

Environmental Review Appeals Commission

House Agriculture and Development Subcommittee

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Legislative Service Commission*

March 11, 2003

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LSC Redbook

for the

Environmental Review Appeals Commission

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<i>Attachment: LSC Budget Spreadsheet By Line Item</i>	

March 11, 2003

Note: The estimated General Revenue Fund (GRF) spending for FY 2003 used in this LSC Redbook reflects the 2.5% reduction made as a result of the Governor's January 22, 2003 budget cut order. The executive reduction was applied across-the-board to FY 2003 GRF appropriations, subject to certain exceptions. Subsequent to such reductions (and not reflected in the Redbook), state agencies were permitted to reallocate the amount that each of their GRF appropriation line items was reduced, while still absorbing the 2.5% budget cut within the total amount of their GRF appropriations.

Environmental Review Appeals Commission

- Agency is GRF funded
- Funding in FY 2004 is 5.1% above FY 2003; FY 2005 is 0.5% above FY 2004
- Reclamation Commission and Hazardous Waste Facility Board are abolished; as a result, more appeals may be brought before EBR

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), 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, and one clerical support person. Board members serve staggered six-year terms and receive a salary that is set by the Governor.

The Environmental Review Appeals Commission is funded entirely by General Revenue Fund (GRF) dollars. In FY 2002, executive order budget reductions led the Commission to lay off one individual from its support staff, resulting in a 50% increase in workload for each of the two remaining support staff persons. When one of these two staff persons is ill or on vacation, the remaining staff person takes on the majority of the administrative duties of the office. A temporary employee is hired when one of these two staff persons is on vacation for one week or more.

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 EBR'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 FY 2003, the Commission is relocating from its current location at 236 E. Town Street to new offices located at 309 S. Third Street. The lease at the Commission's current office will not be renegotiated by the lessor. The new site meets the Commission's needs with regard to adequate space for a hearing room and easy accessibility for parties to an appeal. The Commission's rental payments will remain approximately the same (approximately \$45,000 per year).

The executive funding recommendation for the upcoming biennium is \$437,131 in FY 2004, 5.1% above estimated FY 2003 expenditures, and \$439,109 in FY 2005, 0.5% above FY 2004 appropriations.

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 of environmental legal actions taken by several state and local governmental entities.

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 2004	FY 2005
GRF	172-321	Operating Expenses	\$437,131	\$439,109
Total funding: Environmental Review Appeals Commission			\$437,131	\$439,109

Environmental Review Appeals Commission

Program Description: The Environmental Review Appeals Commission was created in October 1972. Its purpose is to serve Ohio 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, the Department of Agriculture, and 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 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.

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. In recent years, approximately 97% of Commission decisions that have been appealed have been subsequently upheld in court.

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 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.

House Bill 152 of the 120th General Assembly provided for the assessment of a \$40 filing fee on all appeals filed with the Commission. House Bill 94 of the 124th General Assembly increased this fee to \$60. The Commission also charges and collects a fee for photocopies. Because EBR is funded solely by the General Revenue Fund, any fees collected by the Commission are deposited into the GRF and serve to offset a portion of the state's cost for operating the Commission.

Funding Source: GRF

Line Item: 172-321

Implication of the Executive Recommendation: Recommended appropriations are \$437,131 in FY 2004 and \$439,109 in FY 2005. The Commission's three board members and two staff members will continue to be funded by this recommendation.

Unlike other appellate boards, EBR conducts all hearings itself, and all decisions are researched and written by Commission members. Commission staff process and handle all of EBR'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. Therefore, all of the Commission's costs are fixed by contract or defined in statute.

The biennial funding recommendation will allow the Commission to continue to provide service levels at the current FY 2003 level. However, very little discretionary spending will be possible. After payroll and rent, the Commission's remaining funding will be directed toward subscription costs for LexisNexis and the Ohio Revised Code, postage, office supplies, record-keeping expenses, and printing. There is little, if any, funding available for equipment replacement or other unforeseen expenses.

ADDITIONAL FACTS AND FIGURES

Overall Staffing Levels from FYs 2000 to 2005

The following chart illustrates EBR’s total staffing levels between FY 2000 and FY 2005, with the numbers for FY 2004 and FY 2005 being estimates.

Environmental Review Appeals Commission Staffing Levels						
Employee	2000	2001	2002	2003	Estimated	
					2004	2005
Chairman	1	1	1	1	1	1
Vice-Chairman	1	1	1	1	1	1
Member	1	1	1	1	1	1
Executive Secretary	1	1	1	1	1	1
Clerical support	2	2	1	1	1	1
Totals	6	6	5	5	5	5

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:

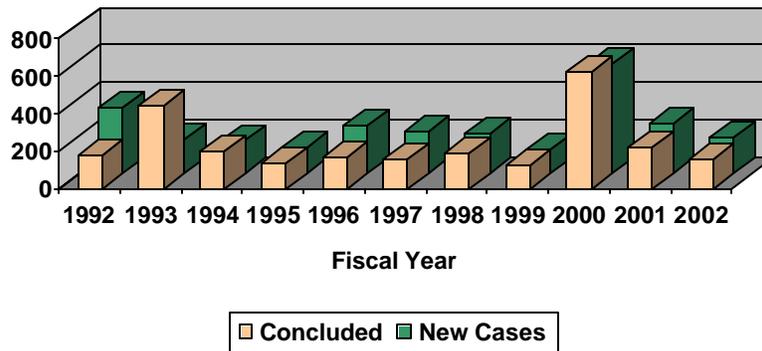
<u>Position</u>	<u>Salary</u>	<u>Expiration of Term</u>
Chair	\$63,877 plus fringe benefits	10/22/06
Vice-Chair	\$62,005 plus fringe benefits	10/22/04
Member	\$60,008 plus fringe benefits	10/22/08

