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LAIKIPIA COUNTY BILLS, 2018

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**THE LAIKIPIA COUNTY WATER SERVICES
BILL, 2018**

A Bill for

**AN ACT of the County Assembly of Laikipia to provide
the legal and institutional framework for
management of water resources, water harvesting,
provision of water and sewerage services in the
county and for connected purposes**

ENACTED by the County Assembly of Laikipia as follows-

PART I—PRELIMINARY

1. This Act maybe cited as the Laikipia County Water Short Title
Services Act, 2018.

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

“Community water service” means water services provided by a community association on a self-help basis.

“County entity” means an entity of the County Government recognized as such under the provisions of the Public Finance Management Act, 2012.

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for water and sanitation services in the county.

“County Executive Committee” means the county executive committee provided for under Article 179 of the Constitution of Kenya, 2010.

“County water services provider” means a water services provider established by the County Government as a county government entity for the provision of water services within the county.

“Gazette” means the Kenya Gazette published by the Government Printer

“Governor” means the County Governor of Laikipia in terms of Article 179(4) of the Constitution of Kenya, 2010.

“Public officer” means a person serving as a public officer in the County Government of Laikipia or any of its agencies.

“Regulatory Board” means the Water Services

Regulatory Board established by the Water Act, 2002, or its successor.

‘Sewerage services’ means the provision of a piped network for the transport and or movement of wastewater for treatment and or final disposal offsite.

“Sanitation” means treatment and or final disposal of wastewater on site through latrines, septic tanks, conservancy tanks, soakaway pits, exhauster services and similar systems but does not include sewerage services.

“Water services” means the provision of water and or sewerage services for domestic, commercial, industrial, agricultural or other purpose and includes the supply of water for multiple uses.

“Water services provider” means an entity providing water and or sewerage services as a business but excludes an establishment providing water services to persons resident within the premises of the establishment.

3 (1) This Act shall apply to the provision of water and sewerage services in Laikipia County.

Application,
objects and
purposes of the Act

(2) The Act gives effect to the Constitution and national law as regards the provision of water and sewerage services by the County Government of Laikipia.

(3) The rights conferred and duties imposed by this Act are in addition to those conferred and imposed by any other law.

4. The County Executive Committee member, the county water services provider and any person administering or applying this Act shall be guided by the principles and values of the Constitution set out herein—

Guiding Principles
and Values

- (a) national values and principles of governance in Articles 10;
- (b) the right of every person to clean and safe water in adequate quantities in Article 43 (1) (d); and
- (c) the values and principles of public service in Article 232.

**PART II—POLICY, COORDINATION AND
OVERSIGHT OF WATER SERVICES**

5. (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and oversight over the development and provision of water and sewerage services within the county.

Powers and Duties
of County
Executive
Committee
member

(2) Without prejudice to the generality of the foregoing, the County Executive Committee Member shall have responsibility to—

- (a) Formulate and review periodically strategies and plans for implementation of water resource standards and catchment protection in the county
- (b) formulate and periodically review county policies, strategies and plans for the development and provision of water services;
- (c) on behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution and national law on the management of water resources and provision of water and sewerage services;
- (d) coordinate and oversee the management of water resources in the county.
- (e) coordinate and oversee the development and provision of water and sewerage services within the county;
- (f) mobilise financial and other resources for the provision of water and sewerage services; and
- (g) prepare a report for the County Assembly each quarter, and from time to time as may be necessary, on the state of management of water resources and water and sewerage and sanitation services in the county; and
- (h) Prepare a report to the county assembly or any other agency each quarter or as may be necessary on the state of the management of water resources and source catchment in the county.

(3) In the performance of the functions and duties

under this Act the County Executive Committee Member shall—

- (a) consult and coordinate with the departments, agencies and entities of the national and county government whose functions affect the development and provision of water as a resource and water and sewerage services; and
- (b) consult with relevant stakeholders including non-governmental organisations, the private sector and consumer groups.

