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THIRTEENTH PARLIAMENT

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2024

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

COMMITTEE REPORT ON THE WATER (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILLS NO. 33 OF 2023)

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

PAPERS LAID	
DATE	20/2/2024
TABLED BY	Sen. Methu
COMMITTEE	
CLERK AT THE TABLE	Kavata

FEBRUARY, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

KAM	-	Kenya Association of Manufacturers
WASPA	-	Water Services Providers Association
WASREB	-	Water Services Regulatory Board
WSPs	-	Water Service Providers

LIST OF ANNEXURES

1. Minutes
2. Copy of the newspaper advertisement for public participation
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PREFACE

2.1 Establishment of the Committee

The Standing Committee on Land, Environment and Natural Resources is established under standing order 228(3) of the Senate Standing Orders. The mandate and the functions of the Committee are set out under the Fourth Schedule of the Senate Standing Orders which mandates the Committee to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

3.1 Membership of the Committee

The Committee is comprised of the following members -

- | | |
|--|-----------------------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice - Chairperson |
| 3. Sen. William Cheptumo Kipkiror, CBS, MP | |
| 4. Sen. Johnes Mwashushe Mwaruma, MP | |
| 5. Sen. Issa Juma Boy, MP | |
| 6. Sen. Agnes Kavindu Muthama, MP | |
| 7. Sen. Wamatinga Wahome, MP | |
| 8. Sen. Mariam Sheikh Omar, MP | |
| 9. Sen. Beatrice Akinyi Ogola, MP | |

Mr. Speaker,

The Constitution of Kenya recognizes water as an essential resource, laying the foundation for its conservation, equitable distribution, efficient management, and sustainable use. Specifically, Article 43(1)(d) of the Constitution affirms every Kenyan's right to clean and safe water in adequate quantities. Additionally, Article 60, which encapsulates the principles of land policy, underscores sustainable and productive management of land resources, inclusive of water bodies. The Fourth Schedule of the Constitution delineates the shared responsibility between the national and county

governments for water management, emphasizing collaborative efforts in overseeing this vital resource.

In light of these constitutional provisions, the Water Act, No. 43 of 2016, was enacted. It represented a significant shift in the management and regulation of water resources and water services in the Country. Since its enactment, there have been rapid changes in the socio-economic landscape, technological advancements, and emerging best practices in water resource management. These shifts necessitate a periodic review of existing laws to align them with current realities and future aspirations.

The Bill primarily addresses the need to refine specific provisions of the Water Act, No. 43 of 2016, offering more clarity on terminologies, expanding the scope of various entities, enhancing the operational ambit of water-related agencies, and instituting a stronger framework for Public-Private Partnerships in the water sector.

Mr. Speaker Sir,

Pursuant to Standing Order 46(3) & (5), the Speaker received a Message, from the Speaker of the National Assembly regarding the passage of the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023).

The Bill was passed by the National Assembly with amendments on August 23rd, 2023.

Pursuant to Standing Order 163 a Bill originating in the National Assembly is required to be proceeded with in the same manner as a Bill introduced in the Senate by way of First Reading. In accordance with Standing Order 144, the speaker directed that, the said Bill be read First Time.

The Bill was published on 4th July, 2023, and read a First Time in the Senate on 19th September, 2023. Following the First Reading in the Senate, the Bill stood committed, pursuant to standing order 145(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation.

Subsequently, the Committee, pursuant to Article 118(1) (b) of the Constitution and standing order 145(5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and the Daily Nation Newspapers on Friday, 22nd September, 2023.

Adoption of the Report of the Standing Committee on Land, Environment and Natural Resources on the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023)

	Name	Designation	Signature
1	Sen. John Muhia Methu, MP	Chairperson	
2	Sen. (Dr.) Steve Lelegwe Ltumbesi, MP	Vice - Chairperson	
3	Sen. William Cheptumo Kipkiror, CBS, MP	Member	
4	Sen. Johnes Mwashushe Mwaruma, MP	Member	
5	Sen. Issa Juma Boy, MP	Member	
6	Sen. Agnes Kavindu Muthama, MP	Member	
7	Sen. Wamatinga Wahome, MP	Member	
8	Sen. Mariam Sheikh Omar, MP	Member	
9	Sen. Beatrice Akinyi Ogola, MP	Member	

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Standing Committee on Land, Environment and Natural Resources on its consideration of the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) which was published on 4th July, 2023. The Bill went through the First Reading on 19th September, 2023 and was thereafter committed to the Land, Environment and Natural Resources Committee for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Water (Amendment) Bill 2023 aims to refine the Water Act No. 43 of 2016 by clarifying roles and functions of key water management entities, expanding operational scopes, and establishing a stronger foundation for Public-Private Partnerships. It addresses rapid socio-economic changes, technological advancements, and emerging water management practices, proposing amendments that enhance clarity in terminology, broaden entity scopes, and reinforce water sector operations and partnerships, crucial for sustainable management and equitable water distribution in line with constitutional guarantees.

Following placement of advertisements in the print media on Friday, 22nd September, 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Committee received twelve (12) memoranda from the following institutions and individuals-

- 1) Kenya Association of Manufacturers (KAM);
- 2) The Council of Governors;
- 3) Members of the County Budget and Economic Forum of Taita Taveta County;
- 4) Water Services Provider Association (WASPA);
- 5) Water Services Regulatory Board (WASREB);
- 6) The National Treasury & Economic Planning-Public Private Partnerships Directorate; and
- 7) The Ministry of Water, Sanitation and Irrigation

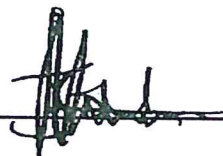
The Committee also invited the Ministry of Water, Sanitation and Irrigation who appeared before the Committee on 6th November, 2023, for a stakeholders' engagement meeting on the Bill whereby the Committee was able to arrive at a consensus on some of the proposals.

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further, the Committee wishes to thank members of the public and stakeholders who sent written submissions including the general public.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 148 of the Senate Standing Orders, to present the Report of the Standing Committee on Land, Environment and Natural Resources on the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023).

Signed:  _____ Date: 20/2/24

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**

CHAPTER ONE

INTRODUCTION

1.0 Purpose of the Bill

1. The objective of this Bill is to amend the Water Act, Act No. 43 of 2016 to enhance clarity on the roles and functions of key entities in water resource management, expand the operational scope of water-related agencies, and establish a stronger foundation for Public-Private Partnerships in the water sector.

2.0 Background

2. The Constitution of Kenya recognizes water as an essential resource, laying the foundation for its conservation, equitable distribution, efficient management, and sustainable use. Specifically, Article 43(1)(d) of the Constitution affirms every Kenyan's right to clean and safe water in adequate quantities. Additionally, Article 60, which encapsulates the principles of land policy, underscores sustainable and productive management of land resources, inclusive of water bodies. The Fourth Schedule of the Constitution delineates the shared responsibility between the national and county governments for water management, emphasizing collaborative efforts in overseeing this vital resource.
 3. In light of these constitutional provisions, the Water Act, No. 43 of 2016, was enacted. It represented a significant shift in the management and regulation of water resources and water services in the Country. Since its enactment, there have been rapid changes in the socio-economic landscape, technological advancements, and emerging best practices in water resource management. These shifts necessitate a periodic review of existing laws to align them with current realities and future aspirations.
 4. The Bill primarily addresses the need to refine specific provisions of the Water Act, No. 43 of 2016, offering more clarity on terminologies, expanding the scope of various entities, enhancing the operational ambit of water-related agencies, and instituting a stronger framework for Public-Private Partnerships in the water sector.
10. The Bill was published on 4th July, 2023, and read a First Time in the Senate on 19th September, 2023. Following the First Reading in the Senate, the Bill stood committed,

pursuant to standing order 145(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation.

11. Subsequently, the Committee, pursuant to Article 118(1) (b) of the Constitution and standing order 145(5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and the Daily Nation Newspapers on Friday, 22nd September, 2023.

3.0 Overview of the Bill

12. This Bill originated from the National Assembly and was passed by the National Assembly with amendments on August 23rd, 2023. It contains the following twelve (12) clauses:

13. **Clause 2** of the Bill seeks to amend section 2 of the Water Act, No. 43 of 2016 (the 'Act') in the following manner:

- (a) by inserting the definition of a 'contracting authority' to mean a national or county governmental body seeking to delegate its functions to a private entity.
- (b) by deleting and inserting a new definition for 'bulk water'. The Act currently defines 'bulk water' as water supplied to a water services provider by the water services provider making the supply. The Bill proposes to amend this definition by specifying that only a water works development agency or the Water Storage Authority can supply bulk water.
- (c) by deleting and inserting a new definition for 'water services provider'. The Act currently defines 'water services provider' as a company, public benefits organization or other person providing water services under and in accordance with a licence issued by the Regulatory Board for the service areas defined by the licence. The Bill now proposes to expand this definition by including the words 'agency, authority and state corporation', which expands the scope of entities that can be considered as water services providers.

