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NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION- 2016

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE CONSIDERATION OF THE SENATE AMENDMENTS TO THE
WATER BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS,
NAIROBI

MAY, 2016

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1.0 PREFACE

On behalf of the Departmental Committee on Environment and Natural Resources and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Water Bill (National Assembly Bill No. 7 of 2014).

The amendments were passed by the Senate on 31st March, 2016 and communicated to the National Assembly for consideration. The Assembly subsequently committed the amendments to the Committee pursuant to the provisions of Standing Order 41, it is on the basis of this that the Committee makes this Report.

1.1 Committee Mandate

The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
- e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows:

climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Committee Membership

The Committee comprises of the following membership:-

1. Hon. Amina Abdalla, M.P, CBS - **Chairperson**
2. Hon. Alexander. K. Kosgey, M.P. - **Vice Chairperson**
3. Hon. Alice Ng'ang'a, M.P.
4. Hon. Samuel Ndiritu, M.P.
5. Hon. Zuleikha Hassan Juma, M.P.
6. Hon. Ejidius Njogu Barua, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Moitalel Ole Kenta, M.P.
9. Hon. Kathuri Murungi, M.P.
10. Hon. Sunjeev Birdi, M.P.
11. Hon. Jackson K. Rop, M.P.
12. Hon. Abdi Noor Ali, M.P.
13. Hon. Joyce Emanikor, M.P.
14. Hon. Abdulaziz Farah, M.P.
15. Hon. Ronald Tonui, M.P.
16. Hon. (Dr.) Reginalda Wanyonyi, M.P.
17. Hon. Gideon Mwiti, M.P.
18. Hon. Hassan Dukicha, M.P.
19. Hon. Chachu Ganya, M.P.
20. Hon. Richard Makenga, M.P
21. Hon. Charles Geni. Mongare, M.P.
22. Hon. (Dr.) Wilber K. Ottichilo, M.P.
23. Hon. Isaac Mwaura, M.P.
24. Hon. George Ogalo, M.P.
25. Hon. (Major) Muluvi Mutua, M.P.
26. Hon. Mohamed, Didiye M P

27. Hon. Peter Kinyua, MP.

28. Hon. Shukra Hussein Gure, M.P

29. Hon. Joyce Lay, M.P

1.3 Consideration of the Senate Amendments to the Water Bill (National Assembly Bill No. 7 of 2014)

The Committee considered the Senate amendments in its Sittings held on Tuesday, 3rd May, 2016. The Committee's decision to accept and or reject the amendments was based on the Constitutional requirements and borrowed best practices in other jurisdictions with similar experiences.

1.4 Committee Recommendations

The Committee having considered the Senate amendments to the Water Bill (National Assembly Bill No. 7 of 2014) recommends that the National Assembly:-

- 1. Approves the Senate amendments to Clauses 19, 24, 25, 63, 72, 73, 74, 109, 117, 130, 139, 140 and 154**
- 2. Rejects the Senate amendments to Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115**

1.5 Adoption of the Report

We the Members of the Departmental Committee on Environment and Natural Resources have pursuant to Standing Order 199 adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached adoption list (Appendix II).

1.6 Acknowledgement

Mr. Speaker Sir,

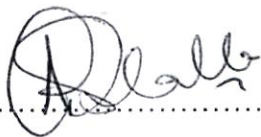
The Committee wishes to register its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee and the staff, in the execution of its mandate.

Let me take this opportunity to thank all Members for their patience, endurance and dedication to committee business, despite their other commitments and tight schedules, which enabled the Committee to complete this Report.

On behalf of the Departmental Committee on Environment and Natural Resources, and pursuant to Standing Orders No.199 of the National Assembly, I now have the honour to present the Report thereto for adoption pursuant to the provisions of standing orders of the National Assembly.

Thank You,

SIGNED



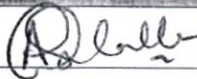

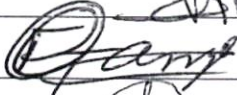
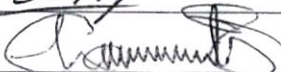

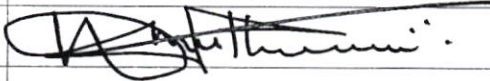
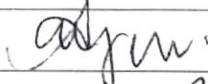

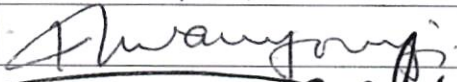



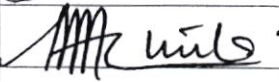

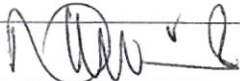
CHAIRPERSON

(HON. ABDALLA AMINA, MP, CBS)

DATE.....

