

As Passed by the House

**126th General Assembly
Regular Session
2005-2006**

H. B. No. 440

**Representatives Stewart, J., Martin, McGregor, J., Ujvagi, Yuko, Reinhard,
Seitz, Uecker, Blasdel, Evans, C., Garrison, Hood, Reidelbach, Hagan,
Brinkman, Blessing, Sayre, Bubp, Collier, Aslanides, Brown, Cassell,
Chandler, Combs, DeBose, Domenick, Fende, Harwood, Hughes, Law,
Otterman, Raussen, Schaffer, Strahorn, Taylor, Trakas, Wagner, Wolpert,
Barrett, Boccieri, Book, Buehrer, Calvert, Carano, Carmichael, Coley, Core,
Daniels, Distel, Dolan, Driehaus, Evans, D., Faber, Flowers, Gibbs, Gilb,
Hartnett, Healy, Key, Latta, Mason, McGregor, R., Miller, Mitchell, Oelslager,
Patton, S., Patton, T., Perry, Peterson, Raga, Schlichter, Setzer, Smith, G.,
Stewart, D., Wagoner, Webster, White, Widener, Willamowski, Williams,
Woodard, Yates, Beatty**

—

A B I L L

To amend section 3706.01 of the Revised Code to 1
revise the definition of "air quality facility" 2
under the Air Quality Development Authority Law. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3706.01 of the Revised Code be 4
amended to read as follows: 5

Sec. 3706.01. As used in this chapter: 6

(A) "Governmental agency" means a department, division, or 7
other unit of state government, a municipal corporation, county, 8
township, and other political subdivision, or any other public 9

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 40
with, and any equipment used for motor vehicle inspections 41
conducted under, section 3704.14 of the Revised Code and rules 42
adopted under it; 43

(3) Ethanol or other biofuel facilities, including any 44
equipment used at the ethanol or other biofuel facility for the 45
production of ethanol or other biofuels; 46

(4) Any property or portion thereof used for the collection, 47
storage, treatment, utilization, processing, or final disposal of 48
a by-product or solid waste resulting from any method, process, 49
device, structure, or equipment that removes, reduces, prevents, 50
contains, alters, conveys, stores, disperses, or disposes of air 51
contaminants, or that renders less noxious or reduces the 52
concentration of air contaminants in the ambient air; 53

(5) Any property, device, or equipment that promotes the 54
reduction of emissions of air contaminants into the ambient air 55
through improvements in the efficiency of energy utilization or 56
energy conservation; 57

(6) Any coal research and development project conducted under 58
Chapter 1555. of the Revised Code; 59

(7) Any property or portion thereof used for the collection, 60
storage, treatment, utilization, processing, or final disposal of 61
a by-product resulting from a coal research and development 62
project as defined in section 1555.01 of the Revised Code or from 63
the use of clean coal technology; 64

(8) Any property or portion thereof that is part of the 65
FutureGen project of the United States department of energy or 66
related to the siting of the project. 67

"Air quality facility" further includes any property or 68
system to be used in whole or in part for any of the purposes in 69

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.

70
71
72
73
74
75
76
77
78

(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.

79
80
81
82
83
84
85
86
87
88
89

(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

90
91
92
93
94
95
96
97
98
99
100
101

duplication, the cost of all machinery, furnishings, and 102
equipment, financing charges, interest prior to and during 103
construction and for no more than eighteen months after completion 104
of construction, engineering, expenses of research and development 105
with respect to air quality facilities, legal expenses, plans, 106
specifications, surveys, studies, estimates of cost and revenues, 107
working capital, other expenses necessary or incident to 108
determining the feasibility or practicability of acquiring or 109
constructing such project, administrative expense, and such other 110
expense as may be necessary or incident to the acquisition or 111
construction of the project, the financing of such acquisition or 112
construction, including the amount authorized in the resolution of 113
the authority providing for the issuance of air quality revenue 114
bonds to be paid into any special funds from the proceeds of such 115
bonds, and the financing of the placing of such project in 116
operation. Any obligation, cost, or expense incurred by any 117
governmental agency or person for surveys, borings, preparation of 118
plans and specifications, and other engineering services, or any 119
other cost described above, in connection with the acquisition or 120
construction of a project may be regarded as a part of the cost of 121
that project and may be reimbursed out of the proceeds of air 122
quality revenue bonds as authorized by this chapter. 123

(J) "Owner" includes an individual, copartnership, 124
association, or corporation having any title or interest in any 125
property, rights, easements, or interests authorized to be 126
acquired by this chapter. 127

(K) "Revenues" means all rentals and other charges received 128
by the authority for the use or services of any air quality 129
project, any gift or grant received with respect to any air 130
quality project, any moneys received with respect to the lease, 131
sublease, sale, including installment sale or conditional sale, or 132
other disposition of an air quality project, moneys received in 133

repayment of and for interest on any loans made by the authority 134
to a person or governmental agency, whether from the United States 135
or any department, administration, or agency thereof, or 136
otherwise, proceeds of such bonds to the extent that use thereof 137
for payment of principal of, premium, if any, or interest on the 138
bonds is authorized by the authority, proceeds from any insurance, 139
condemnation, or guaranty pertaining to a project or property 140
mortgaged to secure bonds or pertaining to the financing of the 141
project, and income and profit from the investment of the proceeds 142
of air quality revenue bonds or of any revenues. 143

(L) "Public roads" includes all public highways, roads, and 144
streets in the state, whether maintained by the state, county, 145
city, township, or other political subdivision. 146

(M) "Public utility facilities" includes tracks, pipes, 147
mains, conduits, cables, wires, towers, poles, and other equipment 148
and appliances of any public utility. 149

(N) "Construction," unless the context indicates a different 150
meaning or intent, includes reconstruction, enlargement, 151
improvement, or providing furnishings or equipment. 152

(O) "Air quality revenue bonds," unless the context indicates 153
a different meaning or intent, includes air quality revenue notes, 154
air quality revenue renewal notes, and air quality revenue 155
refunding bonds, except that notes issued in anticipation of the 156
issuance of bonds shall have a maximum maturity of five years as 157
provided in section 3706.05 of the Revised Code and notes or 158
renewal notes issued as the definitive obligation may be issued 159
maturing at such time or times with a maximum maturity of forty 160
years from the date of issuance of the original note. 161

(P) "Solid waste" means any garbage; refuse; sludge from a 162
waste water treatment plant, water supply treatment plant, or air 163
pollution control facility; and other discarded material, 164

including solid, liquid, semisolid, or contained gaseous material 165
resulting from industrial, commercial, mining, and agricultural 166
operations, and from community activities, but not including solid 167
or dissolved material in domestic sewage, or solid or dissolved 168
material in irrigation return flows or industrial discharges that 169
are point sources subject to permits under section 402 of the 170
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 171
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 172
byproduct material as defined by the "Atomic Energy Act of 1954," 173
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 174

(Q) "Sludge" means any solid, semisolid, or liquid waste, 175
other than a recyclable ~~byproduct~~ by-product, generated from a 176
municipal, commercial, or industrial waste water treatment plant, 177
water supply plant, or air pollution control facility or any other 178
such wastes having similar characteristics and effects. 179

(R) "Ethanol or other biofuel facility" means a plant at 180
which ethanol or other biofuel is produced. 181

(S) "Ethanol" means fermentation ethyl alcohol derived from 182
agricultural products, including potatoes, cereal, grains, cheese 183
whey, and sugar beets; forest products; or other renewable or 184
biomass resources, including residue and waste generated from the 185
production, processing, and marketing of agricultural products, 186
forest products, and other renewable or biomass resources, that 187
meets all of the specifications in the American society for 188
testing and materials (ASTM) specification D 4806-88 and is 189
denatured as specified in Parts 20 and 21 of Title 27 of the Code 190
of Federal Regulations. 191

(T) "Biofuel" means any fuel that is made from cellulosic 192
biomass resources, including renewable organic matter, crop waste 193
residue, wood, aquatic plants and other crops, animal waste, solid 194
waste, or sludge, and that is used for the production of energy 195

for transportation or other purposes.

196

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

197

198

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:

199

200

201

202

203

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

204

205

(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;

206

207

208

209

(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;

210

211

212

213

(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.

214

215

216

217

218

219

(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

220

221

222

223

224

225

million in coal research since 1984. 226

(C) The Ohio Coal Research Consortium is a group of six 227
internationally recognized universities that conduct research in 228
clean coal technologies and will contribute that expertise to the 229
program. The universities are Case Western Reserve University, 230
Ohio University, The Ohio State University, the University of 231
Akron, the University of Cincinnati, and the University of Dayton. 232

(D) The state has the following infrastructure that is 233
necessary to support the FutureGen program: an existing permitting 234
process for the timely siting and permitting of the FutureGen 235
plant; an adequate supply of water for the operation of the plant; 236
water, rail, and highway transportation systems for shipping coal 237
to the plant; access to electric transmission lines for the 238
distribution of electricity from the plant; and other 239
infrastructure that will be beneficial to the program. 240

(E) The state is the home of leading researchers and research 241
facilities that will assist in the program. 242

(F) The program will create in this state between 150 and 250 243
new jobs per year over a seven-year period. In addition, 244
construction of the FutureGen plant will create approximately 245
1,100 jobs in this state over a three-year period. 246

(G) The program will provide a new zero-emissions baseload 247
power plant for the citizens of this state. 248

(H) The program will enhance the state's national and 249
international leadership in clean coal technologies. 250

(I) The program will build on the state's investment in the 251
fuel cell industry. 252