(4) In the discharge of the duties and functions under this Act, the County Executive Committee Member shall be assisted by the Directorate of Water and Sewerage Services established under this Act.

6. (1) Following public consultation the County Executive Committee member shall formulate a county water and sewerage services strategy.

County Water and
Sewerage Services
Strategy

(2) The County Water and Sewerage Services Strategy shall provide—

- (a) information on areas within the county in which access to basic water and sewerage services and sanitation is inadequate;
- (b) plans and measures for the development and continuous improvement of water, sewerage and sanitation services within the county;
- (c) an investment programme and a timeframe for the development, expansion and improvement of water and sewerage services in the county;
- (d) institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas;
- (e) measures to facilitate the provision of water and sewerage services by private sector water service providers and community water service providers; and
- (f) criteria and procedures for the provision by the county government of financial, technical and other assistance to county owned water utility

companies and community water service providers.

(3) The strategy shall be published in the Kenya Gazette Notice after approval by the County Executive Committee upon approval by the County Assembly.

(4) The county water services strategy shall be reviewed periodically and in any case not later than every five years.

(5) Every county public officer and every county organ shall give effect to the gazetted county water and sewerage services strategy in the discharge of [his][her] or its duties under this Act.

(6) Every private and community water services provider shall take account of the county water services strategy in its plans and programmes

7. (1). The Directorate of Water and Sewerage Services is hereby established and shall be headed by the Director of Water and Sewerage Services.

The Directorate of
Water and
Sewerage Services

(2) The County Executive Committee Member shall, in consultation with the County Public Service Board, determine the staff establishment required by the Directorate to effectively perform its functions under the Act.

(3) The duties and functions of the Directorate shall be to—

- (a) provide technical support and advice to the County Executive Committee Member in the discharge of the functions;
- (b) implement and give effect to the county water resource and water and sewerage services strategy;
- (c) subject to national legislation, implement a system and requirements for registration of water services providers operating within the county;
- (d) subject to national legislation, formulate rules, standards and guidelines for the provision of water services within the county;
- (e) in consultation with the Water Services Regulatory Board, enforce rules, guidelines and standards for

- the provision of water services within the county;
- (f) gather, collate and analyse information and disseminate data on water and sewerage services in the county;
 - (g) maintain an inventory of the assets, facilities and other infrastructure of the county government for the provision of water and sewerage services;
 - (h) provide operational, technical and other support to water service providers;
 - (i) receive and address complaints regarding the provision of water services; and
 - (j) perform such other duties and functions in relation to the provision of water and sewerage services as are assigned to it by the County Executive Committee Member.

PART III—ESTABLISHMENT AND OPERATION OF WATER SERVICES PROVIDERS

8. (1). The county government may, following a resolution of the County Assembly, by notice in the Gazette, or through incorporation of a limited liability company, establish one or more county entities as a water and sewerage services provider or providers as the case may be.

Establishment of county water services provider

(2) A county water services provider established under this section shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The County Executive Committee Member shall assign to each county water services provider established under this section a water supply area which may cover the whole or a portion of the area of geographical jurisdiction of the county government and which supply area will ensure that the water services provider is commercially viable.

(4) In determining the area of supply of a county water services provider the County Executive Committee Member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers.

(5) Following the establishment of a county water services provider the assets, facilities and other infrastructure used for the provision of water and sewerage services within the water services provider's water supply area which belong to the county government shall be transferred or to the water services provider.

(6) Where the assets for the provision of water services in the supply area belong to a community water services provider the county water services provider may enter into an agreement with the community water services provider for the use and or acquisition of the assets the terms of which may provide that the community water services provider continues to provide water services as an agent of the county water services provider and that the community water services provider may purchase water in bulk from the county water services provider.

9. (1) A county water and sewerage services provider established under this Act shall be responsible for the economic and efficient provision of water and sewerage services, and for development and management of the related infrastructure and facilities, within its water supply area and for this purpose it may acquire and own land, infrastructure and facilities for water services provision.

