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THE BUSIA COUNTY WATER AND SEWERAGE ACT, 2015

No. 1 of 2015

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THE BUSIA COUNTY WATER AND SEWERAGE ACT, 2015
 AN ACT of the County Assembly of Busia to provide for development, regulation and management of County Public Works related to Water and Sewerage Services, Storm Water Management Systems, Water Conservation and for connected purposes

ENACTED by the County Assembly of Busia as follows—

Short Title and Commencement

1. This Act may be cited as the Busia County Water and Sewerage Services Act, 2015 and shall come into operation on the 14th day after publication in the *Gazette*.

Interpretation

2. In this Act unless the context otherwise requires—

“authorized officer” means an officer appointed under Section 52 of the Act;

“Board of Company” means the Board of the Water and Sewerage Services Company established under Section 6;

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

“Company” means the Water and Sewerage Services Company established under Section 4;

“County” means the County of Busia;

“Directorate” means the Directorate of Water and Soil Conservation established under Section 30;

“Executive Member” means the County Executive Committee Member for the time being responsible for water services;

“Flood Plain” means the land adjoining a watercourse which in the opinion of the county is susceptible to inundation by floods;

“Fund” means the County Water Trust Fund established under Section 49;

“Governor” means the Governor of Busia County;

"Public Works" in this context means storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines;

"Riparian Buffer" is an area around or situated next to bodies of water that act as buffers or cushions to that water body;

"Riparian Land" means land that is adjacent to a water body;

"sanitation" means conditions relating to public health, especially the provision of clean drinking water and adequate sewage disposal;

"storm water" means water resulting from natural precipitation and accumulation and includes ground water and spring water ordinarily conveyed by the storm water system, as well as sea water within estuaries, but excludes water in a drinking water or waste water reticulation system;

"Water Catchment Area" means an area of land that water can drain across, over, or under to a common point on a stream, river, lake or wetland;

"Water Pollution Incident" means an incident or occurrence which has a detrimental impact or a potential detrimental impact on the quality of the water in the storm water system to such an extent that public health or the natural ecosystem may be threatened;

"Water Works" means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, and drainage of any swamp or other land.

Object and Purpose of the Act

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

- (a) ensure equitable and continuous access to clean water;
- (b) promote soil and water conservation;
- (c) promote water catchment conservation and protection;

- (d) provide for the development and management of County water services public works;
- (e) provide for regulation of County water and sanitation public works;
- (f) ensure effective and efficient provision of water and sanitation services;
- (g) promote effective and efficient management of storm water in built up areas;
- (h) enhance suitable management of water resources;
- (i) promote inter agency collaboration and public participation in water resource development and management.

PART II—ADMINISTRATION

Establishment of the Company

4. (1) There is established the Busia Water and Sewerage Services Company.

(2) The Company shall be the successor to the water and sewerage companies operating in the County established under the Water Act, 2002.

(3) The Company shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

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

Functions of the Company

5. The functions of the Company shall be to—

- (a) provide and manage water and sewerage services;
- (b) develop and manage County water and sewerage services infrastructure, including water works and public works;

- (c) develop adequate water supply system for domestic, industrial, livestock and agricultural purposes;
- (d) develop and manage works for water conservation;
- (e) promote, develop and manage water recycling systems;
- (f) promote efficient water use and management for sustainable development;
- (g) identify, initiate and promote water conservation systems, strategies and programs;
- (h) develop and manage public infrastructure for storm water management in collaboration with other agencies;
- (i) maintain database related to water and sewerage services;
- (j) disseminate information related to water and sewerage services;
- (k) maintain collaboration and cooperation with other National Government Agencies, development partners, stakeholders, non-governmental agencies and other County Governments in carrying out its functions.

Board of the Company

6. (1) The management of the Company shall vest in the Board.

(2) The Board of the Company shall consist of—

- (a) a Chairperson and a Vice-Chairperson elected by the directors from amongst the directors;
- (b) one person from each Sub-County sourced through a competitive process, by virtue of their knowledge, expertise and experience in water and sewerage management matters balancing gender representation;

In nominating persons under sub-clause (b) above, the following representation shall be put into consideration—

- (i) one person representing professional bodies;
- (ii) one person representing women;
- (iii) one person representing the business and manufacturing communities;
- (iv) one person representing the resident organizations;

- (v) one person representing persons with disability;
- (vi) one person representing the youth;
- (c) the Executive Committee Member in Charge of Finance and Economic Planning;
- (d) the Executive Committee Member in charge of Water, Environment and Natural Resources;
- (e) the Managing Director who shall be the Secretary to the Board.

