Ohio House Bill 6, the FirstEnergy Bailout

A. Ohio House Bill 6--what it is and what it does

- **Bails out First Energy’s aging and embrittled nuclear plants** – Davis-Besse and Perry, both on Lake Erie: FirstEnergy also operates two commercial nuclear reactors (power plants) in Pennsylvania, 4 miles from the Ohio border. It is illegal for Ohio to directly subsidize any particular energy source, so Ohio Republicans crafted HB 6 as the “Ohio Clean Air Program.” The word “nuclear” is not in HB 6, but it is written to only give a bailout to FirstEnergy.

  From 2021 until 2027, Ohioans will pay a monthly surcharge on electricity bills, from 85 cents for residential customers up to $2,400 for big industrial users. This will bring in about $1.1 billion for First Energy. FirstEnergy customers in Northern Ohio currently pay the highest electric bills in the state, due to the expense of the 2 nuclear plants.

- **Bails out two FirstEnergy coal plants:** These are old, hyper-polluting coal plants on the Ohio River—one of which is in INDIANA. HB 6 a gift to FirstEnergy with no strings attached, since there is no requirement for upgrading the coal or nuclear facilities. The Nuclear Regulatory Commission continues to give waivers on upgrades to plant safety and maintenance.

- **Guts renewable energy standards:** In 2008, Ohio passed a bill requiring utilities to get 12.5% of their power from renewables by 2027. HB 6 reduces the target to 8.5%, exempts large industrial customers, and kills the standard after 2026. This ends incentives for renewable energy development in Ohio. As standards keep changing, solar and wind developers are finding Ohio unreliable.

- **Guts Ohio’s energy efficiency standards:** These standards required utilities to reduce customer energy use by 22 percent over a 20-year period through efficiency programs. Efficiency mandates have so far saved Ohioans $5.1 billion. HB 6 allows utilities to end efficiency programs at 17%, which most have already reached.

  **Support for solar – or for FirstEnergy?** $20 million will be divided among six existing solar projects in rural areas of Ohio. FirstEnergy is still required under Ohio’s energy efficiency mandates to develop more renewables. This is a $20-million gift to FirstEnergy. In March, 2020, Representatives Wilkins and Householder used the groundbreaking ceremony for the 200 MW Hillcrest Solar facility to give credit for this solar facility to HB 6 and to say how much money HB 6 is going to save. State, industry leaders break ground on historic solar project

B. How House Bill 6 was passed

- In April, 2019 the first bill was introduced in a House committee. The bill was continually changing, so a number of hearings were required. It passed the House at the end of May.

  The legislature was scheduled to recess at the end of June. The Senate had not yet passed the bill, so the legislature extended their session. Members who were on vacation were called back to Columbus to vote. The bill passed the Senate by one vote on July 17. The House concurred on July 23. The bill could not have passed without the support of some Democrats, because several free-market Republicans voted against the bill. Republican Gov. Michael DeWine signed the bill into law.

- Ohio is close to evenly divided between Republican and Democratic voters, yet the Republicans have 60 of 99 members in the House and 24 out of 33 in the Senate – due to gerrymandering.

  Unlike other industry-backed proposals, HB 6 was almost universally badmouthed by Ohio’s media. It was opposed by ratepayer groups, business groups, free market conservatives, and environmental groups. At statehouse hearings, the only proponents were those with vested interests—FirstEnergy and its hired PR firm – which was found to have written the statements of some of the witnesses. Other supporters were the unions and communities who are going to be facing serious problems when, inevitably, FirstEnergy
C. **Background on FirstEnergy**

- FirstEnergy (FE) and FirstEnergy Solutions (FES) are talked about interchangeably, but they are two different entities. FES is a Limited Liability Corporation, or LLC. Corporations put their liabilities into their LLCs, protecting the parent company when the LLC goes belly up. **FES did not exist as a stand-alone entity until FirstEnergy decided to put its generating entities into bankruptcy court in March of 2018.** Before that, FES had been a wholly-owned subsidiary of FirstEnergy. FES now owns and operates the aging nuclear and coal plants. Bad business decisions, such as the purchase of Allegheny Energy, actually caused FirstEnergy’s financial woes, as Davis-Besse and Perry show a small profit in the annual report.

- **FirstEnergy received $9+ billion** for “stranded costs” when Ohio’s utilities were deregulated in 2001.
- On March 28, 2018, FirstEnergy Solutions asked the U.S. Department of Energy (DOE) to issue an emergency order to provide cost recovery to coal and nuclear plants in the PJM Regional Transmission Interconnection. As it turns out, DOE does not have the authority to intervene in PJM.
- PJM had previously denied FirstEnergy Solutions a bailout.
- **FirstEnergy Solutions asked for a $100 million bonus plan that excluded union workers** at the plants. The judge approved a $126-million bonus plan that included bonuses for unionized employees.
- On the same day that HB 6 passed, FES told the bankruptcy court it wanted to reject union contracts for its plants, including worker pensions. This, after promising unions that contracts would be honored in order to get their support for the bill.
- **FirstEnergy was the driving force behind Ohio’s wind setback law** – so large it effectively eliminates all wind development in the state. The setback passed in 2014, tacked on at the last minute to the budget bill with only 10 minutes of discussion. It requires a 1300-foot setback from any property line. Newspapers reported a $4.2 billion loss in economic development and the loss of 13,000 jobs due to this restriction.

