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**Majority Floor Leader Bill Seitz
The Ohio House of Representatives**

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**Sponsor Testimony for House Bill 285: Regards intervention/representation in actions
challenging laws**

Chairman Wiggam, Vice Chair John, Ranking Member Kelly, and members of the committee, it is my pleasure to present House Bill 285 to you today. This legislation would impose a degree of legislative oversight, intervention, and approval over settlements of lawsuits in which the constitutionality of any of our statutes or any challenge to the construction or validity of a statute is asserted. This legislation is patterned on statutes currently in effect in Wisconsin, which statutes were upheld by the Wisconsin Supreme Court in *SEIU, Local 1 v. Vos*, 946N.W.2d35(Wisconsin Supreme Court 2020).

Under the bill, each of the House and Senate, acting through the Speaker and the Senate President, independently or jointly, are granted the right to intervene in any such lawsuit by

serving a motion upon the parties to the lawsuit as provided in the Rules of Civil Procedure.

Upon such intervention, the legislature is entitled to obtain legal counsel other than from the

Attorney General with the cost thereof paid from funds appropriated for that purpose. In any case

in which the state is sued for injunctive relief or for which there is a proposed consent decree, the

Attorney General may not compromise or settle the case without the approval of any legislative

intervener or, if there is no intervener, without first submitting a proposed plan to the House and

Senate Finance Committees, acting jointly, and without securing the approval of the House and

Senate Government Oversight Committees in any case in which the proposed settlement

concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates

or is preempted by Federal Law.

Among the kinds of litigation in which this bill might apply would include challenges to whether executive branch agency orders exceeded the scope of their statutory authority, challenges to Ohio laws on reproductive rights, home rule based challenges to enactments

affecting cities, redistricting challenges, and challenges based on alleged conflicts between federal and state law. In each of the circumstances, the General Assembly may have a direct interest in upholding its enactments against challenges thereto. We can never be assured that other Executive Branch authorities will have the same interest as we do in vindicating legislative authority – particularly in cases involving conflicts between the Attorney General’s duty to defend the Executive Branch agencies he represents and his duty to uphold the laws we pass.

I am in no way criticizing our current Attorney General or for that matter any past one in Ohio. But there have been cases in other states where the Attorney General has declined to defend that state’s legislative enactments, and cases in which an Executive Branch official settled litigation with consent decrees binding on the state even though the state was not a party to the lawsuit and the result was a re-interpretation (some would say misinterpretation) of statutes that the legislature had passed.

Passage of the bill does not portend a wave of cases in which the General Assembly seeks to intervene in cases challenging the constitutionality or validity of our statutes. First, the Senate President or the House Speaker, acting alone or together, must decide to intervene. Second, outside counsel may be retained only if the General Assembly appropriates funds for that purpose. Third, once intervention is granted by the court, the legislature is effectively made party to the case and will be bound by any adjudication and be able to agree with a settlement or prevent any settlement to which it is not a party. Fourth, only in cases in which the General Assembly was denied intervention or fails to intervene will consent decrees or settlements require the joint committee approval process outlined in the bill. And even then, that process applies when the consent decree or settlement entails a settlement that concedes the unconstitutionality or other invalidity of a statute, or concedes that a statute violates or is preempted by Federal law.

The bill does not confer on any individual legislator or group of legislators any right to outside counsel. And it says nothing about the General Assembly's right to initiate any litigation – it gives a right to play defense, not offense, to use a sports analogy. At the end of the day, it is just a long overdue recognition of our right not merely to pass laws, but to see that those laws are vindicated when those laws are challenged in court and that their meaning and effect is not diluted by consent decrees entered into by litigants unfriendly to our laws and Executive Branch officials who do not have the same interest we do in enforcing and upholding them.

In all cases covered by the bill, the Attorney General must submit the proposed plan to the Finance Committees of the House and Senate. The committees, acting jointly, decide whether to schedule a joint meeting to review the proposed plan. If, not later than 14 business days after the Attorney General submits the plan, the committees notify the Attorney General they have scheduled a meeting, the Attorney General is prohibited from compromising or settling the action until they receive the joint approval of the committees. So, for instance, if the Attorney

General submits a plan to the committees, 20 business days pass and the Attorney General has not received notice from the committees that a meeting is scheduled, the Attorney General may proceed to compromise or settle the action unless the proposed plan concedes the unconstitutionality or other invalidity of a statute, facially or as applied, or concedes that a statute violates or is preempted by federal law. In that case, the Attorney General also must submit the proposed plan to the Government Oversight Committees. The Attorney General is prohibited from compromising or settling these actions until the Attorney General receives the joint approval of the Government Oversight Committees

I urge your favorable consideration, and would welcome any questions.