

By: Holland, Leach, Gervin-Hawkins, Martinez,
Longoria, et al.

H.B. No. 1734

Substitute the following for H.B. No. 1734:

By: Smith

C.S.H.B. No. 1734

A BILL TO BE ENTITLED

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, 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 bring an action on behalf of the state to enjoin the district from
5 violating those sections.

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

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

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

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

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

20 (1) the filing date;

21 (2) the cause number;

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

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

25 SECTION 4. Section 44.151, Education Code, as transferred,
26 redesignated, and amended by this Act, applies only to an action
27 brought on or after the effective date of this Act. An action

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

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