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**THE SIAYA COUNTY WATER AND SANITATION BILL, 2018**

**A Bill for**

**AN ACT of County Assembly of Siaya to make provision for water and sanitation services, creation of the Siaya County Water Board and water service providers, water works, storm water management systems, water conservation and for**

**ENACTED** by the County Assembly of Siaya as follows—

**PART I—PRELIMINARY**

**Short title and Commencement**

1. This Act may be cited as the Siaya County Water and Sanitation Act, 2018 and shall come into operation on such date as the County Executive Committee Member may, by notice in the Gazette, appoint and different days may be appointed for the coming into operation of different provisions.

**Interpretation**

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

“Board” means the Siaya County Water and Sanitation Services Board established under section 6;

“county executive committee member” means the County Executive Member for Water, Irrigation and Sanitation;

“Government” means the County Government of Siaya;

“Inspector” means a person appointed by the County Executive Committee Member under Section 10;

“Licensee” means any person who has been issued with a license under this Act;

“Limits of supply” in relation to a water services provider means the limits within which a water services provider is for the time being is authorized to supply water;

“Pollution” in relation to a water resource, means any direct or indirect alteration of 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 may 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;

“Regulatory Board” means the water services Regulatory Board

established under section 70 of the Water Act 2016.

“Riparian land” means land adjacent to and associated with a water course.

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

“Storm water” means water resulting from natural precipitation and or 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

“Supply of water in bulk” means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

“Tribunal” means the Water Tribunal established under section 119 of the Water Act 2016

“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 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 under and in accordance with an agreement as stipulated under section 25;

“Watercourse” means any natural channel or depression in which water flows regularly or intermittently;

“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, drainage of any swamp or other land.

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

## **PART II—OWNERSHIP, USE AND MANAGEMENT OF WATER RESOURCES**

### **Ownership of Water Resources**

**3.** Every water resource is vested in and held by the national and county government in trust for the people of Kenya.

### **Right to Water**

**4.** (1) Every person has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation as stipulated in Article

43 of the Constitution.

(2) Upon the commencement of this Act, no instrument shall be effectual to convey, transfer or vest in any person any right or interest in respect of any water resource, and no interest in such property shall be acquired otherwise than under this Act and any other written law.

**Responsibility of the County Executive Committee Member**

(5) The County Executive Committee Member shall—

- (a) formulate and publish in the gazette a county water and sanitation policy;
- (b) ensure effective exercise and performance by any person of powers and duties granted or imposed under this Act;
- (c) co-ordinate all water institutions in the county;
- (d) undertake county water sectorial planning;
- (e) establish a county water data base and information system which shall be provided by the water institutions and any other relevant institution;
- (f) formulate cross-sectoral co-ordination plans with departments in the county and in the national government;
- (g) prepare an annual water sector report on water services provision and sanitation;
- (h) in consultation with the relevant water institutions in the national government put in measures to prevent unlawful abstraction of water resources and watercourses in the county; and
- (i) Formulate a comprehensive inter-sectorial program on sewerage and sludge treatment for decentralized sanitation facilities.

(2) The water policy referred under subsection (1) shall outline the government’s objectives, strategies and plans for management of water and sanitation services.

**PART III— ESTABLISHMENT, POWERS AND FUNCTIONS OF THE SIAYA COUNTY WATER BOARD**

**Establishment of the Board**

6. (1) There is established the Siaya County Water and Sanitation Services Board.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contract;

- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

### **Composition of the Board**

7. (1) The Board shall consist of—

- (a) a non-executive Chairperson appointed through a competitive process by the County Executive Committee Member with the approval of County Assembly;
- (b) the Chief Officer in the Department responsible for Water;
- (c) the Chief Officer in the Department responsible for Finance;
- (d) five other persons appointed by the County Committee Executive Member through a competitive process with the approval of the County Assembly —
  - (i) one being a representative of water users in the County;
  - (ii) one being a representative of water service providers;
  - (iii) three being representatives of sub-counties appointed by virtue of their knowledge, expertise and experience in water and sanitation management matters one of whom shall be of either gender; and
- (e) the Chief Executive Officer who shall be the secretary of the Board.

