

**SPECIAL ISSUE**

*Elgeyo Marakwet County Gazette Supplement No.....*

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REPUBLIC OF KENYA

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***ELGEYO MARAKWET GAZETTE  
SUPPLEMENT***

**ELGEYO MARAKWET COUNTY BILLS, 2023**

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**Nairobi,**

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**THE ELGEYO MARAKWET RURAL WATER AND SANITATION  
BILL, 2023**

**A Bill for**

**AN ACT of the County Assembly of Elgeyo Marakwet County to provide for the establishment of an entity for rural water and sanitation services in Elgeyo Marakwet County and related matters in furtherance of the Fourth schedule of the Constitution and for connected purposes**

**ENACTED** by the County Assembly of Elgeyo Marakwet County, as follows—

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the Elgeyo Marakwet Rural Water and Sanitation Act, 2023 and shall come into operation fourteen days after its publication in the *Kenya Gazette*.

**Interpretation**

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

“Authorized Officer” means a person appointed by the Company to perform a function specified in the Act on behalf of the Company;

“Board” means the Board of Directors of the county rural water and sanitation services provider;

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

“Competent Legal Authority” means a court of competent jurisdiction, ethics and anticorruption commission, directorate of criminal investigation or director of public prosecutions;

“Company” means county rural water and sanitation services provider incorporated pursuant to this Act;

“County” means Elgeyo Marakwet County;

“Department” means the county department responsible for water and sanitation services;

“Executive Committee Member” means the executive committee member responsible for water services;

“Rural” means an area outside a zone designated as a municipality or a town under the Urban Areas and Cities Act No 13 Of 2011;

“Sanitation” means conditions relating to public health, especially the provision of clean drinking water and adequate wastewater disposal;

“Scheme” means a water works from which portable water is supplied to consumers; and

“Water Works” means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for

supply to the public or for private purposes, and drainage of any swamp or other land.

### **Object and purpose**

3. The object and purpose of this Act is to—
- (a) Provide for the establishment of a rural water and sanitation services provider in Elgeyo Marakwet County; and
  - (b) provide a legal framework for provision of water and sanitation services in rural areas within the county.

## **PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE RURAL WATER SERVICES PROVIDER**

### **Establishment of the rural water and sanitation services provider**

4. (1) The County Government shall incorporate a limited liability company (the Company) in accordance with the provisions of the Companies Act, 2015 as the county entity to provide rural water and sanitation services in the county.

(2) The county rural water and sanitation services provider shall be a body corporate with perpetual succession, and a common seal and shall, in its corporate name, be capable of—

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

(2) The Company shall be gazetted as a county entity in terms of the Public Finance Management Act 2012.

### **Functions of the County rural water and sanitation services provider**

5. (1) The county rural water and sanitation services provider shall —
- (a) provide and manage water and sanitation services in rural areas within the county;
  - (b) implement the mandate of county government in ensuring access to adequate, safe and affordable drinking water and sanitation for all in rural areas within the county;
  - (c) support the county government in developing and rehabilitating rural water and sanitation infrastructure;
  - (d) promote water use efficiency through waste water treatment, reuse and recycling;
  - (e) undertake laboratory analysis to ensure that acceptable water and effluent quality standards are maintained;

- (f) enhance effective water governance including catchment area based integrated water resources management and appropriate trans-boundary co-operation;
- (g) develop assets for provision of water and sanitation services in rural areas;
- (h) promote innovations in water and sanitation technologies including water harvesting, information communication systems and use of green energy in rural areas;
- (i) develop rural water and sanitation services infrastructure, including water works and public works;
- (j) develop awareness campaign strategies on sustainable use and management of water resources and sanitation services;
- (k) Participate in catchment protection and conservation initiatives;
- (l) Carry out such other functions as may be assigned to it by this Act or any other written law.