14. **Clause 3** of the Bill proposes amendments to section 32 of the Act. Currently, section 32 delineates the Water Storage Authority's roles, which include overseeing national water works development, managing water storage infrastructure, formulating water storage strategies, enforcing water harvesting policies, managing drought interventions, and advising the Cabinet Secretary on relevant matters. The amendment seeks to broaden the Authority's roles, enabling it to:

(a) enter into bulk water purchase agreements with investors as per the Public Private Partnerships Act; and

(b) enter into bulk water purchase agreements with water works development agencies.

15. **Clause 4** of the Bill proposes an amendment to section 68 of the Act by inserting a new paragraph (ba) immediately after paragraph (b). Section 68 of the Act details the roles and responsibilities of the water works development agencies, including developing, maintaining, and managing national public water works and providing technical support to the Cabinet Secretary. The proposed amendment broadens the agencies operational scope by introducing specific methods and partnerships through which the water works development agencies can operate waterworks and provide water services:

(a) Through bulk water purchase agreements with private investors as per the Public Private Partnerships Act, 2021.

(b) Through bulk water purchase agreements with other water services providers.

(c) By operating as a water services provider until the agency transfers the responsibility for the operation and management of water works to a county government or a water services provider.

16. Additionally, the proposed new paragraph (ba) further states that a national public water work shall not be transferred to a county government.

17. **Clause 5** of the Bill introduces a new section 68A to the Act. The proposed new section 68A will require every water works development agency to obtain a license from the Regulatory Board based on the functions outlined in Clause 4 of the Bill. Furthermore, the proposed new section tasks the Regulatory Board, with the approval of the Cabinet Secretary, to publish in the *Gazette* and on its website the standards and conditions for the licensing of these agencies.

18. **Clause 6** of the Bill seeks to amend Section 69 of the Act. Specifically, the amendment narrows the scope of completed waterworks that are to be handed over by a waterworks development agency, by excluding national public water works from those to be handed over. Additionally, the amendment proposes the omission of references to the 'joint committee' and 'authority of county governments'.

19. Section 69 stipulates that following the commissioning of all waterworks, the waterworks development agency must enter into an agreement with either the county government, the joint committee, or the authority of county governments. This is done jointly with the water service provider whose service area encompasses the said water works. The intent behind this agreement is to authorize the use of the water works to furnish water services, either by the joint committee, the authority, or the water services provider.
20. **Clause 7** of the Bill proposes amendments to section 72 of the Act, introducing a new mandate for the Water Services Regulatory Board to evaluate and approve water, sewerage, and bulk water tariffs across various domains, including domestic, commercial, and irrigation uses. This proposed change expands the Board's existing role, which involves recommending tariffs. Additionally, the amendment seeks to remove the Board's function to accredit water services providers. Within the Act, section 72 broadly outlines the powers and functions of the Regulatory Board. These include setting national water service standards, recommending water and sewerage tariffs with a keen eye on consumer protection, overseeing and regulating water service providers, ensuring compliance, managing a national water services database, addressing consumer grievances, and offering counsel to the Cabinet Secretary on pertinent water service issues.
21. **Clause 8** of the Bill proposes to amend section 75 of the Act, which pertains to the "Register of licensed water services providers." The proposed amendments encompass two primary changes:
- (a) The details required for the registration of all licensed water services providers are expanded. While the original text of section 75(1)(a) mandates the inclusion of "their names and addresses" in the register, the amendment seeks to replace this with a more detailed set of contact information: "their names, telephone numbers, electronic mail and postal addresses."
 - (b) The proposed amendment also changes the terminology in section 75(1)(c). The original text makes reference to the services for which the water services providers are "accredited." The amendment proposes the replacement of "accredited" with "licensed."
22. **Clause 9** of the Bill seeks to introduce multiple amendments to section 93 of the Act, which pertains to Public Private Partnerships (PPP) in the realm of water services:

- (a) The current Section 93(1) of the Act empowers a "water services provider" to engage in a PPP. The proposed amendment seeks to replace this subsection by allowing a "contracting authority" instead to initiate a PPP.
- (b) Section 93(3) of the Act provides for cases where a third party, involved in a PPP with a water services provider, possesses assets or infrastructure for water services. The amendment intends to revise this subsection, underscoring that the PPP agreement must outline the specific terms and conditions governing the utilization of these assets.
- (c) A proposed new subsection, (3A), addresses situations where a third party does not fulfill their commitment to complete a project. Under such circumstances, the contracting authority assumes the responsibility to ensure the project's completion.
- (d) A subsequent proposed subsection, (3B), dictates that if both a third party and the contracting authority contribute to a project, they are mandated to coordinate their activities and consult regularly throughout the project's duration.
- (e) Additionally, subsection (3C) requires parties in a PPP agreement to clearly identify and allocate specific project segments. Furthermore, this subsection directs the parties to distinctly outline both their financial and non-financial obligations associated with each project component.

23. **Clause 10** of the Bill proposes amendments to Section 100 of the Act, which deals with the supply of bulk water. Specifically, the clause proposes the insertion of two new subsections, (4) and (5), after subsection (3) in Section 100 of the Act.

- (a) New subsection (4) aims to make an explicit provision, stating that notwithstanding any other stipulations in this Act, all bulk water supply services, which primarily aim to supply water in bulk to a water services provider in a county or multiple counties different from the county where the bulk water abstraction works are situated must be executed by waterworks development agencies. These agencies should be established under Section 65 of the Act and should be licensed under section 100.
- (b) Additionally, the proposed new subsection (5) empowers the Cabinet Secretary to create regulations that dictate the methodology in which an application for a license for bulk water supply is to be made.

24. **Clause 11** of the Bill proposes a focused amendment to Section 114 of the Act, which outlines the objectives of the Water Sector Trust Fund. The amendment aims to broaden the entities to which the Fund caters. Specifically, the introductory part in Section 114 will be enhanced by including the phrase “or any water works development agency” immediately after the term “counties”. This ensures that not just counties, but also any water works development agencies, are eligible to benefit from the provisions and financial grants of the Fund, especially for the development and management of water services in marginalized or underserved areas.
25. **Clause 12** of the Bill seeks to amend Section 119 of the Act, which establishes the Water Tribunal by elaborating on the composition of the Tribunal. The proposed amendment provides that the Water Tribunal is to consist of:
- (a) a Chairperson who shall be an advocate of the High Court of Kenya with no less than ten years of post-qualification experience.
 - (b) two technical experts, one of whom shall be a registered civil engineer and the other a registered water engineer, both with a minimum of ten years' professional experience.
 - (c) two additional members, each holding a degree from a university recognized in Kenya, coupled with at least five years of experience in their relevant fields.
26. Further, the proposed amendment provides for the tenure of the Chairperson and the members as a term of three years, renewable once, and their remuneration and allowances are to be determined by the Judicial Service Commission, in consultation with the Salaries and Remuneration Commission.

CHAPTER TWO

PUBLIC PARTICIPATION

2.1 Attendance by Stakeholders

27. The Committee, pursuant to Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and Daily Nation Newspapers on Wednesday, 30th August, 2023.

The Committee received submissions from the following stakeholders-

- 1) Kenya Association of Manufacturers (KAM);
- 2) The Council of Governors;
- 3) Members of the County Budget and Economic Forum of Taita Taveta County;
- 4) Water Services Regulatory Board (WASREB);
- 5) The National Treasury & Economic Planning-Public Private Partnerships Directorate; and
- 6) Ministry of Water, Sanitation and Irrigation

The Committee met the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry together with relevant Ministry officials on Wednesday, 30th August, 2023 with the main aim of enlightening the Committee further on the provisions as outlined in the Bill and a justification for each of the provisions as proposed in the Bill.

Water Services Provider Association (WASPA) appeared before the Committee but did not supply the Committee with written submissions and were requested to submit the same. However, by the time the Committee was finalizing its report on the Bill, WASPA had not yet submitted their written submissions.

Submissions from Stakeholders and Committee Observations and Determinations on stakeholder proposals

28. The Committee received submissions on specific clauses of the Bill and made various observations and determinations on each proposal as follows-

A. COUNCIL OF GOVERNORS (COG)

In the memorandum, they proposed the following amendments to the Bill-

1. *Clause 2* of the Bill seeks to amend section 2 of the Water Act, No. 43 of 2016 (the 'Act') in the following manner-
 - (a) by inserting the definition of a 'contracting authority' to mean a national or county governmental body seeking to delegate its functions to a private entity.
 - (b) by deleting and substituting the deletion of 'bulk water'. The Act currently defines bulk water' as water supplied to a water services provider by the water services provider making the supply. The Bill proposes to amend this definition by specifying that only a water works development agency or the Water Storage Authority can supply bulk water.

Propose- To amend clause 2(b) to read as follows: "bulk water" means supply of water in bulk by water works development agency or Water Storage Authority of the County Public Works and Services to water service providers for retail.

Justification- County Public Works and Services include storm water management systems in built-up areas and water sanitation services and are thus an exclusive function of the County Governments under the Fourth Schedule of the Constitution. The Gazette Notice of 9th August, 2013 on the transfer of functions unbundled County Public Works and Services in detail.

