

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) and to repeal R.S. 13:4062,  
3 relative to special civil proceedings; to provide for injunctions and temporary  
4 restraining orders against the state and political subdivisions; to provide for filing  
5 and notice of an affidavit; to provide for waiver of certain requirements; to provide  
6 for hearings by certain legislative committees; to provide for hearings on injunctions  
7 under certain circumstances; to provide for the burden of proof; to provide for the  
8 traversal of affidavits; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

12 Art. 3601. Injunction, grounds for issuance; preliminary injunction; temporary  
13 restraining order

14 A.(1) An injunction shall be issued in cases where irreparable injury, loss,  
15 or damage may otherwise result to the applicant, or in other cases specifically  
16 provided by law; ~~provided, however, that,~~

17 (2)(a) Notwithstanding the provisions of Subparagraph (1) of this Paragraph,  
18 no court shall have jurisdiction to issue, or cause to be issued, any temporary  
19 restraining order, ~~preliminary injunction, or permanent injunction~~ against any state  
20 department, board, or agency, or any officer, administrator, or head thereof, or any

1 officer of the state of Louisiana in any suit involving the expenditure of public funds  
2 under any statute or law of this state to compel the expenditure of state funds when  
3 the ~~director~~ officer, administrator, or head of such department, board, or agency or  
4 the governor shall certify by affidavit that the expenditure of such funds would have  
5 the effect of creating a deficit in the funds of ~~said agency~~ the department, board, or  
6 agency, or be in violation of the requirements placed upon the expenditure of such  
7 funds by the legislature. Notice of the filing and a copy of the affidavit shall be  
8 served on all parties and on the clerk of the House of Representatives and the  
9 secretary of the Senate.

10 (b)(i) The provisions of Subsubparagraph (a) of this Subparagraph shall also  
11 apply to a petition for injunction only if the Joint Legislative Committee on the  
12 Budget reviews and approves the affidavit prior to filing the affidavit or at its next  
13 regularly scheduled meeting after filing the affidavit.

14 (ii) Within five days of filing of the petition for injunction, the court may  
15 waive the requirement of approval of the affidavit by the Joint Legislative  
16 Committee on the Budget and deem the affidavit as approved if it determines from  
17 the filed pleadings that the petition for injunction is frivolous or without merit.

18 (iii) If the next regularly scheduled meeting of the Joint Legislative  
19 Committee on the Budget is more than fifteen days after the date of filing of the  
20 affidavit, the litigation subcommittee of the Joint Legislative Committee on the  
21 Budget shall call itself into a special meeting within fifteen days from the filing of  
22 the affidavit in order to review and approve the affidavit.

23 (c)(i) Unless the court finds that the petition is frivolous or without merit, or  
24 unless the affidavit is approved within the delays required by Subsubparagraph (b)  
25 of this Subparagraph, the court shall set a hearing for the petition for the preliminary  
26 injunction or permanent injunction pursuant to Article 3602.

27 (ii) At the hearing for the preliminary or permanent injunction, the state  
28 department, board, or agency shall have the burden of proving by a preponderance  
29 of the evidence that the injunction sought would have the effect of creating a deficit

1           in the funds of the department, board, or agency, or be in violation of the  
2           requirements placed upon the expenditure of such funds by the legislature.

3           (iii) An adverse party may traverse the facts alleged in the affidavit and may  
4           present evidence to controvert the affidavit. The court shall give equal consideration  
5           to all evidence submitted.

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7           Section 2. R.S. 13:4062 is hereby repealed in its entirety.

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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)]

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Gaines

HB No. 523

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

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 relative to temporary restraining orders and provides that a petition for injunction shall be subject to the certification by affidavit being reviewed and approved by the Joint Legislative Committee on the Budget.

Proposed law provides that the affidavit shall be approved by the Joint Legislative Committee on the Budget at its next regularly scheduled meeting, but if that meeting is not within 15 days of filing the affidavit, the litigation subcommittee shall call a special meeting to approve the affidavit.

Proposed law provides that the court may, within five days of filing the petition for injunction, determine the petition to be frivolous or without merit, and deem the affidavit approved.

Proposed law provides that unless the court finds the petition frivolous or without merit, or unless the certification is approved by the Joint Legislative Committee on the Budget or the litigation subcommittee, the court shall set the hearing on the injunction pursuant to C.C.P. Art. 3602.

Proposed law provides that the state department, board, or agency shall have the burden of proving by a preponderance of the evidence that the injunction sought would have the direct effect of creating a deficit within the agency or be in violation of the requirements placed upon the expenditure of the funds by the legislature.

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

Present law provides for duplicate provisions in Title 13 relative to temporary restraining orders and injunctions.

Proposed law repeals these duplicate provisions of present law.

(Amends C.C.P. Art. 3601(A); Repeals R.S. 13:4062)

#### 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.

#### House Floor Amendments to the engrossed bill.

1. Excluded temporary restraining orders from proposed law changes.
2. Specified that the certification shall be by affidavit.
3. Added requirement of service of notice of the filing of the affidavit.
4. Added provisions for approval of the affidavit by the Joint Legislative Committee on the Budget or the litigation subcommittee thereof.
5. Authorized the court to deem the affidavit as approved if the court determines the petition to be frivolous.
6. Specified that the hearing shall be set according to present law (C.C.P. Art. 3602).
7. Repealed duplicate provisions found in Title 13 relative to temporary restraining orders and injunctions.