(2) In the performance of its duties and functions prescribed under the provisions of this Act, the Company shall be governed by and give effect to the provisions of the Water Act No 43 of 2016, the Water Services Regulations LN No 168 of 2021, the Water Harvesting and Storage Regulations LN No 169 of 2021, the Water Resources Regulations LN No 170 of 2021 and The Elgeyo/Marakwet Water Services Act of 2021, any replacements or amendments made thereto, and all other written laws.

### **Board of Directors**

6. (1) Subject to this Act, the governance, control and administration of the company shall vest in the Board of Directors.
- (2) Without prejudice to the generality of subsection (1), the Board shall have power to -
- (a) formulate, with the approval of the Executive Committee Member, policies pertaining to the organization, management and implementation of the objects of the Company;
  - (b) administer the property and funds of the company in such manner and for such purposes as shall best promote the interests of the company: Provided that the Board shall not charge or dispose of the immovable property of the company without the approval of the Executive Committee Member;
  - (c) receive, on behalf of the Company, donations, endorsements, gifts, grants or other monies and to make legitimate disbursements therefrom;
  - (d) borrow, generate and raise funds for the purposes of the Company;
  - (e) appoint suitable staff for the Company upon such terms and conditions of service as County Public Service Board shall determine in line with the Salaries and Remuneration Commission guidelines.
  - (f) receive reports from the Chief Executive Officer or any officer of the company in respect of financial and other circumstances of the Company

and to direct any action to be taken by the Chief Executive Officer or any officer of the Company; and

(h) do or perform any other act out of the purpose of this Act.

- (3) The Board shall consist of—
- a) a non-executive chairperson appointed by the Governor and approved by the County Assembly;
  - b) County executive committee member responsible for water;
  - c) County executive committee member responsible for finance;
  - d) Six members with relevant qualifications appointed by the Executive committee member.
  - e) The Chief Executive Officer, who shall be an ex-officio member of the Board
- (4) The County Executive Committee member shall advertise for the positions of chairperson and members of the Board
- (5) In making the appointments under sub section (3), the Governor in the case of chairperson or the Executive committee member in the case of members appointed under subsection 3(e) shall take into consideration gender and regional balance.
- (6) The chairperson and the members of the Board shall be appointed by the Governor and the Executive committee member respectively from a list consisting of —
- (a) in the case of the chairperson, three names; and
  - (b) in the case of members under subsection(3)(e), twelve (12) names, submitted by a selection panel appointed by the Executive committee member in accordance with subsection (4)
- (7) The selection panel referred to in subsection (3) shall comprise a chairperson and four other persons appointed by the Executive committee.
- (8) The selection panel shall have power to regulate its own procedure.
- (9) The selection panel shall publicize the names of applicants and shortlisted candidates on the county government website.
- (10) In determining the nomination criteria for the chairperson and members of the Board, the selection panel shall have regard to the objectives of the development of the water sector within the County.
- (11) In nominating the chairperson and members of the Board, the selection panel shall ensure that those nominated shall not have conflict of interest in serving as chairperson and members of the Board.
- (12) If the Governor rejects the names submitted under subsection (3)(a) or the Executive committee member rejects the names submitted under subsection (3)(e) the Governor or the Executive committee member, as the case maybe, shall inform the selection panel within seven days and request the panel for a replacement within twenty-one (21) days.
- (13) In rejecting the names submitted under subsection (3), the Governor or the Executive committee member, as the case maybe, shall attach a memorandum giving reasons for the rejection of the candidates.
- (14) The selection panel shall stand dissolved after the appointment of the chairperson and members of the Board.

### **Qualifications of chairperson and members of the Board**

7. (1) A person shall be qualified for appointment as chairperson of the Board if the person —

- (a) holds a relevant degree from a university recognized in Kenya;
- (b) has at least seven years' experience in management;
- (c) meets the requirements of chapter six of the Constitution;

(2) A member of the Board appointed under section 3(e) shall hold at least a degree from a university recognized in Kenya and experience in leadership or management.

(3) The term of office for chairperson and members of the Board shall be three years and may be renewed for one further term upon satisfactory performance.

(4) All appointments under this section shall be by notice in the Gazette.