4th MAY 2016

**ADOPTION LIST OF THE REPORT OF THE SENATE AMENDMENTS
TO THE WATER BILL, 2014 ON 4TH MAY 2016 IN CPA ROOM**

	NAME	SIGNATURE
1	Hon. Abdalla, Amina, MP, CBS-CHAIRPERSON	
2	Hon. Alexander Kosgey, MP Vice Chairperson	
3	Hon. Dukicha, Hassan Abdi, MP	
4	Hon. Emanikor, Joyce Akai, MP	
5	Hon. Ganya, Francis Chachu, MP	
6	Hon. Geni, Charles Mongare, MP	
7	Hon. Gure, Shukra Hussein, MP	
8	Hon. Ole Kenta, Richard Moitalel, MP	
9	Hon. Mohamed, Diriye Abdullahi, MP	
10	Hon. Murungi, Kathuri, MP	
11	Hon. Ogalo, George Oner, MP	
12	Hon. Sunjeev Kour Birdi, MP	
13	Hon. Tonui, Ronald Kiprotich, MP	
14	Hon. Dr. Wanyonyi, Reginalda N, MP	
15	Hon. Farah, Abdulaziz Ali, MP	
16	Hon. Barua, Ejidius Njogu, MP	
17	Hon. Irea, Gideon Mwiti, MP	
18	Hon. Muluvi, Marcus Mutua, MP	
19	Hon. Isaac Mwaura, MP	
20	Hon. Ndiritu, Samuel Mathenge, MP	
21	Hon. Ottichilo, Wilber Khasilwa, MP	
22	Hon. Rop, Jackson Kipkorir, MP	
23	Hon. Abdinoor, Mohammed Ali, MP	



24	Hon. Ng'ang'a, Alice Wambui, MP	
25	Hon. Peter Kinyua, MP	
26	Hon. Richard Makenga, MP	Richard Makenga
27	Hon. Zuleikha Hassan Juma, MP	
28	Hon. Jude Njomo, MP	
29	Hon. Joyce Lay, M.P	



2.0 INTRODUCTION

The Water Bill, 2014 was passed by the National Assembly on 7th July, 2015 and subsequently forwarded to the Senate for consideration pursuant to provisions of Article 110(4) of the Constitution and Standing Order 142. It was reverted to the National Assembly by the Senate for concurrence on Thursday, 31st March, 2016 through a message from the Speaker. The Speaker of the National Assembly directed the Committee to table its Report on the amendments for consideration by the House.

3.0 CONSIDERATION OF THE PROPOSED SENATE AMENDMENTS TO THE WATER BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)

The Committee considered the Senate amendments to the Water Bill (National Assembly Bill No. 7 of 2014) and resolved as follows:-

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical order –

“Wetland” means an area where plants and animals have become adapted to temporary or permanent flooding by saline, brackish or fresh water”.

The Committee rejected the proposed amendment.

Justification: the word ‘wetland’ is not used within the body of the Bill hence no need to define it.

CLAUSE 8

THAT clause 8 be amended in sub clause (3) by inserting the words ‘for domestic use’ immediately after the words “water works”.

The Committee rejected the proposed amendment.

Justification: it is not clear where the proposed amendment should be inserted as the words “water works” appear twice, further the words proposed to be inserted create ambiguity in the intended meaning of the sub clause.

CLAUSE 8 B

THAT clause 8B be amended in sub clause (5) by deleting the word “three” appearing immediately after the words “Resource Strategy every” and substituting therefor the word “five”.

The Committee rejected the proposed amendment.

Justification: The amendment requires a review of the Water Resource Strategy every five (5) years. The purpose of a review is to monitor the implementation of the Strategy which is formulated every five (5) years as provided under sub clause (1). Increasing the period for review to five (5) years would result in the process of formulation and review of the Strategy clashing.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub clause (1) by inserting the words “geo referenced” immediately after the words “monitoring and”.

