

**As Introduced**

**130th General Assembly  
Regular Session  
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**H. B. No. 238**

**Representative Butler**

**Cosponsors: Representatives Adams, J., Lynch, Terhar**

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**A B I L L**

To enact sections 9.49, 9.491, 9.492, 9.493, 9.494, 1  
9.495, and 9.496 of the Revised Code to provide 2  
transparency in contracts between the state and 3  
private attorneys. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 9.49, 9.491, 9.492, 9.493, 9.494, 5  
9.495, and 9.496 of the Revised Code be enacted to read as 6  
follows: 7

**Sec. 9.49.** Sections 9.49 to 9.496 of the Revised Code shall 8  
be known as the transparency in private attorney contracts act. 9

**Sec. 9.491.** As used sections 9.49 to 9.496 of the Revised 10  
Code: 11

(A) "Contract" means a contract with a private attorney for 12  
any legal matter in which the budget for legal fees is estimated 13  
by the attorney general to be one hundred thousand dollars or 14  
more. 15

(B) "Legal matter" means any administrative proceeding, case, 16  
group of cases, or legal issue for which the state requires legal 17  
representation or advice. 18

(C) "Private attorney" means any attorney in the private practice of law or a law firm but does not mean an attorney appointed by the attorney general pursuant to section 109.08 of the Revised Code for the purpose of collecting debts certified to the attorney general for collection under any law or debts that the attorney general is authorized to collect.

(D) "State" means this state and any officer, department, board, commission, division, bureau, council, or unit of organization, however designated, of the executive branch of government of this state and any of its agents.

(E) "Securities class action" means an action brought as a class action that includes a violation of the "Securities Act of 1933," 15 U.S.C. 77a and following, or the "Securities Exchange Act of 1934," 15 U.S.C. 78a and following.

**Sec. 9.492.** (A) The state shall not enter into a contract with a private attorney unless the attorney general or the attorney general's designee makes a written determination prior to entering into that contract or within a reasonable time after entering into the contract that private representation is both cost-effective and in the public interest. Any written determination shall include findings for each of the following factors:

(1) Whether there exist sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter involved;

(2) The nature of the legal matter for which private representation is required so long as divulging that information would not violate any ethical responsibility of the attorney general or privilege held by the state.

(B) If the attorney general or the attorney general's

designee makes the determination described in division (A) of this 49  
section, the attorney general or the attorney general's designee 50  
shall request qualifications from private attorneys to represent 51  
the state, unless the attorney general or the attorney general's 52  
designee determines that requesting qualifications is not feasible 53  
under the circumstances and sets forth the basis for this 54  
determination in writing. In any case in which the attorney 55  
general or the attorney general's designee determines that it is 56  
not feasible to request qualifications, the attorney general shall 57  
select from the list compiled under division (C) of this section a 58  
private attorney to represent the state. 59

(C) The attorney general shall prepare and publish on the 60  
attorney general's web site a list of private attorneys who are 61  
qualified to represent the state if requesting qualifications 62  
under division (B) of this section is not feasible, the criteria 63  
for inclusion on the list, and the names of the private attorneys 64  
that have been accepted for inclusion on the list. The attorney 65  
general shall specify the types of legal matters for which private 66  
attorneys on the list are qualified to represent the state. The 67  
attorney general shall update the list as necessary. 68

(D)(1) Except as otherwise provided in division (D)(2) of 69  
this section and subject to divisions (D)(3) and (4) of this 70  
section, the state shall not enter into a contingency fee contract 71  
with a private attorney that provides for the private attorney to 72  
receive an aggregate contingency fee in excess of the total of the 73  
following amounts: 74

(a) Twenty-five per cent of any damages up to ten million 75  
dollars; 76

(b) Twenty per cent of any portion of any damages of ten 77  
million dollars or more but less than fifteen million dollars; 78

(c) Fifteen per cent of any portion of any damages of fifteen 79

million dollars or more but less than twenty million dollars; 80

(d) Ten per cent of any portion of any damages of twenty 81  
million dollars or more but less than twenty-five million dollars; 82

(e) Five per cent of any portion of any damages of 83  
twenty-five million dollars or more. 84

(2) Except as provided in division (E) of this section with 85  
respect to security class actions, the aggregate contingency fee 86  
under division (D)(1) of this section, exclusive of reasonable 87  
costs and expenses, shall not exceed fifty million dollars, 88  
regardless of the number of lawsuits filed or the number of 89  
private attorneys retained to achieve the recovery, unless the 90  
contract expressly authorizes a contingency fee in excess of fifty 91  
million dollars. The attorney general shall not enter into a 92  
contract authorizing a contingency fee in excess of fifty million 93  
dollars without the approval of the controlling board. 94

(3) A contingency fee in a contingency fee contract under 95  
division (D)(1) of this section shall not be based on penalties or 96  
civil fines awarded or on any amounts attributable to penalties or 97  
civil fines. 98

