

As Passed by the Senate

126th General Assembly

Regular Session

2005-2006

Sub. 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

Senators Carey, Spada, Hottinger, Niehaus, Hagan, Fedor, Mumper, Amstutz, Armbruster, Dann, Fingerhut, Harris, Kearney, Miller, R., Padgett, Roberts, Schuring, Schuler, Wilson, Zurz, Coughlin, Cates, Goodman

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A B I L L

To amend section 3706.01 and to enact section 1
3706.101 of the Revised Code and to amend Section 2
203.27 of Am. Sub. H.B. 66 of the 126th General 3
Assembly to revise the definition of "air quality 4
facility" under the Air Quality Development 5
Authority Law, to create the FutureGen Initiative 6
Fund, and to make an appropriation. 7

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

Section 1. That section 3706.01 be amended and section 8
3706.101 of the Revised Code be enacted to read as follows: 9

Sec. 3706.01. As used in this chapter: 10

(A) "Governmental agency" means a department, division, or 11
other unit of state government, a municipal corporation, county, 12
township, and other political subdivision, or any other public 13
corporation or agency having the power to acquire, construct, or 14
operate air quality facilities, the United States or any agency 15
thereof, and any agency, commission, or authority established 16
pursuant to an interstate compact or agreement. 17

(B) "Person" means any individual, firm, partnership, 18
association, or corporation, or any combination thereof. 19

(C) "Air contaminant" means particulate matter, dust, fumes, 20
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 21
odorous substance, or any combination thereof. 22

(D) "Air pollution" means the presence in the ambient air of 23
one or more air contaminants in sufficient quantity and of such 24
characteristics and duration as to injure human health or welfare, 25
plant or animal life, or property, or that unreasonably interferes 26
with the comfortable enjoyment of life or property. 27

(E) "Ambient air" means that portion of the atmosphere 28
outside of buildings and other enclosures, stacks, or ducts that 29
surrounds human, plant, or animal life, or property. 30

(F) "Emission" means the release into the outdoor atmosphere 31
of an air contaminant. 32

(G) "Air quality facility" means any of the following: 33

(1) Any method, modification or replacement of property, 34
process, device, structure, or equipment that removes, reduces, 35
prevents, contains, alters, conveys, stores, disperses, or 36

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;

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(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.

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"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.

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(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.

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(I) "Cost" as applied to an air quality project means the
cost of acquisition and construction, the cost of acquisition of

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all land, rights-of-way, property rights, easements, franchise 99
rights, and interests required for such acquisition and 100
construction, the cost of demolishing or removing any buildings or 101
structures on land so acquired, including the cost of acquiring 102
any lands to which such buildings or structures may be moved, the 103
cost of acquiring or constructing and equipping a principal office 104
and sub-offices of the authority, the cost of diverting highways, 105
interchange of highways, and access roads to private property, 106
including the cost of land or easements for such access roads, the 107
cost of public utility and common carrier relocation or 108
duplication, the cost of all machinery, furnishings, and 109
equipment, financing charges, interest prior to and during 110
construction and for no more than eighteen months after completion 111
of construction, engineering, expenses of research and development 112
with respect to air quality facilities, legal expenses, plans, 113
specifications, surveys, studies, estimates of cost and revenues, 114
working capital, other expenses necessary or incident to 115
determining the feasibility or practicability of acquiring or 116
constructing such project, administrative expense, and such other 117
expense as may be necessary or incident to the acquisition or 118
construction of the project, the financing of such acquisition or 119
construction, including the amount authorized in the resolution of 120
the authority providing for the issuance of air quality revenue 121
bonds to be paid into any special funds from the proceeds of such 122
bonds, and the financing of the placing of such project in 123
operation. Any obligation, cost, or expense incurred by any 124
governmental agency or person for surveys, borings, preparation of 125
plans and specifications, and other engineering services, or any 126
other cost described above, in connection with the acquisition or 127
construction of a project may be regarded as a part of the cost of 128
that project and may be reimbursed out of the proceeds of air 129
quality revenue bonds as authorized by this chapter. 130