The Committee agreed with the proposed amendment.

Justification: This amendment will ensure that the national monitoring and information system is georeferenced.

CLAUSE 24

THAT clause 24 of the Bill be amended in sub clause (1) (b) by inserting the words “appointed by the appointing authority after approval by the county assembly” immediately after the words “the basin”.

The Committee agreed with the proposed amendment.

Justification: the amendment provides for the representative of each county government in a basin water resources committee to be approved by the County Assembly.

CLAUSE 25

THAT clause 25 of the Bill be amended by inserting the words “and county governments” immediately after the words “the Authority”.

The Committee agreed with the proposed amendment.

Justification: Water Services is a shared function of both the national and county governments.

CLAUSE 30

THAT clause 30 of the Bill be amended in sub clause (1)(d) by inserting the words “and rules and regulations” immediately after the words “harvesting policy”.

The Committee rejected the proposed amendment.

Justification: The powers to make rules and regulations lies with the Cabinet Secretary and is already provided for in Clause 140 of the Bill.

CLAUSE 63

THAT clause 63 of the Bill be amended in the headnote appearing immediately before the clause by deleting the word “Boards” and substituting therefor the word “Agencies”.

The Committee agreed with the proposed amendment.

Justification: the amendment corrects an error in the title of the heading.

CLAUSE 64

THAT clause be amended in sub clause 1(b) by inserting the words “from the respective counties” immediately after the words “the Cabinet Secretary”.

The Committee rejected the proposed amendment.

Justification: The proposed amendment creates an ambiguity as to where the chairperson of the development Agency is to be appointed from.

In order to remove the ambiguity, the Committee suggests that the proposed amendment should instead read ‘**from counties within the basin**’

CLAUSE 72

THAT clause 72 of the Bill be amended—

(a) in the marginal note by deleting the word “accreditation” and substituting therefor the word “licensing”; and

(b) in sub clause (3) by deleting the word “accreditation” appearing immediately after the words “applicant meets the” and substituting therefor the word “licensing”.

The Committee agreed with the proposed amendment.

Justification: the word “license” is more appropriate. Further, there are instances in the Bill where the word “license” is used.

CLAUSE 73

THAT clause 73 of the Bill be amended—

(1) in sub clause (1)—

- (a) in the marginal note by deleting the word “accredited” and substituting therefor the word “licensed”;
- (b) by deleting the word “accredited” appearing immediately after the words “register of all” in the introductory phrase and substituting therefor the word “licensed”;
- (c) in paragraph by deleting the word “accredited” appearing immediately after the words “providers are” and substituting therefor the word “licensed”; and
- (d) in paragraph(d) by deleting the word “accreditation” appearing immediately after the words “to their” and substituting therefor the word “licence”;

(2) in sub clause (2) by deleting the word “accredited” appearing immediately after the words “register of the” and substituting therefor the word “licensed”; and

(3) in sub clause (4) by deleting the word “accredited” appearing immediately after the words “conduct of” and substituting therefor the word “licensed”.

The Committee agreed with proposed amendment.

Justification: the word “license” is more appropriate. Further, there are instances in the Bill where the word “license” is used.

CLAUSE 74

THAT clause 74 of the Bill be amended—

- (1) in the marginal note by deleting the word “accreditation” and substituting therefor the words “ a license”;
- (2) in sub clause (1)—

- (a) by deleting the word "accreditation" appearing immediately after words "revoke the" in the introductory phrase and substituting therefor the word "license";
- (b) in paragraph (a) by deleting the word "accreditation" appearing after the words "Board that the" and substituting therefor the word "licensing";
- (c) paragraph (b) by deleting the word "accreditation" appearing immediately after the words "criteria for" and substituting therefor the word "licensing"; and
- (d) in paragraph (c) by deleting the word "accredited" appearing immediately after the words "they were" and substituting therefor the word "licensed";
- (e) in paragraph (e) by deleting the word "accreditation" appearing immediately after the words "conditions for" and substituting therefor the word "licensing".

(3) In sub clause (2) by deleting the word "accreditation" appearing immediately after the words "revocation of" and substituting therefor the word " a license"; and

In sub clause (3) by deleting the word "accreditation" appearing immediately after the words "person whose" and substituting therefor the word "license".

