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KISUMU COUNTY BILLS, 2023

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CONTENT

Bill for Introduction into the County Assembly of Kisumu—	PAGE
The Kisumu County Water Bill, 2023	1

THE KISUMU COUNTY WATER BILL, 2023
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Application, objects and purposes of the Act.
- 4—Guiding principles and values.

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

- 5—Powers and Duties of County Executive Committee member.
- 6—County Water and Sanitation Services Strategy.
- 7—Chief Officer.
- 8—The Directorate of Water and Sanitation Services

**PART III— ESTABLISHMENT AND OPERATION OF WATER
SERVICES PROVIDERS**

- 9—Establishment of county water services providers.
- 10—Functions of the county water services provider.
- 11—The governance of water service providers.
- 12—Assets, infrastructure and facilities.
- 13—Chief Executive Officer and other employees of county water services providers.
- 14—Finances of county water service providers.
- 15—Sewerage services charge.
- 16—Water consumption levy account.
- 17—Conservancy charge.
- 18—Accounts and audit.
- 19—Reporting to the Directorate.
- 20—Reporting to the County Assembly.

PART IV— RURAL WATER AND SANITATION SERVICES

- 21—Establishment of a rural water and sanitation services provider.

- 22—Functions of the Corporation.
- 23—The governance of the Corporation.
- 24—Meetings and Procedure of the Board.
- 25—Chief Executive Officer and other employees of the Corporation.
- 26—Finances of the Corporation.
- 27—The Rural Water and Sanitation Fund.
- 28—Annual estimates of the Corporation.
- 29—Accounts and audit.
- 30—Community or private provision of water services in rural areas.

PART V— COMMERCIAL VIABILITY AND SERVICE DELIVERY

- 31—Tariffs for water and sewerage services.
- 32—Ring fencing of revenues.
- 33—Interruptions in the Schedule of water services.
- 34—Customer relations.
- 35—Complaints

PART VI— INSPECTION, EVALUATION AND MONITORING

- 36—Power of entry and inspection.
- 37—Evaluation and monitoring of water service providers.

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

- 38—Offences by employees.

PART VIII— GENERAL OFFENCES

- 39—Impersonation of staff of the water services provider.
- 40—Vandalism of water and sewerage services infrastructure
- 41—Illegal connection to water services.
- 42—Contamination of water and supply to domestic premises.
- 43—Miscellaneous offences.

PART IX—ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

- 44—Raw water abstraction permits and access rights.

45—Septic Tank Sludge Management.

46—Easements, access rights etc.

47—Construction boreholes within supply area.

48—Regulation of water vending kiosks.

**PART X—APPROVALS OF CONSTRUCTION WORKS
AFFECTING INFRASTRUCTURE, ETC.**

49—Approval of construction works.

50—Certification of property development works connecting to water mains.

PART XI—PROTECTION OF WATER RESOURCES ETC.

51—Storm water drainage.

52—Rainwater catchment

53—Catchment conservation

PART XII— GENERAL PROVISIONS

54—Regulations

55—Transitional Provisions.

THE KISUMU COUNTY WATER BILL, 2023**A Bill for**

AN ACT of the County Assembly of Kisumu to give effect to Article 43(1) (d) and Part 2 of the Fourth Schedule of the Constitution, 2010 to provide for the legal and institutional framework for provision of water services in the County and for connected purposes

ENACTED by the County Assembly of Kisumu, as follows—

PART I — PRELIMINARY**Short title**

1. This Act may be cited as the Kisumu County Water Act, 2023.

Interpretation

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

“Chief Officer” means the Chief Officer for the time being; responsible for Water and Sewerage Services appointed in accordance with Section 45 of the County Governments Act, 2012;

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

“County Entity” means an entity of the County Government established in accordance with Section 5 of the Public Finance Management Act, 2012;

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

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

“County water services provider” means a water services provider appearing in the First Schedule to the Act;

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

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

“Governor” means the County Governor of 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 Kisumu or any of its agencies;

“Regulatory Board” means the Water Services Regulatory Board established by the Water Act 2002, or its successor;

“Rural areas” means areas of Kisumu county designated as such for purposes of this Act.

“Rural water services provider” means the entity established as such by this Act with the responsibility to provide water and/or sanitation services in the areas designated as rural areas of Kisumu County;

“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, soak away pits, exhauster services and similar on site systems and includes the provision of sewerage services;

“Municipalities” means the urban areas established in accordance with Section 4 of the Urban Areas and Cities Act, 2011 and includes Maseno-Holo, Muhoroni-Chemelil, Ahero-Awasi, Katito-Pap Onditi and Kombewa-Bodi or other urban area that may be identified as such by the County Government;

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

“Water services provider” means an organization, whether or not incorporated, providing water services within the county of Kisumu under the authority of the County Government and includes a private water services provider or a community water services provider providing water services under sub-contract or other legal arrangement with a county water services provider.

