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REPUBLIC OF KENYA

***BUSIA COUNTY GAZETTE  
SUPPLEMENT***

**BILLS, 2014**

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**NAIROBI, 14th August, 2014**

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## THE BUSIA COUNTY WATER AND SEWERAGE SERVICES BILL, 2014

### A Bill for

**AN ACT of the County Assembly of Busia to provide for development, regulation and management of County public works related to water and sewerage services, storm water management systems, water conservation and for connected purposes.**

**ENACTED** by the county assembly of Busia as follows;—

### PART I—PRELIMINARY

1. This Act may be cited as the Busia County Water and Sewerage Services Act, 2014 and shall come into operation on the date of publication in the *Gazette*.

Short Title and  
commencement.

2. In this Act unless the context otherwise requires:

Interpretation.

“**authorized officer**” means an officer appointed under section 52 of the Act;

“**Board of Company**” means the Board of the Water and Sewerage Services Company established under section 6;

“**Chief Officer**” means the chief officer for the time being responsible for water services;

“**Company**” means the Water and Sewerage Services Company established under section 4;

“**County**” means the County of Busia;

“**Directorate**” means the Directorate of Water and Sewerage Services established under section 28; 30

“**Executive Member**” means the County Executive Committee Member for the time being responsible for water services;

“**flood plain**” means the land adjoining a watercourse which in the opinion of the county is susceptible to inundation by floods;

“**Fund**” means the Water and Sewerage Services Fund established under section 59;

**“Governor”** means the Governor of Busia County;

**“public works”** in this context means storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines;

**“riparian buffer”** is an area around or situated next to bodies of water that act as buffers or cushions to that water body;

**“sanitation”** means conditions relating to public health, especially the provision of clean drinking water and adequate sewage disposal;

**“storm water”** means water resulting from natural precipitation and accumulation and includes ground water and spring water ordinarily conveyed by the storm water system, as well as sea water within estuaries, but excludes water in a drinking water or waste water reticulation system;

**“water catchment area”** means an area of land that water can drain across, over, or under to a common point on a stream, river, lake or wetland;

**“water pollution incident”** means an incident or occurrence which has a detrimental impact or a potential detrimental impact on the quality of the water in the storm water system to such an extent that public health or the natural ecosystem may be threatened;

**“water works”** means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, and drainage of any swamp or other land.

**3.** The object and purpose of this Act is to provide for a legal framework for implementation of Paragraphs 10 (a) and 11 of Part 2 of the Fourth Schedule of the Constitution and Article 43 (1) (b) and (d) thereof in order to;

Object and purpose  
of the Act.

- (a) ensure equitable and continuous access to clean water;
- (b) promote soil and water conservation;

- (c) promote water catchment conservation and protection;
- (d) provide for the development and management of County Water Services Public Works;
- (e) provide for regulation of County Water and Sanitation Public Works;
- (f) ensure effective and efficient provision of water and sanitation services;
- (g) promote effective and efficient management of storm water in built up areas;
- (h) enhance suitable management of water resources;
- (i) promote inter agency collaboration and public participation in water resource development and management.

## **PART II—ADMINISTRATION**

**4.** (1) There is established the Busia Water and Sewerage Services Company.

Establishment of the Company.

(2) The company shall be the successor to the water and sewerage companies operating in the county established under the Water Act, 2002.

(3) The company shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (b) borrowing money or making investments;
- (c) entering into contracts; and
- (d) doing and performing all other acts for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

**5.** The functions of the company shall be to—

Functions of the Company.

- (a) provide and manage water and sewerage services;

- (b) develop and manage county water and sewerage services infrastructure, including water works and public works;
- (c) develop adequate water supply system for domestic, industrial, livestock and agricultural purposes;
- (d) develop and manage works for water conservation;
- (e) promote, develop and manage water recycling systems;
- (f) promote efficient water use and management for sustainable development;
- (g) identify, initiate and promote water conservation systems, strategies and programs;
- (h) develop and manage public infrastructure for storm water management in collaboration with other agencies;
- (i) maintain database related to water and sewerage services;
- (j) disseminate information related to water and sewerage services;
- (k) maintain collaboration and co-operation with other Government agencies and other county Governments in carrying out its functions.