(2) A person shall be qualified for appointment as chairperson under subsection (1) if the person—

- (a) holds a relevant degree from a recognized university;
- (b) has knowledge and experience of at least five years in matters relating to water and sanitation services management or other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

(3) A person shall be qualified for appointment as a member under subsection (2) (d) if the person—

- (a) holds a degree from a recognized university;
- (b) has knowledge and experience of at least three years in matters relating to water resources management, water and sanitation services management or any other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

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**Functions of the Board**

8. (1) The Board shall be responsible for—
- (a) provision and management of water and sanitation and sewerage services;
  - (b) development of county water and sanitation services infrastructure, including water works and public works;
  - (c) ensuring adequate water supply system for domestic, industrial, livestock, wildlife and agricultural purposes;
  - (d) developing and managing works for water conservation;
  - (e) promotion of water-harvesting and water-recycling systems;
  - (f) promotion of efficient water use and management for sustainable development;
  - (g) identification, initiation and promotion of water conservation systems, strategies and programs;
  - (h) development and management of public infrastructure for storm water control;
  - (i) maintenance of database and dissemination of information on water and sanitation services; and
  - (j) maintenance of collaboration and cooperation with other government agencies other county governments in carrying out its functions.
- (k) The Board may delegate any of its functions and powers to any person or body.

**Meetings of the Board**

9. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

(2) Without prejudice to subsection (1) the Board may regulate its own procedure.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

**Appointment of water inspectors**

10. (1) The Board may appoint water inspectors for purposes of enforcing and ensuring compliance of the provisions of this Act and all relevant laws.

(2) Despite subsection (1), Board may designate any other officer to perform the functions of an inspector.

**Power of entry**

11.(1) An inspector or other authorized person appointed by the Board may enter without a warrant on to any land and inspect any water resource located within or accessible from the land concerned, in order to take any measures authorized under this Act for the purpose of—

- (a) conserving or regulating the water resource, or preventing it from pollution or protecting the bed over which it lies or flows; or
- (b) removing any obstruction from, or clearing and deepening, a river bed; or
- (c) preventing the illegal diversion, pollution of the water resource or interference with any water source.

(2) An inspector or authorized person shall not enter into the land or premises without first giving reasonable notice, whether written or verbal, to the landholder or an employee or agent in charge of the land, and such entry shall be at reasonable hours: Provided that an inspector may enter without giving notice if—

- (a) there is reason to believe that a provision of this Act or other law has been or is about to be contravened;
- (b) the inspector unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) there are other reasonable grounds for not giving notice.

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

(4) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and diligence.

**The County Public Service Board**

12. (1) There shall be a Chief Executive Officer of the Board,

(2) The Chief Executive Officer shall be recruited through a competitive process and appointed by the Board.

(3) To qualify for appointment as a Chief Executive Officer, a person shall—

- (a) possess a degree in a relevant field from a recognized university;
- (b) have had experience in management for a period of not less than five years.

(4) The Chief Executive Officer shall hold office for a period of five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

- (5) (a) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.
- (b) The board shall be in the office for five years a renewable subject to performance.
- (6) The Chief Executive Officer shall be responsible for—
  - (a) the day to day management of the affairs of the Board;
  - (b) the staff of the Board in the performance of the functions and duties;
  - (c) the general administration of the Board; and
  - (d) carry out any other function as may from time to time be assigned by the Board.

#### **Removal of the Chief Executive Officer**

- 13.** The Chief Executive Officer may—
- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
  - (b) be removed from office by the executive member on recommendation of the Board, for—
    - (i) serious violation of the Constitution or any other written law;
    - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
    - (iii) physical or mental incapacity to perform the functions of office;
    - (iv) incompetence;
    - (v) bankruptcy.

