

AN ACT

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

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

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

SUBCHAPTER E. LITIGATION INVOLVING SCHOOL DISTRICT FACILITY

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

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

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

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

(3) [~~(2)~~] "State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a 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 by registered or certified mail, return receipt
12 requested, not later than the 30th day after the date the action is
13 filed. If the school district fails to comply with this subsection,
14 the court or an arbitrator or other adjudicating authority shall
15 dismiss the action without prejudice. The dismissal of an action
16 under this subsection extends the statute of limitations on the
17 action for a period of 90 days.

18 (b-1) The notice required under Subsection (b) must
19 include:

20 (1) a copy of the petition; and
21 (2) an itemized list of the defects in the design,
22 construction, renovation, or improvement for which the district is
23 seeking damages under the action.

24 (c) In an action brought under Subsection (b) involving an
25 instructional facility financed by bonds for which the school
26 district receives state assistance under Subchapter A, Chapter 46,
27 the [~~The~~] commissioner may join in the action on behalf of the state

1 to protect the state's share in the action.

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

4 (1) the [brought by the district for the defective
5 design, construction, renovation, or improvement of an
6 instructional facility financed by bonds for which the district
7 receives state assistance under this subchapter to] repair of the
8 defective design, construction, renovation, or improvement of the
9 [instructional] facility on which the action is brought, including
10 the repair of any ancillary damage to furniture and fixtures;

11 (2) the replacement of [or to replace] the facility on
12 which the action is brought;

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

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

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

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

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

1 Section 42.258 applies to the state's share under this subsection.

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

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

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

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

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

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

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

26 (1) the filing date;

27 (2) the cause number;

1 (3) the school district that is the subject of the
2 action; and

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

4 SECTION 4. Section 44.151, Education Code, as transferred,
5 redesignated, and amended by this Act, applies only to an action
6 brought on or after the effective date of this Act. An action
7 brought before the effective date of this Act is governed by the law
8 applicable to the action immediately before the effective date of
9 this Act, and that law is continued in effect for that purpose.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1734 was passed by the House on April 24, 2019, by the following vote: Yeas 111, Nays 30, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1734 on May 23, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1734 on May 26, 2019, by the following vote: Yeas 123, Nays 21, 2 present, not voting.

Chief Clerk of the House

H.B. No. 1734

I certify that H.B. No. 1734 was passed by the Senate, with amendments, on May 16, 2019, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1734 on May 26, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor