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**THE NAKURU COUNTY WATER AND SANITATION SERVICES
ACT, 2021**

No. 6 of 2021

Date of Assent: 10th March, 2021

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**THE NAKURU COUNTY WATER AND SANITATION SERVICES
ACT, 2021**

AN ACT of County Assembly of Nakuru to provide for development, regulation and management of county public works related to water and sanitation services, storm water management systems, water conservation, water harvesting and for connected purposes.

ENACTED by the County Assembly of Nakuru, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Nakuru County Water and Sanitation Services Act, 2021 and shall come into force on the date of publication in *Kenya Gazette* and *County Gazette*.

Interpretation

2. In this Act—

“Authorised officer” means an authorised officer appointed under section 76;

“Board” means the Board of Directors established under section 6;

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

“county executive member” means the County Executive Committee Member for the time being responsible for Water Services;

“Water Service Provider” means a Water and Sanitation Services Company established under section 4;

“Department” means the Department of water and sanitation services as established by the County Executive Committee;

“Technical steering committee” means the Nakuru Countywide Sanitation Technical Steering Committee established under section 11;

“water sector committee” means the County Water Sector Steering Committee established under section 8;

“Water Sector Forum” means the Nakuru County Water Sector Forum established under section 5;

“water service provider” means a water service provider established under section 18; and

“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.

Objects of Act

3. The objects of this Act is to provide for a legal framework for implementation of section 10 (a) and 11 of part 2 of the Fourth Schedule to the Constitution and Article 43 (1) (b) and (d) in order—

- (a) ensure equitable and continuous access to clean water;
- (b) promote soil and water conservation;
- (c) promote Water catchment conservation and protection;
- (d) provide for the development and management of county water services public works;
- (e) provide for regulation of county and sanitation public works
- (f) ensure effective, efficient and affordable provision of water and sanitation services;
- (g) promote effective and efficient management of storm water in built up areas;
- (h) facilitate effective and efficient dispute resolution mechanism on matters relating to water and sanitation;
- (i) enhance sustainable management of water resources; and
- (j) Promote inter-agency collaboration and public participation in water resource development and management.

PART II –ADMINISTRATION

Duties of Department for Water and Sanitation Services

Duties of the Department

4. Pursuant to the provisions of this Act, the Department shall –

(1) There is established the department for Water and Sanitation Services which shall have the overall responsibility of regulating and overseeing the provision and management of water supply, sewerage and sanitation services in the County.

(2) Pursuant to the provisions of this Act the department shall—

- (a) in collaboration with other national or county government (s) departments initiate, develop and coordinate implementation of policies, strategies and plans for water resources management and sanitation services for effective implementation of this Act;

- (b) facilitate public awareness and participation on sustainable water resources, sanitation and storm water management;
- (c) develop and coordinate implementation of water and sanitation services management information system;
- (d) support and facilitate development and management of county water and sanitation services infrastructure, including water works, transport of water and water connections;
- (e) support, promote and facilitate development of adequate water supply system for domestic, industrial and agricultural purposes;
- (f) promote and coordinate development of public works and processes for water conservation and water harvesting including identifying, initiating and promoting water conservation systems, strategies and programs;
- (g) promoting or developing and managing water recycling systems;
- (h) promote sustainable water use;
- (i) promoting and supporting development and management of infrastructure for storm water management;
- (j) subject to any other written law regulating water and sanitation services in the county;
- (k) providing oversight over development of infrastructure and systems for water services in the county and water service development ;
- (l) issuing permits and regulating any person intending to carry out any water and sanitation works similar to the public works defined under this Act;
- (m) regulating use or access to land for the purposes of water conservation on the basis of the county spatial plan;
- (n) issuing permits and regulating the provision of private water trucking services;
- (o) issuing permits and regulating the provision of sanitation services
- (p) promoting and ensuring compliance with the established standards related to water and sanitation services;
- (q) receiving and addressing complaints from water users and any interested person;

- (r) maintaining data and information related to water and sanitation services;
- (s) facilitating collaboration with other government agencies involved in water and sanitation services management and county governments;
- (t) conducting research and appropriate surveys for water resources management;
- (u) advising the executive member on the necessary policy to be adopted for sustainable water resources management.