#### **Staff of the Board**

**14.** The Board may, in consultation with the County Public Service Board, appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, on such terms and conditions of service as the Board may determine.

### **PART IV—WATER AND SANITATION SERVICES**

#### **Supply of water**

- 15.** (1) The Board shall progressively ensure that —
- (a) every person in the county has access to safe and clean water for domestic use within reasonable distance;
  - (b) there is accessible water for agricultural, livestock, wildlife and industrial use;

(c) equitable distribution of water between consumers in urban and rural areas.

(2) The Board may enter into service performance agreements with any entity in carrying out its functions.

### **Development of Water Works**

**16.** (1) The Board may erect or develop water works and other public works on a public or private property.

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

(3) The Board shall in collaboration with the department of roads identify and establish specific areas on any road where public works under this Act may be carried out. Destroyed pipes along the road network must be repaired or reconstructed by the person or company that has destroyed them.

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

### **Community Projects**

**17.** A community may initiate project for water services with the approval of the Board.

### **Water tariffs**

**18.** (1) The Board may levy tariffs and any appropriate user charges for the purposes of supplying efficient water services.

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

(3) The tariffs and user charges collected under this section shall not form part of the County Revenue Fund and may be utilized for defraying expenditures of the Board and providing efficient and quality services under this Act.

The tariffs and user charges imposed or levied under this section shall be subject to approval by the county executive committee.

### **Water Service Providers**

**19.** (1) Water services in the County shall be provided—

- (a) by water services providers licensed in accordance with section 26; and
- (b) on the basis of an agreement between the water services

providers and the board pursuant to section 25.

(2) A water service provider licensed under this section shall be a company established under the Companies Act, or other person or agency providing water services as shall be approved by the Board.

(3) Every county water services provider shall comply with standards of commercial viability set by the relevant national regulatory agency.

(4) Any Company wishing to be licensed as a water service provider shall submit its Memorandum and Articles of Associations that conform to the model developed and approved by the relevant national regulatory agency.

### **Prohibited activities**

**20.** (1) A person shall not—

- (a) interfere with any meter or equipment installed under the authority of the Board;
- (b) install illegal or un authorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards.

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

### **Permit for water works**

**21.** (1) A person intending to carry out or maintain any water works shall apply for a permit to the Board.

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

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding one year or to both.

### **Application for a permit**

**22.**(1) An application for a permit under section 20 shall be subject to public participation, where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Co-ordination Act, 1999 and shall specify among others—

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

(2) The Board shall, where the construction of works are to be undertaken on public property or where the works will affect a cross section of the residents, issue a public notice within fourteen days after such an application and invite any person to make comments or object to such an application.

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

(4) Every objection to an application shall be made in writing to the Secretary of the Board setting out the grounds for such an objection.

(5) The Board shall, upon receiving the application send a notice to the objection received to the applicant for a permit.

(6) The Board may, where appropriate conduct public hearings on the objection.

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

(8) The Board shall consider the application within thirty days of such an application and may where it 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.

(9) Where the Board is not satisfied with the application, it may—

- (a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or
- (b) make comments and recommendations thereon and return it to the applicant within thirty days.

(10) An applicant to whom the application is returned under subsection (9) (b) may re-submit the application within sixty days.

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

### **Conditions for water works**

**23.** Notwithstanding section 21, the Board shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance or waterworks.

### **Requirement for a license for water services**

**24.** (1) No person shall provide water services except under the authority of a license issued by the Board.

(2) A person who provides water services in contravention of this section shall be guilty of an offence.

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

- (a) by a person to employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or business where the source of supply of the water is lawfully under the control of the institution or is supplied to it in bulk by a licensee;
- (c) to a local community through an arrangement of members of that community; and
- (d) in circumstances which are prescribed by rules made by the executive committee member to be exempt from the requirement for a license.

