
 DIGEST

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SB 9 Reengrossed

2024 Third Extraordinary Session

Miller

Present law provides a member of the legislature and a legislative employee shall have peremptory grounds for continuance or extension of a criminal case, civil case, or administrative proceeding. Provides that the peremptory grounds for continuance or extension is available to and for the benefit of a member or legislative employee and may be asserted or waived only by the member or employee. Provides that such peremptory grounds are available if the presence, participation, or involvement of the member or employee is required in any capacity, including any pretrial or post-trial legal proceeding, during:

- (1) Any time between 30 days prior to the original call to order and 30 days following the adjournment sine die of any session of the legislature.
- (2) Any time between 30 days prior to convening and 30 days following adjournment sine die of any constitutional convention.
- (3) Any time when such person is engaged in activities, including travel, in connection with or ordered by the legislature, any legislative committee or subcommittee appointed by the president of the Senate or the speaker of the House of Representatives, any committee or commission appointed by the governor or other person authorized to make such appointments, or any constitutional convention or commission.

Proposed law provides that "legislative employee" means the clerk of the House of Representative, the secretary of the Senate, and an employee of the House of Representatives, the Senate, or the Legislative Bureau, when such person is employed full-time during the legislative session or during any other time in which the continuance or extension is being sought.

Proposed law provides that a member of the legislature or legislative employee shall be entitled to peremptory grounds for a continuance of any court or administrative proceeding or the extension of any legal delay or deadline, if the presence, participation, or involvement of a member of the legislature or legislative employee, who is a party or an attorney for a party, is required in any criminal or civil case or administrative proceeding, including any pretrial or post-trial proceeding, during any legislative session or constitutional convention. Provides that the peremptory grounds are available any time between 30 days before the convening of any session of the legislature or constitutional convention and 30 days after the adjournment sine die of any session of the legislature or constitutional convention.

Present law provides that a motion for legislative continuance or extension filed by a legislative employee shall be accompanied by an affidavit, verifying such employment or service, executed by the presiding officer or the clerk or secretary of the respective house. Provides that the motion for legislative continuance or extension shall be filed at no cost to a member, employee, or a client of a member or employee. Requires the filing no later than five calendar days prior to the hearing or proceeding to be continued. Provides special provisions for extraordinary sessions. Provides that the motion for a legislative 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 shall provide all opposing counsel or parties with a copy of the motion, simultaneously with the transmission of the motion to the court.

Proposed law provides that the motion for continuance shall be filed no later than five days prior to the proceeding to be continued or no later than five days prior to the expiration of

the deadline to be extended, at no cost and shall be accompanied by an affidavit that the legislative employee will be or is in actual attendance of a session of the legislature or constitutional convention and that it is the legislator or legislative employee's intention to participate actively in the preparation or presentation of the case. Proposed law also emphasizes that a member of the legislature is not required to file an affidavit pursuant to this proposed law.

Proposed law provides that the motion for continuance may be filed electronically if the member of the legislature or legislative employee seeking the continuance provides all enrolled counsel or parties with a copy of the motion prior to or simultaneously with the transmission of the motion for continuance to the clerk of court. Provides that every motion for a legislative continuance or extension shall be served by transmitting a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse party, at the number or address expressly designated in a pleading or other writing for receipt of electronic service. Service by electronic means is complete upon transmission but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be served.

Proposed law provides that if the attorney for a party seeking a continuance is a member of the legislature, the attorney shall also serve a copy of the motion for a legislative continuance or extension with the judicial administrator for the Louisiana Supreme Court. The copy of the motion shall be sent to the Louisiana Supreme Court contemporaneously with the filing of the motion for legislative continuance or extension with the court.

Proposed law provides that there shall be a presumption that a motion for continuance filed timely by the member of the legislature or legislative employee is proper and shall be granted within 72 hours of the filing of the motion. Requires the proceeding, legal delay or deadline to be reset to a date not less than 60 days from the date of adjournment sine die of any session of the legislature or constitutional convention.

Proposed law provides that the presumption may be overcome by clear and convincing evidence under either of the following circumstances:

- (1) The motion is being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. A showing that the continuance shall cause a delay or increase the cost of litigation shall not be sufficient grounds to overcome the presumption of granting the continuance.
- (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. Notwithstanding the provisions of proposed law, the court shall also consider any potential substantial and immediate irreparable harm to the party requesting the continuance which may result from requiring the party requesting the continuance to obtain new counsel with insufficient time to prepare.

Proposed law provides that the court may grant the motion ex parte or grant a hearing on a motion in opposition to the continuance or extension. If the court grants a hearing, it shall be conducted by telephone, or other electronic means, within 48 hours of the filing of the motion in opposition or extension.

Proposed law requires a court denying a properly filed motion for a legislative continuance shall issue contemporaneous written reasons for the denial that shall include an analysis of proposed law as applied to the specific facts of the case.