(J) "Owner" includes an individual, copartnership, 131
association, or corporation having any title or interest in any 132
property, rights, easements, or interests authorized to be 133
acquired by this chapter. 134

(K) "Revenues" means all rentals and other charges received 135
by the authority for the use or services of any air quality 136
project, any gift or grant received with respect to any air 137
quality project, any moneys received with respect to the lease, 138
sublease, sale, including installment sale or conditional sale, or 139
other disposition of an air quality project, moneys received in 140
repayment of and for interest on any loans made by the authority 141
to a person or governmental agency, whether from the United States 142
or any department, administration, or agency thereof, or 143
otherwise, proceeds of such bonds to the extent that use thereof 144
for payment of principal of, premium, if any, or interest on the 145
bonds is authorized by the authority, proceeds from any insurance, 146
condemnation, or guaranty pertaining to a project or property 147
mortgaged to secure bonds or pertaining to the financing of the 148
project, and income and profit from the investment of the proceeds 149
of air quality revenue bonds or of any revenues. 150

(L) "Public roads" includes all public highways, roads, and 151
streets in the state, whether maintained by the state, county, 152
city, township, or other political subdivision. 153

(M) "Public utility facilities" includes tracks, pipes, 154
mains, conduits, cables, wires, towers, poles, and other equipment 155
and appliances of any public utility. 156

(N) "Construction," unless the context indicates a different 157
meaning or intent, includes reconstruction, enlargement, 158
improvement, or providing furnishings or equipment. 159

(O) "Air quality revenue bonds," unless the context indicates 160
a different meaning or intent, includes air quality revenue notes, 161

air quality revenue renewal notes, and air quality revenue 162
refunding bonds, except that notes issued in anticipation of the 163
issuance of bonds shall have a maximum maturity of five years as 164
provided in section 3706.05 of the Revised Code and notes or 165
renewal notes issued as the definitive obligation may be issued 166
maturing at such time or times with a maximum maturity of forty 167
years from the date of issuance of the original note. 168

(P) "Solid waste" means any garbage; refuse; sludge from a 169
waste water treatment plant, water supply treatment plant, or air 170
pollution control facility; and other discarded material, 171
including solid, liquid, semisolid, or contained gaseous material 172
resulting from industrial, commercial, mining, and agricultural 173
operations, and from community activities, but not including solid 174
or dissolved material in domestic sewage, or solid or dissolved 175
material in irrigation return flows or industrial discharges that 176
are point sources subject to permits under section 402 of the 177
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 178
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 179
byproduct material as defined by the "Atomic Energy Act of 1954," 180
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 181

(Q) "Sludge" means any solid, semisolid, or liquid waste, 182
other than a recyclable ~~by-product~~ by-product, generated from a 183
municipal, commercial, or industrial waste water treatment plant, 184
water supply plant, or air pollution control facility or any other 185
such wastes having similar characteristics and effects. 186

(R) "Ethanol or other biofuel facility" means a plant at 187
which ethanol or other biofuel is produced. 188

(S) "Ethanol" means fermentation ethyl alcohol derived from 189
agricultural products, including potatoes, cereal, grains, cheese 190
whey, and sugar beets; forest products; or other renewable or 191
biomass resources, including residue and waste generated from the 192

production, processing, and marketing of agricultural products, 193
forest products, and other renewable or biomass resources, that 194
meets all of the specifications in the American society for 195
testing and materials (ASTM) specification D 4806-88 and is 196
denatured as specified in Parts 20 and 21 of Title 27 of the Code 197
of Federal Regulations. 198

(T) "Biofuel" means any fuel that is made from cellulosic 199
biomass resources, including renewable organic matter, crop waste 200
residue, wood, aquatic plants and other crops, animal waste, solid 201
waste, or sludge, and that is used for the production of energy 202
for transportation or other purposes. 203

