

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: 2/14/2022

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 (ANTHEM Act)

Specific Issue: Amendment placing Nuclear Dev Authority in Development Dept

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? 10 minutes

Please provide a brief statement on your position:

This is my second testimony letter opposing the unaccountable Ohio Nuclear Development Authority. Placing it in the Department of Development appears aimed at privatizing ONDA's design, development, experimentation, operations and financing of advanced nuclear power reactors within the JobsOhio nonprofit corporation. JobsOhio is exempt from the Open Records Act, Sunshine Act and Governmental/Sovereign Immunity Act, and so will ONDA be.

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.



The Ohio Nuclear-Free Network
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February 14, 2022

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

RE: Opposition testimony to proposed Amendment of 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, not just H.B. 434, the latest incarnation of the “Advanced Nuclear Technology Helping Energize Mankind Act” (“ANTHEM Act”), but also OPPOSING the proposed amendment to install the Ohio Nuclear Development Authority (“ONDA”) within the Ohio Department of Development.

ONFN objects to the proposed amendment as well as H.B. 434 for these reasons:

- **It is not clear whether the proposed amendment to locate ONDA within the Department of Development will put ONDA within the nonprofit corporation JobsOhio, but if the plan is to privatize ONDA’s activities, including the design, development, experimentation, operations and financing of advanced nuclear power reactors, the General Assembly will create a hideous administrative and financial debacle.**

- **ONDA privatization will cut off the public’s legal access to information on the scientific, engineering, financing, safeguards and experimental aspects of unproven and inherently dangerous radioactive fission technology such as a molten salt reactor, the reactor type being pushed by eGeneration, the corporation behind H.B. 434. O.R.C. § 187.04. The molten salt reactor design dismally failed in the one and only U.S. experiment.**

- **Ohio law allows ONDA to be far more restrictive of its information and records than the federal Freedom of Information Act which governs the U.S. Nuclear Regulatory Commission, Department of Energy and Department of Defense.**

- **ONDA privatization would give ONDA almost uncontrolled discretion to spend taxpayer dollars and create burdens on the public treasury which will be largely invisible when negotiated, and constitutionally impossible to rescind when signed.**

- **Ohio's Auditor of State would not be allowed to conduct an audit or financial review of any Ohio taxpayer funds spent by or in support of a privatized ONDA because JobsOhio is not a "public office."**

- **Even if the Director of Development would retain approval authority over ONDA contracts and debts incurred, the information with which ONDA advises the Director would not be publicly accessible.**

- **ONDA's internal decisions to enter into contracts and debts would be made by directors selected from the very companies and organizations that will benefit from nuclear power development. Those contracts, even if corruptly entered into, probably could not be terminated by act of the Ohio General Assembly because Ohio Const. Article II, § 28 prohibits the State from impairing contracts.**

- **The JobsOhio conflict-of-interest policy allows all decisions made by ONDA's board on conflicts of interest to be maintained as nonpublic.**

- **ONDA will oversee the transportation of spent nuclear fuel and other deadly radioactive wastes around Ohio to various facilities for separating plutonium and reprocessing wastes into fuel for advanced nuclear reactors. Transportation plans, data associated with deliveries, and safety arrangements related to transportation will not be publicly-accessible records. These wastes and new fuels will be fissioned in experimental reactors built with hundreds of millions of Ohio taxpayer or bondholder dollars and then licensed by an ethically unaccountable Nuclear Development Authority.**

The potential dangers and risks from the nuclear experiments spawned by ONDA have not been acknowledged, much less discussed, during these committee hearings. The self-interested proponents promise success with negligible chances that property owners, nuclear workers and the natural environment will be harmed.

The Ohio Development Department's enabling statute allows outsourcing/ privatization of any Departmental function to JobsOhio. O.R.C. § 187.04. H.B. 434 assigns two conflicting responsibilities, regulation and promotion, to ONDA. Regulation would be performed by gubernatorial appointees from the very companies and organizations that will be awarded contracts to design, build and run experimental nuclear plants. ONDA will be a promotional cheerleader for the industry. ONDA apparently would perform due diligence investigations of possible projects, but those investigations would not be public records. The proposed amendment to put ONDA within the Department of Development threatens to hand over these two inconsistent responsibilities to a ghost agency with significant budgetary secrecy, transactional invisibility, and next to zero public accountability.

By giving a privatized ONDA the power to contract and serve as a delegated agency for the U.S. Nuclear Regulatory Commission, Department of Energy and/or Department of Defense, ONDA will be able to conceal information originating from the federal government about nuclear power and weapons, possibly making it unreachable through the federal Freedom of Information Act. Penetrating these concealments through the courts will be arduous, expensive and possibly unsuccessful.

Under the proposed amendment, a "private" corporation would be both regulating and promoting nuclear power under the auspices of a conflict of interest-ridden appointed board whose actions would be taken outside of the Ohio Sunshine Act, Open Records Act, and Governmental Immunity Act. Privatizing government regulation by placing ONDA into JobsOhio raises constitutional questions about how regulations could be privately and thus, secretly, promulgated outside of Ohio's Administrative Procedure Act, and whether those regulations could be legally enforced if broken (not to mention whether violations would become public).

Privatization means expanded tools for hiding the massive costs of nuclear power and waste from public view. ONDA could make irreversible financial commitments which could cause fiscal bankruptcy for the State of Ohio without anyone realizing it until after the fact. In other words, the public would likely not even know who or what hit it, until it's too late to stop the financial bleeding.

Thank you.

For the Ohio Nuclear-Free Network,

/s/ Terry J. Lodge

Terry J. Lodge, Esq.



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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.