REPUBLIC OF KENYA





THE COUNTY ASSEMBLY

SECOND ASSEMBLY- FOURTH SESSION



REPORT OF THE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

ON

THE NYAMIRA COUNTY WETLANDS CONSERVATION AND PROHIBITION OF DESTRUCTION BILL, 2019

OFFICE OF THE CLERK COUNTY ASSEMBLY OF NYAMIRA

FEBRUARY 2020

1.1 PREAMBLE

Mr. Speaker Sir,

A County Assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.

Article 185 of the Constitution of Kenya, 2010 provides that the legislative authority of the County is vested in, and exercised by, it's County Assembly.

A county assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.

Mr. Speaker Sir,

Public participation in Kenya is considered a crucial pillar of the Kenya Constitution. It promotes democracy by providing the public with the opportunity to take part in decision making process in government thus promoting national values and principles of governance.

Article 174 (c) provides that, the object of devolution is to; "enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them" The centrally of public participation cannot therefore be over- emphasized.

Mr. Speaker Sir,

In recent years, interest and action with regard to public participation and accountability in economic decision making has increased through the following major factors;

- a) The growth and use of technology.
- b) Good governance.
- c) Greater decentralization and devolution of power.
- d) The growth in number and operational capacity of independent civil organizations.

1.3 COMPOSITION OF THE COMMITTEE

Mr. Speaker Sir,

The Sectoral Committee on Environment and Natural Resources comprises of the following members;

1. Hon.Raban Masira	Chairperson
2. Hon.Lilian Nyamweya	Member
3. Hon. Fred Nyachae	Member
4. Hon.James Boera	Member
5. Hon. Samuel Nyachama	Member
6. Hon. Enock Okero	Member
7. Hon. Violet Nyakora	Member
8. Hon. Thaddeus Nyabaro	Member
9. Hon. Hezina Mokua	Member
10. Hon. Jeliah Nyakang'I	Member
11. Hon. Jeridah Ibongia	Member
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2.0 INTRODUCTION

Mr. Speaker Sir,

In order to facilitate this development in our County, it is essential to have in place the requisite County Legislation and other necessary tools dully approved by this Honorable House.

The Constitution has placed significant responsibilities on legislatures over the management of public resources and development.

Further, Legislatures have in particular received enhanced responsibility in regard to resource mobilization, allocation, monitoring and control. *Article 196 of the Constitution* provides that, the County Assembly should facilitate public participation and its involvement in its committees, the legislative and other business of the assembly.

Mr. Speaker Sir,

I therefore affirm to this Honorable House that, this Bill was tabled in this Assembly and was committed to the Sectoral Committee on Environment and natural Resources for further scrutiny.

4.0 COMMITTEE PROPOSED AMENDMENTS.

Having scrutinized the Bill and considered views of the Members, the public and stakeholders. The Committee proposes the following amendments to the Bill as outlined below;

ITEM	PRINTED	PROPOSED
		AMENDMENTS
Preliminary		"insert licensing
		authority" means the
	,	County Government of
	,	Nyamira
		"polluter pays
		principle" the polluter
		and users of wetland
		resources shall bear the
		full environmental and
		social costs of their
		activities
1	"Wetlands" means land	wetlands are defined as
	which is mostly under	areas of land that are
	water, produces little if	(1
	any income and has no	permanently or
	use for wildlife or water	occasionally water logged
	conservation purposes,	with fresh, saline,
	provided it is preserved	

			is approximately 14,000
			km2of the land surface
			and fluctuates up to 6%
			in the rainy seasons.
Objectives of this Act		V-1-1-1	Insert and realign
			numbers;
			(i) to identify and map
			geological wetlands
Terms and Conditions	i)	At least	At least seven days prior
of the License(Clause		24hours prior	to commencing an
		to commencing	alteration or activity
10)		an alteration or	undertaken pursuant to
		activity	a wetland activity
		undertaken	license, the licensee shall
		pursuant to a	complete and file with
		wetland activity	the Licensing Authority a
	(; d) =	license, the	notification form
		licensee shall	provided in the Third
		complete and	Schedule and this
		file with the	requirement shall be a
		Licensing	condition of the license.
		Authority a	
		notification	
		form provided	
		in the Third	
		Schedule and	
		this	
		requirement	

	consultation with the	declaration of a wetland,
	department, and the	may cause a wetland
	such costs associated	management plan to be
	with the activities	developed in
	thereto shall be borne by	consultation with the
	the petitioner.	department.
Inventory of wetlands	The department shall	The department shall
	periodically inspect the	periodically inspect the
	wetlands to determine	wetlands to determine
	the necessity for revision	the necessity for revision
	or correction of the	or correction of the
	inventory maintained	inventory maintained
	under this section.	under this section.
		Notwithstanding a review
		shall be done every 10
		years.
		Delete 7 and number 6
Permanent wetland	21) a) include four	21(a) 100 metres of land
preserves	adjacent upland acres of	for each of wetland
Proserves	land for each of wetland	include;
	include;	
General penalty	26) Any person who	26) Any person who
	violates any order by the	violates any order by the
	County Executive	County Executive
	Committee member, or	Committee member, or

