

SUBJECT: Adding requirements for litigation relating to school district facilities

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Farrar, Krause, Meyer, Smith, White

2 nays — Y. Davis, Neave

1 absent — Julie Johnson

WITNESSES: For — Corbin Van Arsdale, AGC-Texas Building Branch; Tom Kader, SEDALCO Inc; Liz Lonngren, Texas Architects; Luis Figueroa and Daniel Hart, Texas Society of Architects; Stephanie Cook; Will Hodges; (*Registered, but did not testify*: Russell Hamley, ABC of Greater Houston; Peyton McKnight, American Council of Engineering Companies of Texas; Travis Jones and Rodney Ruebsahm, Armko Industries, Inc.; Jon Fisher, Associated Builders and Contractors of Texas; Brian Cook, William Martinez, and Jerry Nevlud, Associated General Contractors of America, Houston Chapter; Phil Thoden, Austin Chapter of the Associated General Contractors; Jerry Hoog, Bartlett Cocke General Contractors; Brad Winans, Hensel Phelps; Burton Hackney, Joeris General Contractors, Ltd.; John McCord, NFIB; Mary Tipps, Texans for Lawsuit Reform; Angie Cervantes, Texas Masonry Council; Becky Walker, Texas Society of Architects; Wade Long, Texas Surety Federation; Jack Baxley, TEXO The Construction Association; Ryan Therrell, The Beck Group; Jose Villarreal, Vaughn Construction; Tara Snowden, Zachry Corporation; David Deschaine; Jeff Eubank; Timothy Rosenberg)

Against — Thomas Koger, Jubilee Academies; William Clay Montgomery, Spearman ISD; Barry Haenisch, Texas Association of Community Schools; Will Adams, Texas Trial Lawyers Association; Winifred "Winnie" Dominguez, Walsh, Gallegos, Trevino, Russo and Pyle PC, Texas Association of School Boards; Craig Eiland; (*Registered, but did not testify*: Winifred "Winnie" Dominguez, Walsh, Gallegos, Trevino, Russo and Pyle PC, Texas Association of School

Boards, Council of School Attorneys; Ruben Longoria, Texas Association of School Boards; John Grey, Texas School Alliance)

**BACKGROUND:** Education Code sec. 46.0111 requires school districts that bring a legal action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility that receives state assistance to provide the commissioner of education with written notice of the action. A district must use the net proceeds from such an action to repair or replace the facility.

**DIGEST:** CSHB 1734 would add to requirements for a school district that brings a legal action for defective design, construction, renovation, or improvement of school district facilities financed by bonds.

**Notice.** The district would have to include in its written notice of the action to the education commissioner a copy of the petition by registered or certified mail within 30 days of the date the action was filed. If a district failed to comply with the notification requirement, the court, arbitrator, or other adjudicating authority would be required to dismiss the action without prejudice. Such a dismissal would extend the statute of limitations on the action for 90 days.

The commissioner would be allowed to join in an action involving an instructional facility financed by bonds for which the school district received state financial assistance to protect the state's share.

**Use of proceeds.** A district would have to use the net proceeds from the action for repair of the facility, including any ancillary damage to furniture and fixtures; replacement of the facility; reimbursement of the district for repair or replacement of the facility; or any other purpose with written approval from the commissioner. A district would have to provide the commissioner with an itemized accounting of repairs.

A district would have to send any portion of the state's share not used to repair an instructional facility to the state comptroller.

**Enforcement.** The attorney general would be permitted to bring a legal action on behalf of the state to enjoin a district from violating the bill's requirements for the use of net proceeds, itemizing accounting of repairs, and the state's share of proceeds. In such an action, the attorney general could request and a court could order any other appropriate relief, including payment of:

- a civil penalty not to exceed \$20,000 for each violation;
- the attorney general's reasonable costs for investigating and prosecuting the violation; or
- the state's share of the proceeds, if applicable.

No later than December 1 of each year, the attorney general would have to submit to the governor, the lieutenant governor, members of the Legislature, and the commissioner a report on any actions brought by the attorney general during the preceding year. The report would have to include the filing date, cause number, school district that was the subject of the action, and the court in which the action was brought.

The bill would take effect September 1, 2019, and would apply only to an action brought on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1734 would provide transparency for school districts' use of proceeds from litigation on defective design and construction of school facilities. This transparency would prevent districts from using their lawsuit settlements for expenses unrelated to repairing or replacing the defective facilities. The bill could help prevent districts from being persuaded to sue architects and construction firms before the firms had an opportunity to repair the alleged defects. It would reduce litigation and bring down insurance costs that have risen in response to school facility litigation.

The bill would broaden existing requirements that districts notify the education commissioner about legal actions involving facilities that received state funding to apply to legal actions involving facilities financed by bonds. The bill would add teeth to the notification

requirement by requiring a court or arbitrator to dismiss a lawsuit filed by a district that did not provide the required notice. It would protect districts that mistakenly missed the notification deadline by tolling the statute of limitations so a district could refile the lawsuit. While some have criticized applying the notification requirement to districts with facilities financed entirely by local bonds, the education commissioner does already have some oversight of school facility construction. For instance, the commissioner has adopted administrative rules on school facility construction standards, and districts are required to complete forms certifying that construction projects complied with those standards.

Permitting the attorney general to enforce the law and seek penalties from districts that fail to spend their litigation proceeds on building repairs is necessary to ensure that the spending requirements are followed. In certain cases, the commissioner could approve spending on other purposes under the bill.

**OPPONENTS  
SAY:**

CSHB 1734 would create obstacles for efforts by school district to hold contractors accountable for construction defects. It would unfairly require districts that financed facilities entirely with local bonds to notify the education commissioner when they sought damages for defective projects. This notification requirement would especially burden smaller districts, which could lose their ability to bring a lawsuit if they missed certain deadlines. In addition, allowing the attorney general to sue school districts over their use of litigation proceeds and to seek penalties and attorney's fees could take money away from districts to the detriment of schoolchildren.