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THE KAKAMEGA COUNTY WATER BILL, 2017

A Bill for

AN ACT of the County Assembly of Kakamega County to provide for the 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 Kakamega County as follows;—

PART I—PRELIMINARY

Short Title and commencement

1. This Act may be cited as the Kakamega County Water Act, 2017 and shall come into operation upon publication.

Interpretation

2. In this Act unless the context otherwise requires:

“authorized officer” means an officer appointed under Section 58 of the Act;

“board” means the Board of management of the Water and Sanitation Services Authority established under Section 6;

“chief Officer” means the chief officer responsible for water services;

“county” means Kakamega County;

“department” means the County Department responsible for water and sewerage services;

“executive Committee Member” means the County Executive Committee Member for the time being responsible for water and sewerage services;

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

“governor” means the Governor of Kakamega County;

“other actors” means water and sewerage services providers other than Kakamega County Water and Sanitation Corporation;

“public works” includes 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;

“riparian Land” means land that is adjacent to a water body;

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

“scheme” means a water works from which portable water is supplied to consumers;

“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.

Object and purpose of the Act

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—

- (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; and
- (i) promote inter Corporation collaboration and public participation in water resource development and management.

PART II—WATER CORPORATION

Establishment of the Corporation

4. (1) There is established the Kakamega Water and Sanitation Corporation.

(2) The Corporation shall be the successor to the Kakamega County water and sanitation company limited.

(3) The Corporation 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.

Functions of the Corporation

5. The functions of the Corporation shall be to—

- (a) provide and manage water and sanitation services alongside other actors in the County;
- (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 ;

- (i) maintain database related to water and sewerage services;
- (j) disseminate information related to water and sewerage services;
- (k) maintain collaboration and cooperation with other government agencies, development partners, stakeholders, non-governmental organizations and other county governments in carrying out its functions.

Board of Management

6. (1) The management of the Kakamega Water Services and Sanitation Corporation shall vest in a Board of management consisting of—

- (a) a non-executive chairperson appointed by the Governor;
- (b) the Chief Executive Officer who shall be an *ex officio* member;
- (c) chief officer for the department responsible for water services;
- (d) county attorney;
- (e) chief officer county treasury;
- (f) Four persons with relevant qualifications appointed by the Executive Committee Member.

(2) In making the appointments under sub section (1), the Governor in the case of chairperson or the Executive Committee Member in the case of members appointed under sub section 1(f) shall take into consideration gender balance.

(3) The Chairperson and the Members of the Board shall be appointed by the Governor and the Executive Committee Member respectively from a list consisting of—

- (a) in the case of the chairperson, three names; and
- (b) in the case of members, eight names, submitted by a selection panel appointed by the Executive Committee Member in accordance with subsection (4).

(4) The selection panel referred to in subsection (3) shall comprise of a chairperson and four other persons appointed by the Executive Committee Member as follows—

- (a) one person to represent the County Public Service Board;
- (b) one person to represent the National Chamber of Commerce and Industry Kakamega Chapter;
- (c) one person to represent the County Public Health Services;

- (d) one person to represent the County Government department of water services.
- (5) The selection panel shall have power to regulate its own procedure.
- (6) The selection panel shall advertise the vacancies and publicize the names of applicants and shortlisted candidates in at least two daily newspapers with national circulation.
- (7) In determining the nomination criteria for the members of the Board of management, the selection panel shall have regard to the objectives of the development of water and sewerage services within the County.
- (8) In nominating members of the Board of management, the selection panel shall ensure that those nominated shall not have any conflict of interest in serving as members of the Board.
- (9) If the Governor rejects the names submitted under subsection 3(a) or the Executive Committee Member rejects the names submitted under subsection 3(b) the Governor or the Executive Committee Member, as the case maybe, shall inform the selection panel and request for a replacement.
- (10) In rejecting the names submitted under subsection (3), the Governor or the Executive Committee Member, as the case maybe, shall attach a memorandum giving reasons for the rejection of the candidates.
- (11) The selection panel shall stand dissolved after the appointment of the members of the Board of Management.

Board Secretary

7. The Board shall appoint a suitably qualified person under the Certified Public Secretaries of Kenya Act, Cap.534 to be the secretary of the Board.

