

House Energy and Natural Resources Subcommittee on Energy Generation
Chair Dick Stein and Chair Michael O'Brien
Opponent Testimony on Substitute House Bill 6
Testimony of John Finnigan
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Chair Stein, Chair O'Brien, and Members of the Energy and Natural Resources Committee, my name is John Finnigan. I am Lead Counsel for Environmental Defense Fund (EDF). Thank you for the opportunity to speak to you today as an opponent to Ohio Substitute House Bill 6. EDF opposes the sub bill because it changes very little from the original bill, which I described two weeks ago as "a brazen boondoggle of a bailout for a bankrupt business."

Before I discuss what this bill is, I want to discuss what the bill is not. HB 6 is not an infrastructure bill, like the gas tax increase or the proposed Ohio water quality fund, as some have claimed. Those measures will raise revenue for new improvements to roads and water treatment plants. HB 6 raises revenue that will mostly go to old coal and nuclear plants for past spending.

Let's suppose that lawmakers would give the new gas tax revenues to local governments and tell them they don't actually need to spend the money on new roads and bridges, because their past spending on roads and bridges improved the quality of our transportation system. Ohio taxpayers wouldn't be very happy about that. But this is exactly how HB 6 will work. So don't be fooled – this is not an infrastructure bill that will lead to much new investment to improve air quality.

The stated purpose of this bill is to make our air cleaner. This is a noble purpose but the bill, as written, would utterly fail to accomplish this purpose.

According to the U.S. Energy Information Administration, Ohio has the sixth highest level in the country of carbon emissions from electricity plants. We should do something about this. The best approach would be to establish a cap on carbon emissions that would steadily decline over time, along with tradeable emission allowances. This is how the federal government designed the Clean Air Act of 1990. This law greatly succeeded in reducing the amount of sulfur dioxide in the air, which was causing acid rain. It only cost about 10% of what the experts had projected – because the market for the emission allowances succeeded in producing efficiencies that drove down the compliance costs. This approach would be the most efficient way to reduce carbon emissions. You have to ask yourself – do I want to vote for a proven system that relies on markets or do I want to vote for a system like HB 6 that relies on big government and bureaucratic control? At EDF, we advocate for using market-based solutions to resolve environmental problems. We would like to think that fiscally conservative lawmakers would also support market-based solutions.

It's right out of George Orwell to call HB 6 a "clean air resource" bill – because the bill provides subsidies for old coal and natural gas plants. The bill covers generating plants that make "a significant contribution toward minimizing emissions." This begs the question – compared to what? A new coal or natural gas plant would make a "significant contribution toward minimizing emissions" when compared to an old coal or natural gas plant, because the new plants would be more efficient. In other words, they would burn less fuel, and therefore have lower emissions, than the old plants. Here's another example. Regulators could refuse to certify wind and solar plants as clean air resources because these plants do not make a "significant contribution toward minimizing emissions" when compared to a nuclear plant.

Nuclear, wind and solar plants have zero carbon emissions, while coal and natural gas plants emit millions of tons of carbon emissions and other pollutants annually. The other states that have enacted laws to support nuclear plants have used the term "zero emissions" to make clear that the laws do not apply to coal and natural gas plants. This is a major flaw with the bill.

HB 6 would be the fifth time Ohioans have paid for these plants – (1) when the plants were built; (2) when the retail electricity market was restructured under SB 3 in 1999 and the utilities received billions of dollars in "stranded costs" payments; (3) when utilities were allowed to add the plants back into their electricity supply plans under SB 221 in 2008; (4) under PUCO-approved bailout rulings, which we are currently appealing to the Ohio Supreme Court; and (5) now once again under HB 6. When will it be time to say – enough is enough?