(3) A person shall be qualified for appointment as chairperson or a member appointed under sub-section (2) (b) if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) is a resident of the Sub-County; and
- (c) has had a distinguished career in their respective fields.

Functions of the Board

7. The functions of the Board shall be to—

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Company;
- (b) advise the management of the Company generally on the exercise of the powers and the performance of the functions of the Company;
- (c) approve the estimates of the revenue and expenditure of the Company; and
- (d) perform such other functions as are provided for under this Act or any other written law.

Conduct of Business

8. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule to this Act.

(2) Except as otherwise provided in the Schedule, the Board may regulate its own procedure.

Remuneration of the members of the Board

9. The remuneration of the members of the Board shall be as determined in their annual general meeting with approval from the

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Executive Member in charge of Finance in consultation with the County Public Service Board.

Managing Director of the Company

10. (1) There shall be a Managing Director who shall be appointed by the Executive Member on recommendation of the Board and recruited through a competitive process.

(2) To qualify for appointment as a Managing Director, a person must—

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

(3) The Managing Director shall hold office for a period of three years on such terms and conditions of employment as the Board may determine, and shall be eligible for reappointment.

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

(5) The Managing Director shall—

- (a) subject to the direction of the Board, be responsible for day to day management of the affairs of the Company;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Company, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Company;
- (c) Carry out any other functions as may from time to time be assigned by the Board.

Removal from Office

11. The Managing Director may—

- (a) At any time resign from office by issuing a notice in writing to the Chairperson of the Board; by giving three months notice or forfeiting three months salary in lieu thereof;
- (b) Be removed from office by the Executive Member on recommendation of the Board for—

- (i) serious violation of the Constitution or any other written law;
- (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
- (iii) physical or mental incapacity to perform the functions of the office; or
- (iv) incompetence.

Staff of the Company

12. (1) The Board shall appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

(2) The staff of the company shall be competitively sourced through public advertisement.

Common Seal of the Company

13. (1) The common seal of the Company shall be kept in the custody of the Managing Director or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

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

(3) The common seal of the Company shall be authenticated by the signature of the Chairperson of the Board and the Managing Director.

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

Protection from Personal Liability

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

Liability for Damages

15. The provisions of Section 14 shall not relieve the Company of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Public Awareness

16. The Company shall in carrying out its functions—

- (a) provide public education and awareness on efficient and sustainable water use;
- (b) invest in water source protection and conservation.

Public Private Partnership

17. The Company may enter into public private partnerships in order to effectively carry out its functions in accordance with the Public Private Partnership Act subject to approval by the County Government.

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

18. The Company shall progressively ensure that—

- (a) every person has access to safe and clean water for domestic use within reasonable distance;
- (b) there is accessible water for agricultural, livestock and industrial use;
- (c) equitable distribution of water between consumers in urban and rural areas.

Service Agreements

19. The Company may enter into service performance agreements with any entity in carrying out its functions on behalf of the County Government.

Development of Water Works

20. (1) The Company may for the purpose of carrying out its functions, erect or develop water works and public works on a public or private property.

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(2) Notwithstanding the provisions of sub-section (1), the Company shall seek consent of the owner of private land or the relevant Government agency occupying or in whose custody the public land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation.

(3) The Company shall in collaboration with the department of roads identify and establish specific areas on any road where public works under this Act may be carried out.

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

County Scheme

21. (1) The Company may with the approval of the Executive Member initiate a County scheme to provide services under this Act for public benefit.

(2) Where the Company deems necessary to erect or establish such a scheme or related public works on private property or land, the County Government may purchase the property or in accordance with the laws governing compulsory acquisition seek such compulsory acquisition.

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

Water Tariffs

22. (1) The Company shall levy tariffs and any appropriate user charges for the purposes of supplying efficient water services.

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

(3) The tariffs and user charges collected under this Section shall be administered as follows—

(a) 70% of revenue collected to the Company

(b) 15% of revenue collected to the County Government

(c) 15% of the revenue collected to the water trust fund for providing efficient and quality services under this Act.

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(4) The tariffs and user charges imposed or levied under this section shall comply with the Water Services Regulatory Board.