Functions of the
county water
services provider

(2) The county water and sewerage services provider shall have the exclusive right to provide water services within its area of supply.

(3) The performance by a county water services provider of the functions set out in this Act shall be subject

to the requirement to obtain and maintain a licence issued by the Regulatory Board under the Water Act, 2016 for purposes of consumer protection.

(4) A county water services provider established under the Act may, with the approval of the County Executive Committee Member, contract out the whole or aspects of its functions to a private water services provider, a community water services provider or another county entity which has the requisite capacity to provide water services.

10. (1) Each county water services provider shall have a board of directors comprising not more than seven (7) members which shall guide and direct the performance of its functions.

The governance of
water service
providers

(2) The rules and procedures of the county government on the appointment, composition and qualifications of members of the board of directors of a county water services provider shall give effect to national standards and guidelines prescribed by the Regulatory Board. For Urban based utilities in the County the minimum qualification to serve in the board shall be a degree from a recognized university as per the Governance standards.

(3) The term of the Board of the county water and sewerage services provider shall be subjected to annual performance review term of three years whose term shall not be affected by the expiry of the term of office of the County Government and which term is renewable only once.

11. The First Schedule shall have effect in relation to the meetings and procedures of the Board.

Meetings and
Procedure of the
Board

12. (1) A county water services provider shall employ a chief executive officer who is competitively recruited by its Board and who shall also be the managing director.

Chief Executive
Officer and other
employees of
county water
services providers

(2) The terms and conditions of service of the chief executive officer shall be set by its board of directors and specified in an instrument of appointment.

(3) The chief executive officer shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance

of the functions and duties of the county water services provider.

(4) The chief executive officer shall be an *ex officio* member of the board of directors.

(5) A county water services provider may engage such employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions of service as the Board may approve.

(6) A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.

(7) This clause shall give effect to the National Technical Competence and Staff Efficiency Standards for staff of the county water service providers.

13. (1) The funds and assets of a county water services provider shall consist of—

Finances of county water service providers

- (a) such monies as may be appropriated by the County Assembly for the purposes of the county water services provider; any monies or property which may in any manner accrue or vest in the county water services provider in the course of the exercise of its functions under this Act;
- (b) such monies as may become payable to the County water services provider by way of fees and other charges in respect of services rendered by or through it; and
- (c) all monies from any other source provided whatsoever donated, lent or granted to the county water services provider.

(2) The County Executive Committee may set up a dedicated fund into which the county government and others may place funds for supporting the provision of water services to underserved areas.

(3) The rules governing the operation of the fund shall be prescribed by the County Executive Committee Member in consultation with the County Executive Committee Member in charge of the County Treasury.

14. (1) Not less than six months before commencement of each financial year, the board of a county water services provider shall cause to be prepared estimates of the revenue and expenditure for that year.

Annual estimates
of county water
services provider

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of a county water services provider for the financial year concerned.

(3) The annual estimates shall also make provision for such amounts as are required to pay any portion of the principal and or interest of loans or advances if any secured by or on behalf of the water services provider to finance the capital costs of developing and or rehabilitating infrastructure and or facilities and or acquiring equipment and other assets for the provision of water services.

(3) The Board shall submit the estimates to the County Executive Committee Member, who shall present the estimates for consideration and approval by the County Assembly.

(4) No expenditure shall be incurred for the purposes of a county water services provider except in accordance with the annual estimates approved under this section

15. (1) The board of a county water services provider shall keep proper books of account of its income, expenditure, assets and liabilities.

Accounts and audit

(2) Within three months after the end of each financial year the board of each county water services provider shall submit to the Auditor-General the accounts in respect of that year, together with—

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

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with the provisions of Article 226 and 229 of the Constitution and applicable national and county government legislation.

16. (1) The Directorate shall maintain a register of all water service providers operating within the area of jurisdiction of the county.