The gas tax increase you approved earlier this year was a sound measure that will benefit all the citizens of Ohio who pay the tax. We needed that bill and we will soon we'll all be driving on new roads and bridges funded by the tax. On the other hand, HB 6 creates a new tax on all customers of the four Ohio utilities, even if they buy their power from other suppliers. The main beneficiary of this tax will be FirstEnergy Solutions, which owns the nuclear plants. However, FirstEnergy Solutions is now in bankruptcy, so the bill really benefits a few Wall Street hedge funds that speculated on FirstEnergy Solutions. FirstEnergy Solutions filed a restructuring agreement in the bankruptcy case earlier this year and it lists the firms that will be getting the money out of the bankruptcy case.¹ Here are some of the names:

- Avenue Capital Management
- Cove Key Management
- Latigo Partners
- CV Credit Partners
- Serengeti Asset Management

¹ *Notice of the Debtors' Entry into a Restructuring Support Agreement and of the Record Date for Equity Elections under the Debtors' Plan of Reorganization* at p. 35, Case No. 18-50757 (Bankr. N.D. Ohio) (January 23, 2019), available at: <https://cases.primeclerk.com/FES/Home-DocketInfo?DockRelatedSearchValue=1995>

- VR Global Partners

So the folks who would pay for HB 6 all live right here in Ohio on Main Street but their money would go to benefit a few big hedge funds on Wall Street. You can almost hear a great sucking sound of our money goes “whoosh” out of our pockets here in Ohio straight to New York. Compare this to wind and solar developers, who want to bring new investment and jobs and local tax revenues and lower energy costs into Ohio to benefit Ohio citizens and Ohio local governments and Ohio school districts.

The other party that would really benefit from HB 6 is FirstEnergy Corp. In the FirstEnergy Solutions bankruptcy case, FirstEnergy Corp. is trying to settle its obligations to FirstEnergy Solutions and its creditors. FirstEnergy Corp. agreed to a settlement where it will pay about \$1 billion in cash, notes and other consideration. In exchange for this payment, FirstEnergy Corp. asked for a full release that it would protect it against any future liability for cleaning up the coal and nuclear plant sites owned by FirstEnergy Solutions, in case FirstEnergy Solutions would go bankrupt a second time. This was highly unusual because the law says that any party that owns or operates a hazardous waste site must remain liable for cleanup costs, even if it transfers ownership of the site. FirstEnergy Corp. owned and operated the coal and nuclear plants before turning them over to FirstEnergy Solutions.

On April 4th, the bankruptcy judge rejected this ploy by FirstEnergy Corp. The judge ruled that these broad releases are illegal and that FirstEnergy Corp. must remain liable for cleaning up these sites if FirstEnergy Solutions would go bankrupt a second time. So FirstEnergy Corp. issued a news release on April 20th saying that it would stand behind its \$1 billion bankruptcy settlement and would agree to remain liable for these cleanup costs if FirstEnergy Solutions goes bankrupt a second time.²

And this explains why FirstEnergy Corp. is pushing so hard to get HB 6 passed. The bill would provide about \$300 million/year to prop up FirstEnergy Solutions. This would reduce the risk that FirstEnergy Solutions would go bankrupt a second time, and thus reduce the risk that FirstEnergy Corp. would be called upon to pay for cleaning up the coal and nuclear plant sites that it once owned. So if you approve HB 6, you will be giving FirstEnergy Corp. the financial protection that it couldn't get from the bankruptcy judge. We've all heard about the Green New Deal. If you vote for HB 6, you'll be voting to give FirstEnergy Corp. a Green New Deal to the tune of \$300 million/year.

In spite of all this, EDF would consider withdrawing its objections to payments for nuclear power if this were part of a comprehensive program that would also support other forms of clean energy. When other states have provided support for nuclear plants, they did so as part of a comprehensive plan that strengthened their support for

² FirstEnergy Statement on Next Steps in FES Bankruptcy Filing (April 20, 2019), available at: https://www.firstenergycorp.com/content/fecorp/newsroom/news_articles/firstenergy-statement-on-next-steps-in-fes-bankruptcy-filing.html

wind and solar and energy efficiency. We did not object to these programs in Illinois and New York. There are four states which, like Ohio, have restructured their electricity markets, and have adopted these nuclear support programs since 2016 -

- Illinois – passed the Future Energy Jobs Act in 2016. This bill provides \$235 million/year to Exelon for its nuclear plants, but also significantly increased the number of RECs procured annually for its Renewable Portfolio Standard (RPS) and provided hundreds of millions for energy efficiency and assistance for low-income consumers.
- Connecticut – in 2018, passed a bill that provides nuclear support of \$330 million/year to Dominion for the Millstone nuclear plant, but also passed a bill increasing the RPS to 40% by 2030.
- New York – the Public Service Commission adopted a program in 2016 that will pay \$600 million/year for twelve years to support four nuclear reactors, and also adopted an RPS that requires 50% of the state’s energy to come from renewable resources.
- New Jersey – enacted a law in 2018 that provides \$300 million/year to PSE&G and Exelon for their nuclear plants, but also increases the RPS to 50% by 2030 (the prior RPS target was 13%).

