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H.B. No. 1734

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to litigation involving certain defects in school district  
3 facilities and enforcement of certain duties following that  
4 litigation; authorizing a civil penalty.

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

6 SECTION 1. Chapter 44, Education Code, is amended by adding  
7 Subchapter E and adding a subchapter heading to read as follows:

8 SUBCHAPTER E. LITIGATION INVOLVING SCHOOL DISTRICT FACILITY

9 SECTION 2. Section 46.0111, Education Code, is transferred  
10 to Subchapter E, Chapter 44, Education Code, as added by this Act,  
11 redesignated as Section 44.151, Education Code, and amended to read  
12 as follows:

13 Sec. 44.151 [~~46.0111~~]. ACTIONS BROUGHT FOR DEFECTIVE  
14 DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF SCHOOL  
15 DISTRICT [~~INSTRUCTIONAL~~] FACILITY. (a) In this section:

16 (1) "Instructional facility" has the meaning assigned  
17 by Section 46.001.

18 (2) "Net proceeds" means the difference between the  
19 amount recovered by or on behalf of a school district in an action,  
20 by settlement or otherwise, and the legal fees and litigation costs  
21 incurred by the district in prosecuting the action.

22 (3) [~~(2)~~] "State's share" means an amount equal to the  
23 district's net proceeds from the recovery multiplied by a  
24 percentage determined by dividing the amount of state assistance

1 under Subchapter A, Chapter 46, [~~this subchapter~~] used to pay the  
2 principal of and interest on bonds issued in connection with the  
3 instructional facility that is the subject of the action by the  
4 total amount of principal and interest paid on the bonds as of the  
5 date of the judgment or settlement.

6 (b) A school district that brings an action for recovery of  
7 damages for the defective design, construction, renovation, or  
8 improvement of a district [~~an instructional~~] facility financed by  
9 bonds [~~for which the district receives state assistance under this~~  
10 ~~subchapter~~] shall provide the commissioner with written notice of  
11 the action, including a copy of the petition, by registered or  
12 certified mail, return receipt requested, not later than the 30th  
13 day after the date the action is filed. If the school district  
14 fails to comply with this subsection, the court or an arbitrator or  
15 other adjudicating authority shall dismiss the action without  
16 prejudice. The dismissal of an action under this subsection  
17 extends the statute of limitations on the action for a period of 90  
18 days.

19 (c) In an action brought under Subsection (b) involving an  
20 instructional facility financed by bonds for which the school  
21 district receives state assistance under Subchapter A, Chapter 46,  
22 the [~~The~~] commissioner may join in the action on behalf of the state  
23 to protect the state's share in the action.

24 (d) A school district that brings an action under Subsection  
25 (b) shall use the net proceeds from the [~~an~~] action for:

26 (1) the [~~brought by the district for the defective~~  
27 ~~design, construction, renovation, or improvement of an~~

1 ~~instructional facility financed by bonds for which the district~~  
2 ~~receives state assistance under this subchapter to~~ repair of the  
3 defective design, construction, renovation, or improvement of the  
4 ~~[instructional]~~ facility on which the action is brought, including  
5 the repair of any ancillary damage to furniture and fixtures;

6 (2) the replacement of ~~[or to replace]~~ the facility on  
7 which the action is brought;

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

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

12 (d-1) Section 46.008 applies to the repair.

13 (e) A school district shall provide to the commissioner an  
14 itemized accounting of any repairs made under Subsection (d).

15 (f) The state's share resulting from an action brought under  
16 Subsection (b) involving an instructional facility financed by  
17 bonds for which the school district receives state assistance under  
18 Subchapter A, Chapter 46, is state property. The ~~[school]~~ district  
19 shall send to the comptroller any portion of the state's share not  
20 used by the ~~[school]~~ district to repair the defective design,  
21 construction, renovation, or improvement of the instructional  
22 facility on which the action is brought or to replace the facility.  
23 Section 42.258 applies to the state's share under this subsection.

24 SECTION 3. Subchapter E, Chapter 44, Education Code, as  
25 added by this Act, is amended by adding Section 44.152 to read as  
26 follows:

27 Sec. 44.152. ATTORNEY GENERAL ENFORCEMENT OF SCHOOL

1 DISTRICT DUTIES FOLLOWING CERTAIN ACTIONS; REPORT. (a) If the  
2 attorney general believes that a school district has violated or is  
3 violating Section 44.151(d), (e), or (f), the attorney general may,  
4 after providing at least two weeks' notice to the district, bring an  
5 action on behalf of the state to enjoin the district from violating  
6 those sections.

7 (b) In an action brought under Subsection (a), the attorney  
8 general may request and the court may order any other appropriate  
9 relief that is in the public interest, including payment of:

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

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

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

16 (c) Not later than December 1 of each year, the attorney  
17 general shall submit to the governor, the lieutenant governor, the  
18 members of the legislature, and the commissioner a report on any  
19 actions brought under this section during the preceding year. The  
20 report must include the following information for each action:

21 (1) the filing date;

22 (2) the cause number;

23 (3) the school district that is the subject of the  
24 action; and

25 (4) the court in which the action was brought.

26 SECTION 4. Section 44.151, Education Code, as transferred,  
27 redesignated, and amended by this Act, applies only to an action

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1 brought on or after the effective date of this Act. An action  
2 brought before the effective date of this Act is governed by the law  
3 applicable to the action immediately before the effective date of  
4 this Act, and that law is continued in effect for that purpose.

5 SECTION 5. This Act takes effect September 1, 2019.