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Before the House Public Utilities Committee  
Proponent Testimony on Senate Bill 33  
Rob Eshenbaugh, Capitol Advocates  
November 20, 2019

Chairman Callender, Vice Chair Wilkin, RMM Smith, my name is Rob Eshenbaugh and I am pleased to provide proponent testimony on behalf of a large and diverse collection of companies and trade associations that are supportive of SB 33. I have attached a list of these supporters to my testimony.

In my previous testimony given in front of the committee, I provided some key reasons for the committee to support this bill. Today I am writing in response to some of the testimony given to the committee in recent weeks. I would like to highlight the *actual* bill language for the committee's review instead of relying on interpretations of SB 33. A review of the bill language refutes much of the hyperbole and conjecture surrounding this bill. Specifically, I would like to comment on elements of the bill that have drawn some attention from the committee: liability of an organization, "improperly tampering" and the right to protest.

**Organizational Liability**

Simply being a member of an organization and protesting on behalf of that organization does not make one liable under SB 33. In section 2307.67 and 2923.04, an organization can only be held vicariously liable if the organization "compensates a person for causing damage" or "directs a person to cause damages".

**Civil organizational liability:**

A person or organization may only be held vicariously liable for a judgment the plaintiff obtains against the person who damaged the critical infrastructure facility if the person or organization did either of the following (1) directed, authorized, facilitated, or encouraged the person to cause damage to the critical infrastructure facility, or (2) provided compensation to the person for damaging the critical infrastructure facility.

**Criminal organizational liability:**

Under the new offense of "improper organizational involvement with a critical infrastructure facility," created by previous amendments, no organization shall knowingly direct, authorize, facilitate, or encourage a person to commit specified offenses or provide compensation to a person for committing specified offenses.

### **Definition of “compensation”**

“Compensation” means money, thing of value, or financial benefit. “Compensation” does not include bail, fines, or court costs (R.C. 2307.67(A)(1) and 2923.04(A)(1)).

Contrary to assertions by critics of this bill, an affirmative action of paying or directing a person to do damage is required for criminal and civil liability under the bill. This language is a critical element of the bill that should be preserved to discourage damage to critical infrastructure financed by well-funded groups that believe the end justifies the means. In fact, evidence exists showing some of these groups are actively training and/or educating their members on how to target and damage critical infrastructure. It is our sincere hope that passage of this legislation will head off these acts before they occur. Conversely, we hope the provisions of this bill are never needed in Ohio.

### **Improperly Tampering**

The phrase “improperly tampering” which is contained in Section 2909.07 apparently has caused concern for some of the opponents of SB 33. The new language in the bill that applies to critical infrastructure under this section is simply a derivation of the current criminal mischief statute. In other words, that phrase is already in Ohio Revised Code. It is unclear why opponents have raised a red flag regarding this phrase. Common jurisprudence in Ohio should answer any questions regarding the definition of “improperly tampering”. The recent amendment regarding a definition of improperly tampering is unnecessary, but it does not diminish the effectiveness of the bill.

### **The Right to Protest**

SB 33 does not affect one’s constitutional right to protest. The current bill seeks to increase criminal and civil penalties for very specific *intentional* acts. If a “protestor” decides to take matters into one’s own hands and destroys property or endangers the public, that “protestor” forfeits any protected right to free speech. When one examines the real language in the bill, this concept is evident:

Section 2909.07 (Lines 91-92): Without privilege to do so, *knowingly* destroy or improperly tamper with a critical infrastructure facility.

Section 2911.21 (Lines 229-230): *Knowingly* enter or remain on a critical infrastructure facility.

Section 2911.211 (Lines 376-378): (2) No person shall enter or remain on a critical infrastructure facility *with purpose* to destroy or tamper with the facility.

A review of the language makes it easy to see that all the violations under this bill require an affirmative, intentional action for one to be held liable under SB 33. The critics of the bill are simply wrong on this point regarding protests.

In sum, the industries represented in the attached list make communication possible for emergency services and provide energy to power homes, hospitals and police stations. Trucks and railroads transport essential products to Ohioans every day and water treatment facilities serve water to millions of people in our state. Increasing penalties on a civil and criminal basis for individuals, and organizations that pay individuals to impact these essential operations here in Ohio, will ensure those behaviors are punished or fined appropriately.

I urge your support and swift passage of SB 33 for the foregoing reasons.

## Supporters of SB 33

- a. American Fuel & Petrochemical Manufacturers
- b. American Municipal Power
- c. API Ohio
- d. Coalition of Ohio Regional Districts
- e. CSX Transportation
- f. Dominion East Ohio
- g. Marathon Petroleum Company
- h. MarkWest Energy Partners
- i. MPLX Energy Logistics
- j. National Association of Water Companies (Ohio Chapter)
- k. Ohio Aggregates and Industrial Minerals Association
- l. Ohio Chamber of Commerce
- m. Ohio Chemistry and Technology Council
- n. Ohio Coal Association
- o. Ohio Gas Association
- p. Ohio Municipal Electric Association
- q. Ohio Municipal League
- r. Ohio Railroad Association
- s. Ohio Rural Water Association
- t. Ohio Steel Council
- u. Ohio Telecom Association
- v. Ohio Trucking Association
- w. Ohio's Electric Cooperatives
- x. Ohio Rural Water Association
- y. XTO Energy
- z. Verizon Wireless