

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 and 263(A), relative to legal representation of state and
3 local entities; to prohibit the state and local 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 or local entity belong
6 to the state or local entity; to provide for record-keeping and hourly rates of a special
7 attorney or counsel representing the state and local entities; to require certain entities
8 to obtain approval prior to employment of any special attorney or counsel; to provide
9 for certain requirements relative to the contract, application and resolution; to
10 provide transparency relative to approval and ratification of a contract by the
11 attorney general and governor; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 42:262 and 263(A) are hereby amended and reenacted to read as
14 follows:

15 §262. Special attorneys or counsel

16 A. In the event that the attorney general, or any state agency, board or
17 commission, or parish or local governmental entity is represented by a special
18 attorney or counsel, the special attorney or counsel shall not be compensated for such
19 representation on a contingency fee or percentage basis in the absence of express
20 statutory authority.

1 B. Any recovery or award of attorney fees, including settlement, in litigation
2 involving the attorney general or any state agency, board or commission belongs to
3 the state and shall be deposited into the state treasury. Any recovery or award of
4 attorney fees, including settlement, in litigation involving any parish or local
5 governmental entity belongs to the parish or local governmental entity and shall be
6 deposited into the appropriate depository account. No payment of attorney fees shall
7 be made out of state funds in the absence of express statutory authority.

8 C. Any special attorney or counsel retained or employed by the attorney
9 general, or any state agency, board or commission, or parish or local governmental
10 entity shall be considered a public servant such that the retention of such special
11 attorney or counsel shall not circumvent the requirement of direct payment for
12 services as set forth in R.S. 42:1111(A)(1).

13 D. All contracts with any special attorney or counsel shall require the
14 keeping of accurate records of the hours worked and the expenses incurred in the
15 representation of the public entity. In no case shall the attorney general, or any state
16 agency, board or commission, or parish or local governmental entity incur fees in
17 excess of five hundred dollars per hour for legal services. In the event of a settlement
18 or final judgment which would result in an award of attorney fees in excess of five
19 hundred dollars per hour, the fee amount shall be reduced to an amount equivalent
20 to five hundred dollars per hour.

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

24 (1) In the event it should be necessary to protect the public interest, for any
25 state board or commission to retain or employ any special attorney or counsel to
26 represent it in any special matter for which services any compensation is to be paid
27 ~~by it~~, the board or commission may retain or employ such special attorney or counsel
28 solely on written approval of the governor and the ~~Attorney General~~ attorney general
29 and pay only such compensation as the governor and the ~~Attorney General~~ attorney

1 general may designate or approve in the written approval. The approval shall be
2 given in their discretion upon the application of the board or commission ~~by a~~
3 ~~resolution thereof setting forth fully the reasons for the proposed retention or~~
4 ~~employment of the special attorney or counsel and the amount of the proposed~~
5 ~~compensation.~~

6 (2) In the event it should be necessary to protect the public interest, for any
7 parish governing authority, levee board, except as provided in R.S. 42:263 (B) and
8 (C), parish school board, city school board, or other local or state board to retain or
9 employ any special attorney or counsel to represent it in any special matter for which
10 services any compensation is to be paid, the local governmental entity may retain or
11 employ such special attorney or counsel solely on written approval of the attorney
12 general and pay only such compensation as the attorney general may designate or
13 approve in the written approval. The approval shall be given in his discretion upon
14 the application of the local governmental entity.

15 (3) The applicant shall include in its application al of the following:

16 (a) A resolution that meets all requirements set forth in R.S. 42:263.

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

18 (4) The governor and ~~Attorney General~~ attorney general shall not ratify or
19 approve any action of a board, commission, or local governmental entity in
20 employing any special attorney or counsel or paying any compensation for special
21 service rendered, unless all the formalities as provided by this ~~Part as to resolutions~~
22 and the like, have been complied with. Section and R.S. 42:263 have been complied
23 with or if any of the following apply:

24 (a) The terms of the resolution do not match the required terms of the
25 contract.

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

27 (c) The fee is unreasonable.

28 (d) Any other reason determined by the governor or attorney general.

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 provides that any recovery or award of attorney fees, including settlement, in litigation involving any parish or local governmental entity belongs to the parish or local governmental entity and shall be deposited into the appropriate depository account and further provides that no payment of attorney fees shall be made out of state funds in the absence of express statutory authority.

Proposed law requires that any special attorney or counsel retained or employed by the attorney general, or any state agency, board or commission, or parish or local governmental entity 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.

Present law requires written approval from the attorney general or governor for the employment of any special attorney or counsel to represent any state board or commission 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.

Proposed law requires that any parish governing authority, certain levee boards, parish or city school board, or other local or state board receive written approval of the governor and attorney general prior to retaining or employing a special attorney or counsel, and pay only the compensation that may be designated by the attorney general.

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 and any amendment to the contract requires additional approval through re-submission of the application.

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) Any other reason determined by the governor or attorney general.

Proposed law requires the governor or attorney general to respond to the application in writing by giving approval, conditional approval, or rejecting the application, and if an application is approved, the resolution shall be spread upon the minutes of the body and published in the official journal of the parish for local boards and commissions.

Present law prohibits any parish governing authority, certain levee boards, parish or city school board, or other local or state board from retaining or employing any special attorney or counsel to represent it in any matter or to pay compensation for any legal services unless a resolution fully stating the reasons for the action and the compensation to be paid is approved by the attorney general, and if approved, be spread upon the minutes of the body and published in the official journal of the parish.

Proposed law deletes present law and 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 full statement of the compensation to be paid.
- (4) If the contract contains a contingent fee, the legislative authority for the fee must be cited.

(Amends 42:262 and 263(A))