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THE MACHAKOS COUNTY WATER BILL, 2014

A Bill for

AN ACT of the County Assembly of Machakos to make provisions of water services and sanitation, creation of water services providers and for related purposes

ENACTED by the County Assembly of Machakos as follows—

1. This Act may be cited as the Machakos County Water Act, 2014 and shall come into operation on such date as the Executive Committee Member may, by notice in the Gazette, appoint and different days may be appointed for the coming into operation of different provisions.

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

“Chief officer” means the Chief officer for the Department of Water, Irrigation and Sanitation;

“County” means the County Government of Machakos;

“Executive Committee member” means the County Executive Member for Water, Irrigation and Sanitation;

“government” means the government of Machakos County;

“Inspector” means a person appointed by the Chief Officer under section 8;

“Unit” means the Inspectorate Unit established by section 6;

“licence” means any person who has been issued with a licence 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;

“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;

“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 16;

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

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

PART II — OWNERSHIP AND CONTROL OF WATER

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

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

5. (1) The County Executive Committee Member shall publish in the Gazette a County water policy outlining the
County government’s objectives, principles and plans for management of water supply and sanitation services. The County water policy shall include details of the county government’s policies and plans for the mobilization, enhancement and deployment of financial, administrative and technical resources for the management and provision of water supply and sanitation services. All county organs and public officers shall, when exercising any statutory power or performing any public function, take into account and give effect to the county water policy.

(2) The County Executive Committee Member shall have the following powers and functions:

(a) formulate and publish in the Gazette a county water and sanitation policy;

(b) ensure effective exercise and performance by any authorities or persons of powers and duties granted or imposed under this Act;

(c) coordinate all water institutions in the county;

(d) undertake county water sectoral planning;

(e) establish a county water database 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 to avoid and resolve conflicting mandates;

(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-sectoral program on sewerage and sludge treatment for decentralized sanitation facilities.

PART III—ESTABLISHMENT, POWERS AND FUNCTIONS OF THE INSPECTORATE UNIT

6. (1) There is established an inspectorate unit to be known as the Machakos County Water Inspectorate Unit.
(2) The Inspectorate Unit shall be under the Department responsible for Water, Irrigation and Sanitation.

7. (The Inspectorate Unit shall have the powers necessary for the performance of its functions under this Act, and in particular, the Inspectorate Unit shall have power to—

(a) ensure compliance with all County water laws and Regulations;

(b) implement and enforce all the County water laws and Regulations;

(c) undertake inspection of water resources; and

(d) institute criminal proceedings for offences under this Act or in connection with the performance of its functions and in accordance with the Criminal Procedure.

8. The Chief Officer, in consultation with the Executive Committee Member may appoint water inspectors for purposes of enforcing and ensuring compliance of the provisions of this Act and all relevant laws

9. (1) An Inspector or other authorized person appointed by the Executive Committee member 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 authorised 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, the bed; or

(c) preventing the excessive or illegal diversion, waste or pollution of the water resource or interference with any bed.

(2) An Inspector or authorized person shall not enter to the land or premises without first giving reasonable notice, whether written or verbal, to the landholder or his employee or agent in charge of the land or premises, and such entry
shall be at reasonable hours:

Provided that an Inspector may enter without giving notice if—

(a) he has reason to believe that a provision of this Act or of any rule or order made under this Act has been or is about to be contravened;

(b) he is unable to give notice within a reasonable time having regard to all the circumstances; or

(c) he has given reasonable grounds for not giving notice.

(3) If so requested by the owner or occupier of the land or premises, the Inspector or other authorised person shall produce evidence of his 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 in such a manner as to cause as little damage as possible in so doing.

PART IV—WATER AND SANITATION SERVICES

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

(a) by water services providers licensed in accordance with this Part; and

(b) on the basis of an agreement between the water services providers and the government pursuant to section 12.

(2) A water service provider licensed under this section shall be a company established under the Companies Act, a non-governmental organization or other person or body providing water services as shall be approved by the government.

(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.

11. (1) No person shall provide water services except under the authority of a license issued by the government.

(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 his employees;

(b) on the premises of an institution including a hospital, factory, school, hotel, research station or other institution of a like nature to the occupants thereof, in cases where the source of supply of the water is lawfully under the control of the institution or where the water is supplied to it in bulk by a licensee;

(c) local community arrangement to 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.

