

# AN ACT

To amend section 3706.01 and to enact section 3706.101 of the Revised Code and to amend Section 203.27 of Am. Sub. H.B. 66 of the 126th General Assembly to revise the definition of "air quality facility" under the Air Quality Development Authority Law, to create the FutureGen Initiative Fund, and to make an appropriation.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 3706.01 be amended and section 3706.101 of the Revised Code be enacted to read as follows:

Sec. 3706.01. As used in this chapter:

(A) "Governmental agency" means a department, division, or other unit of state government, a municipal corporation, county, township, and other political subdivision, or any other public corporation or agency having the power to acquire, construct, or operate air quality facilities, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.

(B) "Person" means any individual, firm, partnership, association, or corporation, or any combination thereof.

(C) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or odorous substance, or any combination thereof.

(D) "Air pollution" means the presence in the ambient air of one or more air contaminants in sufficient quantity and of such characteristics and duration as to injure human health or welfare, plant or animal life, or property, or that unreasonably interferes with the comfortable enjoyment of life or property.

(E) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts that surrounds human, plant, or animal life, or property.

(F) "Emission" means the release into the outdoor atmosphere of an air contaminant.

(G) "Air quality facility" means any of the following:

(1) Any method, modification or replacement of property, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants or substances containing air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air, including, without limitation, facilities and expenditures that qualify as air pollution control facilities under section 103 (C)(4)(F) of the Internal Revenue Code of 1954, as amended, and regulations adopted thereunder;

(2) Motor vehicle inspection stations operated in accordance with, and any equipment used for motor vehicle inspections conducted under, section 3704.14 of the Revised Code and rules adopted under it;

(3) Ethanol or other biofuel facilities, including any equipment used at the ethanol or other biofuel facility for the production of ethanol or other biofuels;

(4) Any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of a by-product or solid waste resulting from any method, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air;

(5) Any property, device, or equipment that promotes the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization or energy conservation;

(6) Any coal research and development project conducted under Chapter 1555. of the Revised Code;

(7) As determined by the director of the Ohio coal development office, any property or portion thereof that is used for the collection, storage, treatment, utilization, processing, or final disposal of a by-product resulting from a coal research and development project as defined in section 1555.01 of the Revised Code or from the use of clean coal technology, excluding any property or portion thereof that is used primarily for other subsequent commercial purposes;

(8) Any property or portion thereof that is part of the FutureGen project of the United States department of energy or related to the siting of the FutureGen project.

"Air quality facility" further includes any property or system to be used in whole or in part for any of the purposes in divisions (G)(1) to ~~(5)~~(8) of this section, whether another purpose is also served, and any property or system incidental to or that has to do with, or the end purpose of which is, any of the foregoing. Air quality facilities that are defined in this division

for industry, commerce, distribution, or research, including public utility companies, are hereby determined to be those that qualify as facilities for the control of air pollution and thermal pollution related to air under Section 13 of Article VIII, Ohio Constitution.

(H) "Project" or "air quality project" means any air quality facility, including undivided or other interests therein, acquired or to be acquired or constructed or to be constructed by the Ohio air quality development authority under this chapter, or acquired or to be acquired or constructed or to be constructed by a governmental agency or person with all or a part of the cost thereof being paid from a loan or grant from the authority under this chapter, including all buildings and facilities that the authority determines necessary for the operation of the project, together with all property, rights, easements, and interests that may be required for the operation of the project.

(I) "Cost" as applied to an air quality project means the cost of acquisition and construction, the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for such acquisition and construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of acquiring or constructing and equipping a principal office and sub-offices of the authority, the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of land or easements for such access roads, the cost of public utility and common carrier relocation or duplication, the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for no more than eighteen months after completion of construction, engineering, expenses of research and development with respect to air quality facilities, legal expenses, plans, specifications, surveys, studies, estimates of cost and revenues, working capital, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing such project, administrative expense, and such other expense as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of air quality revenue bonds to be paid into any special funds from the proceeds of such bonds, and the financing of the placing of such project in operation. Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, preparation of plans and specifications, and other engineering services, or any other cost described

above, in connection with the acquisition or construction of a project may be regarded as a part of the cost of that project and may be reimbursed out of the proceeds of air quality revenue bonds as authorized by this chapter.