### **Water Service Provision Agreements**

**25.** (1) A water service provider shall enter into a written agreement with the Board for purposes of exercise and performance of its powers and functions under the license.

(2) An agreement entered into under subsection (1) shall specify the powers and functions under the license which shall be performed by the water service provider.

(3) A water provision agreement shall make provisions for—

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

### **Application for a license**

**26.** (1) An application for a license shall be made to the Board in the prescribed form.

(2) The applicant shall furnish the following particulars—

- (a) evidence of compliance with the national standards set by the national government regulatory agency;
- (b) the technical and financial capability of the applicant to provide the services and perform functions authorized by the license;
- (c) evidence that the water services to be provided shall be commercially viable;
- (d) the applicant's business plans for the provision of efficient, affordable and sustainable water services;
- (e) performance targets;
- (f) details of planned financial and infrastructural improvements;
- (g) a proposed tariff structure; and

- (h) any other information required by the relevant national water
- (i) regulatory agency.

(3) The application shall be made by completing and lodging the prescribed form together with the supporting documentation and the prescribed fee.

(4) The application shall not be granted unless the Board is satisfied that the conditions set out under subsection (2) have been met.

#### **Determination of an application**

27. (1) An application for a license shall be subject to public participation.

(2) Any person opposed to the grant of license may object in writing to the service license Board.

(3) The Board may require the applicant to deposit a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from the person, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(4) Every licensee shall, within twelve months of receipt of the license, or such longer period as the Board may determine, formulate and present to the Board, a development plan for extending services to unserved persons within its area, a time frame for the implementation of the plan and a resource mobilization strategy.

28. (1) A license shall authorize and, to the extent provided therein, require, the provision by the licensee of water services specified in the license.

(2) There is no property in a license, and except provided by this Act, a license shall not be capable being sold, leased, mortgaged, transferred, attached otherwise assigned, demised or encumbered.

(3) The Board may require the applicant to deposit a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from the person, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(4) Every licensee shall, within twelve months of receipt of the license, or such longer period as the Board may determine, formulate and present to the Board, a development plan for extending services to unserved persons within its area, a time frame for the implementation of the plan and a resource mobilization strategy.

#### **License fees**

29. (1) A licensee shall pay to the government, on issue of the licence and at prescribed intervals thereafter, such license fees as the

County Executive Committee Member may determine.

(g) The fee shall be determined by reference to a schedule of fees published in the Gazette from time to time by the County executive committee member following public participation.

**Conditions of a license**

**30.** (1) A license shall be subject to—

- (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 license;

(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 license or for *meeting* any other prescribed contingency.
- (c) provide that a contravention of any specified, conditions prescribed under this Act as conditions of licenses shall constitute an offence punishable by a penalty specified in the license.

(4) 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.

**Duty to provide water**

**31.** (1) A water services provider shall be responsible for the efficient and economic provision of water services to the extent authorized by the license.

(2) For the purpose of the provision of water services, a water services provider, may —

- (a) purchase, lease or otherwise acquire, premises, plant, equipment and facilities;

(b) purchase or lease land in accordance with the applicable law;

(3) Every water services provider shall establish a mechanism for handling consumer complaints which meets the standard set by the relevant national water regulatory agency.

#### **Public Private Partnerships**

**32.** (1) The Board may enter into a public private partnership for the exercise and performance by another person of some or all of its functions as a licensee with respect to a part or the whole of its area of water service.

(2) A public private partnership shall be in writing.

(3) Where the person entering into a public private agreement with the Board owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which the assets may continue to be so used.

(4) A power or function conferred by a license or otherwise conferred under this Act, may be exercised or performed by another person: acting under an agreement with the licensee and shall be deemed, when exercised or performed by that other person.

#### **Special provisions with respect to unviable rural areas**

**33**(1) The Board shall put in place measures for the provision of water services to rural and other areas which are unviable for the provision of water services on a commercial basis

(2) The measures taken by the Board under subsection (1) shall include developing point sources, small scale piped systems and stand pipes which meets the standard set by the National Water Regulatory Agency and which may be managed by the communities, agencies or private persons based on written contract with the Board.

