minerals below the surface of the road,
- (d) does not constitute the owner of the road as an occupier of the land, and

- (e) does not authorize the owner of the road to dispose of any interest (other than an easement or covenant) in the land.

(2) This section does not restrict the power of the Authority to regulate the digging up of county roads pursuant to the provisions of any other Act.

PART IX—ENTRY TO LAND AND OTHER POWERS

Power of entry

91. (1) For the purposes of this Act, an authorized officer may enter any land.

(2) Except in emergencies, the power of entry may be exercised only during daylight hours.

Inspections and investigations

92. For the purposes of this Act, an authorized officer who enters land under any power of entry conferred by this Act—

- (a) may inspect the land,
- (b) may, for the purposes of an inspection, dig up any ground and take such measures as are necessary to ascertain the character and condition of the land and of any building, structure or work that is situated in, on or over the land,
- (c) may make surveys and take levels and, for those purposes, may dig trenches, break up the soil and set up any posts, stakes or marks, and
- (d) may take samples or photographs in connection with any inspection.

Notice of entry

93. (1) Before an authorized officer exercises a power of entry under this Act, the Authority shall give the owner or occupier of the land written notice of the intention to enter the land.

(2) The notice shall specify the day on which the authorized officer intends to enter the land and shall be given before that day.

(3) This section does not require notice to be given—

- (a) if entry to the land is made with the consent of the owner or occupier of the land, or
- (b) if entry is required in an emergency.

Use of force

94. (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Act, but only if authorized by the Authority in accordance with this section.

(2) The authority—

- (a) shall be in writing,
- (b) shall be given in respect of the particular entry concerned, and
- (c) shall specify the circumstances which are required to exist before force may be used.

Notification of use of force or urgent entry

95. (1) An authorized officer who—

- (a) uses force for the purpose of gaining entry to the land; or
- (b) enters land in an emergency without giving written notice to the owner or occupier,

shall promptly advise the Authority of that fact.

(2) The Authority shall give notice of the entry to such persons or authorities as appear to the Authority to be appropriate in the circumstances.

Care to be taken

96. (1) In the exercise of a function under this Act, an authorized officer shall do as little damage as possible.

(2) The Authority shall provide, if necessary, other means of access in place of any taken away or interrupted by an authorized officer.

(3) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence or, if entry by that means is not practicable, through a new opening in the enclosing fence.

(4) Any new opening is to be properly closed when the need for entry ceases.

(5) Where any pit, trench, hole or bore is made in the exercise of a function under this Act and the owner or occupier of the premises requires, the Authority may, at the expense of such owner or occupier—

- (a) fence the land and keep it securely fenced so long as it remains open or not sufficiently sloped down; and
- (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

Recovery of cost of entry and inspection

97. If an authorized officer enters any land for the purpose of making an inspection and, as a result of that inspection, the Authority requires any work to be carried out on the land, the Authority may recover the reasonable costs of the entry and inspection from the owner or occupier of the land.

Compensation

98. The Authority shall pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this Act by an authorised officer, but is not so liable to the extent to which the loss or damage arises from work done for the purpose of an inspection which reveals that there has been a contravention by the owner of this or any other Act.

Authority to enter land

99. (1) A power of entry may not be exercised unless the authorized officer—

- (a) is in possession of a certificate of authority issued by the appropriate Authority, and
- (b) produces the certificate when required to do so by the owner or occupier of the land.

(2) The certificate of authority—

- (a) shall state that it is issued under this Act,
- (b) shall give the name of the person to whom it is issued,
- (c) shall describe the nature of the powers conferred and the source of the powers,
- (d) shall state the date (if any) on which it expires,
- (e) shall describe the kind of land to which the power extends, and
- (f) shall be under the seal of the Authority or shall bear the signature of the general manager or other principal officer of the Authority or the signature of another officer of the authority of a class prescribed by the regulations.

Entry to residential premises

100. A power of entry conferred by this Act is not exercisable in relation to such part of a building as is being used for residential purposes except—

- (a) with the permission of the occupier of that part of the premises, or

- (b) under the authority conferred by a warrant of entry.

