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**EMBU COUNTY GAZETTE
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CONTENT

Bill for Introduction into the Embu County Assembly —

PAGE

The Embu County Water Bill, 2015 31

THE EMBU COUNTY WATER BILL, 2015

ARRANGEMENT OF CLAUSES

PART I — PRELIMINARY

Clause

- 1—Short title.
- 2—Interpretation.
- 3—Object and purpose of Act.

PART II—ADMINISTRATIVE PROVISIONS

- 4—Establishment of the Embu Water Development Board.
- 5—Composition of the Board.
- 6—Functions of the Board.
- 7—Powers of the Board.
- 8—Qualifications of Chairperson and Members of the Board.
- 9—Removal from office of the Chairperson, Member or Chief Executive Officer.
- 10—Appointment of the chief executive officer.
- 11—Conduct of affairs of the Board.
- 12—Remuneration of staff.
- 13—Committees of the Board.
- 14—Appointment of inspectors.
- 15—Powers of inspectors and authorized persons.
- 16—Notice of entry.

PART III—PROVISION OF WATER AND SANITATION SERVICES

- 17—Water Service Providers.
- 18—licensing of water service providers.
- 19—Agreements with water service providers.
- 20—Responsibilities of Water Service Providers.
- 21—Application for a license by a water service provider.
- 22—Conditions of a license.

- 23—Fees or charges.
- 24—Revocation of a license.
- 25—Non transferability of a license.
- 26—Prohibitions.
- 27—Demarcation of riparian land.
- 28—Prohibited activities on the riparian land.
- 29—Obstruction of water resource.
- 30—Pollution of watercourse or water resource.
- 31—Clustering of Areas of water service provision.

PART IV—SANITATION AND SEWERAGE SERVICES

- 32—Control of effluent.
- 33—Execution of works for protection of water.
- 34—Privately developed sewers.
- 35—Sewage service levy.

PART V—SOIL AND WATER CONSERVATION

- 36—Water conservation areas.
- 37—Designation of catchment areas.
- 38—Establishment of Water Resource Users Associations.

PART VI — STORM WATER MANAGEMENT & DRAINS

- 39—Provision of infrastructure.
- 40—Protection of storm water system.
- 41—Prevention of flood risk.
- 42—Studies and assessments.
- 43—Water pollution incidents.
- 44—Storm water systems on private land.

PART VII — FINANCIAL PROVISIONS

- 45—Funds of the Board.
- 46—Financial year.
- 47—Annual estimates.
- 48—Accounts and audit.

PART VIII—MISCELLANEOUS PROVISIONS

- 49—Measures for control of pollution.
- 50—Default by service providers.
- 51—Rural Water Service Provider.
- 52—Regulations.
- 53—General penalty.
- 54—Transitional.

SCHEDULE—Meetings and Procedure for the Board.

THE EMBU COUNTY WATER BILL, 2015

A Bill for

AN ACT of the County Assembly of Embu to provide for provision of water and sanitation services, water and soil conservation, development, regulation and management of water and sanitation services, storm water management systems and for connected purposes

ENACTED by the County Assembly of Embu as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Embu County Water Act, 2015 and shall come into operation upon publication in the *Gazette*.

Short title and commencement.

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

Interpretation.

“authorized officer” means an authorized officer appointed under section 14;

“Board” means the Embu Water Development Board established under section 4;

“Chief Officer” means the Chief Officer for the time being responsible for water and sanitation services;

“charges” in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;

“County” means the Embu County;

“County Assembly” means County Assembly of Embu;

“County Government” means the Embu County Government;

“County Water Service Provider” means a water service provider established and owned by the Embu County Government;

“county public water works” includes water and sanitation infrastructure, management and regulation of water service providers in the county;

“Department” means department responsible for water services in the county;

“Director” means director responsible for matters relating to water and sanitation in the county;

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

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

“Governor” means the Governor of Embu County;

“Inspector” means a person appointed by the Executive Committee Member, the Board or Embu County Government, to exercise the powers of an inspector under this Act;

“Land and Environment Court” means the Land and Environment Court as established under Article 162 (2) of the Constitution;

“license” means a license in force under this Act;