### **Sub committees of the Board**

8. The Board may establish not more than three subcommittees to discharge the following functions affecting the company —

- (a) Governance;
- (b) Audit and risk;
- (c) Compliance;
- (d) Finance;
- (e) Technical matters;
- (f) Strategy.
- (g) Human resource

### **Vacancy in office of chairperson or member of Board**

9. (1) Subject to the provisions of this Act, the office of chairperson or member of the Board shall become vacant if the chairperson or member—

- (a) resigns by notice in writing addressed to the appointing authority;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) if chairperson is absent without the permission of the Executive committee member or if member is absent without the permission of the chairperson for three consecutive meetings;
- (f) fails to meet the requirements of chapter six of the Constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period exceeding six months; or
- (h) dies.

(2) Where the office of chairperson or member of the Board becomes vacant, the Governor in the case of Chairperson or the Executive committee

member in the case of member may, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the provisions of subsection (2) a vacancy in the office of the Chairperson or member shall not render decisions of the Board invalid.

(4) Notwithstanding the generality of the foregoing, the chairperson or any member of the Board suspected of having contravened Chapters Six or Thirteen of the Constitution shall vacate office to pave way for investigations.

(5) Where a person who has vacated office under subsection (4) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of chairperson or member as the case may be.

(6) The Third Schedule shall apply with respect to the conduct of the business and affairs of the Board.

### **Power to issue directions and remove the Board**

**10.** (1) The Governor may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the Governor may on the recommendation of the executive committee, if it is determined that the Board has failed to carry out its functions in the interest of the county, revoke the appointments of the chairperson and members and dissolve the Board and may himself constitute an interim Board for a period not exceeding six months as he or she shall, in consultation with the executive committee determine.

### **Allowances of Board members**

**11.** The chairperson and members of the Board shall be paid such allowances as the County Public Service Board shall determine in line with the Salaries and Remuneration Commission guidelines.

### **Chief executive officer**

**12.** (1) There shall be a chief executive officer of the Company who shall be appointed by the Governor from among three nominees recommended by the Board who shall serve for a period of four years which term may be renewable once upon satisfactory performance.

(2) The power of the Board to recruit and recommend three nominees for the position of chief executive officer under sub section (1) shall be subject to powers of the County Government Act, 2012

(3) The chief executive officer of the Company shall be responsible for the day to day management of the affairs of the Company on such terms and conditions of service as County Public Service Board shall determine in line with the Salaries and Remuneration Commission guidelines.

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

### **Qualification of the Chief executive officer**

**13.** A person shall qualify for appointment as a chief executive officer of the company, if the person—

- (a) possesses a bachelor’s degree in a relevant field from a university recognized in Kenya;
- (b) has at least ten years’ experience in management; and
- (c) meets the requirements of chapter six of the Constitution.

**Removal from office of the Chief executive officer**

**14.** The chief executive officer may be removed from office by the Board if he or she -

- (a) is incapacitated by long physical or mental illness;
- (b) is guilty of gross misconduct;
- (c) is incompetent or has neglected his or her duties;
- (d) has been adjudged bankrupt or enters into a composition or scheme of arrangement for the benefit of creditors;
- (e) serious violation of the Constitution or any other written law;
- (f) is found culpable on any other ground that would justify removal from office under the terms and conditions of service provided such removal process shall be in compliance with Article 47 of the Constitution.

**Other Staff of the Company**

**15.** (1) Subject to powers of the County Public Service Board under The County Governments Act of 2012, the Company may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act.

(2) The County Public Service Board shall determine the remuneration of the other employees of the Company in line with the Salaries and Remuneration Commission guidelines.

(3) All appointments under this section shall take into account gender, equity and regional balance.

**Seal of the Company**

**16.** (1) The common seal of the Company shall be kept in the custody of the Chief Executive Officer 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 such 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 chief executive officer.

(4) The Board shall in the absence of either the chairperson or the chief executive officer, 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 chief executive officer.