**6. (1)** The management of the company shall vest in the board.

Board of the  
Company.

**(2)** The board of the company shall consist of—

- (a) a non-executive Chairperson appointed by the Executive Member from amongst the directors;
-  (b) one person from each sub-county appointed by the Executive Member through a competitive process, by virtue of their knowledge, expertise and experience in water and sewerage management matters balancing gender representation;
- (c) the Managing Director who shall be the secretary to the Board.

(3) A person shall be qualified for appointment as Chairperson or a Member appointed under subsection (2) (b) if the person—

- (a) meets the requirements of Chapter 6 of the Constitution;
- (b) is a resident of the sub-county; and
- (c) has had a distinguished career in their respective fields.

**7.** The functions of the board shall be to—

Functions of the board.

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the company;
- (b) advise the management of the company generally on the exercise of the powers and the performance of the functions of the company;
- (c) approve the estimates of the revenue and expenditure of the company; and
- (d) perform such other functions as are provided for under this Act or any other written law.

**8.** (1) The conduct and regulation of the business and affairs of the board shall be as set out in the Schedule to this Act.

Conduct of business.

(2) Except as otherwise provided in the Schedule, the Board may regulate its own procedure.

**9.** The remuneration of the Members of the board shall be as determined in their annual general meeting with approval from the Executive Member.

Remuneration of the members of the board.

**10.** (1) There shall be a Managing Director who shall be appointed by the Executive Member on recommendation of the Board and recruited through a competitive process.

Managing Director.

(2) To qualify for appointment as a Managing Director, a person must—

- (a) Possess a degree from a recognized university either in civil, mechanical or electrical engineering or related fields; and
- (b) Should have experience in management for a period of not less than five years.

(3) The Managing Director shall hold office for a period of three years on such terms and conditions of employment as the board may determine, and shall be eligible for reappointment.

(4) The Managing Director shall be an *ex officio* Member of the board and shall have no right to vote at any meeting of the board.

(5) The Managing Director shall—

- (a) subject to the direction of the board, be responsible for day to day management of the affairs of the company;
- (b) in consultation with the board, be responsible for the direction of the affairs and transactions of the company, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the company;
- (c) Carry out any other functions as may from time to time be assigned by the board.

11. The Managing Director may—

Removal from office.

- (a) At any time resign from office by issuing a notice in writing to the Chairperson of the board; by giving three months notice or forfeiting three months salary in lieu thereof;
- (b) Be removed from office by the Executive Member on recommendation of the board for—
  - (i) serious violation of the Constitution or any other written law;
  - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
  - (iii) physical or mental incapacity to perform the functions of the office; or
  - (iv) incompetence.

12. The board shall appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Staff of the company.

**13.** (1) The common seal of the company shall be kept in the custody of the Managing Director or of such other person as the board may direct, and shall not be used except upon the order of the board.

Common seal of the company.

(2) The common seal of the company when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the board under this section shall be presumed to have been duly given.

(3) The common seal of the company shall be authenticated by the signature of the Chairperson of the Board and the Managing Director.

(4) The board shall, in the absence of either the chairperson or the Managing Director in any particular matter, nominate one member of the board to authenticate the seal of the company on behalf of either the Chairperson or the Managing Director.

**14.** Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the board shall, if the court holds that such act was done bona fide be paid out of the funds of the company, unless such expenses are recovered by him or her in such suit or prosecution.

Protection from personal liability.

**15.** The provisions of section 14 shall not relieve the company of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

**16.** The company shall in carrying out its functions—

Public awareness.

- (a) provide public education and awareness on efficient and sustainable water use;
- (b) invest in water source protection and conservation.

**17.** The company may enter into public private partnerships in order to effectively carry out its functions in accordance with the Public Private Partnership Act subject to approval by the County Government.

Public private partnership.

### **PART III—WATER SERVICES**

**18.** The company shall progressively ensure that —

Supply of water.

- (a) every person has access to safe and clean water for domestic use within reasonable distance;
- (b) there is accessible water for agricultural, livestock and industrial use;
- (c) equitable distribution of water between consumers in urban and rural areas.

**19.** The company may enter into service performance agreements with any entity in carrying out its functions on behalf of the County Government.

Service agreements.

**20.** (1) The company may for the purpose of carrying out its functions, erect or develop water works and public works on a public or private property.