“management of water resources” means the development, augmentation, conservation or protection of a water resource;

“permit” means a permit for the time being in force under this Act;

“pollution”, in relation to a water resource, means any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource so as to make it—

- (a) less fit for any beneficial purpose for which it is or reasonably be expected to be used; or
- (b) harmful or potentially harmful to—
 - (i) the welfare, health or safety of human beings;
 - (ii) any aquatic or non-aquatic life or property; or
 - (iii) the environment;

“sanitation” means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhaustor services;

“sewerage services” means the development and management of infrastructure for transport, storage, treatment waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

"water services" means any services of or incidental to the supply of water and includes the provision of sewerage services;

“water resource” means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below the ground;

“Water Service” means any service of or incidental to the supply of water or the provision of sewerage;

“water services provider” means a company, non-governmental organization or other person or body licensed to provide water services including water bottling and packaging under this Act and in accordance with an agreement as provided under section 17;

“works” means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilization of water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by Regulations made pursuant to this Act.

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

Object and purpose

(2) Without prejudice to the generality of the provision of subsection (1), the Act makes provisions which—

- (a) provides for equitable and continuous access to safe, clean water in adequate quantities;
- (b) promotes soil water conservation;
- (c) promotes conservation and protection of water catchment;
- (d) provides for the development and management of county water and sanitation services public works;

- (e) provides for effective and efficient provision of water and sanitation services;
- (f) promote effective and efficient management of storm water in built up areas;
- (g) enhances sustainable management of water resources, and
- (h) Promote inter-agency collaboration and public participation in water resource development and management.

PART II—ADMINISTRATIVE PROVISIONS

4. (1) There is established a Board to be known as Embu Water Development Board.

Establishment of the Board

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) Performing all such other roles or acts as may be necessary in furtherance of its purpose and functions.

5. (1) The Board shall consist of—

Composition of the Board

- (a) a non-executive chairperson competitively recruited and nominated by the Governor and vetted and approved by the county assembly;
- (b) six members, who shall be competitively recruited by the County Public Service Board and appointed by the Executive Committee Member;
- (c) the Chief Officer for the time being responsible for matters relating to water;
- (d) the Director in charge of Water and Sanitation Services in the County Government; and
- (e) the chief executive officer who shall be an ex-officio and secretary to the Board.

(2) The chairperson and members of the Board appointed under sub section 3(b) shall be appointed for a single term of three years and are eligible for re-appointment for one term.

6. The Board shall be responsible for—

Functions of the Board.

- (a) recommending for licensing of water service providers to the Executive Member;
- (b) establishing a mechanism for handling complaints from consumers regarding the quality of water services and address those complaints ;
- (c) facilitating public awareness and participation on sustainable water, sanitation and storm water management;
- (d) developing policies, strategies and mechanisms for climate change mitigation and adaptation in the water sector;
- (e) developing performance management system and overseeing its implementation by the agencies established under this Act;
- (f) monitoring and evaluating the implementation of this Act and the water sector;
- (g) maintaining a database on information, data dissemination and communication on water sector issues;
- (h) developing and advising the County Executive Member on the necessary policy, plan or strategy to be adopted for sustainable water and sanitation service provision;
- (i) formulating development and investment plans for rural and urban areas; aggregated from the county development plans and established by the county water service providers and through the County Government water services institutional structures for their designated areas;
- (j) providing technical assistance to the water services providers as County Government agents for County asset development and hand over developed public assets to the licensed water services providers, or to the county water

Directorate according to the Regulations by the County Executive Member;

- (k) ensuring compliance by the water service providers with the established standards relating to water and sanitation services ;
- (l) mobilization of resources for water and sanitation services provision and support, financing of water conservation and protection of catchment areas within the County;
- (m) supporting and direct enforcement of reserve flow maintenance at all times;
- (n) in collaboration with Water Resource Users Associations, participation in development, implementation and monitoring of sub catchment management plans;
- (o) determining, set charges for Water Catchment protection;
- (p) monitoring compliance by water users with the conditions of licenses and the requirements of this Act;
- (q) developing a report, at least, annually on water issues including the performance of water resource institutions;
- (r) recruiting the chief executive officer and other staff of the Board; and
- (s) performing any other functions as may from time to time be assigned to it by the Executive Committee Member or as may be assigned through any other relevant law;

7. (1) The Board shall have all powers necessary for the execution of its functions under this Act.

