

Proposed Revisions - Subchapter A of Chapter 53

TITLE 1 ADMINISTRATION

Part 3 Office of the Attorney General

Chapter 53. Municipal Securities

Subchapter A. Approval on Municipal Securities by Attorney General

1 TAC §§ 53.1-53.23

The Office of the Attorney General (OAG) proposes the repeal of the existing Chapter 53, Subchapter A and the adoption of a new Subchapter A consisting of sections §§ 53.1-53.22, concerning the Approval of Municipal Securities by the Attorney General.

The OAG is responsible for the review and approval of public securities and other obligations issued by an agency, authority, board, public body, department, district, instrumentality, municipal corporation, political subdivision, public corporation or subdivision of the state, or a non-profit corporation acting for or on behalf of any such entities as provided by law (collectively referred to herein as "Issuers"). The revisions to Subchapter A are proposed to update the general rules applicable to the submission of transcripts of proceedings by Issuers and the review of such transcripts of proceedings by the OAG in order to ensure the orderly and efficient review of such proceedings in compliance with state law, including Chapter 1202 of the Texas Government Code.

The Public Finance Division of the OAG has determined that for the first five-year period the new rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the new sections.

The Public Finance Division also has determined that the new rules will have no adverse effect on small businesses and micro-businesses. The Public Finance Division has determined that there will be no economic costs to persons who are required to comply with the new sections.

Comments on the proposed new rules may be submitted to _____, Public Finance Division, Office of the Attorney General, William P. Clements Building, 300 W. 15th St., 12th Floor, Austin, Texas 78701 no later than 30 days from the date that these proposed rules are published in the Texas Register.

The new rules are proposed under the Texas Government Code, Chapters 1202 and 2001. No other statutes, articles, or codes are affected by the proposed new rules.

SUBCHAPTER A. APPROVAL OF PUBLIC SECURITIES BY ATTORNEY GENERAL

Authority: The provisions of this Subchapter A are issued under Texas Government Code, Chapters 2001 and 1202, unless otherwise noted.

§53.1. Application

(a) **General Application.** This subchapter applies to all transcripts of public securities submitted to the Attorney General for review by issuers, other than nonprofit corporations and other conduit issuers, as required by Chapter 1202 of the Government Code or other applicable state law.

(b) **Application to Nonprofit Corporations and Other Conduit Issuers.** Sections 53.2, 53.9, and 53.16 through 53.22 of this subchapter shall apply to transcripts of public securities issued by nonprofit corporations and other conduit issuers subject to Attorney General review. Additional requirements for public securities issued by nonprofit corporations and other conduit issuers are contained in subchapters L through P of this chapter.

(c) **Additional Requirements.** Additional subchapters will apply to transcripts submitted to the Attorney General depending on the type of public securities and the type of issuer.

(d) **Definition of Public Securities.** For the purposes of this subchapter, the term “public securities” means public securities as defined under § 1202.001 of the Government Code and other obligations required to be submitted to the Attorney General under state law.

§53.2. Form of Transcripts

Transcripts submitted to the Public Finance Division of the Office of the Attorney General for approval shall conform to the following requirements:

- (a) each transcript shall be submitted in a red rope or other expanding file folder;
- (b) transcript page size shall not exceed 8-1/2 by 11 inches, and each line of each page should be entirely legible. (Oversize documents, such as maps and charts, should be folded within the 8-1/2 by 11 inch requirement);
- (c) all transcripts shall contain a table of contents;
- (d) all transcripts shall have the table of contents keyed to right side tab numbers; and
- (e) each transcript shall be arranged in chronological order or in some other consistent, logical arrangement that will permit an efficient review.

