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GARISSA COUNTY BILLS, 2018

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THE GARISSA COUNTY CLIMATE CHANGE FUND BILL, 2018

A Bill for

AN ACT of the Garissa County Assembly for the establishment of a Climate Change Fund for facilitating community initiated Climate Change Adaption and Mitigation projects, and for connected purposes

ENACTED by the Garissa County Assembly as follows—

PART I—PRELIMINARY

Short title and Commencement

1 This Act may be cited as the Garissa County Climate Change Fund Act, 2018

Interpretation

2 In this Act, unless the context otherwise requires—

"administrator" means the County climate change fund administrator appointed in accordance with section 10 of this Act,

"board" means the County climate change fund management board established under section 7 of this Act,

"climate change" means a change in the climatic conditions which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which adversely affects livelihoods,

"climate change adaptation" means measures undertaken to prevent or minimize actual or anticipated adverse effects of climate change,

"climate change awareness" means publicity and capacity activities aimed at creating an awareness about Climate Change in the County,

"climate change mitigation" means measures undertaken to prevent or reduce the emission of greenhouse gases,

"climate finance" means financing channeled by local and international entities, the National Government, County Government to facilitate climate change adaptation and mitigation,

"climate finance framework" means a context specific policy items established under this Act to guide in the application of the Fund,

"county" means Garissa County,

"county assembly" means the County Assembly of Garissa County,

"County government" means the Garissa County Government,

"county planning framework" includes the County Integrated Development Plan established under section 2 of the County Governments Act, 2012,

"county treasury" has the meaning assigned to it under section 103 of the Public Finance Management Act, 2012,

"executive member" means the County Executive Committee member for the time being in charge of matters of Environment in Garissa County,

"financial year" means the financial in conformity with the timelines for the County budget outlines in section 125 of the Public Finance Management Act,

"fund" means the climate change fund established under this Act,

"greenhouse gases" means any gaseous compound capable of increasing the earth's atmospheric temperature,

"national government agencies" means any National Government institution that deals with climate change with an office in the County, including the National Environment Management Authority and the National Climate Change Secretariat,

"participating institutions" means national or international institutions that have made contributions to the Fund,

"planning unit" has the meaning assigned to it under section 105 of the County Governments Act, 2012,

"Public Benefit Organization" has the meaning assigned to it under the Public Benefits Organizations Act 2014,

"steering committee" means the County climate change fund steering committee established under section 14 of this Act,

"village administrator" has the meaning assigned to it under section 53 of the County Governments Act, 2012,

"ward" has the meaning assigned to it under Article 89 of the Constitution,

"ward planning committee" means the ward climate change fund Committee established under section 18 of this Act,

Objects and purposes of the Act

3 The object of this Act is to create a fund in the County for the purpose of facilitating Climate Finance in the County for—

(a) establishing Climate Finance mechanisms in the County,

(b) facilitating planning for Climate Change Adaptation and Mitigation in the county planning and budgetary framework,

(c) seeking and receiving grants from international sources, the National Government, the County Government and other organizations,

(d) initiating and coordinating Climate Change Adaptation and Mitigation frameworks at the community level in the County,

(e) facilitating community initiated Climate Change Adaptation and Mitigation activities in the County, and

(f) coordinating support from National Government Climate Change policy and legislative framework

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE FUND

Establishment of the Fund

4 (1) There is established a fund to be known as the Garissa County Climate Change Fund which shall be used to fund climate change programs, projects and activities provided for in the Climate Finance Framework established under this Act

(2) The moneys in the Fund shall be disbursed as follows—

(a) ten percent of the moneys available in the Fund shall be allocated for administrative costs as follows—

(i) ten percent of the administrative costs shall be assigned to the Board,

(ii) thirty percent of the administration costs shall be assigned to the administration of the steering committee, and

(iii) sixty percent of the administrative costs shall be assigned to the administrative costs of the Ward Planning Committees

(b) twenty percent of the moneys available in the fund shall be allocated to County wide projects as follows—

