

Environmental Review Appeals Commission

- Continuation budget— all GRF
- Total budget increase of 4.4% in FY02 and 3.5% in FY03
- Additional \$9,998 to cover salary increases for two members

OVERVIEW

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), State Fire Marshal, the State Emergency Response Commission, and county and local boards of health. The majority of cases heard by EBR relate to final actions of the Ohio EPA. EBR has statewide jurisdiction and is the highest level of administrative appeal from final actions. Appeals heard by EBR are highly technical and legally complex, and all decisions made by EBR are directly appealable to the Franklin County Court of Appeals, or, if the appeal arises from an alleged violation of a law or regulation, to the court of appeals with jurisdiction.

The entire office of EBR consists of six individuals: 3 board members appointed by the Governor; 1 Executive Secretary; and 2 clerical support staff. Board members serve staggered six-year terms and receive a salary that is set by the Governor.

EBR is funded entirely by GRF. The recommended funding for FY 2002 is \$484,383. This represents an increase of \$20,324, or 4.4 percent, over the estimated FY 2001 level, and is \$9,998 above the agency's total request for FY 2002. In FY 2003, the recommended funding is \$501,272, which is \$16,889, or 3.5 percent higher than the recommended FY 2002 funding level.

ADDITIONAL FACTS AND FIGURES

Environmental Review Appeals Commission Staffing Levels						
Employee	1998	1999	2000	2001	<i>Estimated</i>	
					2002	2003
Chairman	1	1	1	1	1	1
Vice-Chairman	1	1	1	1	1	1
Member	1	1	1	1	1	1
Administrative Secretary 3	1	1	1	1	1	1
Executive Secretary 1	1	1	1	1	1	1
Office Assistant 2	1	1	1	1	1	1
Totals	6	6	6	6	6	6

Appointed Members

The Commission has three exempt members that are appointed by the Governor under Ohio Revised Code Section 3745.02. Their salaries and terms of appointment are as follows:

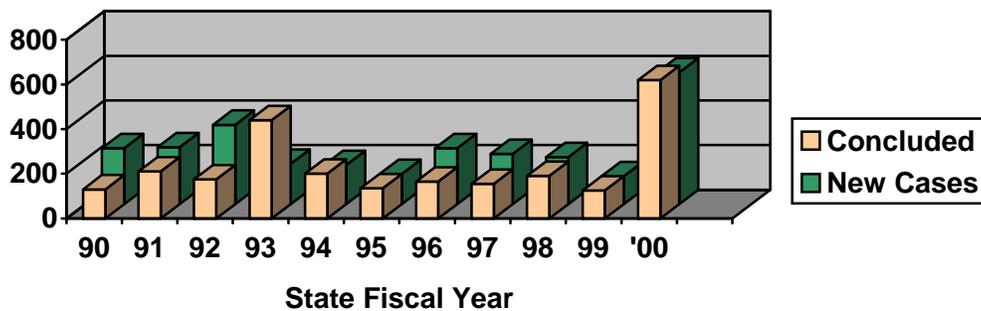
<u>Position</u>	<u>Salary</u>	<u>Expiration of Term</u>
Chairman	\$63,877 without fringe benefits	10/22/06
Vice-Chairman	\$62,005 without fringe benefits	10/22/04
Member	\$60,008 without fringe benefits	10/22/02

EBR Case Load History

Environmental Review Appeals Commission					
Fiscal Year	Total Appeals	Filings Reviewed	Rulings Issued	Appeals Concluded	Hearings
1990	248	2648	2334	131	404
1991	256	2964	2612	210	406
1992	353	3458	3102	177	463
1993	178	3002	2911	440	299
1994	174	2996	3001	198	274
1995	135	2531	2596	134	223
1996	251	3702	3115	165	309
1997	224	3582	3013	155	289
1998	208	3497	2943	191	291
1999	126	2984	2003	124	276
2000*	583	4216	3906	620	784

* It is the Commission's policy to docket individual appeals of the same action separately, in the event that one party decides to withdraw from an action while the other parties desire to continue. The substantial increase in the number of appeals filed with the Commission in FY 2000 reflects such a situation; that is, in one instance, a significant number of individuals appealed a particular matter and each individual was assigned a case number, thereby increasing the Commission's data records for appeals filed.

