

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 143 By Senator Kostelka

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

CIVIL PROCEDURE. Provides relative to civil injunctions and restraining orders. (8/1/15)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Added amendments specifying applicability to both preliminary and permanent injunctions.
2. Changed requirement from service of the notice of filing the affidavit to delivery of the notice of filing the affidavit.
3. Deleted requirement that the court determine the petition to be frivolous within five days of the filing of the petition, and added language authorizing the court to make such determination at any time after the petition is filed.
3. Added limitation of application of proposed law to expenditures of public funds exceeding ten million dollars.
4. Delays implementation of change to C.C.P. Art. 3601(A) until August 1, 2015.
5. Provides that the repeal of R.S. 13:4062 effective August 1, 2014.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

Kostelka

SB No. 143

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. Further provides that the certification be by affidavit and that notice of the filing and a copy of the affidavit be delivered to all parties and to the clerk of the House of Representatives and the secretary of the Senate.

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, at any time after the filing of the petition for preliminary or permanent 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 for preliminary or permanent injunction 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 Chapter 2 of Title I of Book VII of the Code of Civil Procedure (relative to injunctions).

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, as of August 1, 2014, these duplicate provisions of present law.

Proposed law provides that the provisions of proposed law amending and reenacting C.C.P. Art. 3601(A) shall become effective on August 1, 2015.

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

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