- **Balking at Compliance with Energy Standards**: While other utilities over-complied with renewable and efficiency standards, FirstEnergy has dragged its feet, refusing to modernize.

- The Nuclear Regulatory Commission continues to give waivers on safety and maintenance. The Sierra Club has a very long list of these, which are somewhat different between the two reactors. Here are some of the waivers: 1) granted longer periods between inspections; 2) no requirement for emergency plans to be updated; 3) no requirement for implementation of flooding mitigation and other recommendations from Fukushima Lessons Learned; 4) intervals between containment leakage tests were extended; 5) exemptions were given from record retention requirements; 6) exemption was given from the definition of physical barrier – barbed wire is OK at Davis-Besse; 7) Missile Generation by Tornado requirements were deferred – In 1998 Davis-Besse experienced the worst direct hit by a tornado ever weathered by a U.S. nuclear plant. Machinery and debris were thrown at the plant. FirstEnergy was given a deferral on cleaning up their outside mess; and 8) NRC has neglected to update U.S. nuclear regulations to meet the International Atomic Energy Agency (IAEA) recommendations. In spite of needing so many waivers, NRC continues to give FirstEnergy Solutions’ reactors good safety marks.

  - NRC has approved the use of high-burnup fuel—this is fuel that burns longer and hotter, with longer times between refueling. High-burnup waste is far more problematic to store. There is little experience and few protocols for handling this mostly-experimental waste.

  - NRC has licensed 5/8-inch thin stainless steel canisters to hold high-level radioactive waste. These cannot be inspected inside or out, cannot be monitored or repaired, and they are welded shut with no protocol for opening them.

- In July, 2019, the Environmental Law and Policy Center filed suit before the NRC Atomic Safety and Licensing Board, maintaining that FirstEnergy and its subsidiaries, through the bankruptcy case and license transfers between entities, were **avoiding their obligation to fully fund the decommissioning funds for the nuclear reactors**. NRC approved the transfer of the Decommissioning Funds when they...
approved the [transfer of the operating licenses to Energy Harbor](#) in Dec., 2019. **Energy Harbor** is the new name of FirstEnergy Solutions, coming out of bankruptcy, that now owns and operates the nuclear and coal plants.

- FirstEnergy is one of the biggest money players in Ohio politics. Papers report that they spent **$50 million** on lobbying firms and coalitions like **Ohio Clean Energy Jobs Alliance** that supported the bailout. The $50 million is separate from the millions spent on TV and radio ads and mailers. In May, 2018, 4 secretive companies gave $2.6 million to Ohio Republican primary candidates who supported a FirstEnergy bailout. So this bailout was being orchestrated for a long time. This is a small investment with $1.1 billion at stake.

- In 2013 the Public Utilities Commission of Ohio (PUCO) required FirstEnergy to refund $43.4 million to customers. The PUCO found that FirstEnergy paid its subsidiary FirstEnergy Solutions an inflated price for Renewable Energy Credits. This tactic not only kept the money “in house,” it also made renewable energy appear more expensive. In January 2018 the Ohio Supreme Court ruled that FirstEnergy does not have to refund customers this money. The **Energy and Policy Institute reports** that five of the six Ohio Supreme Court justices who ruled in favor of FirstEnergy received campaign contributions from the utility. The Environmental Law and Policy Center and the Ohio Consumers’ Counsel asked the court to reconsider its decision, but the court said no to reconsideration.

- Papers have reported that the secretive group **Generation Now** spent $9 million of dark money on ads promoting HB 6. Ohioans were blanketed with deceptive ads – mailers; TV, radio, newspaper and digital media ads; phone calls – all threatening dire consequences if HB 6 did not pass. This was promoting the passage of HB 6, BEFORE the referendum.

### D. Attempts to get a referendum on the Ohio ballot to overturn House Bill 6

- A group called **Ohioans Against Corporate Bailouts** was hired to conduct a statewide referendum that would overturn HB 6. This effort was largely paid for by oil and gas interests. Citizen groups did not have the resources for such a large endeavor. Ohioans Against Corporate Bailouts proved to be inept and slow. They first wrote ballot language that was deemed inaccurate in 21 ways by Republican Sec. of State Frank LaRose. Disapproval took 20 days of the 90-day referendum period. A second attempt at ballot language was approved after 18 more days, eating 38 days into the 90 days allowed for signature gathering. Since 265,000 valid signatures were needed, many more than that would need to be collected.

- **Millions in dark money was put into defeating the referendum.** Firms were hired to harass and intimidate signature gatherers and asking people not to sign.

- **Ohio was blanketed with “fake” petitions.** Non-binding petitions were circulated that stated support for nuclear and coal and said things like **“Stop Foreign Ownership of our Electric Grid.”** The fake petitions were paid for by **Ohioans for Energy Security.** People were confused between the two petitions.