The Committee agreed with the proposed amendment.

Justification: the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

CLAUSE 75

THAT clause 75 of the Bill be amended by deleting sub clause one and substituting therefor the following new sub clause —

- (1) Each county government shall establish a water services provider.

The Committee rejected the proposed amendment.

Justification: The requirement that counties establish only one water services provider in each county will create monopoly. Further, the Committee prefers the use of the word "may" as opposed to "shall" as proposed by the amendment.

CLAUSE 102

THAT clause 102 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause—

“ A water user may enter into an agreement with any person with respect to the execution and maintenance by any party to the agreement of such works as the water user considers necessary or as the conditions of the water user may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures, the control of vegetation or effectively collecting, conveying or preserving the purity and quantity of water which the water user is for the time being authorised to take.”

The Committee rejected the proposed amendment.

Justification: the amendment seeks to substitute the word “licensee” with the word “water user”, however the word “water user” is too broad.

CLAUSE 109

THAT clause 109 of the Bill be amended in sub clause (1) by inserting the words “georeferenced” immediately after the words “monitoring and”.

The Committee agreed with the proposed amendment

Justification: the amendment requires the national monitoring and information system on water services to be georeferenced.

CLAUSE 114

THAT clause 114 of the Bill be amended in sub clause (1) by deleting paragraph (g) and substituting therefor the following new paragraph —

receive grants for onward lending to water services providers, counties and community schemes towards water services and water resources management projects for the underserved areas and urban poor;

The Committee rejected the proposed amendment

Justifications: the amendment seeks to substitute the word “communities” with the words “Community schemes”. However the phrase “Community schemes” is not defined in the Bill and could be misinterpreted.

CLAUSE 115

THAT clause 115 be amended in sub clause (1) by deleting paragraphs (b) and (c).

The Committee rejects the proposed amendment.

Justification: the amendment deletes the equalization fund and monies from a county government as sources of funding for the Water Sector Trust Fund. However, the object of the Fund is to provide conditional grants to counties, in addition to the equalisation fund and to assist in financing the development and management of water services in marginalized areas or any area deemed to be underserved. The equalisation fund would act as co-financing for donor funded projects.

CLAUSE 117

THAT clause 117 of the Bill be amended in sub clause (1) by deleting the words “which shall be a subordinate court as provided under Article 169(1)(d) of the Constitution”.

The Committee agrees with the proposed amendment.

Justification: the amendment deletes unnecessary words.

CLAUSE 130

THAT clause 130 of the Bill be amended by inserting the words “conservation and” immediately after the words “for the”.

The Committee agrees with the proposed amendment

Justification: the amendment requires that incomes received from water permits and other fees be used for conservation in addition to management of water resources.

CLAUSE 139

THAT clause 139 of the Bill be amended by inserting the words “a county government” immediately after the words “Cabinet Secretary”.

The Committee agreed with the proposed amendment.

Justification: the amendment adds County governments to the list of entities not deemed liable for claims relating to works authorized under the Bill. Inspection of such works shall not imply that the works are guaranteed by a County government.

CLAUSE 140

~~THAT clause 140 of the Bill be amended in~~

- (a) sub clause (2) (a) by deleting the word “commission” appearing immediately after the words “Authority, the” and substituting therefor the word “Board”; and

The Committee agreed with the proposed amendment.

Justification: the amendment corrects an error in the Clause.

- (b) sub clause (2)(h) by inserting the words “or the Board” immediately after the word “Authority”.

The Committee agreed with the proposed amendment.

Justification: the amendment empowers the Cabinet Secretary to make regulations with respect to requirements for the keeping of records and the furnishing of information to the Board.

CLAUSE 154

THAT clause 154 of the Bill be amended in sub clause 5 by deleting the word “Board” appearing immediately after the words “event that the” and substituting therefor the word “Authority”.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to substitute the word “Board” with the word “Authority” which is more inclusive.