(3) In order to implement its obligation under this section the board shall formulate an up to date five year development plan incorporating an investment and financial plan for the provision of water services in unviable rural areas within its area of jurisdiction.

#### **Services Areas of water**

**34.** (1) The area of water service shall be prescribed by the license and shall not be less than the area required for a commercially viable water service.

(2) The area so prescribed may, subject to the relevant County Governments Act traverse the boundaries of the county.

#### **Clustering of areas of water service provision**

**35.** (1) The Board may, in consultation with any other county government—

(a) permit the joint provision by two or more licensees of water

services on such terms as it may approve; or

(b) permit the transfer of a water service, or part thereof, of one licensee to another licensee.

(2) Where it appears to the government to be necessary for the purpose of securing a commercially viable water service, the County executive committee member may, by notice in the Gazette, order such a joint provision of water services or such a transfer of water service and vary the relevant licenses accordingly.

(3) An order made under this section may make incidental and supplementary provisions as the County executive committee member deems necessary or expedient for the purpose of carrying out the order.

(4) A licensee aggrieved by the provisions of the order may apply for review to the tribunal

(5) The licensee giving the notice as may be agreed or in default of agreement, as may be determined by the County executive committee member.

#### **Variation of areas of service**

**36.** (1) The County Executive Committee Member may vary the areas of water service—

(a) on the application of a licensee whose area of water service is to be varied and with the consent of any other licensees affected; or

(b) if is satisfied that the licensee is unable to meet the demands for water or is otherwise unable to provide a commercially viable service.

(2) An order made under this section may make such consequential and supplementary provisions as the County executive committee member deems necessary or expedient for the purpose of carrying out the order.

(3) A licensee aggrieved by the provisions of an order made under this section may appeal to the tribunal.

(2) Where under this section a licensee (in this section called "the supplying licensee") is providing water services to premises outside its area, any other licensee within whose area those premises are situated may in the absence of any agreement to the contrary at any time give not less than three months' notice to the supplying licensee that the licensee is able and intends to provide water services to the premises: Provided that a notice given under this section shall not be valid unless it relates to all the premises to which water services are being provided by the supplying licensee in accordance with this section.

(3) If, at the end of a period of three months notified under subsection

(4), the licensee giving the notice commences to supply water to the premises covered by the notice, the supplying licensee shall, except for the purpose of recovering water rates or other charges or expenses lawfully recoverable by licensee, and of removing any pipes, plant or apparatus belonging to licensee, cease to have any rights or duties in respect of providing water services to the premises concerned: Provided that the supplying licensee shall not remove any pipes, plant or apparatus which licensee is required by the licensee giving the notice to leave in position, and any such pipes, plant or apparatus shall vest in the licensee giving the notice.

(5) The licensee giving notice shall pay to the supplying licensee—

(a) such portion of any expenses reasonably incurred by it for the purpose of providing water services to the premises referred to in the notice.

(b) such sum in respect of any pipes, plant or apparatus vested in

#### **Provision of water service outside the area of supply**

**37.** (1) With the consent of the County executive committee member, and subject to any rules made under this Act and to such conditions as the County executive committee member may impose, a licensee may provide water services outside its area of water service

#### **Default by licensee**

**38.** (1) If following a complaint made to or information received by the County executive committee member, it appears to a licensee—

#### **Transfer of functions by licensee**

**39.** (1) If The County Executive Committee 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, shall, by notice in the Gazette, order the transfer to another licensee of the water services in question.

(2) The order of transfer shall make such provision as appears to the County executive committee member to be desirable or necessary with respect to any property or assets being used by the by the defaulting licensee for the purposes of providing the water services.

#### **Agreements to protect sources of water**

**40.** (1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, of such works as the licensee may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures or preserving the purity and quantity of water which the licensee is for the time being authorized to take.