5.0 OBSERVATIONS.

The Committee observed,

- 1. **THAT,** the public was aware of the danger of encroaching wetlands and any public land.
- 2. **THAT,** the public saw the need to cut eucalyptus trees in all wetland and water sources areas.
- 3. **THAT**, the public sought to know the alternative plants or trees to be planted in wetland.
- 4. **THAT,** Some areas needed alternative and adequate trees at Lake Okari in Manga which was swampy and sinks when it's rainy season.
- 5. **THAT,** the public wanted to know the mode of compensation when they cut all eucalyptus trees.
- 6. **THAT**, the departments requires doing more sensitization to any Bill before it's discussed.
- 7. **THAT**, structures constructed in wetland to be stopped i.e Tea Buying Centers, dispensaries, Schools etc.

- 6. **THAT,** the Executive Committee Member for Environment and Natural Resources should implement The Nyamira County Wetlands

 Conservation and Prohibition of Destruction Bill 2019.
- 7. **THAT,** the Executive Committee Member for Environment and Natural Resources and the department thereof to continue sensitization across the County.

6.0 Conclusion

Mr. Speaker Sir,

The Committee recommends that, this House approves this Report of the Sectoral Committee on Environment and Natural Resources Committee with or without amendments.

Annexure.

- 1. The Nyamira County Wetlands Conservation and Prohibition of Destruction Bill 2019.
- 2. Public participation registers
- 3. Advert for public participation.

SPECIAL ISSUE

Kenya Gazette Supplement No. 1 (Nyamira County Bills No. 1)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NYAMIRA COUNTY BILLS, 2019

NAIROBI, 13th March, 2019

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Bi) :

- 26-General penalties.
- 27—Other compensation.
- 28-No action maintainable against a County Executive Committee member, etc.
- 29-Fines.
- 30—Regulations.

SCHEDULES

FIRST SCHEDULE - APPLICATION WETLAND ACTIVITY

LICENSE

SECOND SCHEDULE — WETLAND ACTIVITY LICENSE

THIRD SCHEDULE — FORMS

FOURTH SCHEDULE — TEMPORARY LICENSE

to the presence of the wetlands, but do not include woody swamps containing shrubs or trees, wet meadows, meandered water, streams, rivers and floodplains or river bottoms.

Objectives of the Act

- 3. The objectives of this Act are to—
- (i) enhance and maintain functions and values derived from wetlands in order to maintain ecosystems' goods and services, protect biological diversity and improve the livelihood of Nyamira County residents;
- (ii) promote innovative planning and integrated ecosystem management approaches towards wetlands conservation and management in the county;
- (iii) strengthen institutional capacity on conservation and management of wetlands;
- (iv) promote communication, education and public awareness among stakeholders;
- (v) improve scientific information and knowledge based on wetland ecosystems;
- (vi) establish an effective and efficient legal and institutional framework for integrated management and wise use of wetlands; and
- (vii) promote partnership and cooperation at county, national, regional and international levels for the management of transboundary wetlands and migratory species.

Guiding principles and values

- 4. Wetlands in Nyamira County shall be held, used and managed in a manner that is efficient, productive and sustainable, and in accordance with the following principles—
 - (a) sustainable and productive management of land resources;
 - (b) polluter pays principle;
 - (c) equity;
 - (d) The principle of public participation in the management of wetlands;
 - (e) The principle of international co-operation in the management of environmental resources shared by two or more Counties;

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- (4) A person may develop a management plan for the protection and management of wetlands and wetland resources and may apply to the County Government for the approval of that management plan.
- (5) The application referred to under sub-section (4) shall be in the form set out under the Third Schedule.

Permitted activities on wetlands

- 7. The following sustainable uses of wetland resources shall be permissible on wetlands-
 - (a) subsistence harvesting of papyrus, medicinal plants, trees and reeds;
 - any cultivation where the cultivated area is not likely to adversely affect the wetland;
 - (c) fishing, subject to the provisions of the Fisheries Act;
 - (d) collection of water for domestic use;
 - hunting, subject to the provisions of the Wildlife (Conservation and Management) Act;
 - small-scale fish farming; and
 - (g) grazing of livestock.