Register of water service providers

(2) For purposes of the register each water services provider shall, within 12 months of commencement of the Act or, in respect to water service providers established after the commencement of the Act, of its establishment or such longer period as the Executive Committee Member may allow, submit to the Directorate information on—

- (a) its area of supply;
- (b) Water production per day as per WRA permit;
- (c) the number and location of customers served;
- (d) an inventory of the facilities and infrastructure available to it for the provision of water services;
- (e) particulars of its board of directors or management committee and staff including the technical qualifications of its staff;
- (f) the tariff charged;
- (g) Water Quality Status ;
- (h) particulars of liabilities;
- (i) its licence status with the Regulatory Board and, if licensed, a copy of the licence;
- (j) plans and programmes for the improvement of water services it provided; and
- (k) such other information as the Executive Committee Member may by regulations prescribe.

(3) By the end of March of each calendar year the water services provider shall notify the Directorate of material changes to the information provided in the previous year and the Directorate shall as soon as practicable thereafter update the register.

(4) The register shall be open to inspection by members of the public during normal working hours.

PART IV—COMMERCIAL VIABILITY AND SERVICE DELIVERY

17. (1) Subject to the national policy and such requirements as may be imposed under national law, tariffs for the provision of water services to urban areas shall be set on the basis of full cost recovery while tariffs for the provision of water services to rural areas may be set on the basis of full recovery of operation and maintenance but not capital costs.

Tariffs for water and sewerage services.

(2) The county government may in appropriate cases provide financial assistance to enable a water services provider which satisfies the criteria stipulated in the water services strategy meet a portion of its operation and maintenance costs.

(3) Subject to national legislation, a water services provider may impose a charge for accepting into its sewerage system and treating wastewater from industrial and other trade premises within its supply area.

(4) A water services provider which provides desludging and or exhauster services may impose a charge for treating the sludge and or wastewater.

(5) Not less than 14 days prior to the due date of payment a water services provider shall avail a bill or other invoice to each of its customers prepared whenever practicable on the basis of metered supply.

18. (1) All funds of a county water services provider and all revenues arising from provision of water services by a county water services provider shall not form part of the general revenues of the county government but shall be retained by the water services provider for its purposes.

Ring fencing of revenues

(2) Any excess of revenue over expenditure at the end of the financial year shall not be paid over to the county government but shall be retained by the county water services provider to be used for the improvement of water services within the area of supply of the county water services provider.

(3) Every water services provider shall establish and maintain a contingency fund into which it shall pay a portion of its revenues to be used to pay for emergency

repairs and meet the costs arising from unforeseen occurrences which can disrupt the provision of water services.

19. (1) Subject to compliance with the requirements of applicable national law a county water services provider may, in an appropriate case, engage in a public private partnership for development of water services infrastructure and or the provision of water and or sewerage services.

Private sector participation

(2) Any assets, facilities and infrastructure developed under a public private partnership to be used for the provision of water and or sewerage services shall be deemed to be public property and upon the expiry or other termination of the public private partnership agreement shall be vested in and be owned by the county government or county water services provider as appropriate.

(3) The county government may with the approval of its Assembly and the Regulatory Board and subject to compliance with applicable national and county legislation divest itself of the assets and liabilities for the provision of water services to a private water services provider or community water services provider.

20. (1) A water services provider shall at all times maintain a customer relations system including a feedback and grievance resolution system.

Customer relations

(2) A water services provider shall formulate and regularly review a service delivery charter, including implementation mechanisms.

21. (1) On each occasion of a planned interruption a water services provider shall notify its customers who are likely to be affected by the interruption not less than 24 hours prior to the planned interruption and shall indicate the expected duration of the interruption.

Interruptions in water services

(2) Where an unplanned interruption occurs to water services, the water services provider shall notify its customers as soon as reasonably practicable and in any event not less than 12 hours after the discovery of the interruption, and keep customers fully apprised on the progress being made to redress the cause of the interruption and the expected time and or day of resumption of normal service.

(3) Where an interruption in services extends for a period longer than 14 days the water services provider shall take remedial measures to the extent practicable to provide consumers with a basic supply of water through bowsers and other mobile means.

