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 on Lake Erie**: FirstEnergy also runs 2 other commercial nuclear reactors in PA, 4 miles from the Ohio border. Because it is illegal for Ohio to directly subsidize any particular energy source, Ohio Republicans have crafted HB 6 as “The Ohio Clean Air Program.” Cleverly, the word “nuclear” is not even in the bill. But it is written in a way that only gives a bailout to FirstEnergy for their 2 nukes and 2 coal plants.

  From 2021 until 2027, all Ohio ratepayers will pay a monthly surcharge on electricity bills, from 85 cents for residential customers up to $2,400 for big industrial customers. The total has been estimated to bring in $1.1 billion for First Energy. (FirstEnergy customers in Northern Ohio currently pay the highest electric bills in the state because 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. This is actually a gift to FirstEnergy with no strings attached, since there is no requirement for upgrading the facilities. All the while, the Nuclear Regulatory Commission continues to give waivers on safety and maintenance, which is particularly a problem with nuclear.

- **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 destroys any incentive for new renewable energy development in the state. With these changing standards, solar and wind developers find Ohio unreliable.

- **Guts energy efficiency standards**: Ohio’s efficiency law required utilities to reduce customers’ energy use by 22 percent over a 20-year period using energy 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 just a $20-million gift to FirstEnergy.

B. How House Bill 6 was passed:

- In April 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 House has 60 Republicans out of 99 members and 24 Republicans out of 33 members the Senate – due to egregious gerrymandering. One very narrow Ohio district stretches all the way between Cleveland and Toledo, which was done that way to pit two strong Democrats against one another.

- 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 packs up. The Sierra Club stresses that communities need aid, not corporations and filthy industries. Workers should be immediately rehired to decommission the plants.

C. Background on FirstEnergy:

- We tend to talk about FirstEnergy and FirstEnergy Solutions (FES) interchangeably, but they are actually now two different entities. FirstEnergy Solutions is a Limited Liability Corporation, or LLC. Corporations put their liabilities into the LLC, protecting the parent company when the LLC goes belly up. FirstEnergy Solutions 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, FirstEnergy Solutions had been a wholly-owned subsidiary of FirstEnergy. FirstEnergy Solutions now owns the decrepit 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.

- 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.

- And PJM had previously denied FES a bailout.

- FirstEnergy Solutions has been in bankruptcy court since March 30, 2018. Astonishingly, U.S. Bankruptcy Court Judge Alan Koschik approved FES to spend assets on lobbying for HB 6.

- 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 a setback that 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 ft. setback from any property line. Newspapers reported a $4.2 B loss in economic development in Ohio and the potential loss of 13,000 jobs due to this restriction.

- While other utilities over-complied with renewable and efficiency standards, FirstEnergy has dragged its feet all the way, 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 all those waivers, NRC continues to give FE’s 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.

- The Environmental Law and Policy Center sued FirstEnergy for avoiding its obligation to fully fund the Decommissioning Funds for its nuclear reactors. An amazing lawsuit still in court.
• 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. It is also reported that 4 secretive companies put $2.6 million into Ohio Republican primaries (May 2018) for candidates that would support a FirstEnergy bailout. So this 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 that were overcharged for Renewable Energy Credits. 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 have received campaign contributions from the utility.

• 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. Note that this was promoting the passage of the bailout bill, 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 referendum that would overturn HB 6. Signatures of registered voters needed to be collected from around the state. This effort was largely paid for by oil and gas interests, because they had the money. Citizen groups did not have the resources for such a huge endeavor. Neither the firm that was hired to collect signatures nor the fossil fuel industry was familiar with the citizen-appeal process. The anti-bailout firm first wrote ballot language that was deemed inaccurate in 21 ways by Republican Sec. of State Frank LaRose. The 21 inaccuracies were indeed problematic. But the 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, leaving only 52 days. 265,000 valid signatures were needed, meaning many more than that would need to be collected.

• **Dark Money** put millions into defeating the referendum and signature gathering. Firms were hired to harass and intimidate signature gatherers, asking people not to sign. Sierra Club signature gatherers were followed. A signature gatherer in Columbus who was being harassed attempted to take a photo of the offender. The harassing woman slapped the phone from the signature gatherer’s hand, breaking the phone. He is suing. Reasonable, thinking people who did not really understand the issues were easily persuaded not to sign a referendum petition.

• **Blanketed Ohio with “fake” petitions.** Non-binding petitions were circulated that stated support for a nuclear power bailout and which stated at the top “**Stop Foreign Ownership of our Electric Grid.**” It was an insane statement that had no basis in reality. The fake petitions said “**Paid for by Ohioans for Energy Security.**” All this caused great confusion. They claim to have collected 400,000 signatures, but was much easier to collect non-binding signatures where anyone could sign, and surely a lot of money was put into this effort.

• **Continually blanketed with more outlandish lying ads**—again, radio, TV, social media, mailers—saying foreign entities have invaded our energy grid. They want to kill our jobs (really?) and raise our rates. Decline to sign. Astonishingly xenophobic ads appeared threatening a Chinese Conspiracy to take over our energy grid. I have a flier here that says, “If you see a circulator, report them to this hotline.” The group points to Chinese bank loans to some natural-gas burning power plants. In actuality, FirstEnergy also has loans from that same Chinese bank.

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

• **Petitions to overturn HB 6 failed to get enough signatures.**

• **All is not completely over,** as Ohioans Against Corporate Bailouts has 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. That seems fair, since 90 days is not a lot of time, and cutting
into it seems like a ploy to stop citizen initiatives and referenda. Initially they took the case to the U.S. District Court for the Southern District of Ohio, which replied that it was not the right court. Now the case has been taken to the Ohio Supreme Court. The Judge for the Southern District, Edmund Sargus, Jr., 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 can be shortened.

The Supreme Court is not required to hear the case. In the meantime, HB 6 went into effect Oct. 21, though rates will not increase until 2021.