

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 7 (Busia County Acts No. 3)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**BUSIA COUNTY ACTS, 2017**

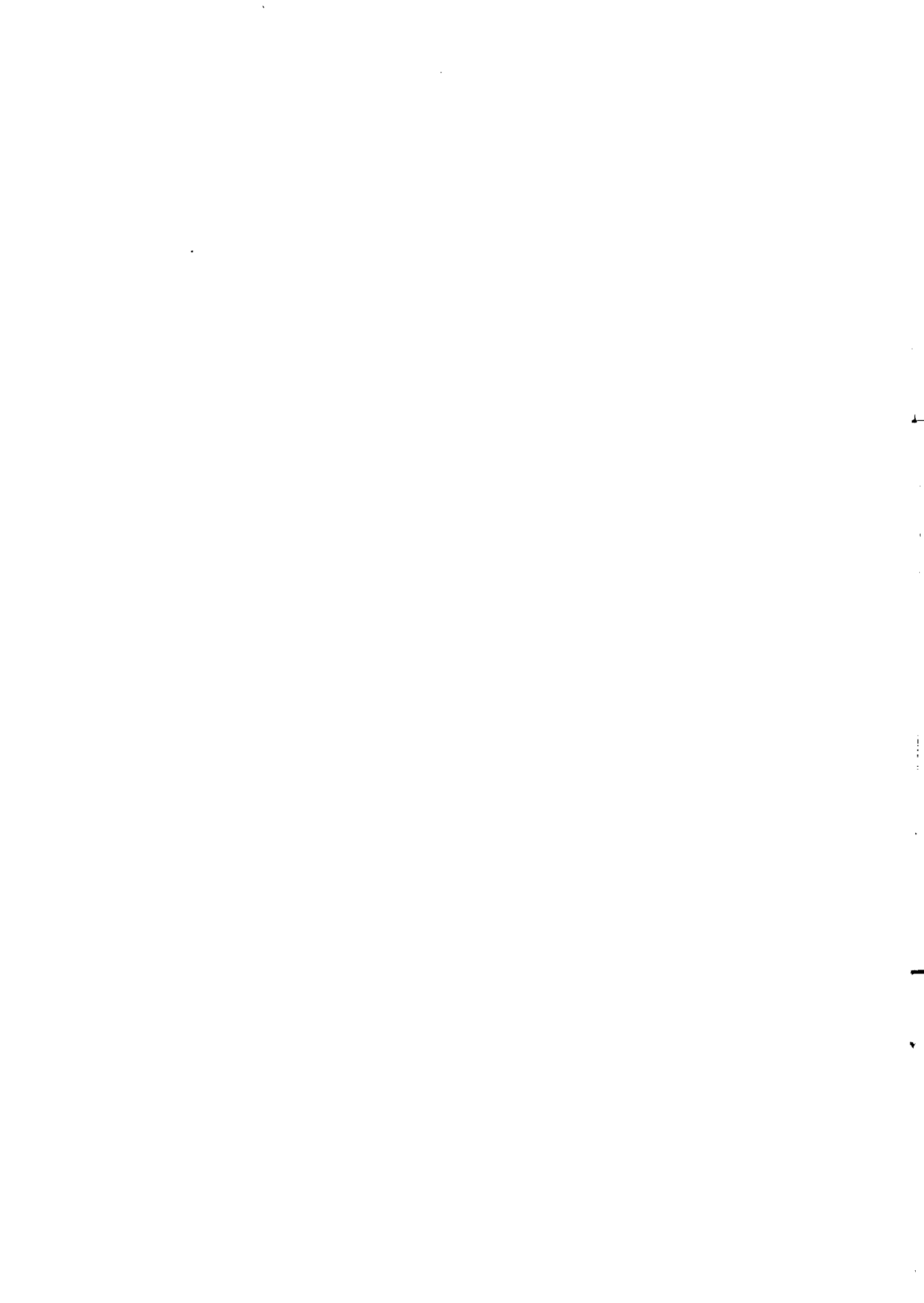
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**NAIROBI, 3rd July, 2017**

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# THE BUSIA COUNTY RATING ACT, 2017

## No. 3 of 2017

*Date of Assent: 29th May, 2017*

*Date of Commencement: By Notice*

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#### *Section*

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**THE BUSIA COUNTY RATING ACT, 2017**

