

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/21/17
A Bill

HOUSE BILL 1832

5 By: Representative House
6 By: Senator Elliott
7

For An Act To Be Entitled

9 AN ACT TO ALLOW THE EMPLOYMENT OF SPECIAL COUNSEL BY
10 A STATE OFFICIAL, DEPARTMENT, INSTITUTION, BOARD,
11 COMMISSION, OR AGENCY IN CERTAIN CIRCUMSTANCES; TO
12 REQUIRE SPECIAL COUNSEL TO OBTAIN APPROVAL BY THE
13 ATTORNEY GENERAL BEFORE ENTERING INTO A SETTLEMENT
14 AGREEMENT; AND FOR OTHER PURPOSES.
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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 A
23 SETTLEMENT AGREEMENT.
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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
29 representation of state agencies and officers by the Attorney General and
30 outside counsel, are amended to read as follows:

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

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

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

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

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

24 (iii)(a) Receives confirmation in writing from the
25 state official, department, institution, board, commission, or agency that
26 the state official, department, institution, board, commission, or agency
27 will re-advertise annually for special counsel if special counsel is employed
28 under this subsection and submit any amount to be paid for special counsel
29 under this subsection for review by the Legislative Council or, if the
30 General Assembly is in session, the Joint Budget Committee.

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

1 jurisdiction.

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

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

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

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

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

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

29 (D) The Attorney General shall not enter into ~~any~~ a
30 contract for the employment of outside legal counsel without first seeking
31 prior review by the Legislative Council.

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

36 (F)(i) Before the execution of a settlement agreement

1 negotiated by special counsel employed under this section or § 21-9-203(b),
2 the settlement agreement shall be:

3 (a) Approved by the Governor; and

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

6 (ii) Before the execution of a settlement agreement
7 negotiated by special counsel employed by the Bureau of Legislative Research
8 or Arkansas Legislative Audit, the settlement agreement shall be submitted to
9 the Litigation Reports Oversight Subcommittee of the Legislative Council for
10 review.

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

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20 /s/House
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