Water and Sanitation Sector Coordination Institutions

Nakuru County Water Sector Forum

- 5.** (1) There is established the Nakuru County Water Sector Forum.
- (2) The Forum shall be responsible for—
- (a) providing a platform for county water stakeholders' participation, consultation and coordination in water sector planning, implementation, financing and evaluating the measures, systems and processes in county water sector;
 - (b) identifying the county water sector emerging needs, challenges and trends and identifying policy, legislative and administrative measures to be adopted in relation to the implementation of this Act, policies, plans and strategies related to water and sanitation sector; and
 - (c) carrying out any other role as may be assigned under this Act.

Composition of the Forum

- 6.** (1) The Forum shall consist of—
- (a) the county executive committee member responsible for water who shall be the chairperson and convener;
 - (b) the chief officer responsible for water who shall be the secretary;
 - (c) the chief officers and directors from the following county departments—
 - (i) environment/natural resources;
 - (ii) health;
 - (iii) agriculture;
 - (iv) roads;

- (v) trade;
 - (vi) land;
 - (vii) physical planning;
 - (viii) roads;
 - (d) the national government ministries and agencies involved in water sector;
 - (e) the chief executive officers in charge of county water service providers;
 - (f) the sub-county administrators;
 - (g) the ward administrators;
 - (h) representatives from non-governmental or community based organizations involved in matters related to water sector in the county;
 - (i) professionals and professional organizations related to water sector;
 - (j) local community leaders involved in water resources conservation and management or water services delivery;
 - (k) representatives of faith based organizations engaged in water resources management or service delivery;
 - (l) representatives of industry or private sector;
 - (m) representatives of large commercial farmers and small scale farmers;
 - (n) development partners supporting water and sanitation sector programmes in the county; and
 - (o) any other person as the county executive member may designate.
- (2) The department shall provide secretariat services to the Forum.

Meetings of the Forum

7. (1) The Forum shall meet at least once in each year.
- (2) The secretary shall cause a record and report of the proceedings of the meetings of the Forum to be maintained prepare reports that shall be submitted to the county executive committee for consideration.

Water Sector Steering Committee

8. (1) There is established the County Water Sector Steering Committee, which shall be the committee of the Forum established under section 5.

- (2) The water sector committee shall be responsible for—
- (a) coordinating the activities of the Forum;
 - (b) facilitating implementation of the decisions of the Forum;
 - (c) coordinating and facilitating multisectoral implementation of this Act, policies, plans and strategies related to water and sanitation sector;
 - (d) advising county executive committee member in charge of water on appropriate measures, plans and programmes to be adopted in enhancing effective implementation of this Act, policies, plans and strategies related to water and sanitation sector; and
 - (e) carrying out any other function as may be assigned under this Act.

Composition of the water sector committee

9. (1) The water sector committee shall consist of—
- (a) the county director in charge of water who shall be the chairperson;
 - (b) a county officer in the department responsible for water who shall be designated as the secretary;
 - (c) the county director responsible for environment/natural resources;
 - (d) the county director responsible for health;
 - (e) the county director responsible for agriculture;
 - (f) the county director responsible for trade;
 - (g) the county director responsible for land;
 - (h) the county director responsible for physical planning;
 - (i) the county director responsible for roads;
 - (j) the technical managers of water services in the respective water service providers;

- (k) one person representing non-governmental or community based organizations involved in matters related to water sector in the county;
- (l) one professional who is an expert in matters related to water;
- (m) one person representing faith based organizations engaged in water resources management or water service delivery;
- (n) one person representing private sector water service providers in the county; and
- (o) one person representing development partners.

(2) The members appointed under subsection (1) (k), (l), (m), (n) and (o) shall be appointed by county executive committee member responsible for water in consultation with the respective bodies being represented where applicable.

(3) The water sector committee may establish sub-sector based subcommittees or thematic committees.

National government participation in meetings of the steering committee

10. The national government ministries and agencies may attend meetings and participate in the deliberations of the committee.

Nakuru Countywide Sanitation Technical Steering Committee

11. (1) There is established the Nakuru Countywide Sanitation Technical Steering Committee.