Development of water works.

(2) Notwithstanding the provisions of subsection (1), the company shall seek consent of the owner of private land or the relevant government agency occupying or in whose custody the public land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation.

(3) The company shall in collaboration with the department of roads identify and establish specific areas on any road where public works under this Act may be carried out.

(4) The company shall seek easements from the owner or occupier of any land for construction of water works or public works to be undertaken on such land.

**21.** (1) The company may with the approval of the Executive Member initiate a county scheme to provide services under this Act for public benefit.

County scheme.

(2) Where the company deems necessary to erect or establish such a scheme or related public works on private property or land, the County Government may purchase the property or in accordance with the laws governing compulsory acquisition seek such compulsory acquisition.

(3) A county scheme shall take precedence over any private or community scheme.

**22.** (1) The company shall levy tariffs and any appropriate user charges for the purposes of supplying efficient water services.

(2) The tariffs and user charges levied under this section shall be established in accordance with the principles set out under the County Governments Act, 2012 and any other written law.

(3) The tariffs and user charges collected under this section shall be administered as follows:

- (i) 70% of revenue collected to the Company.
  - (ii) 15% of revenue collected to the County Government.
  - (iii) 15% of the revenue collected to the water trust fund for providing efficient and quality services under this Act.
- (4) The tariffs and user charges imposed or levied under this section shall comply with WASREP\*. WASREB

**23.** A person shall not—

Prohibited activities.

- (a) interfere with any meter or equipment installed by the company;
- (b) install illegal or unauthorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards.

**24.** (1) A person intending to carry out or maintain any water works shall apply for a permit to the Executive Member for recommendation by the board.

Permit.

(2) A person who prior to the commencement of this Act was carrying out water works, managing or maintaining any water works shall within sixty days apply for a permit.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding three hundred thousand or to imprisonment for a term not exceeding three years or to both.

**25.** (1) An application for a permit shall, where applicable, be accompanied by an environmental impact assessment report in accordance with the Environmental

Application for permit.

Management and Co-ordination Act, 1999 and certification from WARMA\* and shall specify among others—

- (a) the purpose and nature of works to be undertaken;
- (b) the duration within which the works are expected to be completed.

(2) A person may lodge an objection to an application for a permit.

(3) Every objection to an application shall be made in writing to the Executive Member setting out grounds for such objection.

(4) The Executive Member shall upon receiving the application send a notice of the objection received to the applicant for a permit.

(5) The Executive Member may where appropriate conduct public hearings on the objection.

(6) An objector or an applicant for a permit may appear personally or by an advocate at the hearing of an objection proceeding.

(7) The Executive Member shall consider the application within thirty days of such an application and may where he is satisfied that the applicant has fulfilled all the requirements of this Act or any other written law grant a permit in the prescribed form subject to any such conditions as may be prescribed and upon the applicant paying the prescribed fees.

(8) The Executive Member may decline to grant a permit to an applicant citing the reasons for such decline.

(9) An applicant to whom the application is returned under subsection (8) may resubmit the application within sixty days.

(10) On receipt of any revised application under subsection (9), the Executive Member shall within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

**26.** Notwithstanding section 56, the Executive Member shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance of water works.

Water works  
conditions.

**27.** A person who carries out any construction works under this Act on any public property shall ensure that—

- (a) there is no interference with the normal usage of any part of property or land;
- (b) necessary measures are taken to prevent members of the public from being exposed to any danger or harm as a result of such works;
- (c) any parcel of land or property where the works were taking place are restored to their original form.

**28.** The registration of permits shall be accessible to members of the public upon payment of the prescribed fees.

Registration of  
permits.

**29.** (1) The Executive Member will audit and assess the number of persons providing water services in the county whether the persons are authorized or not.

Water services audit.

(2) The data and information collected under this section shall be used on policy directive on management of water services in the County.

#### **PART IV—WATER AND SOIL CONSERVATION**

**30.** (1) The directorate shall in consultation with the National Land Commission and other Government agencies declare by notice in the *Gazette* any area to be a water conservation area for the purpose of conserving water.

Water conservation  
areas.

(2) The directorate may impose through a notice such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area.

**31.** The directorate shall —

Conservation of  
water catchments.

