

2018 Regular Session

SENATE BILL NO. 424

BY SENATOR MORRISH

ATTORNEYS. Provides relative to the employment of special attorneys or counsel to recover royalties due the state. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 49:259(A) and to enact R.S. 42:262(H), relative to legal
3 representation of state entities; to provide that attorneys or counsel may be retained
4 by the State Mineral and Energy Board for the purpose of collecting royalties due the
5 state; to provide relative to the deposit and use of attorney fees and funds recovered;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 42:262(H) is hereby enacted to read as follows:

9 §262. Special attorney or counsel

10 * * *

11 **H. The provisions of this Section shall not apply to attorneys or counsel**
12 **retained by the State Mineral and Energy Board for the purpose of collecting**
13 **past due royalties pursuant to Part 6 of Chapter 7 of Title 31 of the Louisiana**
14 **Revised Statutes of 1950 (R.S. 31:133-143).**

15 * * *

16 Section 2. R.S. 49:259(A) is hereby amended and reenacted to read as follows:

17 §259. Department of Justice Legal Support Fund

such representation on a contingency fee or percentage basis in the absence of express statutory authority. Requires that in retaining a special attorney or counsel, preference be given to private attorneys licensed to practice law in this state and law firms domiciled and licensed in this state.

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

Present law provides that 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.

Present law provides that all contracts with any special attorney or counsel require the keeping of accurate records of the hours worked and the expenses incurred in the representation of the public entity. Provides that 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 \$500 per hour for legal services. Provides that in the event of a settlement or final judgment which would result in an award of attorney fees in excess of \$500 per hour, the fee amount 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 provides that to the extent not otherwise prohibited by present law, the following provisions additionally apply to the retainer of any special attorney or counsel:

- (1) In the event it should be necessary to protect the public interest, for any state board or commission to retain or employ any special attorney or counsel to represent it in any special matter for which services any compensation is to be paid, the board or commission may retain or employ such special attorney or counsel solely on written approval of the governor and the attorney general and pay only such compensation as the governor and the attorney general may designate or approve in the written approval. Provides that the approval be given in their discretion upon the application of the board or commission.
- (2) The applicant shall include in its application all of the following:
 - (a) A resolution that includes all of the following:
 - (i) A statement showing that a real necessity exists.
 - (ii) A statement fully providing the reasons for the action.
 - (iii) A statement of the total compensation to be paid.
 - (iv) The statutory authority for the contingency fee if the contract contains such a fee.
 - (b) A copy of the proposed contract described in the resolution.
- (3) The governor and attorney general shall not ratify or approve any action of a board, or commission, not including any public postsecondary education institution, in employing any special attorney or counsel or paying any compensation for special service rendered, unless all the formalities as provided by present law have been

complied with or if any of the following apply:

- (a) The terms of the resolution do not match the required terms of the contract.
 - (b) The need is not sufficiently shown in the resolution.
 - (c) The fee is unreasonable.
 - (d) The governor or attorney general determines there is a valid reason not to ratify or approve the action.
- (4) The governor or attorney general shall respond to the application in writing by giving approval or rejection with reasons.

Present law provides exceptions to present law 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.

Present law provides exception from present law 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.

Proposed law provides that present law shall not apply to attorneys or counsel retained by the State Mineral and Energy Board for purposes of obtaining past due royalties pursuant to R.S. 31:133-143. Otherwise retains present law.

Present law establishes the Department of Justice Legal Support Fund in the state treasury. Provides that the fund shall be comprised of proceeds recovered by the 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 which revenues are received by the attorney general for deposit into the fund. Excepts those judgments and recoveries made on or pertaining to any office of risk management litigation, litigation involving the Department of Natural Resources or the Department of Environmental Quality, or to the settlement funds, judgments, or final disposition of the claims asserted in State of Louisiana v. BP Exploration & Production, et al., consolidated with In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL No. 2179 (E.D. La.).

Proposed law excepts from present law proceeds recovered from judgments, settlements, fines, fees, forfeitures, and penalties, as well as recovery or award of any attorney fees, as provided in R.S. 31:133-143 by attorneys or counsel retained pursuant to R.S. 42:262(H). Otherwise retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 49:259(A); adds R.S. 42:262(H))