Committee's Observation/Recommendation

The Committee considered the proposal and resolved to provide a definition of 'bulk water services provider' which would include the County Governments.

- (c) by deleting and substituting the definition of 'water services provider'. The Act currently defines 'water services provider' as a company, public benefits organization or other person providing water services under and in accordance with a licence issued by the Regulatory Board for the service areas defined by the licence. The Bill now proposes to expand this definition by including the words 'agency, authority and state corporation', which expands the scope of entities that can be considered as water services providers.

Propose- To amend clause 2 (c) to read as follows: “Water Services Provider” means a company, agency, authority, state corporation, public benefit organization or any other person established/contracted by County Government providing water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license.

Justification- Water and Sanitation Services are functions vested exclusively under the County Governments which are mandated to establish Water Service Providers under Section 77 of the Act. Further, the Regulatory Board in issuing licenses for provision of water services shall ensure it does not claw back on County functions and shall empower county governments to effectively perform their functions and exercise their powers.

Committee’s Observation/Recommendation

The Committee resolved to retain the definition of ‘water services provider’ as provided for under section 2 of the Water Act, thereby affirming the provision of water services at the retail level as a function of the County Government.

2. *Clause 4* of the Bill proposes an amendment to section 68 of the Act by inserting a new paragraph (ba) immediately after paragraph (b).

(ba) operate water works and provide water services-

(a) Through bulk water purchase agreements with private investors as per the Public Private Partnerships Act, 2021.

(b) Through bulk water purchase agreements with other water services providers.

(c) By operating as a water services provider until the agency transfers the responsibility for the operation and management of water works to a county government or a water services provider.

Additionally, the proposed new paragraph (ba) further states that a national public water work shall not be transferred to a county government.

Propose- To amend the proposed Section 68 (ba) (i) to read as follows- (i) By entering into a bulk water purchase agreement with an investor in accordance with a no objection issued by County Government for the agreement with an investor in accordance with a no objection issued by County Government for the and in accordance with the provisions of the Public Private Partnerships Act, 2021. Provided that a national public water works shall not be transferrable to a county government; and no/any transfer of county water works to the national government shall be done upon arrival by the relevant county government.

Justification- The jurisdiction of WWDAs is limited to operating waterworks and providing water services as a WSP. County Governments therefore need to be part of the negotiations to enter into agreements with investors in PPP agreements meant to enhance water and sanitation service delivery to Counties.

The proviso doesn't provide for consultation between the national and county governments in designation of county waterworks as national public waterworks which is needed as the national government has repeatedly designated and gazetted waterworks and basin areas without involvement and/ or consultation of county governments.

Committee's Observation/Recommendation

The Committee concurred that there is need for consultation between the two levels of Government and there is need for public participation before the Water Works Development Agencies enter into bulk water purchase agreements. As such, the Committee proposed an amendment to this clause by incorporating a requirement for public participation and consultation with the relevant county government.

3. *Clause 6 -Section 69* of the Principal Act is amended-
- (a) by deleting subsection (1) and substituting therefore the following new subsection;
 - 1) As soon as possible, following the commissioning of water works other than national public water works, the water works development agency shall enter into an agreement with any county government or water services provider to provide water services within whose area of jurisdiction the services are located.
 - (b) in subsection (2), by deleting the words, "the joint committee, authority"
 - (c) in subsection (3), by deleting the words . "the joint committee, the authority"

Propose- Oppose deletion of joint committee and authorities in these subsections.

Justification- The establishment of Joint Authorities and Committees aligns to the principle of cooperation in Article 189 (2) of the Constitution and Section 23 of the Intergovernmental Relations Act, 2012.

Committee's Observation/Recommendation

The Committee recognizes the establishment of 'joint committees,' involving representatives from various government levels for specific mandates, as proposed in section 32 of the Intergovernmental Relations Act, 2012 and

aligned with Article 189(1) of the Constitution. This structure supports the principle of cooperative governance, especially vital for water management—which is a shared function. However, the lack of a precise definition for 'joint committees' in the Water Act may hinder the effective implementation of section 69 of the Water Act. As such the Committee concurred that joint committees should be retained and further recommended the inclusion of cross-county water service providers.

4. *Clause 7- Section 72* of the Principal Act is amended in subsection (1)-

a) by inserting a new paragraph immediately after paragraph (b)-

ba) evaluate and approve water and sewerage tariffs, bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;

b) by deleting paragraph (c) and substituting therefor the following new paragraph –

(C) issue and set conditions for licensing of water services providers.

Propose- To amend the proposed Section 72 (ba) to read as follows- (ba) evaluate and approve bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic commercial and irrigation purposes.

Justification- This proposed subsection (ba) purports to vest the functions of county governments in entities controlled by the national government.

Committee's Observation/Recommendation

The Committee concurred with this proposal because the task of evaluating and recommending water and sewerage tariffs for county water service providers is already covered under section 72(b) of the Water Act. Therefore, the focus needed to shift to providing for the evaluation and approval of bulk water tariffs.

5. *Clause 9 -Section 93* of the Principal Act is amended by deleting subsection (1) and substituting therefore the following new sub section-

(1) A contracting authority may enter into a public private partnership or public partnerships for the exercise and performance by another person as a licensee, of some or all of its functions with respect to a part or the whole of its area of water service provision.

Propose- To amend the proposed Section 93 (1) to read as follows: A contracting authority may enter into a public private partnership or public partnerships for the exercise and performance by another person as a licensee, of some or all of its functions.

Justification- Allowing a Contracting Authority at National Level to exercise functions in water service provision under a PPP framework encroaches upon functions of County Governments and Water Service Providers.

Committee's Observation/Recommendation

The Committee addressed the concerns raised with a proposed amendment to Clause 4, requiring consultation with the County Governments and ensuring public participation. Additionally, the Committee has narrowed the application of the Public-Private Partnership (PPP) framework in the context of the National Government to exclusively cover the provision of bulk water services.

(3) Where the person entering into an agreement with the contracting authority owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which assets may continue to be used

Propose- To delete 'the provision of water services' from the above amendment.

Justification- Restrict to the 'Contracted Function' to clearly delineate the scope of agreements to avoid any overlaps of functions between National and County Governments.

Committee's Observation/Recommendation

The Committee concurred with this proposal to delete the words 'provision of water services and insertion of the words 'contracted function'. This clarifies that any use of assets or infrastructure must be directly related to the specific functions or services agreed upon. This precision can help prevent ambiguities in agreements and ensure that assets are used appropriately and as intended.

6. *Clause 10- Section 100* of the Principal Act is amended by inserting the following new subsections immediately after subsection (3)-

(4) Notwithstanding any provision in this Act, all bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located shall be undertaken by waterworks development agencies established under section 65 of this Act and licensed under this section.

(5) The Cabinet Secretary may make regulations prescribing the manner in which an application for a license for bulk water supply shall be made.

Propose- To amend (4) to include the County Public Works and Services, Joint Committees and Joint Authorities of County Governments together with Waterworks Development Agencies to supply water in bulk to water service providers.

To amend (5) to include ‘consultation with County Governments’

Justification- Assigning the bulk water supply solely to Water Works Development Agencies serves to limit the scope of the county functions and powers.

This is guided by and aware of the need for consultations and cooperation between both levels of Government in the conduct of their mutual relations.

Committee’s Observation/Recommendation

The Committee resolved to amend the clause by deleting “waterworks development agencies established under section 65 of this Act” and inserting “bulk water services providers.” This change includes counties within the definition of bulk water services providers, thereby eliminating the exclusivity previously granted to Water Works Development Agencies as the sole providers of bulk water supply services.

7. New Clauses -

- i.) **Propose-** Amend section 78(b) of the Principal Act to define the county assets in context.

Justification- The Act needs to be reviewed to clarify functions of water development agencies which touch on county assets. There is need for streamlining section 69 on management of liabilities between national and county government.

Committee’s Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

- ii.) **Propose-** Amend section 29, 30, 42, 26, 64 and 65.

Justification- Review to ensure harmonization of functions, effective representation of county government where there are cross-cutting functions such as water service standards, basis water management, and flood management among others.

Committee's Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

- iii.) **Propose-** Amend section 74, 97, 98 and Sections 101, 106.

Justification- Amend the Act to incorporate participation of county governments in such provision and regulation of provision of water services sections 74, 97, 98 as recognized under sections 101, 106 on the role of county government regarding complaints received on service provision and enforcement.

Amend the Act to clarify that water service provision as captured under Section 76 and 79 and other sections of the Act is a function of County Governments.

Committee's Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

- iv.) **Propose-** Amend section 94.

Justification- To comply with the duty of governments to progressively realise the right to water in rural and undeveloped areas.

Committee's Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

- v.) **Propose-** Amend section 109 and 117.

Justification- To remove the role of counties in sewerage and sanitation from the ambit of both the Regulatory Board and the water Sector Trust Fund.

Committee's Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

- vi.) **Propose-** Amend sections 87 and 92.

Justification- Amend or clarify through regulations how public participation in licencing and monitoring provision of water services.