- (a) through the Intergovernmental Relations Act, the County Governments Act and any other written laws collaborate with other County Governments in conservation and protection of water sources and catchments of strategic importance which are located outside the county;
- (b) support financing of water conservation and catchment protection;

- (c) support and enforce reserve flow maintenance at all times;
- (d) in collaboration with other agencies develop policy and strategy on water storage at household and farm level and ensure their implementation;
- (e) in collaboration with water resource users associations participate in development and monitor implementation of sub catchment management plan.

**32.** The Executive Member shall in consultation with national and county agencies prescribe guidelines and standards to be adopted for water conservation.

Conservation guidelines.

**33.** The directorate shall —

Soil conservation.

- (a) develop and implement policies and strategies controlling cultivation of land situated on slopes;
- (b) develop and implement policies and strategies for sustainable management of wetlands.

**34.** All flood flow storages shall have provisions for silt traps.

Silt traps.

**35.** The directorate shall in consultation with national and county agencies and other stakeholders demarcate riparian land.

Demarcation of riparian land.

**36.** A person shall not carry out any of the following activities on riparian land —

Prohibited activities on riparian land.

- (a) tillage or cultivation;
- (b) clearing of indigenous trees or vegetation;
- (c) building of structures;
- (d) disposal of any form of waste within the riparian land;
- (e) excavation of soil or development of quarries;
- (f) planting of exotic species that may have adverse effect to the water resource; or
- (g) any other activity that in the opinion of the Directorate may degrade the water resource.

## **PART V—STORM WATER MANAGEMENT**

**37.** The directorate shall in collaboration with relevant county or National Government departments and local residents promote sound water and land use practices.

Storm water  
management and  
land use practices.

**38.** (1) There shall be in each town or urban area a watershed storm water management plan in accordance with the prescribed standards.

Storm water  
management plan.

(2) The town administrator or an office responsible for managing an urban area shall ensure that a storm water management plan is developed and implemented through a consultative process.

(3) The storm water management plan shall among others—

- (a) identify and survey inventories existing conditions that affect storm water runoff;
- (b) address issues of peak flows, flooding, ground water recharge, stream erosion and water quality.

(4) Any person constructing a road shall ensure that there is a built in storm water management plan and system for that road.

(5) Any construction of a building, physical infrastructure or road shall not be approved unless the construction has a storm water management plan to be implemented.

(6) A person who contravenes this section commits an offence and shall—

- (a) if a corporate body be liable to a fine of five hundred thousand shillings; or
- (b) if an individual to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months or to both.

**39.** (1) The owner of a house, property or building shall—

Reduction of run off  
water.

- (a) install rain barrels with sufficient capacity to store water from the building;
- (b) where applicable not permit storm water to become run off;

- (c) re-use or recycle storm water collected for other purposes in the premises.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one month.

**40.** (1) The directorate in collaboration with other Government agencies and local residents shall mobilize residents to develop or restore riparian buffers along rivers, water ways or any other water body.

Riparian buffers.

(2) No person will interfere with a restored riparian buffer in a way that exposes it to run off water.

(3) A person who contravenes subsection (2) commits an offence and shall—

- (a) if a corporate body be liable to a fine not exceeding five hundred thousand shillings; and
- (b) if an individual be liable to a fine of fifty thousand shillings or to imprisonment for a term not exceeding two months.

**41.** The directorate shall in collaboration with other county and National Government agencies and local residents prepare a five year water and sewerage services master Plan.

Master plan.

**42.** The company shall either directly or through public private partnership—

Provision of sewerage services.

- (a) provide necessary sewerage facilities and services; and
- (b) construct, operate and maintain extensive system of sewere and treatment facilities to meet applicable discharge requirements.

**43.** The Executive Member shall—

Waste water management.

- (a) develop strategies and policies to encourage treatment of waste water and dried sludge re-use;
- (b) in co-operation with relevant Government agencies will periodically carry out effluent quality analysis to confirm efficacy of the

facilities.

**44.** A person or entity shall when disposing final effluent comply with the guidelines prescribed by the Kenya Bureau of Standards.

Compliance with effluent standards.

**45.** (1) A person shall not discharge or dispose any contaminated water or effluent unless in accordance with the prescribed guidelines and standards.