§53.3. Content of Transcripts

(a) **Transcript Requirements.** Each transcript shall include the following, as applicable:

(1) Initial Public Securities. The initial public securities executed in accordance with applicable law;

(2) Authorizing Document. The authorizing document for the proposed public securities, including the following:

(A) citation to the legal authority for the issuance of the proposed public securities;

(B) the terms of the public securities, including the title, numbering, denominations, date, persons authorized to sign, method of signing, principal and interest payment dates, redemption terms, place of payment and registration, and substantially final form of the public securities; provided, however, that to the extent specific terms of the public securities have been lawfully delegated to a representative or committee for determination, those terms shall be set forth in the pricing certificate;

(C) citation to statutes, as applicable, authorizing the improvements or services to be acquired or constructed by the issuer, the pledge for payment, contracts with other parties for payment of principal and interest and other payments relating to the public securities to be issued;

(D) a reasonably complete and detailed description of the intended use of the proceeds, including whether any of the proceeds are being used to repay an interim borrowing, reimburse the issuer for amounts previously expended, pay capitalized interest or fund a reserve fund;

(E) a recitation of

(i) the manner of the sale, whether privately placed, negotiated, or competitively bid,

(ii) the identification of the purchaser,

(iii) the purchase price, including any discount or premium, and

(iv) the finding that the terms of the sale were the most advantageous to the issuer, if negotiated or privately placed, or, if competitively bid, that the sale was awarded based on the best price or lowest net effective interest rate, as applicable;

(F) for public securities with a floating, variable, or adjustable interest rate, a provision limiting the maximum rate of interest to:

(i) a net effective interest rate not to exceed the maximum interest rate provided for and calculated in accordance with Chapter 1204 of the Government Code, or

(ii) such other limit applicable to the securities and/or the issuer;

(G) the inclusion of provisions of Title 6 of the Property Code (Unclaimed Property) regarding the disposition and reporting of unclaimed principal and interest payments, specifically requiring compliance with the reporting requirements of Chapter 74 of the Property Code;

(H) provisions to account for the use of surplus public securities proceeds, premiums, and interest earnings on public securities proceeds; and

(I) if issuing public securities under voted authorization, recitation of amounts previously issued under such voted authorization and the amount of voted authorization remaining after the issuance of the public securities; provided, however, that if a determination of the amount of the public securities to be issued has been lawfully delegated, the amount of remaining voted authorization shall be stated in the pricing certificate;

(3) Pricing Certificate. A pricing certificate, when appropriate to facilitate a lawful delegation, shall be signed by the representative(s) delegated authority to determine specific terms of public securities and include those terms;

(4) General Certificate. A general certificate, signed by a senior executive officer of the issuer, the official custodian of records of the issuer, and any other appropriate officers or authorized representatives of the issuer, which includes the following:

(A) for all public securities, a debt retirement schedule that:

(i) is current as of the date of the sale of the public securities;

(ii) includes the combined debt service requirements of the proposed issue of public securities and outstanding indebtedness payable in whole or in part from the same source, including any additional series of public securities being issued at the same time as the public securities

(a) at the actual interest rates sold,

(b) in the case of variable rate debt, at the maximum permissible interest rate, or

(c) in the case of commercial paper, at then prevailing interest rates for governmental issuers with the same unenhanced credit rating as the issuer with principal (the maximum authorized program amount) shown as being amortized such that there will be level debt service payments over the life of the commercial paper program or twenty (20) years, whichever is greater, but not to exceed thirty (30) years or, if applicable, in accordance with §1371.057(c) of the Government Code.

The debt service requirements for outstanding public securities payable from ad valorem taxes and one or more other source must be

included unless it is shown that such securities can and are paid from the other sources. The debt service requirements of indebtedness with a related interest rate management agreement, as that term is defined in Chapter 1371 of the Government Code, shall be calculated taking into account the effect of the agreement on the interest rate(s) of the indebtedness;

(B) for all revenue and combination limited tax and revenue public securities:

(i) a history of the pledged revenue collections during the most recent three year period or, if revenues are being relied upon to show coverage, a revenue projection, in the event a revenue history is unavailable or insufficient to provide debt service coverage. A revenue projection must include an explanation of the circumstances, such as a recent increase in the applicable rates, fees, or charges, that support a projected increase in revenues; and

