

1 ENGROSSED SENATE
2 BILL NO. 1341

By: Treat of the Senate

3 and

4 Echols of the House

5
6 An Act relating to municipal boards of adjustment;
7 amending 11 O.S. 2011, Section 44-110, which relates
8 to appeals from the board of adjustment; modifying
9 persons eligible to appeal certain judgments or
10 orders; modifying procedures relating to stays
11 pending appeal; requiring bond or surety posted
12 within certain time period; providing exemption;
13 authorizing stay of certain orders pursuant to
14 certain statute; and declaring an emergency.

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
action, decision, ruling, judgment or order of the board of
adjustment, or by the governing body of the municipality to the

1 district court in the county in which the situs of the municipality
2 is located.

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

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

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

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

1 ~~notice to the chairman of the board from which the appeal is taken,~~
2 ~~and upon due cause being shown~~

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

1 be required to post a bond. Subject to subsection A of Section
2 990.3 of Title 12 of the Oklahoma Statutes, a stay pursuant to this
3 subsection shall automatically dissolve after a judgment, decree or
4 final order resolving the merits of the appeal is filed with the
5 court clerk. Notwithstanding any provision of law to the contrary,
6 stays in appeals from the board of adjustment to the district court
7 shall be obtained only as set forth in this section.

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

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

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