

As Reported by the House Judiciary Committee

130th General Assembly

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Sub. 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, 9.496, and 9.497 of the Revised Code to 2
provide transparency in contracts between the 3
state and 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, 9.496, and 9.497 of the Revised Code be enacted to read as 6
follows: 7

Sec. 9.49. Sections 9.49 to 9.497 of the Revised Code shall 8
be known as the transparency in private attorney contracts act. 9

Sec. 9.491. As used in sections 9.49 to 9.497 of the Revised 10
Code: 11

(A) "Legal matter" means any administrative proceeding, case, 12
group of cases, or legal issue for which the state requires legal 13
representation or advice. 14

(B) "Private attorney" means any attorney in the private 15
practice of law or a law firm but does not mean an attorney 16
appointed by the attorney general pursuant to section 109.08 of 17
the Revised Code for the purpose of collecting debts certified to 18

the attorney general for collection under any law or debts that 19
the attorney general is authorized to collect. 20

(C) "State" means this state and any officer, department, 21
board, commission, division, bureau, council, or unit of 22
organization, however designated, of the executive branch of 23
government of this state and any of its agents. 24

(D) "Securities class action" means an action brought as a 25
class action that includes a violation of the "Securities Act of 26
1933," 15 U.S.C. 77a and following, or the "Securities Exchange 27
Act of 1934," 15 U.S.C. 78a and following. 28

Sec. 9.492. (A) The state shall not enter into a contingency 29
fee contract with a private attorney unless the attorney general 30
or the attorney general's designee makes a written determination 31
prior to entering into that contract or within a reasonable time 32
after entering into the contract that private representation is 33
both cost-effective and in the public interest. Any written 34
determination shall include findings for each of the following 35
factors: 36

(1) Whether there exist sufficient and appropriate legal and 37
financial resources within the attorney general's office to handle 38
the matter involved; 39

(2) The nature of the legal matter for which private 40
representation is required so long as divulging that information 41
would not violate any ethical responsibility of the attorney 42
general or privilege held by the state. 43

(B) If the attorney general or the attorney general's 44
designee makes the determination described in division (A) of this 45
section, the attorney general or the attorney general's designee 46
shall request qualifications from private attorneys to represent 47
the state, unless the attorney general or the attorney general's 48

designee determines that requesting qualifications is not feasible 49
under the circumstances and sets forth the basis for this 50
determination in writing. 51

(C)(1) Except as otherwise provided in division (C)(2) of 52
this section and subject to divisions (C)(3) and (4) of this 53
section, the state shall not enter into a contingency fee contract 54
with a private attorney that provides for the private attorney to 55
receive an aggregate contingency fee in excess of the total of the 56
following amounts: 57

(a) Twenty-five per cent of any damages up to ten million 58
dollars; 59

(b) Twenty per cent of any portion of any damages of ten 60
million dollars or more but less than fifteen million dollars; 61

(c) Fifteen per cent of any portion of any damages of fifteen 62
million dollars or more but less than twenty million dollars; 63

(d) Ten per cent of any portion of any damages of twenty 64
million dollars or more but less than twenty-five million dollars; 65

(e) Five per cent of any portion of any damages of 66
twenty-five million dollars or more. 67

(2) Except as provided in division (D) of this section with 68
respect to security class actions, the aggregate contingency fee 69
under division (C)(1) of this section, exclusive of reasonable 70
costs and expenses, shall not exceed fifty million dollars, 71
regardless of the number of lawsuits filed or the number of 72
private attorneys retained to achieve the recovery, unless the 73
contract expressly authorizes a contingency fee in excess of fifty 74
million dollars. The attorney general shall not enter into a 75
contract authorizing a contingency fee in excess of fifty million 76
dollars without the approval of the controlling board. 77

(3) A contingency fee in a contingency fee contract under 78

division (C)(1) of this section shall not be based on penalties or 79
civil fines awarded or on any amounts attributable to penalties or 80
civil fines. 81

(4) The amount of a contingency fee paid to a private 82
attorney under a contingency fee contract between the state and 83
the private attorney shall be the percentage of the amount of 84
damages actually recovered by the state to which the private 85
attorney is entitled under division (C)(1) of this section. 86

(D) In any contingency fee contract covering a securities 87
class action in which this state is appointed as lead plaintiff 88
pursuant to section 27(a)(3)(B)(i) of the "Securities Act of 89
1933," 15 U.S.C. 77z-1(a)(3)(B)(i) or section 21D(a)(3)(B)(i) of 90
the "Securities Exchange Act of 1934," 15 U.S.C. 78u-4(a)(3)(B)(i) 91
or in which any state is a class representative, division (C)(2) 92
of this section applies only with respect to the state's share of 93
any judgment, settlement amount, or common fund and does not apply 94
to the amount of attorney's fees that may be awarded to a private 95
attorney for representing other members of a class certified 96
pursuant to Rule 23 of the Federal Rules of Civil Procedure or 97
state class action procedures. 98

