

GOVERNMENT CODE

TITLE 9. PUBLIC SECURITIES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1205. PUBLIC SECURITY DECLARATORY JUDGMENT ACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1205.001. DEFINITIONS. In this chapter:

(1) "Issuer" means an agency, authority, board, body politic, commission, department, district, instrumentality, municipality or other political subdivision, or public corporation of this state. The term includes a state-supported institution of higher education and any other type of political or governmental entity of this state.

(2) "Public security" means an interest-bearing obligation, including a bond, bond anticipation note, certificate, note, warrant, or other evidence of indebtedness, regardless of whether the obligation is:

- (A) general or special;
- (B) negotiable;
- (C) in bearer or registered form;
- (D) in temporary or permanent form;
- (E) issued with interest coupons; or
- (F) to be repaid from taxes, revenue, both taxes and revenue, or in another manner.

(3) "Public security authorization" means an action or proceeding by an issuer taken, made, or proposed to be taken or made in connection with or affecting a public security.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.002. CONFLICT OR INCONSISTENCY WITH OTHER LAWS.

(a) To the extent of a conflict or inconsistency between this chapter and another law, this chapter controls.

(b) This chapter does not prohibit an issuer from applying to the Texas Supreme Court for a writ of mandamus to the attorney general for the approval of a bond, and the court is authorized to issue the writ.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. DECLARATORY JUDGMENT ACTION

Sec. 1205.021. AUTHORITY TO BRING ACTION. An issuer may bring an action under this chapter to obtain a declaratory judgment as to:

(1) the authority of the issuer to issue the public securities;

(2) the legality and validity of each public security authorization relating to the public securities, including if appropriate:

(A) the election at which the public securities were authorized;

(B) the organization or boundaries of the issuer;

(C) the imposition of an assessment, a tax, or a tax lien;

(D) the execution or proposed execution of a contract;

(E) the imposition of a rate, fee, charge, or toll or the enforcement of a remedy relating to the imposition of that rate, fee, charge, or toll; and

(F) the pledge or encumbrance of a tax, revenue, receipts, or property to secure the public securities;

(3) the legality and validity of each expenditure or proposed expenditure of money relating to the public securities; and

(4) the legality and validity of the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.022. VENUE. An issuer may bring an action under this chapter in a district court of Travis County or of the county in which the issuer has its principal office.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.023. PROCEEDING IN REM; CLASS ACTION. An action

under this chapter is:

- (1) a proceeding in rem; and
- (2) a class action binding on all persons who:
 - (A) reside in the territory of the issuer;
 - (B) own property located within the boundaries of the issuer;
 - (C) are taxpayers of the issuer; or
 - (D) have or claim a right, title, or interest in any property or money to be affected by the public security authorization or the issuance of the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 3, eff. Sept. 1, 1999.

Sec. 1205.024. PLEADING CONTENTS. The petition in an action under this chapter must briefly set out, by allegation, reference, or exhibit:

- (1) the issuer's authority to issue the public securities;
- (2) the purpose of the public securities;
- (3) the holding and result of any required election;
- (4) a copy of or a pertinent excerpt from each public security authorization, including any essential action or expenditure of money;
- (5) the amount or proposed maximum amount of the public securities;
- (6) the interest rate or rates or the proposed maximum interest rate of the public securities;
- (7) in a suit relating to the validity or organization of an issuer, the authority for and the proceedings relating to the creation of the issuer or a boundary change; and
- (8) any other pertinent matter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.025. TIME FOR BRINGING ACTION; PENDENCY OF OTHER PROCEEDINGS. An issuer may bring an action under this chapter:

- (1) concurrently with or after the use of another

procedure to obtain a declaratory judgment, approval, or validation;

(2) before or after the public securities are authorized, issued, or delivered;

(3) before or after the attorney general approves the public securities; and

(4) regardless of whether another proceeding is pending in any court relating to a matter to be adjudicated in the suit.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. NOTICE OF DECLARATORY JUDGMENT ACTION

Sec. 1205.041. NOTICE TO INTERESTED PARTIES. (a) The court in which an action under this chapter is brought shall, on receipt of the petition, immediately issue an order, in the form of a notice, directed to all persons who:

(1) reside in the territory of the issuer;

(2) own property located within the boundaries of the issuer;

(3) are taxpayers of the issuer; or

(4) have or claim a right, title, or interest in any property or money to be affected by a public security authorization or the issuance of the public securities.

(b) The order must, in general terms and without naming them, advise the persons described by Subsection (a) and the attorney general of their right to:

(1) appear for trial at 10 a.m. on the first Monday after the 20th day after the date of the order; and

(2) show cause why the petition should not be granted and the public securities or the public security authorization validated and confirmed.

(c) The order must give a general description of the petition but is not required to contain the entire petition or any exhibit attached to the petition.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 4, eff. Sept. 1,

1999.

Sec. 1205.042. SERVICE OF NOTICE ON ATTORNEY GENERAL; WAIVER OF SERVICE. (a) A copy of the issuer's petition with all attached exhibits and a copy of the order issued under Section 1205.041(a) shall be served on the attorney general before the 20th day before the trial date.