(U) "FutureGen project" means the buildings, equipment, and 204
real property and functionally related buildings, equipment, and 205
real property designated by the United States department of energy 206
and the FutureGen industrial alliance, inc., as the coal-fueled, 207
zero-emissions power plant designed to prove the technical and 208
economic feasibility of producing electricity and hydrogen from 209
coal and nearly eliminating carbon dioxide emissions through 210
capture and permanent storage. 211

Sec. 3706.101. There is hereby created in the state treasury 212
the FutureGen initiative fund. The fund shall consist of money 213
appropriated to it and money from private donations, grants, 214
gifts, bequests, and other sources. Money in the fund shall be 215
used to make grants for the drilling of a test well to assist the 216
state's efforts to secure the United States department of energy 217
FutureGen initiative pursuant to section 3706.01 of the Revised 218
Code. 219

Section 2. That existing section 3706.01 of the Revised Code 220
is hereby repealed. 221

Section 3. In amending section 3706.01 of the Revised Code in 222
this act, the General Assembly hereby declares its intent to 223
secure the United States Department of Energy's FutureGen program, 224
the first zero-emissions coal power plant in the world, for the 225
citizens of the state of Ohio for all of the following reasons: 226

(A) This state meets the essential requirements for the 227
FutureGen project because the state has all of the following: 228

(1) Deep geological formations, including depleted oil and 229
gas wells and unmineable coal seams, that are suitable and 230
available to sequester carbon dioxide that will be produced in the 231
operation of the FutureGen plant; 232

(2) The coal feedstock that is essential for the future 233
operation of the FutureGen plant because the state has the seventh 234
largest coal reserves in the country, which are expected to last 235
almost 250 years at present consumption levels; 236

(3) Markets for the products produced from the operation of 237
the FutureGen plant. The state will use the electricity produced 238
from the plant because the state is the country's fourth largest 239
industrial consumer of energy. In addition, the state will use the 240
hydrogen produced from FutureGen because the state is the home of 241
leaders in fuel cell research and development. 242

(B) The state is nationally recognized in the area of clean 243
coal research and development and implementation of new clean coal 244
technologies and will contribute that expertise to the program. In 245
addition, the state's long-term vision regarding and commitment to 246
clean coal technology are evidenced by the creation of the Ohio 247
Coal Development Office in 1984 and the investment of over \$173 248
million in coal research since 1984. 249

(C) The Ohio Coal Research Consortium is a group of six 250
internationally recognized universities that conduct research in 251
clean coal technologies and will contribute that expertise to the 252

program. The universities are Case Western Reserve University, 253
Ohio University, The Ohio State University, the University of 254
Akron, the University of Cincinnati, and the University of Dayton. 255

(D) The state has the following infrastructure that is 256
necessary to support the FutureGen program: an existing permitting 257
process for the timely siting and permitting of the FutureGen 258
plant; an adequate supply of water for the operation of the plant; 259
water, rail, and highway transportation systems for shipping coal 260
to the plant; access to electric transmission lines for the 261
distribution of electricity from the plant; and other 262
infrastructure that will be beneficial to the program. 263

(E) The state is the home of leading researchers and research 264
facilities that will assist in the program. 265

(F) The program will create in this state between 150 and 250 266
new jobs per year over a seven-year period. In addition, 267
construction of the FutureGen plant will create approximately 268
1,100 jobs in this state over a three-year period. 269

(G) The program will provide a new zero-emissions baseload 270
power plant for the citizens of this state. 271

(H) The program will enhance the state's national and 272
international leadership in clean coal technologies. 273

(I) The program will build on the state's investment in the 274
fuel cell industry. 275

Section 4. That Section 203.27 of Am. Sub. H.B. 66 of the 276
126th General Assembly be amended to read as follows: 277