(E) A contract entered into between the state and a private 99
attorney under this section shall include all of the following 100
provisions that apply throughout the term of the contract and any 101
extensions of that term: 102

(1) An assistant attorney general shall retain complete 103
control over the course and conduct of the case involved. 104

(2) An assistant attorney general with supervisory authority 105
shall oversee the litigation of the case. 106

(3) An assistant attorney general shall retain veto power 107
over any decisions made by the private attorney. 108

(4) Any opposing party in the case may contact the assistant 109

attorney general directly without having to confer with the 110
private attorney unless the assistant attorney general instructs 111
the opposing party otherwise. 112

(5) An assistant attorney general with supervisory authority 113
for the case may attend all settlement conferences. 114

(6) Final approval regarding settlement of the case shall be 115
reserved exclusively to the discretion of the attorney general. 116

Sec. 9.493. The state shall not enter into a contract with a 117
private attorney located outside this state unless the attorney 118
general determines that at least one of the following applies: 119

(A) There are no private attorneys with an office in this 120
state that are willing to accept the legal representation. 121

(B) All private attorneys with offices in this state that 122
possess the necessary experience or capability are conflicted and 123
unable to represent the state or the attorney general or lack 124
necessary personnel and capacity in the firm to take on the 125
engagement. 126

(C) The attorney general is prevented from engaging a private 127
attorney with an office in this state under the rules of the 128
controlling board regarding waiver of competitive selection. 129

(D) There are no private attorneys with offices in this state 130
that possess the necessary experience, capability, or capacity 131
required by the contemplated engagement. 132

Sec. 9.494. (A) A copy of the executed contingency fee 133
contract between the state and a private attorney pursuant to 134
section 9.492 or 9.493 of the Revised Code and any corresponding 135
submission by the attorney general to the controlling board 136
pursuant to division (C)(2) of section 9.492 of the Revised Code 137
shall be posted on the attorney general's web site and shall 138

remain posted on the web site for the duration of the contract. 139

(B) A private attorney under a contingency fee contract to 140
provide services to the state pursuant to section 9.492 or 9.493 141
of the Revised Code shall maintain from the inception of the 142
contract until at least three years after the contract expires or 143
is terminated detailed current records, including documentation of 144
all expenses, disbursements, charges, credits, underlying receipts 145
and invoices, and other financial transactions that concern the 146
provision of the attorney services. The private attorney shall 147
maintain detailed contemporaneous time records for the attorneys 148
and paralegals working on the legal matter and shall promptly 149
provide these records to the attorney general upon request. 150

Sec. 9.495. By September 1 of each year, the attorney general 151
shall submit a report to the president of the senate and the 152
speaker of the house of representatives describing the use of 153
contracts with private attorneys in the preceding fiscal year. The 154
report shall include the following: 155

(A) Identification of all contracts entered into during the 156
fiscal year and all previously executed contracts that remain 157
current during any part of the fiscal year or that have been 158
closed during any part of the fiscal year, and for each contract a 159
description of all of the following: 160

(1) The name of the private attorney with whom the state has 161
contracted, including the name of the private attorney's law firm 162
if the private attorney is an individual; 163

(2) The nature of the legal matter that is the subject of the 164
contract so long as divulging that information would not violate 165
any ethical responsibility of the attorney general or privilege 166
held by the state; 167

(3) The state entity the private attorney was engaged to 168

<u>represent or counsel;</u>	169
<u>(4) The total legal fees approved by the attorney general for</u>	170
<u>payment to a private attorney by the state for legal services</u>	171
<u>rendered during the preceding fiscal year.</u>	172
<u>(B) Copies of any written determinations made pursuant to</u>	173
<u>sections 9.492 to 9.494 of the Revised Code during the fiscal</u>	174
<u>year.</u>	175
<u>Sec. 9.496. Sections 9.491 to 9.495 of the Revised Code do</u>	176
<u>not apply to contingency fee contracts that are in existence on</u>	177
<u>the effective date of this section.</u>	178
<u>Sec. 9.497. Nothing in sections 9.49 to 9.496 of the Revised</u>	179
<u>Code shall be construed to expand the authority of any state</u>	180
<u>agency or state agent to enter into contracts if no such authority</u>	181
<u>previously existed.</u>	182