4.0 COMMITTEE RECOMMENDATIONS

Having considered the Senate amendments to the Water Bill (National Assembly Bill No. 7 of 2014) the Committee recommends that the National Assembly:-

- 1. Approves the Senate amendments to Clauses 19, 24, 25, 63, 72, 73, 74, 109, 117, 130, 139, 140 and 154**
- 2. Rejects the Senate amendments to Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115**

NATIONAL ASSEMBLY
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03 MAY 2016
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

REPUBLIC OF KENYA



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National Assembly
Parliament Buildings
P O Box 41842 - 00100
NAIROBI, KENYA

THE NATIONAL ASSEMBLY

KNA/DC/ENR/27/2016

3rd May, 2016

Hon Justin B. Muturi, E.G.H, MP

Speaker of the National Assembly,

NAIROBI

Dear

Approved by
SNA
3/5/16

RE: PERMISSION TO SIT ON WEDNESDAY, 4TH MAY, 2016 AT 10 AM.

The Departmental Committee on Environment and Natural Resources is established by Standing Order 216 of the National Assembly and is mandated, among others, to "Make reports and recommendations to the house as often as possible, including recommendations of proposed legislation."

The Committee during its Sitting of 3rd May, 2016 considered the proposed Senate Amendments to the Water Bill, 2014 and resolved to schedule a meeting on Wednesday, 4th May, 2016 to consider and adopt its Report

In this regard, the Committee would like to seek your approval to sit on **Wednesday, 4th May, 2016 at 10.00 am** Pursuant to Standing Order 186 (2) to transact the said business before it.

Yours

HON. AMINA ABDALLA, CBS, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

How SPEAKER
You may consider the
request by the Committee
w/Committee
03/5



**MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY
4TH MAY, 2016 AT 10.30 AM C.P.A ROOM, MAIN PARLIAMENT BUILDINGS**

PRESENT

1. Hon. Abdalla Amina, M.P., CBS – **Chairperson**
2. Hon. Emanikor Joyce, M.P.
3. Hon. Ganya Francis Chachu, M.P.
4. Hon. Geni Charles Mong'are, M.P.
5. Hon. Ole Kenta Richard Moitalel, M.P.
6. Hon. Kathuri Murungi, M.P.
7. Hon. Sunjeev Kaur Birdi, M.P.
8. Hon. Tonui Ronald Kiprotich, M.P.
9. Hon. Dr. Wanyonyi Reginalda N. M.P.
10. Hon. Farah, Abdulaziz Ali, M.P.
11. Hon. Barua Ejidius Njogu, M.P.
12. Hon. Irea Gideon Mwiti, M.P.
13. Hon. Muluvi Marcus Mutua, M.P.
14. Hon. Ottichillo K. Wilber, M.P.
15. Hon. Abdinoor Mohammed Ali, M.P.
16. Hon. Richard Makenga, M.P.

APOLOGIES

1. Hon. Alexander Kosgey, M.P. – **Vice Chairperson**
2. Hon. Ndiritu Samuel Mathenge, M.P.
3. Hon. Ogalo George Oner, M.P.
4. Hon. Rop Jackson Kipkorir, M.P.
5. Hon. Ng'ang'a Alice Wambui, M.P.
6. Hon. Jude Njomo, M.P.
7. Hon. Dukicha Hassan Abdi, M.P.
8. Hon. Peter Kinyua, M.P.
9. Hon. Care Shukra Hussein, M.P.
10. Hon. Zuleikha Hassan Mwaura, M.P.
11. Hon. Joyce Lay, M.P.
12. Hon. Isaac Mwaura, M.P.
13. Hon. Mohamed Diriye Abdullahi, M.P.

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

1. Ms. Chebet Koskei - Clerk Assistant II
2. Mr. Hassan A. Arale - Clerk Assistant III

MIN.NO. DC/ENR/082/2016 - PRELIMINARIES

The meeting was called to order at 10.30 am after which prayers were said. The chair then welcomed the Members to the meeting which was called pursuant to Standing Order 186 (2).

MIN. NO. DC/ENR/083/2016 – ADOPTION OF THE REPORT ON THE SENATE AMENDMENTS TO THE WATER BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)

The Members pursuant to Standing Order 199 adopted the Report and affixed their signatures to affirm their approval and confirmed its accuracy, validity and authenticity as per the attached adoption list after it was proposed by Hon. Dr. Wanyonyi, Reginalda N. M.P and seconded by Hon. Ganya Francis Chachu, M.P

MIN.NO. DC/ENR/084/2016 ADJOURNMENT

There being no other business the meeting was adjourned at 11.10 am.