Ohio stands alone because HB 6 would support nuclear plants but would destroy the renewable portfolio and energy efficiency standards by making them voluntary. This we cannot support. When Governor DeWine ran for office, he stated that he would support an “all of the above” energy policy. HB 6 is a “none of the above” policy, except for nuclear.

Other states are increasing their RPS targets because they see the benefits from renewable energy. Today 29 states have RPS targets, and about half of these states have increased their RPS targets or increased a carve-out for a particular technology in recent years.³

Five states have passed laws that call for 100% renewable energy by 2050 or sooner – Hawaii, California, New Mexico, Nevada and Washington state. The following nine states are currently considering bills that would require 100% renewable energy – Illinois, Minnesota, New York, New Jersey, Virginia, Florida, Massachusetts, Maine and Maryland.

³ G. Barbose, Lawrence Berkeley National Laboratory, *U.S. Renewable Portfolio Standards: 2018 Annual Status Report* (November 2018), available at: http://eta-publications.lbl.gov/sites/default/files/2018_annual_rps_summary_report.pdf

Some HB 6 supporters have said we don't need more renewable energy because then our electricity prices will get really high like in California. This argument has no merit. Here are some important facts about wind energy:⁴

- Wind turbines have become much more efficient in recent years by using longer blades. The typical capacity factor for wind plants built today is 42%, or about double the amount from twenty years ago.
- A wind turbine is made primarily from steel. Most of the towers and blades for wind turbines are built here in the U.S., because these components are so heavy and costly to transport.
- Ten years ago, the average cost of wind energy from a power purchase agreement was 7¢ per kWh. Today, the cost is about 2¢ per kWh and wind is the cheapest form of electricity.
- The states that are the largest users of wind energy are Iowa, Kansas, Oklahoma and South Dakota. They all get over 30% of their total energy from wind. The average retail price for electricity in these four states taken together is below the national average.

The cost of solar has also declined in recent years due to more efficient technology and the average cost is about 4¢ per kWh.⁵ Some of the states with the highest amount of solar penetration include North Carolina, Utah, Arizona and Nevada, which all have retail prices for electricity below the national average.

Another benefit that renewable energy provides is that it is a source of revenue for Ohio's farmers and a source of tax revenue for local governments and school districts, especially rural areas that may be strapped for revenue. Ohio is one of the leading agricultural states in the country and this revenue can help stabilize our farmers' income.

Let's look at what AEP is doing with renewable energy. A couple of years ago, AEP announced the Wind Catcher project, where it planned to invest \$4.5 billion to build a 2,000 MW wind farm in the western panhandle of Oklahoma. It had to cancel this project when it couldn't get one of the regulatory approvals it needed. In January, Southwestern Electric Power Company (SWEPCO), an AEP utility operating company, issued an RFP for 1.2 gigawatts of wind. SWEPCO serves customers in Texas,

⁴ Lawrence Berkeley National Lab, *Wind Technologies Market Report*, available at: <https://emp.lbl.gov/wind-technologies-market-report/>

⁵ Lawrence Berkeley National Lab, *Utility-Scale Solar*, available at: <https://emp.lbl.gov/utility-scale-solar>

Arkansas and Louisiana. When this plan is completed, 24% of the SWEPCO's electricity will come from wind.

In February, AEP announced that it was buying Sempra Renewables for \$1 billion. When it completes this deal and a wind farm under construction in Texas, AEP will own over 1,300 MW of wind, making it the seventh largest utility owner of competitive wind generation in the U.S.

