

**As Reported by the Senate Environment and Natural Resources  
Committee**

**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, Bupp, Collier, Aslanides, Brown, Cassell,  
Chandler, Combs, DeBose, Domenick, Fende, Harwood, Hughes, Law,  
Otterman, Raussen, Schaffer, Strahorn, Taylor, Trakas, Wagner, Wolpert,  
Barrett, Bocchieri, 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**

**—**

**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 37  
contaminants, or that renders less noxious or reduces the 38

concentration of air contaminants in the ambient air, including, 39  
without limitation, facilities and expenditures that qualify as 40  
air pollution control facilities under section 103 (C)(4)(F) of 41  
the Internal Revenue Code of 1954, as amended, and regulations 42  
adopted thereunder; 43

(2) Motor vehicle inspection stations operated in accordance 44  
with, and any equipment used for motor vehicle inspections 45  
conducted under, section 3704.14 of the Revised Code and rules 46  
adopted under it; 47

(3) Ethanol or other biofuel facilities, including any 48  
equipment used at the ethanol or other biofuel facility for the 49  
production of ethanol or other biofuels; 50

(4) Any property or portion thereof used for the collection, 51  
storage, treatment, utilization, processing, or final disposal of 52  
a by-product or solid waste resulting from any method, process, 53  
device, structure, or equipment that removes, reduces, prevents, 54  
contains, alters, conveys, stores, disperses, or disposes of air 55  
contaminants, or that renders less noxious or reduces the 56  
concentration of air contaminants in the ambient air; 57

(5) Any property, device, or equipment that promotes the 58  
reduction of emissions of air contaminants into the ambient air 59  
through improvements in the efficiency of energy utilization or 60  
energy conservation; 61

(6) Any coal research and development project conducted under 62  
Chapter 1555. of the Revised Code; 63

(7) As determined by the director of the Ohio coal 64  
development office, any property or portion thereof that is used 65  
for the collection, storage, treatment, utilization, processing, 66  
or final disposal of a by-product resulting from a coal research 67  
and development project as defined in section 1555.01 of the 68  
Revised Code or from the use of clean coal technology, excluding 69

any property or portion thereof that is used primarily for other 70  
subsequent commercial purposes; 71

(8) Any property or portion thereof that is part of the 72  
FutureGen project of the United States department of energy or 73  
related to the siting of the FutureGen project. 74

"Air quality facility" further includes any property or 75  
system to be used in whole or in part for any of the purposes in 76  
divisions (G)(1) to ~~(5)~~(8) of this section, whether another 77  
purpose is also served, and any property or system incidental to 78  
or that has to do with, or the end purpose of which is, any of the 79  
foregoing. Air quality facilities that are defined in this 80  
division for industry, commerce, distribution, or research, 81  
including public utility companies, are hereby determined to be 82  
those that qualify as facilities for the control of air pollution 83  
and thermal pollution related to air under Section 13 of Article 84  
VIII, Ohio Constitution. 85

(H) "Project" or "air quality project" means any air quality 86  
facility, including undivided or other interests therein, acquired 87  
or to be acquired or constructed or to be constructed by the Ohio 88  
air quality development authority under this chapter, or acquired 89  
or to be acquired or constructed or to be constructed by a 90  
governmental agency or person with all or a part of the cost 91  
thereof being paid from a loan or grant from the authority under 92  
this chapter, including all buildings and facilities that the 93  
authority determines necessary for the operation of the project, 94  
together with all property, rights, easements, and interests that 95  
may be required for the operation of the project. 96

(I) "Cost" as applied to an air quality project means the 97  
cost of acquisition and construction, the cost of acquisition of 98  
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  
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 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  
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 ~~byproduct~~ 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 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	<u>FutureGen Assistance</u>	\$	0	\$	<u>1,000,000</u>	280
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GRF 898-402	Coal Development	\$	568,814	\$	573,814	281
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Office

GRF 898-901	Coal R&D General	\$	7,071,100	\$	8,980,800	282
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Obligation Debt			
Service			
TOTAL GRF General Revenue Fund	\$	7,639,914	\$ 9,554,614 283
			<u>10,554,614</u>
<u>State Special Revenue Fund Group</u> 284			
5DR 898-606 FutureGen Initiative	\$	0	\$ 250,000 285
TOTAL SSR State Special Revenue	\$	0	\$ 250,000 286
<u>Fund Group</u>			
Agency Fund Group 287			
4Z9 898-602 Small Business	\$	263,165	\$ 264,196 288
Ombudsman			
5A0 898-603 Small Business	\$	71,087	\$ 71,087 289
Assistance			
570 898-601 Operating Expenses	\$	256,875	\$ 263,693 290
TOTAL AGY Agency Fund Group	\$	591,127	\$ 598,976 291
Coal Research/Development Fund 292			
046 898-604 Coal Research and	\$	10,000,000	\$ 10,000,000 293
Development Fund			
TOTAL 046 Coal	\$	10,000,000	\$ 10,000,000 294
Research/Development Fund			
TOTAL ALL BUDGET FUND GROUPS	\$	18,231,041	\$ <del>20,153,590</del> 295
			<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