12. (1) A water service provider shall enter into a written agreement with the government for purposes of exercise and performance of all its powers and functions under the licence.

(2) The agreement shall specify the powers and functions under the licence which shall be performed by the water service provider.

(3) The agreement may also make provisions with respect to—

(a) the indemnify by the water service provider of any liability to the government arising from performance or non-performance of functions conferred by the licence; and

(b) the maintenance, rehabilitation and development, by the water service provider of water and sewerage infrastructure and facilities in the County.
13. (1) An application for a license shall be made to the executive committee member in the prescribed form.

(2) The applicant shall furnish the following particulars—

(a) evidence that the applicant's board of directors complies with the 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 will 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 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 Executive Committee member shall determine an application for a license by granting the licence or rejecting the application.

(5) The application shall not be granted unless the Executive Committee member is satisfied that—

(a) the applicant has the requisite technical and financial competence to provide the services to which the license relates;

(b) the applicant has demonstrated that the water services to be provided will be commercially viable;

(c) the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable
(d) the applicant has proposed satisfactory performance targets and planned improvements and an acceptable tariff structure; and

(e) the applicant or any water services provider by whom the functions authorized by the licence are to be performed will provide the water services authorised by the licence on a commercial basis and in accordance with sound business principles.

(f) where water services authorised by licence are to be provided by a water service provider which conducts some other business or performs other functions not authorised by the licence, the supply of those services will be undertaken, managed and accounted for as a separate business enterprise; and

(g) the applicant has met any other requirements which the Executive Committee member considers are called for by the services to be provided under the license.

14. (1) An application for a license shall be the subject of public consultation.

(2) Any person opposed to the grant of license may object in writing to the Executive Committee member.

(3) The Executive Committee member shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefore, and an applicant or objector may, if aggrieved by the decision within thirty days after the date of the notification, appeal to the court.

(4) It shall be the duty of the Executive Committee member to determine an application for a licence as soon practicable after filing of the application but in any case not later than forty-five days.

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

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

(3) As a condition precedent to the issue of a licence, the Executive Committee member may require the applicant to deposit with the government a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from him, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(4) As a condition of its licence the licensee shall, within twelve months of receipt of the licence, or such longer period as the Executive Committee member may determine, formulate and present to the Executive Committee member, a development plan for extending services to un-served persons within its area, a time frame for the implementation of the plan and a resource mobilization strategy.

16. (1) A licensee shall pay to the government, on issue of the licence and at prescribed intervals thereafter, such licence fees as the Executive Committee member may determine.

(2) The fee shall be determined by reference to a schedule of fees published in the Gazette from time to time by the Executive Committee member following public consultation.

17. (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 licence;

(2) Rules made under this Act may make provision for imposing conditions on, or with respect to the conditions which are or shall be imposed on licenses generally or any class or description of licenses.

(3) Without prejudice to the generality of subsection (2), such rules may—
(a) require the imposition of prescribed conditions in prescribed circumstances;
(b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the licence or for meeting any other prescribed contingency.

(c) provide that a contravention of any, or of any specified, conditions prescribed by or under this Act as conditions of licenses shall constitute an offence punishable by a penalty specified in the licence.

(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.

18. (1) A water services provider shall, as licensee, be responsible for the efficient and economical provision of water services fulfilling the rights to water authorised by the license and to the extent required 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, lease or otherwise acquire land, or request for its compulsory acquisition in accordance with the applicable laws;

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

19. (1) A water services provider 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) Such a partnership shall be reduced to an agreement in writing the terms of which and any amendment of which shall be of no force and effect unless and until approved by
(3) Where the person entering into the agreement with the water services provider 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 by or 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, to have been exercised or performed under the license.

20. (1) It shall be the responsibility of the government to put in place measures for the provision of water services to rural areas which are unviable for the provision of water services on a commercial basis.

(2) The measures taken by the government shall include developing point sources, small scale piped systems and stand pipes which meet the standard set by the national water regulatory agency and which may be managed by the community associations, non-governmental organizations or by a private person under a contract with the county government.

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

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

(2) The area so prescribed may, but need not, coincide with the boundaries of the area or areas of jurisdiction of one or more county governments.

22. (1) The government 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 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 such incidental, consequential and supplementary provision as the 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 appeal to the court.

