

**ACT No. 796**

Regular Session, 2014

HOUSE BILL NO. 799

BY REPRESENTATIVE STUART BISHOP

1 AN ACT

2 To amend and reenact R.S. 42:262 and R.S. 49:259(A) and (C), relative to legal  
3 representation of state entities; to prohibit the state entities from retaining any special  
4 attorney or counsel on a contingency fee basis in the absence of express statutory  
5 authority; to provide that attorney fees recovered by the state belong to the state; to  
6 provide for the deposit and use of attorney fees recovered by the state into the  
7 Department of Justice Legal Support Fund; to provide for record-keeping and hourly  
8 rates of a special attorney or counsel representing the state; to require certain entities  
9 to obtain approval prior to employment of any special attorney or counsel; to provide  
10 for certain requirements relative to the contract, application and resolution; to  
11 provide for exceptions; to provide for a preference in hiring certain attorneys; to  
12 provide transparency relative to approval and ratification of a contract by the  
13 attorney general and governor; to provide for prospective application; and to provide  
14 for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 42:262 is hereby amended and reenacted to read as follows:

17 §262. Special ~~attorneys~~ attorney or counsel

18 A. In the event that the attorney general, or any state agency, board or  
19 commission, not including any public postsecondary education institution, is  
20 represented by a special attorney or counsel, the special attorney or counsel shall not  
21 be compensated for such representation on a contingency fee or percentage basis in  
22 the absence of express statutory authority, including R.S. 17:100.10, R.S. 23:1669,  
23 R.S. 37:2153, R.S. 41:724 and 922, R.S. 42:1157.3, R.S. 46:15, R.S. 47:1512,  
24 1515.3, 1516, 1516.1, and 1676. In retaining a special attorney or counsel,

1 preference shall be given to private attorneys licensed to practice law in this state and  
2 law firms domiciled and licensed in this state.

3 B. Any recovery or award of attorney fees, including settlement, in litigation  
4 involving the attorney general or any state agency, board, or commission, not  
5 including any public postsecondary education institution, belongs to the state and  
6 shall be deposited into the state treasury into the Department of Justice Legal  
7 Support Fund in accordance with R.S. 49:259. No payment of attorney fees shall be  
8 made out of state funds in the absence of express statutory authority, including R.S.  
9 17:100.10, R.S. 23:1669, R.S. 37:2153, R.S. 41:724 and 922, R.S. 42:1157.3, R.S.  
10 46:15, R.S. 47:1512, 1515.3, 1516, 1516.1, and 1676, except such payment of  
11 attorney fees as may be approved by the Joint Legislative Committee on the Budget  
12 during the interim between legislative sessions.

13 C. Any special attorney or counsel retained or employed by the attorney  
14 general, or any state agency, board, or commission, not including any public  
15 postsecondary education institution, shall not accept nor demand as payment for the  
16 services rendered by the special attorney or counsel anything of economic value from  
17 any third party.

18 D. All contracts with any special attorney or counsel shall require the  
19 keeping of accurate records of the hours worked and the expenses incurred in the  
20 representation of the public entity. In no case shall the attorney general, or any state  
21 agency, board, or commission, not including any public postsecondary education  
22 institution, incur fees in excess of five hundred dollars per hour for legal services.  
23 In the event of a settlement or final judgment which would result in an award of  
24 attorney fees in excess of five hundred dollars per hour, the fee amount shall be  
25 reduced to an amount equivalent to five hundred dollars per hour, or the maximum  
26 rate approved by the Attorney Fee Review Board, whichever is greater.

27 E. The provisions of this Section shall not apply to attorneys or counsel  
28 retained pursuant to R.S. 39:1533(B) and R.S. 49:258 for purposes of defending the  
29 state, its agencies and its employees in tort litigation or other matters involving the  
30 Self-Insurance Fund as established in R.S. 39:1533.

