

BILL ANALYSIS

Senate Research Center

H.B. 1734
By: Holland et al. (Lucio)
Education
5/4/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When school districts successfully sue for the defective design, construction, renovation, or improvement of one of their buildings, or settle such a case, they are required by law to use the proceeds of that suit to actually remedy the defects in the facilities. Additionally, the state is entitled to a portion of the judgment or settlement, if any remains after the cost of repairing the facility, if the facility in question was built with funds the district received through the instructional facilities allotment. However, there is currently no method for ensuring that funds from the judgment or settlement are actually being used for this intended purpose, or that the state's share of the net proceeds from such actions are ever remitted to the comptroller of public accounts of the State of Texas. As a result, many districts can avoid paying back the state's share of these proceeds, often costing the state significant sums of money.

H.B. 1734 strengthens existing law on the use of proceeds from these lawsuits by requiring districts to report to the commissioner of education when it enters into such a lawsuit, and later report on the use of proceeds from these lawsuits to remedy the problems that were the subject of the suit. The bill also gives enforcement authority of these requirements to the Texas attorney general, who may bring action to recoup any funds entitled to the state. By tightening reporting requirements, H.B. 1734 helps the state enforce existing law and more easily recover the funds to which it is entitled.

H.B. 1734 amends current law relating to litigation involving certain defects in school district facilities and enforcement of certain duties following that litigation; and authorizes a civil penalty.

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. Amends Chapter 44, Education Code, by adding Subchapter E and adding a subchapter heading to read as follows:

SUBCHAPTER E. LITIGATION INVOLVING SCHOOL DISTRICT FACILITY

SECTION 2. Transfers Section 46.0111, Education Code, to Subchapter E, Chapter 44, Education Code, as added by this Act, redesignates it as Section 44.151, Education Code, and amends it, as follows:

Sec. 44.151. New heading: **ACTIONS BROUGHT FOR DEFECTIVE DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF SCHOOL DISTRICT FACILITY.** (a) Defines "instructional facility" for purposes of this section. Creates Subdivision (2) from existing text and redesignates existing text of Subdivision (2) as Subdivision (3). Defines "state's share" to mean an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Subchapter A (Instructional Facilities Allotment), Chapter 46, rather than under this subchapter, used to pay the principal of and interest on

bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

(b) Requires a school district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds, rather than for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter, to provide the commissioner of education (commissioner) with written notice of the action, including a copy of the petition, by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed, rather than with written notice of the action. Requires the court or an arbitrator or other adjudicating authority, if the school district fails to comply with this subsection, to dismiss the action without prejudice. Provides that the dismissal of an action under this subsection extends the statute of limitations on the action for a period of 90 days.

(c) Authorizes the commissioner, in an action brought under Subsection (b) involving an instructional facility financed by bonds for which the school district receives state assistance under Subchapter A, Chapter 46, to join in the action on behalf of the state to protect the state's share in the action.

(d) Creates subdivisions from existing text. Requires a school district that brings an action under Subsection (b) to use the net proceeds from the action for:

(1) the repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;

(2) the replacement of the facility on which the action is brought;

(3) the reimbursement of the district for a repair or replacement made under Subdivision (1) or (2); or

(4) any other purpose with written approval from the commissioner.

Deletes existing text requiring a school district to use the net proceeds from an action brought by the district for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility.

(d-1) Creates this subsection from existing text and makes no further changes.

(e) Requires a school district to provide to the commissioner an itemized accounting of any repairs made under Subsection (d).

(f) Creates this subsection from existing text. Provides that the state's share resulting from an action brought under Subsection (b) involving an instructional facility financed by bonds for which the school district receives state assistance under Subchapter A, Chapter 46, is state property, rather than providing that the state's share is state property. Requires the district, rather than school district, to send to the comptroller of public accounts of the State of Texas any portion of the state's share not used by the district, rather than school district, to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility.

SECTION 3. Amends Subchapter E, Chapter 44, Education Code, as added by this Act, by adding Section 44.152, as follows:

Sec. 44.152. ATTORNEY GENERAL ENFORCEMENT OF SCHOOL DISTRICT DUTIES FOLLOWING CERTAIN ACTIONS; REPORT. (a) Authorizes the Texas attorney general (attorney general), if the attorney general believes that a school district has violated or is violating Section 44.151(d), (e), or (f), to, after providing at least two weeks' notice to the district, bring an action on behalf of the state to enjoin the district from violating those sections.

(b) Authorizes the attorney general, in an action brought under Subsection (a), to request and authorizes the court to order any other appropriate relief that is in the public interest, including payment of:

(1) a civil penalty in an amount not to exceed \$20,000 for each violation of Section 44.151(d), (e), or (f);

(2) the attorney general's reasonable costs for investigating and prosecuting the violation; or

(3) if applicable, the amount of the state's share under Section 44.151(f).

(c) Requires the attorney general, not later than December 1 of each year, to submit to the governor, the lieutenant governor, the members of the legislature, and the commissioner a report on any actions brought under this section during the preceding year. Requires the report to include certain information for each action.

SECTION 4. Makes application of Section 44.151, Education Code, as transferred, redesignated, and amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2019.