Discharge of contaminated water or effluent.

(2) A person who contravenes subsection (1) commits an offence and shall—

- (a) if a corporate body be liable to a fine not exceeding five hundred thousand shillings; and
- (b) if an individual be liable to a fine of one hundred thousand shillings or to imprisonment for a term not exceeding two months or both.

**46.** (1) A person shall not interfere with any sewerage facility or system unless with a written consent of the company for the purposes of carrying out works within the area of the facility or system.

Interference with sewerage systems.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or both.

**47.** The company may impose tariffs or levy sewerage services on water or sewerage services for the purposes of disposal of water or sewage in conformity with national standards.

Sewerage tariffs.

**48.** (1) The Executive Member shall constitute and convene the water and sewerage services sector wide forum.

Sector wide forum.

(2) The sector wide forum shall consist of all stakeholders in the water and sewerage sector as shall be prescribed.

(3) The roles of the sector wide forum shall be to—

- (a) review and deliberate on water resources management and sewerage services;
- (b) propose policy or legislative interventions for effective implementation of this Act;

- (c) participate in development of measures, plans and strategies for implementing this Act.
- (4) The sector wide forum shall meet at least twice every year.

### **PART VII—FINANCIAL PROVISIONS**

**49.** (1) There is established a Fund to be known as the County Water Trust Fund. Trust Fund.

- (2) The Fund shall consist of—
  - (a) an amount of money voted for annually by the County Assembly on recommendation by the Executive Member;
  - (b) any other monies accruing or received by the company from any other source to be distributed as a grant by the County Government through the Executive Member.
- (3) The Fund shall be used in carrying out such activities as—
  - (a) catchment rehabilitation;
  - (b) river bank protection;
  - (c) wetland and riparian area protection;
  - (d) rural water infrastructure and any other water related activities that may be prescribed by the Executive Member.
- (5) The Executive Member shall appoint a committee to vet applications of works to be carried out by the Fund.

**50.** The Fund shall be administered by a technical committee appointed by the Executive Member and drawn from the company. The Managing Director shall be the Chair of the committee. Administration of the Fund.

### **PART VIII—TRANSITIONAL PROVISIONS**

**51.** (1) Subject to subsection (2), on such date as may be specified in the rules and regulations to be made by the Executive Committee Member, there shall be made rules to govern transfer of assets, liabilities and staff from the Water Supply and Sewerage Services Company to the Transfer of functions, assets and liabilities.

County Water and Sewerage Services Company as per the provisions of this Act.

(2) Every person who immediately before the commencement of this Act was an employee of the Water Supply and Sewerage Services Company established under the Water Act, 2002 (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of Busia Water and Sewerage Services Company on terms as relevant or as may be determined by the Managing Director.

## **PART IX—ENFORCEMENT**

**52.** (1) The Executive Member may on recommendations appoint such a number of authorized officers for the purposes of enforcing or implementing the respective functions of each unit of the department.

Authorized officers.

(2) The Executive Member shall issue a letter of appointment to every officer appointed under this section.

**53.** For the purposes of ensuring compliance or implementation of the Act, an authorized officer may at any reasonable time, enter any place in which any function related to this Act is carried out.

Power of entry.

**54.** Any person who obstructs an authorized officer while enforcing or implementing this Act commits an offence and is liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months.

Power of officers.

## **PART X—MISCELLANEOUS PROVISIONS**

**55.** The institutions established under this Act shall actively participate in community water conflict resolution.

Water conflict resolution.

**56.** (1) The Executive Member may make regulations generally for the better carrying out of the objects of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations may—

- (a) prescribe guidelines for developing watershed storm management plans;
- (b) prescribe guidelines for sewerage systems and

standards;

- (c) prescribe for the areas declared as water protected areas;
- (d) prescribe guidelines for administering the Fund;
- (e) prescribe the membership of the water sector stakeholders.

#### **SCHEDULE—(Section 8)**

### **PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD OF THE COMPANY**

#### **Tenure of Office**

1. Any member of the board, other than the Managing Director shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re—appointment for a further and final term of three years.

#### **Vacation of Office**

2. A Member of the board may —

- (a) at any time resign from office by notice in writing to the Executive Member;
- (b) be removed from office by the Executive Member if the Member is guilty of any gross misconduct.

