

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 799 by Representative Stuart Bishop

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

Synopsis of Senate Amendments

1. Excepted from the prohibition on paying attorney fees from state funds in the absence of express statutory authority the payment of attorney fees as may be approved by the Joint Legislative Committee on the Budget during the interim between legislative sessions.
2. Changed proposed law from considering any special attorney or counsel retained or employed by the attorney general, or any state agency, board, or commission, not including any public postsecondary education institution, to be a public servant, such that their retention shall not circumvent the requirement of direct payment for services to a prohibition on such counsel accepting or demanding as payment for the services rendered anything of economic value from any third party.
3. Added that proposed law shall not apply to attorneys or counsel retained pursuant to R.S. 39:1553(B) and R.S. 49:258 for purposes of defending the state, its agencies and its employees in tort litigation or other matters involving the Self-Insurance Fund as established in R.S. 39:1533.
4. Added that proposed law shall not apply to any legal fees or attorney compensation made in connection with the issuance of bonds, notes, or other issuances of indebtedness when such legal fees or attorney compensation are approved by the State Bond Commission pursuant to R.S. 39:1405.4.
5. Specified that any recovery or attorney fees obtained pursuant to proposed law shall be deposited into the Department of Justice Legal Support Fund and that the fund shall be comprised of proceeds from court judgments, settlements, fines, fees and from the recovery or award of any attorney fees, among others.
6. Limited paying employee salary or wages or other expenses to be paid from recovery or award until funding is approved by the Joint Legislative Committee on the Budget.
7. Required that each fiscal year, monies shall be deposited into the fund in an amount sufficient to bring the unencumbered balance in the fund to \$10 million.
8. Added that proposed law provisions shall have prospective application only and shall not apply to existing contracts prior to the effective date of all sections of the Act nor to subsequent renewals of those contracts.
9. Made provisions of proposed law relative to the Department of Justice Legal Support Fund and attorney compensation restrictions effective upon notification by the state treasurer of the president of the Senate, the speaker of the House of Representatives, the attorney general, and the Joint Legislative Committee on the Budget when the fund balance exceeds the Fiscal Year 2013-2014 amount of \$2 million.
10. Made all other sections of proposed law effective upon signature of the governor.

Digest of Bill as Finally Passed by Senate

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. Specifies that monies deposited into the Department of Justice Legal Support Fund includes proceeds from court judgments, settlements, fines, fees and from the recovery or award of any attorney fees, among others.

Proposed law prohibits paying employee salary or wages or other expenses to be paid from the recovery or award until funding is approved by the Joint Legislative Committee on the Budget.

Proposed law requires that each fiscal year, monies shall be deposited into the fund in an amount sufficient to bring the unencumbered balance in the fund to \$10 million.

Proposed law provides that no payment of attorney fees shall be made out of state funds in the absence of express statutory authority, including certain present law provisions, except such payment of attorney fees as may be approved by the Joint Legislative Committee on the Budget during the interim between legislative sessions.

Proposed law provides 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 not accept nor demand as payment for the services rendered by the special attorney or counsel anything of economic value from any third party.

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.

Adds that proposed law shall not apply to attorneys or counsel retained pursuant to present law for purposes of defending the state, its agencies and its employees in tort litigation or other matters involving the Self-Insurance Fund as established in present law, and further provides that proposed law shall not apply to certain legal fees or attorney compensation approved by the State Bond Commission.

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.

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 including a resolution and a copy of the proposed contract. Provides that the 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.

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 excepts public postsecondary education institutions from the requirements of proposed law.

Proposed law requires the governor or attorney general to respond to the application in writing by giving approval or rejection with reasons.

Provides that proposed law provisions shall have prospective application only and shall not apply to contracts to existing contracts prior to the effective date of proposed law nor to subsequent renewals of those contracts.

Provides that proposed law provisions relative to the Department of Justice Legal Support Fund and attorney compensation restrictions become effective upon notification by the state treasurer of the president of the Senate, the speaker of the House of Representatives, the attorney general, and the Joint Legislative Committee on the Budget when the fund balance exceeds the Fiscal Year 2013-2014 amount of \$2 million.

Provides that all other proposed law provisions are effective upon signature of the governor.

(Amends R.S. 42:262 and R.S. 49:259(A) and (C))