“Water Vendor” means individuals who take on the business of reselling or onward distribution of water.

Application, objects and purposes of the Act

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

(2) The objects of this Act is to provide for a legal and institutional framework for implementation of Article 43(1)(d) and paragraphs 8 (d), 10(a), 11 and 13 of Part 2 of the Fourth Schedule of the Constitution in order to —

- (a) ensure access to sustainable, clean, potable, affordable, equitable and adequate water for domestic consumption and for industrial, agricultural and other purposes;
- (b) provide for improved, appropriate and sustainable waste water management services including effective and efficient management of storm water in built-up areas;
- (c) improve public and environmental health through sustainable, effective and efficient sanitation;
- (d) improve and ensure high water quality for human consumption;
- (e) empower communities and develop the capacity of communities for effective water and sanitation service delivery;
- (f) facilitate effective water and sewerage and/or sanitation dispute resolution mechanisms; and
- (g) enhance soil and water conservation efforts.

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

Guiding Principles and Values

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

- (a) national values and principles of governance in Articles 10; and
- (b) the values and principles of public service in Article 232.

PART II— POLICY, COORDINATION AND SUPERVISION OF WATER SERVICES

Powers and Duties of County Executive Committee member

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

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

- (a) formulate and periodically review county policies, strategies and plans for the development and provision of water services;
- (b) 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 provision of water, sewerage and sanitation services;

- (c) coordinate and supervise the development and provision within the county of water, sewerage and sanitation services;
- (d) on behalf of the county government, coordinate with neighbouring counties on the formulation and implementation of strategies, plans and programmes for the development of bulk water supply systems and soil and water catchment conservation; and
- (e) mobilise financial and other resources for the provision of water, sewerage and sanitation services.

(3) In the discharge of functions and duties under this Act the County Executive Committee member shall—

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

County Water and Sanitation Services Strategy

6. (1) The County Executive Committee Member following public consultation shall formulate a county water and sanitation services strategy and investment plan.

(2) The County Water and Sanitation Strategy and investment plan shall provide—

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

(3) The County Water and Sanitation Strategy and investment plan shall be approved by the County Executive Committee and the County Assembly within six (6) months and shall be published in the *Gazette* after the approval.

(4) The strategy shall be reviewed periodically and in any case not later than every five (5) years.

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

(6) Every private water services provider and every community water service provider shall take account of the strategies formulated under this Act in its plans and programmes.

Chief Officer

7. The Chief Officer of the Department designated under section 148 of the Public Finance Management Act 2012 shall undertake the responsibilities and duties of the accounting officer set out in section 147 of that Act, the County Governments Act and any other existing law.

The Directorate of Water and Sanitation Services

8. (1) There shall be a Directorate of Water and Sanitation Services within the county public service.

(2) The Directorate shall be headed by a Director who shall be the technical head of the Directorate, and who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(3) A person shall be qualified. for appointment as a Director under Section (8)(2) if the person—

- (a) holds at least a Bachelor's Degree in Water Engineering, Civil or Agricultural Engineering or any other relevant field from a recognized university;
- (b) is registered by Engineers Registration Board of Kenya as an Engineer;

- (c) has a current valid annual Practicing License from the Engineers Registration Board of Kenya;
- (d) is a member to the Institution of Engineers of Kenya (IEK); and
- (e) has knowledge and experience of at least five years in any relevant field;
- (f) meets the requirements of Chapter Six of the Constitution; and
- (g) has had a distinguished career in the field

(4) The County Public Service Board may in consultation with the County Executive Committee Member determine the units and staff establishment required by the Directorate to effectively perform its functions under this Act.

- (5) 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 [his][her] functions;
 - (b) implement and give effect to the county water, sewerage and sanitation services strategy;
 - (c) subject to national legislation, implement a system and requirements for registration of water, sewerage and sanitation services providers operating within the county;
 - (d) subject to national legislation, formulate rules, standards and guidelines for water, sewerage and sanitation services within the county;
 - (e) in consultation with the Regulatory Board, enforce rules, guidelines and standards for the provision of water, sewerage and sanitation services within the county;
 - (f) gather, collate and analyse information and disseminate data on water, sewerage and sanitation services in the county;
 - (g) maintain an inventory of the assets, facilities and other infrastructure of the county government for the provision of water, sewerage and sanitation services;
 - (h) provide technical and other support to water, sewerage and sanitation service providers;
 - (i) receive and address complaints regarding the provision of water, sewerage and sanitation services; and

- (j) perform such other duties and functions in relation to the provision of water, sewerage and sanitation services as are assigned to it by the County Executive Committee member.