Sec. 203.27. AIR AIR QUALITY DEVELOPMENT AUTHORITY 278

General Revenue Fund 279

GRF 898-401 FutureGen Assistance \$ 0 \$ 1,000,000 280

GRF 898-402 Coal Development \$ 568,814 \$ 573,814 281

	Office				
GRF 898-901	Coal R&D General	\$	7,071,100	\$	8,980,800
	Obligation Debt				282
	Service				
TOTAL GRF	General Revenue Fund	\$	7,639,914	\$	9,554,614
					<u>10,554,614</u>
	<u>State Special Revenue Fund Group</u>				284
5DR 898-606	FutureGen Initiative	\$	0	\$	<u>250,000</u>
TOTAL SSR	State Special Revenue	\$	0	\$	<u>250,000</u>
	<u>Fund Group</u>				
	Agency Fund Group				287
4Z9 898-602	Small Business	\$	263,165	\$	264,196
	Ombudsman				288
5A0 898-603	Small Business	\$	71,087	\$	71,087
	Assistance				289
570 898-601	Operating Expenses	\$	256,875	\$	263,693
TOTAL AGY	Agency Fund Group	\$	591,127	\$	598,976
	Coal Research/Development Fund				292
046 898-604	Coal Research and	\$	10,000,000	\$	10,000,000
	Development Fund				293
TOTAL 046	Coal	\$	10,000,000	\$	10,000,000
	Research/Development Fund				294
TOTAL ALL BUDGET FUND GROUPS		\$	18,231,041	\$	20,153,590
					<u>21,403,590</u>
	COAL DEVELOPMENT OFFICE				296
	The foregoing appropriation item GRF 898-402, Coal				297
	Development Office, shall be used for the administrative costs of				298
	the Coal Development Office.				299
	COAL RESEARCH AND DEVELOPMENT GENERAL OBLIGATION DEBT SERVICE				300
	The foregoing appropriation item GRF 898-901, Coal R & D				301
	General Obligation Debt Service, shall be used to pay all debt				302

service and related financing costs at the times they are required 303
to be made under sections 151.01 and 151.07 of the Revised Code 304
during the period from July 1, 2005, to June 30, 2007. The Office 305
of the Sinking Fund or the Director of Budget and Management shall 306
effectuate the required payments by intrastate transfer voucher. 307

SCIENCE AND TECHNOLOGY COLLABORATION 308

The Air Quality Development Authority shall work in close 309
collaboration with the Department of Development, the Board of 310
Regents, and the Third Frontier Commission in relation to 311
appropriation items and programs referred to as Alignment Programs 312
in the following paragraph, and other technology-related 313
appropriations and programs in the Department of Development, Air 314
Quality Development Authority, and the Board of Regents as those 315
agencies may designate, to ensure implementation of a coherent 316
state strategy with respect to science and technology. 317

To the extent permitted by law, the Air Quality Development 318
Authority shall assure that coal research and development 319
programs, proposals, and projects consider or incorporate 320
appropriate collaborations with Third Frontier Project programs 321
and grantees and with Alignment Programs and grantees. 322

"Alignment Programs" means: appropriation items 195-401, 323
Thomas Edison Program; 898-402, Coal Development Office; 195-422, 324
Third Frontier Action Fund; 898-604, Coal Research and Development 325
Fund; 235-433, Economic Growth Challenge; 235-508, Air Force 326
Institute of Technology; 235-510, Ohio Supercomputer Center; 327
235-451, Eminent Scholars; 235-527, Ohio Aerospace Institute; 328
235-535, Ohio Agricultural Research and Development Center; 329
235-553, Dayton Area Graduate Studies Institute; 235-554, 330
Priorities in Collaborative Graduate Education; 235-556, Ohio 331
Academic Resources Network; and 195-435, Biomedical Research and 332
Technology Transfer Trust. 333

