

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**ACTS, 2024**

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**NAIROBI, 13th December, 2024**

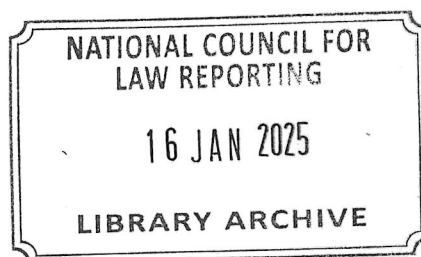
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**THE WATER (AMENDMENT) ACT, 2024****No. 13 of 2024***Date of Assent: 4th December, 2024**Date of Commencement: 24th December, 2024***AN ACT of Parliament to amend the Water Act to provide for Public Private Partnerships arrangements and for connected purposes****ENACTED** by the Parliament of Kenya as follows—

**1.** This Act may be cited as the Water (Amendment) Act, 2024. Short title.

**2.** Section 2 of the Water Act, (hereinafter referred to as “the principal Act”), is amended— Amendment of section 2 of Cap. 372.

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

“bulk water service provider” means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a licence issued by the Regulatory Board for the service areas specified in the licence;

“contracting authority” means—

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

“private party” means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

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

“bulk water” means supply of water in bulk by a bulk water services provider to a water services provider for retail;

**3.** Section 32 of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (f)—

Amendment of  
section 32 of Cap.  
372.

Cap. 430.

(g) enter into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act and in consultation with the Regulatory Board; and

(h) enter into a bulk water purchase agreement with a water works development agency and in consultation with the Regulatory Board.

**4.** Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—

Amendment of  
section 68 of Cap.  
372.

Cap. 430.

(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement—

(i) with an investor in accordance with the provisions of the Public Private Partnerships Act, after conducting public participation and in consultation with the Regulatory Board and the relevant county government whose area of jurisdiction the water works is located ; or

(ii) with a water services provider in consultation with the Regulatory Board;

(bb) operate water works and provide bulk water services as a bulk water services 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;

5. The principal Act is amended by inserting the following new section immediately after section 68—

Insertion of a new section 68A in Cap. 372.

Licensing of water works development agencies.

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

(2) The Regulatory Board shall, upon commencement of this Act and as may be necessary thereafter, publish in the *Gazette* and on its website the standards and conditions for licensing of water works development agencies under this section.

6. Section 69 of the principal Act is amended—

Amendment of section 69 of Cap. 372.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

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

(b) in subsection (2), by deleting the words “the joint committee, authority or water services provider” and substituting therefor the words—

“water services provider or cross-county water services provider”;

(c) in subsection (3), by deleting the words “the joint committee, the authority or water services

provider” and substituting therefor the words “water services provider or cross-county water services provider”.

**7.** Section 72 of the principal Act is amended in subsection (1)—

Amendment of section 72 of Cap. 372.

(a) by inserting the following new paragraphs immediately after paragraph (b)—

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

(bb) evaluate and recommend tariffs and approve the imposition of such tariffs in line with consumer protection standards for irrigation purposes;

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

(c) issue licences, set conditions for water service provision, and accredit water services providers and bulk water services providers;

**8.** Section 75 of the principal Act is amended in subsection (1)—

Amendment of section 75 of Cap. 372.

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

(a) their names, telephone numbers, electronic mail and postal addresses;

(b) in paragraph (c) by deleting the word “accredited” and substituting therefor the word “licensed”.

**9.** Section 93 of the principal Act is amended by—

Amendment of section 93 of Cap. 372.

(a) deleting subsection (1) and substituting therefor 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 contracted function, the agreement shall set out the terms and conditions under which the assets may continue to be used.

- (c) inserting the following new subsections immediately after subsection (3)—

(3A) Where a person entering into an agreement with the contracting authority fails to complete the project, the contracting authority shall take up the remaining works and complete the project.

(3B) Where a party to an agreement and the contracting authority jointly or concurrently participate in undertaking the project works, the party and the contracting authority shall undertake mutual co-ordination, integration and consultation in the implementation of the whole project.

(3C) Subject to subsection (3B), each party to an agreement shall select identifiable components of the project and set out specific financial and non-financial responsibilities attached to each party on each of the components of the project.

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

(4) Despite any provisions in this Act, 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 bulk water service providers licensed under this section.

Amendment of  
section 100 of  
Cap. 372.

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

**11.** The principal Act is amended by deleting section 119 and substituting therefor the following new section—

Repeal and replacement of section 119 of Cap. 372.

Establishment of the Water Tribunal.

**119.** (1) There is established a Water Tribunal.

(2) The Water Tribunal shall consist of the following members appointed by the Judicial Service Commission—

- (a) a Chairperson who shall be an advocate of the High Court of Kenya with not less than ten years' post qualification experience;
- (b) two persons one of whom shall be a registered civil engineer and the other a registered water engineer, with at least ten years' experience; and
- (c) two persons who possess a degree from university recognized in Kenya and at least five years' experience in a relevant field.

(3) The Chairperson and members of the Water Tribunal shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years.

(4) The Chairperson and members of the Water Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, in consultation with the Salaries and Remuneration Commission, determine.