PART III— ESTABLISHMENT AND OPERATION OF WATER SERVICES PROVIDERS

Establishment of county water services providers

9. (1) There is established two County Water Service Providers to provide Water Services to Kisumu City and Rural Areas to be known as—

- (a) Kisumu Water and Sanitation Company (KIWASCO) which shall provide water services within the Urban Areas and;
- (b) Kisumu Rural Water and Sanitation Company (KRAWASCo.) which shall provide water services within the Rural Areas.

(2) Within twelve (12) months of the commencement of this Act, or such longer period as the County Executive Committee member may allow, the Director shall undertake a mapping exercise and capacity assessment of water services within the county of Kisumu in order to formulate a water services strategy including the strategies for operation and management of rural water services within the county.

(3) On the basis of the strategy the County Executive Committee member may, with the approval of the County Executive Committee and following a resolution of the County Assembly, through incorporation of limited liability companies, establish one or more additional water services providers to provide water and sewerage services in areas not adequately served by an existing county water services provider or where supplementary measures are deemed appropriate.

(4) The County Executive Committee member for Finance and Economic Planning may, following a resolution of the county assembly, *gazette* a county water services provider as a county entity under section 5 of the Public Finance Management Act, 2012.

Powers and functions of the county water services provider

10. (1) A county water and sewerage services provider established under this Act shall be responsible for the provision of water and sewerage and or sanitation services, and development and management of the related infrastructure and facilities, within its water supply area.

(2) The county water and sewerage services provider shall have the exclusive right to provide, or following consultation with the County Executive Committee member, formulate and implement appropriate arrangements for the provision of, water services within its area of supply.

(3) The County Executive Committee member shall, following the approval of the County Executive Committee, define the area of supply of each county water services provider.

(4) The performance by a county water services provider, of the functions set out in this Act shall be subject to the requirement to comply with standards issued by the Regulatory Board under the Water Act, 2016.

(5) A county water services provider may delegate some or all of its functions to a private water services provider or a community or other water services provider under a public private partnership or other contractual arrangement approved by the County Executive Committee following a resolution of the county assembly.

The governance of water service providers

11. (1) Each county water services provider shall have a Board of Directors comprising seven (7) for the medium sized companies or nine (9) members for the large sized companies which shall guide and direct the performance of its functions.

(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 standards and guidelines prescribed by the Regulatory Board.

(3) The term of the Board of Directors of the county water services provider shall be three (3) years which term shall not be affected by the expiry of the term of office of the county government.

Assets, infrastructure and facilities

12. (1) The assets, facilities and other infrastructure used for the provision of water and sewerage services by a county water services provider shall be vested in and remain the property of the county Government of Kisumu and the county Government shall enter into an agreement with the county water services provider stipulating the terms and conditions for the use of such assets, facilities and infrastructure.

(2) The terms for the use by the county water services of the assets, infrastructure and facilities of the county government shall not require the county water services provider to pay any fees for the use of the assets, infrastructure and facilities other than monies required by the county government to repay loans acquired for the development of the assets, infrastructure and facilities.

(3) Where the contract for the provision of water services by the private water services provider or community group involve the development by the private water services provider of additional assets,

infrastructure and facilities the contract terms shall require that upon expiry or earlier termination of the contract ownership of the assets, facilities and infrastructure developed under the contract shall revert to the county government.

Chief Executive Officer and other employees of county water services providers

13. (1) A county water services provider shall employ a Chief Executive Officer who is competitively recruited by its Board of Directors.

(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 of Directors, 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 of Directors may approve.

(6) A person employed by a county water services provider shall perform his functions under this Act and be subject to the provisions of the Public Officer Ethics Act, 2003.

Finances of county water service providers

14. The funds and assets of a county water services provider shall consist of—

- (a) such monies as may be appropriated by the County Assembly for the purposes of the county water services provider;
- (b) 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;
- (c) such monies as may become payable to the county water services provider by way of tariffs and other charges in respect of services rendered by or through it; and
- (d) all monies from any other sources provided whatsoever donated, lent or granted to the county water services provider.

Sewerage services charge

15. A county water services provider may impose a charge for the provision of sewerage services which shall be a percentage of the water consumption charge payable by the consumer in each billing month.

Water consumption levy account

16. (1) The water consumption levy imposed under Section 117(2) of the Water Act 2016 shall be collected by the county water services provider and maintained in a separate bank account established for the purpose.

(2) A county water services provider shall keep books of account and other books and records in relation to its water consumption levy bank account and submit an annual audit of such books and records to the Regulatory Board and the County Executive Committee member.

(3) The County Executive Committee member and the Regulatory Board shall have the right to inspect the records of the sales of water services by a county water services provider to verify that the account is operated in accordance with this Act, the Water Services Regulations and guidelines issued by the Regulatory Board from time to time.

(4) A county water services provider may charge an administration fee of not more than 0.1% of the proceeds of the water consumption levy to cover the costs of collecting and administering the levy.