- (2) The Technical Steering Committee shall be responsible for—
 - (a) coordinating and promoting effective implementation of sanitation policies, strategies, plans and programmes;
 - (b) providing inter-departmental and multisectoral governance and management of sanitation policies, strategies, plans and programmes;
 - (c) providing a platform for stakeholder coordination, collaboration and liaison on sanitation services development and management; and
 - (d) mobilizing resources for sanitation services development and management.

Composition of the technical steering committee

12. The Steering Committee shall consist of—

- (a) the director for the time being responsible for water who shall be a co-chairperson;
- (b) the director for the time being responsible for sanitation which shall be a co-chairperson;
- (c) four county officers from the department responsible for water;
- (d) four officers from the department responsible for health;
- (e) one officer from the department responsible for physical planning;
- (f) two officers from each water service provider; and
- (g) co-opted representatives from water resources users associations and private sector organizations.

Meetings and procedures of the committees

13. (1) The committees established under section 8 and 11 shall meet at least once in each period of three months.

(2) A committee shall regulate their own procedures of meetings.

(3) Notwithstanding subsection (2), a committee shall maintain a written record of its proceedings and deliberations.

Term of office

14. A person appointed under section 9 (1) (k), (l) (m), (n), (o), (p) and section 12 (g) shall serve for a term of three years which may be renewed for a final term of three years.

Removal from office

15. A person appointed under section 8 (1) (m), (n), (o), (p) and section 12 (g) may—

- (a) at any time resign by issuing notice in writing to the County Executive Committee Member;
- (b) be removed from office by the County Executive Committee Member for—
 - (i) serious violation of the Constitution or any other written law;
 - (ii) 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) been absent from three consecutive meetings of the committee without the permission of the chairperson;
- (v) incompetence; or
- (vi) bankruptcy.

Allowances for Committee Members

16. A member of a committee may be paid such allowances as the county treasury may from time to time determine in accordance with guidelines established under the Public Finance Management Act.

Reports

17. The committees established under section 8 and 11 each committee shall prepare and submit quarterly reports on discharge of its functions to the county executive committee for consideration.

Water Service Providers

Establishment of water service providers

18. (1) There shall be three County Water and Sanitation Service Providers namely—

- (a) Nakuru Water and Sanitation Services Company;
- (b) Nakuru Rural Water and Sanitation Company; and
- (c) Naivasha Water and Sanitation Company.

(2) A water service provider shall be registered as a company limited by share capital and shall be wholly owned by the county government.

(3) The county executive committee member responsible for finance, the county executive committee member responsible for water and sanitation services and the county secretary shall hold equal shares each as trustees on behalf of the county government.

(4) The Water Service Providers existing immediately before the coming into force of this Act under the same names described under subsection (1) shall be deemed to be the service providers described under subsection (1) and all rights, liabilities and powers accruing thereto shall be deemed to be the same.

(5) The County Executive Committee shall, in consultation with the Water Services Regulatory Board, assign to each Water Service Providers established under subsection (1) the sub counties or zones in which a Water Service Provider shall provide water and sanitation.

Functions of a Water Service Provider

- 19.** A Water Service Provider shall be responsible for—
- (a) coordinating with the national government entities in accessing bulk water for distribution;
 - (b) providing and managing water and sanitation services;
 - (c) developing, operating and maintaining water distribution and reticulation infrastructure and systems;
 - (d) developing and maintaining sanitation and sewerage services;
 - (e) maintaining database related to water and sanitation services; and
 - (f) carrying out any other function as may be assigned under this Act.

Board of a Water Service Provider

- 20.** (1) The management of a water service provider shall vest in the Board of Directors.
- (2) A Board of the water service provider shall consist of—
- (a) not less than five and not more seven non-executive directors appointed by the county secretary on advice of the county executive committee member and subject to the approval by the Governor, in accordance with the memorandum and articles of association of the respective companies, provided that, at least—
 - (i) one person shall be qualified and experienced in matters water services, and in good professional standing;
 - (ii) one person shall be qualified and experienced in matters related to finance and accounting, and in good professional standing; and
 - (iii) one person shall be qualified and experienced in human resources management practice and in good professional standing;
 - (b) the county executive member or his or her alternate representative duly appointed;
 - (c) the County Executive Member responsible for finance or his or her alternate representative, duly appointed; and
 - (d) managing Director who shall be an ex officio member of the Board.