(2) An agreement under this section may be registered against any land of the person with whom it is made, and shall be binding upon and enforceable against such land or such person or his successor in title.

**Power of licensee to prohibit or restrict use of water**

41. (1) A licensee who is of the opinion that there is a serious deficiency of water available for distribution or that such a deficiency is threatened may, with the approval of the County executive committee member, for such period as is necessary prohibit or restrict as respects the whole or any part of its limits of supply, the use for any specified purpose of water supplied by him.

(2) Before prohibition or restriction comes into force, public notice shall be given by the licensee, in one or more electronic media, newspapers circulating within the affected area or by such other means as the County executive committee member may approve, of the proposed prohibition or restriction and of the date when it will come into force.

**Responsibilities of a water services provider**

42. (1) A water services provider shall be responsible for the following—

- (a) provision of water services within the area specified in the license;
- (b) to ensuring that water services and related works are provided, maintained and upgraded in the area specified;
- (c) collection, treatment and management of storm and waste water;
- (d) collection, treatment and management of sludge regardless of its origin.

**Execution of works for water protection**

43. (1) A licensee may construct and maintain drains, sewers and other works for preventing water from being polluted: Provided that before constructing any works the licensee shall, if the proposed works are likely to affect any water resource, obtain the approval of the county executive committee member.

**Control of Trade Effluent**

44. (1) A licensee receiving trade effluent into its sewerage system shall ensure that it has in place measures for the receipt and handling of the effluent without causing pollution of the environment, harm to human health, damage to the sewerage-system, a contravention of applicable-laws or contravention of standards set by the County executive committee member.

(2) No person shall discharge any trade effluent from any trade premises into the sewers of a licensee without the consent of the licensee.

(3) An application for consent shall be made to the licensee 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 licensee.

(4) The licensee's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the licensee of charges for the discharge.

(5) Any person who is dissatisfied with the decision of the licensee on an application under this section may, within thirty days of the decision, appeal to the County executive committee member.

(6) A person who contravenes the provisions of this section shall be guilty of an offence.

(7) In this section, "trade effluent" means any liquid, whether with or without suspended particles, produced as a by-product in the course of any trade or industry.

#### **Sewerage Services Levy**

**45** (1) The County executive committee member may impose a sewerage services levy on all water services within the area of water service of a licensee, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

(2) Portion of the levy may, with the approval of the County executive committee member, be set aside by the licensee for use in the expansion of the sewerage system within the area of service of the licensee.

#### **Supply of water in bulk**

**46.** (1) A water service provider may enter into an agreement with any licensee, for supply of water in bulk either within or outside the limits of supply of that water service provider:

- (2) where it appears to the county executive committee member that –
- (a) it is expedient that—
    - (i) any water service provider should give a supply of water in bulk to another water service provider.
    - (ii) the other water service provider should take such supply: and
  - (b) the giving and taking of such supply cannot be secured by

agreement, the county executive committee member 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.

**47.** (1) The county executive committee member shall in consultation with the relevant national water institutions oversee provision of water by water services providers

- (a) regulate and coordinate water service providers;
- (b) ensure compliance to licensing conditions;
- (c) establish a mechanism for handling complaints from consumers regarding the quality or nature of water services; and
- (d) maintain a county data base or information system on the services.

## **PART V—COUNTY WATER WORKS AND STORM WATER MANAGEMENT**

### **Public Works by the Board**

**48.** The Board shall in addition to works by the water service providers carry out public works in the County for the following purpose—

- (a) the supply, distribution or apportionment of water for use in the County;
- (b) protection of any water resource, its source or catchment in collaboration with the relevant bodies for that particular purpose;
- (c) water resource development in form of boreholes, dam, springs among others;
- (d) storm water management in collaboration with public works department;
- (e) drainage or reclamation of lands;
- (f) irrigation schemes and related works in collaboration with the National Irrigation Board and other relevant bodies;
- (g) construction of water storage systems;
- (h) rehabilitation and restoration of water storage facilities including conservation of wetlands and forests, water saving technologies, and ground aquifer re-charging;
- (i) recycling treated effluent water;
- (j) conservation of water and improvement of water quality; and
- (k) any other form of water works.

