

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1151

By: Representative House

## For An Act To Be Entitled

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

## Subtitle

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

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

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

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



the Attorney General for attention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Approved by the Governor; and

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

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