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Ohio Fire Chiefs' Association
House Bill 500 Testimony
House State and Local Government Committee
March 20, 2018

Chair Anielski, Vice Chair Hambley, Ranking Member Holmes and members of the House State and Local Government Committee, thank you for the opportunity to provide testimony on House Bill 500. My name is Porter Welch and I serve as the Chief of the Scioto Township Fire Department in Pickaway County. In addition to being a fire chief, I am also a practicing attorney for the past 18 years and serve as General Counsel to the Ohio State Firefighters' Association. The OFCA exists to improve the safety of Ohio by leading, representing, educating, and supporting Ohio's fire chiefs and emergency services. As a coalition of Ohio's fire service leadership, the Ohio Fire Chiefs' Association is interested in certain provisions included in House Bill 500.

I am here today to specifically testify AGAINST the proposed modification to R.C. §505.38, submitted as part of House Bill 500. The proposed modification would require that an authorized investigation be conducted by the fire chief or an attorney, rather than the fire chief or a private citizen. I have participated in Chapter 505.38 investigations and hearings as a witness and in advising clients subject to these investigations. In this disciplinary process, the Board of Trustees authorizes the fire chief or a private citizen to conduct an investigation of alleged misconduct that may rise to the level of suspension, demotion, or termination. At the conclusion of the investigation, and if warranted, the fire chief or private



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citizen proffers charges against the employee and a hearing is held before the Board of Trustees. The Board of Trustees sits as judge and jury and listens to testimony and evidence offered by the fire chief or private citizen investigator and to the exculpatory evidence and/or testimony of the accused employee. The Board of Trustees issues a decision based on all of the testimony and evidence presented. This quasi-judicial proceeding provides for the issuing of subpoenas, the production of documents, the administration of oaths, and generally provides an open and fair opportunity for the accused to hear the charges and evidence against him or her and to defend themselves.

The proposed amendment to R.C. §505.38 would allow a Board of Trustees to appoint an attorney to conduct the investigation of an accused employee. In turn, the work product of this attorney will be termed “attorney-client privileged” material or “attorney work product” and exempted from disclosure to the accused employee by the Board of Trustees. This is the very basis for the proposed amendment and was the argument of the Liberty Township Board of Trustees in their efforts to block the disclosure of information to the accused.

This is an egregious violation of an accused person’s due process rights to be confronted by the information against them. An accused employee cannot effectively answer the charges against him or her or mount an effective defense if they do not have the information that served as the basis for the charges against them. The Board of Trustees is supposed to remain a neutral arbiter of the allegations against the employee. Absolutely nothing in the current language of R.C. §505.38 prohibits a Board of Trustees from appointing a lawyer to conduct the investigation of an employee accused of wrongdoing. R.C. §505.38 does prohibit a Board, though, from hiding the results of that investigation behind the shield of the attorney-client privilege. The proposed amendment is patently unfair and a clear violation of due process rights. Thank you for your time and consideration.