**AN ACT of the County Assembly of Busia to give effect to the provisions of Article 187 and 209 (3) of the Constitution and provide for the imposition of rates on land, buildings and other immovable property in the Busia County and for related and connected purposes**

**ENACTED** by the County Assembly of Busia, as follows—

**PART I— PRELIMINARIES**

1. This Act may be cited as the Busia County Rating Act, 2017. Short title
2. Save as stated otherwise in this Act or other written law, this Act shall apply to all rateable property in the County and shall come into operation on such day as the Executive Committee Member shall appoint and publish in the Gazette. Application and commencement
3. In this Act, unless the context requires otherwise— Interpretation
- “agricultural rental value rate” has the meaning assigned to it in accordance with clause 1 of Schedule 2;
- “area rate” has the meaning assigned to it in accordance with clause 1 of Schedule 1;
- “County Assembly” means the Busia County Assembly;
- “County Government” means the Busia County Government;
- “Executive Committee Member” means the member of the County Executive Committee for the time being responsible for land and urban housing development;
- “Gazette” means the Busia County Gazette;
- “Improvement rate” has the meaning assigned to it in clause 2 of Schedule 3;
- “Land” includes any improvement on, in or under the land;
- “Prescribed” means prescribed by the rules made under this Act;
- “Rate” means a rate imposed under this Act;

“Ratable owner” has the meaning assigned to it by section 7 of the Valuation for Rating Act (Cap. 266);

“Ratable property” has the same meaning as in the Valuation for Rating Act (Cap 266);

“Rating area” means an area for which a form or method of rating is or may be adopted or an area for which a rate is or may be imposed;

“Rating Authority” has the meaning assigned by Clause 5 of this Act;

“Receiver of Revenue” has the meaning given by the Busia County Revenue Administration Act 2016;

“Site value rate” has the meaning assigned to it in clause 1 of Schedule 3;

“Supplementary Valuation Roll” means any supplementary valuation roll prepared under the Valuation for Rating Act (Cap 266);

“Valuation Roll” means any valuation roll prepared under the Valuation for Rating Act, (Cap 266);

“Year” means a period of 12 months starting on 1 January or such other prescribed date.

**4.** The objective and purpose of this Act is to—

Objective and  
purpose of the Act

- (a) provide a framework within which the County Government may perform and exercise its constitutional functions and powers under Article 187 and 209 of the Constitution;
- (b) provide an objective and equitable mechanism for taxation of property in the County; and
- (c) establish a mechanism to reliably raise revenue in the County to enable the County Government to govern and deliver services effectively.

## **PART II—ADMINISTRATION**

**5.** (1) There is established in the County Government department responsible for matters relating to land in the County, the County Property Rates Committee.

Establishment and  
functions of the  
rating authority

(2) The Property Rates Committee shall be composed of—

- (a) the Executive Committee Member responsible for lands or his or her representative designated in writing as the Chairperson;
- (b) the Executive Committee Member responsible for finance or his or her representative designated in writing;
- (c) the chairperson of each Town Management Committee in the County or his or her representative designated in writing;
- (d) the County Receiver of Revenue or his or her representative designated in writing who shall be the secretary to the Committee; and
- (e) not less than two and not more than four persons appointed by the Executive Committee Member representing the community of persons amenable to payment of property rates.

(3) No person may be designated under subsection (2) herein unless that person is a county public officer.

(4) The persons appointed under paragraph (e) of subsection (1) herein shall be of such gender as to ensure that not more than two thirds of the members of the Committee shall be of the same gender.

(5) The Property Rating Committee will be responsible to the Chief Officer and the Executive Committee Member for the administration of this Act and shall—

- (a) administer this Act in accordance with this Act and the regulations and guidelines promulgated by the Executive Committee Member;
- (b) establish and manage a valuation roll or rolls and registers in the County.

6. There shall be seconded to the rating authority such number of public officers as may be necessary to enable the rating authority to effectively perform its functions under this Act.

Officers of the  
rating authority

7. (1) The Receiver of Revenue shall be responsible for collecting and receiving revenue under this Act.