Powers of the Board.

(2) Without prejudice to the generality of subsection (1), the Board has the power to—

- (a) source and receive funding for the activities of the Board;
- (b) collect, analyse and disseminate information on water services; and

- (c) Monitor compliance by water service providers with the conditions of permits and the requirements of this Act or the national legislation relating to water.

8. (1) A person is qualified for appointment as a chairperson of the Board if such person—

Qualifications of
Chairperson and
Members of the
Board.

- (a) holds a bachelor degree from a university recognised in Kenya ;
- (b) has a distinguished career in senior management position in either private or public sector ;
- (c) holds at least eight years post qualification professional experience ; and
- (d) Satisfies the requirements of Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member of the Board if such person—

- (a) holds a bachelor degree from a university recognised in Kenya ;
- (b) has a distinguished career in their respective field;
- (c) has at least five years post qualification professional experience ; and
- (d) Satisfies the requirements of chapter six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Board of the Embu Water Development Board if that person—

- (a) is of unsound mind ;
- (b) is adjudged bankrupt ;
- (c) is a member of a Commission established under the Constitution ;
- (d) is a member of Parliament or County Assembly;
- (e) is a member of a governing body of a political party ; and
- (f) has been removed from office for contravening the Constitution or any other law ;

Removal from office
of chairperson,
member or chief
executive officer.

9. A chairperson, member or the chief executive officer may be removed from office in accordance with the terms and conditions of service for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity ;
- (b) gross misconduct or misbehaviour ;
- (c) incompetence or negligence of duty ;
- (d) Any other ground that would justify removal from office under the terms and conditions of service.

10. (1) The chief executive officer shall be competitively recruited and appointed by the County Public Service Board on such terms and conditions as the Board shall determine.

Appointment of the
chief executive
officer.

(2) A person is qualified to be appointed as the chief executive officer if that person—

- (a) holds a degree from a university recognized in Kenya ;
- (b) has at least five years relevant professional experience ; and
- (c) Satisfies the requirements of Chapter Six of the Constitution.

(3) The chief executive officer shall be the accounting officer and shall be responsible for the day to day administration of the affairs of the Board.

(4) Without prejudice to the generality of the provisions of subsection (3), the chief executive officer shall be responsible for—

- (a) the implementation of decisions of the Board ;
- (b) the establishment and development of an efficient administration of the secretariat of the Board ;
- (c) the organization, control and management of the staff of the secretariat;
- (d) maintaining accurate records on financial matters and resource use ;
- (e) ensuring the preparation and approval of the budget for the required funding of the operational expenses of the Board ; and

- (f) Performing any other duties as may be assigned to him by the Board.

(5) The chief executive officer shall be appointed for a term of five years, and shall be eligible for renewal for a further one more term.

11. (1) The conduct of affairs and procedure of the Board shall be as provided under the Schedule to this Act.

Conduct of affairs of the Board.

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

12. (1) The chairperson and members of the Board shall be paid such benefits and allowances as may be determined by the Executive Committee Member, in consultation with the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

Remuneration of staff.

(2) The chief executive officer and staff of the Board shall be paid such salaries and benefits as may be determined by the Board, in consultation with Executive Committee Member and County Public Service Board upon the advice of the Salaries and Remuneration Commission.

13. The Board may establish such committees or appoint experts to assist the Board on technical matters for the better carrying out of the functions of the Board.

Committees of the Board.

14. (1) The Executive Committee Member shall, in consultation with the Board and by a notice in the *Gazette*, appoint inspectors under this Act.

Appointment of inspectors.

(2) An inspector appointed under subsection (1) shall be a holder of at least a diploma in a relevant field.

15. (1) For purposes of this section an officer or staff of the Board shall be deemed to be an authorized person under this Act.

Powers of inspectors and authorized persons.