(4) The amount of a contingency fee paid to a private 99  
attorney under a contingency fee contract between the state and 100  
the private attorney shall be the percentage of the amount of 101  
damages actually recovered by the state to which the private 102  
attorney is entitled under division (D)(1) of this section. 103

(E) In any contingency fee contract covering a securities 104  
class action in which this state is appointed as lead plaintiff 105  
pursuant to section 27(a)(3)(B)(i) of the "Securities Act of 106  
1933," 15 U.S.C. 77z-1(a)(3)(B)(i) or section 21D(a)(3)(B)(i) of 107  
the "Securities Exchange Act of 1934," 15 U.S.C. 78u-4(a)(3)(B)(i) 108  
or in which any state is a class representative, division (D)(2) 109  
of this section applies only with respect to the state's share of 110

any judgment, settlement amount, or common fund and does not apply 111  
to the amount of attorney's fees that may be awarded to a private 112  
attorney for representing other members of a class certified 113  
pursuant to Rule 23 of the Federal Rules of Civil Procedure or 114  
state class action procedures. 115

(F) A contract entered into between the state and a private 116  
attorney under this section shall include all of the following 117  
provisions that apply throughout the term of the contract and any 118  
extensions of that term: 119

(1) An assistant attorney general shall retain complete 120  
control over the course and conduct of the case involved. 121

(2) An assistant attorney general with supervisory authority 122  
shall oversee the litigation of the case. 123

(3) An assistant attorney general shall retain veto power 124  
over any decisions made by the private attorney. 125

(4) Any opposing party in the case may contact the assistant 126  
attorney general directly without having to confer with the 127  
private attorney unless the assistant attorney general instructs 128  
the opposing party otherwise. 129

(5) An assistant attorney general with supervisory authority 130  
for the case may attend all settlement conferences. 131

(6) Final approval regarding settlement of the case shall be 132  
reserved exclusively to the discretion of the attorney general. 133

**Sec. 9.493.** The state shall not enter into a contract with a 134  
private attorney located outside this state unless the attorney 135  
general determines that at least one of the following applies: 136

(A) There are no private attorneys with an office in this 137  
state that are willing to accept the legal representation. 138

(B) All private attorneys with offices in this state that 139

possess the necessary experience or capability are conflicted and 140  
unable to represent the state or the attorney general or lack 141  
necessary personnel and capacity in the firm to take on the 142  
engagement. 143

(C) The attorney general is prevented from engaging a private 144  
attorney with an office in this state under the rules of the 145  
controlling board regarding waiver of competitive selection. 146

(D) There are no private attorneys with offices in this state 147  
that possess the necessary experience, capability, or capacity 148  
required by the contemplated engagement. 149

**Sec. 9.494.** (A) A copy of the contract between the state and 150  
a private attorney pursuant to section 9.492 or 9.493 of the 151  
Revised Code and any corresponding submission by the attorney 152  
general to the controlling board for a waiver of competitive 153  
selection shall be posted on the attorney general's web site and 154  
shall remain posted on the web site for the duration of the 155  
contract. 156

(B) A private attorney under contract to provide services to 157  
the state pursuant to section 9.492 or 9.493 of the Revised Code 158  
shall maintain from the inception of the contract until at least 159  
three years after the contract expires or is terminated detailed 160  
current records, including documentation of all expenses, 161  
disbursements, charges, credits, underlying receipts and invoices, 162  
and other financial transactions that concern the provision of the 163  
attorney services. The private attorney shall maintain detailed 164  
contemporaneous time records for the attorneys and paralegals 165  
working on the legal matter and shall promptly provide these 166  
records to the attorney general upon request. 167

**Sec. 9.495.** By September 1 of each year, the attorney general 168  
shall submit a report to the president of the senate and the 169

speaker of the house of representatives describing the use of 170  
contracts with private attorneys in the preceding fiscal year. The 171  
report shall include the following: 172

(A) Identification of all contracts entered into during the 173  
fiscal year and all previously executed contracts that remain 174  
current during any part of the fiscal year or that have been 175  
closed during any part of the fiscal year, and for each contract a 176  
description of all of the following: 177

(1) The name of the private attorney with whom the state has 178  
contracted, including the name of the private attorney's law firm 179  
if the private attorney is an individual; 180

(2) The nature of the legal matter that is the subject of the 181  
contract so long as divulging that information would not violate 182  
any ethical responsibility of the attorney general or privilege 183  
held by the state; 184

(3) The state entity the private attorney was engaged to 185  
represent or counsel; 186

(4) The total legal fees approved by the attorney general for 187  
payment to a private attorney by the state for legal services 188  
rendered during the preceding fiscal year. 189

(B) Copies of any request for qualifications received by the 190  
attorney general pursuant to division (B) of section 9.492 of the 191  
Revised Code. 192

**Sec. 9.496.** Nothing in sections 9.49 to 9.495 of the Revised 193  
Code shall be construed to expand the authority of any state 194  
agency or state agent to enter into contracts if no such authority 195  
previously existed. 196