

SENATE BILL NO. 143

BY SENATOR KOSTELKA AND REPRESENTATIVE GAINES

VETOED
Click here for
Veto Message

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; to provide limitations on applicability; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

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

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

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

18 (2)(a) Notwithstanding the provisions of Subparagraph (1) of this
19 Paragraph, no court shall have jurisdiction to issue, or cause to be issued, any
20 temporary restraining order, ~~preliminary injunction, or permanent injunction~~ against
21 any state department, board, or agency, or any officer, administrator, or head thereof,
22 or any officer of the state of Louisiana in any suit involving the expenditure of public
23 funds under any statute or law of this state to compel the expenditure of state funds
24 when the ~~director~~ officer, administrator, or head of such department, board, or
25 agency or the governor shall certify by affidavit that the expenditure of such funds
26 would have the effect of creating a deficit in the funds of ~~said agency~~ the

1 department, board, or agency, or be in violation of the requirements placed upon
2 the expenditure of such funds by the legislature. Notice of the filing and a copy of
3 the affidavit shall be delivered to all parties and to the clerk of the House of
4 Representatives and the secretary of the Senate.

5 (b)(i) The provisions of Subsubparagraph (a) of this Subparagraph shall
6 also apply to a petition for preliminary or permanent injunction only if the
7 Joint Legislative Committee on the Budget reviews and approves the affidavit
8 prior to filing the affidavit or at its next regularly scheduled meeting after filing
9 the affidavit.

10 (ii) At any time after the filing of the petition for preliminary or
11 permanent injunction, the court may waive the requirement of approval of the
12 affidavit by the Joint Legislative Committee on the Budget and deem the
13 affidavit as approved if it determines from the filed pleadings that the petition
14 for preliminary or permanent injunction is frivolous or without merit.

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

20 (c)(i) Unless the court finds that the petition for preliminary or
21 permanent injunction is frivolous or without merit, or unless the affidavit is
22 approved within the delays required by Subsubparagraph (b) of this
23 Subparagraph, the court shall set a hearing for the petition for the preliminary
24 injunction or permanent injunction pursuant to Chapter 2 of Title I of Book VII
25 of this Code.

26 (ii) At the hearing for the preliminary or permanent injunction, the state
27 department, board, or agency shall have the burden of proving by a
28 preponderance of the evidence that the injunction sought would have the effect
29 of creating a deficit in the funds of the department, board, or agency, or be in
30 violation of the requirements placed upon the expenditure of such funds by the

1 legislature.

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

5 (3) The provisions of Subparagraph (2) of this Paragraph requiring
6 approval of the affidavit by the Joint Legislative Committee on the Budget or
7 the litigation subcommittee of the Joint Legislative Committee on the Budget
8 shall apply only to matters where the expenditure of public funds exceeds ten
9 million dollars.

10 * * *

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

12 Section 3. The provisions of Section 1 of this Act shall become effective on August
13 1, 2015.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

"Senate Bill No. 143 could put the state in a mid-year deficit posture without the tools available during the legislative process to address such shortfalls, and prior to a final decision of the legal issue being litigated. Current law allows the head of a department, board or agency to certify that a temporary restraining order or injunction against the state could place the state in a deficit posture, while still allowing the litigation to proceed to a final ruling. Whether a temporary restraining order or injunction will cause a deficit is an issue of fact-either it will require additional spending that was not budgeted in HB1 for that fiscal year, or it will not.

If a deficit occurs when the Legislature is not in session, the Executive Branch is required by the Constitution to present a plan to reduce spending to bring the state budget back into balance. There are far fewer tools available outside of the legislative process to mitigate the impact of those reductions on critical services, creating the threat of critical needs of citizens going unmet. This is an unacceptable risk to our citizens.

The bill also raises separation of powers issues. By allowing the Judicial Branch-prior to a final decision of the legal issues-to review and determine whether the state budget has entered a deficit posture at the very first stage of the litigation, the Judicial Branch assumes the fundamental appropriations function of the Legislative Branch to craft and pass an annual budget for the State.

For these reasons, I have vetoed Senate Bill No. 143 and hereby return it to the Senate."