### **Personal Liability**

17. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Company shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Company under this Act, render the member, officer, employee or agent or any other person acting on their directions personally liable to any action, claim or demand whatsoever provided that the action was done in accordance with this Act.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court or tribunal 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 or tribunal holds that such act was done bona fide, be paid out of the funds of the Company.

(3) Any negligent or reckless acts or omissions that subject the Company to loss may in addition to sanctions by the Company attract prosecution under the relevant law.

### **Liability to pay damages**

18. The provisions of section 17 shall not relieve the Company of the liability to pay compensation or damages to any person for 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 other written law or by the failure, wholly or partially, of any works that may be lawfully awarded.

### **Partnerships**

19. (1) The Company may enter into partnerships with other entities in order to effectively carry out its functions.

(2) Any partnerships formed under this section shall be approved by the Executive committee member.

## **PART III—FINANCIAL PROVISIONS OF THE COUNTY RURAL WATER AND SANITATION SERVICES PROVIDER**

### **Finances of the company**

20. The funds and assets of the Company shall consist of—

- (a) such monies as may be appropriated by the County Assembly for the purposes of the Company;
- (b) any monies or property which may in any manner accrue or vest in the Company in the course of the exercise of its functions under this Act;
- (c) fees and charges for services rendered by the Company;
- (d) such monies as may be lawfully earned from income generating activities; and
- (e) grants and donations to the County rural water and sanitation services provider.

### **Elgeyo Marakwet County Rural Water Fund**

**21.** (1) The County Executive Committee member in charge of finance may establish a public fund in accordance with the Public Finance Management Act 2012 to support water and sanitation services in areas designated by the County Executive Committee member as rural areas and in which water and sanitation services cannot be provided by the Company on a commercially viable basis.

(2) A fund established pursuant to this shall operate in accordance with rules made by the County Executive Officer responsible for finance following stakeholder consultation and consultation with the county executive officer responsible for water services.

### **Financial Year**

**22.** The financial year of the Company shall be the period of twelve months ending on the thirtieth June of each year.

### **Annual estimates**

**23.** (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Company for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Company for the financial year concerned and in particular, shall provide for—

- (a) the operations of the Company;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the Company;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Company;
- (d) the maintenance of the assets of the Company;
- (e) the funding of operations, training, research and development activities of the Company; and
- (f) the creation of such reserves to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board, may deem fit.

(3) The annual estimates shall be approved by the Executive committee member, before the commencement of the financial year to which they relate after the Executive committee member has given approval, the Board shall not change any sum provided in the estimates without the consent of the Executive Committee.

### **Accounts and audit**

**24.** (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Company.

(2) Within a period of three (3) months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Company in respect of that year together with—

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

(3) The annual accounts of the Company shall be prepared, audited and reported upon in accordance with the provisions of Article 226 and 229 of the Constitution, the Public Audit Act, 2015 and any other applicable national and county legislation

## **Reports**

**25.** (1) The Board shall prepare quarterly reports on the operations and administration of the Company and provide to the Executive committee member quarterly statements.

(2) Notwithstanding sub-section (1) the Board shall prepare monthly reports and financial statements on the operations and administration of the Company and submit the same to the Executive committee member.

(3) Within ninety (90) days after the end of the financial year, the Board shall furnish the Executive committee member, with an annual financial report of the Company for that year.

(4) Upon receipt of the annual report under subsection (3), the Executive committee member shall, in line with the budget cycle, transmit the same to the County Assembly for tabling and debate.

(5) The County Executive Committee member shall also periodically, with the technical assistance of the Directorate undertake the monitoring and evaluation of the performance of the Company to ascertain the extent of compliance with the County Water Services Strategy and performance targets.

(6) 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 sanitation services provided in the rural areas.

(7) The County Executive Committee member shall submit annually a summary of the evaluation and monitoring report to the County Assembly.

## **PART IV— GENERAL PROVISIONS**

### **Water inspectors**

**26.** (1) The company may appoint water inspectors for purposes of inspection and enforcing compliance by consumers and other persons with the provisions of this Act.