(4) Where such interruptions arise from damage to pipes or other infrastructure by a contractor carrying out works, the contractor shall repair the damaged pipes or infrastructure within such time as the Director stipulates and, pending the restoration of the water supply, the contractor shall provide an alternative water supply to the affected consumers.

PART V—INSPECTION, EVALUATION AND MONITORING

22. (1) A water services provider shall establish and maintain an inspectorate service with adequate resources and staff.

Power of entry and inspection

(2) An inspector employed by the water services provider may enter any premises to which it provides water and or sewerage services in order to inspect and monitor—

- (a) the distribution system
- (b) the water metre(s)
- (c) water storage systems
- (d) the sewerage system
- (e) such other elements of the water and sewerage services as the County Executive Committee Member, may, through regulations, authorize.

(3) An inspection may only be undertaken between the hours of 8.00 a.m. and 6.00 p.m. except in an emergency.

(4) A water services provider shall communicate to its customers the recommended methods and procedures of verifying the identity of inspectors seeking entry into premises and maintain at all times a customer help line to which customers may telephone to verify any information provided to them by the inspector.

(5) Where the water and sewerage services provider has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and or sewerage services in

any premises, it shall apply to the appropriate court for a warrant to enter and search the premises.

(5) Nothing in this sub-section (4) shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question.

23. (1) The County Executive Committee Member shall, on an annual basis, with the technical assistance of the Directorate and in consultation with the Regulatory Board, undertake monitoring and evaluation of the performance of each water services provider to ascertain the extent of compliance with the county water services strategy and performance targets.

Evaluation and monitoring of water service providers

(2) The County Water Service Provider(s) shall provide the directorate on a quarterly basis an operations report that has the following parameters – Finance, Technical and Governance.

(3) The County Executive Committee Member shall, on the basis of recommendations of the monitoring and evaluation report and operations reports of WSPs take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sewerage services provided by water services providers operating in the county.

PART VI— OFFENCES RELATING TO CONDUCT OF EMPLOYEES OF A WATER SERVICES PROVIDER

24. (1) Employees of a county water services provider shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties.

Offences by employees

(2) Notwithstanding (1) above, any actions of employees of a county water services provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act or their replacement or amendment.

Cap 63
Cap 65
Cap 183

(3) It is an offence for a employee of the water services provider to wilfully fail to—

- (a) read a metre when it is his or her duty to do so;
- (b) disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider;
- (c) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sewerage services.

(4) It is an offence for an employee of a water services provider to collude with other persons to allow or assist such persons illegally to access and use water services contrary to rules set by the water services provider.

(5) It is an offence not to keep proper books of account and records of a water service provider so as to give misleading information to the CEC or any other agency in the national or county government.

(6) Upon conviction for an offence under this section the person shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

(7) For purposes of this section, an employee of a water services provider includes a person engaged on casual terms of service, as well as a contractor when performing duties falling within the scope of this section

PART VII— GENERAL OFFENCES

25. Any person who impersonates an employee of a water services provider shall be guilty of an offence and, upon conviction, be liable to a sentence of not less than six months imprisonment, or a fine not less than two hundred and fifty Thousands shillings, or both.

Impersonation of staff of the water services provider

26. (1) Any person who wilfully vandalizes, damages, or destroys infrastructure or a facility of a water and sewerage services provider shall be guilty of an offence and, on conviction, shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Vandalism of water and sewerage services infrastructure

(2) Upon conviction for a second or subsequent offence involving the willful destruction or vandalism of infrastructure or facilities belonging to a water services

provider the offender shall be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or to both

27. (1) Any person who illegally connects to, diverts and utilizes for any purpose, water and or sewerage services provided by a water services provider shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or both.

Illegal connection to water services

(2) Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider.

28. (1) Any person who willfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or both.

Contamination of water and supply to domestic premises

(2) Any person who supplies water to domestic premises which he knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and must be treated prior to being consumed is guilty of an offence and liable of conviction to imprisonment for six months or a fine of not less than two hundred and fifty thousand shillings or both.

