

STATE FINANCE LAW ARTICLE 7-A (§123 et seq.) CITIZEN-TAXPAYER ACTIONS

§123. Legislative purpose.

It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein.

§123-a. Definitions.

1. Citizen. A "citizen" is any person who is a resident of the state.
2. Taxpayer. A "taxpayer" is any citizen who has paid or is paying state income or state sales taxes.
3. Person. A "person" is any individual, public or private corporation, political subdivision, department or agency of the state or any local government, the attorney general, an association, or any other legal entity whatsoever.

§123-b. Action for declaratory and equitable relief.

1. Notwithstanding any inconsistent provision of law, any person, who is a citizen taxpayer, whether or not such person is or may be affected or specially aggrieved by the activity herein referred to, may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property, except that the provisions of this subdivision shall not apply to the authorization, sale, execution or delivery of a bond issue or notes issues in anticipation thereof by the state or any agency, instrumentality or subdivision thereof or by any subdivision thereof or by any public corporation or public benefit corporation.

2. A plaintiff in such an action may join as a party defendant the recipient or intended recipient of such a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property.

§123-c. Pleadings and procedure.

1. An action pursuant to this article shall be brought in the supreme court in any county wherein the disbursement has occurred, is likely to occur, or is occurring, or in the county in which the state officer or employee has his or her principal office.

2. The complaint in such action shall be either verified or supported by affidavits.

3. Where the plaintiff in such action is a person other than **the attorney general**, a copy of the summons and complaint shall be served upon **the attorney general**.

4. An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts.

§123-d. Security for costs.

At any stage of the action, upon motion by the defendant, or upon its own initiative, the court may order the plaintiff to give an undertaking for costs and taxable disbursements not to exceed the sum of twenty-five hundred dollars. If plaintiff shall not have given such undertaking at the expiration of sixty days from the date of service of the order upon him or her, the court may, upon motion of the defendant, dismiss the action and award costs to the defendant. This section shall not apply to any action commenced by **the attorney general in the name of and on behalf of the people of the state**.

§123-e. Relief by the court.

1. The court may grant equitable or declaratory relief, or both, including, but not limited to: enjoining the activity complained of; restitution to the state of those public funds disbursed or public property alienated; in the case of public property wrongfully alienated, compelling payment of the full market value; a declaration that a proposed disbursement or alienation of property would be illegal; and such other and further relief as to the court may seem just and proper.

2. The court, at the commencement of an action pursuant to this article, or at any time subsequent thereto and prior to entry of judgment, upon application by the plaintiff or **the attorney general on behalf of the people of the state**, may grant a preliminary injunction and impose such terms and conditions as may be necessary to restrain the defendant if he or she threatens to commit or is committing an act or acts which, if committed or continued during the pendency of the action, would be detrimental to the public interest. A temporary restraining order may be granted pending a hearing for a preliminary injunction notwithstanding the requirements of section six thousand three hundred thirteen of the civil practice law and rules, where it appears that immediate and irreparable injury, loss, or damage will result unless the defendant is restrained before a hearing can be had.

§123-f. Termination of action.

No action brought pursuant to this article shall be compromised, discontinued or dismissed by consent, default, or neglect to prosecute, except with approval of the court.

§123-g. Costs and fees.

1. The court shall have the authority to fix a reasonable sum to reimburse the plaintiff for costs and expenses, including attorney fees in an action wherein judgment was rendered for the plaintiff. Such attorney fees shall only be paid from the fund established under section one hundred twenty-three-h of this article to the extent of money available therein.

2. No intervenors, unless they are necessary parties, shall be awarded attorney fees.

§123-i. Existing rights and remedies preserved.

Nothing in this article shall abridge or alter rights of actions or remedies now or hereafter existing.

§123-j. Separability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision.