

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.