(2) Notwithstanding sub section (1) the Company may designate any officer or person to perform the functions of an inspector.

(3) Any person appointed or designated as an inspector under this section shall wear either a uniform or identification badge duly issued by the company.

(4) The company 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.

### **Power of entry and inspection**

**27.** (1) An inspector or other authorized person appointed by the Company may enter without a warrant on any land and inspect any water resource located within or accessible from the land concerned in order to take any measures authorized under this Act for the purpose of —

- (a) conserving or regulating the water resource or preventing it from pollution or protecting the bed over which it lies or flows;
- (b) removing any obstruction from or clearing and deepening a river bed;
- (c) Preventing the illegal diversion, pollution of the water resource or interference with any water source; or
- (d) Such other elements of the water and sanitation services as the County Executive Committee member, may, through regulations authorize.

(2) An inspector or authorized person shall not enter into the land or premises without first giving reasonable notice whether written or verbal to the land owner or an employee or agent in-charge of the land and such entry shall only be undertaken between the hours of 8am and 6pm except in an emergency or in cases of suspected crime.

Provided that an inspector or authorised person may enter without giving notice if—

- (a) there is reason to believe that a provision of this Act or other law has been or is about to be contravened;
- (b) the inspector or authorised person is unable to give a notice within a reasonable time having regard to all the circumstances; or
- (c) there are other reasonable grounds for not giving notice.

(3) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and diligence.

#### **Water tariffs**

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

(2) Subject to national policy and such other requirements as may be imposed by the county executive committee, the Company may waive the whole or a portion of tariffs and user charges for qualified categories of consumers.

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

(4) The tariffs and user charges collected under this section shall not form part of the county revenue fund and maybe utilized for defraying expenses of the Company and providing efficient and quality services under this Act.

(5) The tariffs and user charges imposed or levied under this section shall be subject to approval by the Water Services Regulatory Board.

#### **Obstruction or pollution of watercourse or water resource**

**29.** (1) No person shall, without authority under this Act—

- (a) willfully obstruct, interfere with, divert or abstract water from any watercourse or any water resource, or negligently allow any such obstruction, interference, diversion or abstraction; or

- (b) throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or be likely to cause, pollution of the water resource.
- (2) A person who contravenes this section commits an offence.

### **Disruption or destruction of water infrastructure during construction**

**30.** (1) In all cases where a person is undertaking construction works which affect water infrastructure operated by the Company, the approval of the Company shall be obtained on terms and conditions set by the Company, 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 Company and upon conviction such person will be liable to a fine of not less than Kenya Shillings One Hundred Thousand or imprisonment for a term not exceeding six months or both such fine and such imprisonment

(3) A person who disrupts, destroys or causes damage to water infrastructure belonging to or used by the Company through construction works shall be liable to a surcharge of the full cost of repairs and such costs shall be a debt due to the Company 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.

### **Prohibited activities**

**31.** (1) A person shall not—

- (a) interfere with any meter or equipment installed under the authority of the Company;
- (b) install illegal or unauthorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards; or
- (d) employ a person who is not licensed by the company to carry out works falling within its jurisdiction.

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

### **Permit for works**

**32.** (1) A person intending to carry out or maintain any works which can adversely affect any waterworks or facilities belonging to the Company shall apply for a permit from the Company.

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

### **Special provisions with respect to unviable rural areas**

**33.** (1) The Company shall put in place measures for the provision of water and sanitation services to rural areas which are unviable for the provision of water and sanitation services on a commercial basis.

(2) The measures taken by the Company under sub-section (1) shall include developing point sources, small scale piped systems and stand pipes which meet the set standards and which may be managed by the communities, agencies or private persons based on written contract with the Company.

(3) The Company shall formulate an up-to date five-year strategic plan incorporating an investment and financial plan for provision of water and sanitation services in unviable rural areas within the count

### **Offences**

**34.** (1) A person who –

(a) obstructs, interferes with or diverts water from any water course or water resource or allows any such obstruction, interference or diversion;

(b) pollutes or causes to be polluted any water resource; or

(c) defaces, alters, removes or interferes with any water works falling under the jurisdiction of the Company,

commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand shillings or to imprisonment to a term not exceeding one year.

