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REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**SENATE BILLS, 2021**

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**NAIROBI, 30th April, 2021**

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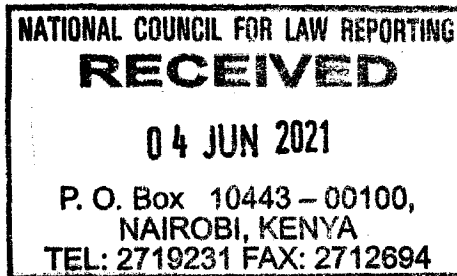
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**THE IRRIGATION (AMENDMENT) BILL, 2021**

**A Bill for**

**AN ACT of Parliament to amend the Irrigation Act, 2019 and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Irrigation (Amendment) Act, 2021

Short title.

2. Section 2 of the Irrigation Act, 2019, in this Act referred to as “the principal Act”, is amended—

Amendment of Section 2 of No 14 of 2019.

(a) by deleting the definition of “Department” and substituting therefor the following new definition—

“Department” means the State Department responsible for matters relating to irrigation;

(b) by deleting the definition of “irrigation” and substituting therefor the following new definition—

“irrigation” means any hydraulic engineering – driven process, which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest trees;

(c) by inserting the following new definitions in proper alphabetical sequence—

“agency contract” means a legal agreement creating a fiduciary relationship whereby the principal agrees that subsequent actions by the agent are binding as if the principal acted thereupon;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for irrigation;

“Council of Governors” means the Council of County Governors established under the Intergovernmental Relations Act, 2012;

No. 2 of 2012.

“irrigators” means the persons or entities which own,

operate or manage an irrigation scheme;

“monitoring and evaluation” means a system of measuring reporting and interpreting the quantity and quality of inputs provided, actions implemented, immediate outcomes attained, and ultimately impacts realized;

“national irrigation scheme” means an area of land designated as such by the Cabinet Secretary through a gazette notice;

“transboundary, trans-county or inter county irrigation Schemes” means a scheme whose area of coverage lies across at least two administrative County boundaries; and

“strategic irrigation schemes” means a national or a county scheme which serves a specific production purpose.

3. Section 3 of the principal Act is amended in subsection (2) by inserting the words “management and regulation” immediately after the word “development”.

Amendment of section 3 of No 14 of 2019.

4. Section 6 of the principal Act is amended in subsection (2)

Amendment of section 3 of No 14 of 2019.

(a) by deleting the words “and management” appearing in the opening statement and substituting therefor the words “management and regulation”;

(b) by deleting the words “and management” appearing in paragraph (h) and substituting therefor the words “management and regulation”; and

(c) by deleting the words “and management” appearing in paragraph (i) and substituting therefor the words “management and regulation”.

5. Section 8 of the principal Act is amended in subsection (2) by deleting paragraph (j) and substituting therefor the following new paragraph—

Amendment of section 8 of No. 14 of 2019.

(j) provide, manage, and administer land in national or public irrigation schemes as well as inter-county schemes for public use;

6. Section 9 (1) of the principal Act is amended—

Amendment of section 9 of No. 14 of 2019.

(a) in subsection (1) —

(i) by deleting paragraph (f) and substituting

therefor the following new paragraph—

- (f) two persons of opposite gender and from different regions, with knowledge and experience in matters relating to water, agriculture, irrigation or environmental studies, appointed by the Cabinet Secretary from a list of four nominees submitted by the Council of County Governors;
- (ii) by deleting paragraph (g) and substituting therefor the following new paragraph—
  - (g) one person with knowledge and experience in matters relating to either civil engineering, economics, finance or rural development, appointed by the Cabinet Secretary from a list of three nominees submitted by a registered private sector membership organisation with a national outlook;
- (iii) by deleting paragraph (h) and substituting therefor the following new paragraph—
  - (h) two persons appointed by the Cabinet Secretary out of four persons nominated by the National Irrigation Farmers Associations;
- (iv) by inserting the following new paragraph immediately after paragraph (h) —
  - (i) the Attorney-General or his representative;
- (b) by deleting subsection (5) and substituting therefor the following new subsection—
 

‘(5) The Board shall adhere to principles of corporate governance and may from time to time establish committees for the better carrying out of its functions.’

7. Section 11 of the principal Act is amended by inserting the word “other” immediately before the word “activity”.

Amendment of section 11 of No. 14 of 2019.

8. Section 13 of the principal Act is amended by deleting the expression “section 34” and substituting therefor the expression “section 35”.

