

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 324

Representative Yates

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A B I L L

To amend section 3745.05 of the Revised Code and to 1
amend Section 279.10 of Am. Sub. H.B. 1 of the 2
128th General Assembly to eliminate the schedule 3
in accordance with which the Environmental Review 4
Appeals Commission must issue written orders 5
concerning certain actions that were filed with 6
the Commission and to make an appropriation. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3745.05 of the Revised Code be 8
amended to read as follows: 9

Sec. 3745.05. (A) In hearing the appeal, if an adjudication 10
hearing was conducted by the director of environmental protection 11
in accordance with sections 119.09 and 119.10 of the Revised Code 12
or conducted by a board of health, the environmental review 13
appeals commission is confined to the record as certified to it by 14
the director or the board of health, as applicable. The commission 15
may grant a request for the admission of additional evidence when 16
satisfied that such additional evidence is newly discovered and 17
could not with reasonable diligence have been ascertained prior to 18
the hearing before the director or the board, as applicable. If no 19
adjudication hearing was conducted in accordance with sections 20

119.09 and 119.10 of the Revised Code or conducted by a board of 21
health, the commission shall conduct a hearing de novo on the 22
appeal. 23

For the purpose of conducting a de novo hearing, or where the 24
commission has granted a request for the admission of additional 25
evidence, the commission may require the attendance of witnesses 26
and the production of written or printed materials. 27

When conducting a de novo hearing, or when a request for the 28
admission of additional evidence has been granted, the commission 29
may, and at the request of any party it shall, issue subpoenas for 30
witnesses or for books, papers, correspondence, memoranda, 31
agreements, or other documents or records relevant or material to 32
the inquiry directed to the sheriff of the counties where the 33
witnesses or documents or records are found, which subpoenas shall 34
be served and returned in the same manner as those allowed by the 35
court of common pleas in criminal cases. 36

(B) The fees of sheriffs shall be the same as those allowed 37
by the court of common pleas in criminal cases. Witnesses shall be 38
paid the fees and mileage provided for under section 119.094 of 39
the Revised Code. The fee and mileage expenses incurred at the 40
request of the appellant shall be paid in advance by the 41
appellant, and the remainder of the expenses shall be paid out of 42
funds appropriated for the expenses of the commission. 43

(C) In case of disobedience or neglect of any subpoena served 44
on any person, or the refusal of any witness to testify to any 45
matter regarding which the witness may be lawfully interrogated, 46
the court of common pleas of the county in which the disobedience, 47
neglect, or refusal occurs, or any judge thereof, on application 48
of the commission or any member thereof, may compel obedience by 49
attachment proceedings for contempt as in the case of disobedience 50
of the requirements of a subpoena issued from the court or a 51
refusal to testify therein. 52

(D) A witness at any hearing shall testify under oath or affirmation, which any member of the commission may administer. A witness, if the witness requests, shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness, and who may not examine or cross-examine witnesses. A witness shall be advised of the right to counsel before the witness is interrogated.

(E) A stenographic record of the testimony and other evidence submitted shall be taken by an official court shorthand reporter. The record shall include all of the testimony and other evidence and the rulings on the admissibility thereof presented at the hearing. The commission shall pass upon the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the commission thereon, and if the commission refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

Any party may request the stenographic record of the hearing. Promptly after receiving such a request, the commission shall prepare and provide the stenographic record of the hearing to the party who requested it. The commission may charge a fee to the party who requested the stenographic record that does not exceed the cost to the commission for preparing and transcribing it.

(F) If, upon completion of the hearing, the commission finds that the action appealed from was lawful and reasonable, it shall make a written order affirming the action, or if the commission finds that the action was unreasonable or unlawful, it shall make a written order vacating or modifying the action appealed from.

~~The commission shall issue a written order affirming, vacating, or modifying an action pursuant to the following schedule:~~

~~(1) For an appeal that was filed with the commission before April 15, 2008, the commission shall issue a written order not later than December 15, 2009.~~ 85
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~~(2) For all other appeals that have been filed with the commission as of October 15, 2009, the commission shall issue a written order not later than July 15, 2010.~~ 88
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~~(3) For an appeal that is filed with the commission after October 15, 2009, the commission shall issue a written order not later than twelve months after the filing of the appeal with the commission.~~ 91
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(G) Every order made by the commission shall contain a written finding by the commission of the facts upon which the order is based. Notice of the making of the order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each party by certified mail, with a statement of the time and method by which an appeal may be perfected. 95
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(H) The order of the commission is final unless vacated or modified upon judicial review. 101
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Section 2. That existing section 3745.05 of the Revised Code is hereby repealed. 103
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Section 3. That Section 279.10 of Am. Sub. H.B. 1 of the 128th General Assembly be amended to read as follows: 105
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Sec. 279.10. EBR ENVIRONMENTAL REVIEW APPEALS COMMISSION 107

General Revenue Fund 108

GRF 172321 Operating Expenses	\$	487,000	\$	487,000	109
		<u>637,000</u>		<u>637,000</u>	
TOTAL GRF General Revenue Fund	\$	487,000	\$	487,000	110
		<u>637,000</u>		<u>637,000</u>	

TOTAL ALL BUDGET FUND GROUPS	\$	487,000	\$	487,000	111
		<u>637,000</u>		<u>637,000</u>	

Section 4. That existing Section 279.10 of Am. Sub. H.B. 1 of 113
the 128th General Assembly is hereby repealed. 114