

Regular Session, 2014

SENATE BILL NO. 143

BY SENATOR KOSTELKA AND REPRESENTATIVE GAINES

CIVIL PROCEDURE. Provides relative to civil injunctions and restraining orders. (8/1/14)

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**

1 **Paragraph**, no court shall have jurisdiction to issue, or cause to be issued, any
2 temporary restraining order, ~~preliminary injunction, or permanent injunction~~ against
3 any state department, board, or agency, or any officer, administrator, or head thereof,
4 or any officer of the state of Louisiana in any suit involving the expenditure of public
5 funds under any statute or law of this state to compel the expenditure of state funds
6 when the ~~director~~ **officer, administrator, or head** of such department, board, or
7 agency or the governor shall certify **by affidavit** that the expenditure of such funds
8 would have the effect of creating a deficit in the funds of ~~said agency~~ **the**
9 **department, board, or agency**, or be in violation of the requirements placed upon
10 the expenditure of such funds by the legislature. **Notice of the filing and a copy of**
11 **the affidavit shall be served on all parties and on the clerk of the House of**
12 **Representatives and the secretary of the Senate.**

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

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

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

27 **(c)(i) Unless the court finds that the petition is frivolous or without**
28 **merit, or unless the affidavit is approved within the delays required by**
29 **Subsubparagraph (b) of this Subparagraph, the court shall set a hearing for 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.

Effective August 1, 2014.

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