(b) The attorney general may waive the service if the attorney general has been provided a certified copy of the petition, order, and a transcript of each pertinent public security authorization relating to the matters described in the petition.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.043. PUBLICATION OF NOTICE. (a) The clerk of the court shall give notice by publishing a substantial copy of the order issued under Section 1205.041(a) in a newspaper of general circulation in:

(1) Travis County;

(2) the county where the issuer has its principal office; and

(3) if the issuer has defined boundaries, each county in which the issuer has territory.

(b) The notice shall be published once in each of two consecutive calendar weeks, with the date of the first publication before the 14th day before the trial date.

(c) If the issuer is this state, Subsection (a)(3) does not apply.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.044. EFFECT OF PUBLICATION. The effect of notice given under Sections 1205.041 and 1205.043 is that:

(1) each person described by Section 1205.041(a) is a party to the action; and

(2) the court has jurisdiction over each person to the same extent as if that person were individually named and personally served in the action.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER D. TRIAL AND APPEAL PROCEEDINGS

Sec. 1205.061. COURT'S POWER TO ENJOIN OTHER PROCEEDINGS.

(a) On the issuer's motion, before or after the trial date set under Section [1205.041](#), the court may enjoin the commencement, prosecution, or maintenance of any proceeding by any person that contests the validity of:

(1) any organizational proceeding or boundary change of the issuer;

(2) public securities that are described in the petition for declaratory judgment action;

(3) a public security authorization relating to the public securities;

(4) an action or expenditure of money relating to the public securities, a proposed action or expenditure, or both;

(5) a tax, assessment, toll, fee, rate, or other charge authorized to be imposed or made for the payment of the public securities or interest on the public securities; or

(6) a pledge of any revenue, receipt, or property, or an encumbrance on a tax, assessment, toll, fee, rate, or other charge, to secure that payment.

(b) The court may:

(1) order a joint trial on all issues pending in any other proceeding in a court in this state and the consolidation of the proceeding with the action under this chapter; and

(2) issue necessary or proper orders to effect the consolidation that will avoid unnecessary costs or delays or a multiplicity of proceedings.

(c) An interlocutory order issued under this section is final and may not be appealed.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.062. ANSWER OR INTERVENTION BY INTERESTED PARTIES. A person described by Section [1205.041](#)(a) may become a

named party to an action brought under this chapter by:

(1) filing an answer with the court at or before the time set for trial under Section 1205.041; or

(2) intervening, with leave of court, after the trial date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.063. DUTIES OF ATTORNEY GENERAL. (a) The attorney general shall examine a petition filed under Section 1205.021, and shall raise appropriate defenses if the attorney general believes that:

(1) the petition is defective, insufficient, or untrue; or

(2) the public securities are, or the public security authorization or an expenditure of money relating to the public securities is, or will be invalid or unauthorized.

(b) If the attorney general does not question the validity of the public securities, the public security authorization, or an expenditure of money relating to the public securities or the security or provisions for the payment of the public securities, the attorney general may:

(1) state that belief; and

(2) on a finding by the court to that effect, be dismissed as a party.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.064. INSPECTION OF RECORDS OF ISSUER. (a) Each record of an issuer relating to the public securities, a public security authorization, or an expenditure of money relating to the public securities is open to inspection at reasonable times to any party to an action under this chapter.

(b) Each officer, agent, or employee with possession, custody, or control of any book, paper, or record of the issuer shall, on demand of the attorney general:

(1) allow examination of the book, paper, or record; and

(2) without cost, provide an authenticated copy that

pertains to or may affect the legality of the public securities, public security authorization, or an expenditure of money relating to the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.065. TRIAL OF ACTION. (a) The court shall with the least possible delay:

(1) hear and determine each legal or factual question in the declaratory judgment action; and

(2) render a final judgment.

(b) Regardless of the pendency of an appeal from an order entered under Subchapter E, on motion of the issuer, the trial judge shall proceed under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.066. COURT COSTS AND OTHER EXPENSES. (a) An issuer that brings an action under this chapter shall pay costs of the action, except as provided by Subsection (b).

(b) The court may require a person other than the attorney general who appears and contests or intervenes in the action to pay all or part of the costs as the court determines equitable and just.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.067. MILEAGE AND TRAVEL EXPENSES OF ATTORNEY GENERAL. (a) If an action under this chapter is brought in a county other than Travis County, the issuer shall pay any mileage or travel expense of the attorney general or an assistant attorney general in the amount this state allows to an official of this state for travel on official business.

(b) A claim for an expense under Subsection (a):

(1) must be filed in duplicate with the clerk of the court in which the action is pending; and

(2) shall be taxed as a cost against the issuer.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.068. APPEALS. (a) Any party to an action under this chapter may appeal to the appropriate court of appeals:

(1) an order entered by the trial court under Section 1205.103 or 1205.104; or

(2) the judgment rendered by the trial court.

(b) A party may take a direct appeal to the supreme court as provided by Section 22.001(c).

(c) An order or judgment from which an appeal is not taken is final.

(d) An order or judgment of a court of appeals may be appealed to the supreme court.

