

Regular Session, 2014

SENATE BILL NO. 553

BY SENATOR ADLEY

FLOOD PROTECTION AUTH. Provides relative to special attorneys for flood protection authorities. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 42:262 and to enact R.S. 42:263(D), relative to special counsels;  
3 to provide relative to special attorneys for flood protection authorities; to provide for  
4 resolutions requesting special counsel; to provide for prospective and retroactive  
5 application; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 42:262 is hereby amended and reenacted and R.S. 42:263(D) is  
8 hereby enacted to read as follows:

9 §262. Special attorneys

10 A. In the event it should be necessary to protect the public interest, for any  
11 state board, ~~or commission,~~ **or any regional flood protection authority established**  
12 **under Article VI, Section 38.1 of the Louisiana Constitution of 1974,** to retain or  
13 employ any special attorney or counsel to represent it in any special matter for which  
14 services any compensation is to be paid by it, the board, ~~or commission,~~ **or regional**  
15 **flood protection authority** may retain or employ such special attorney or counsel  
16 solely on written approval of the governor and the Attorney General and pay only  
17 such compensation as the governor and the Attorney General may designate in the

1 written approval. The approval shall be given in their discretion upon the application  
 2 of the board, or commission, or regional flood protection authority by a resolution  
 3 thereof setting forth fully the reasons for the proposed retention or employment of  
 4 the special attorney or counsel and the amount of the proposed compensation. The  
 5 governor and Attorney General shall not ratify or approve any action of a board,  
 6 commission, or regional flood authority in employing any special attorney or  
 7 counsel or paying any compensation for special service rendered, unless all the  
 8 formalities as provided by this Part as to resolutions and the like, have been complied  
 9 with. The governor may delegate the authority granted to him under this  
 10 Section to approve the retention of special attorney or counsel.

11 B. Unless otherwise specifically authorized by law to use contingency fee  
 12 agreements, no entity subject to this Section that is subject to the  
 13 Administrative Procedure Act and represented by the attorney general when  
 14 called upon do so, may retain or employ any special attorney or counsel  
 15 pursuant to a contingency fee agreement until after the Joint Legislative  
 16 Committee on the Budget has approved the contingency fee agreement.

17 C. It is the intent of the legislature that Subsection A of this Section,  
 18 shall have both prospective and retroactive application. It is further the intent  
 19 of the legislature to clarify that agreements not in accordance with Subsection  
 20 A of this Section are and have always been contrary to the public policy of this  
 21 state and void ab initio.

22 D. It is the intent of the legislature that Subsection B of this Section,  
 23 shall apply only prospectively.

24 §263. Resolution requesting special counsel

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26 D.(1) Unless otherwise specifically authorized by law to use contingency  
 27 fee agreements, no entity subject to this Section that is subject to the  
 28 Administrative Procedure Act and represented by the attorney general when  
 29 called upon do so, may retain or employ any special attorney or counsel

1           pursuant to a contingency fee agreement until after the Joint Legislative  
2           Committee on the Budget has approved the contingency fee agreement.

3                   (2) It is the intent of the legislature that Subsection D of this Section,  
4           shall apply only prospectively.

5           Section 2. All agreements for the retention or employment of special counsel by a  
6           state board or commission or a regional flood protection authority that have not been  
7           approved by the governor and the attorney general under R.S. 42:262(A) as amended by this  
8           Act, are null and void unless and until such approval is obtained. Notwithstanding the  
9           foregoing, the Legislature hereby ratifies each such agreement, provided that it was approved  
10          by the attorney general as to the matters addressed in R.S. 42:262 as it existed one day  
11          before the effective date of this Act, and provided that the agreement states specific hourly  
12          rates for legal services. No payment is or may be due or paid for services rendered under  
13          any agreement that is null and void under this Section or R.S. 42:262(A) as amended by this  
14          Act, other than in quantum meruit.

15          Section 3. This Act shall become effective upon signature by the governor or, if not  
16          signed by the governor, upon expiration of the time for bills to become law without signature  
17          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
18          vetoed by the governor and subsequently approved by the legislature, this Act shall become  
19          effective on the day following such approval.