Committee's Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

B. WATER SERVICE REGULATORY BOARD

The Water Service Regulatory Board proposed the following amendments-

1. Long Title - The '*Title of the Act*' to read as follows-

Propose- 'An ACT of Parliament to amend the Water Act, 2016 to provide for Public Private Partnerships arrangements, licencing and for connected purposes.

Committee's Observation/Recommendation

The Committee considered this proposal and found that the term 'for connected purposes' as provided in the long title as, already covers all aspects that may be related to private partnership agreements including licensing of the Water, Works Development Agencies.

2. *Clause 2 - Section 2* of the Principal Act be amended by inserting the following new definition in proper alphabetical sequence-

- a. "contracting authority" means at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or at the county government level, the county government or county corporation which intends to have its functions undertaken by a private party

Purpose- the amendment intends to align the definition of a contracting authority in line with the Public Private Partnerships Act for purposes of operationalizing PPP arrangements in the water sector.

- b. by deleting the definition of "water services provider" and substituting therefore with the following new definition;
'water services provider' means a company, agency, authority, state corporation, public benefit organization or any other person providing water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license

Purpose- the amendment seeks to widen the scope of water service providers including those providing bulk water supplies. This shall ultimately allow WASREB

to license all the water service providers covered under this category in accordance with the provisions of the ACT.

Propose- To add 'county agency' under the definition of a contracting authority under (ii). Additionally, WASREB supports the expansion of the scope of 'water service providers' as the current definition is restrictive to companies who operate as either county or private water service provider.

Committee's Observation/Recommendation

The Committee adopted this proposal.

3. *Clause 3 - Section 32 of No. 43 of 2016* is proposed to be amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (f)-
(g)enter into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act;

(h)enter into a bulk water purchase agreement with a water works development agency.

Propose- To amend (h) to allow National Water Harvesting and Storage Authority to enter into a bulk water purchase agreement with other Water Service Providers subject to economic efficiency criteria determined by the Regulatory Board is in line with consumer protection standards.

Committee's Observation/Recommendation

The Committee concurred that the bulk water purchase agreements entered into by the National Water Harvesting and Storage Authority should be subject to criteria set by the Water Services Regulatory Board to ensure their financial integrity, safeguard consumer interests, and guarantee equitable access to water services at fair prices. The Committee adopted this proposal.

4. *Clause 4 - Section 68 of No. 43 of 2016* is proposed to be amended by inserting the following new paragraph immediately after paragraph (b):

(ba) operate water works and provide water services:

- i. by entering into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021;*
- ii. by entering into a bulk water purchase agreement with a water service provider; or*
- iii. as a water service provider until such a time as the water works development agency transfers responsibility for the operation and*

*management of water works to a county government or water services provider in whose area of jurisdiction the water works is located:
Provided that a national public water works shall not be transferable to a county government.*

Propose- To amend 68 (ba) (ii) to read "by entering into a bulk water purchase agreement with a water services provider subject to economic efficiency criteria determined by the Regulatory Board. Further, delete section (ba) (iii) as this is already catered for under section 68 (b) of the Water Act 2016.

Committee's Observation/Recommendation

The Committee concurred that the bulk water purchase agreements entered into by the Water Works Development Agencies should be subject to criteria set by the Water Services Regulatory Board to ensure their financial integrity, safeguard consumer interests, and guarantee equitable access to water services at fair prices. The Committee adopted this proposal. However, on the proposal to delete clause (ba)(iii), the Committee resolved to clarify that the agreements to which the clause would apply would be for bulk water purchase agreements.

5. *Clause 5* - on the Proposal of insertion of a new section 68A in No. 43 of 2016 immediately after section 68 as follows-

68A (1) Each water works development agency shall be licensed by the Regulatory Board with respect to the functions under section 68 (b) and (c) of this Act.

(2) The Regulatory Board shall, upon commencement of this Act and as may be necessary thereafter, and with the approval of the Cabinet Secretary, publish the standards and conditions for licensing of water works development agencies under this section.

Propose- The phrase "with the approval of the Cabinet Secretary" under section 68A (2) to be deleted as it negates the statutory powers donated to the Regulatory Board under section 71 of the Water Act 2016.

Justification - It negates the statutory powers donated to the Regulatory Board under section 71 of the Water Act, 2016.

Committee's Observation/Recommendation

The Committee adopted this proposal in view of sections 71 and 72(1) (a) of the Water Act, as they relate to the functions and powers of the Regulatory Board.

6. *Clause 6 -Section 69* of the Principal Act is amended-
- (a) by deleting subsection (1) and substituting therefore the following new subsection;
 - 2) As soon as possible, following the commissioning of water works other than national public water works, the water works development agency shall enter into an agreement with any county government or water services provider to provide water services within whose area of jurisdiction the services are located.
 - (b) in subsection (2), by deleting the words, “the joint committee, authority”.
 - (c) in subsection (3), by deleting the words “the joint committee, the authority”.

Propose- Section 69 (1) to be deleted in entirety as it contravenes Article 189 of the COK which ensures collaboration between the National and County Governments.

Committee’s Observation/Recommendation

The Committee recognizes the establishment of 'joint committees,' involving representatives from various government levels for specific mandates, as proposed in section 32 of the Intergovernmental Relations Act, 2012 and aligned with Article 189(1) of the Constitution. This structure supports the principle of cooperative governance, especially vital for water management—which is a shared function. However, the lack of a precise definition for 'joint committees' in the Water Act may hinder the effective implementation of section 69 of the Water Act. Further, the Committee resolved to insert a definition of ‘joint committees’ and retain section 69 as provided for in the Water Act.

7. *Clause 7 Section 72* of the Principal Act is amended in subsection (1)-
- c) by inserting a new paragraph immediately after paragraph (b)-

ba) evaluate and approve water and sewerage tariffs, bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;

- d) by deleting paragraph (c) and substituting therefor the following new paragraph –

(C) issue and set conditions for licensing of water services providers

Propose- To maintain the previous section 72 (b) but replace the word "recommend" with approve. Add sub-section (bb) to read as follows: "Evaluate and approve tariffs for irrigation purposes" Section 72 (c) to be rephrased to read-; "Issue licenses and set conditions for water service provision"

Committee's Observation/Recommendation

The Committee concurred with the proposal to insert subsection (bb) for the reason that this clause would enable WASREB to regulate water use for irrigation more effectively; ensuring water is utilized efficiently and sustainably. By setting and approving tariffs, WASREB can incentivize the adoption of water-saving technologies and practices, and prevent over-extraction of water resources, thus protecting ecosystems and securing water availability for future generations.

The Committee further concurred with the proposal to rephrase section 72(c) to "*issue licenses and set conditions for water service provision*". This clearly outlines two distinct but related regulatory functions: the issuance of licenses and the setting of conditions that govern the provision of water services. This delineation ensures that the regulatory authority's roles are comprehensively covered, encompassing both the licensing process and the broader regulatory framework that guides service provision.

However, the Committee maintained that section 72(b) of the Water Act, 2016 in so far as it relates to the Regulators role in recommending and approving water and sewerage tariffs to the water services providers be retained. The focus needed to shift to providing for the evaluation and recommendation of bulk water tariffs.

8. *Clause 8 - Section 75* of the Principal Act is amended in subsection 1 paragraph (c) by deleting the word "accredited" and substituting therefor the word "licensed".

Comments- WASREB supports this amendment as it is.

9. *Clause 9 -Section 93* of the Principal Act is amended by deleting subsection (1) and substituting therefore the following new sub section-

(1) A contracting authority may enter into a public private partnership or public partnerships for the exercise and performance by another person as a licensee, of some or all of its functions with respect to a part or the whole of its area of water service provision.

Comments- The amendments allow all water service providers under the Act to enter into PPP arrangements as the current provision under Water Act 2016 only allows county water service providers to enter into PPP arrangements.

10. *Clause 10- Section 100* of the Principal Act is amended by inserting the following new subsections immediately after subsection (3)-

(4) Notwithstanding any provision in this Act, all bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located shall be undertaken by waterworks development agencies established under section 65 of this Act and licensed under this section.

Propose- Delete the proposed subsection 100(4).

Justification - The provision violates Article 189 of the COK and section 86 of the Water Act, 2016 on the requirement of commercial viability.

Committee's Observation/Recommendation

The Committee resolved to amend the clause to provide that bulk water supply services shall be undertaken a bulk water service provider which includes agencies at both levels of Government.

(5) The Cabinet Secretary may make regulations prescribing the manner in which an application for a license for bulk water supply shall be made.

Propose- To delete the proposed subsection 100 (5).

Justification- Section 100 (5) to be deleted since these powers are already donated to the Regulatory board under section 71.

Committee's Observation/Recommendation

The Committee considered this proposal and rejected it on the basis that Section 142 of the Water Act already grants the Cabinet Secretary the authority to make regulations.

C. KENYA ASSOCIATION OF MANUFACTURERS

In the memorandum, they proposed the following amendments to the Bill:

1. *Clause 3, Section 32* of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (f):
 - (g) enter into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act;
 - (h) enter into a bulk water purchase agreement with a water works development agency.