Qualification of Board Members

8. (1) A person shall be qualified for appointment as a chairperson or member of the Board if the person—
- (a) in the case of the chairperson, holds a Masters degree from a university recognized in Kenya;
 - (b) in the case of a member appointed under section 6 (1), (f) and (g), holds at least a degree from a university recognized in Kenya, and at least five years' experience in leadership, management or has experience in the field of water and sanitation services.
- (2) In addition to the qualifications specified under subsection (1), the chairperson and members of the Board shall be persons of integrity in

accordance with chapter six of the Constitution and capable of making useful contribution to the management of water and sewerage services in the County.

(3) The chairperson shall be appointed from persons who, in addition to the qualification specified in subsection (1), has at least ten years' experience in leadership and management of public or private institutions.

(4) Subject to the provisions of this Act, the chairperson and members of the Board shall hold office for a term of three years and may be reappointed for one further term upon satisfactory performance.

(5) The members of the Board appointed under section 6 (1)(f) shall at the first meeting after appointment determine by lot which one of their number shall vacate office after a period of two years to ensure continuity in the activities of the Board.

(6) All appointments under this section shall be by notice in the Gazette.

Vacancy of Office

9. (1) Subject to the provisions of this Act, the office of chairperson or member of the Board shall become vacant if the chairperson or member—

- (a) resigns by notice in writing addressed to the appointing Corporation;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) if chairperson is absent without the permission of the Executive Committee Member or if member is absent without the permission of the chairperson for three consecutive meetings;
- (f) fails to meet the requirements of chapter six of the Constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period of six months or more; or
- (h) dies.

(2) Where the office of chairperson or member of the Board becomes vacant, the Governor in the case of Chairperson or the Executive Committee Member in the case of member may, subject to the provisions

of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the generality of the foregoing, the chairperson or any member of the Board suspected of having contravened Chapters 6 or 13 of the Constitution shall vacate office to pave way for investigations.

(4) Where a person who has vacated office under subsection (3) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of chairperson or member as the case may be.

(5) The First Schedule shall apply with respect to the conduct of the business and affairs of the Board.

Power to issue directions and remove Board

10. (1) The Governor may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the Governor may, if at any time it appears to him or her that the Board has failed to carry out its functions in the interest of the county, revoke the appointments of the chairperson or members and dissolve the Board and may himself constitute an interim Board for a period not exceeding six months as he or she shall, in consultation with the Executive Committee determine.

Functions of the Board

11. The functions of the Board shall be to—

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;
- (b) advise the management of the Corporation generally on the exercise of the powers and the performance of the functions of the Corporation;
- (c) approve the estimates of the revenue and expenditure of the Corporation;
- (d) administer the assets, liabilities and funds of the Corporation in such a manner and for such purposes as will promote the best interests of the Corporation in accordance with this Act;

- (e) receive, on behalf of the Corporation, gifts, donations, grants or other money and to make legitimate disbursements therefrom;
- (f) promote the general welfare of the staff of the Corporation;
- (g) have power to enter into association with other institutions dealing with water and sewerage matters, institutions of higher learning and research organizations as the Board may consider desirable or appropriate within or outside Kakamega County in furtherance of the purposes for which the Board is established;
- (h) make rules and regulations for the proper and efficient management of the Corporation which rules and regulations shall be issued by the Chief Executive Officer on behalf of the Board and shall not be published in the Gazette but shall be brought to the attention of all those affected or governed by them;
- (i) monitor and evaluate the state of water and sewerage systems in the County;
- (j) liaise with the County department of water services in all matters relating to water and sewerage services;
- (k) perform such other functions as the Board of Management may deem necessary for the proper discharge of its mandate under this Act.

Allowances of the Board members

12. The chairperson and members of the Board shall be paid such allowances as the Executive Committee Member shall determine in line with the Salaries and Remuneration Commission guidelines.

Chief Executive Officer

13. (1) There shall be a Chief Executive officer of the Corporation who shall be appointed by the Governor on recommendation of the Board of Management following a competitive recruitment process and shall serve for a period of three years which term may be renewable once upon satisfactory performance.

(2) The power of the Board Of Management to recruit and recommend the three nominees to the Governor shall be subject to power of the County Public Service Board under section 6 (3) of the Kakamega County Public Service Board Act, 2017.

