



**Ohio Senate Committee on Energy and Public Utilities
The Honorable Bob Peterson, Chairman**

**Interested Party Testimony on
House Bill 128
Chris Zeigler | API Ohio
March 23, 2021**

Chairman Peterson, Vice Chair Schuring, Ranking Member Williams and members of the Senate Energy & Public Utilities Committee - thank you for the opportunity for API Ohio to provide interested party testimony on House Bill 128 (H.B. 128).

The American Petroleum Institute-Ohio (API Ohio) is a division of the American Petroleum Institute (API). The API represents all segments of America's natural gas and oil industry, which supports more than ten million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our 600 members produce, process, and distribute most of the nation's energy, and participate in *API Energy Excellence*,¹ which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

API supports a market-based approach as it relates to energy policy. We have opposed subsidies for nuclear power generation for the last several General Assemblies, due to the impacts this would have on natural gas development in Ohio and the region, as well as the impacts on our members, some of which are large industrial energy users.

During House committee consideration of H.B. 128, API Ohio testified in support of the legislation since it would repeal the nuclear subsidy provisions passed into law by H.B. 6 and did not include subsidies for any other energy resource. However, after submitting our proponent testimony, the House committee voted to amend H.B. 128 with language that provided subsidies for solar power generation. Therefore, API Ohio's position on H.B. 128 has changed to an interested party. This is due to our support of the bill language that repeals provisions regarding the nuclear resources credit program of H.B. 6, but we remain opposed to the provisions in the bill that retain subsidies for solar power generation by changing the term "renewable" to "solar" and keeping intact the related energy credit program enacted under H.B. 6. As an association, we have opposed subsidies for specific, marketable energy resources; we favor a level-playing field for all forms of energy.

As presented in testimony, several times during the debate on H.B. 6, API Ohio opposed the bill from its introduction because we believed that it would discourage innovation in new technologies and the

¹ <https://www.api.org/oil-and-natural-gas/api-energy-excellence>

associated risks of investing billions of private capital dollars in constructing new natural gas-fired electric power plants--taking advantage of the state's abundant supply of natural gas. Ultimately, however, we believed that the bill would effectively destroy the market dynamics that have provided positive outcomes for Ohio's ratepayers and our economy over the last several years.

API Ohio's concerns were justified when two natural gas-fired power plants publicly announced in 2019 that they would be mothballed due to passage of H.B. 6, reportedly a loss of \$1.6 billion of private investment in our state.^{2,3} What was certain about the policy of H.B. 6 is that it guaranteed profits for a select list of recipients on the backs of Ohio ratepayers and at the expense of free market investment opportunities.

API Ohio also questioned the lack of publicly available analysis or data that may have been used to determine if, in verifiable fact, Ohio nuclear resources were in jeopardy of closing without being provided a ratepayer subsidy of over a billion dollars. To this end, we commissioned a study by Dr. Paul M. Sotkiewicz⁴, to determine if Ohio's nuclear resources had historically been operating profitably and could be expected to operate profitably into the future, without the billion-dollar ratepayer subsidy handed to them under H.B. 6.

Dr. Sotkiewicz's analysis determined that:

"1) Historically, Ohio nuclear resources have been able to cover their going forward costs and have significant operating margins that contribute toward the recovery of sunk costs plus a return on investment;

2) Over the next ten years, Ohio nuclear resources are projected to remain profitable on an operating basis, covering going forward costs and earning margins that contribute toward returns.

The bottom line is that Ohio nuclear resources are in no danger of retiring anytime soon and to do so would not only be economically irrational but would financially harm the equity shareholders of these nuclear assets."⁵

Although this study and other data were provided to support a lack of need for the \$1.1 billion ratepayer subsidy for Ohio's two nuclear power plants, the policy of H.B. 6 did not include a mechanism that would protect Ohio's ratepayers from being fleeced. The calls for an independent financial audit of Energy Harbor's accounts to determine and support the need for ratepayer subsidies were never addressed.

² <https://www.prnewswire.com/news-releases/ls-power-announces-ohio-nuclear-subsidy-legislation-will-force-cancellation-of-its-troy-generating-facility-expansion-300884803.html>

³ <https://ohioipp.org/wp-content/uploads/2019/09/2019.08.21-OIPP-Press-Release-CEF-Lordstown-3-Cancellation.pdf>

⁴ http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/133rd_ga/ready_for_publication/committee_docs/cmte_s_energy_pu_1/submissions/cmte_s_energy_pu_1_2019-06-04-0930_683/oh-nuclear-analysis_5_28_19.pdf

⁵ http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/133rd_ga/ready_for_publication/committee_docs/cmte_s_energy_pu_1/submissions/cmte_s_energy_pu_1_2019-06-04-0930_683/drpaulsotkiewicztimony.pdf

The concerns regarding the profitability of Ohio’s nuclear resources were realized after the passage of H.B. 6 when Energy Harbor’s board of directors “voted to increase authorization for its stock buyback program from \$500 million to \$800 million”⁶—clearly evidence of a lack of “need” for the billion-dollar Ohio ratepayer handout to subsidize Energy Harbor’s nuclear power assets.

It is understood that due to the Federal Energy Regulatory Commission’s Minimum Offer Price Rule (MOPR), which contains new auction bidding floors for power generators that are eligible for state subsidies⁷, the operator of Ohio’s nuclear power plants could be effectively unable to compete in PJM’s wholesale capacity auctions and is now lobbying to repeal the very same policies that are at the center of several federal and state agency investigations. Regardless of the reasons behind the introduction of H.B. 128, API Ohio supports the removal of the nuclear resources credit program under the bill.

Again, API Ohio supports a level-playing field where any type of generation resource can compete for market-share. We also believe that a system that promotes the selection of “winners and losers” in the market disrupts effective entry and exit of economic resources resulting in an inefficient market where consumers end up paying more.

Thank you again Chairman Peterson, Vice Chair Schuring, Ranking Member Williams and members of the Senate Energy & Public Utilities Committee for the opportunity to provide interested party testimony on House Bill 128.

⁶ <https://www.cleveland.com/open/2020/05/with-ohio-bailout-law-secured-firstenergy-solutions-successor-moves-to-increase-share-buybacks-by-300-million.html>

⁷ <https://www.powermag.com/the-significance-of-fercs-recent-pjm-mopr-order-explained/>