

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2942 Public securities validation; action to contest validity; counterclaim; third party complaint; continuances; amendment; notice to appear; service; publication of order to appear; parties; other actions; intervention; final judgment; appeal; upholding validity of securities; definitions; short title; proceedings.

Sec. 2942. (1) If an action contesting the validity of any securities proposed to be issued or any aspect of such validity is brought against any public body, the public body may file a counterclaim against the plaintiff and a third party complaint against the state of Michigan and all persons, resident and nonresident, owning property or subject to taxation in the public body or in the political entity or entities it represents, and all other persons interested in or affected by the issuance of the securities, for the purpose of securing an adjudication, forever conclusive as against all the parties, as to the validity of the securities or as to those issues affecting such validity as are then properly justiciable or become so during the pendency of the proceedings. The court may grant continuances and permit amendments as may be appropriate to enable the issues affecting the validity of the securities to be adjudicated as fully as possible.

(2) The counterclaim and third party complaint shall briefly set out by proper allegation, reference or exhibit, insofar as the circumstances of the case permit, such facts as may be necessary to show the authority of the public body to issue the securities and to take any other action essential to their validity, the taking of all proceedings and other action and the satisfaction of all legal requirements essential to the validity of the securities (including the holding of any required election and the result thereof), the nature and characteristics of the securities (including amount, date, purpose, maturities, maximum interest rate), the source of the funds from which the securities are to be paid, and any other essential matters relevant to the issues upon which an adjudication is sought. In case the public body was established for the purpose of constructing or acquiring a public improvement for which the securities are to be issued, the counterclaim shall also set forth the authority for the creation of the public body.

(3) Upon the filing of the counterclaim and third party complaint, the court shall issue an order in general terms in the form of a notice directed against the plaintiff in the action and against the state of Michigan and, without naming them, all public bodies, property owners, taxpayers, citizens and others having or claiming any right or interest affected in any way by the issuance of the securities, requiring them, in general terms, and the state of Michigan, through its attorney general or his representative, to appear at a time and place designated in the order and show cause why the prayer of the counterclaim and third party complaint should not be granted.

(4) A copy of the counterclaim, the third party complaint, and the order shall be served upon the plaintiff in the action and upon the attorney general at least 20 days before the time fixed in the order for the hearing. The attorney general shall carefully examine the counterclaim and third party complaint and if it appears, or there is reason to believe, that it is defective, insufficient or untrue, or if in his opinion the securities have not been duly authorized or cannot be lawfully issued, or the taxes, assessments, rates, tolls or other charges or revenues provided for payment of said securities cannot be lawfully levied, collected and pledged for such purpose, he shall make such defense thereto as may seem proper.

(5) Prior to the date set for hearing, the clerk of the court shall publish a copy of the order once each week for 3 consecutive weeks in each of the newspapers designated below, the first publication in each newspaper to be not less than 20 nor more than 30 days prior to the date set for hearing:

(a) If the public body embraces, or the project for which the securities are to be issued extends into, territory in only 1 county, the notice shall be published in the county in a newspaper of general circulation in the territory.

(b) If the public body embraces, or the project for which the securities are to be issued extends into, territory in more than 1 but not more than 5 counties, the notice shall be published in each of the counties in a newspaper of general circulation therein.

(c) If the public body embraces, or the project for which the securities are to be issued extends into, territory in more than 5 counties, the notice shall be published in each of the 5 most populous counties in a newspaper of general circulation therein, and also in a newspaper or newspapers of general circulation in the territory outside of the 5 counties.

(d) If the public body is the state of Michigan (as distinguished from a political subdivision thereof) or any department, commission, agency or official thereof, or if the project extends throughout the state, the notice shall also be published in the county wherein the seat of state government is located, in a newspaper of general circulation therein.

(6) At least 10 days prior to the date set for the hearing, the clerk of the court shall give such notice of the

filing of the counterclaim and the third party complaint and of the hearing on the order to show cause to all known parties as the court shall direct in the order

(7) Upon motion of the public body, whether before or after the date set for hearing as provided in (3), the court may enjoin the commencement by any person or public body, of any other action contesting the validity of the security issue described in the counterclaim, may order a joint hearing or trial before him of all issues raised by the counterclaim and third party complaint which are then pending in any action or proceeding in any court, may order all such actions or proceedings consolidated with the action pending before him, and may make such orders as may be necessary and proper to effect such consolidation and as may tend to avoid unnecessary costs or delays and multiplicity of actions. Such order shall not be appealable.

(8) Any public body, property owner, taxpayer, citizen or other person affected by or interested in the issuance of the securities may become a named party to the proceedings by pleading to the third party complaint on or before the time set for hearing as provided in (3) or thereafter by intervention upon leave of court. At the time and place designated in the order for hearing, the court shall proceed to hear and determine all questions of law and fact in the proceedings and may make such orders as to the proceedings and such adjournments as will enable the court properly to try and determine the same and to render a final judgment therein with the least possible delay. Such final judgment shall be based upon a written opinion of the court which shall find the facts specially and shall state separately the court's conclusions of law therein.

(9) Any parties to the cause, whether plaintiff, defendant, third party plaintiff, third party defendant, intervenor or otherwise, dissatisfied with the final judgment, may appeal therefrom to the supreme court. The supreme court, insofar as practicable, shall expedite and give priority to the hearing and decision on the appeal.

(10) In the event that the judgment upholds the validity of the securities or such aspects thereof as have been adjudicated, and no appeal is taken therefrom, or if an appeal is taken and the judgment is affirmed, the judgment shall be forever binding and conclusive against the public body and all other parties to the cause, named or unnamed, and shall constitute a permanent injunction against the institution by any person of any action contesting any aspect of the validity of the security issue which has been adjudicated.

(11) For the purposes of this section, the term:

(a) "Public body" means the state of Michigan or any political subdivision thereof, including any county, township, city, village, school district, metropolitan district, port district, drainage district, public authority or other political entity, or any department, commission, agency or official of any of the foregoing.

(b) "Securities" or "security issue" means any bonds, notes, orders, certificates or other evidences of indebtedness whether general or special obligations and whether payable from taxes, assessments, rates, tolls or other charges or revenues or otherwise creating an obligation upon a public body.

(c) "Validity" as applied to any securities means the authority of the public body to issue the securities, to levy and collect the taxes, assessments, rates, tolls or other charges or revenues as are provided for the payment thereof, to pledge the same for payment, and to take any action essential to any of the foregoing; and also the legality of all proceedings and other action taken, and the satisfaction of all legal requirements, in connection with the issuance of the securities and the levy and collection of the taxes, assessments, rates, tolls or other charges or revenues and the pledge thereof.

(12) This section shall be known and may be cited as the "public securities validation act".

(13) Counterclaims and third party proceedings brought pursuant to this section are equitable in nature.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1962, Act 187, Imd. Eff. May 24, 1962.