PART VIII— ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

29. (1) A county water services provider shall ensure the availability and development of sources of water for abstraction as necessary to enable the water services provider supply adequate quantities and quality of water to its consumers.

Raw water abstraction permits and access rights

(2) A water services provider shall apply for and

secure an abstraction permit from the relevant national regulatory authority, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions.

(3) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the support of the County Executive Committee Member, make arrangements for the purchase of water in bulk

30. (1) The County Executive Committee Member in consultation with the County Executive Committee Member in charge of public health shall, as soon as reasonably practicable following coming into effect of the Act, make regulations governing the sustainable management of septic tank sludge, including the licensing of exhauster service providers, and disposal of sludge after collection from septic tanks by exhauster service providers.

Septic Tank Sludge
Management

(2) Regulations made under this section may require one or more county water service providers to establish and maintain facilities for the disposal of septic tank sludge and waste water from exhausters operating within the area of supply of the county water services provider.

31. (1) The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in national law.

Easements, access
rights etc

(2) A water services provider which acquires easements, access rights and or property rights over land on or over which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and it has in its custody the relevant title documents.

(3) A water services provider shall take steps to obtain and maintain in its records “as built” drawings of its facilities and infrastructure, geo-referenced maps and plans and other relevant documents which show the location and layout of the water infrastructure.

(4) The County Executive member shall prescribe rules for protecting access rights to point water sources enjoyed by community members on traditional or other non-statutory basis.

32. (1) No community water operator shall supply water for domestic use without being registered with the Directorate and obtaining a no objection from the directorate.

Operation of community water projects

(2) The County Executive Committee Member shall facilitate the development and operation of community water service providers in rural areas within which the county water service providers do not provide adequate water services.

(3) Where, following viability studies, it is recommended that certain community water service providers should cluster into bigger associations in order to better achieve viability, the County Executive Committee Member shall put in place appropriate measures to encourage such community water service providers to cluster; consolidate and outsource to a common services provider services such as billing services, pump maintenance services and other similar services; or engage the services of a contractor to provide professional management services.

(4) A community water services provider which takes steps to enhance viability through clustering, outsourcing of services and or engagement of professional management services shall be eligible to financial, technical and other support from the county government during the period before it achieves financial viability.

33. (1) Subject to national legislation every application to the water resources regulatory authority for the construction of a borehole for domestic water consumption within the area of supply of a water services provider shall be submitted for a “no-objection” to the water services provider within whose area of supply the borehole is to be constructed.

Construction of boreholes within supply area

(2) In considering an application for a “no-objection” the water services provider shall take account of its ability to provide the water services in respect to which the application for the borehole has been made and, if it reasonably believes that it can provide the required water services within a period not exceeding one year, it shall decline the request for a “no-objection.”

(3) The water services provider shall maintain an inventory of boreholes constructed within its area of supply

and as soon as it is able to provide water services to the owner of the borehole it shall require the owner of the borehole to discontinue the use of the borehole and take a supply of water from the water services provider.

(4) Where the water services provider wishes to take water from the borehole for supply to its customers it shall enter into a contract with the owner of the borehole for the purchase of water from the owner of the borehole.

(5) Any dispute between the owner of the borehole and the water services provider over the use of the borehole by the water services provider for the provision of water to the water service provider's customers shall be submitted to the Director for determination and if any party is dissatisfied with the decision of the Director, may appeal to the Water Tribunal established under the Water Act

34. (1) The County Executive Committee Member shall, within six months of this law coming into effect, make regulations on water vending kiosks.

Regulation of water vending kiosks

(2) Without prejudice to the generality of subsection (1) such regulations may make provision with respect to:

- (a) the operations and licensing of water kiosks;
- (b) sources of water and tariffs chargeable for water sold and purchased at water vending kiosks;
- (c) optimal location of kiosks; and
- (d) restriction of ownership of water vending kiosks by employees of water service providers.