Conservancy charge

17. (1) Under an agreement with the County government, a county water services provider shall include in the customer's monthly water bill a conservancy charge the amount of which shall be determined by the County Executive Committee from time to time and approved by the County Assembly, provided however that the conservancy charge shall be shown separately in the water bill.

(2) The customer shall, together with the water bill, pay the conservancy charge to the county water services provider.

(3) The county water services provider shall be entitled to discontinue the supply of water to a customer who defaults in the payment of the conservancy charge notwithstanding that the customer will have paid the water tariff.

(4) Each month the county water services provider shall remit the conservancy charge to the County Government or as directed by the County Government to be used by the County Government for purposes of

collecting and disposing of garbage and other litter in urban areas and other population centres within the county of Kisumu.

(5) The County Executive Committee member and the County Executive Committee member for finance shall have the right to inspect the records of the collections of the conservancy charge by a county water services provider to verify their accuracy and any shortfalls discovered as a result of the inspection shall immediately be made good by the county water services provider and in default may be recovered by the county government as a civil debt.

Accounts and audit

18. (1) The county water services provider shall keep books of account and the income, expenditure, assets and liabilities of a county water services provider shall be reported on in accordance with the requirements of the Public Finance Management Act, 2012.

(2) Within three (3) months after the end of each financial year the Board of Directors 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.

Reporting to the Directorate

19. (1) All county water service providers, including the Corporation established in Part IV of this Act, shall make a report twice yearly to the Directorate or, where the Directorate directs, within such period as required by the Directorate.

(2) The report shall contain information on the following—

- (a) its area of supply;
- (b) the number and location of customers served;
- (c) an inventory of the facilities and infrastructure available to it for the provision of water services;
- (d) particulars of its board of directors or management committee and staff including the technical qualifications of its staff;
- (e) the tariff charged;
- (f) particulars of liabilities;
- (g) if licensed by the Regulatory Board, a copy of the licence;
- (h) its performance during the reporting period;

- (i) plans and programmes for the improvement of water services it provides; and
- (j) such other information as the Executive Committee member may require.

Reporting to the county assembly.

20. The County Executive Committee member shall be responsible for presenting a report to the County Assembly on a need basis, on the state of water, sewerage and sanitation services within the county of Kisumu and the performance of county water services providers operating within the county including the Corporation established in Part IV of this Act.

PART IV— RURAL WATER AND SANITATION SERVICES

Establishment of rural water and sanitation services provider

21. (1) Pursuant to section 94 of the Water Act, 2016, the County Government will establish a county entity by the name Kisumu Rural Water and Sanitation Corporation (the Corporation) with the responsibility for the provision of water and sanitation services in rural areas and the satellite towns of the county of Kisumu.

(2) The Corporation will be a body corporate with perpetual succession, 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 will lawfully be done or performed by a body corporate.

(3) The Corporation will, for purposes of the Public Finance Management Act, 2012 be a county entity in terms of that Act.

Functions of the Corporation

22. (1) The Corporation will be responsible for the provision and management of water and sanitation services within areas designated by the County Executive Committee member, following a resolution by the county assembly, as rural areas of the county of Kisumu, including satellite towns, and for the development and management of infrastructure and facilities for water services provision, within such areas.

(2) The Corporation will be responsible for sanitation services in collaboration with the department responsible for public health and in accordance with the county rural water and sanitation services strategy.

(3) The Corporation will be the principal instrument of the County Government for discharging its obligations regarding the provision of water services in rural areas and other areas not commercially viable pursuant to section 94 of the Water Act, 2016.

(4) The Corporation may on behalf of the county government, and with the approval of the County Executive Committee member and the county assembly, enter into contractual arrangements for the performance of the whole or aspects of its functions by a private water services provider a community water services provider or public benefit organisation.

(4) Following the assumption by the Corporation of its functions the assets, facilities and other infrastructure used for the provision of water and sanitation services within the area of supply of the rural water and sanitation services provider which belong to the county government will be transferred to the Corporation to use for the provision of water services in its areas of supply.

The governance of the Corporation

23. (1) The Corporation will have a Board of Directors comprising seven (7) for medium sized companies or nine (9) for the large sized companies members which will guide and direct the performance of its functions.

(2) The rules and procedures of the county government on the appointment, composition and qualifications of members of the Board of Directors of the Corporation shall give effect to standards and guidelines prescribed by the Regulatory Board.

(3) The term of the Board of Directors of the Corporation shall be three (3) years which term shall not be affected by the expiry of the term of office of the county government.

Meetings and Procedure of the Board

24. The meetings and procedures of the Board of the Corporation will be conducted in line with the guidelines of the Regulatory Board and in compliance with the tenets of good governance.