New Appeals v. Cases Concluded by Fiscal Year



ANALYSIS OF EXECUTIVE PROPOSAL

Environmental Review Appeals Commission

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

The following table shows the line item that is used to fund the Environmental Review Appeals Commission, as well as the Governor’s recommended funding levels.

Fund	ALI	Title	FY 2002	FY 2003
GRF	172-321	Operating Expenses	\$484,383	\$501,272
Total funding: Environmental Review Appeals Commission			\$484,383	\$501,272

Environmental Review Appeals Commission *Program Description:* The Environmental Review Appeals Commission was created in October 1972. It is authorized under Ohio Revised Code Sections 3745.02-3745.06. The Commission serves the State of Ohio, specifically, citizens and governmental entities affected by environmental final actions.

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, and the local boards of health. At any one time, the Commission has approximately 400 active cases pending on its docket. 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 the court of common pleas. The Commission is empowered to hear appeals from individuals who were parties 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.

All decisions of the Commission are subsequently appealable directly to the Franklin County Court of Appeals, or, if the appeal arises 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. In recent years, Commission officials have said that most decisions of the Commission are appealed, but that 97 percent are upheld.

The appeals heard by EBR are generally highly technical 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 continue until precedents are established for the new law or rule. For example, the Commission has recently experienced an increased number of “air appeals,” as litigants challenged such issues as amended definitions of air contaminants, the state funding mechanism for the Title V air permitting program, and the standards to which new air contaminants must conform. The Commission has also begun to hear cases dealing with Ohio’s legislation regarding the operation and licensing of construction and demolition debris landfills.

Additionally, when certain activities come under increased scrutiny by the Ohio EPA or the public, there is a concomitant increase in cases before the Commission, such as cases dealing with large-scale livestock farming which encompasses many matters that are appealable to the Commission.

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. This expanded authority has led to an increase in the Commission's appellate caseload. As might be expected, the supporting administrative workload that accompanies an increase in caseload is immense. Despite this, the Commission has not created any additional staff positions to handle the increased workload over the last sixteen years. The Commission's current staff has been able to absorb increased workloads with little to no disruption or delay.

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. Examples include motions for stay of certain actions, motions to dismiss, motions for protective orders and numerous and varied other procedural activities which must be ruled upon prior to the ultimate litigation of the case. Furthermore, the Revised Code requires that certified mail notice of the various actions taken by the Commission be sent to all parties to the appeal.

In the FY94-95 budget bill, the Ohio Revised Code Section 3745.04 was amended to provide for the assessment of a \$40.00 filing fee on all appeals filed with the Commission unless, at the Commission's discretion, the fee is waived for extreme hardship. Further, the Commission charges and collects a fee for photo copies. The Commission is funded solely by the General Revenue Fund, and the fees that are collected by the Commission are deposited with the Treasurer of the State for deposit into the General Revenue Fund. Therefore, the fees do not increase the Commission's appropriated funding, but rather serve to offset a portion of the state's cost for operating the Commission.

Funding Source: GRF.

Line Items: 172-321.

Implication of Recommendation: In the FY 1999-2000 budget bill, the Commission's three line items, consisting of a 100, a 200, and a 300 account, were combined into a single 321 account. Commission operations have continued as normal, but the change has allowed the Commission to transfer money for personnel, maintenance, and equipment without Controlling Board or legislative approval.

The entire staff of 6 individuals at EBR will be fully funded by the recommended level of funding. An additional \$9,998 above the Commission's funding request was recommended for FY 2002 to cover the salaries of the newest appointed member of the Commission, who was appointed in October of 2000 (at \$63,877

annually), as well as the next member, who will be appointed in October of 2002 (at an estimated salary of \$66,432).

Unlike other commissions, EBR conducts all hearings itself, and all decisions are researched and written by Commission members. Commission staff also process and handle all of EBR's normal administrative functions, such as financial administration (purchasing and vouchering), personnel, 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. Therefore, all of EBR's costs are fixed. FY 2002-2003 funding recommendations will continue to provide FY 2001 service levels.

With the exception of office supplies, all expenses of the Commission are required by statute or are fixed by contract. This funding will also allow the Commission to maintain its required copies of transcripts that are available to the public.

PERMANENT AND TEMPORARY LAW

This section describes permanent and temporary law provisions contained in the executive budget that will affect the department's activities and spending decisions during the next biennium.

There are no permanent or temporary law provisions with fiscal effects on this agency.