(J) "Owner" includes an individual, copartnership, association, or corporation having any title or interest in any property, rights, easements, or interests authorized to be acquired by this chapter.

(K) "Revenues" means all rentals and other charges received by the authority for the use or services of any air quality project, any gift or grant received with respect to any air quality project, any moneys received with respect to the lease, sublease, sale, including installment sale or conditional sale, or other disposition of an air quality project, moneys received in repayment of and for interest on any loans made by the authority to a person or governmental agency, whether from the United States or any department, administration, or agency thereof, or otherwise, proceeds of such bonds to the extent that use thereof for payment of principal of, premium, if any, or interest on the bonds is authorized by the authority, proceeds from any insurance, condemnation, or guaranty pertaining to a project or property mortgaged to secure bonds or pertaining to the financing of the project, and income and profit from the investment of the proceeds of air quality revenue bonds or of any revenues.

(L) "Public roads" includes all public highways, roads, and streets in the state, whether maintained by the state, county, city, township, or other political subdivision.

(M) "Public utility facilities" includes tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility.

(N) "Construction," unless the context indicates a different meaning or intent, includes reconstruction, enlargement, improvement, or providing furnishings or equipment.

(O) "Air quality revenue bonds," unless the context indicates a different meaning or intent, includes air quality revenue notes, air quality revenue renewal notes, and air quality revenue refunding bonds, except that notes issued in anticipation of the issuance of bonds shall have a maximum maturity of five years as provided in section 3706.05 of the Revised Code and notes or renewal notes issued as the definitive obligation may be issued maturing at such time or times with a maximum maturity of forty years from the date of issuance of the original note.

(P) "Solid waste" means any garbage; refuse; sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or

contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but not including solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or byproduct material as defined by the "Atomic Energy Act of 1954," 68 Stat. 921, 42 U.S.C.A. 2011, as amended.

(Q) "Sludge" means any solid, semisolid, or liquid waste, other than a recyclable ~~by-product~~ ~~by-product~~, generated from a municipal, commercial, or industrial waste water treatment plant, water supply plant, or air pollution control facility or any other such wastes having similar characteristics and effects.

(R) "Ethanol or other biofuel facility" means a plant at which ethanol or other biofuel is produced.

(S) "Ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable or biomass resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable or biomass resources, that meets all of the specifications in the American society for testing and materials (ASTM) specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations.

(T) "Biofuel" means any fuel that is made from cellulosic biomass resources, including renewable organic matter, crop waste residue, wood, aquatic plants and other crops, animal waste, solid waste, or sludge, and that is used for the production of energy for transportation or other purposes.

(U) "FutureGen project" means the buildings, equipment, and real property and functionally related buildings, equipment, and real property designated by the United States department of energy and the FutureGen industrial alliance, inc., as the coal-fueled, zero-emissions power plant designed to prove the technical and economic feasibility of producing electricity and hydrogen from coal and nearly eliminating carbon dioxide emissions through capture and permanent storage.

Sec. 3706.101. There is hereby created in the state treasury the FutureGen initiative fund. The fund shall consist of money appropriated to it and money from private donations, grants, gifts, bequests, and other sources. Money in the fund shall be used to make grants for the drilling of a test well

to assist the state's efforts to secure the United States department of energy FutureGen initiative pursuant to section 3706.01 of the Revised Code.

SECTION 2. That existing section 3706.01 of the Revised Code is hereby repealed.

SECTION 3. In amending section 3706.01 of the Revised Code in this act, the General Assembly hereby declares its intent to secure the United States Department of Energy's FutureGen program, the first zero-emissions coal power plant in the world, for the citizens of the state of Ohio for all of the following reasons:

(A) This state meets the essential requirements for the FutureGen project because the state has all of the following:

(1) Deep geological formations, including depleted oil and gas wells and unmineable coal seams, that are suitable and available to sequester carbon dioxide that will be produced in the operation of the FutureGen plant;

(2) The coal feedstock that is essential for the future operation of the FutureGen plant because the state has the seventh largest coal reserves in the country, which are expected to last almost 250 years at present consumption levels;

(3) Markets for the products produced from the operation of the FutureGen plant. The state will use the electricity produced from the plant because the state is the country's fourth largest industrial consumer of energy. In addition, the state will use the hydrogen produced from FutureGen because the state is the home of leaders in fuel cell research and development.