(3) The Chief Executive Officer of the Authority and shall be responsible for the day to day management of the affairs of the Corporation on such terms and conditions of service as Board of Management shall in line with the Salaries and Remuneration Commission guidelines.

Qualification of Chief Executive Officer

14. A person shall qualify for appointment as a Chief Executive officer, if the person —

- (a) possesses a masters degree from a university recognized in Kenya;
- (b) possesses a first degree or its equivalent from a university recognized in Kenya;
- (c) has at least seven years' experience in management; and
- (d) meets the requirements of chapter six of the Constitution.

Vacation of office of Chief Executive Officer

15. The Chief Executive Officer may —

- (a) at any time resign from office by issuing a notice in writing to the chairperson of the Board of Management;
- (b) be removed from office by the Governor on recommendation of the Board of Management for —
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct;
 - (iii) prolonged physical or mental incapacity to perform the functions of the office;
 - (iv) dies; or
 - (v) non-performance.

Staff of the Corporation

16. (1) Subject to power of the County Public Service Board under section 6 (3) of the kakamega County Pubic Service Board Act, 2017, the Board of Management shall appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, and on such terms and conditions of service in line with the Salaries and Remuneration Commission guidelines.

(2) Whereas the Board of management will have the overall responsibility over the employment of the staff of the corporation, it may delegate this function as it deems fit.

(3) All appointments under this section shall be competitive and shall take into account gender equity, ethnic and regional balance in accordance with the Constitution.

Protection from personal Liability

17. 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 Authority, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for Damages

18. The provisions of Section 16 shall not relieve the Authority 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.

Public Private Partnership

19. The Corporation 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 executive committee.

PART III—FINANCIAL PROVISIONS RELATING TO THE CORPORATION

Funds of the Board

20. The funds of the Corporation shall consist of—

- (a) monies appropriated by the Assembly for the purposes of the Corporation;
- (b) fees and charges for services rendered by the Authority;
- (c) such monies as may be lawfully earned from income generating activities; and
- (d) monies granted or donated to the Authority.

Financial Year

21. The financial year of the Corporation shall be the period of twelve months ending on the thirtieth June of each year.

Annual Estimates

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

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

- (a) the operations of the Corporation;
- (b) the payment of the salaries, allowances and charges in respect of the staff of the Corporation;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Corporation;
- (d) the maintenance of the assets of the Corporation;
- (e) the funding of operations, training, research and development activities of the Corporation; and
- (f) the creation of such reserves to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board of Management, may deem fit.

(3) The annual estimates shall be approved by the Executive Committee Member, before the commencement of the financial year to which they relate after the Executive Committee Member has given approval, the Board of Management shall not increase any sum provided in the estimates without the consent of the Executive Committee.

Accounts and Audit

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

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

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

(3) The annual accounts of the Corporation shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

Reports

24. (1) The Board of management shall prepare quarterly reports on the operations and administration of the corporation and provide to the Executive Committee Member quarterly statements.

(2) Notwithstanding sub-section (1) the Board of management shall prepare monthly reports and financial statements on the operations and

administration of the corporation and submit the same to the Executive Committee Member.

(3) Within ninety days after the end of the financial year, the Board of management shall furnish the Executive Committee Member, with an annual report of the operations and administration of the corporation for that year.

(4) Upon receipt of the annual report under subsection (3), the Executive Committee Member shall, in line with the budget cycle, transmit the same to the County Assembly for tabling and debate.

PART IV—WATER SERVICES

Supply of Water

25. The County Government shall progressively ensure that—

- (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; and
- (c) there is equitable distribution of water between consumers in urban and rural areas.

Water and Sewerage Services to be Licensed

26. Any person or entity including government owned agencies wishing to provide water, sewerage or any related service shall apply for a license in the prescribed manner.

Development of Water Works

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

(2) Notwithstanding the provisions of subsection (1), the county government may acquire private land or land from the relevant government Corporation 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 County government shall identify and establish specific areas on any road where public works under this Act may be carried out.

Water Schemes

28. (1) The County government or the community may initiate a water scheme to provide services under this Act for public benefit.

(2) A water scheme initiated by the County government shall take precedence over any private or community scheme.

