

Regular Session, 2014

HOUSE BILL NO. 181

BY REPRESENTATIVES GAINES AND KATRINA JACKSON AND SENATOR
KOSTELKA

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 exceptions; to provide
7 for hearings on injunctions under certain circumstances; to provide for the burden
8 of proof; to provide for the 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

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

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

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

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

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

28 (ii) At the hearing for the preliminary or permanent injunction, the state
29 department, board, or agency shall have the burden of proving by a preponderance

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.

Proposed law provides that the requirements to obtain approval of the affidavit by the Joint Legislative Committee on the Budget or the litigation subcommittee of the Joint Legislative Committee on the Budget shall only apply to matters where the expenditure of public funds exceeds \$10,000,000.

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. Changed the requirement of service of the notice of the filing of the affidavit to the requirement of delivery of the notice of the filing of the affidavit.
2. Deleted the requirement that the court determine whether the petition is frivolous within five days of the filing of the petition and authorized the court to make such determination at any time after the filing of the petition.
3. Added an exception to the requirement of approval of the affidavit by the Joint Legislative Committee on the Budget or the litigation subcommittee where the expenditure of public funds does not exceed \$10,000,000.