

## **BILL ANALYSIS**

C.S.H.B. 1734  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised that a lack of restrictions on the purposes for which a public school district may spend the proceeds from a verdict or settlement for alleged construction defects may encourage unreasonable lawsuits against design professionals and construction contractors involved in school facility projects. C.S.H.B. 1734 seeks to address these concerns by restricting the purposes for which districts may spend such proceeds and by broadening the applicability of certain accountability requirements.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1734 amends the Education Code to make applicable to any public school district facility financed by bonds the following requirements regarding an action brought by a district for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which a district receives state assistance under the instructional facilities allotment:

- a requirement for the district to provide written notice of the action to the commissioner of education; and
- a requirement for the district to use net proceeds from the action for applicable facility repairs or facility replacement.

C.S.H.B. 1734 specifies that applicable facility repairs include the repair of any ancillary damage to furniture and fixtures and expands the purposes for which the net proceeds may be used to include the reimbursement of the district for an applicable repair or replacement and any other purpose for which the district has written approval from the commissioner. The bill sets out requirements for the district's written notice to the commissioner and provides for dismissal of the action without prejudice if the district fails to comply with those requirements. Such dismissal extends the statute of limitations on the action for a period of 90 days. The bill requires the district to provide to the commissioner an itemized accounting of any repairs made to the facility using the net proceeds from an action.

C.S.H.B. 1734 authorizes the attorney general to bring an action on behalf of the state to enjoin a district from violating provisions relating to the use of net proceeds, the itemized accounting

requirements, or the state's share of net proceeds from an applicable action if the attorney general believes that a district has violated or is violating those provisions and sets out provisions authorizing certain appropriate relief.

C.S.H.B. 1734 requires the attorney general, not later than December 1 of each year, to submit to the governor, the lieutenant governor, the members of the legislature, and the commissioner a report on any such actions brought by the attorney general during the preceding year and sets out the information, for each action, required to be included in the report.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1734 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the deadline by which a district that brings an applicable action must provide the commissioner with written notice from the 10th day after the date the action is filed to the 30th day after that filing date.

The substitute includes specifications that the dismissal of an applicable action on the grounds of the district's failure to comply with the notice requirements is without prejudice and that such a dismissal extends the statute of limitations on the action for a period of 90 days.

The substitute includes the following as additional purposes for which the net proceeds from an applicable action may be used: the repair of any ancillary damage to furniture and fixtures, the reimbursement of the district for a repair or replacement, and any other purpose for which the district has written commissioner approval.

The substitute makes the provision authorizing the commissioner to join in an action on behalf of the state applicable only to an action involving an instructional facility for which a district receives state assistance under the instructional facilities allotment, as was the case before amendment by the original.

The substitute lowers the cap on the civil penalty that may be ordered in an action brought by the attorney general against a district for certain violations from \$50,000 to \$20,000.