(2) An inspector or authorized person may enter on to any kind or premises in the county for the purpose of—

- (a) ascertaining whether there is or has been any contravention of any such regulations;
- (b) in the case of any regulations in respect of tariffs and the payment therefore, non-payment; or
- (c) in the case of any regulations made for preventing water degradation—

- (i) ascertaining whether or not circumstances exist which may justify the water service provider's imposing a requirement to execute works or take other action to prevent degradation; or
- (ii) exercising any right conferred on the licensee, to execute and maintain works or take other action.

16. An Inspector or authorized person shall not enter to the land or premises without first identifying himself or herself and giving reasonable notice, whether written or verbal, to the landholder or his employee or agent in charge of the land or premises, and such entry shall be at reasonable hours provided that an Inspector may enter without giving notice if—

Notice of entry.

- (a) he has reason to believe that a provision of this Act or regulations made under this Act has been or is about to be contravened;
- (b) he is unable to give notice within a reasonable time having regard to the circumstances; or
- (c) He has been given reasonable grounds for not giving notice.

(2) If requested by the owner or occupier of the land or premises, the Inspector or authorized person shall produce evidence of his right or permission, as the case may be, to enter on to the land.

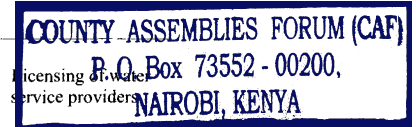
(3) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in doing so.

PART III—PROVISION OF WATER AND SANITATION SERVICES.

17. (1) Water and Sewerage services in the county shall be provided by or on the basis of an agreement with water services providers in accordance with the provisions of this Act.

Water service
providers

(2) The Executive Committee Member shall, by notice published in the *Gazette* appoint a water service provider.



18. (1) A water service provider shall not provide water services except under the authority of a licence issued by the Executive Committee Member.

(2) A license issued under subsection (1) shall specify the conditions and terms of the license.

(3) Nothing in this section prohibits the provision of water services—

- (a) by a person to his employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or other institution of a similar nature to the occupants thereof, in cases where the source of supply of the water is lawfully under the control of the institution or where the water is supplied to it in bulk by a licensee; or
- (c) In circumstances where a person supplies less than fifty households per day.

19. (1) An agreement entered into between a water service provider and the Board shall specify the powers and functions of the licensee which shall be performed by the water service provider.

Agreements with water service providers.

(2) The agreement specified under subsection (1) shall make provisions with respect to-

- (a) indemnifying the water service provider of any liability to the Board arising from performance or non-performance of functions conferred by the licence; and
- (b) The maintenance, rehabilitation and development by the water service provider of water and sewerage infrastructure and facilities in the County.

20. A water service provider shall be responsible for—

Responsibilities of water service providers.

- (a) provision of water services within the area specified in the licence and ensure that water and sewerage services in the county are performed in effective and efficient manner;
- (b) development and maintenance of county assets for water service provision;

- (c) collection, treatment and management of wastewater; and
- (d) Treatment and management of sludge.

21. (1) A water service provider shall make an application to the Board for a license to supply water and sewerage services in the county.

Application for a
licence by a water
service provider.

(2) The application shall be made by submitting to the Board the form provided under the Second Schedule to this Act together with the prescribed fees.

(3) An application for a license shall require the following particulars to be furnished by the applicant—

- (a) the technical and financial capability of the applicant to provide the services and perform functions authorized by the license;
- (b) business plans for the provision of efficient, affordable and sustainable water services;
- (c) details of planned financial and infrastructural improvements;
- (d) a proposed tariff structure; and
- (e) Any other information required by the County.

(4) The Board may recommend to the Executive Committee Member to grant or refuse to issue a licence.

(5) Where the County Executive Committee Member refuses to grant or issue a license, the Executive Committee Member shall inform the applicant the reasons for refusal within seven working days from the day the decision to refuse is made.

22. (1) A license shall be subject to—

Conditions of a
licence

- (a) such conditions as may be prescribed by or under this Act in relation to the license; and
- (b) such other conditions, not inconsistent with the conditions prescribed, as the national water regulatory agency may impose by endorsement on, or instrument in writing annexed to, the licence;

(2) Rules made under this Act may make provision for imposing conditions on, or with respect to the conditions

which are or shall be imposed on licenses generally or any class or description of licenses.