Authority may take possession of land when constructing etc county road

101. (1) For the purpose of—

- (a) carrying out road work on a road or a proposed road; or
- (b) providing a temporary road to replace a county road that has become impassable, the Authority may use and occupy, for as long as may reasonably be necessary in the circumstances, any land along or near the line of the road.

(2) However, the power may not be exercised unless the appropriate Authority has given the occupier of the land at least 7 days' written notice of its intention to exercise the power.

(3) A person given a notice under this section may, within 7 days after receipt of the notice, appeal to the Member of the Executive Committee against the proposed use and occupation to which the notice relates by lodging with the Member of the Executive Committee a written notice of appeal specifying the grounds of appeal.

(4) The decision of the Member of the Executive Committee on such an appeal is binding on the appropriate Authority and the appellant and is final.

(5) A notice under this section is not required—

- (a) if, in the opinion of the appropriate Authority, it is necessary, as a matter of urgency, to use and occupy land that is more than 15 metres from a dwelling-house for the purpose of reconstructing or repairing a particular road, and
- (b) if that authority gives the occupier of the land such notice (if any) as is practicable in the circumstances and, immediately after giving the notice, reports to the Member of the Executive Committee the circumstances requiring such a notice to be dispensed with.

(6) The appropriate Authority shall not, under this section, use or occupy land within 15 metres of a dwelling-house unless—

- (a) the occupier of the land has consented in writing to the use or occupation, or
- (b) if that consent is not given the Member of the Executive Committee has given written authority for the use or occupation.

(7) The Authority shall pay compensation to the owner of the land for

any loss or damage arising from the exercise of any power under this section.

(8) While being used or occupied under this section for the purpose of providing a temporary road, the land so used or occupied is taken to be a county road for the purposes of this Act.

PART X—DISPUTE RESOLUTION

Appeal against direction to Land and Environment Court

102. (1) A person on whom a direction under this Act has been served (not being a public authority) may appeal against the direction to the Land and Environment Court.

(2) An appeal shall be made, in accordance with rules of court, within 14 days after the direction was served on the person.

(3) The making of an appeal operates to suspend the direction to which it relates until the appeal is finally determined or is withdrawn.

(4) The Land and Environment Court may do any one or more of the following—

- (a) it may confirm or quash the direction,
- (b) it may vary the period within which the direction shall be complied with, or
- (c) it may vary any of the requirements of the direction.

(5) The decision of the Land and Environment Court on an appeal is final.

Land and Environment Court may vary certain contracts

103. (1) A person affected by a direction under this Act may make an application to the Land and Environment Court for an order under this section.

(2) The Land and Environment Court may, on hearing the application, make an order under this section if satisfied—

- (a) that the applicant is a party to a contract relating to the premises, work or structure the subject of the direction, and
- (b) that, because of the operation of the direction, the performance of the contract has or is likely to become impossible or, so far as the applicant is concerned, has become inequitable or unduly onerous.

(3) An order under this section may do any one or more of the following—

- (a) it may cancel or suspend the operation of the contract,
- (b) it may vary the terms of the contract,
- (c) it may direct the repayment of all or part of any money paid under the contract.

(5) The decision of the Land and Environment Court on any application under this section is final.

PART XI— FINANCIAL PROVISIONS

Statement of accounts

104. (1) The Authority shall keep proper books of account in respect of the income, expenditure, assets and other activities of the Authority, including such particular accounts and records as the Member of the Executive Committee may direct.

(2) As soon as possible after the end of each financial year, the Secretary to the Board shall prepare and submit to the Member of the Executive Committee a statement of accounts in respect of that financial year or in respect of such other period as the Member of the Executive Committee may direct

Financial year

105. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year or such other period as may be prescribed.

Annual estimates

106. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority; and

- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may consider appropriate.

(5) The annual estimates of the Authority shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Member of the Executive Committee for approval.

