Regular Session, 2014

HOUSE BILL NO. 799

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## BY REPRESENTATIVE STUART BISHOP

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 rates of a special attorney or counsel representing the state; to require certain entities 8 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,

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

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

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

C. 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, 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.

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

E. The provisions of this Section shall not apply to attorneys or counsel retained pursuant to R.S. 39:1533(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.

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F. To the extent not otherwise prohibited by Subsections A, B, C, and D of

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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.

Section have been complied with or if any of the following apply:

1	(a) The terms of the resolution do not match the required terms of the
2	<u>contract.</u>
3	(b) The need is not sufficiently shown in the resolution.
4	(c) The fee is unreasonable.
5	(d) The governor or attorney general determines there is a valid reason not
6	to ratify or approve the action.
7	(4) The governor or attorney general shall respond to the application in
8	writing by giving approval or rejection with reasons.
9	G. The provisions of this Section shall not apply to any legal fees or attorney
10	compensation made in connection with the issuance of bonds, notes, or other
11	issuances of indebtedness when such legal fees or attorney compensation are
12	approved by the State Bond Commission pursuant to R.S. 39:1405.4.
13	Section 2. R.S. 49:259(A) and (C) are hereby amended and reenacted to read as
14	follows:
15	§259. Department of Justice Legal Support Fund
16	A. There is hereby established in the state treasury a special fund to be
17	known as the Department of Justice Legal Support Fund, hereinafter referred to as
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	the "fund". The fund shall be comprised of a portion of proceeds recovered by the
19	the "fund". The fund shall be comprised of a portion of proceeds recovered by the attorney general on behalf of the state from court judgments, settlements, fines, fees,
19 20	
	attorney general on behalf of the state from court judgments, settlements, fines, fees,
20	attorney general on behalf of the state from court judgments, settlements, fines, fees, forfeitures and penalties, <u>from the recovery or award of any attorney fees as provided</u>
<ul><li>20</li><li>21</li></ul>	attorney general on behalf of the state from court judgments, settlements, fines, fees, forfeitures and penalties, from the recovery or award of any attorney fees as provided in R.S. 42:262, or from proceeds recovered by the attorney general from any other
<ul><li>20</li><li>21</li><li>22</li></ul>	attorney general on behalf of the state from court judgments, settlements, fines, fees, forfeitures and penalties, from the recovery or award of any attorney fees as provided in R.S. 42:262, or from proceeds recovered by the attorney general from any other source from which revenues are designated by the attorney general for deposit into
<ul><li>20</li><li>21</li><li>22</li><li>23</li></ul>	attorney general on behalf of the state from court judgments, settlements, fines, fees, forfeitures and penalties, from the recovery or award of any attorney fees as provided in R.S. 42:262, or from proceeds recovered by the attorney general from any other source from which revenues are designated by the attorney general for deposit into the fund, except those judgments and recoveries made on or pertaining to any office
<ul><li>20</li><li>21</li><li>22</li><li>23</li><li>24</li></ul>	attorney general on behalf of the state from court judgments, settlements, fines, fees, forfeitures and penalties, from the recovery or award of any attorney fees as provided in R.S. 42:262, or from proceeds recovered by the attorney general from any other source from which revenues are designated by the attorney general for deposit into the fund, except those judgments and recoveries made on or pertaining to any office of risk management litigation or litigation involving the Department of Natural

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

- (2) No employee salary or wages or other expenses, to be paid from the recovery or award of any attorney fees as provided in R.S. 42:262 shall be paid by the Department of Justice, until funding is approved by the Joint Legislative Committee on the Budget.
- (3) Each fiscal year, monies shall be deposited into the fund in an amount sufficient to bring the unencumbered balance in the fund to ten million dollars.

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

Section 4. The treasurer shall immediately notify 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 balance in the Department of Justice Legal Support Fund reaches an amount which exceeds the Fiscal Year 2013-2014 balance by Two Million One Hundred Thousand Dollars. Upon such notification, the provisions of R.S. 42:262(B) and (C) as provided in Section 1 of this Act shall become effective.

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

**ENROLLED** 

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