23. (1) The Executive Committee member may vary the areas of water service prescribed by one or more licenses—

(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) without the consent, or against the objections, of any such other licensee, if the Executive Committee member is satisfied that the other licensee is unable to meet the demands for water in its or is otherwise unable to provide a commercially viable service.

(2) Where it appears to the Executive Committee member that it is necessary to vary the area of water service of a licensee, and the Executive Committee member is satisfied that such a variation cannot otherwise be secured he may, by order published in the Gazette, effect the variation and may vary the relevant licence accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provision as the Executive Committee member deems necessary or expedient for the purpose of carrying out the order.

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

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

(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 he 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 (2), 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 him, and of removing any pipes, plant or apparatus belonging to him, 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 he 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.

(4) 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 the licensee giving the notice as may be agreed or, in default of agreement, as may be determined by the Executive Committee member.

(5) While the supplying licensee is in accordance with this section authorized to provide water services outside its area of service, any regulations relating to its water service shall have effect as if the area to which those services were provided were within those limits.

25. (1) If, following a complaint made to or information by the licensee
received by the Executive Committee member, it appears to that Board that any licensee—

(a) has failed to discharge any duty imposed upon him by a licence or otherwise under this Act; or

(b) has failed to give an adequate supply water, as respects either quantity or quality to any area or any person which it is supplying, or has failed to give any supply which he is lawfully required to give; or

(c) having been notified by the Executive Committee member to take such steps as are reasonably practicable in order to remedy any such failure as is mentioned in paragraph (a) or (b), has failed to do so,

the Executive Committee member may inquire into the matter.

(2) If, after inquiry, the Executive Committee member is satisfied that there has been any such failure on the part of the licensee in question, it may impose a special regulatory regime on the water services provider for the purpose of remedying the default.

(3) A licensee declared to be in default who is dissatisfied with an order of the Executive Committee member under this section may, within thirty days after receipt of the order, appeal to the court.

(4) A licensee declared to be in default by order under this section who fails to comply with any requirement of the order within the time specified for compliance with the requirement shall be guilty of an offence.

26. (1) If the 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, it 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 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.
27. (1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the licensee considers necessary or as the conditions of his licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures or the control of vegetation or more effectively collecting, conveying or preserving the purity and quantity of water which the licensee is for the time being authorised 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.

28. (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 Executive Committee member, for such period as he thinks 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 any such prohibition or restriction comes into force, public notice shall be given by the licensee, in one or more newspapers circulating within the affected area or by such other means as the Executive Committee member may approve, of the proposed prohibition or restriction and of the date when it will come into force.

(3) Rules made under this Act may provide that any person who, while such prohibition or restriction is in force, contravenes its provisions shall be guilty of an offence and liable on conviction to a penalty fixed by Regulation.

29. A water services provider shall be responsible for the following—

(a) provision of water services within the area specified in the licence;

(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.

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

Provided that before constructing any works the licensee, if the proposed works will affect or be likely to affect any water resource, it shall obtain the consent of the Executive Committee member.

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

(3) A consent required under subsection (2) shall not be unreasonably withheld, nor shall any unreasonable condition be attached to such consent, and any question arising from the operation of this subsection shall be decided by consultation between the state organs concerned.

31. (1) It shall be the duty of a licensee receiving trade effluent into its sewerage system to 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 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 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.

32. (1) The 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) A portion of the levy may, with the approval of the 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.

33. (1) A water service provider may enter into an agreement with any other person, whether a water service provider or not, for the giving by that person, and the taking by the water service provider, of a supply of water in bulk for any period and on any terms and conditions and, where the supply is to be given by a person who is himself a licensee, either within or outside the limits of supply of that water service provider:

Provided that no such agreement shall be of any force or effect unless its terms have been approved by the Executive Committee member, and where such a supply is to be given by a water service provider, it shall withhold approval if it appears that the giving of that supply would be likely to interfere with the supply of water for any purpose within the
limits of supply of that water service provider.

(2) Where it appears to the 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; and

ii. the other water service provider should take such a supply; and

(b) the giving and taking of such a supply cannot be secured by agreement, the 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.

34. (1) The Executive Committee member shall in consultation with the relevant national water institutions shall be responsible for supervision, monitoring and coordination of water by water service providers.