Water Tariffs

29. (1) The County government may in consultation with other water regulatory bodies issue guidelines on tariffs for the purposes of supplying efficient, affordable and economical water and sewerage services.

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

(3) The tariffs and user charges imposed or levied under this section shall comply with the requirements of Water Services Regulatory Authority.

Prohibited Activities

30. (1) A person shall not—

- (a) tamper with any meter or installed water and sewerage infrastructure;
- (b) install illegal or unauthorized water or sewerage connections;
- (c) install a pipe or connection which does not comply with standards approved by the corporation or any other water or sewerage service provider.

(2) Any person who fails to comply with the provisions of sub section (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or to both.

(3) Nothing contained in this section shall prevent a water or sewerage services provider from imposing a penalty for any illegal or unauthorized water or sewerage connections.

Permit

31. (1) Subject to the provisions of the Water Act, 2002 regarding the mandate of the Water Resources Management Authority, a person intending to carry out or maintain any water works shall apply for a permit to the Executive Committee Member.

(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 to the executive committee member.

(3) A person who contravenes this Section commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or to both.

Application for Permit

32. (1) An application for a permit shall, where applicable, be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Coordination Act, 1999 and certification from the National Environment Management Authority 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 Committee Member setting out grounds for such objection.

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

(5) The Executive Committee 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 Committee Member shall consider the application within thirty days of such an application and may where he or she 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 Committee 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 Committee Member shall within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

Water and Sewerage Works Conditions

33. Notwithstanding the provisions of Section 32, the Executive Committee Member shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance of water and sewerage works.

Non Interference and Restoration After Water Works

34. 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 the satisfaction of an authorized officer.

Register of Permits

35. The register of permits under this Act shall be accessible to members of the public upon payment of the prescribed fees.

Water Services Audit

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

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

PART V—WATER AND RIPARIAN AREA CONSERVATION

Water Conservation Areas

37. (1) The Department for the time being responsible for water services 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.

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

Conservation of Water Catchment Areas

38. The Department shall—

- (a) through the Intergovernmental Relations Act, the County Governments Act and any other written law collaborate with other County Governments in conservation and protection of water sources and catchment areas 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 plans.

Conservation Guidelines

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

Demarcation of Riparian Land

40. The Department shall in consultation with national and county agencies and other stakeholders demarcate riparian land.

Prohibited Activities on Riparian Land

41. (1) A person shall not carry out any of the following 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 Department may degrade the water resource.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or to both.

PART VI—STORM WATER MANAGEMENT

Storm water management and land use practices

42. The Department shall in collaboration with relevant county or national government departments and local residents promote sound water and land use practices.

Storm Water Management Plan

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

(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 on conviction to a fine not exceeding five hundred thousand shillings; or
- (b) if an individual be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or to both.

Reduction of run-off water

44. The Department shall develop policies to encourage owners of houses, property or buildings to—

- (a) install rain barrels with sufficient capacity to store water from the building;
- (b) where applicable not permit storm water to become runoff;
- (c) re-use or recycle storm water collected for other purposes in the premises.

Riparian buffers

45. (1) The Department 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.

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

(3) A person who contravenes the provisions of sub section (2) commits an offence and shall—

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

Water and Sewerage Master Plan

46 The Department shall in collaboration with other county and national government agencies and local residents prepare a five year water and sewerage services master plan.

Provision of Sewerage Services

47. The Authority shall either directly or through public private partnership—

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

Waste Water Management

48. The Department shall—

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

Compliance with Effluent Standards

49. A person or entity shall when disposing final effluent comply with the guidelines prescribed by the National Environment Management Authority and Water Resources Management Authority.

Discharge Effluent

50. (1) A person shall not discharge effluent unless in accordance with the prescribed guidelines and standards by the Department.

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

- (a) if a corporate body be liable on conviction to a fine not exceeding five hundred thousand shillings; and

- (b) if an individual be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding six months or both.

Interference with Water and Sewerage Systems

51. (1) A person shall not interfere with any water or sewerage facility or system unless with a written consent of the department responsible for water and sewerage services, for the purposes of carrying out works within the area of the facility or system.