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The original instrument was prepared by J. Ashley Mitchell. The following  
digest, which does not constitute a part of the legislative instrument, was  
prepared by Sharon F. Lyles.

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#### DIGEST

Adley (SB 553)

Present law provides that in the event it should be necessary to protect the public interest, for any state board or commission to retain or employ any special attorney or counsel to represent it in any special matter for which services any compensation is to be paid by it, the board or commission may retain or employ such special attorney or counsel solely on written approval of the governor and the attorney general and pay only such compensation as the governor and the attorney general may designate in the written approval. The approval will be given in their discretion upon the application of the board or commission by a resolution thereof setting forth fully the reasons for the proposed retention or employment of the special attorney or counsel and the amount of the proposed compensation. The governor and attorney general will not ratify or approve any action of a board in employing any special attorney or counsel or paying any compensation for special service rendered, unless all the formalities as provided in present law as to resolutions and the like, have been complied

with.

Proposed law modifies present law and provides that any state board or commission, or any regional flood protection authority established under Article VI, Section 38.1 of the Louisiana Constitution of 1974, to retain or employ any special attorney or counsel to represent it in any special matter for which services any compensation is to be paid by it, the board, commission, or regional flood protection authority may retain or employ such special attorney or counsel solely on written approval of the governor and the attorney general and pay only such compensation as the governor and the attorney general may designate in the written approval. The approval will be given in their discretion upon the application of the board, or commission, or regional flood protection authority by a resolution thereof setting forth fully the reasons for the proposed retention or employment of the special attorney or counsel and the amount of the proposed compensation. The governor and attorney general will not ratify or approve any action of a board, commission or regional flood authority in employing any special attorney or counsel or paying any compensation for special service rendered, unless all the formalities as provided in present law as to resolutions and the like, have been complied with.

Proposed law provides that the governor may delegate the authority granted to him under proposed law to approve the retention of special attorney or counsel and provides that it is further the intent of the legislature to clarify that agreements not in accordance with proposed law are and have always been contrary to the public policy of this state and void ab initio.

Proposed law provides that proposed law relative to the governor's authority to approve retention of special attorney or counsel will have both prospective and retroactive application.

Proposed law provides that unless otherwise specifically authorized by law to use contingency fee agreements, no entity subject to proposed law may retain or employ any special attorney or counsel pursuant to a contingency fee agreement until after the Joint Legislative Committee on the Budget has approved the contingency fee agreement and that proposed law will apply only prospectively.

Present law provides that no parish governing authority, levee board except as provided in present law hereof, parish school board, city school board, or other local or state board will retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid. The resolution then will be subject to the approval of the attorney general and, if approved by him, will be spread upon the minutes of the body and published in the official journal of the parish.

Present law provides that the governing boards of the Cane River Levee and Drainage District, the Campti-Clarence Levee District, the Natchitoches Levee and Drainage District, the Red River Levee and Drainage District, the Fifth Louisiana Levee District, and the Nineteenth Louisiana Levee District may retain or employ special counsel as needed and without the approval of the attorney general.

Present law provides that the Board of Commissioners of the Black Lake Bayou Recreation and Water Conservation District of Red River Parish may retain or employ general or special counsel as needed and without the approval of the attorney general.

Proposed law provides that unless otherwise specifically authorized by law to use contingency fee agreements, no entity subject to the Administrative Procedure Act and represented by the attorney general under proposed law may retain or employ any special attorney or counsel pursuant to a contingency fee agreement until after the Joint Legislative Committee on the Budget has approved the contingency fee agreement and that proposed

law shall apply only prospectively.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amend R.S. 42:262; adds R.S. 42:263(D))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation,  
Highways, and Public Works to the original bill

1. Adds that requirement for approval by the Joint Legislative Committee on the Budget to retain or employ any special attorney or counsel on a contingency fee agreement applies to an entity that is subject to the Administrative Procedure Act and represented by the attorney general when called upon to do so.