(ii) a copy of the current rate order or ordinance or adopted rate schedule of the issuer;

(C) for ad valorem tax public securities, certified statements of taxable values;

(D) for general law city ad valorem tax public securities, certification of the type of general law city and the city's population as of the next immediately preceding federal census;

(E) for home rule cities, certification of the date of the most recent amendment to the city charter and a certified copy of any charter amendment not previously submitted with a transcript;

(F) for issuers other than municipalities, citation to the statutory and, if applicable, constitutional provisions authorizing the issuer's creation and, if applicable, its taxing power;

(G) certification of incumbency, including the following:

(i) certification of the incumbency of each issuer's executive or administrative officer subscribing any document in the transcript; and

(ii) certifications of incumbency for city secretaries, county clerks, and other officers customarily certifying incumbencies, which certifications may be made by the presiding officer of the governing body of the issuer or, in his or her absence, any other member of the governing body; and

(H) any other certifications required by this chapter at the discretion of the issuer;

(5) Purchase Agreement. For negotiated sales, executed original of any purchase agreement relating to the sale of the public securities;

(6) Bid Form. For competitive sales, a copy of the winning bid form;

(7) Insurance. For financings for which insurance is obtained:

(A) copy of the insurance commitment letter, executed by the insurer;

(B) certified proceedings authorizing the insurance, which may be in the public securities authorization;

(C) if a statement of insurance is to be printed on the public securities, such printing must be authorized by the issuer in the public securities authorization, either in the form of public security or separately; and

(D) a copy of any agreement entered into with the insurer; if the agreement constitutes an authorized credit agreement pursuant to Chapter 1371 of the Government Code, the proceedings authorizing the agreement must be submitted;

(E) items (A), (B), and (D) are not required if insurance is obtained by the purchaser and the issuer has not entered into any agreements with the insurer;

(8) Offering Document. An official statement or other offering document; if a preliminary official statement is initially provided, a final official statement is to be provided prior to Attorney General approval;

(9) Affidavit of Publication. An affidavit of publication, executed by a representative of the newspaper, including a confirmation that the newspaper is of general circulation within the boundaries of the issuer, if a specific finding to that effect has not been made by the governing body of the issuer, and a recitation that the newspaper meets the requirements of the Government Code, Chapter 2051, Subchapter C, by reciting the requirements of §2051.044, with a copy of a clipping of the published material attached;

(10) Paying Agent/Registrar Agreement. The paying agent/registrar agreement in substantially final form containing the following:

(A) a statement that the paying agent/registrar accepts the duty to act as paying agent and/or registrar, as appropriate;

(B) a statement that the paying agent/registrar is subject to a good faith and reasonable care standard;

(C) a statement that any indemnification provision is limited "to the extent permitted by law" and excludes negligence and willful misconduct on the part of the paying agent/registrar;

(D) a statement that any early termination provisions shall not be effective until a successor paying agent/registrar has been appointed by the issuer and such appointment has been accepted;

(E) if the agreement provides that a bank will not release contents of the register to anyone other than the issuer, such a statement must include qualifying

language stating "except upon court order or as otherwise required by law;"

(F) if the agreement addresses the bank's right to file an interpleader, the jurisdiction must be limited to the State of Texas;

(G) a statement that in the event of a conflict between the agreement and the authorizing ordinance, order or resolution, the authorizing ordinance, order or resolution controls;

(H) a statement that the agreement is governed by Texas law; and

(I) a statement that any moneys held by the bank are subject to the unclaimed property laws of the State of Texas.