SIGNED.....
(Chairperson)

DATE.....

**MINUTES OF THE 29TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 3RD
MAY, 2016 AT 10.30 AM C.P.A ROOM, MAIN PARLIAMENT BUILDING.**

PRESENT

1. Hon. Abdalla Amina, M.P. – **Chairperson**
2. Hon. Emanikor Joyce, M.P.
3. Hon. Ganya Francis Chachu, M.P.
4. Hon. Geni Charles Mong'are, M.P.
5. Hon. Ole Kenta Richard Moitalel, M.P.
6. Hon. Mohamed Diriye Abdullahi, M.P.
7. Hon. Kathuri Murungi, M.P.
8. Hon. Sunjeev Kaur Birdi, M.P.
9. Hon. Tonui Ronald Kiprotich, M.P.
10. Hon. Dr. Wanyonyi Reginalda N. M.P.
11. Hon. Farah, Abdulaziz Ali, M.P.
12. Hon. Muluvi Marcus Mutua, M.P.
13. Hon. Ottichillo K. Wilber, M.P.
14. Hon. Abdinoor Mohammed Ali, M.P.
15. Hon. Richard Makenga, M.P.
16. Hon. Isaac Mwaura, M.P.

APOLOGIES

1. Hon. Alexander Kosgey, M.P. – **Vice Chairperson**
2. Hon. Ndiritu Samuel Mathenge, M.P.
3. Hon. Ogalo George Oner, M.P.
4. Hon. Rop Jackson Kipkorir, M.P.
5. Hon. Ng'ang'a Alice Wambui, M.P.
6. Hon. Jude Njomo, M.P.
7. Hon. Dukicha Hassan Abdi, M.P.
8. Hon. Barua Ejidius Njogu, M.P.
9. Hon. Irea Gideon Mwit, M.P.
10. Hon. Peter Kinyua, M.P.
11. Hon. Gure Shukra Hussein, M.P.
12. Hon. Zuleikha Hassan Mwaura, M.P.
13. Hon. Joyce Lay, M.P.

THE NATIONAL ASSEMBLY

- | | |
|------------------------|-----------------------|
| 1. Ms. Chebet Koskei | - Clerk Assistant II |
| 2. Mr. Hassan A. Arale | - Clerk Assistant III |
| 3. Mr. Ronald Walala | - legal Counsel |

MIN.NO. DC/ENR/079/2016 - PRELIMINARIES

The meeting was called to order at 10.30 am after which prayers were said. The chair then welcomed the members to the meeting.

MIN. NO. DC/ENR/080/2016 – CONSIDERATION OF SENATE AMENDMENTS TO WATER BILL, 2014.

The Committee considered the Senate amendments to the Water Bill (National Assembly Bill No. 7 of 2014) and resolved as follows:-

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical order –

“wetland” means an area where plants and animals have become adapted to temporary or permanent flooding by saline, brackish or fresh water”.

The Committee rejected the proposed amendment.

Justification: the word ‘wetland’ is not used within the body of the Bill hence no need to define it.

CLAUSE 8

THAT clause 8 be amended in sub clause (3) by inserting the words ‘for domestic use’ immediately after the words “water works”.

The Committee rejected the proposed amendment.

Justification: it is not clear where the proposed amendment should be inserted as the words “water works” appear twice, further the words proposed to be inserted create ambiguity in the intended meaning of the sub clause.

CLAUSE 3 B

THAT clause 8B be amended in sub clause (5) by deleting the word “three” appearing immediately after the words “Resource Strategy every” and substituting therefor the word “five”.

The Committee rejected the proposed amendment.

Justification: The amendment requires a review of the Water Resource Strategy every five (5) years. The purpose of a review is to monitor the implementation of the Strategy which is formulated every five (5) years as provided under sub clause (1). Increasing the period for review to five (5) years would result in the process of formulation and review of the Strategy clashing.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub clause (1) by inserting the words “geo referenced” immediately after the words “monitoring and”.

The Committee agreed with the proposed amendment.

Justification: This amendment will ensure that the national monitoring and information system is georeferenced.