(3) Without prejudice to the generality of subsection (2), such rules may—

- (a) require the imposition of prescribed conditions in prescribed circumstances;
- (b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the licence or for meeting any other prescribed contingency.
- (c) provide that a contravention of any, or of any specified, conditions prescribed by or under this Act as conditions of licenses shall constitute an offence punishable by a penalty specified in the licence.

(3) The imposition of a penalty by a regulation made in accordance with subsection (3) (c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

(4) The limits of supply of water shall be as prescribed by the license.

23. (1) A water service provider shall pay to the Board, on issue of a license any such fees as the Board shall determine.

Fees or charges.

(2) Without prejudice to the generality of the provisions of subsection (1), a county water service provider shall pay to the county ten percent of their total collection per year which amount shall be used only for development of the water and sanitation systems.

(3) A water services provider who contravenes the provision of this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both.

24. (1) Where a water service provider more than three times defaults in complying with the conditions of the

Revocation of a licence.



licence or the requirements of the Act the Board may impose a special regulatory regime, on the licensee requirements which may include—

- (a) enhanced monitoring and reporting;
- (b) loss of privileges;
- (d) the imposition of financial penalties;
- (e) the removal of the senior management of the licensee;
- (f) dissolution of the Board of directors of the licensee; and
- (g) Appointment of a special manager of the water services.

(2) If the County Executive Member is satisfied that, notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the licensee, he may by notice in the Gazette, order the transfer to another licensee of the water services within the county.

(3) The order of transfer under subsection (2) shall make such provision as it appears to the Executive Committee Member to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

25. (1) Subject to subsection (2), a licence issued under this Act shall not be capable of being sold, leased, charged, transferred, attached or otherwise assigned, demised or encumbered.

Non transferability
of a license

(2) Despite subsection (1), a water service provider may enter into an agreement with any other person for the supply of water in bulk for any period and on any terms and conditions approved by the Board.

(3) Where it appears to the Board that it is expedient that—

- (a) any water service provider should give a supply of water in bulk to another water service provider; and
- (b) the other water service provider should take such a supply; and

- (c) the giving and taking of such a supply cannot be secured by agreement, the Board may, by order served on them, require the water service providers concerned to give and take such supply for such period and on such terms as it may specify

26. (1) A water service provider which is of the opinion that there is a serious deficiency of water available for distribution or that there is a likelihood of such a deficiency may, with the approval of the Board, for such period as he thinks necessary prohibit or restrict, as respects the whole or any part of his limits of supply, the use for any specified purpose of water supplied that service provider.

Prohibitions.

(2) Before any such prohibition or restriction comes into force, public notice shall be given by the licensee, in at least two newspapers with wide circulating within the affected area of the proposed prohibition or restriction and of the date when it shall come into force.

Any person who, while such prohibition or restriction is in force, contravenes its provisions shall commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand or to imprisonment for a period not exceeding twelve months or to both.

27. (1) Any riparian land shall be demarcated and protected.

Demarcation of
riparian land.

(2) The county department responsible for land shall, in consultation with the Board and County Land Management Board ensure that this section is implemented.

28. A person shall not carry any of the following activities on riparian land—

Prohibited activities
on the 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; or
- (f) Planting of exotic species that may have adverse effect to the water resource or any other activity

that in the opinion of the Department may degrade.

29. (1) No person shall, without authority under this Act or other written law wilfully obstruct, interfere with, divert or abstract water from any watercourse or water resource, or negligently allow any such obstruction, interference, diversion or abstraction.

Obstruction of water resource.

(2) A person who contravenes this commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment of a term not exceeding twelve months or to both.

(3) Any person who without any written authority from the department, Board or water service provider, knowingly or wilfully—

- (a) defaces, alters, removes or interferes with water works developed by the department, Board or water service provider ; or
- (b) causes to be defaced, altered, connect storm water to the sewer system, removes or interfered with any public works developed by the Directorate or water service providers;
- (c) use or cause to divert domestic water for other purposes other than domestic use, commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment term not exceeding twenty four months or both.