Propose- That a template of a bulk water purchase agreement is added to the Schedule or subsidiary legislation of this Bill.

Justification- A template ensures consistency in formatting and structure across multiple documents. This makes the document easier to read and reduces the risk of errors and omissions. Furthermore, the use of a template enhances uniformity.

Committee's Observation/Recommendation

The Committee did not carry this proposal for the following reasons:

- (a) Water supply needs and conditions can vary significantly across different regions and over time. A one-size-fits-all template may not be able to accommodate the unique aspects of each agreement, potentially leading to inadequate or inefficient agreements that don't meet the specific needs of the parties involved.
 - (b) The water sector is dynamic, with frequent advancements in technology, shifts in market conditions, and evolving environmental regulations. A static template embedded in the Water Act would likely become out-dated quickly, necessitating frequent legislative amendments to remain relevant.
2. *Clause 7, Section 72* of the principal Act is amended in sub-section (1):
- a. by inserting a new paragraph immediately after paragraph (b):
 - (ba) evaluate and approve water and sewerage tariffs, bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;
 - b. by deleting paragraph (c) and substituting therefor the following new paragraph: (c) issue and set conditions for licensing of water services providers.

Propose- That this clause is deleted.

Justification- This power should remain with the Regulatory Board. The clause has removed the Regulatory Board's power to accredit water service providers. Further, the Bill has not indicated the alternative entity that will have the power to accredit water service providers. Accreditation of water service providers has the following benefits:

- a. ensures that water service providers meet set standards for delivering high quality services. Consequently, customers can have confidence in the quality and reliability of the services they receive;
- b. ensures that water service providers comply with health and safety standards in their operations. This includes water treatment processes and testing protocols to prevent contamination of water; and
- c. enhances the reputation and credibility of water service providers, making them more attractive to investors.

Committee's Observation/Recommendation

The Committee concurred that accreditation is vital and serves as a mechanism for quality assurance, indicating that a WSP meets certain standards beyond the minimum regulatory requirements. It can be seen as a mark of excellence or higher competency in service provision. As such, rather than deleting the clause, the Committee proposed an amendment to clause 7 that would incorporate licensing, setting conditions and accreditation of the WSP's.

3. *Clause 10, Amendment of Section 100 of the Water Act 2016 to provide that all water bulk water supply services in a county shall be undertaken by waterworks development agencies. Section 100 - Supply of bulk water*

Section 100 of the principal Act is amended by inserting the following new subsections immediately after subsection (3):

(4) Notwithstanding any provision in this Act, all bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located shall be undertaken by water works development agencies established under section 65 of this Act and licensed under this section.

(5) The cabinet Secretary may make regulations prescribing the manner in which an application for a licence for bulk water supply shall be made.

Propose- The deletion of this amendment

Justification- Counties should be exempt from the requirements of the proposed amendment to ensure water remains affordable to water users within counties as there is a need for the cost of water supplied to residents and businesses in a county to be maintained at a low level, to ensure it remains affordable. This will ensure that Kenya attains the right to clean and safe water in adequate quantities is an economic and social right under Article 43 (1) (d) of the Constitution. The Bill seeks to make it mandatory for counties that do not produce their own water to purchase the commodity, consequently, this proposal will lead to an increase in the price of water paid by the consumers.

Committee's Observation/Recommendation

The Committee resolved to amend the clause to provide that bulk water supply services shall be undertaken a bulk water service provider which includes agencies at both levels of Government.

4. (Water use charges for the salt sector) - Propose the introduction of *new provisions* under *section 100* on bulk water under the Water Act to provide for the development of regulations on bulk water and purchase agreements and a schedule to prescribe the agreement forms as follows:

Section 100 (3) The Cabinet Secretary shall make Regulations for better carrying into effect provisions on bulk water purchase agreements and prescribed agreement forms for bulk water purchase.

Justification- The proposed new provisions for bulk water purchase agreements are progressive provisions and will support industries that utilize bulk water for their operations. Additionally, there is a need to develop regulations to further expand on the new provisions and allow for schedules to be included outlining items such as templates to guide agreements which will enhance uniformity.

Committee's Observation/Recommendation

The Committee observed that section 142(1) empowers the Cabinet Secretary to make regulations with respect to any matter which by the Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed. Therefore, this matter has adequately been provided for and therefore the Committee rejected the proposal.

5. *New provision-* Water use charges for the salt sector.

Propose- The charges for water use for the salt sector be reduced.

Justification- Water use charges were increased at almost 90% and the requirement is monthly. The increment has led to a huge financial implication to the salt industry as they require huge water use from boreholes. Charges on renewal of permits for bore holes have increased drastically. A single borehole increased to 90,000 shillings for the renewal permit. This has increased the cost of doing business for the salt sector, which has contributed to the increase in the cost to the consumer. This is further compounded by a delay in the time taken to acquire a borehole permit. Permits applied for and paid for in the past year or prior to the application of the Act have not been issued. This may negatively affect manufacturers as the Water Resource Authority may charge them at the new rates or charges.

Committee's Observation/Recommendation

The Committee reviewed the proposal and determined it was not within the scope of the Bill as published. Consequently, it may be considered in future deliberations.

D. THE NATIONAL TREASURY AND ECONOMIC PLANNING

(PUBLIC PRIVATE PARTNERSHIPS (PPP) DIRECTORATE)

The National Treasury and Economic Planning proposed the following amendments-

1. *Clause 2*, on the proposed amendment of the definition of the term “water service provider”

Propose- Amending the definition of “water service provider” to adopt the following definition:

“water service provider” to mean a company, agency, authority, **contracting authority**, state corporation, public benefit organization or any other person providing water services in accordance with a licence issued by the Regulatory Board for the services areas specified in the licence.

Justification- The proposed adoption of the definition is aligned to the definition of a contracting authority under clause 2.

Committee’s Observation/Recommendation

The Committee resolved that the term ‘contracting authority’ would be inserted in the definition of ‘*bulk water services provider*’ rather than in the definition of ‘*water services provider*’.

2. *Clause 9-* Entering into a public private partnership or public partnerships

Propose- Clause 9 be amended to read as follows:

“A contracting authority may enter into a public private partnerships arrangement for the exercise...”

Justification- The words “entering into a public private partnerships arrangement” is in tandem with the syntax used in the PPP Act, 2021.

Committee’s Observation/Recommendation

The Committee rejected this proposal on the basis that limiting partnerships exclusively to PPPs could unnecessarily restrict the scope of collaboration, excluding potentially beneficial partnerships solely between public entities. The water sector often involves infrastructure and resources that span multiple jurisdictions. Limiting partnerships to PPPs could restrict the ability of water service providers to

collaborate across county lines or with other public entities in managing shared water works efficiently.

3. *Clause 93 (1)*- Entering into a public private partnership or public partnerships

Propose- Clause 93 (1) be amended to read as follows:

“A Water Service provider may enter into a public private partnerships arrangement for the exercise...”

Justification- The words “entering into a public private partnerships arrangement” is in tandem with the syntax used in the PPP Act, 2021.

Committee’s Observation/Recommendation

The Committee observed that the Bill did not have a Clause 93(1) to which the amendment was being proposed.

E. MEMBERS OF THE COUNTY BUDGET AND ECONOMIC FORUM OF TAITA TAVETA COUNTY

In their memorandum, they proposed the following amendment to the Bill:

1. **Clause 2 – Definition of Contracting Authority**

- i. **Proposal-**Under the definition of ‘contracting authority’ there is need for an interpretation of the word used therein ‘private party’.

Justification- Section 2 of the Water Act, 2016 does not give an interpretation over the same.

Committee’s Observation/Recommendation

The Committee adopted the definition of a ‘private party’ as provided for under section 2 of the Public Private Partnerships Act, 2021.

- ii. **Proposal-** The interpretation of the service provider remains as in Section 2 of the Water Act, 2016 ("the principal Act") and an interpretation of the word “company”

- *a water services provider established by county government as a public limited liability company under the Companies Act, 2015*

Justification- For the definition of “water services provider”, the term was already defined in the principal Act. However, the Bill has added “agency, authority and state corporations” as new entities that can be water service providers in this Bill.

The Bill has widened the scope of the definition to allow more entities to be water service providers but it is important to also ensure we live to the spirit of the COK 2010 CHAPTER FIVE—LAND AND ENVIRONMENT PART 2—ENVIRONMENT AND NATURAL RESOURCES

Obligations in respect of the environment.

69. (1) The State shall—

(d) encourage public participation in the management, protection and conservation of the environment;

Committee’s Observation/Recommendation

The Committee resolved to retain the definition of a ‘water service provider’ as provided in the Water Act. Further, the Committee resolved to insert the definition of ‘bulk water services provider’ in order to differentiate between a ‘water service provider’ and further provide a funding option for the Water Works Development Agencies through Public Private Partnerships.

2. Clause 3 –

Proposal- A template of a bulk water purchase agreement is added to the Schedule or subsidiary legislation of this Bill.