Receiver of  
revenue to be  
authorized officer

(2) The receiver of revenue may appoint officers to collect and receive revenue under this Act and such officers shall be deemed to have been appointed by the Receiver of revenue pursuant to this Act

8. (1) All and any rates due and payable together with any interest and or penalties thereon shall be paid to the receiver of revenue or any other person authorized under Section 7 above to collect rates.

Rates to be paid to the rating authority

(2) Rates may be paid—

- (a) by electronic transfer of funds or such other means as may be approved by the receiver of revenue; or
- (b) at the offices of the rating authority; or
- (c) at any other place as may be determined by receiver of revenue.

(3) The rating authority or any other person receiving payment of a rate shall issue a receipt for the payment to the person making payment at the time of such payment.

**PART III—FORM, DETERMINATION AND PAYMENT OF RATES**

9. (1) The forms of rating in accordance with which property rates may be imposed under this Act are—

Forms of rating

- (a) area rate as provided for in Schedule 1;
- (b) agricultural rental value rate as provided for in schedule 2; and
- (c) site value rate or an improvement rate as provided for in Schedule 3.

(2) The County Assembly shall, in each year, adopt one or more forms of rating for the purposes of imposing a rate under section 10.

(3) Where a new form of rating is not adopted in a financial year, the forms of rating adopted in the previous financial year shall be applicable.

10. (1) The County Government may impose a rate on all or any ratable property in the county in respect of each year.

Imposition of rates and adoption of a form of rating



(2) Subject to subsection (3), the form of rating adopted for the purposes of imposing a rate under subsection (1) shall be site value rate.

(3) The County Assembly may adopt one or more of the other forms of rating referred to in section 9 and shall do so under the Act of the County Assembly providing for annual county finances or such other Act as the County Assembly may determine.

(4) Where there is in force a Valuation Roll or a supplementary valuation roll which does not include the value of land or where no improvement rate is valued, the Rating Authority may levy site value rate at such an amount as the Rating Authority shall determine provided it does not exceed 1% unless specifically provided for by another law (5) The County Government may adopt different forms of rating for different rating areas of the County.

11. The County Assembly may, with such modifications as may be necessary, adopt and continue to apply in the County or part of the County, any form or method of rating under any law or rule in force immediately before the coming into operation of this Act.

Adoption of forms and methods in existence

12. (1) The County Assembly shall, for each year, determine the amount of the rate payable and may do so under the Act providing for annual county finances or such other Act as it deem appropriate.

Payable rates to be determined annually

(2) Without prejudice to subsection (1), the County Assembly may, in determining the amount of a rate payable, use the wording set out in Schedule 4 of this Act.

13. Where the County Assembly does not determine the amount of a rate payable for a particular year in accordance with section 12, then the amount of the rate payable for that year shall be deemed to be the amount of the rate that was payable for the immediately preceding year.

Effects of default in determining annual rate

14. (1) A rate determined and imposed under this Act shall become due on 1st January in the financial year in which it is levied or such other date of each year prescribed by the County Assembly and shall become payable on such a day in the financial year as shall be fixed by the Rating Authority through a notice in the Gazette.

When rates are due

(2) The rating authority shall, upon determination and imposition of a rate, by notice in the Gazette—

- (a) specify the date on which the rate shall become payable; and
- (b) publish that date in a newspaper circulating in a newspaper of nationwide circulation.

Provided that a notice of at least thirty (30) days shall be given of the date of payment published under this Section.

(3) For the purposes of this Act, the Valuation Roll or any Supplementary Valuation Roll in force on the day on which any rate becomes payable shall be conclusive evidence of all matters included in such Roll.

**15.** (1) The County Property Rates Committee shall from time to time, but at least once in every six years or such longer period as the County Assembly may approve, cause a valuation to be made of every rateable property within the County in respect of which a rate on the value of land is, or is to be imposed, and the values to be entered in a valuation roll.

Preparation of  
Valuation rolls and  
Supplementary  
Valuation Rolls

(2) The County Property Rates Committee shall, either on its own initiative or at the request of any person, from time to time and at any time, cause a valuation to be made, as at the time of valuation of—

- (a) any rateable property omitted from the valuation roll;
- (b) any new rateable property;
- (c) any rateable property which is sub divided or consolidated with other rateable property; or
- (d) any rateable property which, from any cause particular to such rateable property arising since the time of valuation, has materially increased or decreased in value, and include such valuation in a supplementary valuation roll.

