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## DIGEST

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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.