Chief Executive Officer and other employees of the Corporation

25. (1) The Board of Directors of the Corporation will, following consultation with the County Public Service Board, employ an officer to serve as the Chief Executive Officer of the Corporation.

(2) The terms and conditions of service of the Chief Executive Officer will be set by the Board of the Corporation following consultation with the County Public Service Board and specified in an instrument of appointment.

(3) The Chief Executive Officer will, in accordance with this Act, and under the general direction of the Board of the Corporation, be responsible for the daily management and performance of the functions and duties of the Corporation.

(4) The Chief Executive Officer shall be an *ex officio* member of the Board of the Corporation.

(5) The Corporation may, with the approval of the County Public Service Board and in consultation with the County Executive Committee member, 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, with the approval of the County Public Service Board in consultation with the County Executive Committee member, approve.

(6) A person employed by the Corporation will be a public officer and subject to the provisions of the Public Officer Ethics Act, 2003.

Finances of the Corporation

26. The funds and assets of the Corporation shall consist of—

- (a) such monies as may be appropriated by the County Assembly for the purposes of the county water services provider;
- (b) 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;
- (c) such monies as may become payable to the Corporation by way of tariffs, fees and other charges in respect of services rendered by or through it; and
- (d) all monies from any other sources provided whatsoever donated, lent or granted to the county water services provider.

The Rural Water and Sanitation Fund

27. (1) The County Executive Committee member for finance shall establish a dedicated Fund to be known as the Kisumu Rural Water and Sanitation Fund.

(2) The objective of the Fund shall be to support water and sanitation services in areas designated by the County Executive Committee member as rural areas within the county of Kisumu.

(3) The Kisumu Rural Water and Sanitation Fund consists of—

- (a) such monies as may be appropriated by the county assembly for the purposes of the Fund;
- (b) donations, grants and loans from any lawful source; and
- (c) any other monies lawfully received or made available to the Fund as the County Executive Committee member may approve.

(3) The Fund shall be a public fund established and operating in accordance with the Public Finance Management Act, 2012 and under rules prescribed by the County Executive Committee member for finance.

(4) The County Executive Committee member shall present a report annually on the status and performance of the Fund to the county assembly.

Annual estimates of the Corporation

28. Not less than six (6) months before commencement of each financial year, the board of the Corporation shall cause to be prepared estimates of the revenue and expenditure for that year.

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of the Corporation in accordance with its functions and powers under this Act, for the financial year concerned.

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

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under this section.

Accounts and audit

29. (1) The Board of the Corporation shall keep proper books of account of its income, expenditure, assets and liabilities.

(2) Within three (3) months after the end of each financial year the board of the Corporation 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 the Corporation 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.

Community or private provision of water services in rural areas

30. (1) Within twelve (12) months of the commencement of this Act or such longer period as the County Executive Committee member may consent to, the Corporation, with the approval of the County Executive Committee member, shall establish criteria for water services provision in rural areas by community water services providers, private persons or public benefit organisations.

(2) Community water services which meet criteria established by the Corporation will be eligible to enter into sub-contract agreements with the Corporation to continue to provide water services within the areas of supply they have previously provided a supply to subject to complying and continuing to comply with the conditions set by the sub-contract.

(3) Community water service providers providing water services under a sub-contract with the Corporation shall be eligible for technical, financial and other capacity or other support out of the Fund, provided that all such support shall be channeled by the Fund through the Corporation.

(4) Where, following viability studies, the Corporation recommends 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 facilitate such clustering.

(5) The Corporation may also provide technical and financial support to enable community water service providers to consolidate and outsource to a common services provider services such as billing, pump maintenance and other similar services, or engage the services of a contractor to provide professional management services.

PART V— COMMERCIAL VIABILITY AND SERVICE DELIVERY

Tariffs for water and sewerage services

31. (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, including recovery of capital costs, while tariffs for the provision of water services to rural areas shall be set on the basis that such water services shall move progressively towards full recovery of operation and maintenance costs.

(2) The county government may provide financial assistance to enable a county water services provider which satisfies financing criteria laid down by the County Government offset a portion of capital investment or operation and maintenance costs.

(3) Subject to Article 209 (5) of the Constitution, a county water services provider providing water services in an area other than a rural area 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 county 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 fourteen (14) days prior to the due date of payment a county water services provider shall avail a bill or other invoice to each of its customers prepared whenever practicable on the basis of metered supply.

Ring fencing of revenues

32. (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 county water services provider for its purposes.

(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 county 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.

Interruptions in the schedule for water services

33. (1) On each occasion of a planned interruption or variation in the schedule for supply of water, a water services provider shall notify its customers who are likely to be affected by the interruption or variation in the schedule not less than twenty-four (24) hours prior to the planned interruption or variation in the schedule and shall indicate the expected duration of the interruption.