(11) Certificate of Authority. Evidence of authority to sign for any persons who signed any transcript document in a representative capacity (the representative's own verification is not sufficient);

(12) Acknowledgment of Special Meeting. Acknowledgment of timely receipt of notice from each member of the issuer's governing body who failed to attend a special meeting of the governing body at which a transcript document was approved;

(13) Certification of Official Actions. A certificate for each action taken by the governing body relating to the issuance of the public securities, executed by the custodian of records of the governmental body, indicating attendance, type of meeting (special, regular, or emergency), introduction and adoption of the action and the number of votes for, against, and abstaining. Such actions must be certified as true and correct copies of originals on file in the body's official minutes and all meetings at which such actions have been taken must be certified as having been held in full compliance with Texas Government Code, Chapter 551;

(14) Signature Identification and No-Litigation Certificate. An undated signature identification and no-litigation certificate signed by the officers who executed the public securities that complies with the following requirements:

(A) signatures shown on the certificate must substantially conform to the signatures on the public securities;

(B) signatures must be certified as genuine by a bank or acknowledged by a notary public;

(C) certificate must include certification that no litigation is pending or to the best of the knowledge of the issuer, threatened, against the issuer seeking to restrain or enjoin the issuance of the public securities, questioning the issuance or sale of the public securities or the authority or action of the governing body relating to the issuance or sale of the public securities, or the levy of taxes or collection of revenues or the pledge of taxes or revenues to the principal of and interest on the securities, as appropriate, or materially affecting the assessment or collection of taxes to pay the principal of and interest on the public securities, when appropriate; and that neither the corporate existence or boundaries of the issuer nor the

right to hold office of any member of the governing body of the issuer or any other elected or appointed official of the issuer is being contested or otherwise questioned; and

(D) authorization to the Attorney General to date the certificate the date of the approving opinion must be provided, along with a representation that the issuer will notify the Attorney General by phone if it becomes aware of any additional pending litigation;

(15) Use of Premium. For public securities issued pursuant to an election or a notice required by law, a certification as to how any premium will be expended;

(16) Reimbursement of Expenditures. If applicable, documentation evidencing intent to use subsequent public security proceeds to reimburse the issuer for its prior expenditures;

(17) Bond Review Board Information. Bond Review Board information required by §1202.008 of the Government Code along with an additional copy of the official statement; and

(18) Election Proceedings. Certified election proceedings as provided in §53.14 of this title.

(b) **Execution of Documents**. All certificates must be originally signed and sealed.

All issuer contracts providing security or otherwise affecting the marketing or terms of public securities and governmental orders must be either originally signed and, if required, sealed or legible copies certified to be true and correct copies.

§53.4. Financial Publications

The following financial publications circulated within the State of Texas are approved for publication of notices of public security sales:

- (a) Texas Bond Reporter;
- (b) the Bond Buyer; and
- (c) the Wall Street Journal.

§53.5. Determination of Bond Allowable

The following apply to determinations of ad valorem tax bond allowable:

(a) "bond allowable" means the portion of the maximum authorized tax rate available for debt service;

(b) except as provided below, and except for good cause shown, all political subdivisions have a bond allowable equal to 2/3 of the maximum tax rate authorized by law;

(c) home rule cities and general law cities authorized to levy a tax of up to \$2.50 per \$100 valuation have a bond allowable of \$1.50 per \$100 valuation, unless the tax rate is further limited by the city's charter;

(d) counties have a bond allowable of \$.40 per \$100 valuation, plus an additional bond allowable of ½ of the tax rate voted for "further maintenance of public roads" authorized by Article VIII, §9 of the Texas Constitution up to a maximum additional tax of \$.075 per \$100 for public securities payable from that tax;

(e) annual tax funds available for debt service shall be calculated at a 90% collection rate or a higher rate based on the average collection rate for the most recent three years. In calculating the average collection rate, the annual collection rate used for any year may not exceed 100%;

(f) the bond allowable calculation for school district bonds and maintenance tax notes shall be determined in accordance with the most recent All Bond Counsel Letter addressing the matter;

(g) bond allowable may be further restricted by statute in certain instances.

§53.6. Satisfaction of Coverage

The maximum annual debt service in the debt retirement schedule may not exceed the bond allowable and/or revenue history/projection, as applicable.