Consistent with the recommendations of the Governor's 334
Commission on Higher Education and the Economy, Alignment Programs 335
shall be managed and administered (1) to build on existing 336
competitive research strengths, (2) to encourage new and emerging 337
discoveries and commercialization of ideas and products that will 338
benefit the Ohio economy, and (3) to assure improved collaboration 339
among Alignment Programs, with programs administered by the Third 340
Frontier Commission, and with other state programs that are 341
intended to improve economic growth and job creation. 342

As directed by the Third Frontier Commission, Alignment 343
Program managers shall report to the Commission or to the Third 344
Frontier Advisory Board on the contributions of their programs to 345
achieving the objectives stated in the preceding paragraph. 346

Each alignment program shall be reviewed annually by the 347
Third Frontier Commission with respect to its development of 348
complementary relationships within a combined state science and 349
technology investment portfolio and its overall contribution to 350
the state's science and technology strategy, including the 351
adoption of appropriately consistent criteria for: (1) the 352
scientific merit of activities supported by the program; (2) the 353
relevance of the program's activities to commercial opportunities 354
in the private sector; (3) the private sector's involvement in a 355
process that continually evaluates commercial opportunities to use 356
the work supported by the program; and (4) the ability of the 357
program and recipients of grant funding from the program to engage 358
in activities that are collaborative, complementary, and efficient 359
with respect to the expenditure of state funds. Each alignment 360
program shall provide annual reports to the Third Frontier 361
Commission discussing existing, planned, or possible 362
collaborations between programs and recipients of grant funding 363
related to technology, development, commercialization, and 364
supporting Ohio's economic development. The annual review by the 365

Third Frontier Commission shall be a comprehensive review of the 366
entire state science and technology program portfolio rather than 367
a review of individual programs. 368

Applicants for Third Frontier and Alignment Program funding 369
shall identify their requirements for high-performance computing 370
facilities and services, including both hardware and software, in 371
all proposals. If an applicant's requirements exceed approximately 372
\$100,000 for a proposal, the Ohio Supercomputer Center shall 373
convene a panel of experts. The panel shall review the proposal to 374
determine whether the proposal's requirements can be met through 375
Ohio Supercomputer Center facilities or through other means and 376
report its conclusion to the Third Frontier Commission. 377

To ensure that the state receives the maximum benefit from 378
its investment in the Third Frontier Project and the Third 379
Frontier Network, organizations receiving Third Frontier awards 380
and Alignment Program awards shall, as appropriate, be expected to 381
have a connection to the Third Frontier Network that enables them 382
and their collaborators to achieve award objectives through the 383
Third Frontier Network. 384

FUTUREGEN ASSISTANCE 385

The foregoing appropriation item GRF 898-401, FutureGen 386
Assistance, shall be used to make grants for the drilling of a 387
test well to assist the state's efforts to secure the United 388
States Department of Energy FutureGen Initiative pursuant to 389
section 3706.01 of the Revised Code, as amended by this act. 390

FUTUREGEN INITIATIVE 391

The foregoing appropriation item 5DR 898-606, FutureGen 392
Initiative, shall be used to make grants for the drilling of a 393
test well to assist the state's efforts to secure the United 394
States Department of Energy FutureGen Initiative pursuant to 395
section 3706.01 of the Revised Code, as amended by this act. 396

Section 5. That existing Section 203.27 of Am. Sub. H.B. 66 397
of the 126th General Assembly is hereby repealed. 398

Section 6. Within the limits set forth in Sections 4 and 5 of 399
this act, the Director of Budget and Management shall establish 400
accounts indicating the source and amount of funds for each 401
appropriation made in those sections and shall determine the form 402
and manner in which appropriation accounts shall be maintained. 403
Expenditures from appropriations contained in those sections shall 404
be accounted for as though made in Am. Sub. H.B. 66 of the 126th 405
General Assembly. 406

The appropriations made in those sections are subject to all 407
provisions of Am. Sub. H.B. 66 of the 126th General Assembly that 408
are generally applicable to the appropriations made in that act. 409