

Regular Session, 2014

HOUSE BILL NO. 799

BY REPRESENTATIVE STUART BISHOP

ATTORNEYS: Provides relative to the employment of special attorneys or counsel

1 AN ACT

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

13 Be it enacted by the Legislature of Louisiana:

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

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

16 A. In the event that the attorney general, or any state agency, board or  
17 commission, not including any public postsecondary education institution, is  
18 represented by a special attorney or counsel, the special attorney or counsel shall not  
19 be compensated for such representation on a contingency fee or percentage basis in  
20 the absence of express statutory authority, including R.S. 17:100.10, R.S. 23:1669,

1 R.S. 37:2153, R.S. 41:724, 922, and 1512, R.S. 42:1157.3, R.S. 46:15, R.S. 47:1512,  
2 1515.3, 1516, 1516.1, and 1676. In retaining a special attorney or counsel,  
3 preference shall be given to private attorneys licensed to practice law in this state and  
4 law firms domiciled and licensed in this state.

5 B. Any recovery or award of attorney fees, including settlement, in litigation  
6 involving the attorney general or any state agency, board, or commission, not  
7 including any public postsecondary education institution, belongs to the state and  
8 shall be deposited into the state treasury. No payment of attorney fees shall be made  
9 out of state funds in the absence of express statutory authority, including R.S.  
10 17:100.10, R.S. 23:1669, R.S. 37:2153, R.S. 41:724, 922, and 1512, R.S. 42:1157.3,  
11 R.S. 46:15, R.S. 47:1512, 1515.3, 1516, 1516.1, and 1676.

12 C. Any special attorney or counsel retained or employed by the attorney  
13 general, or any state agency, board, or commission, not including any public  
14 postsecondary education institution, shall be considered a public servant such that  
15 the retention of such special attorney or counsel shall not circumvent the requirement  
16 of direct payment for services as set forth in R.S. 42:1111(A)(1).

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

26 E. To the extent not otherwise prohibited by Subsections A, B, C, and D of  
27 this Section, the following provisions additionally apply to the retainer of any special  
28 attorney or counsel:

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

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

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

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

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

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

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

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

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

26           (a) The terms of the resolution do not match the required terms of the  
27 contract.

28           (b) The need is not sufficiently shown in the resolution.

- 1                    (c) The fee is unreasonable.
- 2                    (d) The governor or attorney general determines there is a valid reason not  
3                    to ratify or approve the action.
- 4                    (4) The governor or attorney general shall respond to the application in  
5                    writing by giving approval or rejection with reasons.
- 6                    Section 2. The provisions of this Act shall have prospective application only.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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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.