30. (1) No person shall, without authority under this Act or any other written law throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or likely to cause, pollution of the water resource.

Pollution of water course or water resource.

(2) A person who contravenes this commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding twelve months or both.

(3) No person shall carry on agricultural activities along the banks of any water resource unless he does so ten meters from the banks of a water resource.

(4) A person who contravenes this shall be guilty of an offence and liable to a fine of Kenya Shillings ten thousand and to imprisonment of a term not exceeding twelve months or to both.

31. (1) The County may, on application by Consumers and with consultation of the licensees concerned permit the transfer of a water service, or part thereof, from one licensee to another licensee.

Clustering of areas
of water service
provision.

(2) Where it appears necessary to the Executive Committee Member to cluster, merge or restructure the water service providers, for the purpose of securing a commercially viable water service, he may, by notice in the Gazette, order such a joint provision of water services or such a transfer of water service and may vary the relevant licenses accordingly.

PART IV — SANITATION OR SEWERAGE SERVICES

32. (1) No person shall discharge any trade effluent from any trade premises into the sewers of a water service provider without the consent of the water service provider.

Control of effluent

(2) An application for consent shall be made to the water services provider and shall state—

- (a) the nature or composition of the trade effluent;
- (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) Any other information required by the water service provider.

(3) The water service provider's consent may be given subject to conditions, including conditions requiring the payment to the water service provider of charges for the discharge.

(4) Such consent shall be granted with the approval of the Executive Committee Member.

33. (1) A water service provider may, on any land belonging to it, or over or in which it has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the water service provider, or which it is for the time being authorized to take, from being polluted.

Execution of works
for water protection

(2) Provided that before constructing any works the water service provider, if the proposed works will affect or is likely to affect any body of water in the catchment area in which the works are situated, shall obtain the consent of the National Environment Management Authority and any other relevant authorities.

(3) Any water service provider proposing to construct any such drain, sewer or other works may, with the consent of the Board concerned and subject to such conditions as the Board may impose, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of supply of the water service provider.

34. Any privately developed sewer approved and supervised by the water service Provider and connecting to public facilities may revert to public use.

Privately developed
sewers.

35. A water service provider may with the approval of the Executive Committee Member, fix and impose a sewerage services levy on all water services within the limits of supply of the licensee, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

Sewerage service
levy.

PART V—SOIL AND WATER CONSERVATION

36. The Executive Committee Member shall in consultation with National Land Commission, the public, National Water Resources Management institutions and Intra County Basin Management Authority declare by notice in the Gazette any area to be a water conservation area for the purposes of conserving water.

Water conservation
areas.

37. (1) The Executive Committee Member shall, in consultation with the cabinet secretary in-charge of Water, by notice published in the Gazette designate a defined area

Designation of
catchment areas.

from which rainwater flows into a watercourse to be a catchment area for the purposes of this Act.

(2) The Water Resources Management Department may designate a catchment area lying wholly or partly within another catchment area as a sub-catchment, in consultation with the National Water Resources Management Department or Agency.

(3) Each Sub Catchment, represented by the Water Recourses Users Associations shall formulate a Sub Catchment Management Plan.

(4) Each sub catchment water resources management plan as is in force for the time being, shall be published in the Gazette

38. (1) The Water Resource Users Association shall be established as association of water resource users at Sub Catchment level and as agents of the County Government.

Establishment of
Water Resource
Users Associations.

(2) Water Resource Users Association shall be community-based associations for catchment protection, collaborative management of water resources and resolution of conflicts concerning the use of water resources.

(3) The county may contract Water Resource Users Associations as agents to perform some functions in catchment protection and water resource management

PART VI—STORM WATER DRAINS

39. (1) The Department may—

Provision of
infrastructure.

- (a) construct, expand, alter, maintain or lay any drains, pipes or other structures related to the storm water system on or under immovable property;
- (b) drain storm water or discharge water from any county public works into any natural water course, and
- (c) do any other thing necessary to give effect to this Act.

(2) Ownership of any drains, pipes or structures related to storm water shall vest in the County.

40. A person shall not, unless with the written consent of the county government and subject to any conditions it may impose—

Protection of the
water system.