(2) The Executive Committee member may—

(a) monitor, regulate water service providers and enforce licence conditions;

(b) formulate, promote and monitor implementation of policies for sustainable growth of the water sector, in consultation with the private sector and in line with water institutions in the National Government;

(c) establish a mechanism for handling complaints from consumers regarding the quality or nature or water services; and

(d) maintain a County data base or information system on water services.

PART VII — COUNTY PUBLIC WORKS

35. The county government 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;
catchment in collaboration the relevant bodies for that particular purpose;

(c) water resource development in form of boreholes, dams among others;

(d) storm water management;

(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) re-establishing green water storage areas such as wetlands and forests, water saving technologies, ground, ground aquifer re-charging;

(i) recycling treated effluent water;

(j) rehabilitation and restoration of water storage systems;

(k) conservation of water or improvement of water quality; and

(l) any other works done in exercise and performance of the mandate of the County Governments stipulated in the Fourth schedule of the Constitution.

36. (1) The Executive Committee Member may through the National Land Commission and in the manner provided for in the Land Act initiate land acquisition process for the works provided in this Act.

(2) A licensee, or an applicant for a licence, who requires the compulsory acquisition of land for any of its purposes may apply to the Executive Committee member, who may, and upon being satisfied that such compulsory acquisition is desirable, take any steps necessary to secure the compulsory acquisition of the land in accordance with the applicable laws.

(3) The purposes of a licensee or an applicant for a licence shall be deemed, for the purposes of subsection (1), to include any necessary protection of a source of supply which belongs to the licensee or will belong to it following the acquisition, or which it is or will be authorised to take,
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against pollution or other degradation, whether on the surface or underground.

(4) Any purpose for which land may be acquired under this section shall be deemed, for the purposes of the law on land acquisition, to be a public purpose.

37. The Executive Committee member shall in collaboration with the relevant bodies in the national 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 Public Health Act;

(c) ensure untreated effluent water is not released into 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.

38. (1) The 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 Executive Committee member may make Regulations—

(a) prescribing the amount of fees payable under this Act generally or in particular cases;

(b) the circumstances in which licences and agreements may be applied for, granted, varied, refused or cancelled, and the manner in which a person to whom a licence is granted may exercise a right or privilege conferred upon him by the licence;

(c) forms to be used under this Act;

(d) provision of bottled or mineral water; or

(e) county water projects.

(3) Without prejudice to subsection (1) the nature and
scope of the Regulations shall—

(a) be in line with the general purpose and objectives of this Act;

(b) be limited only to the matters set out in this Act; and

comply to the drafting standards set out under this Act.

39. (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) throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or likely to cause, pollution of the water resource;

(c) carries on agricultural activities within the ten-metre 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 exceeding fifty thousand shillings or to imprisonment of a term not exceeding twelve months or to both.
MEMORANDUM OF OBJECTS AND REASONS

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

In view of the above this Bill seeks to make provisions for provision of water services and related functions in the County as provided for in the Fourth Schedule of the Constitution. The purpose of this Bill is to make provision for licensing water service providers to provide water services, water works, ensure compliance to set down water standards, control of pollution in water bodies and related matters.

PART I of the Bill provides for preliminaries, which include the short title and interpretation of terms as used in the Bill.

PART II provides for ownership of water, right to use water and powers and functions of the Executive Committee Member for the time being responsible for the water in the County.

PART III of this Bill proposes to establish an Inspectorate Unit in the Department of Water, Irrigation and Sanitation. This Part also provides powers of Inspectors under the Unit. The Inspectorate Unit will be responsible for ensuring compliance of the provisions of this Bill.

PART IV provides for the licensing of water service providers by the Executive Committee member who is also expected to execute an agreement with the water service providers undertaking to ensure that they comply with the terms therein. This Part also provides for the conditions to be met by applicants for licenses and the responsibilities of water service providers in the process of providing water to the residents of the county. Water services providers are also required to execute certain works for purposes of protecting water and to manage sewerage systems and control trade effluents. It also makes provisions for supply of water in bulk to the water services providers and supervision of their operations.

PART V provides for public works by the county government in addition to the works undertaken by the service providers. This Part also provides for processes of initiating compulsory land acquisition where land is required for public purposes.

PART VI provides for general provisions including pollution control measures, power to make subsidiary legislation, offences and penalty.

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

Dated the 20th March, 2014.

FRANCIS WAMBUA MALITI,
County Executive Member,
Water, Irrigation and Sanitary.