Amendment of section 13 of No. 14 of 2019.

9. Section 15 of the principal Act is amended in

Amendment of section 15 of No.

subsection (2) by deleting paragraph (a) and substituting therefor the following new paragraph—

14 of 2019.

- (a) in consultation with the Water Resources Authority, put in place appropriate water use fees structures and make arrangements with the Water Resources Authority in respect of requisition of irrigation water in bulk;

**10.** Section 16 of the principal Act is amended—

Amendment of section 16 of No. 14 of 2019.

- (a) in subsection (2) by deleting the words “the Department” and substituting therefor the words “the Authority”;
- (b) in subsection (3) by deleting the words “the Department” and substituting therefor the words “the Authority”.

**11.** The principal Act is amended by repealing section 17 and replacing it with the following new section—

Repeal and replacement of section 17 of No. 14 of 2019.

Administrative and legal framework water storage

**17.** (1) The Cabinet shall in consultation with the Water Resource Authority Secretary, the National Water Storage and Harvesting Authority, the National Lands Commission, the Council of Governors and other stakeholders prescribe administrative and regulatory frameworks within existing laws and regulations on water storage existing and future Irrigating requirements.

(2) Without prejudice to subsection (1), the Cabinet Secretary shall ensure that irrigation developments are planned and implemented—

- (a) in accordance with Integrated Water Resources Management Principles, and
- (b) in accordance with agreements between irrigation water users and other stakeholders; and
- (c) in such a manner as to reduce conflicts on water resources, protect the environment and public health and share water

appropriately and equitably for multiple uses.

**12.** Section 20 of the principal Act is amended in subsection (3) by inserting the words “subject to mandatory approvals” immediately after the word “a scheme

Amendment of section 20 of No. 14 of 2019.

**13.** Section 22 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (d)—

Amendment of section 22 of No. 14 of 2019.

- (e) estimated expenditure for development of infrastructure for the development of irrigation;
- (f) estimated expenditure for the provision of irrigation services and advisory support.

**14.** Section 27 of the principal Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 27 of No. 14 of 2019.

- (a) develop and implement a monitoring and evaluation system for the development, governance, management, regulation, provision and financing of irrigation at all levels, including assessment of inputs, outputs immediate outcomes and ultimate impacts based on the results;

**15.** Section 34 of the principal Act is amended—

Amendment of section 34 of No. 14 of 2019.

(a) in subsection (3) by inserting the following new paragraphs immediately after paragraph (i)—

- (j) development of irrigation including infrastructure, frameworks, complementary installations, water harvesting, storage, distribution and licensing; and
- (k) multi-government agencies consultation, collaboration, cooperation and accountability in the implementation of this Act.

(b) in subsection (4) by deleting the words “within ninety days of the enactment of this Act” appearing immediately after the words “the Gazette” and substituting therefor the words “within eighteen months of the enactment of this Act or as otherwise determined upon consultations with stakeholders”;

**16.** The Schedule to the principal Act is amended in

Amendment of the Schedule of No.

paragraph 2 by inserting the following new sub-paragraph immediately after sub-paragraph (b)—

14 of 2019.

- (c) be removed from office by the Cabinet Secretary with justification if the member—
  - (i) conducts himself in a manner undesirable of a Director;
  - (ii) carries himself in a way that puts the organization into disrepute; or
  - (iii) acts irresponsibly and in contravention of codes, policies and procedures in the public service.

17. The Schedule to the principal Act is amended in paragraph 4 by deleting the word “seven” and substituting therefore the word “five”

Amendment of the  
Schedule of No.  
14 of 2019.

**MEMORANDUM OF OBJECTS AND REASONS****Statement of the Objects and Reasons for the Bill**

The principal object of the Bill is to make amendments to the Irrigation Act, 2019 in order to better enhance the Act and harmonize the various structures and entities within the Ministry relating to water and water services. The various amendments are set out as below—

**Clause 1** of the Bill sets out the short title of the proposed Act.

**Clause 3,4 and 5** of the Bill seeks to amend the Act by expanding the administration of irrigation matter to include management and regulation of irrigation matters.

**Clause 6** of the Bill seeks to amend the Act to provide for the appointing and nominating authorities in line with the Constitution.

**Clause 8** of the Bill seeks to amend Act to harmonize the provision of the irrigation Act, Water Act and Water Resources Management Rules, 2007.

