

**PRESENTED AT**

16th Annual Advanced Administrative Law Conference  
September 9-10, 2021

**The Limited Scope of the Expedited Declaratory  
Judgment Act**

**Michael V. Powell**

**Author Contact Information:**

Michael V. Powell  
Locke Lord LLP  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201  
mpowell@lockelord.com  
(214) 740-8520

# **The Limited Scope of the Expedited Declaratory Judgment Act**

**Michael V. Powell  
Locke Lord LLP**

## **I. Introduction: the EDJA's unique procedures**

The EDJA is a powerful statute enacted to enable public bond issuers to obtain quick, final judgments adjudicating challenges to the issuance of bonds. The EDJA accomplishes this by bypassing many of the procedural safeguards that apply in ordinary civil litigation to protect the requirements of due process.<sup>1</sup>

The EDJA authorizes the giving of notice of the suit by newspaper publication only, eliminating the usual requirement of service of process and even the lesser need to give the “best practicable notice,” for example notice by mail. GOV’T CODE §§ 1205.041, 1205.043, 1205.044.<sup>2</sup>

Newspaper notice is published 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.” *Id.* at § 1205.041(a). Once the required publication has occurred, all persons within these broad categories become “parties to the action,” and the court acquires jurisdiction over each such person “as if that person were individually named and personally served in the action.” *Id.* at § 1205.044.

The published notice, which is in the form of an order issued by the court to which the issuer’s suit is assigned, must advise all parties that they may appear to “show cause why the [bond issuer’s] petition should not be granted and the securities or the public security authorization validated and confirmed.” *Id.* at § 1205.041(b) (2). The EDJA designates those “parties to the action” who elect to file an answer or intervene in the EDJA suit as “named parties.” *Id.* at § 1205.062.

---

<sup>1</sup>The EDJA, found in chapter 1205 of the Texas Government Code, is sometimes called the Public Security Declaratory Judgment Act. There is a general description of the EDJA at Mike Raiff, *et al.*, *The Expedited Declaratory Judgment Act: A Litigation Approach to the Efficient Resolution of Bond Hold-Ups*, 47 THE ADVOCATE 70 (2009) (a publication of the Texas Bar Litigation Section).

<sup>2</sup>The only exception is that the petition must be served on the Attorney General, unless the Attorney General waives service. GOV’T CODE § 1205.042. The Attorney General’s duties are to examine the petition and raise appropriate defenses if the attorney general believes “(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.” GOV’T CODE § 1205.063(a).

Time is short and the procedure accelerated. The notice tells parties that they have a right to “*appear for trial* at 10 a.m., on the first Monday after the 20th day after the date [the trial court signed the order that is published].” *Id.* at § 1205.041(b) (1) (emphasis added). Then the EDJA instructs trial courts to hear and determine each legal and factual question in the action and render judgment “with the least possible delay.” *Id.* at § 1205.065.<sup>3</sup>

An EDJA action is a class action as a matter of law, without any requirement for the plaintiff bond issuer to prove any of the elements of Texas Rule of Civil Procedure 42. *Id.* at § 1205.023(2).

An EDJA judgment is “binding and conclusive” against the issuer, State officials, and all persons to whom publication notice was addressed, regardless whether they appeared in the action or even saw the notice. *Id.* at § 1205.151(b); *see id.* at § 1205.044. The judgment constitutes a permanent injunction forbidding any person from filing any proceeding contesting the public securities, a public security authorization, or an expenditure of money relating to the public securities, as well as “any adjudicated matter and any matter that *could have been raised* in the action.” *Id.* at § 1205.151(c) (emphasis added).<sup>4</sup> As the Texas Supreme Court has explained, “[r]esolving a controversy through an EDJA action ends that controversy once and for all: a final judgment is binding on all ‘interested parties’ and is an injunction against future attacks.” *City of Conroe v. San Jacinto River Authority*, 602 S.W.3d 444, 451 (Tex. 2020).<sup>5</sup>

Upon motion by the bond issuer, the EDJA requires courts to order named parties who appear to oppose an issuer’s EDJA action to post a surety bond payable to the issuer. *Id.* at § 1205.101(a).<sup>6</sup> The bond amount “must be” sufficient to cover “any damage or cost, including an

---

<sup>3</sup>Nevertheless, the constitutional right to jury trial applies in EDJA actions. *Hatten v. City of Houston*, 373 S.W.2d 525, 533-35 (Tex. Civ. App.—Houston 1963, writ ref’d n.r.e.). In addition, unless the EDJA provides otherwise, the Texas Rules of Civil Procedure govern EDJA actions. *Id.* at 535. But note that the EDJA controls “to the extent of a conflict or inconsistency” between its text and another law. GOV’T CODE § 1205.002(a).

<sup>4</sup>The Supreme Court has held this provision precludes the filing of an equitable bill of review to challenge an EDJA judgment. *City of Lubbock v. Isom*, 615 S.W.2d 171 (Tex. 1981). In *Narmah v. Waller I.S.D.*, 257 S.W.3d 267, 273-75 (Tex. App.—Houston [1st Dist.] 2008, no pet.), the court held the EDJA does not allow restricted appeals under Texas Rule of Appellate Procedure 30, which under Rule of Appellate Procedure 26.1(c) may be filed up to six months after a judgment is entered.

<sup>5</sup>For disclosure, the author represents Conroe and other cities in the litigation that resulted in *City of Conroe v. San Jacinto River Auth.*, cited in the text. In that litigation, the author has advocated for limits on the EDJA, so that is his mindset. Presumably, that is why he was asked to present at this conference. But the author has endeavored to remain neutral while writing this paper.

<sup>6</sup>Other statutes say federal and state agencies, cities, water districts, and school districts are not required to file bonds. *See* TEX. CIV. PRAC. & REM. CODE ch. 6.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: The Limited Scope of the Expedited Declaratory Judgment Act

Also available as part of the eCourse

[Answer Bar: Litigating the Administrative Law Case](#)

First appeared as part of the conference materials for the  
16<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Use and Abuse of Public Security Declaratory Judgment Actions"