

# Environmental Review Appeals Commission

*Jonathan Lee, Senior Budget Analyst*

- Due to newer state and federal regulations, EBR's caseload is becoming more complex and time-consuming
- Funding levels will not allow EBR to hire one additional attorney to assist with cases

## 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 Commission members appointed by the Governor, one administrative assistant, 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 expired in October 2006 and they were replaced in December 2006. The salary remains the same for the new member.

Recent environmental legislation expanded the jurisdiction of the Commission (e.g., the Environmental Protection Agency's Voluntary Action Program, the regulation of construction and demolition debris landfills, and the Ohio Department of Agriculture's regulation of animal feeding facilities). Additionally, a number of existing programs have been amended, such as Title V of the federal Clean Air Act. Overall, 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 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.

### Agency in Brief

Agency In Brief					
Number of Employees*	Total Appropriations - All Funds		GRF Appropriations		Appropriation Bill(s)
	2008	2009	2008	2009	
5	\$483,859	\$487,000	\$483,859	\$487,000	Am. Sub. H.B. 119

\*Employee count obtained from the Department of Administrative Services (DAS) payroll reports as of June 2007.

## ANALYSIS OF THE BUDGET

### Single Program Series

### Operating Expenses

**Purpose:** The Environmental Review Appeals Commission is an appellate review board whose primary statutory duty is to hear appeals of environmental legal actions taken by several state and local governmental entities.

The Commission is funded entirely by one GRF line item. The following table shows the enacted funding levels for the single program series.

Fund	ALI	Title	FY 2008	FY 2009
<b>General Revenue Fund</b>				
GRF	172-321	Operating Expenses	\$483,859	\$487,000
<b>Total Funding: Environmental Review Appeals Commission</b>			<b>\$483,859</b>	<b>\$487,000</b>

**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 effectively sits in lieu of local courts of common pleas for environmental matters.

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.

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 can then be sent to the Supreme Court of Ohio. At any one time the Commission has approximately 400 active cases pending on its docket. As of March 19, 2007, the Commission had 502 cases pending.

**Funding Source:** GRF and \$70 filing fee on appeals

**Implication of the Budget:** Enacted funding levels are \$483,859 in FY 2008 and \$487,000 in FY 2009. Funding at these levels 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. However, enacted funding will not allow the Commission to hire an additional Attorney that was planned for in the Commission's original budget submission, potentially delaying technical and legal research work.

## Permanent Law Provision

*Environmental Review Appeal Commission – EPA Jurisdiction (R.C. 3745.04).* A new permanent law provision alters the process by which EPA orders can be appealed so that the Director of Environmental Protection retains jurisdiction to modify, amend, revise, renew, or revoke a permit, rule, order, or other action that is already the subject of an appeal to the Commission. It also sets out public participation and notification requirements in these situations. In sum, the new appeals procedures could increase EBR workload.

**FY 2008 - 2009 Final Appropriation Amounts**

**All Fund Groups**

<i>Line Item Detail by Agency</i>	<i>FY 2005:</i>	<i>FY 2006:</i>	<i>FY 2007 Adj. Appropriations:</i>	<i>FY 2008 Appropriations:</i>	<i>% Change 2007 to 2008:</i>	<i>FY 2009 Appropriations:</i>	<i>% Change 2008 to 2009:</i>
<b>Report For: Main Operating Appropriations Bill</b>		<b>Version: Enacted</b>					
<b><i>EBR Environmental Review Appeals Commission</i></b>							
GRF 172-321 Operating Expenses	\$ 437,472	\$ 455,655	\$ 483,859	\$ 483,859	0.00%	\$ 487,000	0.65%
<b>General Revenue Fund Total</b>	<b>\$ 437,472</b>	<b>\$ 455,655</b>	<b>\$ 483,859</b>	<b>\$ 483,859</b>	<b>0.00%</b>	<b>\$ 487,000</b>	<b>0.65%</b>
<b><i>Environmental Review Appeals Commission Total</i></b>	<b>\$ 437,472</b>	<b>\$ 455,655</b>	<b>\$ 483,859</b>	<b>\$ 483,859</b>	<b>0.00%</b>	<b>\$ 487,000</b>	<b>0.65%</b>