

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: February 7, 2022

Name: Terry J. Lodge

Are you representing: Yourself Organization

Organization (If Applicable): Ohio Nuclear-Free Network

Position/Title: Legal Counsel

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Do you wish to be added to the committee notice email distribution list? Yes No

Business before the committee

Legislation (Bill/Resolution Number): H.B. 434

Specific Issue: Sovereign Immunity (State avoidance of liability for nuclear accident)

Are you testifying as a: Proponent Opponent Interested Party

Will you have a written statement, visual aids, or other material to distribute? Yes No

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

How much time will your testimony require? _____

Please provide a brief statement on your position:

H.B. 434 contains the General Assembly's declaration that the actions of the Nuclear Development Authority comprise an "essential government function." This is legal code for "sovereign immunity" and means the State of Ohio will take all measures to evade financial liability in the event of a radiological accident or catastrophe in which state support is invested.

Please be advised that this form and any materials (written or otherwise) submitted or presented to this committee are records that may be requested by the public and may be published online.



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February 7, 2022

Hon. Jason Stephens, Chair
Ohio House of Representatives
Energy and Natural Resources Committee
Via Email delivery to Energy&NaturalResourcesCommittee@ohiohouse.gov

RE: Opposition testimony to H.B. 434

To Chairman Stephens, Vice-Chairman Stewart, Ranking Member Weinstein and members of the Energy and Natural Resources Committee:

On behalf of the Ohio Nuclear-Free Network, I am hereby offering witness testimony OPPOSING to H.B. 434, the latest incarnation of the “Advanced Nuclear Technology Helping Energize Mankind Act” (“ANTHEM Act”).

According to the ANTHEM Act, in the event of a financial or radiological meltdown resulting from the activities of the Nuclear Development Authority, the State is immune, the private actors will have no liability, and there will be zero insurance. There will be zero compensation available anywhere for damage to people’s health, water supplies, real property, communities and lives.

The nuclear development activities of the proposed Nuclear Development Authority would cause transportation of spent nuclear fuel, one of the most dangerous materials on Earth, and its deadly waste components, around Ohio to various necessary facilities for it to be reprocessed into fuel for advanced nuclear reactors. These new fuel types would be fissioned in one or more experimental reactors financed by hundreds of millions of Ohio taxpayer or bond investment dollars, all pursuant to licensing by the Nuclear Development Authority.

The dangers and risks from the experiments spawned by the Nuclear Development Authority have not been acknowledged, much less discussed during these committee hearings. It has merely been assumed by the self-interested proponents that there will be successes, with little chance that the public, adjacent property owners, nuclear workers

and/or the physical and natural environment will be harmed. There has been zero mention that essentially none of the proposed activities of the Nuclear Development Authority will be insurable by conventional means. In the 1950's, when the Atomic Energy Commission moved to commercialize nuclear power, no insurance companies would underwrite its development, so the federal Price-Anderson Act was passed by Congress. Congress figured in 1957 that insurance subsidies would be only temporarily needed. But in 2022 the Price-Anderson Act insurance subsidy remains in place and the nuclear power industry cannot exist without it.

H.B. 434 is a classic example of lawyer magic. There is no insurance or state compensation provision in H.B. 434. Indeed, the State of Ohio has taken the opposite tack. If the combined State and private sponsors of these high-risk experimental reactors turn out to be mistaken, and there are contamination disasters, or explosions, meltdowns or other wayward events, or if a project simply turns out to be financially unviable and is abandoned, ***no one can be held liable.***

How is this possible? Proposed § 4164.04 states, “The authority's exercise of powers conferred by this chapter is the ***performance of an essential governmental function*** and addresses matters of public necessity for which public moneys may be spent and private property acquired.” The words “performance of an essential governmental function” are magic lawyer words. They mean that in the event of a radiological meltdown or a financial meltdown, the Nuclear Development Authority’s members, the Authority itself, its employees, and presumably all contractors retained by the Authority to design, build and manage these inherently dangerous experiments will all be completely immune from any financial responsibility whatsoever for causing or contributing to the radiological or financial disaster. ***They will be 100% protected by the doctrine of sovereign immunity.***

Section 2743.02(A)(3) of the Ohio Revised Code limits the liability of the State of Ohio as follows:

(3)(a) Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty. . . .

“Public duty” according to O.R.C. § 2743.01((E)(1):

. . . [I]ncludes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following:

(a) Permitting, certifying, licensing, inspecting, investigating, supervising,

regulating, auditing, monitoring, law enforcement, emergency response activity, or compromising claims;

(b) Supervising, rehabilitating, or liquidating corporations or other business entities.

The only public safety obligation H.B. 434 imposes appears in § 4164.20, where the Nuclear Development Authority is required to “adopt rules provided for by the United States nuclear regulatory commission, department of energy, department of defense or another United States military agency, or a comparable federal agency for an Ohio state nuclear technology research program . . . [that] . . . reasonably ensure Ohioans of their safety in respect to nuclear technology research and development and radioactive materials.” Once such rules are adopted, the State is off any financial liability hook so long as the rules “reasonably” assure public safety, which is a very mild standard that will easily be met.

Making the picture bleaker, private profiteers co-venturing with the Authority will LLC themselves out of any financial accountability catastrophes. By not specially addressing by statute the liability of private partners in the State’s risky experiments, the General Assembly is deferring to customary corporate law and tort principles to address potentially enormous public health, economic and environmental damage. Those laws make it quite easy for corporate actors to dodge nearly all, if not all, responsibility in the event of disastrous experimental outcomes.

Every homeowner’s and apartment dweller’s insurance policy in the United States specifically excludes coverage for any harm or damage arising from a nuclear or radiological accident.

So in the event of a financial or radiological meltdown resulting from the activities of the Nuclear Development Authority, the State is immune, the private actors will have no liability, and there will be zero insurance. There will be zero compensation available anywhere for damage to people’s health, water supplies, real property, communities and lives.

If you knew, going into a complicated and dangerous experiment, that you could never be held responsible for any mistakes you made, would that influence your thinking about taking expensive measures to reduce or prevent harm to others?

The financing and promotion of dangerous nuclear experimentation is not an “essential government function,” and it is up to the Ohio General Assembly to keep magic lawyer words from making hapless victims out of every Ohioan who might be harmed or

destroyed by the acts of the Nuclear Development Authority.

Thank you.

For the Ohio Nuclear-Free Network,

/s/ Terry J. Lodge

Terry J. Lodge, Esq.