- (a) discharge, permit to enter or place anything other than storm water into the storm water system;
- (b) damage, endanger, or destroy the storm water system or its operation;
- (c) construct or erect any structure or thing or over or in such a manner to interfere with or endanger the storm water system or its operation;
- (d) discharge, permit to enter or place anything likely to cause storm water pollution;
- (e) make an opening into a storm water pipe, canal or culvert drain, abstract or divert any water directly from the storm water system;
- (f) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the storm water system; or
- (g) Connect or direct storm water into the Public sewerage system.

41. A person shall not, except with the written consent of the county and subject to any conditions it may impose undertake in any activity which alone or in combination with other existing or future activities, may cause an increase in the flood levels or create a potential flood risk.

Prevention of flood
risk.

42. (1) The studies and assessments which the county may undertake include—

Studies and
Assessments.

- (a) establishment of flood lines for water bodies;
- (b) impact assessments for all waterworks infrastructure and environmental impact studies as per the national laws on environment;
- (c) environmental impact studies or investigations which may be required by any applicable environmental laws

(2) Any study done under subsection (1) will be at the expense of the applicant.

43. (1) Where there is a storm water pollution incident as contemplated in this Act, the owner of the property on which the incident took place or is still in the process of taking place or the person responsible for the incident shall immediately report the incident to the executive committee member and National Environment Management Authority.

Water pollution incidents.

(2) The County Executive Committee member may in its opinion require that such persons take all reasonable measures to minimize the effects of the pollution at their own cost.

44.(1) Every owner of property on which private storm water systems are located shall, not carry out any activity which may reasonably impair the effective functioning of the storm water system

(2) The owner of such a property may be required at his or her own cost, to keep such storm water systems functioning effectively, including undertaking its refurbishment or reconstruction.

(3) The provisions of subsection (1), does not apply to the extent that the county has accepted responsibility for any of the duties in a formal agreement or in terms of a condition of a servitude.

PART VII — FINANCIAL PROVISIONS

45. (1) The funds of the Board shall consist of—

Funds of the Board

- (a) such funds as may be vested in or accrue to the Board in the performance of the function under this Act or any other written law;
- (b) monies allocated by the County Assembly for the purposes of capacity building, research, catchment protection and any other County Water Development,
- (c) any grant, credits, gifts, donation and other endowments provided to the Board,

(2) The County Executive Committee Member for finance may through a regulation create a public trust Fund for purposes of research and catchment protection.

46. The financial year of the Board shall be the period of twelve months ending on the thirtieth day of June in each year.

Financial year

Annual estimates

47. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

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

- (a) funding of training, research and development of activities of the Board; and
- (b) the funding of the schedules and organization of public participation meetings.

(3) The annual estimates shall be approved by the executive committee member before the commencement of the financial year to which they relate.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3).

48. (1) The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Board.

Accounts and audit

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board in respect of that year together with a—

- (a) statement of the income and expenditure of the Board during that year; and
- (b) statement of the assets and liabilities of the Board on the last day of that financial year.

(3) The annual accounts of the Board shall be prepared, audited and reported upon in accordance with the provisions relating to public audit.

PART VIII—MISCELLANEOUS PROVISIONS

49. In order to control pollution of water resources in the County, the Board in collaboration with the relevant bodies in the National Government shall—

Measures for control
of pollution

- (a) set up a cost-effective pollution monitoring program;
- (b) enforce regulations through user or polluter pays

principle, and other legal and administrative actions stated under this Act and in the national laws on management and coordination of environment and on public health;

- (c) ensure untreated effluent water is not released in to water resources;
- (d) treat effluent water and re-use or recycle it for irrigation purposes in the County; and
- (e) perform any other lawful act done to enhance control of pollution.

50. (1) Where the water services provider has failed to discharge any duty imposed upon it by a license or otherwise under this Act and having been notified by the Board to take such steps as are reasonably practicable in order to remedy any such failure and has failed, the Board may by order declare such Water supply provider to be in default.

Default by service providers.

(2) A water services provider declared to be in default by the order under this Act, who fails to comply with any requirement of the order within the specified time for the compliance with the requirement commits an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

51. (1) Rural water service providers shall obtain a license with conditions to ensure they run on Commercial principles.

