

1-1 By: Shapleigh, Ellis S.B. No. 1413
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1413 By: Barrientos

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to county brownfield cleanup and economic redevelopment
1-11 programs.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. This Act does not place primary responsibility
1-14 on a county for brownfield remediation or redevelopment but allows
1-15 a county to leverage state or federal money that may be available
1-16 for that purpose.

1-17 SECTION 2. Chapter 361, Health and Safety Code, is amended
1-18 by adding Subchapter X to read as follows:

1-19 SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC
1-20 REDEVELOPMENT OF BROWNFIELDS

1-21 Sec. 361.901. DEFINITIONS. In this subchapter:

1-22 (1) "Assessment" means an environmental assessment
1-23 described by Section 361.904.

1-24 (2) "Brownfield" means real property the expansion,
1-25 redevelopment, or reuse of which may be complicated by the presence
1-26 or potential presence of environmental contamination.

1-27 (3) "Brownfield program" means a county brownfield
1-28 cleanup and economic redevelopment program described by Section
1-29 361.902.

1-30 (4) "Eligible owner" means the owner of a brownfield
1-31 who demonstrates to the commissioners court of the county in which
1-32 the brownfield is located that the owner:

1-33 (A) became the owner after the contamination
1-34 occurred;

1-35 (B) did not contribute to the contamination as an
1-36 owner responsible for contamination or through association with
1-37 previous owners responsible for the contamination;

1-38 (C) exercises appropriate care at the brownfield
1-39 by taking reasonable steps to stop continuing releases, prevent any
1-40 threatened future releases, and prevent or limit human,
1-41 environmental, or natural resource exposure to any previously
1-42 released hazardous substance; and

1-43 (D) complies with local, state, and federal laws
1-44 with respect to land use and requests for information.

1-45 (5) "Eligible site" means a property or facility that
1-46 a county determines is a brownfield under the county's brownfield
1-47 program.

1-48 (6) "Licensed professional engineer" means a person
1-49 licensed by the Texas Board of Professional Engineers.

1-50 (7) "Remediation" means an action included within the
1-51 meanings of "remedial action" and "removal," as those terms are
1-52 defined by Section 361.003.

1-53 Sec. 361.902. COUNTY BROWNFIELD CLEANUP AND ECONOMIC
1-54 REDEVELOPMENT PROGRAM. (a) The commissioners court of a county
1-55 with a population of 250,000 or more may establish a program for the
1-56 cleanup and economic redevelopment of brownfields located in the
1-57 county, as authorized by Section 52-a, Article III, Texas
1-58 Constitution.

1-59 (b) A brownfield program must include:

1-60 (1) procedures to:

1-61 (A) identify eligible sites;

1-62 (B) conduct assessments;

1-63 (C) prioritize the remediation of eligible

2-1 sites, with consideration given to:
 2-2 (i) the number of jobs related to the
 2-3 remediation; and
 2-4 (ii) the resulting economic and
 2-5 environmental benefits to the county;
 2-6 (D) conduct the remediation of an eligible site;
 2-7 (E) conduct the inspection of a property or
 2-8 facility after remediation; and
 2-9 (F) guide eligible owners in applying for county
 2-10 assistance under the program; and
 2-11 (2) standards by which the county can determine:
 2-12 (A) the eligibility of a person for a grant or
 2-13 loan under the program;
 2-14 (B) the eligibility of a person to enter into a
 2-15 contract with the county to perform remediation or inspection; and
 2-16 (C) the completeness of the remediation of a
 2-17 property or facility.
 2-18 (c) The county shall make available to the public and to the
 2-19 commission a draft of the proposed program at least 60 days before a
 2-20 public hearing to receive comments on the proposed program.
 2-21 (d) The county shall review comments received and make
 2-22 amendments to the draft as appropriate before adopting and
 2-23 implementing the program.
 2-24 (e) The county shall submit a copy of the final draft of a
 2-25 program adopted under this section to the commission and shall make
 2-26 the final draft available to the public.
 2-27 (f) The county may amend a program adopted under this
 2-28 section by applying the procedures described by Subsections (c),
 2-29 (d), and (e) to the proposed amendment.
 2-30 (g) The county may assign current or employ additional staff
 2-31 to implement a program adopted under this section.
 2-32 Sec. 361.903. BROWNFIELD CLEANUP AND ECONOMIC
 2-33 REDEVELOPMENT FUND. (a) The commissioners court of a county may
 2-34 establish a fund for a brownfield program and deposit to the credit
 2-35 of the fund any money the commissioners court considers
 2-36 appropriate, including revenue from property taxes, sales taxes,
 2-37 fees, gifts or grants, principal and interest payments made to
 2-38 repay loans from the fund, proceeds from the issuance of bonds, and
 2-39 contributions of other resources.
 2-40 (b) Money from a fund established under this section may be
 2-41 used only to provide for economic growth and development of the
 2-42 county by paying for all or part of:
 2-43 (1) the cost of an assessment;
 2-44 (2) the cost of remediating a brownfield;
 2-45 (3) the cost of inspecting a property or facility
 2-46 after remediation;
 2-47 (4) a loan to an eligible owner or licensed
 2-48 professional engineer to conduct assessment, eligible site
 2-49 remediation, or inspection of a property or facility after
 2-50 remediation; or
 2-51 (5) administrative expenses associated with
 2-52 implementing the brownfield program.
 2-53 (c) For the purposes of the county's brownfield program, a
 2-54 county may solicit and leverage money from other sources, including
 2-55 federal money that may be available for brownfield assessment and
 2-56 eligible site remediation.
 2-57 (d) Before a county may issue bonds payable from ad valorem
 2-58 taxes to provide money for a fund, the bond issuance must be
 2-59 approved by a majority of the voters voting on the issue at an
 2-60 election held for that purpose.
 2-61 Sec. 361.904. ENVIRONMENTAL ASSESSMENT. An assessment
 2-62 under this subchapter must include:
 2-63 (1) a legal description of the property or facility;
 2-64 (2) a description of the physical characteristics of
 2-65 the property or facility;
 2-66 (3) the operational history of the property or
 2-67 facility to the extent that history is known by the owner;
 2-68 (4) information of which the owner is aware concerning
 2-69 the nature and extent of any relevant contamination or release at