(6) The Board shall not increase the annual estimates without the consent of the Member of the Executive Committee.

Books of accounts and audit

107. (1) Within a period of three months from the end of each financial year, the Secretary to the Board shall submit to the Auditor-General, the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a balance sheet of the Authority on the last day of that year.
- (c) the accounts of the Authority shall be audited and reported by the Auditor-General.

PART XI—MISCELLANEOUS PROVISIONS

General penalty

108. 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

109 (1) The Member of the Executive Committee may 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 and, in particular, for or with respect to:

- (a) the naming of county roads,
- (b) the care, control and management of roads,
- (c) the regulation of traffic on, and the restriction or suspension of the use by the public of, any toll-way, transit-way, bridge, tunnel or road-ferry,

- (d) the regulation of traffic for the purpose of protecting roads from damage,
- (e) the payment, collection and enforcement of any toll or charge (including a private toll or charge) levied or imposed in relation to a toll-way, bridge, tunnel or road-ferry,
- (f) the provision and use of service centers and rest centers, and
- (g) the making of applications for the purposes of this Act.

SCHEDULE**PROVISIONS ON THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE
BOARD OF THE AUTHORITY****1. Meetings.**

- (a) The Board of a the Authority shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (b) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board of the Authority at any time for the transaction of the business of the Board.
- (c) The Board shall elect a Vice-Chairperson from among its members during its first sitting.
- (d) Unless three quarters of the total members of the Board of the Authority otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (e) The quorum for the conduct of the business of the Board of the Authority shall be one half of the members including the chairperson or the person presiding.
- (f) The chairperson shall preside at every meeting of the Board of a the Authority at which her or she is present but in his or her absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (g) Unless a unanimous decision is reached, a decision on any matter before the Board of a the Authority shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- (h) Subject to such subparagraph (4), no proceedings of the Board of the Authority shall be invalid by reason only of a vacancy among the members thereof.

2. Committees

- (a) The Board of the Authority may establish such committees as it may consider appropriate to perform such functions and responsibilities as it may determine.
- (b) The Board of the Authority shall appoint the chairperson of a committee established under subparagraph (1) from amongst its own members.

- (c) The Board of the Authority may where it considers appropriate, co-opt any person to attend the deliberations of any of its committees.

3. Disclosure of interest

- (a) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board of the Authority and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
- (b) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (c) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine of one hundred thousand shillings, or to imprisonment for a term of six months, or to both.

4. The common seal

- (a) The affixing of the common seal of the Authority shall be authenticated by the signature of the chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Chief Executive Officer:
- (b) Provided that the Board shall, in the absence of either the chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the Chief Executive Officer

5. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Construction, maintenance and management of county roads is a County function. The County Government must therefore put in place a legislative framework to promote the development, maintenance and management of county roads as a devolved function.

The Busia County Roads and Infrastructure Bill 2016 seeks to establish the County Roads and Infrastructure Services Authority and a mechanism for finance the planning, development, construction and maintenance of roads and roads infrastructure in the County and to provide for other related and connected matters.

This Bill follows the recent determination by courts of law that classes D, E, F and Unclassified Roads all come within the ambit of County Roads to be managed by the County Governments.

Part I of the Bill carries preliminary provisions. Part II provides for administration structures detailing the institutional framework for management of county roads. Under this part, the Bill seeks to establish the County Roads and Infrastructure Services Authority.

Part III of the Bill provides for the construction and maintenance of county roads. It is at this part that provisions are carried detailing the various stages of demarcating a road, designating it as a county road. Procedures to be followed in widening roads are also carried under this part.

Part IV of the Bill is concerned with regulation of road works, erection of structures and related activities generally. There are provisions requiring the approval of the Authority before certain activities can be undertaken.

Part IV of the Bill proposes to confer powers of entry, search or inspection on authorized officers of the authority for purposes of enforcing the provisions of the Act.

GODFREY EGESA ODONGO,

Chair,

Transport, Public Works And Disaster Management.