(3) Regulations shall prescribe further requirements relating to preparation of the valuation rolls and the valuation for rating.

**16.** (1) The rateable areas in respect of land located within which property rates are imposed shall be demarcated in line with the County Spatial Plan.

Demarcation of rateable areas and determination of rateable property

(2) Regulations shall make further provisions relating to demarcation of rateable areas and determination of rateable property.

**17.** (1) Any person who is the owner of rateable land at the time when a rate is determined and imposed on that land becomes liable for the payment thereof.

Person liable to pay rate

(2) Where land is registered either jointly or as a tenancy in common, then the co-owners of the land so registered shall be jointly and severally liable for the payment of the rate.

(3) A person receiving the rent or who is in charge or control of the land the rateable owner of which is absent from Kenya shall be liable for the payment of the rate.

(4) Where the rateable land owner is deceased, the personal representatives of the deceased owner will be liable to payment of land rates.

**18.** (1) The County Executive, in accordance with the Revenue Administration and Management Act, shall determine the rate—

County executive to determine discount rates

- (a) of discount that may be given by the rating authority where a rate payable is paid in full;
- (b) at which the rating authority may charge interest on any amount payable that remains unpaid.

(2) In determining the discount under this section, the Executive Committee Member shall—

- (a) adhere to the provisions of section 159 of the Public Finance Management Act; and
- (b) seek prior approval of the County Executive Committee and the County Assembly.
- (c) ensure that the County Treasury maintains a public record of each waiver together with the reason for the waiver and report on each waiver to the Auditor-General in accordance with Section 164 of the Public Finance Management Act.

**19.** The rating authority may, on or before the day on

Power to allow

## No. 3

which a rate determined by the County Assembly becomes payable— discount

- (a) allow a discount on any rate paid in full;
- (b) charge interest at a rate to be determined in the annual Finance Bill on any amount of a rate remaining unpaid after the day on which the rate became payable.

**20.** (1) Any rate or part thereof that remains unpaid after it has become due and payable, together with interest thereon, shall be recoverable as a summary debt by the rating authority and/or the receiver of revenue from the person liable for payment.

Unpaid rate to be recoverable as summary debt

(2) The receiver of revenue may institute proceedings to recover the debt on behalf of the rating authority.

(3) A certificate signed by the receiver of revenue and certifying that—

- (a) an amount of rates is or was due and payable on or before a certain date; and
- (b) the amount or a part of the amount has not been paid on or before that date shall be admissible and prima facie evidence against the defendant in proceedings under this section.

**21.** (1) Where any rate or part thereof remains unpaid after the day on which it became payable, the rating authority may serve a written notice under subsection (2) upon any person paying rent to the owner of the land in respect of which such rate was imposed.

Notice and its effect where rate is unpaid

(2) The notice shall indicate and state—

- (a) the amount of arrears payable, which may include interest calculated in accordance with section 12; and
- (b) that all future payments of rent (whether already accrued, due or not) by the person paying the rent shall be made directly to the rating authority until such arrears and interest have been made in full.

(3) The notice served under this section shall operate as a transfer to the rating authority the right to recover, receive and give a discharge in respect of such rent.

(4) The protection of the right to property enshrined at Article 40 of the Constitution shall be limited as specified

under this section for the purposes of effectively implementing Article 209 (2) (a) of the Constitution.

22. (1) Any rate due and unpaid, together with interest thereon calculated in accordance with section 12, shall be a charge against the land on which the rate was imposed.

Unpaid rate to constitute a charge on land

(2) The rating authority may, in the prescribed form, deliver a notification of a charge to a registrar of land under which such land is registered and the registrar shall register the notification against the title to the land.

(3) Upon its registration, the charge shall take priority in accordance with the law under which the land is registered.

(4) When the unpaid rate including interest and penalties, if any, in respect of land charged under sub section (3) herein is eventually paid, the land shall be promptly discharged in favour of the owner thereof.

(5) The protection of the right to property enshrined at Article 40 of the Constitution shall be limited as specified under this section for the purposes of effectively implementing Article 209 (2) (a) of the Constitution.

23. On payment of the prescribed fee by any person, the rating authority shall furnish to that person a statement of the current status of the payment of rates for an area of land.