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

(3) Where an interruption in services extends for a period longer than fourteen (14) days or three consecutive scheduled supplies the water services provider shall, as far as is practicable, take remedial measures to provide consumers with a basic supply of water through bowsers and other mobile means or make alternative arrangements to enable consumers access a basic supply of water.

Customer relations

34. (1) A county water services provider shall at all times maintain a customer relations system.

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

Complaints

35. (1) A water action group, customer or other member of the public may lodge a complaint concerning a water service provider to the water services provider using the complaints handling mechanism established by the water service provider.

(2) Where the complaint is not dealt with or not dealt with to the satisfaction of the customer, the water action group, customer or other member of the public may lodge a complaint to office of the Director at the county or sub-county level who shall respond to the complaint within a period of not more than thirty (30) days.

(3) If the complaint is not resolved to the satisfaction of the person who lodged the complaint or the person is otherwise dissatisfied with the handling of the complaint, the person may submit the complaint to the to the Regulatory Board and, if aggrieved by the decision of the Regulatory Board, the complainant may seek recourse at the Water Tribunal.

PART VI— INSPECTION, EVALUATION AND MONITORING

Power of entry and inspection

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

(2) An inspector employed by the county 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 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 8am and 6pm except in an emergency or in cases of suspected crime.

(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) Nothing in this subsection (4) shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question if it cannot lawfully gain access into the premises as a last resort upon all processes and procedures being exhausted.

Evaluation and monitoring of water service providers

37. (1) The County Executive Committee member shall periodically, with the technical assistance of the Directorate 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.

(2) The County Executive Committee member shall, on the basis of recommendations of the monitoring and evaluation report take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sewerage services provided by or under a contract with the county water services providers.

(3) The County Executive Committee member shall on a quarterly basis submit a summary of the evaluation and monitoring report to the county assembly.

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

Offences by employees

38. (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.

Cap. 63

Cap. 65

Cap. 183

(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.

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

- (a) read a metre when it is his/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; and
- (c) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sewerage services.
- (d) Forcefully gain entry without proper identification.

(4) It is an offence for an employee of a county 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) Upon conviction for an offence under this section the person shall be liable to a sentence of not less than three months imprisonment or a fine not exceeding Thirty Thousands Shillings, or both such fine and imprisonment.

(6) For purposes of this section, an employee of a county water services 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 VIII— GENERAL OFFENCES**Impersonation of staff of the water services provider**

39. 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 (6) months imprisonment, or a fine not less than Thirty Thousands shillings, or both such fine and imprisonment.

Vandalism of water and sewerage services infrastructure.

40. (1) Any person who willfully vandalizes, damages, or destroys infrastructure or a facility of a water services provider shall be guilty of an offence and, on conviction, shall be liable to a sentence of not less than six months imprisonment or a fine of not less than thirty thousand shillings or both such fine and imprisonment.

(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 imprisonment for a term not less than two years, or a fine of not less than One Hundred Thousand shillings, or both such fine and imprisonment.

Illegal connection to water services

41. (1) Any person who illegally connects to, diverts and utilizes for any purpose, water services provided by a water services provider shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term not exceeding six months a fine of not more than Thirty Thousand Shillings for domestic users and One Hundred Thousand Shillings for commercial users or both such fine and imprisonment.

(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.

Contamination of water and supply to domestic premises

42. (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 an offence and upon conviction shall be liable to imprisonment for a period of not less than six months or to a fine of not less than fifty thousand shillings or both such fine and imprisonment.

(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 on conviction to imprisonment for six (6) months or a fine of not less than Fifty Thousand shillings, or to both such fine and imprisonment.

Miscellaneous offences

43. (1) A person commits an offence under this Act if they engage in—

- (a) an unauthorized water connection in commercial or industrial establishments, or for the purposes of construction;
- (b) an unauthorized connection in domestic households;
- (c) fraud through overcharging at a water kiosk;
- (d) an unauthorized sewer connection in commercial or industrial establishments, or for the purposes of construction;
- (e) an unauthorized sewer connection in domestic households, Government, schools, universities or colleges;
- (f) self-reconnection after cut-off for non-payment;
- (g) tampering with meters, this includes meter removal, reversing of meters etc.; and
- (h) direct suction of water from the supply line using a pump.

(2) Any person who commits an offence listed in subsection (1) shall upon conviction be subject to the penalties prescribed in the Second Schedule of this Act.

(3) The County Executive Committee member may, with the approval of the County Executive Committee and following a resolution of the County Assembly, amend the penalties prescribed in the Second Schedule of this Act.

PART IX— ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

Raw water abstraction permits and access rights

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

(2) A county 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 county water services provider as the case may be, does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall make arrangements for the purchase of water in bulk within the county.