CLAUSE 24

THAT clause 24 of the Bill be amended in sub clause (1) (b) by inserting the words “appointed by the appointing authority after approval by the county assembly” immediately after the words “the basin”.

The Committee agreed with the proposed amendment.

Justification: the amendment provides for the representative of each county government in a basin water resources committee to be approved by the County Assembly.

CLAUSE 25

THAT clause 25 of the Bill be amended by inserting the words “and county governments” immediately after the words “the Authority”.

The Committee agreed with the proposed amendment.

Justification: Water Services is a shared function of both the national and county governments.

CLAUSE 30

THAT clause 30 of the Bill be amended in sub clause (1)(d) by inserting the words “ and rules and regulations” immediately after the words “harvesting policy”.

The Committee rejected the proposed amendment.

Justification: The powers to make rules and regulations lies with the Cabinet Secretary and is already provided for in Clause 140 of the Bill.

CLAUSE 63

THAT clause 63 of the Bill be amended in the headnote appearing immediately before the clause by deleting the word “Boards” and substituting therefor the word “Agencies”.

The Committee agreed with the proposed amendment.

Justification: the amendment corrects an error in the title of the heading.

CLAUSE 64

THAT clause be amended in sub clause 1(b) by inserting the words “from the respective counties” immediately after the words “the Cabinet Secretary”.

The Committee rejected the proposed amendment.

Justification: The proposed amendment creates an ambiguity as to where the chairperson of the development Agency is to be appointed from.

In order to remove the ambiguity, the Committee suggests that the proposed amendment should instead read ‘**from counties within the basin**’

CLAUSE 72

THAT clause 72 of the Bill be amended—

- (a) in the marginal note by deleting the word “accreditation” and substituting therefor the word “licensing”; and
- (b) in sub clause (3) by deleting the word “accreditation” appearing immediately after the words “applicant meets the” and substituting therefor the word “licensing”.

The Committee agreed with the proposed amendment.

Justification: the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

CLAUSE 73

~~THAT clause 73 of the Bill be amended—~~

(1) in sub clause (1)—

(a) in the marginal note by deleting the word "accredited" and substituting therefor the word "licensed";

(b) by deleting the word "accredited" appearing immediately after the words "register of all" in the introductory phrase and substituting therefor the word "licensed";

(c) in paragraph by deleting the word "accredited" appearing immediately after the words "providers are" and substituting therefor the word "licensed"; and

(d) in paragraph(d) by deleting the word "accreditation" appearing immediately after the words "to their" and substituting therefor the word "licence";

(2) in sub clause (2) by deleting the word "accredited" appearing immediately after the words "register of the" and substituting therefor the word "licensed"; and

(3) in sub clause (4) by deleting the word "accredited" appearing immediately after the words "conduct of" and substituting therefor the word "licensed".

The Committee agreed with proposed amendment.

Justification: the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

CLAUSE 74

~~THAT clause 74 of the Bill be amended—~~

(1) in the marginal note by deleting the word "accreditation" and substituting therefor the words " a license";

(2) in sub clause (1)—

- (a) by deleting the word "accreditation" appearing immediately after words "revoke the" in the introductory phrase and substituting therefor the word "license";
- (b) in paragraph (a) by deleting the word "accreditation" appearing after the words "Board that the" and substituting therefor the word "licensing";
- (c) paragraph (b) by deleting the word "accreditation" appearing immediately after the words "criteria for" and substituting therefor the word "licensing"; and
- (d) in paragraph (c) by deleting the word "accredited" appearing immediately after the words "they were" and substituting therefor the word "licensed";
- (e) in paragraph (e) by deleting the word "accreditation" appearing immediately after the words "conditions for" and substituting therefor the word "licensing".

(3) In sub clause (2) by deleting the word "accreditation" appearing immediately after the words "revocation of" and substituting therefor the word " a license"; and

In sub clause (3) by deleting the word "accreditation" appearing immediately after the words "person whose" and substituting therefor the word "license".

The Committee agreed with the proposed amendment.

Justification: the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

CLAUSE 75

THAT clause 75 of the Bill be amended by deleting sub clause one and substituting therefor the following new sub clause —

- (1) Each county government shall establish a water services provider.

The Committee rejected the proposed amendment.

