

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 certified 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 would retain present law relative to temporary restraining orders and provide 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 (JLCB). Would have further provided 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 would provide that the affidavit shall be approved by the JLCB 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 would provide 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 would provide that unless the court finds the petition for preliminary or permanent injunction frivolous or without merit, or unless the certification is approved by the JLCB 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 would provide 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 would provide that an adverse party may traverse the facts alleged in the affidavits and may present evidence to controvert the affidavits.

Proposed law would provide that the requirements to obtain approval of the affidavit by the JLCB or the litigation subcommittee of the JLCB 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 would repeal, as of August 1, 2014, these duplicate provisions of present law.

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

(Proposed to amend C.C.P. Art. 3601(A); repeal R.S. 13:4062)

**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."