

**Sponsor Testimony on House Bill 738
Repeal of House Bill 6 – Electric Utility Bailout
Provided by Representatives Michael J. Skindell & Michael O’Brien
Before the House Select Committee on Energy Policy and Oversight
September 10, 2020**

Chairman Hoops, Vice Chair Abrams, Ranking Member Leland and members of the House Select Committee on Energy Policy and Oversight, it is a pleasure to provide sponsor testimony on House Bill 738, legislation accomplishing a straight and outright and repeal of House Bill 6.

Introduction – Need for Immediate Repeal

Why should the repeal of HB 6 be the number one priority for the remainder of the 133rd Ohio General Assembly? Legislation adopted by means of corruption is in-and-of-itself corrupt. The confidence and trust of Ohioans cannot be restored until there is a complete and immediate repeal of legislation founded in corruption.

In summary, what is the corruption involving H.B. 6? As outlined by the United States Justice Department, the alleged corruption is a \$61 million bribery and racketeering scheme set up to elect legislators who would propel Representative Larry Householder to the position of Speaker of the Ohio House of Representatives and then pass favorable electric utility legislation. The legislation included a \$1.5 billion subsidy of two nuclear power plants and two outdated coal generators paid for by Ohio electric ratepayers and gutting our renewable energy and energy efficiency standards.

Road to Passing Corrupt Legislation

Passage of H.B. 6 was the culmination of many years of work by FirstEnergy. In 2014, FirstEnergy requested that the PUCO allow its distribution utilities to enter into agreements to purchase the outputs of its coal and nuclear plants at a set price that significantly exceeded wholesale electricity market prices. Although approved by the PUCO in 2016, the proposal was blocked as being unfair to consumers by the Federal Energy Regulatory Commission.

In 2017 numerous bills were introduced to subsidize the nuclear and coal plants and make changes to renewable energy standards and energy efficiency standards, including S.B. 128 and H.B. 178 (zero-emission credits to subsidize nuclear power plants), H.B. 239 and S.B. 155

(OVEC coal plants subsidies) and H.B. 114 (voluntary renewable energy standards and weaken energy efficiency standards). These bills were not successful during the 132nd General Assembly.

Unsuccessful in prior attempts for subsidies, in 2018 FirstEnergy turned to change the political landscape by getting a Speaker of the House and a legislature favorable to passing legislation granting its subsidies. A July 21, 2020, press release from the Department of Justice, U.S. Attorney's Office, Southern District of Ohio, summarizes the scheme with the following points:

- “In 2018, the enterprise spent energy company-to-Generation Now money on approximately 21 different state candidates – 15 (including Householder) in the primary, and six additional candidates in the general election. The Enterprise spent more than one million in fall 2018 alone to flood the airways with negative ads against enterprise opponents. Most of these candidates won the 2018 general election. All who won voted for Householder as Speaker.
- Money passed from the energy company through Generation Now was used to pay for Householder campaign staff, which would otherwise have been paid by Householder's candidate committee, Friends of Larry Householder.
- Householder received more than \$400,000 in personal benefits as a result of the payments into Generation Now, including funds to settle a personal lawsuit, to pay for costs associated with his residence in Florida, and to pay off thousands of dollars of credit card debt.
- The enterprise paid \$15,000 to an individual to provide insider information about the ballot initiative and offered to pay signature collectors for the ballot initiative \$2,500 cash and plane fare to stop gathering signatures.”

The press release also adds: “According to the 80-page criminal complaint unsealed today, from March 2017 to March 2020, the enterprise received millions of dollars in exchange for Householder's and the enterprise's help in passing House Bill 6, a billion-dollar bailout that saved two failing, Ohio nuclear power plants from closing.”

H.B. 6 – Worst Energy Legislation this Century

Often referred to as the worst energy policy legislation passed by any state, H.B. 6 is the quintessential example of how a corrupted system can pass legislation hurting average working families to benefit large corporations. Despite the complex history of passage, the legislation accomplishes several major goals benefiting electric utilities:

- H.B. 6 bails out two nuclear power plants: By placing a surcharge on ratepayers' electric bills, the legislation produces \$170 million per year from 2021 until 2027; \$150 million per year would be used to subsidize Davis-Besse and Perry nuclear power plants and \$20 million per year would be divided between six existing solar projects in rural areas of Ohio.
- H.B. 6 bails out two outdated coal electric plants: A surcharge of \$1.50 per month on ratepayers is added to bail out heavily-polluting coal power plants (one in Ohio and one in Indiana) jointly owned by the Ohio Valley Electric Corporation (OVEC).
- H.B. 6 creates new decoupling charges: The legislation adds a regulatory construct which decouples the utility's profits from the sales of the energy commodity. The provision may allow FirstEnergy to collect \$355 million through 2024, and hundreds of millions more in later years, from Ohio's electric ratepayers.
- H.B. 6 guts renewable energy standards: Passed in 2008, Ohio's renewable energy standards required electric utilities to incrementally increase the supply of renewable energy. Comparably modest to most states, Ohio's standards required utilities to get 12.5 percent of their power from renewables by 2027. H.B. 6 reduces the standard to 8.5 by 2026, exempts large industrial customers, and kills the standard after 2026.
- H.B. 6 guts energy efficiency standards: Electric utilities were required to reduce customers' energy use by 22 percent from 2008 levels by 2017 through energy efficiency programs. If these standards remained in effect, the savings would have amounted to \$4 billion over the ten years preceding passage of H.B. 6 for Ohio electric ratepayers. H.B. 6 guts the standards by allowing utilities to abandon the energy efficiency programs once they hit 17.5 percent, a benchmark most utilities had already reached at the time of passage of H.B. 6.

House Bill 6 provided corporate welfare, at the expense of electric ratepayers, to subsidize uncompetitive power plants, remove most incentives to increase our renewable energy supply and cancel successful programs resulting in the reduction of energy usage by customers, reportedly saving Ohio families over \$7 billion in lower electric bills since 2009.

Recently, Representative Householder told the press that H.B. 6 was sound policy, would save ratepayers money and would save jobs. What is the cost of H.B. 6 to the average ratepayer? An analysis by the Ohio Environment Council and others as recently reported in the Columbus Dispatch concludes that the average electric customer will pay \$7.01 more a month under a fully implemented H.B. 6. This increase is a result of the lost efficiency savings, added decoupling charges, less investment in lower-cost renewable energy sources, and added charges for the nuclear subsidies and on-going charges for coal power plants.

Moreover, as previously noted by in testimony before the House and the Senate, H.B. 6 costs jobs. Prior to H.B. 6 more than 114,000 Ohioans worked in the clean energy sector, including over 85,000 construction and manufacturing jobs. Gutting the renewable energy standards and energy efficiency standards puts those jobs at risk. H.B. 6 failed to ensure jobs at the nuclear power plants would be protected and rolled back Ohio's position in the clean energy economy.

In summary, H.B. 6 increases costs on Ohio families, put good energy jobs at risk, and was bad policy for Ohio's energy future.

The Case for Bailout not Established

FirstEnergy and other proponents of H.B. 6 failed to make the case that the bailout legislation was necessary. During committee hearings in the House and Senate, Democratic members requested financials from FirstEnergy demonstrating financial need. Such documents were not provided. Rather, the Ohio Consumer Counsel provided information during the hearing process demonstrating that the two nuclear power plants were profitable in the year prior to adoption of H.B. 6. Monthly operating reports filed by FirstEnergy Solutions in the federal bankruptcy court showed the two nuclear plants had a profitable operating margin of \$50 million in the year following the filing of bankruptcy in May 2018. In addition, a study by Paul Sotkiewicz, former

chief economist of PJM Interconnection LLC, the largest U.S. power grid operator in the country, found that the Davis-Besse and Perry nuclear plants generated annual profits of \$28 and \$44 million, respectively, and are “among the most profitable of their kind in the nation.” Federal authorities accused FirstEnergy Solutions and its former parent company, FirstEnergy, with concocting a “scheme” that was “an abuse of the bankruptcy system”.

Evidence of the financial health of the electric utility has also been demonstrated in FirstEnergy’s use of a “distribution modernization rider” for increased dividends to its investors and FirstEnergy’s 2020 stock buyback proposal. During the collection of a subsidy granted to FirstEnergy by the PUCO through a “distribution modernization rider”, FirstEnergy dividends “increased considerably” averaging \$375 million compared to pre-DMR dividends of an average of \$152 million. At one point, FirstEnergy while defending the need for the rider argued that its nuclear power plants would have to close, thus decreasing energy diversification in the state, should the rider not remain in place. This was the same argument for passage of H.B. 6.

Then, after H.B. 6, Energy Harbor Corp., the successor to FirstEnergy Solutions, the former subsidiary of FirstEnergy Corp., announced that it was offering a stock buyback worth between \$300 and \$800 million. A stock buyback generally demonstrates a fiscally healthy company which repurchases stock investing in itself and increasing the relative ownership stake of each investor.

Conclusion

Ohioans deserve better than H.B. 6, an example of how corrupt activities, bribery, money laundering and racketeering can move legislation through the Statehouse. Ohioans have lost confidence and trust in Ohio government with the passage of H.B. 6. Its immediate and complete repeal will be a step forward in restoring trust.

Chairman Hoops, Vice Chair Abrams, Ranking Member Leland and members of the House Select Committee on Energy Policy and Oversight, thank you for the opportunity to provide sponsor testimony on HB 738. We would be happy to answer any questions that you may have on this legislation.