Prohibited Activities

23. A person shall not —

- (a) interfere with any meter or equipment installed by the Company;
- (b) install illegal or unauthorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards.

Permit

24. (1) A person intending to carry out or maintain any water works shall apply for a permit to the Executive Member for recommendation by the Board.

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

(3) A person who contravenes this Section commits an offence and is liable to a fine not exceeding three hundred thousand or to imprisonment for a term not exceeding three years or to both.

Application for Permit

25. (1) An application for a permit shall, where applicable, be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Co-ordination Act, 1999 and certification from the National Environment Management Authority and shall specify among others —

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

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

(3) Every objection to an application shall be made in writing to the Executive Member setting out grounds for such objection.

(4) The Executive Member shall upon receiving the application send a notice of the objection received to the applicant for a permit.

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(5) The Executive Member may where appropriate conduct public hearings on the objection

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

(7) The Executive Member shall consider the application within thirty days of such an application and may where he is satisfied that the applicant has fulfilled all the requirements of this Act or any other written law grant a permit in the prescribed form subject to any such conditions as may be prescribed and upon the applicant paying the prescribed fees.

(8) The Executive Member may decline to grant a permit to an applicant citing the reasons for such decline.

(9) An applicant to whom the application is returned under subsection (8) may re-submit the application within sixty days.

(10) On receipt of any revised application under subsection (9), the Executive Member shall within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

Water Works Conditions

26. Notwithstanding Section 56, the Executive Member shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance of water works.

Non-interference and Restoration after Water Works

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

(a) there is no interference with the normal usage of any part of property or land;

(b) necessary measures are taken to prevent members of the public from being exposed to any danger or harm as a result of such works;

(c) any parcel of land or property where the works were taking place are restored to their original form.

Registration of Permits

28. The registration of permits shall be accessible to members of the public upon payment of the prescribed fees.

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Water Services Audit

29. (1) The Executive Member will audit and assess the number of persons providing water services in the County whether the persons are authorized or not.

(2) The data and information collected under this Section shall be used on policy directive on management of water services in the County.

PART IV – WATER AND SOIL CONSERVATION**Water Conservation Areas**

30. (1) There is established a Directorate for Water and Soil Conservation.

(2) The Directorate shall in consultation with the National Land Commission and other government agencies declare by notice in the *Gazette* any area to be a water conservation area for the purpose of conserving water.

(3) The Directorate may impose through a notice such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area.

Conservation of Water Catchments

31. The directorate shall—

(a) through the Intergovernmental Relations Act, the County Governments Act and any other written laws collaborate with other County Governments in conservation and protection of water sources and catchments of strategic importance which are located outside the County;

(b) support financing of water conservation and catchment protection;

(c) support and enforce reserve flow maintainance at all times;

(d) in collaboration with other agencies develop policy and strategy on water storage at household and farm level and ensure their implementation;

(e) in collaboration with water resource users associations participate in development and monitor implementation of sub-catchment management plan.

Conservation Guidelines

32. The Executive Member shall in consultation with national and County Agencies prescribe guidelines and standards to be adopted for water conservation.

Soil Conservation

33. The directorate shall—

- (a) develop and implement policies and strategies controlling cultivation of land situated on slopes;
- (b) develop and implement policies and strategies for sustainable management of wetlands.

Silt Traps

34. All flood flow storages shall have provisions for silt traps.

Demarcation of Riparian Land

35. The Directorate shall in consultation with national and county Agencies and other stakeholders demarcate riparian land.

Prohibited activities on Riparian Land

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

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

Any person who contravenes the provisions of this Section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months or to both.

PART V – STORM WATER MANAGEMENT**Storm Water Management and Land use Practices**

37. The Directorate shall in collaboration with relevant county or National Government Departments and local residents promote sound water and land use practices.

Storm Water Management Plan

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

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

(3) The storm water management plan shall among others –

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

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

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

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

(6) A person who contravenes this section commits an offence and shall –

(a) if a corporate body be liable to a fine of five hundred thousand shillings; or

(b) if an individual to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months or to both.

Reduction of run off Water

39. (1) The owner of a house, property or building shall –

(a) install rain barrels with sufficient capacity to store water from the buiding;

- (b) where applicable not permit storm water to become runoff;
- (c) re-use or recycle storm water collected for other purposes in the premises.

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

Riparian Buffers

40. (1) The Directorate in collaboration with other Government agencies and local residents shall mobilize residents to develop or restore riparian buffers along rivers, water ways or any other water body.

