

House Bill 1734
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 under Subchapter A, Chapter 46, [~~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) A school district that brings an action for recovery of damages for the defective design, construction, renovation,

SENATE VERSION (IE)

SECTION 1. Same as House version.

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 under Subchapter A, Chapter 46, [~~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) A school district that brings an action for recovery of damages for the defective design, construction, renovation,

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or improvement of a district [~~an instructional~~] facility financed by bonds [~~for which the district receives state assistance under this subchapter~~] shall provide the 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. If the school district fails to comply with this subsection, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this subsection extends the statute of limitations on the action for a period of 90 days.

(c) 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, the [The] commissioner may join in the action on behalf of the state to protect the state's share in the action.

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

(1) the [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 of the defective design, construction, renovation, or improvement of the

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or improvement of a district [~~an instructional~~] facility financed by bonds [~~for which the district receives state assistance under this subchapter~~] shall provide the commissioner with written notice of the action by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed. If the school district fails to comply with this subsection, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this subsection extends the statute of limitations on the action for a period of 90 days. [FA1(1)]

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

(1) a copy of the petition; and

(2) an itemized list of:

(A) the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action; and

(B) any damaged furniture or fixtures for which the district is seeking damages under the action. [FA1(2)]

(c) 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, the [The] commissioner may join in the action on behalf of the state to protect the state's share in the action.

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

(1) the [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 of the defective design, construction, renovation, or improvement of the

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~~[instructional]~~ facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;

(2) the replacement of ~~[or to replace]~~ 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.

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

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

(f) 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. The ~~[school]~~ district shall send to the comptroller any portion of the state's share not used by the ~~[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 42.258 applies to the state's share under this subsection.

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

Sec. 44.152. ATTORNEY GENERAL ENFORCEMENT OF SCHOOL DISTRICT DUTIES FOLLOWING CERTAIN ACTIONS; REPORT. (a) If the attorney general believes that a school district has violated or is violating

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~~[instructional]~~ facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;

(2) the replacement of ~~[or to replace]~~ 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.

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

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

(f) 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. The ~~[school]~~ district shall send to the comptroller any portion of the state's share not used by the ~~[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 42.258 applies to the state's share under this subsection.

SECTION 3. Same as House version.

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Section 44.151(d), (e), or (f), the attorney general may, 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) In an action brought under Subsection (a), the attorney general may request and the court may 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) Not later than December 1 of each year, the attorney general shall 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. The report must include the following information for each action:

(1) the filing date;

(2) the cause number;

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

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

SECTION 4. Section 44.151, Education Code, as transferred, redesignated, and amended by this Act, applies only to an action brought on or after the effective date of this Act. An action brought before the effective date of this Act is governed by the law applicable to the action immediately

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SECTION 4. Same as House version.

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before the effective date of this Act, and that law is continued in effect for that purpose.

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

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SECTION 5. Same as House version.

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