(B) The state is nationally recognized in the area of clean coal research and development and implementation of new clean coal technologies and will contribute that expertise to the program. In addition, the state's long-term vision regarding and commitment to clean coal technology are evidenced by the creation of the Ohio Coal Development Office in 1984 and the investment of over \$173 million in coal research since 1984.

(C) The Ohio Coal Research Consortium is a group of six internationally recognized universities that conduct research in clean coal technologies and will contribute that expertise to the program. The universities are Case Western Reserve University, Ohio University, The Ohio State University, the University of Akron, the University of Cincinnati, and the University of Dayton.

(D) The state has the following infrastructure that is necessary to

support the FutureGen program: an existing permitting process for the timely siting and permitting of the FutureGen plant; an adequate supply of water for the operation of the plant; water, rail, and highway transportation systems for shipping coal to the plant; access to electric transmission lines for the distribution of electricity from the plant; and other infrastructure that will be beneficial to the program.

(E) The state is the home of leading researchers and research facilities that will assist in the program.

(F) The program will create in this state between 150 and 250 new jobs per year over a seven-year period. In addition, construction of the FutureGen plant will create approximately 1,100 jobs in this state over a three-year period.

(G) The program will provide a new zero-emissions baseload power plant for the citizens of this state.

(H) The program will enhance the state's national and international leadership in clean coal technologies.

(I) The program will build on the state's investment in the fuel cell industry.

SECTION 4. That Section 203.27 of Am. Sub. H.B. 66 of the 126th General Assembly be amended to read as follows:

**Sec. 203.27. AIR AIR QUALITY DEVELOPMENT AUTHORITY**

**General Revenue Fund**

<u>GRF 898-401</u>	<u>FutureGen Assistance</u>	\$	0	\$	<u>1,000,000</u>
GRF 898-402	Coal Development Office	\$	568,814	\$	573,814
GRF 898-901	Coal R&D General Obligation Debt Service	\$	7,071,100	\$	8,980,800
TOTAL GRF General Revenue Fund		\$	7,639,914	\$	<u>9,554,614</u>
					<u>10,554,614</u>

**State Special Revenue Fund Group**

<u>5DR 898-606</u>	<u>FutureGen Initiative</u>	\$	0	\$	<u>250,000</u>
<u>TOTAL SSR State Special Revenue Fund Group</u>		\$	0	\$	<u>250,000</u>

**Group**

**Agency Fund Group**

4Z9 898-602	Small Business Ombudsman	\$	263,165	\$	264,196
5A0 898-603	Small Business Assistance	\$	71,087	\$	71,087
570 898-601	Operating Expenses	\$	256,875	\$	263,693
TOTAL AGY Agency Fund Group		\$	591,127	\$	598,976

**Coal Research/Development Fund**

046 898-604	Coal Research and Development Fund	\$	10,000,000	\$	10,000,000
TOTAL 046 Coal Research/Development Fund		\$	10,000,000	\$	10,000,000
TOTAL ALL BUDGET FUND GROUPS		\$	18,231,041	\$	<u>20,153,590</u>
					<u>21,403,590</u>

COAL DEVELOPMENT OFFICE

The foregoing appropriation item GRF 898-402, Coal Development Office, shall be used for the administrative costs of the Coal Development Office.

COAL RESEARCH AND DEVELOPMENT GENERAL OBLIGATION DEBT SERVICE

The foregoing appropriation item GRF 898-901, Coal R & D General Obligation Debt Service, shall be used to pay all debt service and related financing costs at the times they are required to be made under sections 151.01 and 151.07 of the Revised Code during the period from July 1, 2005, to June 30, 2007. The Office of the Sinking Fund or the Director of Budget and Management shall effectuate the required payments by intrastate transfer voucher.

SCIENCE AND TECHNOLOGY COLLABORATION

The Air Quality Development Authority shall work in close collaboration with the Department of Development, the Board of Regents, and the Third Frontier Commission in relation to appropriation items and programs referred to as Alignment Programs in the following paragraph, and other technology-related appropriations and programs in the Department of Development, Air Quality Development Authority, and the Board of Regents as those agencies may designate, to ensure implementation of a coherent state strategy with respect to science and technology.

To the extent permitted by law, the Air Quality Development Authority shall assure that coal research and development programs, proposals, and projects consider or incorporate appropriate collaborations with Third Frontier Project programs and grantees and with Alignment Programs and grantees.

"Alignment Programs" means: appropriation items 195-401, Thomas Edison Program; 898-402, Coal Development Office; 195-422, Third Frontier Action Fund; 898-604, Coal Research and Development Fund; 235-433, Economic Growth Challenge; 235-508, Air Force Institute of Technology; 235-510, Ohio Supercomputer Center; 235-451, Eminent Scholars; 235-527, Ohio Aerospace Institute; 235-535, Ohio Agricultural Research and Development Center; 235-553, Dayton Area Graduate Studies Institute; 235-554, Priorities in Collaborative Graduate Education; 235-556, Ohio Academic Resources Network; and 195-435, Biomedical Research and Technology Transfer Trust.

Consistent with the recommendations of the Governor's Commission on Higher Education and the Economy, Alignment Programs shall be managed and administered (1) to build on existing competitive research strengths, (2)

to encourage new and emerging discoveries and commercialization of ideas and products that will benefit the Ohio economy, and (3) to assure improved collaboration among Alignment Programs, with programs administered by the Third Frontier Commission, and with other state programs that are intended to improve economic growth and job creation.

As directed by the Third Frontier Commission, Alignment Program managers shall report to the Commission or to the Third Frontier Advisory Board on the contributions of their programs to achieving the objectives stated in the preceding paragraph.

Each alignment program shall be reviewed annually by the Third Frontier Commission with respect to its development of complementary relationships within a combined state science and technology investment portfolio and its overall contribution to the state's science and technology strategy, including the adoption of appropriately consistent criteria for: (1) the scientific merit of activities supported by the program; (2) the relevance of the program's activities to commercial opportunities in the private sector; (3) the private sector's involvement in a process that continually evaluates commercial opportunities to use the work supported by the program; and (4) the ability of the program and recipients of grant funding from the program to engage in activities that are collaborative, complementary, and efficient with respect to the expenditure of state funds. Each alignment program shall provide annual reports to the Third Frontier Commission discussing existing, planned, or possible collaborations between programs and recipients of grant funding related to technology, development, commercialization, and supporting Ohio's economic development. The annual review by the Third Frontier Commission shall be a comprehensive review of the entire state science and technology program portfolio rather than a review of individual programs.

Applicants for Third Frontier and Alignment Program funding shall identify their requirements for high-performance computing facilities and services, including both hardware and software, in all proposals. If an applicant's requirements exceed approximately \$100,000 for a proposal, the Ohio Supercomputer Center shall convene a panel of experts. The panel shall review the proposal to determine whether the proposal's requirements can be met through Ohio Supercomputer Center facilities or through other means and report its conclusion to the Third Frontier Commission.

To ensure that the state receives the maximum benefit from its investment in the Third Frontier Project and the Third Frontier Network, organizations receiving Third Frontier awards and Alignment Program awards shall, as appropriate, be expected to have a connection to the Third

Frontier Network that enables them and their collaborators to achieve award objectives through the Third Frontier Network.

FUTUREGEN ASSISTANCE

The foregoing appropriation item GRF 898-401, FutureGen Assistance, shall be used to make grants for the drilling of a test well to assist the state's efforts to secure the United States Department of Energy FutureGen Initiative pursuant to section 3706.01 of the Revised Code, as amended by this act.

FUTUREGEN INITIATIVE

The foregoing appropriation item 5DR 898-606, FutureGen Initiative, shall be used to make grants for the drilling of a test well to assist the state's efforts to secure the United States Department of Energy FutureGen Initiative pursuant to section 3706.01 of the Revised Code, as amended by this act.

SECTION 5. That existing Section 203.27 of Am. Sub. H.B. 66 of the 126th General Assembly is hereby repealed.

SECTION 6. Within the limits set forth in Sections 4 and 5 of this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in those sections and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in those sections shall be accounted for as though made in Am. Sub. H.B. 66 of the 126th General Assembly.

The appropriations made in those sections are subject to all provisions of Am. Sub. H.B. 66 of the 126th General Assembly that are generally applicable to the appropriations made in that act.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_