

Environmental Review Appeals Commission

Ann Braam, Budget Analyst

- Due to newly effective federal regulations, EBR's caseload is becoming more complex and time-consuming
- EBR faces equipment upgrade costs this biennium

OVERVIEW

Duties and Responsibilities

The Environmental Review Appeals Commission (EBR) is an appellate review board whose primary statutory duty is to hear and resolve appeals from certain legal actions taken by state and local governmental entities, including the Ohio Environmental Protection Agency (EPA), the State Fire Marshal, the State Emergency Response Commission, the Department of Agriculture, and county and local boards of health. The majority of cases heard by EBR relate to final actions of the Ohio EPA.

The Commission's office consists of five individuals: three board members appointed by the Governor, one executive secretary who also serves as liaison and fiscal, personnel, and administrative officer, and one clerical support person. Board members serve staggered six-year terms and receive a salary that is set by the Governor. One Commission member's term will expire during this biennium.

The Environmental Review Appeals Commission is funded entirely by General Revenue Fund (GRF) dollars. The Environmental Review Appeals Commission conducts all hearings itself, and all decisions are researched and written by Commission members. Commission staff also process and handle all of the Commission's normal administrative functions. With the exception of office supplies, all expenses of the Commission are required by statute or are fixed by contract.

In the last several years, the Environmental Review Appeals Commission has experienced several challenges as a result of new requirements under the federal Clean Air Act (Title V) that have expanded the regulatory authority of the Ohio EPA. Final actions stemming from these changes in regulations have resulted in a large number of appeals that take longer on average to resolve and that demand a greater portion of staff time. The Commission's caseload continues to grow in legal and scientific complexity.

Unlike other appellate boards, the Commission conducts all hearings itself, and all decisions are researched and written by Commission members. Commission staff process and handle all of the Commission's normal administrative functions, such as purchasing and vouchering, payroll, acting as liaison between the Commission and the parties to an appeal, day-to-day duties such as typing, mail, copying, telephones, and all other functions for which many agencies have separate departments and personnel.

Agency in Brief

Agency In Brief					
Number of Employees*	Total Appropriations-All Funds		GRF Appropriations		Appropriation Bill(s)
	2006	2007	2006	2007	
5	\$479,161	\$483,859	\$479,161	\$483,859	Am. Sub. H.B. 66

*Employee count obtained from the Department of Administrative Services (DAS) payroll reports as of June 2005.

Vetoed Provisions

There are no vetoed provisions associated with this Commission.

ANALYSIS OF THE ENACTED BUDGET

For budget purposes, as detailed below, the Environmental Review Appeals Commission is considered a single program series agency and its activities are not subdivided into separate programs.

Program Series 1**Operating Expenses**

Purpose: To hear appeals of environmental legal actions taken by several state and local government entities.

The Commission is funded entirely by one line item. The following table shows the Commission's enacted budget.

Fund	ALI	Title	FY 2006	FY 2007
General Revenue Fund				
GRF	172-321	Operating Expenses	\$479,161	\$483,859
Total Funding: Environmental Review Appeals Commission			\$479,161	\$483,859

Environmental Review Appeals Commission

Program Description: The Environmental Review Appeals Commission was created in October 1972. Its purpose is to serve Ohio citizens, the regulated community, and governmental entities affected by environmental final actions and to provide statewide legal precedent and expeditious review of environmental challenges.

The Commission has statewide jurisdiction and is the highest level of administrative appeal from final actions of the Ohio EPA, the State Fire Marshal, the State Emergency Response Commission, the Department of Agriculture, and local boards of health. At any one time, the Commission has approximately 400 active cases pending on its docket.

The Commission's duties are prescribed in sections 3745.02 through 3745.07 of the Revised Code. The Commission effectively sits in lieu of local courts of common pleas for environmental matters, creating a consistent body of environmental case law in Ohio, decided by a panel of Commission members with significant environmental expertise and knowledge of complex state and federal environmental laws. All decisions of the Commission are subsequently appealable to the Franklin County Court of Appeals, or, if the appeal arose from an alleged violation of a law or regulation, to the court of appeals for the district in which the violation was alleged to have occurred. Appeals from the courts of appeals' decisions are then appealable to the Supreme Court of Ohio.

Through the Commission's exclusive original jurisdiction, it is able to provide litigants with a more cost effective, efficient, and relaxed forum for review of their environmental disputes than if the action were required to be filed in a court of common pleas. The Commission is empowered to hear appeals from individuals who are party to a proceeding that resulted in an appealable decision, persons who are aggrieved or adversely affected by an appealable decision, and state and local subdivisions.

The appeals heard by the Commission are generally highly technically and legally complex. Historically, whenever a statute or regulation is enacted or significantly amended in the environmental arena, there is a proliferation of cases related to this area filed with the Commission, which continues until precedents are established for the new law or rule. In the past few years, environmental legislation has significantly expanded the regulatory authority of the Ohio EPA and created a number of new laws and programs to be administered by the Ohio EPA. Virtually all of the final actions stemming from these legislative changes are appealable to the Commission.

With each appeal that is filed with the Commission, the Revised Code requires the Ohio EPA or the originating agency to file its certified record with the Commission. These certified records can be lengthy filings, at times consisting of several thousand documents. The administrative duties of the Commission (i.e., docketing, indexing, and maintaining certified records) are necessary for the development of each case. In addition, there are numerous legal filings and pleadings that are made throughout the pendency of a case. The Revised Code requires the Commission to send, via certified mail, notice of the various actions taken by the Commission to all parties to an appeal.

Funding Source: GRF

Implication of the Enacted Budget: The total enacted budget is \$479,161 for FY 2006 and \$483,859 for FY 2007.

The enacted budget will allow the Commission to continue to fulfill its statutory duties in hearing and resolving appeals from certain legal actions taken by state and local governmental entities. The recommended funding amount will allow the Commission to make needed computer/equipment upgrades, to continue to subscribe to Lexis Nexis, and to cover FY 2006 cost-of-living pay increases as well as the new Commission appointment in October 2006. The Commission does not plan to increase its staff at this point.