

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

MAY 25 2019

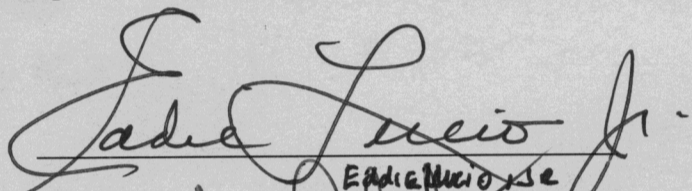
Date

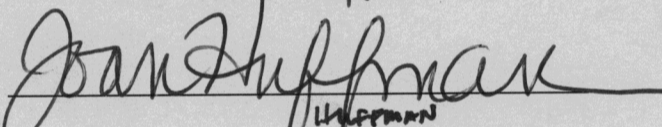
Honorable Dan Patrick
President of the Senate

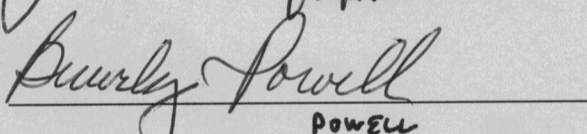
Honorable Dennis Bonnen
Speaker of the House of Representatives

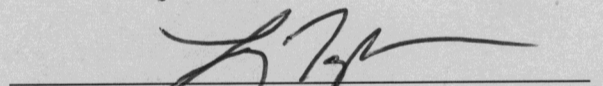
Sirs:

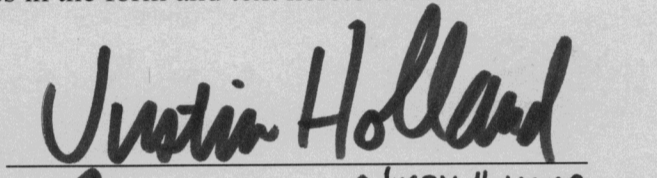
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 1734 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

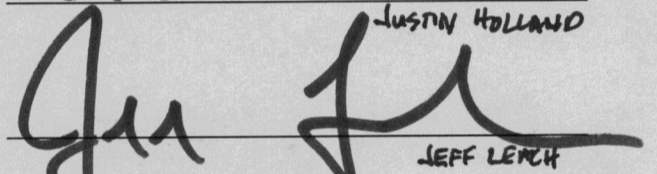

Eddie Lucio Jr.
CRAIGTON



Joan Huffman
HUFFMAN

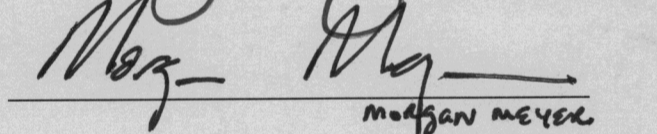

Burly Powell
POWELL

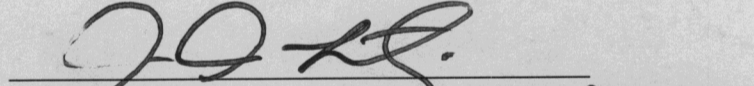

On the part of the Senate TAYLOR


Justin Holland
JUSTIN HOLLAND


Jeff Leach
JEFF LEACH


Julie Johnson
JULIE JOHNSON


Morgan Meyer
MORGAN MEYER


On the part of the House ARMANDO MARTINEZ

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

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 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.

House Bill 1734
Conference Committee Report
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)

(b) A school district that brings an action for recovery of damages for the defective design, construction, renovation, 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

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version except as follows:

Same as House version.

(a) Same as House version.

(b) A school district that brings an action for recovery of damages for the defective design, construction, renovation, 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)]

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as Senate version except as follows:

Same as House version.

(a) Same as House version.

(b) Same as Senate version.

House Bill 1734
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

extends the statute of limitations on the action for a period of 90 days.

No equivalent provision.

(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)]

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

(1) a copy of the petition; and

(2) an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

(c) - (f)

(c) - (f) Same as House version.

(c) - (f) Same as House version.

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

SECTION 3. Same as House version.

SECTION 3. Same as House version.

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

SECTION 4. Same as House version.

SECTION 4. Same as House version.

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

SECTION 5. Same as House version.

SECTION 5. Same as House version.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 25, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB1734 by Holland (Relating to litigation involving certain defects in school district facilities and enforcement of certain duties following that litigation; authorizing a civil penalty.), **Conference Committee Report**

<p>No significant fiscal implication to the State is anticipated.</p>
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Based on the analysis of the Office of Court Administration, Office of the Attorney General, and the Texas Education Agency, it is assumed that the provisions of the bill relating to litigation of defective school facilities could be absorbed using existing state resources.

Local Government Impact

Based on the analysis of the Texas Education Agency, a school district may forfeit facility funding if it does not comply with the notification requirements of the bill. However, the fiscal implications of the bill cannot be determined at this time.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 701 Texas Education Agency

LBB Staff: WP, CPa, HL, AM, NV, JMO, SLE

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under House Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not subject to a point of order under Rule 13.

I certify that a copy of the conference committee report on HB1734 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Justin Holland
(name)

5-25-19
(date)