(4) Where the bulk water supply is to be obtained from outside of the jurisdiction of the county of Kisumu the County Executive Committee member shall provide such support and facilitation to the county water services provider as is necessary to secure bulk supply under a collaborative arrangement with another or other county governments.

Septic Tank Sludge Management

45. (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.

(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.

Easements, access rights etc.

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

(2) A county 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 county water services provider shall take steps to obtain and maintain in its records, where practical in digital form, “as built” drawings of its facilities and infrastructure, reference maps and plans and other relevant documents which show the location and layout of the water infrastructure.

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

Construction of boreholes within supply area

47. (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 county water services provider shall be submitted for a “no-objection” to the county water services provider within whose area of supply the borehole is to be constructed.

(2) In considering an application for a “no-objection” the county 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.”

(4) Where the county 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 county water services provider over the use of the borehole by the county water services provider for the provision of water to the county water service provider’s customers shall be submitted to the Water Tribunal for determination.

Regulation of water vendors

48. (1) The County Executive Committee member shall, within twelve (12) months of this law coming into effect, make regulations on water vendors.

(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, communal water points and stand pipes;
- (b) sources of water and tariffs chargeable such tariffs as provided by WASREB 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 county water service providers.

**PART X— APPROVALS OF CONSTRUCTION WORKS
AFFECTING INFRASTRUCTURE**

Approval of construction works

49. (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.

(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 Thousand Shillings or imprisonment for a term not exceeding six months or both such fine and such imprisonment.

(3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works the person responsible for the works shall be liable to a surcharge of the full cost of repairs or replacement and such costs shall be a debt due to the water services provider recoverable at its instance through a suit in the appropriate court.

(4) The provisions of this section shall apply equally to public entities undertaking construction works as they do to private persons.

(5) The County Executive Committee member shall, in consultation with other stakeholder departments of the county government, make rules for the implementation of the requirements of this section.

Certification of property development works connecting to water mains.

50. (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—

- (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 (6) months or a fine or not more than Fifty Thousand Shillings or to both such fine and imprisonment.

PART XI— PROTECTION OF WATER RESOURCES

Storm water drainage

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

(2) The Approval process shall fall and be issued within a period Thirty Days.

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

(4) 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.

(5) 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.

Rainwater catchment

52. (1) An owner or occupier of premises from the roof of which rainwater drains, may install rainwater catchment systems and storage facilities with a storage capacity capable of meeting the water consumption of the premises for a period of not less than seven (7) days.

(2) Rules made by the County Executive Committee member in consultation with the County Executive Committee member in charge of planning shall make provision for enabling the county government to provide assistance to homeowners installing the rainwater catchment and storage systems and facilities.

(3) A beneficiary 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 (3) months or a fine not exceeding thirty thousand shillings or to both such fine and such imprisonment.

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

Catchment conservation

53. (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 through soil and water conservation measures.

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

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

(4) The water consumption levy referred to in section 17 of this Act, following consultations between the County Executive Committee member in charge of the County Treasury and the County Executive Committee member, may be used to finance part of the cost of implementation of catchment management plans by water resources users associations.

PART XII— GENERAL PROVISIONS

Regulations

54. (1) The County Executive Committee member may make regulations for the better carrying out of the provisions of this Act.

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

Transitional provisions

55. The Third Schedule shall have effect with regard to the transition period.

FIRST SCHEDULE
COUNTY WATER SERVICE PROVIDERS
(Section 9(1) and (2))

1. Kisumu Water and Sanitation Company Limited (KIWASCO)
2. Kisumu Rural Water and Sanitation Corporation

SECOND SCHEDULE
PENALTIES
(Section 43(1))

Offence	Penalty (Kshs)
Unauthorised water connection in commercial or industrial establishments, or for the purposes of construction;	100,000 plus estimated consumption during the period of the illegality
Unauthorised connection in domestic households;	30,000 plus estimated consumption during the period of illegality
Fraud through overcharging at a water kiosk;	15,000
Unauthorised sewer connection in commercial or industrial establishments, or for the purposes of construction;	100,000
Unauthorised sewer connection in domestic households, Government, schools, universities or colleges;	30,000
Self-reconnection after cut-off for non-payment;	5,000 and billing to be backdated from date of cut-off
Tampering with meters, this includes meter removal, reversing of meters etc.; and	10,000
Direct suction of water from the supply line using a pump.	10,000

THIRD SCHEDULE**(Section 55)****TRANSITIONAL PROVISIONS****Existing arrangements to continue**

1. Prior to the establishment of the Corporation established under this Act, Kisumu Water and Sanitation Company (KIWASCO) shall continue its obligations under the existing agreement with the County Government of Kisumu to deliver water and sanitation services in the areas falling within the areas of supply of Nyanas Water and Sanitation Company and Gulf Water Services Company ,this shall include any other rural utilities within the County .

