

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

HOUSE BILL 1151

4
5 By: Representative House

For An Act To Be Entitled

8 AN ACT TO ALLOW THE EMPLOYMENT OF SPECIAL COUNSEL BY
9 A STATE OFFICIAL, DEPARTMENT, INSTITUTION, BOARD,
10 COMMISSION, OR AGENCY IN CERTAIN CIRCUMSTANCES; TO
11 REQUIRE SPECIAL COUNSEL TO OBTAIN APPROVAL BY THE
12 ATTORNEY GENERAL BEFORE CONTRACTING FOR SERVICES WITH
13 SPECIAL COUNSEL OR ENTERING INTO A SETTLEMENT
14 AGREEMENT; AND FOR OTHER PURPOSES.

Subtitle

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18 TO ALLOW THE EMPLOYMENT OF SPECIAL
19 COUNSEL BY A STATE OFFICIAL OR ENTITY IN
20 CERTAIN CIRCUMSTANCES; AND TO REQUIRE
21 SPECIAL COUNSEL TO OBTAIN APPROVAL BY THE
22 ATTORNEY GENERAL BEFORE ENTERING INTO
23 CERTAIN AGREEMENTS.

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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 SECTION 1. Arkansas Code § 25-16-702(a)-(c), concerning the procedure
29 for requests and review of requests for special counsel, are amended to read
30 as follows:

31 (a)(1) The Attorney General shall be the attorney for all state
32 officials, departments, institutions, boards, commissions, and agencies.
33 Whenever ~~any officer~~ a state official or department, institution, board,
34 commission, or agency of the state ~~needs~~ requires the services of an attorney
35 other than a staff attorney employed by the state official, department,
36 institution, board, commission, or agency, the matter shall be certified to



1 the Attorney General for attention.

2 (2) The certification under subdivision (a)(1) of this section
 3 shall include without limitation the proposed written contract for the
 4 services of the outside counsel.

5 (3) The Attorney General shall review the information and render
 6 his or her decision under this section no later than ten (10) regular
 7 business days after receipt of the certification and proposed written
 8 contract.

9 (b)(1) ~~All~~ Except as otherwise provided in this section, § 21-9-203,
 10 and § 24-2-618, all office work and advice for state officials, departments,
 11 institutions, boards, commissions, and agencies shall be given by either a
 12 staff attorney employed by the state official, department, institution,
 13 board, commission, or agency or the Attorney General and his or her
 14 assistants, and ~~no~~ special counsel shall not be employed ~~or~~ and additional
 15 expense shall not be paid for those services.

16 (2)(A) If, in the opinion of the Attorney General, it shall at
 17 any time be necessary to employ special counsel to prosecute ~~any~~ a suit
 18 brought on behalf of the state or to defend a suit brought against any state
 19 official, department, institution, board, commission, or agency of the state,
 20 the Attorney General, with the approval of the Governor, may authorize a
 21 state official, department, institution, board, commission or agency to
 22 employ special counsel.

23 (B) The Attorney General may authorize the employment of
 24 special counsel under this subsection if the Attorney General:

25 (i) Determines and certifies in writing that the
 26 state official, department, institution, board, commission, or agency needs
 27 the advice and assistance or representation of special counsel;

28 (ii) Consents in writing to the employment of
 29 special counsel by the state official, department, institution, board,
 30 commission, or agency;

31 (iii)(a) Receives confirmation in writing from the
 32 state official, department, institution, board, commission, or agency that
 33 the state official, department, institution, board, commission, or agency
 34 will re-advertise at least once every two (2) years for special counsel if
 35 special counsel is employed under this subsection and submit any amount to be
 36 paid for special counsel under this subsection for review by the Legislative

1 Council or, if the General Assembly is in session, the Joint Budget
2 Committee.

3 (b) However, re-advertisement for special
4 counsel is not required, and special counsel may be retained to provide
5 services for an indeterminate period of time that may be longer than one (1)
6 year, if such a period of time is necessary to represent the interests of the
7 state official, department, institution, board, commission, or agency in an
8 ongoing cause of action in a court of appropriate jurisdiction.

9 (c) A state official, department, institution,
10 board, commission, or agency shall provide the certification required under
11 subdivision (b)(2)(B)(i) of this section annually, if the special counsel is
12 employed on a retainer basis, or each time the state official, department,
13 institution, board, commission, or agency employs special counsel.

14 (d) A copy of the certification required under
15 this subdivision (b)(2)(B)(i) of this section shall be retained in the fiscal
16 records of the state official, department, institution, board, commission, or
17 agency for audit purposes; and

18 (iv)(a) Approves the proposed contract between
19 special counsel and the state official, department institution, board,
20 commission, or agency.

21 (b) However, if the Attorney General does not
22 approve or disapprove the proposed contract submitted by a state official,
23 department, institution, board, commission, or agency under this subdivision
24 (b)(2)(B)(iv) within five (5) business days of receiving the proposed
25 contract, the contract is considered to be approved.

26 (C)(i) The compensation for the special counsel shall be
27 ~~fixed by the court where the litigation is pending, with~~ determined during
28 the process of procuring the contract with special counsel subject to the
29 written approval of the Governor and the Attorney General.

30 (ii) However, if the Governor or the Attorney
31 General, or both, do not approve or disapprove the proposed compensation for
32 the special counsel under subdivision (b)(2)(C)(i) of this section, the
33 proposed compensation for the special counsel is considered to be approved if
34 neither the Governor nor the Attorney General disapproved the proposed
35 compensation.

36 (D) The Attorney General shall not enter into any a

1 contract for the employment of outside legal counsel without first seeking
 2 prior review by the Legislative Council.

3 (E) A state official, department, institution, board,
 4 commission, or agency authorized to employ special counsel under this
 5 subsection may expend moneys appropriated for maintenance and general
 6 operations to pay for the cost of employing special counsel.

7 (F)(i) Before the execution of a settlement agreement negotiated
 8 by special counsel employed under this section or § 21-9-203(b), the
 9 settlement agreement shall be:

10 (a) Approved by the Governor; and

11 (b) Submitted to the Litigation Reports Oversight
 12 Subcommittee of the Legislative Council for review.

13 (c) If ~~any~~ a state official, department, institution, board,
 14 commission, or agency of the state needs the service of an attorney and the
 15 Attorney General fails to render the service or provide authorization under
 16 subdivision (b)(2) of this section when requested in writing, then, upon the
 17 establishment of that fact, the Governor may appoint counsel to look after
 18 the matter or may authorize the employment of counsel by the officer,
 19 department, agency, board, commission, or institution needing the services of
 20 an attorney.

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