3-1 the property or facility and immediately contiguous to the property
3-2 or facility, or wherever the contamination came to be located; and
3-3 (5) relevant information of which the owner is aware
3-4 concerning the potential for human exposure to contamination at the
3-5 property or facility.

3-6 Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Subject
3-7 to the requirements of Subchapter C, Chapter 312, Tax Code, a county
3-8 may designate an area of the county that contains a brownfield as a
3-9 reinvestment zone and enter into a tax abatement agreement based on
3-10 the remediation of the brownfield with the eligible owner of the
3-11 brownfield.

3-12 Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION.
3-13 (a) A county may contract with a licensed professional engineer or
3-14 contractor to:

3-15 (1) conduct remediation for an eligible site owned by
3-16 the county; or

3-17 (2) inspect a property or facility after remediation
3-18 to determine whether it meets county standards for completeness of
3-19 the remediation.

3-20 (b) To be eligible to enter into a contract with a county
3-21 under this section or to receive a loan under Section 361.907, a
3-22 licensed professional engineer or contractor at a minimum must
3-23 provide evidence to the county of previous success in conducting
3-24 remediation or inspection, as applicable, of at least one
3-25 brownfield or other property or facility contaminated by a
3-26 hazardous substance.

3-27 Sec. 361.907. GRANTS AND LOANS. To help finance an
3-28 assessment, eligible site remediation, or inspection, a county may
3-29 provide money as a grant or a loan from a county fund established
3-30 under Section 361.903 to:

3-31 (1) an eligible owner; or
3-32 (2) a licensed professional engineer or contractor who
3-33 meets the requirements of Section 361.906.

3-34 Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY.
3-35 A county that establishes a brownfield program may act as a liaison
3-36 between an eligible owner, licensed professional engineer, or
3-37 contractor and the Environmental Protection Agency to assist in
3-38 obtaining a federal grant for an assessment or eligible site
3-39 remediation under the Comprehensive Environmental Response,
3-40 Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

3-41 Sec. 361.909. LIAISON TO COMMISSION. A county that
3-42 establishes a brownfield program may act as a liaison between the
3-43 commission and an eligible owner, licensed professional engineer,
3-44 or contractor to assist in obtaining any available commission
3-45 assistance for an assessment, eligible site remediation, or
3-46 property or facility inspection after remediation.

3-47 Sec. 361.910. LIMITATIONS ON LIABILITY. (a) A person who
3-48 is an eligible owner, licensed contractor, or licensed professional
3-49 engineer engaged in an assessment, eligible site remediation, or
3-50 property or facility inspection after remediation under a program
3-51 adopted under this subchapter is not liable for damages or costs
3-52 resulting from a release or threatened release of a hazardous
3-53 substance that occurs during the assessment, remediation, or
3-54 inspection unless the person:

3-55 (1) qualified as an eligible owner, licensed
3-56 professional engineer, or contractor by fraud, misrepresentation,
3-57 or knowing failure to disclose material information; or

3-58 (2) negligently or knowingly contributed to or caused
3-59 the release or threatened release.

3-60 (b) The county shall inspect a property or facility after
3-61 remediation is completed to determine whether the remediation meets
3-62 county standards for completeness under the brownfield program. On
3-63 a finding that the remediation meets the standards, the county
3-64 shall issue a certificate signifying the satisfactory remediation
3-65 to the owner of the property or facility and shall file a copy of the
3-66 certificate in the county property records. The owner or a
3-67 subsequent owner of a remediated property or facility is not liable
3-68 for the costs of any additional assessment or remediation for
3-69 environmental contamination that occurred before the issuance of

4-1 the certificate.

4-2 (c) This subchapter does not limit or impair any immunity or
4-3 defense to liability or suit that may be available to a county under
4-4 any other provision of law.

4-5 Sec. 361.911. FAILURE TO PASS INSPECTION. The owner of a
4-6 property or facility who is denied a certificate under Section
4-7 361.910:

4-8 (1) is entitled to receive a detailed description of
4-9 actions needed for the property or facility to meet county
4-10 standards; and

4-11 (2) may apply for additional county assistance under
4-12 the county's brownfield program.

4-13 Sec. 361.912. COMMISSION ASSISTANCE. The commission may
4-14 provide:

4-15 (1) educational, advisory, and technical services
4-16 concerning assessment, remediation, and inspection of brownfields
4-17 to a county that establishes a brownfield program under this
4-18 subchapter; and

4-19 (2) assistance to a county in obtaining federal grants
4-20 for assessment and remediation of brownfields.

4-21 SECTION 3. This Act takes effect September 1, 2005.

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