**Storm Water Management Plan**

**49.** (1) For the purposes of this section, a 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.

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

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

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

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

(5) A person or entity engaged in land development activity, construction of a building or any physical infrastructure that is exposed to water precipitation or an owner of such constructed infrastructure shall develop and implement a storm water management plan on a sub-catchment basis in accordance with the prescribed standards.

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

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

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

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

**Reduction of run-off Water**

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

- (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.

(2) A person who contravenes this section commits an offence and

shall be liable to a fine not exceeding shillings twenty thousand or to imprisonment for a term not exceeding one month.

### **Riparian Buffers**

**51.** (1) For the purposes of this section, a riparian buffer is an area around or situated next to bodies of water that act as buffers or cushions to that water body.

(2) The Board in collaboration with other government agencies and local residents shall develop or restore riparian buffers along rivers, waterways or any water body.

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

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

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

## **PART VI— SANITATION SERVICES AND POLLUTION CONTROL**

### **Measures for control of pollution**

**52.** The Board shall in collaboration with the relevant bodies in the national and County Government—

- (a) set up a cost-effective pollution monitoring program;
- (b) enforce regulations through polluter-pays principle, and other legal and administrative actions set out under this Act, the Environmental Management and Coordination Act and any other law;
- (c) ensure untreated effluent water is not released in to water resources;
- (d) treat effluent water and re-use or recycle it for irrigation and other purposes in the County; and
- (e) put in place any other lawful measure to control of pollution.

### **Provision of Sanitation Services**

**53.** The Board shall either directly or through public private partnership—

- (a) provide necessary sanitation facilities and service
- (b) construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements.

**Compliance with effluent standards**

**54.** (1) A person or entity shall, when disposing final effluent comply with the guidelines prescribed by Kenya Bureau of Standards.

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

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

**Discharge of contaminated Water or Effluent**

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

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

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

**Interference with Sewerage System**

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

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

**Sewerage Tariffs**

**57.** (1) Subject to the County Governments Act and any written law, the Board may impose tariffs or levy sewerage services levy on water or sanitation services for the purposes of disposal of water or sewage.

(2) The tariffs imposed or levied under this section shall be subject to approval by the county executive committee

**Sector Wide Forum**

**58.** (1) The Board shall constitute and convene the water and sanitation services sector wide forum.

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

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

- (a) review and deliberate on water resources management and

sanitation 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 three months.

## **PART V—FINANCIAL PROVISIONS**

### **Funds of the Board**

**59.** The funds of the Board shall comprise of—

- (a) monies allocated by County Assembly for the purposes of the Board; such money as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (c) fees and royalties from registered patents, inventions or improvements; and
- (d) all monies from any other source provided for or donated or lent to the Board.

### **Financial year**

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

### **Annual estimates**

**61.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year which shall be submitted to the county executive member for approval.

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

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Board; and
- (c) the proper maintenance of the buildings and grounds of the Board.

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

### **Books of Accounts, Audit and Reports**

**62.** (1) The Board shall cause to be kept proper books of accounts of

all the income and expenditure, assets and liabilities, undertakings, funds, activities, contracts, transactions and other business of the Board.

(2) The Board shall ensure that all money received is properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities.

(3) The accounts of the Board shall be audited in accordance with the Public Audit Act, 2015.

(4) Annual reports of the Board shall be laid before the county assembly three months after the end of every financial year.