(i) ten percent shall be assigned to Climate Change Awareness Activities,

(ii) twenty percent shall be assigned to County specific research and development, and

(iii) seventy percent shall be assigned to County wide climate change adaptation and mitigation projects

(c) seventy percent of the moneys available in the fund shall be allocated to projects from the Wards approved by the Board, and

(d) moneys not spent at the end of any financial year shall be retained in the Fund for uses that are allowable under this Act

Sources of funds

5 The Fund shall be financed through—

(a) moneys appropriated by the County Assembly, constituting a minimum of two percent of annual development budget,

(b) moneys from the National Government,

(c) climate finance from international sources,

(d) moneys received from Public Benefit Organizations,

(e) fees and charges from activities adversely affecting climate change, and

(f) grants and donations

Climate Finance Framework

6 (1) The Executive Member of Environment in consultation with the executive member in charge of Finance shall publish a Climate Finance Framework for the County annually

(2) Climate Finance Frameworks shall be developed through a consultative process spearheaded by the Steering Committee

(3) The Climate Finance Framework shall address the following issues—

(a) the status of Climate Change Awareness in the County,

(b) specific items in the National Climate Change Policy that are applicable to the County,

(c) the impact of climate change in the County,

(d) human activities in the County that may contribute to Climate Change,

(e) enforcement of climate change related county laws and community bylaws,

(f) projects that are relevant in the County with regard to Climate Change Adaptation and Mitigation and the anticipated impact, and

(g) any other emerging climate change issues

(4) The Climate Finance Framework shall be aligned to the County Planning Framework

Establishment of the Board

7 (1) There shall be an established Board which shall be known as the Garissa County Climate Change Fund Board and which shall be a body corporate and shall in its corporate name be able to—

(a) sue and be sued,

(b) taking, purchasing or otherwise acquiring, holding, charging or, (c) disposing of movable and immovable property,

(c) money or making investments, and

(d) or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate

(2) The Board shall be administered by a Board of Directors which shall consist of—

(a) one person, not being a public officer, appointed by the Executive Member, who shall be the chairperson,

(b) the Chief Officer in charge Environment,

(c) the Chief Officer in charge of Development Planning,

(d) the Chief Officer in charge of Finance,

(e) the Chief Officer in charge of Agriculture,

(f) the Chief Officer in charge of Livestock,

(g) the Chief Officer in charge of Public Health,

(h) the Chief Officer in charge of intergovernmental& institutional relations,

(i) Chief Officer in charge of water and irrigation,

(j) the County Drought Coordinator of the National Drought Management Authority in the County,

(k) one person representing a forum of Participating Institutions,

(l) One person representing of Public Benefit Organizations operating in the County,

(m) Two persons from religious institutions in the County, and

(n) Director National environmental management Authority

(3) A person shall be qualified for appointment as chairperson or a member appointed under subsection (2) if the person—

(a) is a resident of Garissa County,

(b) holds at least a degree qualification from a reputable academic institutions

(c) has relevant experience in any aspect of environment management or Climate Finance for at least 3 years, and

(d) meets the requirements of Chapter Six of the Constitution

Conduct of the affairs of the Board

8 The conduct of the affairs of the Board shall be as set out in the first schedule

Fund Administrator

9 (1) There shall be Fund Administrator for the Fund who shall be the secretary to the Board

(2) The County Executive Member for Finance shall designate an officer as the Administrator of the Fund

Functions of the Fund Administrator

10 The Fund Administrator shall—

(a) prepare a framework for receiving and evaluating project proposals,

(b) prepare and publish a yearly projects and program evaluation and implementation schedule stating—

(i) the key activities in a financial year,

(ii) the persons responsible for each task, and

(iii) the time frame for each process,

(c) organize access to the services of the Board at the ward level,

(d) implement the decisions of the Board,

(e) publish the eligibility criteria for projects under this Act,

(f) organize and coordinate the disbursement of moneys allocated to approved projects,