EBR Caseload History

Environmental Review Appeals Commission					
Fiscal Year	Total Appeals	Filings Reviewed	Rulings Issued	Appeals Concluded	Hearings
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
2001	262	3947	3004	217	302
2002	189	3434	2932	156	214

* 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 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 vs. Cases Concluded by Fiscal Year



PERMANENT AND TEMPORARY LAW

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

Permanent Law Provisions

Elimination of the Reclamation Commission

The bill abolishes the Reclamation Commission within the Department of Natural Resources (DNR), which hears appeals of decisions of the Chief of the Division of Mineral Resources Management. The duties of the Reclamation Commission are transferred to the Environmental Review Appeals Commission, except for the hearing of appeals regarding the relocation or the plugging and abandonment of an oil or gas well (authority for which is transferred to the Oil and Gas Commission).

The Reclamation Commission is a seven-member adjudicatory board, established pursuant to section 1513.05 of the Revised Code (repealed by this bill). Members are appointed by the Governor to five-year terms. Each member is paid \$150 per day when engaged in the performance of work as a member of the Commission and when engaged in travel necessary to this work. Members are also reimbursed for travel, hotel, and other expenses necessarily incurred in the performance of Commission work.

Current funding for the Reclamation Commission is provided, in part, by GRF dollars. Under DNR's GRF line item 725-412, Reclamation Commission, FY 2002 actual expenditures totaled \$32,359, and FY 2003 estimated expenditures total \$57,934. According to a representative of DNR, however, actual costs to maintain the Commission average between \$150,000 and \$175,000 annually. Additional funding is provided by two State Special Revenue Funds and one Federal Fund within DNR.

At this point, it is unclear how the Environmental Review Appeals Commission will incorporate the new review responsibilities assigned to it under the provisions of this bill. As discussed previously, EBR is currently operating with a reduced staff level from FY 2001, and Commission members already anticipate that FY 2004 and 2005 recommended funding levels will provide little, if any, discretionary spending ability. All of the Commission's current costs are fixed by contract or defined in statute.

Elimination of the Hazardous Waste Facility Board

The bill abolishes the Hazardous Waste Facility Board and transfers the responsibilities of the Board to the Ohio Environmental Protection Agency. The Board was created in 1980 as part of Ohio EPA's two-tiered permitting program for hazardous waste facilities in the state. The Board is responsible for acting on permit applications for new hazardous waste facilities, and for applications for certain modifications to existing facilities.

Under current law, appeals of final actions issued by the Board are directly appealable to the Franklin County Court of Appeals. Under the bill, as responsibility for permit issuance is transferred to Ohio EPA, final actions of the Director will be appealable to the Environmental Review Appeals Commission.

This change in permanent law is not likely to result in a significant increase in workload for EBR. When the Hazardous Waste Facility Board was established, there were 336 hazardous waste facilities in Ohio. Today, there are 44. In the past two years, the Board has been working on a single permit application. It

is likely, therefore, that the number of appeals heard by EBR with respect to final actions on hazardous waste facility permits will be slight.

Temporary Law Provisions

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

REQUESTS NOT FUNDED

Environmental Review Appeals Commission						
Fund Line Item	FY 04 Requested	FY 04 Recommended	Difference	FY 05 Requested	FY 05 Recommended	Difference
GRF 172-321	\$448,339	\$437,131	(\$11,208)	\$450,368	\$439,109	(\$11,259)

The executive budget proposal for FYs 2004 and 2005 partially funds EBR's budget request. The funding recommendation will allow the Commission to continue to provide service levels at the current FY 2003 level. However, very little discretionary spending will be possible. After payroll and rent, little, if any, funding will be available for equipment replacement or other unforeseen expenses.

General Revenue Fund

GRF 172-321 Operating Expenses

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$449,927	\$448,540	\$440,299	\$415,938	\$437,131	\$439,109
	-0.3%	-1.8%	-5.5%	5.1%	0.5%

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 are for rent, with the remaining maintenance expenses used for office supplies, telephone bills and postage.

LSC Budget Spreadsheet by Line Item, FY 2004 - FY 2005

<i>Fund</i>	<i>ALI</i>	<i>ALI Title</i>	<i>2002</i>	<i>Estimated 2003</i>	<i>Executive 2004</i>	<i>% Change 2003 to 2004</i>	<i>Executive 2005</i>	<i>% Change 2004 to 2005</i>
<i>EBR Environmental Review Appeals Commission</i>								
GRF	172-321	Operating Expenses	\$ 440,299	\$415,938	\$ 437,131	5.1%	\$ 439,109	0.5%
General Revenue Fund Total			\$ 440,299	\$ 415,938	\$ 437,131	5.1%	\$ 439,109	0.5%
Total All Budget Fund Groups			\$ 440,299	\$ 415,938	\$ 437,131	5.1%	\$ 439,109	0.5%