

By: Shapleigh, Ellis

S.B. No. 1413

A BILL TO BE ENTITLED

AN ACT

relating to county brownfield cleanup and economic redevelopment programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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. Chapter 361, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC

REDEVELOPMENT OF BROWNFIELDS

Sec. 361.901. DEFINITIONS. In this subchapter:

(1) "Assessment" means an environmental assessment described by Section 361.904.

(2) "Brownfield" means real property the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of environmental contamination.

(3) "Brownfield program" means a county brownfield cleanup and economic redevelopment program described by Section 361.902.

(4) "Eligible owner" means the owner of a brownfield who demonstrates to the commissioners court of the county in which the brownfield is located that the owner:

1           (A) became the owner after the contamination  
2 occurred;

3           (B) did not contribute to the contamination as an  
4 owner responsible for contamination or through association with  
5 previous owners responsible for the contamination;

6           (C) exercises appropriate care at the brownfield  
7 by taking reasonable steps to stop continuing releases, prevent any  
8 threatened future releases, and prevent or limit human,  
9 environmental, or natural resource exposure to any previously  
10 released hazardous substance; and

11           (D) complies with local, state, and federal laws  
12 with respect to land use and requests for information.

13           (5) "Eligible site" means a property or facility that  
14 a county determines is a brownfield under the county's brownfield  
15 program.

16           (6) "Licensed professional engineer" means a person  
17 licensed by the Texas Board of Professional Engineers.

18           (7) "Remediation" means an action included within the  
19 meanings of "remedial action" and "removal," as those terms are  
20 defined by Section 361.003.

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

27           (b) A brownfield program must include:

1           (1) procedures to:

2                   (A) identify eligible sites;

3                   (B) conduct assessments;

4                   (C) prioritize the remediation of eligible  
5 sites, with consideration given to:

6                           (i) the number of jobs related to the  
7 remediation; and

8                           (ii) the resulting economic and  
9 environmental benefits to the county;

10                   (D) conduct the remediation of an eligible site;

11                   (E) conduct the inspection of a property or  
12 facility after remediation; and

13                   (F) guide eligible owners in applying for county  
14 assistance under the program; and

15           (2) standards by which the county can determine:

16                   (A) the eligibility of a person for a grant or  
17 loan under the program;

18                   (B) the eligibility of a person to enter into a  
19 contract with the county to perform remediation or inspection; and

20                   (C) the completeness of the remediation of a  
21 property or facility.

22           (c) The county shall make available to the public and to the  
23 commission a draft of the proposed program at least 60 days before a  
24 public hearing to receive comments on the proposed program.

25           (d) The county shall review comments received and make  
26 amendments to the draft as appropriate before adopting and  
27 implementing the program.

1       (e) The county shall submit a copy of the final draft of a  
2 program adopted under this section to the commission and shall make  
3 the final draft available to the public.

4       (f) The county may amend a program adopted under this  
5 section by applying the procedures described by Subsections (c),  
6 (d), and (e) to the proposed amendment.

7       (g) The county may assign current or employ additional staff  
8 to implement a program adopted under this section.

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

17       (b) Money from a fund established under this section may be  
18 used only to provide for economic growth and development of the  
19 county by paying for all or part of:

20           (1) the cost of an assessment;

21           (2) the cost of remediating a brownfield;

22           (3) the cost of inspecting a property or facility  
23 after remediation;

24           (4) a loan to an eligible owner or licensed  
25 professional engineer to conduct assessment, eligible site  
26 remediation, or inspection of a property or facility after  
27 remediation; or

1           (5) administrative expenses associated with  
2 implementing the brownfield program.

3           (c) For the purposes of the county's brownfield program, a  
4 county may solicit and leverage money from other sources, including  
5 federal money that may be available for brownfield assessment and  
6 eligible site remediation.

7           (d) Before a county may issue bonds payable from ad valorem  
8 taxes to provide money for a fund, the bond issuance must be  
9 approved by a majority of the voters voting on the issue at an  
10 election held for that purpose.