Rural Water Service Provision.

(2) Where the scope of the project does not allow a commercial entity, the executive committee member may cluster the small water utilities for better technical support and management of their service.

52. (1) The Executive Committee Member shall make regulations for the better carrying out of the activities of this Act.

Regulations.

(2) Without prejudice to the generality of the provisions of subsection (1), the Regulations shall provide for—

- (a) conditions for the provision of water services and the tariffs applicable;

- (b) for controlling cultivation of land situated on slopes;
- (c) sustainable management of wetlands;
- (d) demarcating riparian lands;
- (e) disposing water falling or coming to rest within private property;
- (f) prescribing the amount of fees payable under this Act generally or in particular cases;
- (g) the circumstances in which licenses and agreements may be applied for, granted, varied, refused or cancelled, and the manner in which a person to whom a license is granted may exercise a right or privilege conferred upon him by the license;
- (h) forms to be used under this Act;
- (i) provision of bottled or mineral water; or
- (j) county projects relating to the water sector.

53. Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

General penalty

54. (1) Notwithstanding any other provision of this Act to the contrary, a person, a company or a body which, immediately before the commencement of this Act was in accordance with the legislation previously governing licensing of water service providers, shall be deemed to be a water service provider under this Act.

Transitional

(2) The water service provider referred to in subsection (1), shall, upon expiry of the licence granted under the referred legislation, comply with the requirements of this Act.

SCHEDULE

(s.11)

MEETINGS AND PROCEDURE FOR THE BOARD

1. The chairperson shall convene the first meeting of the Board.
2. The Board shall decide when and where it meets and the meetings shall be convened by the Secretary.
3. The Board shall have at least six meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
4. Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.
5. A meeting shall be presided over by the Chairperson or in his or her absence, by the vice-chairperson
6. The members of the Board shall elect a vice-chairperson from among themselves at the first sitting of the Board.
8. If any person has a personal or fiduciary interest in any matter before the Board, and is present at a meeting of the Board or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
9. A disclosure of interest made under paragraph 8 shall be recorded in the minutes of the meeting at which it is made.
10. A person who contravenes paragraph 8 commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.
12. The quorum of the meeting shall not be less than half of the appointed members.
13. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.
14. The Board shall keep minutes of proceedings of its meetings and decisions taken.

MEMORANDUM OF OBJECTS AND REASONS

Following the promulgation the Kenyan Constitution in the year 2010, provision of water services was devolved as a function of the County governments under the Fourth schedule of the Constitution.

In view of the above this Bill seeks to make provisions for provision of water and sanitation services, water and soil conservation, development, regulation and management of water and sanitation services, storm water management systems and related functions in the County as provided for in the Fourth Schedule of the Constitution.

PART I of the Bill provides for preliminaries, which include the short title, interpretation and object and purpose of this Bill.

PART II provides for administrative provisions including establishment of, composition, functions and powers of Embu Water Development Board.

PART III provides for the licensing of water service providers by the Executive Member who is also expected to execute an agreement with the water service providers undertaking to ensure that they comply with the terms therein. This Part also provides for the conditions to be met by applicants for licenses and the responsibilities of water service providers in the process of providing water to the residents of the County.

PART IV provides for sanitation and sewerage services including requirements by water services providers to execute certain works for purposes of protecting water and to manage sewerage systems and control trade effluents.

PART V provides for soil and water conservation including designation and protection of water catchment areas and also provides for establishment of Water Resources User Associations.

PART VI provides for public works on storm water drains by the County government through the department to protect storm water system and check flood risks.

PART VII provides for the funds of the Board including sources of such funds, accounting auditing and reporting on the funds of the Board.

PART VIII Provides for miscellaneous provisions including pollution control measures, power to make subsidiary legislation and transitional provisions offences and penalty.

The enactment of this Bill shall occasion additional expenditure of the public funds, which shall be provided for in the estimates.

Dated the 20th August, 2015.

HON. MERCY MBAE,
*Chairperson, County Assembly Committee Lands, Water, Environment
and Natural Resources.*