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House Bill 110 (State Operating Budget)

Senate Finance Committee

Chairman Dolan, Vice Chair Gavarone, Ranking Member Sykes, and members of the Senate Finance Committee, thank you for the opportunity to offer testimony regarding House Bill 110, the State Operating Budget for Fiscal Years 2022 and 2023. I am here to discuss an amendment related to open meetings complaints.

Since 1995, I have represented media entities and others in public records disputes and open meeting cases on many occasions. I have represented these clients in all levels of the Ohio Court system. As you know, a public records mandamus case may be filed as an original action in any level – trial, intermediate level appellate court or the Supreme Court. These courts have issued any number of decisions that have vindicated the public's right to know. And this is a good thing. But as I am sure you all know, litigation in any level of the court system tends to be a rather slow process, and often requires parties to incur substantial expense. Moreover, dockets can be crowded, and cases occasionally languish. This is frustrating in any case, but particularly so in access cases, where the information is being sought for its newsworthiness.

Unlike public record cases under R.C. 149.43, open meeting act cases under R.C. 121.22 are required to be filed in the first instance in the common pleas court. This means that a randomly assigned judge will hear the case. And it is possible that the assigned judge has little or no experience with the open meetings act or the cases decided under the act. That is not a criticism of any judge, it is merely an observation of reality. And under both R.C. 149.43 and R.C. 121.22, there is no mechanism to force a public office to engage in some sort of alternative dispute resolution. This is not to say that a public office would not do so, but only to point out there is no requirement to do so.

Several years ago, the Ohio legislature adopted a statutory scheme to provide for public records cases to be heard in proceedings in the Court of Claims. I have had the opportunity to litigate a number of cases using that process, and

while not perfect, it is a very useful process that makes the public records act more accessible, efficient, and economical. Because of these attributes, I consider the court of claims process to be my default method to resolve public records disputes. The process is much more efficient than a court action. The statute sets out specific time limits that encourage expeditious action. The filing fee is $25, and the complaint is submitted on a form that can be completed online. There is no discovery, which controls the cost of the proceeding.

Upon filing the case, the matter is submitted to mediation, such that the parties are afforded the chance to resolve the matter. If mediation fails, a Special Master reviews the parties' submissions and renders a report and recommendation. Unlike a randomly assigned judge, the Special Master reviews the disputes regularly, which allows the Special Master to develop subject matter expertise, and to develop thoughtful, consistent rulings which allow lawyers and public officials to gain a better understanding of the law. This consistency gives public officials a resource to draw on when deciding whether a meeting must be open, or whether an executive session is appropriate. Jeff Clark, the Special Master for Public Records cases in the court of claims, has performed his duties admirably and has developed a well-deserved reputation for fairness and thoroughness. I am confident that the same will be true for the Special Master appointed to open meeting act matters as well.

Amendment SC-3275 was submitted last week by Senator Blessing and supported by several other members of this body. The amendment expands the current Court of Claims process to allow for open meetings disputes to be brought forward. It incorporates the attributes of the Court of Claims public records process. This would provide newspapers, journalists, and members of the public with a low-cost option to challenge violations of R.C. 121.22. Any complaints that involve a question of first impression or seek to overturn a decision of the body would be excluded from the Court of Claims and would need to be filed in the appropriate Common Pleas Court. This amendment is pro-transparency and will ensure government bodies operate in a fair and open manner.

As an experienced practitioner, I believe it is my duty to resolve cases for my clients in the most efficient and economical manner possible. Inclusion of amendment SC-3275 in House Bill 110 will allow me to serve my clients in the most efficient and economical manner possible.