§53.7. Transcripts of Combination Tax and Revenue Public Securities

Generally, the transcripts of combination ad valorem tax and revenue public securities issues shall include both the ad valorem tax securities transcript requirements and the revenue securities transcript requirements provided by these rules.

§53.8. Certification of Appropriated Funds

When an issuer must pay debt service on an *ad valorem* tax public security or combination *ad valorem* tax and revenue public security before the initial tax levy can be collected, the issuer must provide certification that the issuer has appropriated lawfully available funds for such payment to the extent not paid from capitalized interest.

§53.9. Securities in Litigation

Pending litigation may disqualify an issue from approval when the pending litigation concerns the public securities, the majority of the titles to office, the issuer's creation, or the issuer's boundaries (for traditional governmental issuers) if a final judgment may reduce the tax base or revenue of the issuer so that the security for the public securities is materially impaired, or when pending litigation in any other way challenges the authority of the issuer to issue the public securities.

§53.10. Estimates in Statements of Taxable Values

Estimates in statements of taxable values are not permissible unless the issuer has been in operation for a period of less than 18 calendar months.

§53.11. Seals

Seals must bear an inscription of the official title of the issuer as it appears in the transcript. Seals on certificates must exactly correspond to seals on securities.

§53.12. Refunding Bonds

(a) **Definitions.** For purposes of this section, the term "bonds" includes commercial paper used for refunding purposes, and the term "public securities" includes other obligations authorized to be refunded by law that do not constitute public securities under §1202.001 of the Government Code.

(b) **Types of Refundings.** Refundings may be accomplished by the issuance of (i) advance or current refunding bonds sold for cash or (ii) exchange refunding bonds issued in exchange for the refunded obligations. For state law purposes, all refundings in which the public securities being refunded are not paid and discharged the same day as the refunding bonds are issued are considered to be advance refundings.

(c) **Advanced Refundings.** Transcripts for net defeasance advance refunding must include documentation from an accounting firm or other qualified entity, other than the issuer, verifying the sufficiency of the investments of the escrowed proceeds to redeem on the redemption date or pay at maturity, as applicable, the refunded public securities. For a gross defeasance, a certificate of sufficiency from the paying agent for the refunded obligations or other qualified entity, other than the issuer, is required. For an advance refunding pursuant to Subchapter C of Chapter 1207 of the Government Code:

(1) the financial institution with whom the refunding bond proceeds are to be deposited must enter into an escrow or similar agreement if required by §1207.062 of the Government Code, or otherwise execute an agreement or certificate confirming its agreement to hold the refunding proceeds in trust for the owners of the refunded public securities; and

(2) a certification of incumbency, including specimen signatures, and corporate authority of the financial institution executing an escrow or similar agreement must be included in the transcript.

(d) **Paying Agent for Refunded Public Securities.** All paying agents for public securities to be redeemed must

(1) acknowledge receipt of a notice of redemption and, in cases in which a notice of redemption is required to be published or mailed to the registered owners prior to the delivery of the refunding bonds, evidence of such publication or a certification by the paying agent/registrar as to provision of notice to registered owners must be included in the transcript; and

(2) acknowledge satisfaction of paying agent fees; if fees will not be paid at closing, the paying agent must certify that it will not look to the bond proceeds as payment for its fees but its sole remedy will be an action for payment under the paying agent agreement.

(e) **Exchange Refundings.** Exchange refunding bonds issued pursuant to the authority of §1207.081 of the Government Code may be sent to the Comptroller for registration after approval if the transcript includes instructions from the issuer to the paying agent for the refunding bonds to hold the bonds and deliver them only upon surrender of the public securities being refunded and a representation that the refunding bonds will be delivered to the paying agent for further delivery as instructed and not to any other party, or provides a similar mechanism for ensuring delivery only in exchange for the public securities being refunded.