PART IX— APPROVALS OF CONSTRUCTION WORKS AFFECTING INFRASTRUCTURE, ETC.

35. (1) In all cases where a person is undertaking construction works which affect water and sewerage infrastructure operated by a water services provider the approval of the water services provider shall be obtained on terms and conditions set by the water services provider, which may include the payment of a fee.

Approval of construction works

(2) It is an offence for a person to undertake the works contemplated in this section without the approval of the water services provider and upon conviction, such person will be liable to a fine of not less than One Hundred

Thousands shillings or imprisonment for a term not exceeding six months or both.

(3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works, the person responsible for the construction works shall, in addition to any other prescribed penalties, be liable to a surcharge of the full cost of repairs or replacement and it shall not be a defence to any action taken against the person responsible, whether civil or criminal, that the water services provider had approved the works.

(4) The provisions of this section shall apply equally to public entities undertaking construction works as they do to private contractors undertaking works for private persons or under a contract with public bodies.

36. (1) In every case where a developer of property is undertaking plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider—

Certification of property development works connecting to water mains

- (a) the developer shall present the plans for such plumbing and sewerage works to the water services provider for inspection and approval, prior to commencement of construction; and
- (b) upon completion of the works, the water services provider shall inspect the works and if the works comply with the approved plans, certify the works as approved for connection to the mains.

(2) A developer who undertakes plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider without presenting the plans for certification as required under this section shall be guilty of an offence and on conviction shall be liable to imprisonment for up to six months or a fine of not more than One Hundred Thousand Shillings or to both

PART X— PROTECTION OF WATER RESOURCES ETC.

37. (1) Before undertaking works for the development of property in an urban area the person shall prepare and submit for approval by the Directorate a storm water management plan.

Storm water drainage

(2) The plan shall make provision for short term storm water retention and an augmentation of groundwater resources before discharge into storm water drainage channels of the urban authority.

(3) The arrangements made by the urban authority for the disposal of storm water from rooftops and paved areas of the urban area may not increase the risk of erosion or flooding of private property.

(4) The powers of the Directorate to approve a storm water management plan under this section shall be exercised in consultation with the directorate in charge of county urban planning.

38. (1) The County Executive Committee Member in consultation with the County Executive Committee Member in charge of county physical planning and building approvals shall make rules requiring householders to install rainwater catchment systems with a storage capacity capable of meeting 7 days demand of the household for domestic water supply.

Rainwater
catchment

(2) The rules shall make provision for enabling the county government to offset a portion of the capital cost of installing the storage systems subject to such terms and conditions as the County Executive Committee Member in charge of the County Treasury shall approve.

(3) A householder who, having received financial assistance from the county government to do so, willfully fails to install a rainwater catchment system contrary to the rules, shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding one hundred thousand shillings or both.

(4) The Directorate shall advise householders on the household treatment and other handling requirements for rainwater which is to be consumed.

39. (1) The County Executive Committee Member, in consultation with the county executive committee member in charge of environment, shall formulate a strategy for the conservation by the county government of catchments and other sources of water from which a water service provider takes water for supply.

Catchment
conservation

(2) The strategy shall provide for measures and institutional arrangements of the county government for the conservation of catchments and water sources.

(3) The strategy shall provide collaborative arrangements between the county government, water basin committee and water resources users associations in the formulation and implementation of catchment and sub-catchment management plans.

(4) The County Executive Committee Member may, following consultations with the County Executive Committee Member in charge of the County Treasury, impose a levy on water consumption to be used to finance part of the cost of implementation of catchment management plans by water resources users associations.

40. (1). The County Executive Committee Member shall make regulations for the better carrying out of the provisions of this Act. Regulations

(2) Regulations made under this Act shall be subjected to public consultations, and be approved by the County Assembly

SCHEDULE 1**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF BOARDS OF COUNTY WATER SERVICES PROVIDERS****Meetings**

1. The Board shall meet for the dispatch of business at least four times a year and not more than six times a year at the premises of the water service provider provided that the Board shall meet not less than four times in any financial year.

