

DIGEST

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Stuart Bishop

HB No. 799

Abstract: Requires certain entities to receive approval for the employment of special attorneys or counsel and provides procedures for requesting and approving employment of special attorneys or counsel.

Proposed law requires express statutory authority for compensation to a special attorney or counsel representing the attorney general, or any state agency, board or commission, not including any public postsecondary education institution, on a contingency fee or percentage basis.

Proposed law requires that a preference in hiring be given to attorneys licensed to practice law in this state and law firms domiciled and licensed in this state.

Proposed law provides that any recovery or award of attorney fees including settlement, in litigation involving the attorney general, or any state agency, board, or commission belongs to the state and shall be deposited into the state treasury.

Proposed law requires that any special attorney or counsel retained or employed by the attorney general, or any state agency, board, or commission, not including public postsecondary education institutions, shall be considered a public servant such that the retention shall not circumvent the requirement of direct payment for services.

Proposed law requires the keeping of accurate records of the hours worked and expenses incurred in the representation of the public entity, and prohibits the entity from incurring fees in excess of \$500 per hour for legal services, and any award in excess of the \$500 per hour shall be reduced to an amount equivalent to \$500 per hour, or the maximum rate approved by the Attorney Fee Review Board, whichever is greater.

Present law requires written approval from the attorney general and governor for the employment of any special attorney or counsel to represent any state board or commission, not including any public postsecondary education institution, in any matter for which compensation is to be paid for services by application and a resolution setting forth the reasons for the employment of the special attorney or counsel and the proposed compensation.

Proposed law retains present law except that it removes the requirement for the submission of a

resolution.

Present law authorizes the attorney general and governor to designate the amount of compensation in the written approval which shall be given in their discretion upon application of the board or commission by a resolution setting forth the reasons for the proposed retention or employment of the special attorney or counsel and the amount of the proposed compensation.

Proposed law provides that the attorney general and governor may designate or approve the amount of compensation in writing.

Proposed law requires the applicant to submit an application and a resolution that meets requirements for a resolution as provided by present law. Further requires the applicant to include in his application a copy of the proposed contract and a written statement from the attorney designated to represent the entity, explaining why he could not handle the matter.

Present law prohibits the attorney general and governor from ratifying or approving any action of a board in employing any special attorney or counsel or paying any compensation for special services rendered unless all of the board or commission has complied with all of the formalities regarding the resolution.

Proposed law retains present law and provides for the following additional prohibitions:

- (1) The terms of the resolution do not match the required terms of the contract.
- (2) The need is not sufficiently shown in the resolution.
- (3) The fee is unreasonable.
- (4) The governor or attorney general determines there is a valid reason not to ratify or approve the action.

Proposed law requires the governor or attorney general to respond to the application in writing by giving approval, conditional approval, or rejecting the application.

Proposed law provides that a resolution requesting special counsel shall include the following:

- (1) A statement showing a real necessity exists.
- (2) A statement fully providing the reasons for the action.
- (3) A statement of the total compensation to be paid.
- (4) The statutory authority for the contingency fee if the contract contains a contingent fee.

Proposed law provides for prospective application only.

(Amends R.S. 42:262)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Deleted provisions applying proposed law to parish and local governmental entities.
2. Added provisions excepting public postsecondary education institutions from proposed law.
3. Added provision requiring that a preference in hiring be given to attorneys licensed to practice law in this state and law firms domiciled and licensed in this state.
4. Added provisions specifying the contents of the applicant's resolution.
5. Added provision specifying only prospective application of proposed law.

House Floor Amendments to the engrossed bill.

1. Added citations to existing statutes authorizing contingency fees.
2. Added requirement of approval by the Attorney Fee Review Board.
3. Added technical amendments.