Justification- We conclude that: Section 32 of the Water Act, 2016 ("the principal Act") is unconstitutional. The COK 2010 FOURTH SCHEDULE (Article 185(2), 186(1) and 187(2))

Distribution of Functions between the National Government and the County Governments

PART 1—NATIONAL GOVERNMENT

19. National public works.

33. Public investment.

PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012 and The Public Finance Management (Public Investment Management) Regulations, 2022 (Legislative Supplement No. 29) Kenya Gazette Supplement No. 52 of 1st April, 2022 has provided a very clear and elaborate process to undertake Public Investment.

We further recommend that there is need to amend the entire Section 32 of the ("the principal Act") and all agreements should be developed in reference to the PFM Act,2012 and the Regulations.

Committee's Observation/Recommendation

The Committee did not carry this proposal for the following reasons:

- a) Water supply needs and conditions can vary significantly across different regions and over time. A one-size-fits-all template may not be able to accommodate the unique aspects of each agreement, potentially leading to inadequate or inefficient agreements that don't meet the specific needs of the parties involved.
- b) The water sector is dynamic, with frequent advancements in technology, shifts in market conditions, and evolving environmental regulations. A static template embedded in the Water Act would likely become out-dated quickly, necessitating frequent legislative amendments to remain relevant.

3. Clause 4 –

Proposal- they conclude that:

1. Section 68, 69, of the Water Act, 2016 ("the principal Act") is unconstitutional.

Justification- The COK 2010 FOURTH SCHEDULE (Article 185(2), 186(1) and 187(2))

Distribution of Functions Between the National Government and the County Governments

PART 1—NATIONAL GOVERNMENT

19. National public works.

In addition, COK 2010 CHAPTER FIVE— LAND AND ENVIRONMENT

Obligations in respect of the environment.

69. (1) The State shall—

(d) encourage public participation in the management, protection and conservation of the environment;

The COK 2010 FOURTH SCHEDULE (Article 185(2), 186(1) and 187(2))

Distribution of Functions Between the National Government and the County Governments

PART 2 – COUNTY GOVERNMENTS

10. Implementation of specific national government policies on natural resources and environmental conservation, including—

- (a) soil and water conservation; and
- (b) forestry.

11. County public works and services, including—

- (a) storm water management systems in built-up areas; and
- (b) water and sanitation services. Finally, CHAPTER FOUR – THE BILL OF RIGHTS

PART 2 – RIGHTS AND FUNDAMENTAL FREEDOMS

Economic and social rights.

43. (1) Every person has the right—

- (d) to clean and safe water in adequate quantities;

CHAPTER FOUR—THE BILL OF RIGHTS PART 1—GENERAL PROVISIONS RELATING TO THE BILL OF RIGHTS

Application of Bill of Rights.

20. (1) The Bill of Rights applies to all law and binds all State organs and all persons.

(5) In applying any right under Article 43, if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles—

- (a) it is the responsibility of the State to show that the resources are not available;
- (b) in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and
- (c) the court, tribunal or other authority may not interfere with a decision by a state organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

Committee's Observation/Recommendation

Article 189(2) of the Constitution acknowledges that certain functions or powers can be assigned to multiple levels of government, thereby placing them within the shared jurisdiction of both the National and County Governments. In this context, the responsibility for developing, maintaining, and managing national public water works is allocated to the National Government. Conversely, the management of county public works and services, which includes water and sanitation services, falls

under the purview of the county governments. Based on this, the Committee did not concur with this proposal.

4. Clause 7 –

Proposal- For paragraph (ba), the Bill has added bulk water tariffs as one of the tariffs that the Regulatory Board will evaluate and approve. It is important to note that bulk water tariffs were not present in the principal Act.

For new paragraph (c), the clause has removed the Regulatory Board's power to accredit water service providers.

We do not agree with this proposal as the Bill has not indicated the alternative entity that will have the power to accredit water service providers.

Consequently, we propose that this power remains with the Regulatory Board.

Justification- Accreditation of water service providers has the following benefits:

- a. accreditation ensures that water service providers meet set standards for delivering high quality services. Consequently, customers can have confidence in the quality and reliability of the services they receive;
- b. accreditation ensures that water service providers comply with health and safety standards in their operations. This includes water treatment processes and testing protocols to prevent contamination of water; and
- c. accreditation enhances the reputation and credibility of water service providers.

Committee's Observation/Recommendation

The Committee concurred that accreditation is vital and serves as a mechanism for quality assurance, indicating that a WSP meets certain standards beyond the minimum regulatory requirements. It can be seen as a mark of excellence or higher competency in service provision. As such, rather than deleting the clause, the Committee proposed an amendment that would incorporate licensing, setting conditions and accreditation of the WSP's.

5. Clause 9 –

Proposal- We propose that Section 93 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new sub section:

(1) A contracting authority may enter into a public investment for the exercise and performance by another person as a licensee, of some or all of its functions with respect to a part or the whole of its area of water service provision as in the PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012 and The Public Finance Management (Public Investment Management) Regulations, 2022 (Legislative Supplement No. 29) Kenya Gazette Supplement No. 52 of 1st April, 2022.

Justification- Not Provided

Committee's Observation/Recommendation

This proposal to amend Section 93 has the potential to dilute the benefits offered by Public-Private Partnerships (PPPs). PPPs are designed to leverage the strengths of the private sector, including its efficiency, innovation, and capacity for risk management, to enhance the provision of public services like water supply. By shifting the framework to a broader public investment model, as suggested, there's a significant risk of losing these critical benefits. This change could lead to decreased efficiency, slower project implementation, and potentially higher costs for water service provision, undermining the goal of improving access to quality water services for the public. The existing PPP model provides a structured approach for attracting private investment and expertise, crucial for addressing infrastructure gaps and ensuring sustainable, high-quality water service delivery. As such, the Committee rejected this proposal.

6. Clause 10 –

Proposal- We conclude that Section 100 of the Water Act, 2016 ("the principal Act") is unconstitutional since;

COK 2010 CHAPTER FIVE—LAND AND ENVIRONMENT

PART 2—ENVIRONMENT AND NATURAL RESOURCES

Obligations in respect of the environment.

69. (1) The State shall—

(d) encourage public participation in the management, protection and conservation of the environment;

The COK 2010 FOURTH SCHEDULE (Article 185(2), 186(1) and 187(2))

Distribution of Functions Between the National Government and the County Governments

PART 2 – COUNTY GOVERNMENTS

10. Implementation of specific national government policies on natural resources and environmental conservation, including—
 - (a) soil and water conservation; and
 - (b) forestry.
11. County public works and services, including—
 - (a) storm water management systems in built-up areas; and
 - (b) water and sanitation services.

They propose that the same be deleted.

Justification- Not Provided

Committee's Observation/Recommendation

The Committee resolved to amend the clause to provide that bulk water supply services shall be undertaken a bulk water service provider which includes agencies at both levels of Government.

F. THE MINISTRY OF WATER, SANITATION AND IRRIGATION

The Ministry had an extensive deliberation with the Committee making reference to some of the proposals raised by the various Stakeholders outline above and agreed on the following proposals below -

1. *Clause 2* of the Bill seeks to amend section 2 of the Water Act, No. 43 of 2016 (the 'Act') in the following manner-
 - (a) by inserting the definition of a 'contracting authority' to mean a national or county governmental body seeking to delegate its functions to a private entity.
 - (b) by deleting and substituting the deletion of 'bulk water'. The Act currently defines bulk water' as water supplied to a water services provider by the water services provider making the supply. The Bill proposes to amend this definition by specifying that only water works development agency or the Water Storage Authority can supply bulk water.

Observation

The Committee noted with concern that Clause (2b) essentially leaves out the Counties and ignores their mandate as provided for in the Constitution, further, County Public Works and Services include storm water management systems in built-up areas and water sanitation services and are thus an exclusive function of the County Governments under the Fourth Schedule of the Constitution. The Gazette Notice of 9th August, 2013 on the transfer of functions unbundled County Public Works and Services in detail.

Ministry Response

The Cabinet Secretary assured the Members that going forward all the projects initiated by the Ministry would be going the full mile as initially Counties would fail in the last mile of distribution and at the time of amending the Water Bill no County had developed any County Public Works and Services thus the omission. Further, on the definition of 'bulk water' on Clause (2b) it was based on the fact that investors would want to engage with a water works development for security of payment.

Joint Resolution

The agreement was that the amendment should include County Government's role in Clause (2b) to also supply bulk water. Further the inclusion of the National Water Harvesting & Storage Authority in entering into the water purchase agreements with the Water Works development Authority.

(c) by deleting and substituting the definition of 'water services provider'. The Act currently defines 'water services provider' as a company, public benefits organization or other person providing water services under and in accordance with a license issued by the Regulatory Board for the service areas defined by the license. The Bill now proposes to expand this definition by including the words 'agency, authority and state corporation', which expands the scope of entities that can be considered as water services providers.

Observation- Members noted that the proposed definition would have a ripple effect and thus the definition should read as follows- "Water Services Provider" means a company, agency, authority, state corporation, public benefit organization or any other person established/contracted by County Government providing water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license as Water and Sanitation Services are functions vested exclusively under the County Governments which are mandated to establish Water Service Providers under Section 77 of the Act.

Ministry Response- The Ministry's intention was to try and have a funding option for the WWDAs through PPPs. The intention is to meter in bulk and be able to sell the water to Water Service Providers.

Further, the Committee was informed that they picked the definition of a contracting authority from the PPP Act.

Joint Resolution

The joint agreement was to consider having a definition for a bulk water service provider instead, so as to make it different from a water service provider.

2. *Clause 4* of the Bill proposes an amendment to section 68 of the Act by inserting a new paragraph (ba) immediately after paragraph (b).

(ba) operate water works and provide water services-

(a) Through bulk water purchase agreements with private investors as per the Public Private Partnerships Act, 2021.

(b) Through bulk water purchase agreements with other water services providers.

(c) By operating as a water services provider until the agency transfers the responsibility for the operation and management of water works to a county government or a water services provider.

Additionally, the proposed new paragraph (ba) further states that a national public water work shall not be transferred to a county government.

Observation

The Committee noted that it was essential to add the phrase 'in consultation with the County Government' as the jurisdiction of WWDAs is limited to operating waterworks and providing water services as a WSP. County Governments therefore need to be part of the negotiations to enter into agreements with investors in PPP agreements meant to enhance water and sanitation service delivery to Counties.

Ministry Response

The Ministry informed the Committee that on the No objection Clause by the County Government, the request is to have the words public participation instead.

Joint Resolution

The joint agreement was that the adoption of the words in consultation with the County Governments and Public Participation be carried.

3. *Clause 6 -Section 69* of the Principal Act is amended-

(a) by deleting subsection (1) and substituting therefore the following new subsection;

1) As soon as possible, following the commissioning of water works other than national public water works, the water works development agency shall enter into an agreement with any county government or water services provider to provide water services within whose area of jurisdiction the services are located.

(b) in subsection (2), by deleting the words, “the joint committee, authority”

(c) in subsection (3), by deleting the words, “the joint committee, the authority”

Observation

The Committee needed clarification on why the proposal for the deletion of the term joint authority. What would be the danger of having several joint authorities in the various regions?

Ministry’s Response

The Ministry informed the Committee that the joint authorities were not practical since it introduced several state corporations all over the country that were unmanageable. Since this was not tenable, they decided to have the WWDAs doing the bulk water since it was not achievable.

4. *Clause 7 Section 72* of the Principal Act is amended in subsection (1)-

a) by inserting a new paragraph immediately after paragraph (b)-

ba) evaluate and approve water and sewerage tariffs, bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;

b) by deleting paragraph (c) and substituting therefore the following new paragraph –

(C) issue and set conditions for licensing of water services providers

Observation

The Committee observed that there was need for public participation in the area of concern to ensure there’s a standardized way of charging across all regions through guidelines provided by regulators in consultation with County Governments. Further, the Committee was concerned with the inclusion of irrigation and the argument supporting it.

Ministry’s Response

The Ministry informed the Committee that they had conducted public participation widely and thus the proposed amendment should remain as is. Water needs to be collected, transported and eventually disposed of safely and thus the cost is what informs the tariff and is normally at 75% of the cost of water.

On irrigation, the reason to have it included is to attract investors and to spread the cost of investment to make it viable and commercial as opposed to only relying on domestic consumption which may be unsustainable to pay debts.

There is no intention to make water an expensive commodity to the consumers.

Joint Resolution

The joint agreement was that it's important to guide and give a uniform charge across all the Counties. The regulator could do this in consultation with the Counties.

5. *Clause 9 -Section 93* of the Principal Act is amended by

(a) deleting subsection (1) and substituting therefore the following new subsection-

(1) A contracting authority may enter into a public private partnership or public partnerships for the exercise and performance by another person as a licensee, of some or all of its functions with respect to a part or the whole of its area of water service provision.

(b) deleting subsection (3) and substituting therefor the following new subsection -

(3) Where the person entering into an agreement with the contracting authority owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which assets may continue to be used.

Observation

The Committee was concerned with why the proposal for deletion of the Clauses mentioned in the Bill is necessary.

Ministry's Response

The Ministry explained that the contracting authority would not directly supply water to county utilities but would instead sell water in bulk to Water Works Development Agencies (WWDAs), which in turn would supply to utilities. This model ensures the investor's engagement ends with the WWDAs, streamlining the process and potentially enhancing efficiency in water service provision.

Joint Resolution

The Committee concurred with the Ministry.

6. *Clause 10- Section 100* of the Principal Act is amended by inserting the following new subsections immediately after subsection (3)-

(4) Notwithstanding any provision in this Act, all bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are

located shall be undertaken by waterworks development agencies established under section 65 of this Act and licensed under this section.

(5) The Cabinet Secretary may make regulations prescribing the manner in which an application for a license for bulk water supply shall be made.

Observation

To amend (4) to include the County Public Works and Services, Joint Committees and Joint Authorities of County Governments together with Waterworks Development Agencies to supply water in bulk to water service providers. As proposed by the Council of Governors in their submission, assigning the bulk water supply solely to Water Works Development Agencies serves to limit the scope of the county functions and powers.

Further, to amend (5) to include 'consultation with County Governments'. This is guided by and aware of the need for consultations and cooperation between both levels of Government in the conduct of their mutual relations.

Ministry's Response

The Ministry informed the Committee that both proposals in sub clause (4) and (5) is tenable and that they have always and consistently consulted counties even in the past.

Joint Resolution

The Committee recommended the proposal to adopt a definition of the term 'bulk water service provider' which would incorporate both the National Government agencies as well as the County Government agencies when it comes to the provision of bulk water.

CHAPTER THREE

COMMITTEE OBSERVATIONS

The Committee made the following observations in line with its consideration of the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) –

1. Clause 2

- (a) The Committee noted the necessity of incorporating the words 'county agency' into the definition of a 'contracting authority', specifically in part (b), to accurately reflect the array of county government entities involved in provision of water services. This observation underscores the importance of a legislative framework that inclusively represents the organizational diversity within county governments, ensuring clarity and effectiveness in water service governance at the county level.
- (b) The Committee observed that the term 'private party' had been used under the definition of the term 'contracted authority' but no definition had been provided in the Bill, therefore causing ambiguity and uncertainty as to who a private party is.
- (c) The Committee further observed that the proposal to broaden the definition of 'water services provider' to include 'agency, authority, and state corporation' conflicts with sections 77, 78, and 79 of the Water Act, 2016 which specify that water services providers are established by County Governments. This expansion could introduce contradictions within the Act regarding the designation and governance of water services providers.
- (d) The Committee observed that the proposal in the Bill to amend the definition of the term 'bulk water' to solely mean water supplied only by water works development agencies or the National Water Harvesting and Storage Authority contradicts paragraph 11 of Part 2 of the Fourth Schedule to the Constitution, which assigns water and sanitation services to County Governments. While acknowledging the importance of facilitating funding for these agencies through Public Private Partnerships, the Committee underscored the imperative to include County Governments in these arrangements, preserving their Constitutional role in water service provision.

- (e) Arising from the above observation, the Committee identified the need to introduce a definition of 'bulk water services provider' in the Bill. This definition would provide that a bulk water service provider would include: a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license. This would broaden the scope to include various entities licensed by the Regulatory Board, ensuring a more inclusive approach that aligns with constitutional and regulatory frameworks.
- (f) The Committee identified the absence of a clear definition of 'joint committees' within section 69 of the Water Act, 2016, which introduces uncertainty about the nature and scope of such committees. Noting that section 23 of the Intergovernmental Relations Act provides for the establishment of joint committees by the national or county governments for collaboration between national and county governments to fulfil the objectives of devolution, the Committee observed a critical need to define 'joint committee' in the Water Act. This definition would explicitly include committees formed by both national and county governments, aiming to dispel the existing ambiguity.

2. **Clause 3**

The Committee noted that while this clause sought to expand the mandate of the Water Storage Authority, enabling it to enter into bulk water purchase agreements, these agreements need to be subjected to economic efficiency criteria set by the Water Services Regulatory Board. This approach would promote financial integrity, protect consumer interests, and ensure fair access to water services.

3. **Clause 4**

The Committee observed that, while this proposed amendment seeks to broaden the water works development agencies operational scope by introducing specific methods and partnerships through which the water works development agencies can operate waterworks and provide water services, there is need to specify that: -

- (a) there must be consultation between the two levels of Government and public participation before the water works development agencies enter into bulk water purchase agreements;
- (b) the water works and development agencies can only operate water works and provide bulk water services; and,

- (c) the bulk water purchase agreements must be subjected to an economic efficiency criteria set by the Water Services Regulatory Board.

Further, the Committee observed that the proviso under clause 4 that seeks to provide that national public works shall not be transferrable to a county government goes against the principles of devolution as outlined in the Constitution promoting autonomy and empowering county governments to manage resources for tailored community development. Moreover, it conflicts with sections 69 and 153 of the Water Act, 2016, which already address the transfer of assets.