Start-up Financing for the Corporation.

2. (1) Within twelve (12) months of the commencement of this Act, but after the establishment of the Corporation and following the approval of the County Assembly, the county government shall provide the Corporation with start-up financing to support the Corporation's establishment and performance of its functions.

(2) The County Executive Committee shall present a budget proposal to the County Assembly as a basis for providing the start-up financing referred to in subclause (1) herein.

KIWASCO to handover Gulf and Nyanas to the Corporation.

3. (1) As soon as is practicable after the establishment of the Corporation, KIWASCO shall by a Deed of Handover and Acceptance signed amongst the county government, KIWASCO and the Corporation, handover to the Corporation the responsibility of the delivery of water and sanitation services in the areas of supply of Nyanas Water and Sanitation Company and Gulf Water Services Company.

(2) With effect from the handover date, the Corporation shall shall assume responsibility for the collection of any bills not older than ninety (90) days and the responsibility for settling any commercial obligations of the water and sanitation services in the areas of supply of Nyanas Water and Sanitation Company and Gulf Water Services Company that are not older than ninety (90) days.

(3) Staff of the Nyanas Water and Sanitation Company and Gulf Water Services Company shall be seconded to the Corporation with effect from the handover date, and KIWASCO's obligations with respect to the payment of salaries and remuneration of the employees of Nyanas Water

and Sanitation Company and Gulf Water Services Company shall be assumed by the Corporation, with effect from the handover date.

(4) During the period of secondment referred to in subclause (3), the Corporation shall implement a staff rationalization programme in order to determine the number of staff sufficient for the performance of the Corporation's functions under this Act and that meet the standards set by WASREB.

(5) KIWASCO shall prepare a list of all property, assets, facilities, including a debtors' and creditors' list in respect to water services in the areas of supply of Nyanas Water and Sanitation Company and Gulf Water Services Company, and annex the list to the Deed of Handover.

(6) Notwithstanding subclause (5), all property, assets, facilities and other rights of Nyanas Water and Sanitation Company and Gulf Water Services Company existing at the handover date for the purpose of the delivery of water and sanitation services in the areas served by both Nyanas Water and Sanitation Company and Gulf Water Services Company, shall be deemed to have been handed over to the Corporation at the handover date whether or not listed and appearing in the Deed of Handover and Acceptance.

(7) The County Executive Committee member shall publish in the *gazette* notice of the handover of Nyanas Water and Sanitation Company and Gulf Water Services Company to the Corporation, specifying the effective date of handover.

Winding up of Gulf and Nyanas

4. (1) The county government shall assume responsibility for discharging outstanding long-term debts and liabilities older than ninety (90) days of Nyanas Water and Sanitation Company and Gulf Water Services Company, and assume ownership of the assets and facilities of Nyanas Water and Sanitation Company and Gulf Water Services Company provided that the county government shall give to the Corporation the right of operation and use of the assets and facilities for the provision of water and sanitation services in the designated rural areas and the satellite towns.

(2) The county government shall within twelve (12) months of the commencement of this Act or upon such further extension of time not exceeding twenty-four (24) months as approved by the County Executive Committee, complete the winding up of Nyanas Water and Sanitation Company and Gulf Water Services Company in accordance with the requirements of the Companies Act, 2015.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for a legal and institutional framework for implementation of Article 43(1)(d) and paragraphs 8 (d), 10(a), 11 and 13 of Part 2 of the Fourth Schedule of the Constitution in order to –

- (a) ensure access to sustainable, clean, potable, affordable, equitable and adequate water for domestic consumption and for industrial, agricultural and other purposes;
- (b) provide for improved, appropriate and sustainable waste water management services including effective and efficient management of storm water in built-up areas;
- (c) improve public and environmental health through sustainable, effective and efficient sanitation;
- (d) improve and ensure high water quality for human consumption;
- (e) empower communities and develop the capacity of communities for effective water and sanitation service delivery;
- (f) facilitate effective water and sewerage and/or sanitation dispute resolution mechanisms; and
- (g) enhance soil and water conservation efforts.

Statement of how the Bill concerns the County Government of Kisumu

The Bill concerns the county government of Kisumu in terms of Articles 43 and the 4th Schedule Part II of the Constitution.

Statement of delegation of legislative powers and limitation of fundamental rights and freedoms.

The Bill does not contain any provision limiting any fundamental rights or freedoms. The Bill however delegates legislative authority to the CECM for the time being responsible for Water, Environment and Natural Resources to make regulations for the better implementation of the Act.

Statement that the Bill is a money Bill, within the meaning of Article 114 of the Constitution.

The Bill is not a money bill within the meaning of Article 114 of the Constitution

Financial Impact Statement

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 28th August, 2023.

SAMUEL DEDE,
Chairperson: Committee on Water Environment and Natural Resources.