REQUESTS NOT FUNDED

The executive budget proposal for FY 2003-2003 fully funds EBR's budget request. In addition, the Governor has recommended an additional appropriation of \$9,998 in FY 2002 to supplement funds already available to cover the salaries of the newest appointed member of the Commission, who was appointed in October of 2000 (at \$63,877 annually), as well as the next member, who will be appointed in October of 2002 (at an estimated salary of \$66,432). The recommended FY 2002 appropriation is \$484,383; the FY 2003 recommendation is \$501,272.

LSC Budget Spreadsheet by Line Item, FY 2002 - FY 2003

<i>Fund</i>	<i>ALI</i>	<i>ALI Title</i>	<i>Revised Estimated 2001</i>	<i>As Introduced 2002</i>	<i>House Sub Bill 2002</i>	<i>% Change Est. 2001 to House 2002</i>	<i>As Introduced 2003</i>	<i>House Sub Bill 2003</i>	<i>% Change House 2002 to House 2003</i>
<i>EBR Environmental Review Appeals Commission</i>									
GRF	172-321	Operating Expenses	\$459,418	\$ 484,383	\$ 465,008	1.2%	\$ 501,272	\$ 481,221	3.5%
General Revenue Fund Total			\$ 459,418	\$ 484,383	\$ 465,008	1.2%	\$ 501,272	\$ 481,221	3.5%
Total All Budget Fund Groups			\$ 459,418	\$ 484,383	\$ 465,008	1.2%	\$ 501,272	\$ 481,221	3.5%

General Revenue Fund

GRF 172-100 Personal Services

1998	1999	2000	2001 Estimate	2002 Executive Proposal	2003 Executive Proposal
\$318,430	\$334,174	\$0	\$0	\$0	\$0
	4.9%	-100.0%	N/A	N/A	N/A

Source: GRF

Legal Basis: ORC 3745.02 to ORC 3745.06

Purpose: This line item provides funds for personnel expenses for the agency, including Board member salaries and staff payroll, as well as payment for outside legal counsel from the Attorney General's office, on an as-needed basis. Starting with FY 2000, these expenditures are made from line item 172-321.

GRF 172-200 Maintenance

1998	1999	2000	2001 Estimate	2002 Executive Proposal	2003 Executive Proposal
\$52,483	\$57,938	\$0	\$0	\$0	\$0
	10.4%	-100.0%	N/A	N/A	N/A

Source: GRF

Legal Basis: ORC 3745.02 to ORC 3745.06

Purpose: This line item provides funds for maintenance expenses for the agency, the majority of which is for rent (approximately 65 percent), with the rest used for office supplies, telephone, and postage. Starting with FY 2000 these expenditures are made from line item 172-321.

GRF 172-300 Equipment

1998	1999	2000	2001 Estimate	2002 Executive Proposal	2003 Executive Proposal
\$3,360	\$15,356	\$0	\$0	\$0	\$0
	357.0%	-100.0%	N/A	N/A	N/A

Source: GRF

Legal Basis: ORC 3745.02 to ORC 3745.06

Purpose: This line item provides funds for equipment for the agency. Starting with FY 2000 these expenditures are made from line item 172-321.

GRF 172-321 Operating Expenses

1998	1999	2000	2001 Estimate	2002 Executive Proposal	2003 Executive Proposal
\$0	\$0	\$449,927	\$464,059	\$484,383	\$501,272
	N/A	N/A	3.1%	4.4%	3.5%

Source: GRF

Legal Basis: ORC 3745.02 to ORC 3745.06

Purpose: This line item provides funds for personnel, maintenance and equipment expenses for the Environmental Review Appeals Commission. This includes Commission members' salaries and staff payroll, as well as payment for outside legal counsel from the Attorney General's office, on an as-needed basis. The majority of maintenance expenses for the Commission go toward rent, with the remaining maintenance expenses used for office supplies, telephone and postage.

As Introduced*

In House Finance and Appropriations

Permanent Law Changes**Subject: Increased Filing Fee****section: 3745.04**

No provision.

Increases the filing fee associated with filing an appeal with the Environmental Review Appeals Commission. The fee is increased from \$40 to \$60. As in current law, this filing fee may be waived in cases of extreme hardship. The Commission is funded solely through GRF monies, and all filing fees are credited to the GRF to offset the cost of operating the Commission.