11           Sec. 361.904. ENVIRONMENTAL ASSESSMENT. An assessment  
12 under this subchapter must include:

13                   (1) a legal description of the property or facility;

14                   (2) a description of the physical characteristics of  
15 the property or facility;

16                   (3) the operational history of the property or  
17 facility to the extent that history is known by the owner;

18                   (4) information of which the owner is aware concerning  
19 the nature and extent of any relevant contamination or release at  
20 the property or facility and immediately contiguous to the property  
21 or facility, or wherever the contamination came to be located; and

22                   (5) relevant information of which the owner is aware  
23 concerning the potential for human exposure to contamination at the  
24 property or facility.

25           Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Subject  
26 to the requirements of Subchapter C, Chapter 312, Tax Code, a county  
27 may designate an area of the county that contains a brownfield as a

1 reinvestment zone and enter into a tax abatement agreement based on  
2 the remediation of the brownfield with the eligible owner of the  
3 brownfield.

4 Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION.

5 (a) A county may contract with a licensed professional engineer or  
6 contractor to:

7 (1) conduct remediation for an eligible site owned by  
8 the county; or

9 (2) inspect a property or facility after remediation  
10 to determine whether it meets county standards for completeness of  
11 the remediation.

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

19 Sec. 361.907. GRANTS AND LOANS. To help finance an  
20 assessment, eligible site remediation, or inspection, a county may  
21 provide money as a grant or a loan from a county fund established  
22 under Section 361.903 to:

23 (1) an eligible owner; or

24 (2) a licensed professional engineer or contractor who  
25 meets the requirements of Section 361.906.

26 Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY.

27 A county that establishes a brownfield program may act as a liaison

1 between an eligible owner, licensed professional engineer, or  
2 contractor and the Environmental Protection Agency to assist in  
3 obtaining a federal grant for an assessment or eligible site  
4 remediation under the Comprehensive Environmental Response,  
5 Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

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

12 Sec. 361.910. LIMITATIONS ON LIABILITY. (a) A person who  
13 is an eligible owner, licensed contractor, or licensed professional  
14 engineer engaged in an assessment, eligible site remediation, or  
15 property or facility inspection after remediation under a program  
16 adopted under this subchapter is not liable for damages or costs  
17 resulting from a release or threatened release of a hazardous  
18 substance that occurs during the assessment, remediation, or  
19 inspection unless the person:

20 (1) qualified as an eligible owner, licensed  
21 professional engineer, or contractor by fraud, misrepresentation,  
22 or knowing failure to disclose material information; or

23 (2) negligently or knowingly contributed to or caused  
24 the release or threatened release.

25 (b) The county shall inspect a property or facility after  
26 remediation is completed to determine whether the remediation meets  
27 county standards for completeness under the brownfield program. On

1 a finding that the remediation meets the standards, the county  
2 shall issue a certificate signifying the satisfactory remediation  
3 to the owner of the property or facility and shall file a copy of the  
4 certificate in the county property records. The owner or a  
5 subsequent owner of a remediated property or facility is not liable  
6 for the costs of any additional assessment or remediation for  
7 environmental contamination that occurred before the issuance of  
8 the certificate.

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

12 Sec. 361.911. FAILURE TO PASS INSPECTION. The owner of a  
13 property or facility who is denied a certificate under Section  
14 361.910:

15 (1) is entitled to receive a detailed description of  
16 actions needed for the property or facility to meet county  
17 standards; and

18 (2) may apply for additional county assistance under  
19 the county's brownfield program.

20 Sec. 361.912. COMMISSION ASSISTANCE. The commission may  
21 provide:

22 (1) educational, advisory, and technical services  
23 concerning assessment, remediation, and inspection of brownfields  
24 to a county that establishes a brownfield program under this  
25 subchapter; and

26 (2) assistance to a county in obtaining federal grants  
27 for assessment and remediation of brownfields.



1 SECTION 3. This Act takes effect September 1, 2005.