**Clause 10** of the Bill seeks to amend the Act by substituting the reporting obligation under the Act from the Department to the Authority.

**Clause 11** of the Bill seeks to amend the Act by taking into account the already existing legislative and regulatory structures when prescribing administrative and regulatory framework on water storage.

**Clause 13** of the Bill seeks to amend the Act in Section 22 on annual estimates to include estimated expenditure for development of infrastructure and for the provision of irrigation services.

**Clause 14** of the Bill seeks to amend the Act in section 27 to include the output level of results in monitoring and evaluation.

**Clause 15** of the Bill seeks to amend the Act in section 34 to enable the Cabinet Secretary to make regulations to provide for the development of irrigation, including infrastructure and water storage, and to provide for multi-government agencies consultation and collaboration.

**Clause 16** of the Bill seeks to amend the Act in the Schedule in paragraph 2 to provide for other conditions for removal of a board member by the Cabinet Secretary.

**Clause 17** of the Bill seeks to amend the Act in the Schedule 4 to provide for quorum for meeting to harmonize the provision with existing policies on board meetings.



**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms, neither does it delegate any legislative power

**Statement on how the Bill concerns county governments**

The Bill seeks to amend the Irrigation Act, 2019 through a series of amendments that enhance the role of the county governments as envisioned in Article 6(2) of the Constitution. The amendments proposed in this Bill include the creation of administrative and legal frameworks that enhance consultation between the National Government and the county governments as well as the recognition of forums for intergovernmental consultation in matters relating to water resources and irrigation development.

Paragraph 1 of Part 2 of the Fourth Schedule lists Agriculture as a devolved function. Irrigation is a crucial component of agriculture; thus, the Bill directly affects the functions and powers of the county governments set out in the Fourth Schedule of the Constitution.

The Bill is therefore one that concerns county governments in terms of Article 110(1)(a) of the Constitution

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 13th April, 2021.

SAMUEL POGHISIO,  
*Senate Majority Leader.*

*Section 3 of Act No. 14 of 2019 which it is proposed to amend—*

### **3. Scope of application**

(1) The provisions of this Act shall apply to matters relating to the development, management, financing, provision of support services and regulation of the entire irrigation sector in Kenya.

(2) Upon the commencement of this Act, no irrigation development may be carried out in Kenya otherwise than under this Act.

*Section 6 of Act No. 14 of 2019 which it is proposed to amend—*

### **6. Role of national government**

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary shall have responsibility with regard to development and management of irrigation to—

- (a) formulate policies, make legislative proposals to Parliament, provide sector regulation, coordination and guidance, and monitoring and evaluation;
- (b) develop general principles, guidelines and standards for promoting development and for the coordination of irrigation planning;
- (c) establish, through a gazette notice, national, public or strategic schemes of any category as defined in this Act;
- (d) promote the use of efficient irrigation systems across the country;
- (e) subject to resource constraints, ensure availability and adequacy of water for irrigation;
- (f) receive and determine applications for any irrigation projects, including issuance of irrigation licences for irrigation schemes;
- (g) monitor and enforce conditions attached to licenses for all irrigation projects;
- (h) report to both Houses of Parliament annually, and from time to time as may be necessary, on the state of, and needs for, irrigation development and management in the country;
- (i) in collaboration with county governments, gather information and maintain data bases on irrigation development and management including data on irrigation water supplies, demands, projects, irrigated areas, management performance, potential for expansion and human resources;

- (j) conduct periodic technical and management audits of irrigation schemes infrastructure, governance, management and financing;
- (k) maintain storage investments for their proper use implementation; and
- (l) carry out other mandate as may be specified in this Act or any other written law.

*Section 8 of Act No. 14 of 2019 which it is proposed to amend—*

### **8. Powers and functions of the Authority**

(2) The Authority shall exercise all such powers necessary to enable it to

perform its functions under this Act and, without prejudice to the generality of the foregoing, the Authority may—

- (j) provide land in national irrigation schemes for public purposes;

*Section 9 of Act No. 14 of 2019 which it is proposed to amend—*

### **9. The Board of Authority**

(1) There shall be a Board of the Authority which shall consist of—

- (f) two persons nominated by the Council of County Governors and appointed by the Cabinet Secretary;
- (g) one person nominated by the registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary; and
- (h) one person nominated by irrigation farmers associations and appointed by the Cabinet Secretary.

(5) The Board may from time to time establish committees for better carrying out of its functions.