- **Bizarre ads filled the media.** Radio, TV, social media, and mailers claimed “Foreign entities have invaded our energy grid. These entities want to kill our jobs and raise our rates. Decline to sign.” Xenophobic ads appeared, threatening a Chinese conspiracy to take over our energy grid. Fliers were mailed saying, “If you see a circulator, report them to this hotline.” The ads said that Chinese bank loans were going to natural gas-burning power plants. In actuality, FirstEnergy also had loans from that same Chinese bank.

- **Ohioans for Energy Security filed a lawsuit** before the Ohio Supreme Court seeking to block the referendum, arguing that the House Bill 6 fee on electricity ratepayers constitutes a tax and thus is not subject to a referendum. But when HB 6 was first introduced, promoters assured the public that this was NOT a tax. In late November, 2019, the court decided not to hear this case.

- **Petitions to overturn HB 6 failed to get enough signatures.** Ohioans Against Corporate Bailouts asked the courts to rule that Ohio law allowing ballot language to cut into signature gathering time is illegal and they should be given 38 more days to collect signatures. Edmund Sargus, Jr., judge for the U.S. District Court for the Southern District of Ohio, certified five state law questions to the Ohio Supreme Court, all centering on whether and under what circumstances the Ohio constitution’s 90-day referendum guarantee could be shortened. Ohio Secretary of State Frank LaRose asked the Ohio Supreme Court to not answer the five questions from Judge Sargus. The Ohio Supreme Court agreed to take up the questions and to hear the case. Three justices recused themselves because of conflicts of interest involving their past
campaign managers having served roles in the referendum campaign. Six of the 7 Ohio Supreme Court justices have taken money from FirstEnergy. On January 21, 2020, Ohioans Against Corporate Bailouts announced that they were ending their campaign and dropping legal action, citing lack of resources to continue the fight.

E. Dark Money Dominated Ohio's Nuclear Subsidy Saga  Cleveland Scene 3-9-20
This linked article outlines the intrigue and incestuous relationships surrounding HB 6. Here are snippets:

- FirstEnergy Solutions gave $1,859,457 to dark money group Generation Now, Inc. on July 5, 2019. And, if it weren't for FirstEnergy Solutions' bankruptcy case, the payment to Generation Now likely wouldn't have been disclosed.
- The nearly $2 million in documented spending by FirstEnergy Solutions is just part of the total spent from 2018 through now. That figure could be as high as $15 million.
- Dark money groups such as Generation Now and the Growth & Opportunity PAC spent roughly $1 million in the 2018 election cycle. That election replaced Kasich with Mike DeWine as governor. The 2018 election also led to a leadership shift in the Ohio House of Representatives.
- Generation Now formed in 2017 as a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code. Generation Now gave $1,050,000 to the Growth & Opportunity PAC in 2018, which in turn ran ads and took other steps to support candidates who would favor Householder's selection as House speaker, preparing the way for the subsidy bill. Unions reported giving $840,000 to Generation Now in 2018 and 2019.
- Support for HB 6 comes from beyond the state and reaches into some top levels of national politics.
- Empowering Ohio's Economy, a Generation Now funder, lists its principal officer as Jo Ann Davidson in its 2018 filing with the IRS. Davidson was speaker of the Ohio House of Representatives from 1995 to 2000. She spent four years as co-chair of the Republican National Committee. Davidson also heads up JAD & Associates, a political consulting firm in Columbus. And the address shown for Empowering Ohio's Economy is the same as that for the Jo Ann Davidson Ohio Leadership Institute.
- Matt Borges, who acted as a lobbyist for FirstEnergy Solutions, also has strong political connections. He was chair of the Ohio Republican Party from 2013 through 2017.
- The forces that passed Ohio's subsidy law are poised for further action to shore up utilities and protect fossil fuel interests. Lawmakers who passed HB 6 continue to consider other pro-utility or pro-fossil-fuel bills. Those include a bill that could further increase utilities' ability to use ratepayer funds to subsidize affiliates' businesses, a plan to allow local referendums on wind farms after they've gotten all regulatory approvals, and a proposed constitutional amendment banning foreign ownership of "critical infrastructure."

F. Beaver Valley Nuclear Power Station to Stay Open Because of PA’s Climate Plan:  Allegheny Front 3-16-20. Energy Harbor (formerly FirstEnergy Solutions) now owns and operates the 4 nuclear plants – 2 in Ohio and 2 in PA. They have pulled back the deactivation notices for their 2 Beaver Valley, PA, nuclear plants. These reactors are 4 miles from Ohio. They cited PA Gov. Tom Wolf’s moves to join the Regional Greenhouse Gas Initiative (RGGI), a cap-and-trade program intended to limit carbon dioxide emissions from power plants. RGGI has listed nuclear and fracked gas as clean energy. This shows that the operating costs of the facilities are not in the red as FirstEnergy maintained. The difference is that FirstEnergy no longer has liability for a nuclear accident or radioactive waste, and Energy Harbor is a limited liability corporation (LLC.) Ohio’s bailout money is going to Energy Harbor to use as they please. Such as lobbying Pennsylvania for a bailout for their Beaver Valley nukes.