## **PART VI—GENERAL PROVISIONS**

### **Transition**

**63.** (1) Upon the commencement of this Act—

- (a) all the rights, duties, obligations, assets and liabilities of the former boards shall be transferred to the Board;
- (b) any reference to the former boards in any contract or document shall, for all purposes, be deemed to be a reference to the Board;
- (c) all contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments made or entered into, on behalf of shall, or in relation to the former boards have effect as if made or entered into by, on behalf of, or in relation to, the Board; and
- (d) all actions, claims, arbitrations, applications and other proceedings (including proceedings on appeal or review)
- (e) pending or existing immediately before the commencement of this Act, by, against, or in relation to the former board shall have effect as if they were proceedings by, against, or in relation to the Board, and may be continued and completed accordingly.

### **Power to make Regulations**

**64.** (1) The County executive committee member may make Regulations on any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1) the County executive committee member may make Regulations—

- (a) prescribe guidelines for developing watershed storm management plans;
- (b) prescribe guidelines for sanitation system and standards;
- (c) declare certain areas to be water protected areas;
- (d) prescribe the amount of fees payable under this Act generally or in particular cases;

- (e) prescribe circumstances under which licenses and agreements may be applied for, granted, varied, refused or cancelled;
- (f) prescribe forms to be used under this Act; or
- (g) prescribe requirements to be met by providers of bottled or mineral water in the county;

**Offences**

**65.** (1) A person who knowingly—

- (a) obstructs, interferes with, or diverts water from any watercourse or water resource, or negligently allows any such obstruction, interference, or diversion;
- (b) pollutes or causes to be polluted any water resource;
- (c) carries on agricultural activities within the ten-meter mark along the banks of any water resource;
- (d) defaces, alters, removes or interferes with any county works commits an offence and shall, upon conviction be liable to a fine not Kenya shillings exceeding one hundred thousand or to imprisonment of a term not exceeding twelve months or both.

(2) A person who commits an offence under this Act for which no other penalty is provided shall on conviction be liable to a fine not exceeding Kenya shillings one hundred thousand or to imprisonment for term not exceeding twelve months or to both.

**MEMORANDUM OF OBJECTS AND REASONS**

The object of this Bill is to give effect to section 11 (b) of the Fourth Schedule of the Constitution by providing for a legislative and institutional framework for water and sanitation services in Siaya County.

The layout of the Bill is as follows—

**PART I (Clauses 1-2)** provides for preliminary matters including short title, date of commencement and interpretation of terms used in the Bill.

**PART II (Clauses 3-5)** provides for ownership, use and management of water resources.

This Part also provides for the right to water and role of County executive committee member in development of policies.

**PART III (Clauses 6-14)** provides for the establishment, powers and functions of the county water Board. This Part also provides for the composition, functions and meetings of the Board and for the appointment of water inspectors, such power of entry, chief executive officer of the board, removal of the chief executive of the board and detailed provisions of staff of the board.

**PART IV (Clauses 16-47)** contains provisions relating to supply of water and development of water works, community water projects, and related matters. This Part also contains provisions relating to application for and issuance of permits for undertaking water works and licenses for supply of water. There are provisions relating to water service provision agreements, duty to provide water service and public private partnerships. Further, this Part contains special provisions with respect to unviable rural areas, such clustering of areas of water service provision, water service outside authorized areas, and protection of water sources and responsibilities of service providers. Finally, this Part has provisions on execution of works for water protection, control of water pollution and effluent management, sewage service levy, supply of water in bulk and coordination of water provision.

**PART V (Clauses 48-51)** contains provisions relating to public works, storm water management plans, reduction of runoff water and riparian buffers.

**PART VI (Clauses 52-56)** provides for sanitation services and pollution control measures. This part also for sanitation services, compliance with effluent standards, discharge of contaminated water, sewage tariffs and the requirement to convene sector wide forum.

**PART VII (Clause 59-62)** contains financial provisions including the sources funds of the Board, financial year, annual estimates and books of accounts audit and reports.

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**PART VIII (Clauses 63-65)** contains transition and general provisions the power to make regulations and offences.

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

BOOKER WASHINGTON BONYO,

*Chairperson, Environment and Natural Resources Committee*