Statement on rates

24. (1) For the purposes of preparing a Draft Valuation Roll or Draft Supplementary Valuation Roll under the Valuation for Ratings Act (Cap 266), the County Executive Member responsible for lands may appoint a qualified and duly authorized valuer from the county public service or other person or persons to value land in the County.

Officers to value land

(2) any person who obstructs prevents or refuses a public officer or other person authorized to do so commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding six months or to a fine not exceeding Two hundred and Fifty Thousand Shillings or both.

25. Where any document is required to be published, sent or served for the purposes of this Act, the provisions of section 12 of the Busia County Revenue Administration and Management Act, 2014, shall apply.

Service of documents

**PART IV— MISCELLANEOUS**

**26.** (1) The County Executive member may make rules generally for the better carrying out of the provisions and purposes of this Act and different rules may be made in respect of different forms of rating or different ratings areas.

Rules and  
regulations

(2) Without limiting subsection (1), rules may be made for the following purposes—

- (a) collecting rates;
- (b) prescribing cases in which rates may be reduced or remitted;
- (c) exempting any person or class of persons from the payment of rates;
- (d) prescribing the cases or circumstances under which the rating authority is to or may grant exemption from the payment of rates or of any rate or classes of persons who may be exempted;
- (e) prescribing the extent to which any land is to be exempted from the payment of area rates; and
- (f) prescribing fees.

**27.** (1) Subject to such modifications that may be necessary to bring them into conformity with provisions and requirements of this Act and the rules and or regulations made hereunder—

Transitional  
provisions

- (a) the form or method of rating in force in the County immediately before the coming into operation of this Act is hereby adopted by reference and shall continue to apply under this Act;
- (b) the rules in force immediately before the coming into operation of this Act that apply to any form or method of rating which is continued under subsection (1) shall continue to be in force for the purposes of this Act;
- (c) any rules in force immediately before the coming into operation of this Act that exempt any charitable institution from the payment of rates in respect of any area in the County are adopted by reference under this Act and shall continue in force for the purposes of this Act.

(2) A valuation roll or supplementary valuation roll that, but for the operation of the Valuation for Rating Act (Cap 266), would have been in force immediately before the coming into operation of this Act in respect of the County or a part of the County is deemed to be in force for the purposes of this Act as if that valuation roll or supplementary valuation roll were made in compliance with the Valuation for Rating Act (Cap. 266).

**SCHEDULE I—Area Rate***Section 9 (1) (a)*

1. An area rate is a rate imposed on an area of land and, the County Assembly may adopt one or more of the following methods of rating for an area rate-

- (a) a flat rate upon the area of land;
- (b) a graduated rate upon the area of land;
- (c) a differential flat rate or a differential graduated flat rate, according to the use to which the land is put, capable of being put or reserved;
- (d) an industrial rate upon the area of land used for other than agricultural or residential purposes;
- (e) a residential rate upon the area of land used for residential purposes; or
- (f) such other method of rating upon the rate of land or building or other immovable property as the county assembly may approve.

2. The county may adopt different forms of rating for different rating areas and may from time to time vary the method or methods of area rating referred to in clause 1 above.

**SCHEDULE I— Agricultural Rental Value***Section 9 (1) (b)*

3. An agricultural rental value rate is rate imposed on the annual value of agricultural land.

4. Agricultural land is land used for agriculture pursuant to Section 2 of the Agriculture, Fisheries and Food Authority Act.

**SCHEDULE III— Site value rate or improvement rate***Section 9 (1) (c)*

“A site value rate” is a rate imposed on the value of unimproved land as appearing in a valuation roll or supplementary valuation roll.

“An improvement rate” is a site value in combination with a rate on the assessment for improvement rate as appearing in a valuation roll or supplementary roll.



**Application of Valuation For Rating Act (Cap. 266)**

If a site value rate or improvement rate is adopted, the Valuation for Rating Act (cap266) including relevant definitions shall apply to the form of rating so adopted.

**SCHEDULE IV – Determining the Amount of rate payable***Section 12*

For the purposes of **section 6** of the Busia County Rating Act 2016, the amount of a rate payable for a ratable property for 2015 is 0.3 percent of the unimproved value of the ratable property.