

Regular Session, 2013

HOUSE BILL NO. 523

BY REPRESENTATIVE GAINES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/RESTRAINING ORDER: Provides relative to civil injunctions and restraining orders

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 3601(A), relative to special civil
3 proceedings; to provide for injunctions and temporary restraining orders against the
4 state and political subdivisions; to provide for the burden of proof; to provide for the
5 traversal of affidavits; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 3601(A) is hereby amended and
8 reenacted to read as follows:

9 Art. 3601. Injunction, grounds for issuance; preliminary injunction; temporary
10 restraining order

11 A.(1) An injunction shall be issued in cases where irreparable injury, loss,
12 or damage may otherwise result to the applicant, or in other cases specifically
13 provided by law; provided, however, that no court shall have jurisdiction to issue, or
14 cause to be issued, any temporary restraining order, preliminary injunction, or
15 permanent injunction against any state department, board, or agency, or any officer,
16 administrator, or head thereof, or any officer of the state of Louisiana in any suit
17 involving the expenditure of public funds under any statute or law of this state to
18 compel the expenditure of state funds when the director of such department, board,
19 or agency or the governor shall certify that the expenditure of such funds would have
20 the effect of creating a deficit in the funds of said agency or be in violation of the

1 requirements placed upon the expenditure of such funds by the legislature, provided
2 that such certification is reviewed and approved by the Joint Legislative Committee
3 on the Budget.

4 (2)(a) If a certification is presented by a state department, board, or agency
5 and the certification is not approved by the Joint Legislative Committee on the
6 Budget, the state department, board, or agency shall have the burden of showing by
7 a preponderance of the evidence that the injunction sought would compel the
8 expenditure of state funds and that such expenditure would have the direct effect of
9 creating a deficit within the agency.

10 (b) An adverse party may traverse the facts alleged in the affidavits and may
11 present evidence to controvert the affidavits submitted in accordance with
12 Subparagraph (1) of this Paragraph. The court shall give equal consideration to all
13 evidence submitted.

14 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Gaines

HB No. 523

Abstract: Provides for the traversal of affidavits offered by a state department, board, or agency in opposition to the issuance of an injunction or temporary restraining order.

Present law requires that an injunction be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law.

Present law provides that no court shall have jurisdiction to issue any temporary restraining order, preliminary injunction, or permanent injunction against any state department, board, or agency to compel the expenditure of state funds when the director of such department, board, or agency or the governor certifies that the expenditure of such funds would have the effect of creating a deficit or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

Proposed law retains present law subject to the certification being reviewed and approved by the Joint Legislative Committee on the Budget.

Proposed law provides that if a certification is presented to, but not approved by, the Joint Legislative Committee on the Budget, the agency shall have the burden of showing by a preponderance of the evidence that the injunction sought would both compel the expenditure of state funds and have the direct effect of creating a deficit within the agency.

Proposed law provides that an adverse party may traverse the facts alleged in the affidavits and may present evidence to controvert the affidavits.

(Amends C.C.P. Art. 3601(A))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Reinstated present law relative to the court not having jurisdiction to issue any temporary restraining order or preliminary or permanent injunction when an agency certifies the effect of creating a deficit.
2. Added requirement that the certification submitted pursuant to present law shall be reviewed and approved by the Joint Legislative Committee on the Budget.
3. Added provision providing that if the certification is not approved by the Joint Legislative Committee on the Budget, the agency bears the burden of proof.