- (3) For purposes of appointing persons under subsection (2), at least—
- (a) one person shall be a representative of resident associations in the county;
 - (b) one person shall be a representative of business member organizations in the county; and
 - (c) one person shall be a person with disability representing organizations of persons with disability in the county.
- (4) The board of directors shall in their first meeting appoint the chairperson in accordance with memorandum and articles of association.
- (5) A person shall not be appointed under subsection (2) (a) unless the person—
- (a) holds a degree in management, water related engineering, law, business, economics or any relevant field from a recognized university;
 - (b) has at least five years experience in leadership and management in public or private sector;
 - (c) Provided that for the chairperson, the person shall have at least ten years experience in public or private sector;
 - (d) meets the requirements of Public Officer and Ethics Act;
 - (e) is a resident of the County; and
 - (f) not an office bearer in any political party.
- (5) Any member of the Board, other than county executive committee members shall hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment and shall be eligible for appointment for a final term of three years.

Removal from office

- 21.** A member of the Board of Directors may—
- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board, the county secretary and the county executive member;
 - (b) be removed from office by the county secretary in consultation with the Board and the county executive member and with the approval by the Governor for—
 - (i) serious violation of the Constitution, Public Officer and Ethics Act 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; or bankruptcy.

Managing Director

22. (1) There shall be a Managing Director for each Water Service Provider.

(2) A Managing Director shall be appointed by the Board through a competitive process.

(3) To qualify for appointment as a Managing Director, a person shall—

- (a) possess a degree in management, water related engineering, business, economics, law or any other relevant field from a recognized university;
- (b) have had experience in leadership and management for a period of not less than five years in utility management or service industry;
- (c) meet the requirements of Public Officer and Ethics Act;
- (d) is in good professional standing with the respective professional body

(4) The Managing Director shall be an ex-officio member of the Board but shall have no right to vote at any meeting of the Board.

(5) The Managing Director shall-

subject to the direction of the Board, be responsible for day to day management of the affairs of a water service provider;

in consultation with the Board, be responsible for the direction of the affairs and transactions of the water service provider, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the water service provider; and

carry out any other function as may from time to time be assigned by the Board.

Removal from office

- 23.** The Managing Director may—
- (a) any time resign from office by issuing notice in writing to the chairperson of the Board;
 - (b) be removed from office by the Board, for—
 - (i) serious violation of the Constitution, Public Officer Ethics Act, 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; or
 - (v) bankruptcy.

Staff of the water service provider

24. A water service provider may appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

The common seal

25. (1) The common seal of a water service provider shall be kept in the custody of the Managing director or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

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

(3) The common seal of a water service provider shall be authenticated by the signature of the Managing Director.

(4) The Board shall, in the absence of either the Managing Director, in any particular matter, nominate one member of the Board to authenticate the seal of the Water Service Provider on behalf of the Managing Director.

Protection from personal liability

26. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Water Service Provider shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Water Service Provider under this Act, render the member,

officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done bona fide be paid out of the funds of the Water Service Provider, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damages

27. The provisions of section 26 shall not relieve the water service provider of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Reporting by a Water Service Provider

28. A water service provider shall prepare and submit to the county executive member—

- (a) quarterly reports of its operations; and
- (b) annual status report which shall cover among others—
 - (i) the water and sanitation coverage during the year;
 - (ii) challenges faced in carrying out its functions;
 - (iii) strategies and measures adopted to facilitate access to water and sanitation services in the area assigned; and
 - (iv) any other matter as may be required under this Act by the county executive member.

Strategic planning by water service providers

29. (1) A water service provider shall prepare for each period of three or five years, a strategic plan which shall—

- (a) be the basis of planning for operations planning and execution in the water service provider;
- (b) be the basis for budgeting;
- (c) be aligned with county development priorities as outlines under the County Integrated Development Plan.