Just last week, AEP issued an RFP to buy wind and solar in PJM. AEP said that it was primarily looking for new wind and solar in Ohio because it has made commitments to supply it to several large customers.

So look at the billions of dollars of investment that AEP and other companies want to make in renewable energy. They're just waiting to shower this new investment on Ohio. That investment will bring good-paying jobs, more tax revenue, lower electricity bills and cleaner air. Let's support this new investment, rather giving a handout to nuclear plants that were built 50 years ago and involve zero new investment.

AEP had a conference call with its investors two weeks ago, after releasing its earnings for the first quarter of 2019. During the call, one of the investors asked a question about AEP's views on HB 6. This was the original version of the bill, but of course, the substitute version is essentially the same. Here's what AEP said:

Paul Patterson (representing investors):

Okay. Then with respect to the Ohio legislation, previously you guys, I think had concerns about AEP utility ratepayers paying for other companies' nuclear plants. How do you guys feel about HB 6 as it currently stands? I mean, I know you raised a couple of the issues in your prepared remarks. I was just wondering if you could give a little more color on that.

Brian Tierney (an Executive VP at AEP and the CFO):

Yes, so we think if there's a full package where all of Ohio customers can benefit, then it's a worthy effort. If it's just a bailout for one company or another, it's not as beneficial to all Ohio customers, so there needs to be a full package of things that get addressed, and energy efficiency, the renewable portfolio standard, ability of utilities to invest in renewables going forward are all important things that need to be in the bill, and if they're not, it's not as beneficial for ratepayers in the state.

Mr. Tierney makes a good point – why should lawmakers from other regions in Ohio support a bill where almost all of the benefits will support two nuclear plants that provide hundreds of millions in revenue to businesses and tax revenue to local governments and school districts only in FirstEnergy’s service territory. Let’s get a bill that supports renewable energy, which would allow all Ohio citizens and local governments and school districts to benefit – not just those in FirstEnergy’s service territory.

Finally, any energy bill should fix the wind setback issue that was adopted in 2014. Ohio has one of the most restrictive wind setback laws in the country. This has stifled investment in new wind farms. A number of lawmakers have expressed support for fixing this on a bipartisan basis. But it’s like Mark Twain said about the weather – “Everybody talks about the weather but no one does anything about it.” Instead of rushing through HB 6 that would primarily benefit two old nuclear plants located in FirstEnergy’s service territory, let’s fix the wind setback rule and unlock billions in new investment that would benefit all Ohioans.

Ohio’s wind farms provide tremendous benefits. For example, the Blue Creek Wind Farm in Van Wert County provides about \$3 million/year in tax revenues to local governments and school districts and \$2 million/year in lease payments to farmers.

The wind setback rule was adopted by stealth. Someone mysteriously buried it into the budget bill at the last minute in 2014. No one would sponsor it and no one wanted to vote on it as a stand-alone bill because they knew it would attract a lot of opposition.

Since that time, the setback rule has choked off new wind farm projects. When the setback rule was changed in 2014, developers had wind projects on the books that would have provided over \$4 billion in economic benefits, including \$2 billion in new direct capital investment, \$660 million in tax revenues to local governments and schools and \$440 million in payments to farmers for leasing their land. But these projects did not get built because the wind setback rule blocked these projects from going forward.

The conditions are good for wind development in Ohio. We live in a windy part of the country, especially in the northern part of the state. We have a lot of transmission lines that could accommodate wind farms. Neighboring states like Illinois, Michigan and Pennsylvania each have over 20 wind farms, but Ohio only has three – thanks to the wind setback rule. These other states are eating our lunch and we’re losing out on billions in new investment.

Last year, HB 114 and SB 238 were introduced to fix the wind setback rule, but these bills were not passed. Let’s get the job done now and unleash billions in new investment in Ohio wind farms instead of worrying about old investment in nuclear plants.

I began my comments by telling you what HB 6 is not – it is not an infrastructure bill. I will end my comments by telling you what this bill is. I agree with what AEP's Mr. Tierney said about the bill. This bill is nothing but a humungous handout for a few huge hedge funds and for FirstEnergy. The wind setback rule should be fixed and HB 6 should be nixed.

I appreciate your time and consideration today, I would be pleased to answer any questions.