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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

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DIGEST

SB 7 Original

2024 Third Extraordinary Session

Luneau

Present law provides that legislators and legislative employees have a peremptory ground to file a written motion for continuance or extension of a criminal case, civil case, or administrative proceeding if the legislator or employee's presence, participation, or involvement is required in any capacity, including any pretrial or post-trial legal proceeding, during:

- (1) Any time 30 days prior to call to order of a legislative session or 30 days following its adjournment sine die; or
- (2) Any time between 30 days prior to convening and 30 days following adjournment sine die of any constitutional convention.

Proposed law retains present law but provides for a presumption that a motion for continuance is proper and is to be granted unless there is proof sufficient to overcome the presumption.

Present law provides that the continuance or extension may only be asserted or waived by the legislator or legislative employee enrolled as counsel of record when his participation is required. Provides that the availability of other counsel to assume the duties or responsibilities of counsel invoking the continuance or extension does not negate the peremptory nature of his motion.

Proposed law retains present law but provides that the availability of other counsel does not overcome the presumption that the motion is proper.

Present law provides that a continuance or extension is also available when the legislator or legislative employee is engaged in activities, including travel, in connection with or ordered by:

- (i) the legislature;
- (ii) any legislative committee or subcommittee appointed by the president of the Senate or the speaker of the House of Representatives;
- (iii) any committee or commission appointed by the governor or other person authorized to make such appointments; or
- (iv) any constitutional convention or commission.

Present law requires that the filing of a motion for continuance or extension be accompanied by an

affidavit executed by the presiding officer, clerk, or secretary of the respective house verifying employment or service.

Present law requires if the grounds for continuance or extension are founded on the convening of a regular session or constitutional convention, the motion is to be filed no later than five calendar days prior to the hearing or proceeding to be continued. Provides that if the grounds for the motion are founded on a legislative activity, including travel, or upon issuance of an extraordinary legislative session the continuance or extension is to be filed no later than five calendar days prior to the hearing or proceeding to be continued but no later than two days following issuance of the notice of the meeting or call of the extraordinary session.

Present law requires a court or agency to grant the motion for continuance or extension ex parte within 72 hours of the filing of the motion and if granted, the continuance or extension shall be for not less than 60 days from the date of adjournment sine die or the constitutional convention.

Proposed law provides for granting the continuance or extension within 72 hours of filing of the motion unless another party has filed a motion to oppose the continuance or extension. Provides for granting the motion unless there is clear and convincing proof of one of the following:

- (1) The motion is being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- (2) The objecting party has a substantial existing right or interest that will be defeated or abridged and will suffer substantial and immediate irreparable harm if the requested continuance is granted.

Proposed law authorizes the court to grant the motion ex parte or grant a hearing on a motion to oppose the continuance. Provides that if a hearing is granted, the hearing shall be conducted by telephone, or other electronic means within 48 hours of the filing of the opposition.

Present law provides that if an action taken against a person, including any sanction imposed on an attorney, who has filed a motion for continuance or extension and which results from the failure of such person or attorney to appear or comply with an order of the court or agency or any deadline shall be considered an absolute nullity and shall be set aside by the court or agency upon the filing of a motion by the aggrieved person or attorney. Provides that if the motion is denied, then the denial is an appealable order.

Proposed law deletes this provision.

Present law provides that if any person or attorney who has filed a motion for continuance or extension which has been denied or which has not been granted within 72 hours of filing may apply directly to the supreme court for supervisory writs to review the action or inaction of the court or agency where the motion was filed.

Proposed law deletes this provision.

Present law provides that for sufficient cause, the court shall consider a motion of continuance or extension at any time prior to the hearing or proceeding. Present law provides that a motion for continuance may be filed by electronic means such as facsimile transmission or electronic mail, or any other means authorized by law, provided that the mover provides all opposing counsel or parties with a copy of the motion, simultaneously with the transmission of the motion to the court.

Proposed law retains these present law provisions.

Proposed law authorizes a legislator or legislative employee to obtain a continuance upon a showing of good cause when seeking a continuance of a court proceeding or deadline outside the time frame of a legislative session or constitutional convention. Requires that the showing, be accompanied by an affidavit, that the member or employee is required to attend an interim committee hearing or other official legislative function and that the presence of the member or employee in court is necessary and essential to a fair and proper trial or other proceeding in the suit may be considered good cause.

Proposed law requires the court to assign specific reasons for denial of a property file motion for legislative continuance. Provides for direct appeal to the supreme court for supervisory writs to review the action or inaction of the court.

Proposed law if the supreme court affirms the lower court's denial of a motion for continuance or extension based on a determination that the motion was (1) being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; or (2) that the objecting party has a substantial existing right or interest that will be defeated or abridged and will suffer substantial and immediate irreparable harm if the requested continuance is granted then the supreme court may exercise its jurisdiction of disciplinary proceedings against the member of the legislature or legislative employee whose motion was denied or refer the matter to the office of disciplinary counsel.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 13:4163)