(f) **Combination New Money and Refunding Public Securities.** For combination new

money/refunding bonds issued pursuant to Chapter 1207 of the Government Code, the issuer must provide documentation in accordance with these rules evidencing compliance with any election, notice of intention or publication requirements for the new money portion.

(g) **Public Purpose and Required Certificates.** A refunding pursuant to Chapter 1207 of the Government Code for which the aggregate amount of payments to be made on the refunding bonds will or may exceed the aggregate amount of payments to be made on the public securities being refunded must include the finding required by §1207.008(a)(1) and must include the finding required by §1207.008(a)(2), unless, as provided by subsection (b) of that section, the governing body of the issuer determines and states in the order, ordinance, or resolution authorizing the refunding that the manner in which the refunding is being executed does not make it practicable to make the determination required by subsection (a)(2) of that section.

Refunding transcripts must include a debt service savings schedule showing the amount of debt service savings or loss, reflecting the calculation of any issuer contribution and showing the methodology used. If there is no gross savings or the issuer has made a finding of impracticability under §1207.008(b), a statement must be included in the bond order, ordinance, or resolution explaining the public purpose of the refunding.

(h) **Submission of Refunded Public Securities Documents.** All refunding transcripts must contain a copy of the order, ordinance or resolution authorizing, or a copy of the trust indenture securing, the public securities being refunded. The documentation submitted should include the officers' pricing certificate for public securities sold pursuant to delegated authority,

(i) **Refunding Assumed Public Securities.** For municipal refunding bonds being issued to refund public securities for which the obligation to pay has been assumed through annexation of another political subdivision or special district, the following must be included in the transcript:

(1) if applicable, a certified copy of the action taken by the governing body that conducted the annexation calling the public hearing and authorizing publication of the notice of the hearing;

(2) if applicable, an original or certified copy of the affidavit of publication of the notice of the hearing with the newspaper clipping attached;

(3) a certified copy of the action taken by the governing body annexing the land and assuming the debt; and

(4) a copy of the federal preclearance letter relating to the annexation.

§53.13. Refunding Issues by Consent

When refunded public securities are being redeemed by consent of the holders thereof, written evidence of such consent must be included in the transcript.

§53.14. Elections

(a) **Types of Elections.** Proceedings of the following elections must be submitted with the first transcript of public securities utilizing the authority acquired through the election:

(1) an election authorizing the issuance of public securities;

- (2) an election authorizing the levy or imposition of a tax or other security pledged to the payment of public securities;
- (3) an election creating or incorporating, or confirming the creation of, an issuer;
- (4) an election approving a home rule charter for a municipality; and
- (5) elections discussed in other subchapters of this chapter.

Proceedings of state elections, including amendments to the Constitution, are not required.

(b) **Election Contest Period.** When the proceedings of an election held pursuant to the Election Code are submitted as part of a transcript of public securities, the securities will not be approved until the time for filing a petition for an election contest has expired in accordance with §233.006 of the Election Code or, if an election contest has been filed, a final, nonappealable judicial order upholding the validity of the election has been obtained.

(c) **Election Proceedings.** Election proceedings must include the following:

(1) Official Action Calling the Election. A certified copy of the action taken by the governing body calling the election; the official action must include the elements required by all applicable law including, for elections governed by the Election Code, the following:

- (A) date of election;
- (B) proposition(s) to be voted on at the election;
- (C) location of the main early voting polling place;
- (D) dates and hours of early voting as required by §85.007 of the Election Code; and
- (E) as applicable, the action authorized by §85.062 of the Election Code;

(2) Election Notice. Affidavits of posting, publication, or mailing, as required by law, of notice of an election, in English and other languages as required by the Federal Voting Rights Act with a copy of the election notice; the election notice must contain the elements required by applicable law, including, for elections governed by the Elections Code, the following provisions:

- (A) date of election, location of each polling place and polling hours;
- (B) proposition(s) to be voted on at the election;
- (C) location of the main early voting polling place;
- (D) dates and hours of early voting as required by §85.007 of the Election Code;
- (E) locations, dates and times for early voting at permanent and temporary

DRAFT 11/25/2008

branch polling places as required by §§85.067 and 85.068 of the Election Code;

(3) Official Action Canvassing the Election. A certified copy of the action taken by the governing body canvassing the results of the election, including the total number of votes for and against a proposition;

(4) Compliance with the Election Code. Certification as to compliance with the Election Code, including particularly the giving of notice of an election to the county clerk pursuant to §4.008 of the Election Code and the bilingual requirements of Chapter 272 of the Election Code, or explaining why these requirements are not applicable to the election.

(5) Home Rule Charter Election. For an election approving a home rule charter for a municipality, certification as to compliance with §§9.003(b) and 9.007 of the Local Government Code;

(d) **Standard of Review**. Election proceedings will be reviewed to confirm that any failure to comply with the Election Code would not reasonably appear, based on the totality of the circumstances, to have altered the outcome of the election.

§53.15. Federal Voting Rights Act Requirements

When election proceedings are submitted with a transcript, the general certificate shall include a certification that the requirements of the Federal Voting Rights Act have been met and include a copy of the United States Department of Justice preclearance letter, or explain why these requirements are not applicable to the election.

§53.16. Submission and Approval of Transcripts

(a) **Submitting Attorney**. A transcript must be submitted by an attorney licensed in Texas.

(b) **Transcript Submission Deadlines**. An issuer must submit its transcript at least 10 working days prior to closing for traditional financings, and at least 12 working days prior to closing for nonprofit corporation or other conduit issuer financings. In the cover letter for the transcript submission, bond counsel must advise the Public Finance Division of transcripts requiring the delivery of an approving opinion earlier than normally provided and must submit the transcript a corresponding amount of additional time prior to the proposed closing date. These time periods may be increased with advance notice from the Public Finance Division in an All Bond Counsel Letter. A transcript must be submitted in substantially final form. Preliminary or pro-forma transcripts will not be accepted for review without prior approval for good cause shown when the current Public Finance Division workload allows. Black lined pages identifying changes must accompany any changed pages to a transcript. An issuer's failure to submit a substantially complete transcript prior to the expected release date of a preliminary approval letter under Subsection (d) of this section may prevent the release of approved public securities by the proposed closing date.

(c) **Initial Public Securities**. Initial public securities must be submitted no later than five working days prior to closing.

(d) **Preliminary Approval Letters**. No preliminary approval letter from the Public Finance Division should be expected until the end of the fifth working day preceding the date set for closing, or an earlier date as requested by bond counsel in writing, if the time requirements for an earlier approval date have been met.

DRAFT 11/25/2008

If the issuer fails to submit a substantially complete transcript, the Attorney General may delay the release of the preliminary approval letter until such time as he receives a substantially complete transcript. After receipt by bond counsel of a preliminary approval letter relative to a given issue, bond counsel shall supply a written response to any questions, enclosing, when requested, missing or substituted documentation. Intervening telephone discussion is welcome, and confirmation of any verbal waivers or modifications to the preliminary approval requirements should be included in the reply letter.

(e) **Submission of Final Documents.** Any outstanding requirements for final approval as well as the executed, final versions of documents submitted in unexecuted or uncertified form, must be submitted no later than three working days prior to closing. Exceptions to this requirement may be granted by the Public Finance Division for good cause, if the current workload allows.

(f) **Registration of Public Securities.** If all requirements have been satisfied, approved public securities generally will be sent by the Public Finance Division to the Texas Comptroller of Public Accounts for registration two days prior to the proposed closing date.

(g) **Approval of Certain Contracts.** For transcripts in which specific approval by the Attorney General of a contract providing revenue or security to pay the public security is required, the proceedings, including the contract, must be supplied in final and executed or certified form by the time of Attorney General approval.

(h) **Lease Purchase Agreements.** For lease purchase agreements, the issuer must submit two fully executed contracts. One will be registered with the Texas Comptroller of Public Accounts and returned to the issuer, and the second will remain with the transcript file.

(i) **No Guarantee of Final Approval.** Closings may be delayed if requirements are not timely filed or if there are unresolved legal issues. The Attorney General does not represent, assure or guarantee completion of transcript examination or the issuance of transcript approval by any specific date or time.

(j) **Calculation of Deadlines.** For calculations under this section, the day of submission is counted if the transcript is received by 3:00 p.m., but the day of closing is not counted. If the closing is to take place in Austin, or if bond counsel states that it is satisfactory for the public securities to be registered by the Comptroller of Public Accounts the day before closing, then one day may be subtracted from the time requirements. If Attorney General approval is requested a certain number of days prior to closing, then the time requirements are counted back from the requested approval day, not from closing.

(k) **Review of Forward Deliveries.** An opinion for forward delivery new money public securities will not be delivered until shortly before the delivery date of the public securities. A preliminary approval letter will be provided, and subsequently, if requested, the reviewing attorney will confirm that all outstanding requirements have been satisfied, to the extent this has occurred. An extensive "settlement certificate" generally setting forth information of the nature required to be in general and no-litigation certificates and confirming that there have been no material changes made to the transcript previously reviewed by this office will be required before the opinion is given. Opinions for forward delivery refunding public securities will generally be handled in the same manner, with an opinion being provided at the initial closing only in exceptional circumstances.

(l) **Return of Transcripts.** Transcripts on file with the Public Finance Division for six (6) months with no action will be returned to bond counsel. Should any such transcripts be resubmitted, a new fee will be required.

(m) **Facsimile Transmissions.** Unless specifically requested or approved by the Public Finance Division, no fax transmissions of more than 20 pages may be sent to the Public Finance Division. Unless specifically requested, material should not be faxed in the late afternoon or evening if it is being sent by overnight delivery.

§53.17. Examination Fees

Section 1202.004 of the Government Code sets out the fee amounts for submitting a public security to the Attorney General for examination and approval.

§53.18. Additional Showings

If independent investigation or extrinsic evidence relating to any public securities proceedings indicates to the Attorney General the need, in his judgment, for other or additional showings by the issuer to satisfy any legal requirements precedent to the approval of such proceeding, approval of such proceedings and the issue subject thereof may be withheld pending such showings being furnished to the Attorney General.

§53.19. Novel or Uncommon Characteristics or Transactions

Issuers contemplating authorization, issue, and sale of public securities not specifically treated in these rules or which contain novel or uncommon characteristics or transactions are encouraged to present preliminary plans to the Public Finance Division for review and comment before taking official action for issuance. The Public Finance Division is also willing to pre-review transcripts for unusual or particularly complex transactions, provided the transcripts are accompanied by the appropriate fee.

§53.20. State Law Reissuance - Amendment of Documents

Amendments to documents after the issuance of public securities which are within the scope of the amendment provisions of the documents do not require Attorney General review or approval. Amendments that are not within the scope of amendment provisions which change the transaction, particularly if made in conjunction with a change in ownership of the securities, may constitute a state law reissuance that would require submission of a new transcript to the Attorney General. It is recommended that bond counsel contact the Public Finance Division to discuss these cases when they occur.

§53.21. Waiver of Rules

Subject to specific requirements set out in the Constitution of the State of Texas, applicable statutes, or applicable city charter, the rules for public securities promulgated herein may be waived by the Public Finance Division upon a showing of good cause.

§53.22. Interpretation

DRAFT 11/25/2008

These rules and the applicable laws have been and will be interpreted from time to time by the issuance of All Bond Counsel Letters by the Public Finance Division pursuant to §402.044 of the Government Code. All substantive All Bond Counsel Letters from November 1987, and selected letters from before that date, are on the Attorney General's website (www.oag.state.tx.us).

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