Activity License

- 8. (1) The licensing authority may grant a Wetland Activity License to a person to carry out the activities listed under Section 7 if the following is provided
 - a completed application, on the form set out under the First Schedule, accompanied by the prescribed fee;
 - notice to each owner of all real property within 200 feet in all directions of the property which is the subject of such application; and
 - (c) any further documentation requested by the licensing authority.
 - (2) Such application shall include—
 - (a) a detailed description of the proposed work;
 - a map showing the area of wetland directly affected with the location of the proposed work thereon; and

revoke a license where the Licensing Authority determines there is good and sufficient reason to do so.

(2) No amendment or revocation shall be made to a license without prior written notice from the County Executive Committee member, is given to the licensee and an opportunity to be heard.

Temporary permit

- 12.(1) The Department may grant a temporary permit to an applicant for the use of a wetland where—
 - (a) there is need to use water for emergency situations pending the availability of alternative sources of supply; or
 - (b) if a special research project requires the use of the wetland for a specified period of time.
- (2) The temporary permit issued under this Section shall be valid for a maximum period of three months, and may be renewed for a further period of three months upon application by the holder with reasons to the satisfaction of the Department.

Consideration in granting licenses

- 13. (1) In granting, denying or limiting any permit or license the Licensing Authority shall consider the effect of the proposed work or permits with reference to the public health and welfare, fisheries, wildlife, the protection of life and property from flood, hurricanes, and other natural disasters, and the public policy.
- (2) In determining whether a proposed regulated activity in any wetland is in the public interest, the County Executive Committee member shall consider—
 - (a) the public interest in preservation of natural resources and the interest of the property owners in reasonable economic development;
 - (b) the relative extent of the public and private need for the proposed regulated activity;
 - (c) where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, including mitigation, to accomplish the purpose of the proposed regulated activity;
 - (d) the extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;

- operate heavy equipment or a motor vehicle on the sediment bed or bank of a watercourse;
- operate heavy equipment or a motor vehicle on a wetland;
- disturb, remove, alter, disrupt or destroy the ground in any manner;
- (m) spray or apply pesticides of any kind;
- (n) disturb, remove, alter, disrupt or destroy vegetation in any
- (o) manner, including but not limited to the cutting of live trees or live shrubs; or
- carry out any type of wetland enhancement activity, including but not limited to debris removal, habitat development, or placement of structures.
- (2) No person shall, without a license or a Wetland Activity Permit, and other than in accordance with the terms and conditions thereof, cause or permit the engaging in any of the activities listed in subsection (1).

Protected

- 16. (1) The County Executive Committee member may, by notice in the Gazette, declare an area to be a protected wetland where such area has national and international significance due to its-
 - (a) biological diversity;
 - (b) ecological importance;
 - (c) landscape;
 - (d) natural heritage; or
 - (e) aesthetic value.
 - (2) Upon declaration of an area to be a wetland, the following shall be the only activities be permitted to be carried out in the area—
 - (a) research;
 - (b) eco-tourism;
 - (c) restoration or enhancement of the wetland; or
 - (d) any other activities identified in a County Wetland Management plan.

- (b) on the recommendation of a relevant Authority on its own motion or in consultation with other lead agencies, registered civil society organizations or individuals.
- (2) Where the relevant authority of its own motion or in consultation with the relevant lead agencies initiate the process of declaring an area to be a protected wetland under sub-section (1), the Department shall—
 - (a) by notice in the Gazette and in at least one newspaper circulating in the County, notify the public of its intention to declare the area to be a protected wetland, which notice shall identify and assign terms of reference to a task force which shall be mandated to prepare the wetland management plan;
 - (b) set up a task to prepare a wetland management plan by, incorporating the views of the people inhabiting the areas contiguous to the wetland;
 - (c) cause a Strategic Environmental Assessment of the management plan to be undertaken in accordance with the Act; and
 - (d) review the report containing the findings under paragraphs (b) and (c) of this sub-section.
- (3) Where the Department is satisfied with the findings under subsection (2) (d), it shall submit its recommendations to the County Executive Committee member for the gazettement of the wetland.
- (4) Where a lead agency, a member of the public or a registered civil society organization petitions the Department to initiate the process for declaration of an area as a protected wetland, the Department shall consider the petition and may initiate the process as set out in sub-section (2).
- (5) Without prejudice to the foregoing, a petitioner for the declaration of a wetland, may cause a wetland management plan to be developed in consultation with the Department, and the such costs associated with the activities thereto shall be borne by the petitioner.
- (6) Where, following a petition under sub-section (4) and (5), the Department declines to initiate the process of declaring an area to be a protected wetland, it shall communicate its decision together with its reasons to the petitioner within 60 days of the decision.

Inventory of wetlands

19. (1) The Department shall, in consultation with the relevant lead agency, prepare and maintain an inventory of all wetlands in the county

(3) Any person who fails, neglects or refuses to protect a wetland under sub-section (1) commits an offence.