(e) An appeal under this section is governed by the rules of the supreme court for accelerated appeals in civil cases and takes priority over any other matter, other than writs of habeas corpus, pending in the appellate court. The appellate court shall render its final order or judgment with the least possible delay.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 6, eff. Sept. 1, 1999.

Sec. 1205.069. LEGISLATIVE CONTINUANCES. Rule 254, Texas Rules of Civil Procedure, and Section 30.003, Civil Practice and Remedies Code, do not apply to a suit or an appeal under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. SECURITY FOR ISSUER

Sec. 1205.101. SECURITY AGAINST SUIT. (a) Before the entry of final judgment in an action under this chapter, the issuer may file a motion with the court for an order that any opposing party or intervenor, other than the attorney general, be dismissed unless that person posts a bond with sufficient surety, approved by the court, and payable to the issuer for any damage or cost that may occur because of the delay caused by the continued participation of the opposing party or intervenor in the action if the issuer finally prevails and obtains substantially the judgment requested in its petition.

(b) On receipt of a motion under Subsection (a), the court

shall issue an order directed to the opposing party or intervenor, with a copy of the motion, to be served on the opposing party, the intervenor, or the party's attorney, personally or by registered mail, requiring the opposing party or intervenor to:

(1) appear at the time and place directed by the court, not sooner than five nor later than 10 days after the date the order is entered; and

(2) show cause why the motion should not be granted.

(c) The court may direct that motions relating to more than one party or intervenor be heard together.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.102. STANDARD FOR GRANTING OF MOTION. The court shall grant an issuer's motion for security under Section [1205.101](#) unless, at the hearing on the motion, the opposing party or intervenor establishes that the person is entitled to a temporary injunction against the issuance of the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.103. AMOUNT OF BOND. (a) The court that grants a motion under this subchapter as to a particular opposing party or intervenor shall in the order set the amount of the bond to be posted by that person.

(b) The bond must be in an amount determined by the court to be sufficient to cover any damage or cost, including an anticipated increase in interest rates or in a construction or financing cost, that may occur because of the delay caused by the continued participation of the opposing party or intervenor in the acts if the issuer finally prevails and obtains substantially the judgment requested in its petition.

(c) The court may receive evidence at the hearing or during any adjournment relating to the amount of the potential damage or cost.

(d) The court may allocate the amount of the bond among opposing parties and intervenors according to the extent of their participation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.104. FAILURE TO FILE BOND. (a) The court shall dismiss an opposing party or intervenor who does not file a required bond before the 11th day after the date of the entry of the order setting the amount of the bond.

(b) A dismissal under this section is a final judgment of the court, unless appealed under Section 1205.068.

(c) No court has further jurisdiction over any action to the extent that action involves any issue that was or could have been raised in the action under this chapter, other than an issue that may have been raised by an opposing party or intervenor who was not subject to the motion.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.105. APPEAL. (a) An order setting the amount of a bond denying the motion of an issuer for a bond, or dismissing a party for failure to file a bond may be appealed under Section 1205.068.

(b) An appellate court may:

- (1) modify an order of a lower court; and
- (2) enter the modified order as the final order.

(c) If an appeal is not taken or if the appeal is taken and the order of the lower court is affirmed or affirmed as modified, and the required bond is not posted before the 11th day after the date of the entry of the appropriate order, no court has further jurisdiction over any action to the extent it involves an issue that was or could have been raised in the action under this chapter, other than an issue that may have been raised by an opposing party or intervenor who was not subject to the motion.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. EFFECT OF DECLARATORY JUDGMENT

Sec. 1205.151. EFFECT OF JUDGMENT. (a) This section applies to a final judgment of a district court in an action under this chapter that holds that:

- (1) the issuer had or has the authority on the terms

set out in the issuer's petition to:

- (A) issue the public securities; or
 - (B) take each public security authorization; and
- (2) each public security authorization and expenditure of money relating to the public securities was legal.

(b) The judgment, as to each adjudicated matter and each matter that could have been raised, is binding and conclusive against:

- (1) the issuer;
- (2) the attorney general;
- (3) the comptroller; and
- (4) any party to the action, whether:
 - (A) named and served with the notice of the proceedings; or
 - (B) described by Section [1205.041\(a\)](#).

(c) The judgment is a permanent injunction against the filing by any person of any proceeding contesting the validity of:

- (1) the public securities, a public security authorization, or an expenditure of money relating to the public securities described in the petition;
- (2) each provision made for the payment of the public securities or of any interest on the public securities; and
- (3) any adjudicated matter and any matter that could have been raised in the action.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.152. STATEMENT ON VALIDATED PUBLIC SECURITY. (a) The issuer of a public security validated under this chapter may have written on the public security the following certificate:

"This obligation was validated and confirmed by a judgment entered _____ (date when the judgment was entered; the court entering the judgment; and the style and number of the declaratory judgment action), which perpetually enjoins the commencement of any suit, action, or proceeding involving the validity of this obligation, or the provision made for the payment of the principal and interest of the obligation."

(b) The clerk, secretary, or other official of the issuer

may sign the certificate.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.