

BILL ANALYSIS

Senate Research Center

S.B. 1413
By: Shapleigh
Natural Resources
6/8/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, industrial entities which abandon land and leave behind contaminated soils, hazardous waste, or similar polluted conditions are not required to pay for the redevelopment of the vacated land.

Cities need options to address environmental contamination while providing economic development. Brownfields are unfortunate results of contaminating industries which have come to the end of their life-cycle. Brownfield redevelopment funds help cities to continue building their tax base and provide employment opportunities.

S.B. 1413 provides local governments with the authority to establish a fund through a tax or fee assessment for investment in site clean-up and preparation thereby providing the opportunity for continued economic growth within the local jurisdiction.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that this Act does not place primary responsibility on a county for brownfield remediation or redevelopment but allows a county to leverage state or federal money that may be available for that purpose.

SECTION 2. Amends Chapter 361, Health and Safety Code, by adding Subchapter X, as follows:

SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC REDEVELOPMENT OF BROWNFIELDS

Sec. 361.901. DEFINITIONS. Defines "assessment," "brownfield," "brownfield program," "eligible owner," "eligible site," "licensed professional engineer," and "remediation."

Sec. 361.902. COUNTY BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT PROGRAM. (a) Authorizes the commissioners court of a county with a population of 250,000 or more to establish a program for the cleanup and economic redevelopment of brownfields located in the county, as authorized by Section 52-a, Article III, Texas Constitution.

(b) Requires a brownfield program to include specific procedures and standards for counties to determine eligibility.

(c) Requires the county to make available to the public and to the Texas Commission on Environmental Quality (commission), a draft of the proposed program at least 60 days before a public hearing to receive comments on the proposed program.

- (d) Requires the county to review the comments and make amendments to the draft as appropriate before adopting and implementing the program.
- (e) Requires the county to submit a copy of the final draft of a program adopted under this section to the commission and to the public.
- (f) Authorizes the county to amend a program adopted under this section by applying the procedures described by Subsections (c), (d), and (e) to the proposed amendment.
- (g) Authorizes the county to assign current or employ additional staff to implement a program adopted under this section.

Sec. 361.903. BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT FUND. (a) Authorizes the commissioners court of a county to establish a fund for a brownfield program and deposit to the credit of the fund any money the commissioners court considers appropriate, including revenue from property taxes, sales taxes, fees, gifts or grants, principal and interest payments made to repay loans from the fund, proceeds from the issuance of bonds, and contributions of other resources.

- (b) Authorizes money from a fund established under this section to be used only to provide for the economic growth and development of the county by paying all or part of specific costs, loans, or administrative expenses.
- (c) Authorizes a county, for the purposes of the county's brownfield program, to solicit and leverage money from other sources, including federal money available for brownfield assessment and eligible site remediation.
- (d) Requires the bond issuance to be approved by a majority of the voters voting on the issue at an election held for that purpose, before a county is authorized to issue bonds payable from ad valorem taxes to provide money for a fund.

Sec. 361.904. ENVIRONMENTAL ASSESSMENT. Requires an assessment under this subchapter to include specific information regarding property description, operational history, and other relevant information.

Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Authorizes a county, subject to the requirement of Subchapter C, Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code, to designate an area of the county that contains a brownfield as a reinvestment zone and enter into a tax abatement agreement based on the remediation of the brownfield with the eligible owner of the brownfield.

Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION. (a) Authorizes a county to contract with a licensed professional engineer or contractor to conduct remediation for an eligible site owned by the county or inspect a property or facility after remediation to determine whether it meets county standards for completeness of the remediation.

- (b) Requires a licensed professional engineer or contract, at a minimum, to be eligible to enter into a contract with a county under this section or to receive a loan under Section 361.907, to provide evidence to the county of previous success in conducting remediation or inspection, as applicable, of at least one brownfield or other property or facility contaminated by a hazardous substance.

Sec. 361.907. GRANTS AND LOANS. Authorizes a county, to help finance an assessment, eligible site remediation, or inspection, to provide money as a grant or a loan from a county fund established under Section 361.903 to an eligible owner or a licensed professional engineer or contractor who meets the requirements of Section 361.906.

Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY. Authorizes a county that establishes a brownfield program to act as a liaison between an eligible owner, licensed professional engineer, or contractor and the Environmental Protection Agency to assist in obtaining a federal grant for an assessment or eligible site remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

Sec. 361.909. LIAISON TO COMMISSION. Authorizes a county that establishes a brownfield program to act as a liaison between the commission and an eligible owner, licensed professional engineer, or contractor to assist in obtaining any available commission assistance for an assessment, eligible site remediation, or property or facility inspection after remediation.

Sec. 361.910. LIMITATIONS ON LIABILITY. (a) Provides that a person who is an eligible owner, licensed contractor, or licensed professional engineer engaged in an assessment, eligible site remediation, or property or facility inspection after remediation under a program adopted under this subchapter is not liable for damages or costs resulting from a release or threatened release of a hazardous substance that occurs during the assessment, remediation, or inspection unless the person qualified as an eligible owner, licensed professional engineer, or contractor by fraud, misinterpretation, or knowing failure to disclose material information or negligently or knowingly contributed to or caused the release or threatened release.

(b) Requires the county to inspect a property or facility after remediation is completed to determine whether the remediation meets county standards for completeness under the brownfield program. Requires the county, on a finding that the remediation meets the standards, to issue a certificate signifying the satisfactory remediation to the owner of the property or facility and file a copy of the certificate in the county property records. Provides that the owner or subsequent owner of a remediated property or facility is not liable for the costs of any additional assessment or remediation for environmental contamination that occurred before the issuance of the certificate.

(c) Provides that this subchapter does not limit or impair any immunity or defense to liability or suit that may be available to a county under any other provision of law.

Sec. 361.911. FAILURE TO PASS INSPECTION. Sets forth entitlements and authorizations for the owner of a property or facility who is denied a certificate under Section 361.910.

Sec. 361.912. COMMISSION ASSISTANCE. Authorizes the commission to provide educational, advisory, and technical services concerning assessment, remediation, and inspection of brownfields to a county that establishes a brownfield program under this subchapter and assistance to a county in obtaining federal grants for assessment and remediation of brownfields.

SECTION 3. Effective date: September 1, 2005.