#### **Meetings**

3. (1) The board shall meet not less than four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of sub paragraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the board at any time for the transaction of the business of the board.

(3) Unless three quarters of the total Members of the Board otherwise agree, at least fourteen days written notice of every meeting of the board shall be given to every Member of the board.

(4) The quorum for the conduct of business of the board shall be five Members including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the board at which he is present but in his absence, the Members present shall elect one of their Members to preside who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the board shall be by a majority of 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.

### **Conflict of Interest**

4. (1) If a Member is directly or indirectly interested in any contract, proposed contract or other matter before the board and is present at a meeting of the board at which the contract, proposed contract or other matter is the subject of consideration, that Member shall, at the meeting and as soon as is 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 the consideration of the matter:

Provided that, if the majority of the Members present are of the opinion that the experience or expertise of such Member is vital to the deliberations of the meeting, the board may permit the Member to participate in the deliberations subject to such restrictions as it may impose but such Member shall not have the right to vote on the matter in question.

(2) A Member of the board shall be considered have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a Member or employee of the board.

(3) If the Chairperson has a conflict of interest he shall in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.

(4) Upon the board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the Member of the board and the Member with the conflict of interest shall not vote on this determination.

### **Assets and Liabilities**

2. The board shall maintain an updated register of the assets and liabilities of the company and have them availed to the relevant stakeholders as the need may arise.

### MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya at Article 43(1) (d) mandates the County Government to fulfill the rights set forth thereof which is that every person has a right to clean and safe water in adequate quantities. The demands for water as a resource are increasing rapidly and Article 69 (1) (a) of the Constitution further requires that the state should ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure equitable sharing of the accruing benefits.

This Bill therefore seeks to bring to fruition the role of the County Government as stipulated at paragraph 10 (a) and paragraph 11 of Part 2 of the Fourth Schedule of the Constitution.

The Bill at Part II thereof seeks to establish a County Water and Sewerage Services Company which according to the Bill, shall be the successor of the outgoing Water and Sewerage Services Company established under the Water Act. The Bill also establishes a board which shall be responsible for carrying out the activities of the company. It stipulates the membership of the board and the schedule to the Bill stipulates the rules and guidelines for the conduct of the affairs and business of the board.

**PART III** identifies the water services that are available to the residents of the county and makes provisions for the payment of tariffs to enable residents enjoy such services. It also stipulates the forms of application to be made by a person or a corporate entity which wishes to carry out water works or public works which are to the benefit of the county residents.

**PART IV** mainly touches on forms and modes of water and soil conservation. The company is mandated to carry out the provisions of this Act and ensure their implementation to ensure the objectives of this Bill are achieved.

Provisions for storm water management are made at Part V of the Bill where the company responsible for water services is tasked with coming up with storm water management plans to help conserve storm water.

**PART VI** of the Bill makes provisions for sewerage services and pollution control providing for the company to come up with a master plan which shall ensure the control of pollution activities, provision of sanitation services and management of waste water.

**PART VII** makes provisions for establishment of a Fund to be administered by a committee established by the Executive Committee Member in-charge of water services. The relevant section makes a provision that the Managing director of the board shall be the Chairperson to the committee to ensure that the company is represented in the administration of this Fund.

**PART VIII, IX and X** of the Bill makes general provisions touching on matters transitional, enforcement and miscellaneous provisions pertaining the Bill, including the powers of the Executive Member having powers to make regulations to ensure the proper performance of the objectives of the Bill.

Pursuant to Standing Order No. 114 of the Busia County Interim Standing Orders, it is provided at section 56 of the Bill that the County Executive Committee Member is given delegatory powers of legislation but with proper consultation and recommendations from the relevant stakeholders.

The Bill does not limit any fundamental rights and freedoms of individuals; it only seeks to enforce them.

The Bill concerns the County Government and it falls under the ambit of the functions of the County Government as outlined at paragraph 2 of this Memorandum.

The enactment of this Bill shall occasion further expenditure of Public funds in terms of the establishment of the Fund referred to at section 49 of the Bill; which expenditure ought to be factored in the County Government's Budget estimates.

LUCAS WAKULOBWA,  
*Chairperson,  
Transport, Public Works and Disaster Management Committee.*