(2) A person who commits an offence under this Act, for which no other penalty is provided shall on conviction be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months.

### **Power to make regulations**

**35.** (1) The Executive committee member may make regulations on any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of sub section (1) the Executive committee member may make regulations to—

(a) prescribe guidelines for sanitation systems and standards in rural areas;

(b) prescribe the amount of fees payable under this Act generally on in particular cases;

(c) Exempt projects from being taken over by the Company; and

(d) prescribe forms to be used under this Act.

### **Transitional Provisions**

**36.** (1) As soon as practicable following its incorporation and in accordance with the Second schedule hereto, the county rural water services provider established pursuant to this Act shall take over the management of the rural water schemes listed in the First Schedule hereto and any other scheme that may be developed in accordance with the procedure laid out in the Second Schedule of this Act.

- (2) The County Executive Committee member may allow a rural water scheme which is viable on its own to continue operating notwithstanding the provisions of sub section (1) herein.
- (3) The Company may, on behalf of the County Government, and with the approval of the County Executive Committee member, enter into contractual arrangements for the performance of the whole or aspects of its functions by a private water service provider, a community water service provide or public benefit organization
- (4) Within twelve (12) months of the commencement of this Act or such longer period as the County Executive Committee member may approve, the Company, with the approval of the County Executive Committee, shall establish criteria for water services provision in rural areas by the rural schemes during the transition period before the county rural water services provider assumes the its functions in respect to the area of operation of any particular scheme.
- (5) Following the assumption by the Company of its functions, the assets, facilities and other infrastructure within the area of supply of the Company which are used for the provision of water services and which belong to the County Government, shall be transferred to the Company for the provision of water services in its area of supply.
- (6) The Second Schedule shall have effect with regard to the transition period.

## FIRST SCHE DULE

### RURAL WATER SUPPLY SCHEMES

<b>SUB-COUNTY</b>	<b>WARD</b>	<b>PROPOSED PROJECT NAME</b>
<i>Marakwet East Sub County</i>	Endo	
	Embobut/Embolot	
	Kapyego	
	Sambirir	
<i>Marakwet West Sub County</i>	Arror	
	Kapsowar	Kapsowar Water Project
	Moiben/Kuserwo	
	Lelan	
	Sengwer	
	Cherangany/Chebororwa	
<i>Keiyo North County</i>	Kamariny	Yokot Dam & Kapkoi Water Supply
	Kapchemutwa	
	Emsoo	
	Tambach	
<i>Keiyo South Sub County</i>	Kaptarakwa	Kaptarakwa Water Supply
	Chepkorio	Chepkorio Water Supply
	Kabiemit	
	Metkei	
	Soy South	
	Soy North	Chepsigot Water Supply

## SECOND SCHEDULE

### Section 36

#### TRANSITIONAL PROVISIONS

<b>Existing arrangements to continue.</b>	1. Prior to the establishment of the Company under this Act, the Rural Schemes listed in the First Schedule shall continue their obligations to deliver water and sanitation services in the areas falling within their areas of supply.
<b>Seed funding and staff.</b>	2. (1) Within twelve (12) months of the commencement of this Act, but after the establishment of the Company the County Executive Committee member shall present a budget proposal to the County Assembly as a basis for providing the seed funding to the Company to enable it commence operations.  3. Following incorporation of the Company the County Executive Committee member, following consultation with the County Public Service Board may second such staff as is considered necessary to the Company to enable it commence operations on such terms and conditions of secondment as the County Public Service Board may approve.
<b>Rural Schemes to handover to the Company water and sanitation services delivery.</b>	4. (1) As soon as is practicable after the establishment of the Company, the Rural Schemes listed in the First Schedule shall by a Deed of Handover and Acceptance signed amongst the County Government, the Rural Schemes and the Company, handover to the Company the responsibility of the delivery of water and sanitation services in the areas of supply of the Rural Schemes.  (2) With effect from the handover date, the Company 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 the Rural Schemes that are not older than ninety (90) days.  (3) The Rural Schemes 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 the Rural Schemes, and annex the list to the Deed of Handover.  (4) Notwithstanding subclause (5), all property, assets, facilities and other rights of the Rural Schemes existing at the handover date for the purpose of the delivery of water and sanitation services in the areas served by the Rural Schemes, shall be deemed to have been handed over to the Company at the