(g) coordinate capacity building for the Ward Planning Committees,

(h) keep custody of the accounts of the Fund,

(i) establish, coordinate and implement a monitoring and evaluation framework for projects under this Act,

(j) develop a complaints mechanism,

(k) facilitate the functions of the institutions created under this Act where appropriate,

(l) prepare a budget for the administrative costs per quarter for each institution under this Act, and

(m) perform any other duty assigned by the Board

Removal of the Fund Administrator

11 The Fund Administrator may—

(a) at any time resign from office by issuing three months' notice in writing to the chairperson of the Board,

(b) be removed from office by the executive member for finance on recommendation of the Board on either of the following grounds—

(i) serious violation of the Constitution or any other written law,

(ii) gross misconduct, whether in the performance of the functions of the office or otherwise,

(iii) physical or mental incapacity to perform the functions of office,

(iv) incompetence,

(v) bankruptcy

Staff of the Board

12 The Board may recruit staff on a need basis subject to the limitation on the administrative costs of the Fund

PART III—OVERSIGHT

Steering Committee

13 There is established a Garissa County Climate Change Fund Steering Committee which shall be composed of—

Technical officers appointed by respective CECs and institutions including (i) Agriculture, (ii) Livestock, (iii) Environment and Natural resources, (iv) Public health and sanitation, (v) water and irrigation, (vi) Kenya Met, (vii) Mining, (viii) KFS, (ix) KWS, (x) Finance, (xi) 1 rep

from technical partners, (xii) 1 rep from business community, (xiii) Fund admin, (xiv) Education, (xv) Nema, (xvi) procurement

Functions of the Steering Committee

14 The functions of the steering committee shall be to—

(a) develop a Climate Finance Framework for the County,

(b) facilitate and monitor the implementation of the Climate Finance Framework at the ward level,

(c) to compile the list of approved projects and prepare the County Climate Finance Budget,

(d) develop a Climate Finance research priority needs list for the county,

(e) coordinate research and development for Climate Finance in the County,

(f) pre-qualify research consultants for Climate Finance research in the County,

(g) assign and coordinate technical assistance from County departments to projects funded under this Act,

(h) ensure appropriate need based allocation of the moneys available in the Fund with regard to the projects received from the Ward Planning Committee,

(i) coordinate and implement curriculum for capacity building for Climate Change Awareness and Climate Finance in the County,

(j) ensure compliance of the Fund administration to the Public Finance Management principles under article 201 of the Constitution of Kenya ,

(k) ensure that projects approved for funding conform to the Climate Finance Framework,

(l) mobilize funding for projects, programs and activities listed in the Climate Finance Framework,

(m) facilitate the coordination of Climate Finance projects and programs with other programs in the County,

(n) prepare a Climate Change Awareness strategy for the County,

(o) appraise and prioritize the ward disbursement proposal by the Ward Climate change adaptation committee,

(p) regularly review the Climate Finance Framework,

(q) provide technical advice to Ward planning committee on tendering processes and support with documentation,

(r) monitor, evaluate and dissemination of reports on climate finance projects, and

(s) any other matter relevant to Climate Finance in the County

Conduct of affairs of the Steering Committee

15 (1) The Steering Committee shall meet at least once every month, and any other intermittent meeting when necessary

(2) The quorum for the meetings of the Steering Committee shall be half of the membership

(3) The committee in their first sitting elect the chairman and vice chairman

Secretariat of the Steering Committee

16 The Executive Member shall assign an officer in the department of Environment the duty of managing the affairs of the Steering Committee including planning for meetings in liaison with the Fund Administrator

Ward Planning Committee

17 (1) There is established a Ward Planning Committee in each Ward in Garissa County

(2) The ward admin in consultation with the local community leaders shall constitute The Ward Planning Committee with the following qualities—

(i) must be a resident of the respective ward,

(ii) Must be a reliable and respectable community member who is development conscious,

(iii) must have experience of doing a similar project in a transparent manner according to the expectation of the community,