Permanent wetland preserves

- 21. The County Government may acquire permanent easements on land containing wetlands which shall—
 - include four adjacent upland acres of land for each acre of wetland included;
 - (b) require that the landowner control noxious weeds; and
 - (c) be conveyed to the County Government in recordable form free of any prior title, lien, or encumbrance and must provide for a right of entry by the County for inspection and correction of violations.

Wetland restoration program

- 22. (1) A willing landowner may apply, to the County Government for the establishment or restoration of a wetland on property owned by the landowner in an area that is—
 - (a) designated by the County Government as a high priority wetland region; and
 - (b) identified as a high priority wetland area in the local unit of the County Government's comprehensive local water plan.
- (2) Within 30 days after receiving an application, the County government shall hold a public hearing.
- (3) Notice of the hearing shall be given to the applicant, of at least ten days before the hearing by the County government and such notice shall be published in an official newspaper of general circulation in the county.
- (4) The county government shall describe the application and hear comments from interested persons regarding the application and the planned establishment or restoration project at the hearing.
- (5) The county government must give preliminary approval or disapproval of the application within 30 days of the public hearing.

PART III - MISCELLANEOUS PROVISIONS

Gifts

23. The County Executive Committee member may accept for and on behalf of the county, any gift, bequest, devise, or grants of land; or interest in land or personal property of any kind; for any purpose pertaining to the activities of the Department or any of its divisions.

- (b) (i) recovery of cost of any investigation, inspection, monitoring, or survey which led to the discovery of the violation;
- (ii) cost of preparing and bringing a civil action commenced under this subsection;
- (iii) costs incurred by the county in removing, correcting, or terminating the adverse effects upon the wetland resulting from any violation for which a civil action has been commenced and brought under this subsection;
- (iv) compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archaeological resources, and for any other actual damages commenced and brought under this subsection.
- (c) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible, or in the event that restoration of the site of the violation is not practicable or by the Department.
- (3) A remedial order referred to under sub-section (2) (c) shall be in the form set out in the Fourth Schedule.
- 28. Neither the County Executive Committee Members nor any other person Maintainable or body of persons shall be personally liable to any done or omitted to be done in good faith in the performance or exercise or conferred by or under this Act.

29. Fines payable under this Act shall be remitted to the County Regulations

30. The County Executive Committee member shall make regulations for the better carrying out of the provisions of this Act.

	The Nyamira County Wetlands Conservation and Prohibition of Destruction Bill, 2019
	and heenee is valid from 20
	receive is granted subject to the following condition
	Date:
	- 410.
	Signature:
	Chief Officer,
	Lands, Environment and Natural Resources
	County Government of nyamira
	THIRD SCHEDULE—FORMS
	FORM A
	(S. 10 (1))
	NOTIFICATION FORM
	Licensee's Name:
	Company:
	Phone:
	Fax:
	c-mail address:
	Sub-County:
	Ward:
	Village:
	Postal address:
	Other physical address:
	Project information:
	Type of project:
	Property Information:
	Property Owner(s)
	Address:
	Work location on
,	Property
	(describe):
	Applicant's Signature:

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FOURTH SCHEDULE
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property located at or near
Occurring or has
(description of the activity), which are
REASONABLE GROUNDS, THAT time is of the essence for remedial officer designated pursuant to the Nandi County Wetlands Conservation I THEREFORE ORDER YOU
person/corporation issued to) of
the violation of the person committing or apparently committing which constitutes the violation or the registered owner of the property on CEASE The following activity (see Section 2).

STATEMENT OF OBJECTS AND REASONS

- (a) Wetlands protect and preserve drinking water supplies by serving to purify surface water and groundwater resources;
- (b) Wetlands provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property through the absorption and storage of water during high runoff periods and the reduction of flood crests;
- Wetlands serve as a transition zone between dry land and water courses, thereby retarding soil erosion;
- (d) Wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the county's fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife; and
- (e) Wetlands maintain a critical base flow to surface waters through the gradual release of stored flood waters and groundwater, particularly during drought periods.

There is required vigorous action to protect the county wetlands; further that in order to advance the public interest in a just manner, the rights of persons who own or possess real property affected by this Act must be fairly recognized and balanced with environmental interests; and that the public benefits arising from the natural functions of wetlands, and the public harm from freshwater wetland losses, are distinct from and may exceed the private value of wetland areas.

The County Executive Committee therefore determines that in this county, where pressures for commercial, agricultural and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around wetland areas designed to provide predictability in the protection of wetlands; that it shall be the policy of the county to preserve the purity and integrity of wetlands from random, unnecessary or undesirable alteration or disturbance; and that to achieve these goals it is important that the county enacts this law.

RICHARD NIXON A. ONYINKWA, Chairperson, Budget and Appropriations Committee.

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