	<p>handover date whether or not listed and appearing in the Deed of Handover and Acceptance.</p> <p>(7) The County Executive Committee Member shall publish in the <i>gazette</i> notice of the handover of the Rural Schemes to the Company, specifying the effective date of handover.</p>
<p><b>Winding up of the Rural Schemes</b></p>	<p>5. (1) The County Government shall assume responsibility for discharging outstanding long-term debts and liabilities older than ninety (90) days of the Rural Schemes listed in the First Schedule, and assume ownership of the assets and facilities of the Rural Schemes provided that the County Government shall give to the Company the right of operation and use of the assets and facilities for the provision of water and sanitation services in the designated rural areas.</p> <p>(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 the Rural Schemes in accordance with the relevant laws.</p>

**THIRD SCHEDULE**  
**PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND**  
**AFFAIRS OF THE BOARD**

1. The chair in consultation with the Chief executive officer shall call for general meetings of the Board once every three months.
2. Subcommittees of the Board established under this Act shall meet as directed by the Board.
3. The chairperson may with the approval of the Executive committee member call for a special meeting of the Board provided special Board meetings shall not exceed six in any one financial year.
4. A meeting of the Board shall only be valid if attended by the chief executive officer or a person designated as such by the Board.
5. The chairperson shall preside at every meeting of the Board at which he or she is present, but in the absence of the chairperson the members present may elect one from among their number to preside.
6. The quorum for a meeting shall consist of six members, consisting of two who shall be representatives of the county government and four members appointed by the executive member. The Chief executive officer shall attend the meetings as an ex-officio member of the Board.
7. Where the chief executive officer is the subject matter of discussion the Board shall designate a person to act as the chief executive officer during the meeting.
8. The chief executive officer shall sit in all the sub committees of the Board except a subcommittee responsible for Audit and Risk matters.
9. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
10. A member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest in writing, and shall not be present during any deliberations on the matter.
11. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.
12. The Board may constitute specialized sub committees provided that the decisions of the sub committees shall be subject to the approval of the Board.
13. The Board or a subcommittee thereof may co-opt up to a maximum of two persons with specialized skills or knowledge of the subject matter at their respective sittings to assist the Board or the subcommittee as the case may be in discharging their mandate
14. The chief executive officer, a person appointed by the Board of Directors to act in the absence of the Chief executive officer or an officer instructed by him or her in that behalf, present at a meeting of the Board or a subcommittee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the subcommittee, as the case may be,

passes a resolution, which in the chief executive officer's, a person appointed by the Board of Directors to act in the absence of the Chief executive officer or officer's opinion, is contrary to his or her advice or contrary to law.

**15.** Save as provided in this schedule the Board may regulate its own procedure.

## MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide for the establishment of a county rural water and sanitation services provider, to make provision for the roles of the company and related matters in furtherance of the Fourth schedule of the Constitution and for connected purposes.

This Bill is divided into three parts as follows—

**Part I** provides for preliminaries issues including short title, interpretation, as well as object and purpose of the Bill.

**Part II** provides for the incorporation of the county rural water and sanitation services provider, providing functions and powers of the Company. The main function of the Company being the provision of water and sanitation services in rural areas within Uasin Gishu County.

**Part III** provides for financial provisions relating to the Funds of the Company and the corresponding reporting and accountability for the Funds.

The implementation of the Bill when enacted into law shall occasion additional expenses which shall be provided for in the government's budget estimates.

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*Chairperson, Water, Environment and Climate Change Committee.*