*Section 11 of Act No. 14 of 2019 which it is proposed to amend—*

### **11. Powers of the Board**

(2) Without prejudice to the generality of the foregoing the Board shall have power to—

- (g) undertake any activity necessary for the fulfilment of any of the functions of the Authority.

*Section 13 of Act No. 14 of 2019 which it is proposed to amend—*

### **13. Other staff**

Subject to the provisions in section 34 regarding transitional arrangements, the Authority may engage such other officers and staff as it

may consider sufficient for the performance of its functions under this Act on such terms and conditions as are provided in approved establishment.

*Section 15 of Act No. 14 of 2019 which it is proposed to amend—*

**15. Water for irrigation**

(2) Pursuant to subsection (1), the Cabinet Secretary shall take measures to—

- (a) approve appropriate tariff structures and make arrangements with the Water Resources Authority in respect of requisition of irrigation water in bulk;

*Section 16 of Act No. 14 of 2019 which it is proposed to amend—*

**16. Setting apart of land, access rights etc**

(2) In respect of land, other than public land, in a national or public irrigation scheme, the Cabinet Secretary shall, in accordance with the law for the time being relating to the compulsory acquisition of land, take such steps as may be necessary to acquire the right, title or interest in such land and to vest it in the Department for the purposes of this Act.

(3) In the case of community land forming part of a national or public irrigation scheme, the Cabinet Secretary, on behalf of the Department, may take the land on lease and on terms to be agreed between the Cabinet Secretary and the county government concerned.

*Section 17 of Act No. 14 of 2019 which it is proposed to amend —*

**17. Administrative and legal framework for water storage**

(1) The Cabinet Secretary shall in consultation with the council of county governors prescribe administrative and regulatory framework—

- (a) for management and development of water storage infrastructure, and flood control and land reclamation, dams and dykes; and
- (b) for water storage creation requirement on all existing and future irrigation projects.

(2) Despite the provisions under subsection (1), the Cabinet Secretary shall, in consultation with the county governments, ensure that irrigation developments are planned and implemented within the framework of Integrated Water Resources Management, and in accordance with agreements between irrigation and other stakeholders, in such a manner as to reduce water resource conflicts, protect the environment and public health, and share water appropriately and equitably for multiple uses.

*Section 20 of Act No. 14 of 2019 which it is proposed to amend —*

**20. Formation of irrigation water users' associations**

(3) An association may, with the approval of the Cabinet Secretary, enter into an agreement with the National Government, a county government, a private sector institution or another farmers' association for the establishment, expansion, implementation, improvement, modernisation, operation or maintenance of a scheme.

*Section 22 of Act No. 14 of 2019 which it is proposed to amend —*

**22. Annual estimates**

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

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Authority and the Board of the Authority as the case may be;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;
- (c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

*Section 27 of Act No. 14 of 2019 which it is proposed to amend —*

**27. Monitoring and evaluation**

(1) The Cabinet Secretary shall, in consultation with the county governments—

- (a) develop and implement a monitoring and evaluation system for the development, governance, management and financing of irrigation at all levels, and this may include assessment of inputs, immediate outcomes and ultimate impacts based on the results; and

*Section 34 of Act No. 14 of 2019 which it is proposed to amend —*

**34. Making of Regulations**

(3) Without prejudice to the generality of the foregoing, Regulations made under this section may provide for—

- (a) the management of national, public and other irrigation schemes;
  - (b) the standards of good on-farm water management;
  - (c) the regulation of, and tariffs payable for, the use of water on national, public and other irrigation schemes;
  - (d) the control of persons occupying any land comprising or forming part of a national irrigation scheme, the introduction of or the control of settlers on such land, the issue by the Authority as the case may be, of licenses or permits or leases to such persons or settlers, the revocation of such licenses and leases, and the terms and conditions which may be attached to such licenses and leases;
  - (e) the requirements, procedures and forms for licensing of irrigation schemes;
  - (f) the establishment, operations and governance of irrigation water users' associations, scheme management committees and dispute resolution committees;
  - (g) prescribe fees payable by irrigation water users based on costs of operation and maintenance of the scheme;
  - (h) monitoring and evaluation and audits required under the Act; and adherence to environmental and public health matters.
- (3) Any Regulations made under this section may—
- (a) require acts to be performed to the satisfaction of a prescribed authority, may prohibit their performance without the prior approval of a specified authority, and may empower a specified authority to impose conditions for the performance of specific acts;