1                    F. To the extent not otherwise prohibited by Subsections A, B, C, and D of  
 2                    this Section, the following provisions additionally apply to the retainer of any special  
 3                    attorney or counsel:

4                    (1) In the event it should be necessary to protect the public interest, for any  
 5                    state board or commission to retain or employ any special attorney or counsel to  
 6                    represent it in any special matter for which services any compensation is to be paid  
 7                    by it, the board or commission may retain or employ such special attorney or counsel  
 8                    solely on written approval of the governor and the ~~Attorney General~~ attorney general  
 9                    and pay only such compensation as the governor and the ~~Attorney General~~ attorney  
 10                   general may designate or approve in the written approval. The approval shall be  
 11                   given in their discretion upon the application of the board or commission ~~by a~~  
 12                   ~~resolution thereof setting forth fully the reasons for the proposed retention or~~  
 13                   ~~employment of the special attorney or counsel and the amount of the proposed~~  
 14                   ~~compensation.~~

15                    (2) The applicant shall include in its application all of the following:

16                    (a) A resolution that includes all of the following:

17                    (i) A statement showing that a real necessity exists.

18                    (ii) A statement fully providing the reasons for the action.

19                    (iii) A statement of the total compensation to be paid.

20                    (iv) The statutory authority for the contingency fee if the contract contains  
 21                    such a fee.

22                    (b) A copy of the proposed contract described in the resolution.

23                    (3) The governor and ~~Attorney General~~ attorney general shall not ratify or  
 24                    approve any action of a board, or commission, not including any public  
 25                    postsecondary education institution, in employing any special attorney or counsel or  
 26                    paying any compensation for special service rendered, unless all the formalities as  
 27                    provided by this ~~Part as to resolutions and the like, have been complied with.~~  
 28                    Section have been complied with or if any of the following apply:



1           C.(1) The monies in the fund shall be annually appropriated to the  
 2           Department of Justice solely for the purposes of defraying the costs of expert  
 3           witnesses, consultants, contract legal counsel, technology, specialized employee  
 4           training and education, and public education initiatives. Monies in the fund may also  
 5           be used to defray the expense of employees hired, including attorneys and support  
 6           staff, and to pay related expenses to represent the state. Monies appropriated from  
 7           the fund shall be used to supplement the Department of Justice budget and shall in  
 8           no way be used to displace, replace, or supplant appropriations from the state general  
 9           fund for operations of the Department of Justice below the level of state general fund  
 10          appropriations for that department in the current fiscal year.

11                     (2) No employee salary or wages or other expenses, to be paid from the  
 12                     recovery or award of any attorney fees as provided in R.S. 42:262 shall be paid by  
 13                     the Department of Justice, until funding is approved by the Joint Legislative  
 14                     Committee on the Budget.

15                     (3) Each fiscal year, monies shall be deposited into the fund in an amount  
 16                     sufficient to bring the unencumbered balance in the fund to ten million dollars.

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18           Section 3. The provisions of this Act shall have prospective application only and  
 19           shall not apply to contracts existing prior to the effective date of all sections of this Act nor  
 20           shall this Act apply to subsequent renewals of those contracts.

21           Section 4. The treasurer shall immediately notify the president of the Senate, the  
 22           speaker of the House of Representatives, the attorney general, and the Joint Legislative  
 23           Committee on the Budget when the balance in the Department of Justice Legal Support Fund  
 24           reaches an amount which exceeds the Fiscal Year 2013-2014 balance by Two Million One  
 25           Hundred Thousand Dollars. Upon such notification, the provisions of R.S. 42:262(B) and  
 26           (C) as provided in Section 1 of this Act shall become effective.

27           Section 5. The provisions of R.S. 42:262(A), (D), and (E) as provided in Section 1  
 28           of this Act, and Sections 2, 3, 4, and 5 of this Act shall become effective upon signature by  
 29           the governor or, if not signed by the governor, upon expiration of the time for bills to

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 become law without signature by the governor, as provided by Article III, Section 18 of the  
2 Constitution of Louisiana. If vetoed by the governor and subsequently approved by the  
3 legislature, R.S. 42:262(A), (D), and (E) as provided in Section 1 of this Act, and Sections  
4 2, 3, 4, and 5 of this Act shall become effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_