(a) one person, who shall be chairperson,

(b) community representatives comprising of—

(i) two persons nominated by elders in the Ward,

(ii) two persons nominated by women in the Ward,

(iii) two persons nominated by the youth in the Ward,

(iv) two persons nominated by persons with disabilities in the Ward

(c) one person from a Ward based Public Benefit Organization, nominated by a Participating Institution,

(d) one person representing faith based institutions in the Ward,

(e) *ex –officio* members with no voting rights comprising of—

(i) the Sub–County Administrator of the respective sub-county,

(ii) ward Administrator of the respective ward,

(iii) two Village Administrators nominated by the Sub-County Administrator from among the Village Administrators to serve for a period of one year,

(iv) one chief per ward nominated by the assistant county commissioner,

(v) ward level technical representatives from line ministries – extension officers from Livestock, Agriculture, water and environment, and

(f) a secretary with a minimum qualification of KCSE certificate, in addition to above qualities

Functions of the Ward Planning Committee

18 (1)The roles of the Ward Planning Committee shall be—

(a) consulting with the community on the relevant Climate Finance activities,

(b) facilitating public participation at the Ward level,

(c) receiving project proposals from the community at the ward level,

(d) developing the technical components of project proposals,

(e) procuring goods and services for projects including the development of procurement plans for each project,

(f) monitoring the implementation of projects at the ward level,

(g) preparing the budget at the ward level,

(h) preparing the Ward level project reports, and

(i) any other duty assigned by the steering committee

(2) The Ward Planning Committee shall have access to other County

Departments for technical assistance as may be required

19 (1) The Ward Planning Committee shall meet at least once a month in every financial year and—

(a) the Ward Planning Committee shall prioritize the development of an eligibility criteria in the first quarter of the financial year, and

(b) the Ward Planning Committee can meet any other time on a need basis provided the limit on administrative costs per quarter is not exceeded

(2) The quorum for the meetings of the Ward Planning Committee shall be half of the membership

(3) A resolution of the Ward Planning Committee shall require an affirmative vote of more than one half of the membership present at a meeting, excluding the chairperson's vote which shall be a casting

PART IV—DISBURSEMENT OF FUNDS

Allocation of Fund to the Wards

20 (1) The Fund Administrator shall prepare and publish information on the disbursements of funds available to each Ward

(2) The Fund Administrator shall be guided by the following factors in determining the allocation of funds to the Wards—

(a) equitable distribution of the Fund in accordance with the eligibility criteria,

(b) wards identified by KFSSG as most vulnerable to climate disasters,

(c) population of each ward

(3) The Executive Member shall issue regulations for the better administration of this part including opening of accounts for ward planning committee

Eligibility Criteria

21 (1) The Board shall approve and publish eligibility criteria for Climate Finance projects that will be eligible for funding under this Act

(2) The eligibility criteria in subsection (1) above shall be based on the following parameters—

(a) magnitude and possibility of risk occurrence,

(b) promotion of climate resilience in the locality through Climate Mitigation or Adaptation,

(c) support for economic growth through Climate Adaptation,

(d) communal benefit including vulnerable groups and have clear considerations for gender representation,

(e) properly conducted situation analysis with clear problem statement to facilitate clarity on level and urgency of vulnerability, and risks arising from delayed intervention,

(f) Evidence of a properly conducted environmental impact assessment in line with communal land use,

(g) clearly defined monitoring and evaluation plan,

(h) Ownership and sustainability plan,

(i) provision of a platform for stakeholder engagement, and

(j) any other consideration that may be deemed relevant

Community Consultation Forums

22 (1) Each Ward Planning Committee shall convene community consultation forums in at least three different locations in the Ward in the first quarter of every Financial Year

(2) The agenda for the community consultation forums shall be—

(a) climate Change Awareness,

(b) project eligibility criteria, and

(c) identification of priority projects from the community members

(3) The Ward Planning Committee Secretary shall prepare a report on the community consultation forums under this part, and submit it to the steering committee for onward submission to the Board

Development of Project Proposals

23 (1) The Ward Planning Committee shall develop project proposals from the project priorities identified in section 23 (2) above, and include any necessary technical details, including the procurement plan for each project