Special meetings

2. The Chairman or any three directors may, by not less than twenty-four hours written notice to all other directors, summon a special meeting of the Board at the headquarters of the WSP at any time.

Notice of meetings

3. Except where a shorter period is appointed notice of the date, time and place of each meeting shall be given in writing at least five days beforehand to every director at such address in Kenya as he/she shall have notified to the Secretariat from time to time.

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

Quorum

4. The quorum necessary for the transaction of business by the Board shall be not less than two thirds of the members of the Board.

Chairperson

5. The Chairperson shall preside at meetings of the Board:

Provided that if he is not present at the start or at any time during a meeting, the Vice Chairperson shall chair, and if both absent, the directors present, if a quorum, may choose one of their number to act as chairperson during the Chairperson's absence from that meeting.

Voting

6. Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:

Provided that in the case of any equality of votes, the Chairperson of the meeting shall have a second or casting vote.

Minutes

7. The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat by a competent person.

Other procedures

8. Subject to the provisions of this Schedule, the Board shall in a Board Charter which meets the principles of corporate governance determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

Disclosure of interest

9. (1) If a director is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he/she shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

The common seal

10. The affixing of the common seal of the company shall be authenticated by the signatures of the Chairperson or any other director authorized generally or specially by the Board to act for the purpose, and of an employee of the company authorized generally or specially by the Board to act for the purpose.

Contracts and instruments

11. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the [company] by any person generally or specially authorized by it for that purpose.

Proof of documents

12. Any document purporting to be a document duly executed or issued under the seal of the Corporation [company] or on behalf of the Corporation [company] shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

MEMORANDUM OF OBJECTS AND REASONS

The provision of water services and sanitation was devolved as a function of the County governments under the Fourth schedule of the Constitution, following the promulgation of the Constitution of Kenya 2010. Provisions on Water, Sewerage, Sanitation, Environment and Natural Resources were confirmed as a function of the Laikipia County Government through Kenya Gazette Supplement No. 116 of 9th August, 2013. This Bill therefore seeks to operationalize water service provision and supply management in Laikipia County; to make provision for regulating water service providers; water works; ensure compliance to set down water quality standards; control of pollution in water bodies and related matters.

The Bill seeks to provide the legal and institutional framework for management of water resources, water harvesting, provision of water, sanitation and sewerage services in the County and for connected purposes.

PART I of the Bill provides for the preliminary matters that include Short title of the Bill, interpretations of terms, objects and purpose the Bill.

PART II of the Bill provides policy, coordination and oversight of water services. It provides for the establishment of water services provider which is capable of suing and being sued; taking, purchasing or other acquiring, holding, harging or disposing of moveable aand immovable property. The part also provides the functions of the County Water Services provider and governance of water service providers. It gives guidance on how recruitment of a Chief Executive Officers for the board shall be done. The part also provides the establishment of Directorate of Water, Sanitation and Sewerage Services as well as its duties and functions.

PART III of the Bills provides the establishment and operation of water services providers. This includes the establishment of County Water Services Provider and its functions. This part indicates the meetings and procedure of the Board. The part also informs of what the Finances of County Water service prodicers consist of.

PART IV provides for commercial viability and service delivery. This part also gives information on tariffs for water and sewerage services. The customer relations system is to be maintained including a feedback and grievance resolution system according to this part.

PART V provides for inspection, evaluation and monitoring

PART VI provides for a general penalty for failure to comply with any provisions of the Act. It also provides for offices by the staff of the water services provider including the penalty for the offices. This provides

recourse if a person is aggrieved by non-performance of the County Officers.

PART VII provides general offences

PART VIII Administration of certain water supply and infrastructure services.

PART IX provides for approvals of construction works affecting infrastructure

PART X provides for protection of water resources.

SIMON KANYUTU,
*Chairmperson, Agriculture, Environment
and Natural Resources*