

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 SENATE BILL NO. 1341

By: Treat

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to municipal boards of adjustment;  
9 amending 11 O.S. 2011, Section 44-110, which relates  
10 to appeals from the board of adjustment; modifying  
11 persons eligible to appeal certain judgments or  
12 orders; modifying procedures relating to stays  
pending appeal; requiring bond or surety posted  
within certain time period; providing exemption;  
authorizing stay of certain orders pursuant to  
certain statute; and declaring an emergency.

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 11 O.S. 2011, Section 44-110, is  
17 amended to read as follows:

18 Section 44-110. A. An appeal from any action, decision,  
19 ruling, judgment or order of the board of adjustment may be taken by  
20 any person or persons, ~~jointly or severally aggrieved, or any~~  
21 ~~taxpayer or any officer, department, board or bureau~~ who were  
22 entitled, pursuant to Section 44-108 of this title, to mailed notice  
23 of the public hearing before the board of adjustment, by any person  
24 or persons whose property interests are directly affected by such

1 action, decision, ruling, judgment or order of the board of  
2 adjustment, or by the governing body of the municipality to the  
3 district court in the county in which the situs of the municipality  
4 is located.

5 B. The appeal shall be taken by filing with the municipal clerk  
6 and with the clerk of the board of adjustment, within the time  
7 limits which may be fixed by ordinance, a notice of appeal. The  
8 notice shall specify the grounds for the appeal. No bond or deposit  
9 for costs shall be required for such appeal.

10 C. Upon filing the notice of appeal, the board of adjustment  
11 shall forthwith transmit to the court clerk the original, or  
12 certified copies, of all papers constituting the record in the case,  
13 together with the order, decision or ruling of the board.

14 D. The appeal shall be heard and tried de novo in the district  
15 court. All issues in any proceedings under this section shall have  
16 preference over all other civil actions and proceedings.

17 ~~E. An appeal to the district court from the board of adjustment~~  
18 ~~stays all proceedings in furtherance of the action appealed from,~~  
19 ~~unless the chairman of the board, from which the appeal is taken,~~  
20 ~~certifies to the court clerk, after the notice of appeal has been~~  
21 ~~filed, that by reason of facts stated in the certificate a stay~~  
22 ~~would in his opinion cause imminent peril to life or property. In~~  
23 ~~such case, proceedings shall not be stayed otherwise than by a~~  
24 ~~restraining order which may be granted by the district court upon~~

1 ~~application or notice to the administrative officer in charge of the~~  
2 ~~enforcement of the terms and provisions of the ordinance, and upon~~  
3 ~~notice to the chairman of the board from which the appeal is taken,~~  
4 ~~and upon due cause being shown~~

5 During the pendency of such an appeal, the effectiveness of a  
6 decision of the board of adjustment shall not be suspended unless a  
7 party applies to the district court for a stay pending the district  
8 court's determination of the merits of the appeal. Notice of such  
9 application shall be given by first class mail to all parties to the  
10 district court appeal and to any applicant before the board of  
11 adjustment. Upon filing of an application for stay in the district  
12 court, all proceedings in furtherance of the action appealed from  
13 shall be temporarily stayed pending the outcome of a hearing  
14 regarding the stay, which shall be conducted within 30 days of  
15 application. The Court shall determine whether to impose a stay by  
16 considering the following factors: (i) the likelihood of success on  
17 the merits by the party seeking to impose the stay, (ii) irreparable  
18 harm to the property interests of the party seeking to impose the  
19 stay if the stay is not imposed, (iii) relative effect on the other  
20 interested parties, and (iv) public policy concerns arising out of  
21 the imposition of the stay. If the court determines to impose a  
22 stay, the court shall require a bond or other security and such  
23 other terms as it deems proper to secure the rights of the parties  
24 and compensate for costs of delay. A bond or other security shall

1 be posted within 5 days of the court's determination; provided, that  
2 a municipal governing body shall not be required to post a bond.  
3 Subject to subsection A of Section 990.3 of Title 12 of the Oklahoma  
4 Statutes, a stay pursuant to this subsection shall automatically  
5 dissolve after a judgment, decree or final order resolving the  
6 merits of the appeal is filed with the court clerk. Notwithstanding  
7 any provision of law to the contrary, stays in appeals from the  
8 board of adjustment to the district court shall be obtained only as  
9 set forth in this section.

10 F. The district court may reverse or affirm, wholly or partly,  
11 or modify the decision brought up for review. Costs shall not be  
12 allowed against the board of adjustment unless it shall appear to  
13 the district court that the board acted with gross negligence or in  
14 bad faith or with malice in making the decision appealed from. An  
15 appeal shall lie from the action of the district court as in all  
16 other civil actions. A party may obtain a stay of the enforcement  
17 of the district court's judgment, decree or final order as provided  
18 by Section 990.4 of Title 12 of the Oklahoma Statutes.

19 SECTION 2. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

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24 55-2-3043

MJM

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