(2) A water service provider shall, prior to its finalization and adoption by the board, submit the strategic plan to the county executive member for consideration and feedback.

Reporting by Department

30. (1) The department shall prepare an annual water sector status report on the implementation of this Act which shall be submitted to the County Executive Committee and the County Assembly for consideration.

(2) The department shall—

- (a) publish the report prepared under this section; and
- (b) publicize the report to county resident and facilitate collation of public views on the report for further consideration by the Department.

Adoption of quality management systems

31. (1) A water service provider shall such quality management systems for purposes of ensuring quality service delivery, which shall include certification on quality management systems.

(2) The department shall facilitate and support the water service providers to comply with requirements of subsection (1).

PART III—WATER SERVICES**Supply of water**

32. A Water Service Provider and the department shall, in collaboration and coordination with national government and relevant stakeholders progressively ensure that—

- (a) ensure access to sustainable, clean, potable, affordable, equitable and adequate water for domestic consumption within a distance of one kilometer of the home or premises with collection time not exceeding thirty minutes walking distance;
- (b) ensure equitable access to sustainable supply and access to water for industrial, agricultural and commercial use; and
- (c) there is equitable distribution of water between consumers in urban and rural areas under service jurisdiction of the water service provider.

Water distribution and reticulation infrastructure

33. (1)A water service provider shall, in collaboration the department and national government, develop and maintain such appropriate water distribution and reticulation infrastructure and system, which shall be in accordance with the national standards and international best practices.

(2) The county executive member shall A water service provider shall, in collaboration with the department and national government, develop and maintain such appropriate water distribution and reticulation infrastructure and system, which shall be in accordance with the national standards and international best practices. progressively ensure that the water service providers have adequate resources to implement requirements under subsection (1).

Water quality standards

34. (1) A public or private water service provider shall not supply water that does not comply with water quality standards.

(2) Pursuant to subsection (1), a public or private water service provider shall not supply water that exceeds the permissible fluoride levels.

(3) The department shall, in coordination with water service providers and national government —

- (a) map and gazette areas in the county with high levels of fluoride in ground water;
- (b) promote and where appropriate facilitate acquisition of technology and infrastructure for purposes of defluoridation of water in areas with high levels of fluoride in the ground water; and
- (c) carryout public awareness and education on effects and mitigation measures of using water contaminated with fluoride.

(4) No person shall supply or provide water that does not comply with the requirements of this section.

(5) The department shall in coordination with the water service providers and the private sector water service providers, designate and facilitate establishment of a modern water quality testing laboratory in the designated water service provider where testing of quality of water supplied buy public and private water service provider

(6) The county executive member shall continuously cause to be tested water supplied by public and private water service providers for purposes of quality assurance and control.

(7) A person who supplies water that does not meet the water quality standards commits an offence and shall upon conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months.

Zoning for water service delivery

35. (1) Subject to the approval by the county executive committee and in consultation with water service providers and Water Services Regulatory Board, the county executive member shall delineate and prescribe the water services supply and coverage zones designated for each water service provider, where a water service provider shall be responsible for supplying water.

(2) While prescribing the zones described under subsection (1), the county executive member shall—

- (a) ensure equitable distribution of water services supply between rural and urban areas;
- (b) efficiency and sustainability of water services throughout the county;
- (c) take into consideration geographic and topographical features in different areas in the county;
- (d) sources of water within and outside the county;
- (e) population density, settlements and urbanization trends; and
- (f) cost of supply of water services in each zone.

Service agreements

36. A Water Service Provider may enter into service performance agreements with any entity in carrying out its functions.

Development of water works on public or private property

37. (1) A Water Service Provider or the department may for the purposes of carrying out its functions erect or develop water works on a public or private property.

(2) Notwithstanding provisions of subsection (1), a Water Service Provider or the department shall seek consent of the owner of private land or the relevant government agency occupying the property or in whose custody the public land falls where it seeks to erect any water works, and shall provide the appropriate compensation for use of such property.

(3) A Water Service Provider or the department shall seek easements for construction of works to be undertaken on any parcel of land described under subsection (1) and (2).

(4) A Water Service Provider or the department shall in collaboration with the department of roads identify, map and establish specific areas on any road reserve where public works under this Act may be carried out.

(5) Pursuant to subsection (4), the department responsible for roads shall, in coordination with the national government designate areas of road reserves where water public works may be erected.

(6) A water service provider shall not erect any public water works in a non-designated area in the road reserves as stipulated under subsection (2).

County scheme

38. (1) A Water Service Provider or the department may with the approval of the county executive committee initiate a county scheme to provide services under this Act for public benefit.

(2) Where a Water Service Provider or the department deems necessary to erect or establish such a scheme or related public works on private property or land and the county government may purchase the property or in accordance with the laws governing compulsory acquisition seek such compulsory acquisition.

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

Community water initiatives

39. (1) Where a local community, prior to the coming into force of this Act has established a community water project, the community shall ensure that the provision of water services through the project meets the standards for water service delivery prescribed by the Water Services Regulatory Board.

(2) Upon coming into force of this Act, each water service provider shall, in coordination and collaborate with the department and local communities that have no access to water supply from respective water service provider initiate and undertake water distribution and reticulation schemes.

Water tariffs

(No. 43 of 2016)

40. (1) A Water Service Provider shall levy tariffs and any appropriate user charges for the purposes of supplying efficient water services in accordance with the provisions of the Water Act.

(No. 17 of 2012)

(2) The tariffs and user charges levied under this Act shall be established in accordance with the principles set out under section 120 of 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 but shall be utilized for defraying expenditures of the Water Service Provider and providing efficient and quality services under this Act.

(4) The tariffs and user charges imposed or levied under this section shall be subject to approval by the County Executive Committee.

Prohibited activities

41. (1) A person shall not—

- (a) interfere with any meter or equipment installed by a water service provider;
- (b) install illegal or un authorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards;
- (d) sell water supplied by a water service provider established under this Act; or
- (e) vandalize any water works, infrastructure, pipes or any water installations.

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

(3) Notwithstanding subsection (2), a person who has vandalized any water infrastructure, tampered with a water meter or sold water supplied to a water service provider shall pay to the water service provider, the costs as a result of such actions as shall be prescribed.

(4) A water service provider shall have power to disconnect any illegal or un authorized connection.

Application for water services

42. (1) A person intending to install water services in the person's premises shall apply to the water service provider operating in the zone, in the prescribed form.

(2) A water service provider shall provide water services to the applicant, where—

- (a) the water service provider has established water distribution and reticulation infrastructure where the applicant resides or is situated;

- (b) where the applicant has installed the required water supply system in accordance with the prescribed standards; and
- (c) paid the prescribed fees.

(3) A water service provider shall, prior to connecting the water supply to an applicant, inspect the water supply system and ensure that it complies with the prescribed system.

Development control related to abstraction of ground and surface water

43. (1) Pursuant to the powers of the county government in relation to development control, no person shall abstract ground water in a densely populated urban areas as shall be prescribed.

(2) Subject to subsection (1), the department shall carry out continuous monitoring audit of all ground abstraction projects including dams and boreholes and shall maintain a record of the projects.

(3) The department shall, where abstraction of ground water in a specific location exceeds the prescribed limits and density under the national standards, the department shall liaise, collaborate and coordinate with the national government to prohibit further water ground water abstraction in the stipulated location or area.

Permit for ground water and surface abstraction

(No. 43 of 2016)

44. (1) Notwithstanding authorization acquired under the Water Act, 2016 pursuant to development control laws, a person intending to carry out or maintain any water works including abstraction of ground or surface water shall apply for a permit to the department.

(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 thousands or to imprisonment for a term not exceeding six months.

Application for permit

(No. 8 of 1999)

45. (1) An application for a permit under section 44 shall, where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Coordination 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; and
- (c) the duration within which the works are expected to be completed.

(2) The department shall, where the construction of works will 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 department setting out the grounds for such an objection.

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

(6) The department 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 department 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 Department 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 Department shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

Water works conditions

46. The county executive member shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance of water works.

Non interference and restoration after construction works

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

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

Register of permits

48. (1) The department shall maintain a register of permits issued under this Act, which shall include all details related the permit.