(2) The Ward Planning Committee shall submit the list of project proposals to the steering committee for review

(3) Upon receiving the project proposals from the Ward Planning Committee, the steering committee shall within four weeks after receiving the project proposals—

(a) review and recommend the project proposals and communicate their decision to the respective Ward Planning Committee, or

(b) reject project proposals with reasons given in writing and communicate this decision to the respective Ward Planning Committee, or

(c) instruct the respective Ward Planning Committee to make necessary amendments to a project proposal and approve the amended project proposal within a further three weeks from the date of resubmission

(4) The project proposals developed by the Ward Planning Committee shall be subject to the funds allocated to the Ward by the fund Administrator in accordance with article 21 (1)

(5) The Board shall approve the reviewed and recommended list of projects within two weeks upon submission by the steering committee

(6) The executive Member shall develop regulations for the better administration of this part

Procurement

24 (1) The steering committee shall issue guidelines on the procurement entities for each Ward Planning Committee in consultation with the Executive Member

(2) The Ward Planning Committee shall adhere to the relevant procurement procedures under the Public Procurement and Asset Disposal Act 2015 and the matrix in the second Schedule of this Act

(3) The steering committee shall develop a capacity building schedule for the procurement entities of the Ward Planning Committee

Complaints mechanism

25 (1) Community members who are aggrieved by the decisions of the Ward Planning Committee shall submit the complaint to the Fund Administrator

(2) The Fund Administrator shall forward all complaints to the Steering Committee who shall constitute a Conflict Resolution Panel comprising five persons

(3) The Conflict Resolution Panel formed in subsection (2) above shall make a final determination within a period of fourteen working days

PART V—FINANCIAL PROVISIONS

Bank Account of the Fund

26 (1) The Executive Member in charge of finance shall issue guidelines on the banking arrangements of the Fund under the provisions of the Public Finance Management Act

(2) The bank account for the Fund shall be—

(a) managed by the Fund Administrator under regulations developed by the Executive member in consultation with executive member in charge of Finance,

(b) the following shall be the signatories to the account – Board chairperson, fund administrator and Chief officer environment

(3) Each ward planning committee will operate a separate account for administrative purposes with the following signatories the chairperson, treasurer and the fund administrator

(4) The bank account for the Fund shall be subject to the national legislation for auditing public entities

Administrative expenditure

27 (1) The Fund Administrator shall prepare an administrative cost budget for each quarter of a Financial Year

(2) The budget developed in subsection (1) above shall be submitted to the Board for approval

(3) The Executive Member shall develop regulations on the payment of sitting allowances of the Board, steering committee and the Ward Planning Committees

Accounts of the climate change fund

28 (1) The Fund Administrator shall keep proper books of account of the funds

(2) Three months before the close of the Financial Year, the Fund Administrator shall prepare an internal audit report for the Board

PART VI—MISCELLANEOUS

Protection from liability

29 Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for

the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in his personal capacity to any action, suit, claim or demand whatsoever

Reporting and project evaluation forms

30 Reporting and project evaluation shall be in accordance with the forms Contained in the third schedule

FIRST SCHEDULE (Section 9)

CONDUCT OF THE AFFAIRS OF THE BOARD

Meetings

1 (1) The meetings of the Board shall be convened at least six times every year by the chairperson, but not more than eight times in a financial year

(2) The chairperson may at any time convene a special meeting of the Board and shall do so within one month of the receipt by him of a written request signed by at least five members

(3) In the absence of the chairperson from any Board meeting, the members present shall elect one of their members to preside, and such member shall, as concerns that meeting, have all the powers and attributes of the chairperson under this Act

(4) At every meeting of the Board the member presiding shall have a casting as well as a deliberative vote

(5) The quorum for the meetings of the board shall be half of the membership

Committees

2 (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members

(3) The Board may where it deems appropriate, invite any person to attend the deliberations of any of its committees