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

(3) A person who contravenes sub section (2) commits an offence and shall—

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

Master Plan

41. The Directorate shall in collaboration with other county and national government agencies and local residents prepare a five year water and sewerage services master plan.

Provision of Sewerage Services

42. The Company shall either directly or through public private partnership—

- (a) provide necessary sewerage facilities and services; and
- (b) construct, operate and maintain extensive system of sewere and treatment facilities to meet applicable discharge requirements.

Waste Water Management

43. The Executive member shall—

- (a) develop strategies and policies to encourage treatment of waste water and dried sludge re-use;

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- (b) in co-operation with relevant government agencies will periodically carry out effluent quality analysis to confirm efficacy of the facilities.

Compliance with effluent Standards

44. A person or entity shall when disposing final effluent comply with the guidelines prescribed by the National Environment Management Authority.

Discharge of contaminated Water or Effluent

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

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

(a) if a corporate body be liable to a fine not exceeding five hundred thousand shillings; and

(b) if an individual be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two months or both.

Interference with Sewerage Systems

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

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

Sewerage Tariffs

47. The company may impose tariffs or levy sewerage services on water or sewerage services for the purposes of disposal of water or sewage in conformity with national standards.

Sector wide Forum

48. (1) The Executive Member shall constitute and convene the water and sewerage services sector wide forum.

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

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

- (a) review and deliberate on water resources management and sewerage services;
- (b) propose policy or legislative interventions for effective implementation of this Act;
- (c) participate in development of measures, plans and strategies for implementing this Act.

(4) The sector wide forum shall meet at least twice every year.

PART VII—FINANCIAL PROVISIONS

Trust Fund

49. (1) There is established a Fund to be known as the County Water Trust Fund.

(2) The Fund shall consist of—

- (a) an amount of money voted for annually by the County Assembly on recommendation by the Executive Member
- (b) any other monies accruing or received by the Company from any other source to be distributed as a grant by the County Government through the Executive Member.

(3) The Fund shall be used in carrying out such activities as—

- (a) catchment rehabilitation;
- (b) river bank protection;
- (c) wetland and riparian area protection;
- (d) rural water infrastructure and any other water related activities that may be prescribed by the Executive Member.

(5) The Executive Member shall appoint a committee to vet applications of works to be carried out by the Fund.

Administration of the Fund

50. The fund shall be administered by the Managing Director of the Board who shall be appointed by the Executive Member in charge of

PART VIII—TRANSITIONAL PROVISIONS**Transfer of Functions, Assets and Liabilities**

51. (1) Subject to sub section (2), on such date as may be specified in the rules and regulations to be made by the Executive Committee member, there shall be made rules to govern transfer of assets, liabilities and staff from the water supply and sewerage services Company to the County water and sewerage Services Company as per the provisions of this Act.

(2) Every person who immediately before the commencement of this Act was an employee of the Water supply and Sewerage Services Company established under the Water Act, 2002 (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of Busia Water and Sewerage Services Company on terms as relevant or as may be determined by the Managing Director.

PART IX—ENFORCEMENT**Authorized Officers**

52. (1) The Executive member may on recommendations appoint such a number of authorized officers for the purposes of enforcing or implementing the respective functions of each unit of the department.

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

Power of Entry

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

Power of Officers

54. Any person who obstructs an authorized officer while enforcing or implementing this Act commits an offence and is liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months.

PART X – MISCELLANEOUS PROVISIONS**Water Conflict Resolution**

55. The institutions established under this Act shall actively participate in community water conflict resolution.

Regulations

56. (1) The Executive Member may make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of sub section (1) , the regulations may—

- (a) prescribe guidelines for developing watershed storm management plans;
- (b) prescribe guidelines for sewerage systems and standards;
- (c) prescribe fees;
- (d) prescribe for the areas declared as water protected areas;
- (e) prescribe guidelines for administering the Fund;
- (f) prescribe the membership of the water sector stakeholders.

SCHEDULE—(Section 8)**Provisions as to the conduct of business and affairs of the Board of the Company****Tenure of Office**

1. Any member of the Board, other than the Managing Director shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further and final term of three years.

Vacation of Office

2. A member of the Board may—

- (a) at any time resign from office by notice in writing to the Executive Member;
- (b) be removed from office by the Executive Member if the member is guilty of any gross misconduct.