(2) Notwithstanding the provision of subsection (1), any person carrying out works in any area necessitating relocation of water and sewerage infrastructure shall meet the cost of relocation.

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

Sewerage Tariffs

52. The County government 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.

Sector Wide Forum

53. (1) The Executive Committee Member shall constitute and convene the water and sewerage services 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 once every year.

PART VII—TRANSITIONAL PROVISIONS

Transfer of Functions, Assets and Liabilities

54. (1) The corporation shall be the successor to Kakamega County Water and Sanitation Company Limited in respect of all rights, duties, obligations, assets and liabilities concerning Kakamega County Water and Sanitation Company Limited existing at the date of commencement of this Act.

(2) All such rights, duties, obligations, assets and liabilities shall be automatically and fully transferred to the Authority and any reference to the county government or the Executive Committee Member or the chief officer responsible for water services or the Board or the Chief Executive Officer in relation to Kakamega County Water and Sewerage Company Limited in any written law or in any contract or document shall for all purposes be deemed to reference to the Authority under this Act.

(3) Any person who at the commencement of this Act is a member of staff of Kakamega County Water and Sanitation Company Limited shall on commencement of this Act become a member of staff of the Corporation on the same or improved terms and conditions of service as may be specified by the Board of management in consultation with the executive committee member;

Provided that—

- (a) any such member of staff may retire on the basis of abolition of office in accordance with this Act;
- (b) any such member of staff may be deployed in the county public service with mutual consent of any such member and the county government.

(4) Any person who at the commencement of this Act is a chairperson or member of the Board of management of Kakamega County Water and Sanitation company limited shall on commencement of this Act shall continue in office until his or her current term of appointment expires.

PART VIII—ENFORCEMENT

Authorized Officers

55. (1) The Executive Committee Member may appoint such number of authorized officers for the purposes of enforcing the provisions of this Act.

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

Power of Entry

56. 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.

Obstruction of Enforcement Officers

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

PART IX—MISCELLANEOUS PROVISIONS

Water Conflict Resolution

58 The Executive Committee Member shall put in place measures and programs to ensure resolution of community water conflicts.

Regulations

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

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

- (a) prescribe guidelines for developing watershed storm management plans;
- (b) prescribe guidelines for sewerage systems and standards;
- (c) prescribe fees;
- (d) prescribe areas declared as water protected areas;
- (e) prescribe guidelines for sustainable management of community based water schemes
- (f) prescribe guidelines for administering the Fund;
- (g) prescribe the membership of the water sector stakeholders.
- (h) formation of water apportionment committee

FIRST SCHEDULE (s. 6 (5))

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD OF MANAGEMENT

1. The Board of Management shall meet once in every three months.
2. The chairperson may at any time call a special meeting of the Board but such meetings shall not exceed four meetings in a financial year.
3. The chairperson shall preside at every meeting of the Board at which he or she is present, but in the absence of the Chairperson the members present may elect one from among their number to preside.
4. The quorum for a meeting of the Board shall be five members.

5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.

6. A member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.

7. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.

8. The Chief Executive Officer or an officer instructed by him or her in that behalf, present at a meeting of the Board or a committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the Chief Executive Officer's or officer's opinion, is contrary to his advice or contrary to law.

9. Save as provided in this Schedule the Board may regulate its own procedure.

MEMORANDUM OF OBJECTS AND REASON

This Bill seeks to provide for the development, regulation and management of County public works related to water and sewerage services, storm water management systems and water conservation.

These regulations are organised into nine parts covering the following provisions—

Part I provides for preliminaries including short title, interpretation, object and purpose as well the Bill.

Part II establishes the Kakamega Water and Sanitation Corporation, providing functions and management thereof and the necessary structures in the corporation.

Part III provides for financial provisions relating to the funds and the corresponding, reporting and accountability.

Part IV provides for water services while Part V and VI provide for water and riparian area conservation as well as storm water management.

Part VII, VIII and IX contain transitional provisions, enforcement and miscellaneous provisions.

The Bill respects the separation of powers of national and county governments and recognizes the critical role assigned to the County with regard to water services.

The Bill shall occasion additional expense which will be provided for in the estimates.

ALEX KHAMASI,
*Chairperson, Environment, Water and
Natural Resources Committee,
and Marketing Committee.*