

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

# 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 the services of an attorney, the  
35 matter shall be certified to the Attorney General for attention.

36 (b)(1) ~~All~~ Except as otherwise provided in this section and § 21-9-



1 203, all office work and advice for state officials, departments,  
2 institutions, boards, commissions, and agencies shall be given by the  
3 Attorney General and his or her assistants, and ~~no~~ special counsel shall not  
4 be employed ~~or~~ and additional expense shall not be paid paid for those  
5 services.

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

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

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

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

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

28 (b) A state official, department, institution,  
29 board, commission, or agency shall provide the certification required under  
30 this subdivision (b)(2)(B)(iii) annually, if the special counsel is employed  
31 on a retainer basis, or each time the state official, department,  
32 institution, board, commission, or agency employs special counsel.

33 (c) A copy of the certification required under  
34 this subdivision (b)(2)(B)(iii) shall be retained in the fiscal records of  
35 the state official, department, institution, board, commission, or agency for  
36 audit purposes.

1                    (C) The compensation for the special counsel shall be  
2 fixed by the court where the litigation is pending, with the written approval  
3 of the Governor and the Attorney General.

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

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

11                   (F) Special counsel employed under this subsection shall  
12 not enter into a settlement agreement on behalf of a state official,  
13 department, institution, board, commission, or agency without the prior  
14 written approval of the Attorney General.

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

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