

1-1 By: Holland, et al. (Senate Sponsor - Lucio) H.B. No. 1734
 1-2 (In the Senate - Received from the House April 24, 2019;
 1-3 April 25, 2019, read first time and referred to Committee on
 1-4 Education; May 10, 2019, reported favorably by the following vote:
 1-5 Yeas 11, Nays 0; May 10, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Taylor	X			
1-8 Lucio	X			
1-9 Bettencourt	X			
1-10 Campbell	X			
1-11 Fallon	X			
1-12 Hall	X			
1-13 Hughes	X			
1-14 Paxton	X			
1-15 Powell	X			
1-16 Watson	X			
1-17 West	X			

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to litigation involving certain defects in school district
 1-22 facilities and enforcement of certain duties following that
 1-23 litigation; authorizing a civil penalty.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Chapter 44, Education Code, is amended by adding
 1-26 Subchapter E and adding a subchapter heading to read as follows:

1-27 SUBCHAPTER E. LITIGATION INVOLVING SCHOOL DISTRICT FACILITY

1-28 SECTION 2. Section 46.0111, Education Code, is transferred
 1-29 to Subchapter E, Chapter 44, Education Code, as added by this Act,
 1-30 redesignated as Section 44.151, Education Code, and amended to read
 1-31 as follows:

1-32 Sec. 44.151 [46.0111]. ACTIONS BROUGHT FOR DEFECTIVE
 1-33 DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF SCHOOL
 1-34 DISTRICT [INSTRUCTIONAL] FACILITY. (a) In this section:

1-35 (1) "Instructional facility" has the meaning assigned
 1-36 by Section 46.001.

1-37 (2) "Net proceeds" means the difference between the
 1-38 amount recovered by or on behalf of a school district in an action,
 1-39 by settlement or otherwise, and the legal fees and litigation costs
 1-40 incurred by the district in prosecuting the action.

1-41 (3) ~~(2)~~ "State's share" means an amount equal to the
 1-42 district's net proceeds from the recovery multiplied by a
 1-43 percentage determined by dividing the amount of state assistance
 1-44 under Subchapter A, Chapter 46, ~~[this subchapter]~~ used to pay the
 1-45 principal of and interest on bonds issued in connection with the
 1-46 instructional facility that is the subject of the action by the
 1-47 total amount of principal and interest paid on the bonds as of the
 1-48 date of the judgment or settlement.

1-49 (b) A school district that brings an action for recovery of
 1-50 damages for the defective design, construction, renovation, or
 1-51 improvement of a district ~~[an instructional]~~ facility financed by
 1-52 bonds ~~[for which the district receives state assistance under this~~
 1-53 ~~subchapter]~~ shall provide the commissioner with written notice of
 1-54 the action, including a copy of the petition, by registered or
 1-55 certified mail, return receipt requested, not later than the 30th
 1-56 day after the date the action is filed. If the school district
 1-57 fails to comply with this subsection, the court or an arbitrator or
 1-58 other adjudicating authority shall dismiss the action without
 1-59 prejudice. The dismissal of an action under this subsection
 1-60 extends the statute of limitations on the action for a period of 90
 1-61 days.

1-62 (c) In an action brought under Subsection (b) involving an

2-1 instructional facility financed by bonds for which the school
2-2 district receives state assistance under Subchapter A, Chapter 46,
2-3 the [The] commissioner may join in the action on behalf of the state
2-4 to protect the state's share in the action.

2-5 (d) A school district that brings an action under Subsection
2-6 (b) shall use the net proceeds from the [an] action for:

2-7 (1) the [brought by the district for the defective
2-8 design, construction, renovation, or improvement of an
2-9 instructional facility financed by bonds for which the district
2-10 receives state assistance under this subchapter to] repair of the
2-11 defective design, construction, renovation, or improvement of the
2-12 [instructional] facility on which the action is brought, including
2-13 the repair of any ancillary damage to furniture and fixtures;

2-14 (2) the replacement of [or to replace] the facility on
2-15 which the action is brought;

2-16 (3) the reimbursement of the district for a repair or
2-17 replacement made under Subdivision (1) or (2); or

2-18 (4) any other purpose with written approval from the
2-19 commissioner.

2-20 (d-1) Section 46.008 applies to the repair.

2-21 (e) A school district shall provide to the commissioner an
2-22 itemized accounting of any repairs made under Subsection (d).

2-23 (f) The state's share resulting from an action brought under
2-24 Subsection (b) involving an instructional facility financed by
2-25 bonds for which the school district receives state assistance under
2-26 Subchapter A, Chapter 46, is state property. The [school] district
2-27 shall send to the comptroller any portion of the state's share not
2-28 used by the [school] district to repair the defective design,
2-29 construction, renovation, or improvement of the instructional
2-30 facility on which the action is brought or to replace the facility.
2-31 Section 42.258 applies to the state's share under this subsection.

2-32 SECTION 3. Subchapter E, Chapter 44, Education Code, as
2-33 added by this Act, is amended by adding Section 44.152 to read as
2-34 follows:

2-35 Sec. 44.152. ATTORNEY GENERAL ENFORCEMENT OF SCHOOL
2-36 DISTRICT DUTIES FOLLOWING CERTAIN ACTIONS; REPORT. (a) If the
2-37 attorney general believes that a school district has violated or is
2-38 violating Section 44.151(d), (e), or (f), the attorney general may,
2-39 after providing at least two weeks' notice to the district, bring an
2-40 action on behalf of the state to enjoin the district from violating
2-41 those sections.

2-42 (b) In an action brought under Subsection (a), the attorney
2-43 general may request and the court may order any other appropriate
2-44 relief that is in the public interest, including payment of:

2-45 (1) a civil penalty in an amount not to exceed \$20,000
2-46 for each violation of Section 44.151(d), (e), or (f);

2-47 (2) the attorney general's reasonable costs for
2-48 investigating and prosecuting the violation; or

2-49 (3) if applicable, the amount of the state's share
2-50 under Section 44.151(f).

2-51 (c) Not later than December 1 of each year, the attorney
2-52 general shall submit to the governor, the lieutenant governor, the
2-53 members of the legislature, and the commissioner a report on any
2-54 actions brought under this section during the preceding year. The
2-55 report must include the following information for each action:

2-56 (1) the filing date;

2-57 (2) the cause number;

2-58 (3) the school district that is the subject of the
2-59 action; and

2-60 (4) the court in which the action was brought.

2-61 SECTION 4. Section 44.151, Education Code, as transferred,
2-62 redesignated, and amended by this Act, applies only to an action
2-63 brought on or after the effective date of this Act. An action
2-64 brought before the effective date of this Act is governed by the law
2-65 applicable to the action immediately before the effective date of
2-66 this Act, and that law is continued in effect for that purpose.

2-67 SECTION 5. This Act takes effect September 1, 2019.

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