4. **Clause 5**

The Committee noted that Section 71(1) of the Water Act specifies the Water Services Regulatory Board's independence in exercising its powers and functions, with Section 72(1)(a) affirming its role in setting national standards for water service provision and asset development. Thus, clause 5 of the Bill which requires the Cabinet Secretary to approve the standards and licensing conditions for water works development agencies set by the Regulatory Board, undermines the Board's statutory autonomy. This proposed amendment contradicts the established legislative framework granting the Regulatory Board the authority to operate independently.

5. **Clause 6**

The Committee observed that the proposed clause 6 aims to prevent the handover of national public water works to county governments, water service providers, or joint committees of national and county governments, including the authority of these county governments over such works. This clause contradicts the cooperative governance principle outlined in Article 189 of the Constitution, given that water management is a shared function. Further, the committee acknowledged that section 23 of the Intergovernmental Relations Act provides that: - The national or a county government may establish a joint committee with a specific mandate where such a committee is necessary for the achievement of the objects and principles of devolution provided in Articles 174 and 175 of the Constitution.

6. **Clause 7**

The Committee observed that:

- (a) the proposed insertion of paragraph (ba) which seeks to provide that the Water Services Regulatory Board shall evaluate and approve water and sewerage

tariffs has already been covered under section 72(b) of the Water Act, and therefore the text of the proposed paragraph (ba) should only include the Regulatory Board's function to evaluate and recommend bulk water tariffs.

- (b) there was need to separate the aspect of the evaluation and approval of tariffs for irrigation purposes. Allowing the Regulatory Board to regulate water use for irrigation will ensure that water is utilized efficiently and sustainably. By setting and approving tariffs, WASREB can incentivize the adoption of water-saving technologies and practices, and prevent over-extraction of water resources, thus protecting ecosystems and securing water availability.
- (c) there was need to rephrase the proposal under clause 7(b) by clearly stating that the Regulatory Board shall issue licenses, set conditions and accredit water services providers. This clearly outlines two distinct but related regulatory functions: the issuance of licenses and the setting of conditions that govern the provision of water services. Further, the Committee observed that accreditation is vital and serves as a mechanism for quality assurance, indicating that a WSP meets certain standards beyond the minimum regulatory requirements. It can be seen as a mark of excellence or higher competency in service provision, and therefore should not be deleted from the functions of the Regulator.

7. Clause 9

The Committee observed that under clause 9(b) of the Bill which provides for cases where a third party, involved in a PPP with a water services provider, possesses assets or infrastructure for the provision of water services, specific terms and conditions governing the utilization of these assets must be outlined in the Bill. There is need to clarify that any use of assets or infrastructure must be directly related to the specific functions or services agreed upon. This precision helps prevent ambiguities in agreements and ensure that assets are used appropriately and as intended.

8. Clause 10

The Committee observed that clause 10 of the Bill aims to make an explicit provision, stating that notwithstanding any other stipulations in the Act, all bulk water supply services, which aim to supply water in bulk to a water services provider in a county or multiple counties different from the county where the bulk water abstraction works are situated shall be undertaken by waterworks development agencies. In view of the Committee's deliberation on the insertion of the definition of a 'bulk water service

provider', the Committee noted that there would be need to amend this clause to provide that bulk water supply services shall be undertaken by the bulk water service providers licensed by the Regulatory Board and this would include agencies at both levels of Government.

9. **Clause 12**

The Committee observed that this clause seeks to broaden the composition of the Water Tribunal as established under section 119 of the Water Act. It was noted that the jurisdiction of the Tribunal as outlined in section 121 of the Act includes adjudicating disputes from decisions or orders by various authoritative bodies within the water sector and handling disputes involving water resources or services under business contracts. Recognizing the constitutional role of counties in water and sanitation services, the Committee underscored the need to include two persons (man and a woman) nominated by the Council of County Governors as members of the Tribunal. This would ensure that the Tribunal's composition is comprehensive and reflective of the diverse interests and structures within the Country's water governance framework.

10. CHAPTER FOUR

COMMITTEE RECOMMENDATIONS

The Committee having reviewed the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) and conducted public participation, made the following recommendations:

1. **Clause 2**

- (a) The Committee recommends the insertion of the definition of the term ‘private party’ as provided for under section 2 of the Public Private Partnerships Act, 2021.
- (b) The Committee resolved to retain the definition of a ‘water service provider’ as provided in the Water Act. Accordingly, it proposed the deletion of the definition of ‘water services provider’ as contained in the Bill.
- (c) The Committee resolved to delete the definition of ‘bulk water’ as contained in the Bill and insert a new definition that encompasses the provision of water in bulk by a bulk water services provider to a water service provider. This recommendation aims to ensure that the definition aligns with broader legislative and constitutional mandates, recognizing the role of both county governments and designated agencies in the supply of bulk water, thereby maintaining the integrity and inclusiveness of water service governance.
- (d) The Committee recommends the inclusion of the term 'county agency' within the definition of 'contracting authority' in part (b) to acknowledge county governments' varied organizational roles in water service delivery. This adjustment aims to ensure the law fully captures the range of county-level entities engaged in managing water services, promoting a comprehensive legal structure that supports efficient water governance at the local government level.
- (e) The Committee recommends the insertion of a definition of the term 'joint committee' to address current ambiguities. This definition would include the meaning that a joint committee is a committee established by the national or a county government consisting of the national government and a county government or two or more county governments. This amendment aims to clarify the composition and collaborative nature of joint committees in order to facilitate

better coordination and execution of water management projects, aligning with the broader objectives of devolution and efficient resource management across different levels of government.

2. **Clause 3**

The Committee recommends that Clause 3 be amended by subjecting the bulk water purchase agreements entered into by the Water Storage Authority to economic efficiency criteria set by the Water Services Regulatory Board. This amendment emphasizes the importance of regulatory oversight to ensure these agreements are financially sound and beneficial to consumers.

3. **Clause 4**

The Committee recommends that Clause 4 be amended to clarify the operational scope of water works development agencies in relation to entering into bulk water purchase agreements by incorporating specific provisions that:

- (a) require consultation with the concerned county governments and public participation prior to entering into bulk water purchase agreements, ensuring transparency and inclusivity.
- (b) limit the agencies' operational scope to managing water works and providing bulk water services, defining their roles and preventing operational overreach; and,
- (c) requiring that bulk water purchase agreements adhere to economic efficiency criteria established by the Water Services Regulatory Board, safeguarding financial integrity and consumer interests.

Further, the Committee recommended the deletion of the proviso under clause 4 that provides that: 'Provided that a national public water work shall not be transferrable to a county government'.

4. **Clause 5**

The Committee recommends that clause 5 be amended by deleting the requirement for the approval of the Cabinet Secretary for the standards and licensing conditions for water works development agencies set by the Regulatory Board. Section 71(1) of the Water Act already specifies the Water Services Regulatory Board's independence in exercising its powers and functions, with Section 72(1)(a) affirming its role in setting national standards for water service provision and asset development.

5. **Clause 6**

The Committee recommends that clause 6 be amended to provide that following the commissioning of all waterworks, the water works development agency shall enter into an agreement with a county government, cross-county water service provider, a joint committee, or water services provider to provide water services within whose area of jurisdiction the services are located. This proposed amendment to clause 6 seeks to clarify the entities that a water works development agency may enter into an agreement with when it comes to the handover of completed works. Further, the Committee has recommended the insertion of a definition of 'joint committees' therefore removing any ambiguities that may arise.

6. **Clause 7**

The Committee recommends that clause 7 be amended by:

- (a) separating the functions of the Water Services Regulatory Board to evaluate and recommend water and sewerage tariffs for water service providers which has already been covered under section 72(b) of the Water Act, with the proposed function to evaluate and recommend bulk water tariffs. Therefore, the new paragraph (ba) should only provide for the evaluation and recommendation of bulk water tariffs.
- (b) inserting a new paragraph that provides for the function of the Regulatory Board to evaluate and recommend tariffs for irrigation purposes.
- (c) stating that the Regulatory Board shall issue licenses, set conditions and accredit water services providers under clause 7(b).

11. **Clause 9**

The Committee recommends the amendment of clause 9(b) of the Bill to replace the term 'provision of water services' with 'contracted function.' This change ensures that the use of assets or infrastructure in Public-Private Partnership (PPP) agreements is strictly aligned with the specific functions or services outlined in the agreement.

12. **Clause 10**

The Committee recommends that clause 10 of the Bill be amended to provide that all bulk water supply services shall be done by the bulk water service providers and not just the water works development agencies.

13. **Clause 12**

The Committee recommends that Clause 12 of the Bill be amended to insert a new paragraph (d) that provides for the addition of two members being a man and a woman, nominated by the Council of County Governors, who possess a degree from a university recognized in Kenya and have at least five years' experience in the water sector.

APPENDICES

- Annex I: Minutes of the meetings**
- Annex II: Newspaper Advert**
- Annex III: Stakeholder Submissions/ Public Views**