

# THE BOND BUYER

## Ohio shuts off valve to tainted \$1 billion bailout

By

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Ohio formally put an end to the \$1 billion ratepayer bailout for two nuclear power plants owned by then-bankrupt FirstEnergy Solutions Corp. at the center of a \$60 million pay-to-play scheme that led to the arrest of Ohio House Speaker Larry Householder on [federal corruption charges](#).

Tainted House Bill 6, enacted in July 2019, bolstered the company's restructuring plan and in so doing improved the trading value of some of its secured municipal bonds that had been dragged into the case.

Gov. Mike DeWine last week signed a partial repeal — [House Bill 128](#).

Legislative passage triggered a cut to junk earlier in the week for the issuer credit rating of FES' successor company Energy Harbor Corp. that owns the plants but its roughly \$400 million of secured, tax-exempt bonds retained their low investment grade rating.

The original bailout legislation — House Bill 6 — faced backlash after federal authorities last July [leveled bribery charges](#) against then House Speaker Larry Householder and four others related to passage of the bill and efforts to quash any challenge.

After the filing of the federal criminal complaint last July, S&P put Energy Harbor's ratings on CreditWatch over concerns that the subsidies would be repealed and the company — although neither First Energy or Energy Harbor were charged with any wrongdoing — was facing deeper scrutiny as part of the ongoing federal probe.

Moody's Investors Service reacted in July by moving its outlook to negative from stable on the Baa3 rating assigned after the bankruptcy. "Developments in Ohio heighten risk at Energy Harbor and creates greater uncertainty surrounding corporate governance risk," Moody's said of the criminal complaint and debate over a repeal.



*Ohio House Speaker Larry Householder, shown at the 2016 Republican National Convention, is at the center of the corruption allegations that led to the recent repeal of legislation. **Bloomberg News***

S&P resolved the watch placement last week, cutting the company's rating two notches to BB from BBB-minus while also affirming the BBB-minus rating assigned to about \$400 million of bonds. S&P still expects full recovery on the bonds if there is ever a default. S&P first assigned the company and bond ratings of BBB-minus in May 2020 after the bankruptcy was resolved.

The partial repeal will cost Energy Harbor \$150 million annually over the next seven years although "without nuclear clean air credits, we view Energy Harbor's portfolio as weaker than those of peers, reflected in our revised business risk assessment to weak," S&P said.

The subsidies had been on hold after Ohio Attorney General David Yost last December won a preliminary injunction from a state judge preventing the distribution that was set to begin Jan. 1. Energy Harbor had also been seeking the legislative option to reject the subsidies over worries it could complicate efforts to market its electricity elsewhere.

Energy Harbor is an Akron-based independent producer of power. It's the successor to FES which emerged from Chapter 11 in February 2020 after shedding \$4 billion in debt. Bondholder-creditors are the primary owners including Avenue Capital Group and Nuveen Asset Management LLC with the latter holding 45% of equity ownership. Energy Harbor operates the nuclear plants and is no longer affiliated with FirstEnergy Corp.

The \$1 billion bailout saved the nuclear plants from closure. HB 6 created a Clean Air fund via an electricity rider which would be used to subsidize the Davis-Besse and Perry plants, allowing them to remain open as they were then in line to receive \$150 million annually through 2027. It slapped surcharges on energy customers in Ohio to, among other things, support the money-losing nuclear plants.

"The CreditWatch reflects risks that both legislation could be introduced to overturn HB 6, in which case Energy Harbor could face a material decline" in its balance sheet "and/or the potential that Energy Harbor is in some way implicated in the alleged criminal activity," S&P said in July after the arrests.

Federal authorities arrested Householder on allegations that he violated federal racketeering statutes through honest services wire fraud and the receipt of millions in bribes and money laundering. Householder, who retains his House seat, and others allegedly accepted bribes between March 2017 and March 2020 to steer passage of House Bill 6 and to help stave off a public ballot initiative that would have overturned the legislation.

FirstEnergy Corp. and its related companies and Energy Harbor were not charged with any wrongdoing. FirstEnergy Corp. reported it had received subpoenas in connection with the investigation surrounding House Bill 6.

FES had \$1.5 billion of unsecured debt and \$690 million of secured municipal debt. The private power plant operator sold the tax-exempt debt to fund air and water pollution control facilities and sewage and solid waste facilities at its power generation plants.

The Chapter 11 filing included FirstEnergy Solutions, its subsidiaries, and FirstEnergy Nuclear Operating Co. but Akron-based parent company FirstEnergy Corp. was not included. Secured bond claims were not impaired and the bankruptcy disclosure document reported recovery rates for allowed unsecured bondholder and note claims of 13.5%, 22.9%, and 30.2% depending on the claim.

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