Present law provides that any person or attorney who has filed a motion for legislative continuance or extension that 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 provides that a member of the legislature or legislative employee who has filed a motion for legislative continuance that has been denied or which has not been granted within 72 hours may apply directly to the supreme court for supervisory writs at no cost to

review the action or inaction of the court where the motion was filed, or may file an appeal with the court of appeal with jurisdiction as provided in proposed law.

Proposed law provides that if a motion filed pursuant to proposed law is denied or not acted upon within the requisite deadline, then such denial shall be an appealable order. The order of appeal shall be signed within 24 hours of being filed, and the provisions of present law (C.C.P. Art. 2088) shall attach.

Proposed law provides that upon appeal, the reviewing court shall consider de novo any denial or failure to act on a motion for legislative continuance or extension of proceeding.

Proposed law provides that if the supreme court affirms the lower court's denial of a motion for a legislative continuance or extension based on the objecting party overcoming the presumption pursuant to proposed law, 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.

Proposed law provides that notwithstanding the provisions of proposed law, if any part of the proceedings occurs on a day that a member of the legislature has been ordered by a majority vote of the elected members of each house of the legislature to attend a session day during which that house is in session, then the provisions of the Louisiana Constitution (Art. III, Sect. 10) shall be given effect and no legal proceedings may be conducted in the member's absence on such day. If any part of the proceeding occurs in violation of proposed law, it shall be deemed an absolute nullity.

Proposed law provides that for good cause shown, the court may consider a motion for legislative continuance or extension at any time prior to the hearing or proceeding.

Proposed law provides that if seeking a continuance of a court proceeding or extension of any type of deadline occurring outside the time frame of a legislative session or constitutional convention, a member of the legislature or legislative employee that is a party or an attorney for a party to an action may obtain a legislative continuance upon a showing of good cause. A showing, 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.

Present law provides that any action taken against a person, including any sanction imposed on an attorney, who has filed a motion for legislative 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.

Proposed law deletes present law.

Present law provides that legislative continuances shall not apply to cases in the Louisiana Supreme Court, criminal cases where the death penalty is sought, and administrative rulemaking. Also, provides that present law shall not apply to cases and proceedings wherein a member or employee is called as a witness, in which instances other provisions of present law shall apply.

Proposed law provides that civil prescriptive or preemptive periods, criminal statutes of limitations, and criminal cases where the death penalty is sought are excluded from legislative continuances. Also, provides that proposed law does not apply to proceedings wherein a temporary restraining order, protective order, preliminary injunction, permanent injunction, court-approved consent agreement resulting from an action brought, or order issued pursuant to any of the following:

- (1) Certain present law provisions regarding domestic violence, dating violence, stalking, sexual assault and peace bonds relating for such acts.
- (2) Criminal procedure law regarding the disposition or sentence.

- (3) Present law prohibits communications between offenders and victims following a charge or after sentencing for any crime of violence.
- (4) Present law provides that as condition of a parole release which requires that the parolee stay away from any specific person, when the order is issued for the purpose of preventing violent or threatening acts, harassment against, contact or communication with, or physical proximity to, another person to prevent witness intimidation, domestic abuse, stalking, dating violence, or sexual assault.
- (5) Child custody proceedings or proceedings pursuant to the Domestic Violence Prevention Firearm Transfer Act.
- (6) Proceedings for writs of habeas corpus for the determination and enforcement of rights to the custody of a minor or for the release of a person in custody in which the family court has original jurisdiction.

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

(Amends R.S. 13:4163)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Provides definition of "legislative employee".
2. Clarifies that time delays applies to a legislative continuance or extension of deadlines.
3. Clarifies that a showing that the continuance shall cause a delay or increase the cost of litigation shall not be sufficient grounds to overcome the presumption of granting the continuance.
4. Requires the court to consider any potential substantial and immediate irreparable harm to the party requesting the continuance which may result from requiring the party requesting the continuance to obtain new counsel with insufficient time to prepare.
5. Clarifies that supervisory writs may be taken if the motion for legislative continuance has not been granted within 72 hours.
6. Makes the denial of the legislative continuance or extension of a deadline an appealable order which shall be signed within 24 hours. Requires a de novo review of the denial or failure to act on a motion for legislative continuance or extension of a proceeding.
7. Provides for absolute nullity of proceedings which occur when a member is required to be in legislative session by majority vote of each house pursuant to Art. III, Sect. 10 of the Louisiana Constitution.
8. Makes technical changes.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill:

1. Remove language requiring members of the legislature to file an affidavit with their motion for continuance for a matter set during a session of the legislature or constitutional convention.
2. Specify that a member of the legislature shall not be required to submit an affidavit as required by proposed law in certain circumstances.
3. Specify that if the supreme court's denial is based on the objecting party overcoming the presumption pursuant to proposed law, the supreme court may exercise its jurisdiction of disciplinary proceedings or refer the matter to the office of disciplinary counsel.
4. Make technical changes.