(2) The register of permits shall be accessible to members of the public upon payment of the prescribed fees.

Private water services audit

49. (1) A water service provider in collaboration with the department shall audit and assess the number of persons providing private water services in the county.

(2) The water service provider shall submit the data and information collected under this section to the executive member who shall issue policy directive on management of water services to such persons in accordance with this Act.

Aid coordination in water services.

50. (1) Any person providing support to county residents or local communities in the form of grants, Aid, technical assistance or any support in cash or in kind for purposes of provision or access to water services shall notify the county executive committee member, in the prescribed form.

(2) The county executive committee member shall, in consultation with local communities and county residents, development partners and private sector prescribe guidelines for coordinating grants, Aid and

financial assistance in the county on provision and access to water services.

PART IV—WATER AND SOIL CONSERVATION

Water conservation

Water conservation areas

51. (1) The department responsible for spatial planning shall, in preparation of the county spatial plan designate and delineate such areas as water conservation areas.

(2) The department shall consult, liaise, collaborate and coordinate with the national government in management and conservation of water conservation areas which shall include—

- (a) mapping and fencing such areas where appropriate;
- (b) imposing development control restrictions and conditions in the areas delineated as water conservation areas;
- (c) restricting human activities in such areas;
- (d) rehabilitating any water conservation areas that are depleted.

Conservation of water catchments and wetlands

52. The department shall—

- (a) collaborate with national government or other county governments in conservation and protection of water sources, wetlands and catchments of strategic importance to the county, which are located outside the county;
- (b) support through financing of water conservation and catchment protection;
- (c) support and enforce reserve flow maintenance;
- (d) in collaboration with other agencies, develop policies and strategies on water storage management at household, farm and industrial levels and ensure their implementation; and
- (e) in collaboration with water resource users associations, participate in development and monitoring of implementation of sub catchment management plans.

Conservation guidelines

53. Subject to any written law, the county executive member shall, in consultation with national government prescribe guidelines for water conservation.

*Soil conservation***Soil conservation**

54. The county executive member shall, in collaboration with other entities, develop and implement policies and strategies for soil conservation and sustainable management of wetlands.

Flood flow management

55. The county executive member shall—

- (a) prescribe rules for flood flow management; and
- (b) initiate community programs for managing flood flow.

Mapping and demarcation of riparian land

56. (1) Any riparian land shall be mapped, demarcated and protected in accordance with the national law.

(2) The county department responsible for land shall, in consultation, collaboration and coordination with the National Land Commission and other relevant national government departments to ensure that this section is implemented.

Prohibited activities on riparian land

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

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

(2) A person who contravenes subsection (1) commits an offense and shall upon conviction be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one month.

PART V—STORM WATER MANAGEMENT

Storm water management and land use practices

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

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

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

(a) identify, survey and inventory existing conditions that affect storm water runoff; and

(b) address issues of peak flows, flooding, ground water recharge, stream erosion and water quality.

(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) 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.

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

(6) The county department responsible for roads shall ensure that road construction plans include a storm water management plan.

(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 subsection (6) and (8) 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.

Reduction of run off water

60. (1) A proprietor of a 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; and
- (c) reuse or recycle storm water collected for other purposes in the premises.

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

Riparian buffers

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

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

(3) A person shall not 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.

Rainwater harvesting

62. (1) An owner of a residential, commercial or industrial premises shall install such appropriate infrastructure for collecting and storing rain water in accordance with the prescribed standards and guidelines which shall include roofing materials for roofing catchment.

(2) The department shall, in collaboration with owners or premises described under subsection (1) and relevant stakeholders promote and where appropriate facilitate development of rainwater water collection and storage infrastructure and processes.

(3) The department shall embrace and promote appropriate technologies in water harvesting which shall include the sponge cities model.

PART VI—SANITATION SERVICES AND POLLUTION CONTROL

Master plan

63. The department shall, in collaboration with other counties and national government departments and local residents, prepare medium and long term sanitation services master plan.

Provision of sanitation services

64. (1) A water service provider shall either directly or through public private partnership—

- (a) provide necessary sanitation services in all urban areas;
- (b) construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements.

(2) The county shall adopt onsite fecal sludge management systems and process for waste generated in urban areas.

(3) The department, water service providers and relevant stakeholders shall adopt such measures, strategies and processes for effective implementation of this section.

Waste water management.

65. The department shall—

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

Compliance with effluent standards

66. (1) A person or entity shall, when disposing final effluent comply with the guidelines prescribed by the relevant government authority.

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

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

Discharge of contaminated water or effluent

67. (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 (2) commits an offence and shall—

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

Interference with sewerage system

68. (1) No person shall interfere with any sewerage facility or system unless with a written consent of a water service provider 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 or to both.

Sewerage tariffs**(No. 17 of 2012)**

69. (1) Subject to the County Governments Act, 2012 and any written law, a water service provider or its agent 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 and the Water Services Regulatory Board.

Prohibition of open sewer lines.

70. Open sewer lines in the county are hereby Prohibited.

Conflict resolution

71. (1) The county executive member shall Rules for governing conflict resolution related to water and sanitation.

(2) The department shall in collaboration with other relevant county departments and stakeholders —

- (a) map all water conflict issues predominant in the county based on the respective geographical localities; and

- (b) mobilize local communities in promotion of community integration and cohesion in access to water sources.

PART VII – WATER AND SANITATION SERVICES FINANCING

Funds mobilization and allocation

(Cap 412 C)

72. (1) The department responsible for water shall in collaboration with national government and other relevant stakeholders mobilize financial resources for water and sanitation sector development, which shall include—

- (a) annual appropriations under the Public Finance Management Act;
- (b) grants;
- (c) donations;
- (d) contributions in kind; and
- (e) any other support.

(2) The department responsible for water shall in collaboration with the county treasury, national government, private sector and other relevant stakeholders, promote the use of Public-Private-Partnerships model and related investment mechanisms to finance water harvesting, storage, and distribution with inbuilt sanitation projects, and trans-boundary resource development.

Utilization of fees and charges

73. The fees, charges and tariffs collected from the water sector service delivery shall be designated for utilization specifically for water sector development in accordance with the financial management system in the county and the Public Finance Management Act in order to ensure operational sustainability and viability for all county water services provided.

Fees and charges for community water projects

(Cap 412 C)

74. All charges and tariffs collected from community based water projects financed by the county government shall be collected and utilized for the purposes of defraying operational costs of the water project in accordance with the established financial management systems for community based water projects.

Financial management of water service providers**(Cap 412 C)**

75. (1) A water service provider shall comply with the Financial management principles and processes provided under the Public Finance Management Act.

(2) Each water service provider shall submit to the county executive member—

- (a) statement of annual estimates of income and expenditure in respect of each financial year at least thirty days before the commencement of the financial year;
- (b) annual operations plans related to the statement of annual estimates of income and expenditure;
- (c) quarterly financial reports;
- (d) annual audited financial statements and reports; and
- (e) any other financial report as may be required under this Act.

PART VIII—ENFORCEMENT**Authorized officers**

76. (1) The County Executive Member may appoint such number of authorized officers for the purposes of enforcing or implementing the this Act.

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

Power of entry

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

Power of officers

78. (1) An authorized officer may examine or inspect any facility, equipment, information or data related to this Act or gain access to any area for the purposes of implementing this Act.

(2) Any person who obstructs an authorized officer while enforcing or implementing this Act commits an offence and liable to a fine not exceeding one hundred thousand shillings.

PART IX— GENERAL PROVISIONS**Regulations**

79. (1) The county executive member may make Regulations generally for the better carrying out of the objects of this Act.

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

- (a) prescribe the procedure of nominating persons representatives of water users to the Board of a water service provider;
- (b) prescribe guidelines for developing watershed storm management plans;
- (c) prescribe guidelines for sanitation system and standards;
- (d) prescribe for the areas declared as water protected areas;
- (e) prescribe the rules for conflict resolution;
- (f) prescribe the fees applicable under this Act;
- (g) prescribe the forms applicable under this Act;
- (h) prescribe the tariffs chargeable by a community water project;
- (i) prescribe the list of water sector stakeholders; or
- (j) prescribe the conduct of operations of the water sector stakeholders forum.