Justification: The requirement that counties establish only one water services provider in each county will create monopoly. Further, the Committee prefers the use of the word "may" as opposed to "shall" as proposed by the amendment.

CLAUSE 102

THAT clause 102 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause—

“ A water user may enter into an agreement with any person with respect to the execution and maintenance by any party to the agreement of such works as the water user considers necessary ~~or as the conditions of the water user may require for the purpose of protecting the catchment~~ areas, drainage of land, carrying out soil conservation measures, the control of vegetation or effectively collecting, conveying or preserving the purity and quantity of water which the water user is for the time being authorised to take.”

The Committee rejected the proposed amendment.

Justification: the amendment seeks to substitute the word “licensee” with the word “water user”, however the word “water user” is too broad.

CLAUSE 109

THAT clause 109 of the Bill be amended in sub clause (1) by inserting the words “georeferenced” immediately after the words “monitoring and”.

The Committee agreed with the proposed amendment

Justification: the amendment requires the national monitoring and information system on water services to be georeferenced.

CLAUSE 114

THAT clause 114 of the Bill be amended in sub clause (1) by deleting paragraph (g) and substituting therefor the following new paragraph —

receive grants for onward lending to water services providers, counties and community schemes towards water services and water resources management projects for the underserved areas and urban poor;

The Committee rejected the proposed amendment

Justifications: the amendment seeks to substitute the word “communities” with the words “Community schemes”. However the phrase “Community schemes” is not defined in the Bill and could be misinterpreted.

CLAUSE 115

~~THAT clause 115 be amended in sub clause (1) by deleting paragraphs (b) and (c).~~

The Committee rejects the proposed amendment.

Justification: the amendment deletes the equalization fund and monies from a county government as sources of funding for the Water Sector Trust Fund. However, the object of the Fund is to provide conditional grants to counties, in addition to the equalisation fund and to assist in financing the development and management of water services in marginalized areas or any area deemed to be underserved. The equalisation fund would act as co-financing for donor funded projects.

CLAUSE 117

THAT clause 117 of the Bill be amended in sub clause (1) by deleting the words “which shall be a subordinate court as provided under Article 169(1)(d) of the Constitution”.

The Committee agrees with the proposed amendment.

Justification: the amendment deletes unnecessary words.

CLAUSE 130

THAT clause 130 of the Bill be amended by inserting the words “conservation and” immediately after the words “for the”.

The Committee agrees with the proposed amendment

Justification: the amendment requires that incomes received from water permits and other fees be used for conservation in addition to management of water resources.

CLAUSE 139

THAT clause 139 of the Bill be amended by inserting the words “a county government” immediately after the words “Cabinet Secretary”.

The Committee agreed with the proposed amendment.

Justification: the amendment adds County governments to the list of entities not deemed liable for claims relating to works authorized under the Bill. Inspection of such works shall not imply that the works are guaranteed by a County government.

CLAUSE 140

THAT clause 140 of the Bill be amended in—

- (a) sub clause (2) (a) by deleting the word “commission” appearing immediately after the words “Authority, the” and substituting therefor the word “Board”; and

The Committee agreed with the proposed amendment.

Justification: the amendment corrects an error in the Clause.

- (b) sub clause (2)(h) by inserting the words “or the Board” immediately after the word “Authority”.

The Committee agreed with the proposed amendment.

Justification: the amendment empowers the Cabinet Secretary to make regulations with respect to requirements for the keeping of records and the furnishing of information to the Board.

CLAUSE 154

THAT clause 154 of the Bill be amended in sub clause 5 by deleting the word “Board” appearing immediately after the words “event that the” and substituting therefor the word “Authority”.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to substitute the word “Board” with the word “Authority” which is more inclusive.

1 4.0 COMMITTEE RECOMMENDATIONS

Having considered the Senate amendments to the Water Bill (National Assembly Bill No. 7 of 2014) the Committee recommends that the National Assembly:-

1. Approves the Senate amendments to **Clauses 19, 24, 25, 63, 72, 73, 74, 109, 117, 130, 139, 140 and 154**
2. Rejects the Senate amendments to **Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115**

MIN.NO. DC/ENR/081/2016 ADJOURNMENT

There being no other business the meeting was adjourned at 11.55 am.

SIGNED.....
(Chairperson)

DATE.....