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board

Declaration of Interest

3 (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as

reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made

(3) A member of the Board who contravenes subparagraph (1) shall cease to be a member of the Board upon direction of the Executive Member

(4) The Executive Member shall make arrangements for the appropriate departmental representation with regard to subsection (3) above

Common Seal

4 (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson, the Fund Administrator and one member nominated by the Board and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, the Fund Administrator and that member nominated by the Board

(3) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given

Contracts and Instruments

5 Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose

SECOND SCHEDULE PROCUREMENT MATRIX

(Section 30)

Approach to Seeking Quotation	Minimum number	Cost of Goods and services (Kenya Shillings)
Direct Purchase (single sourcing)	1	As specified in the Public Procurement and Asset Disposal Act 2015 and its Regulations
Targeted invitation to already known or new suppliers, not widely circulated	2	As specified in the Public Procurement and Asset disposal Act, 2015 and its Regulations
Open Tender widely Circulated	3	As specified in the Public Procurement and Asset disposal Act, 2015 and its Regulations

THIRD SCHEDULE FORMS

(Section 37)

FORM A SUMMARY SHEET FOR PROJECT IMPLEMNTATION (ONGOING PROJECTS)

Financial year

Ward Name

Type of Project	Location	Estimated total cost	Amount allocated	Expenditure to date	Variance				
					Q1	Q2	Q3	Q4	Total

Reasons for Varince

FORM B PROJECT FUND RE ALLOCATION REPORT

Ward Name **Financial Year**

Project No	Project Location	Amount Allocated	Amount Disbursed	Balance (KSh)	Unspent Re Allocated

Reasons for re allocation

Signature **Date**

Name **Position**

FORM C DETAILS OF PROPOSED PROJECTS

SUMMARY OF PROPOSED PROJECT

No	Project Name	Ward	Ranking	Estimated Cost
Grand Total, all proposals				

FORM D PROJECT EVALUATION FORM

Financial Year (Cost in KSh unless Otherwise Advised)

Ward Name

	Project and Location	
1	Project Priority Rank	
2	Short Description and target beneficiaries	
2 1	Justification	
2 2	Description of proposed measures	
3	Project Costs	
3 1	Pre-Construction costs	
3 2	Construction Cost	
3 3	Additional Infrastructure	
3 4	Design of Supervision	
3 5	Contingencies	
3 6	Total project cost	
3 7	Estimated annual operating costs	
3 8	Annual maintenance cost	
	Total Estimated costs (for the year)	
4	Sources of finance	
5 1	Development costs	
5 2	Operations and Maintenance costs	
6	Staffing and maintenance arrangengement	
7	Relationship with other projects	
8	Project timeframe (period of implementation)	

MEMORANDUM OF REASONS AND OBJECTS

The principal objects of this bill is to create a fund in the county for the purpose of facilitating Climate Finance in the county through

- Initiating and coordinating climate change adaptation and mitigation activities at the community level in the county,
- Establishing climate finance mechanisms in the county,
- Facilitating community initiated climate change adaptation and mitigation activities in the county,

Facilitating planning for climate change adaptation and mitigation in the county planning and budgetary framework seeking and receiving grant from international sources the National Government, the county Government and other organization, and coordinating support from National Government climate change policy and legislative framework

PART—I has 3 sections, preliminary consisting interpreting of terms, short titles and Commencement date and objects and purposes of the Act

PART—II of the bill has 10 sections, the establishment and administration of the fund

It comprises creation of the fund, the board, the fund administrator and sources of fund for the Garissa county climate change fund

PART—III of the bill is oversight, it has 7 parts In this part the bill creates a steering committee and word planning committee, the composition of the respective committee and their functions

PART—IV of the bill contains disbursement of the fund which focuses on the distribution of the fund, eligibility criteria, community consultation forums, development of project proposals, procurement among others

PART—V of the bill has the financial provisions, bank account of the fund, administrative expenditure and account of the board

PART—VI of the bill is miscellaneous, including regulations of the bill, protection from liability and reporting and evaluation forms

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CEC Environment, Energy & Natural Resources