

1 ENGROSSED HOUSE  
2 BILL NO. 3397

By: McEntire and Phillips of  
the House

3 and

4 Kidd of the Senate  
5  
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7 An Act relating to municipal utility oversight;  
8 enacting the Municipal Utilities Oversight Act;  
9 amending 11 O.S. 2011, Section 44-104, which relates  
10 to boards of adjustment; providing for board of  
11 adjustment to hear utility customer appeals;  
12 prescribing procedures for customer appeals with  
13 respect to alleged overcharges for certain utility  
14 services; prescribing notice requirement; authorizing  
15 petition to district court; providing for payment of  
16 attorney fees and costs for frivolous appeals;  
17 providing for presentation to board of adjustment;  
18 providing for exclusive nature of remedy; providing  
19 for testing of utility meters; providing for payment  
20 of deposit; providing for return of deposit based  
21 upon test outcome; providing for surrender of deposit  
22 based upon test outcome; prescribing procedures for  
23 reimbursement or crediting for overcharges; providing  
24 for codification; providing for noncodification; and  
providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be  
codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Municipal  
Utilities Oversight Act".

1 SECTION 2. AMENDATORY 11 O.S. 2011, Section 44-104, is  
2 amended to read as follows:

3 Section 44-104. The board of adjustment shall have the power  
4 to:

5 1. Hear and decide appeals if it is alleged there is error in  
6 any order, requirement, decision, or determination made by an  
7 administrative official in the enforcement of any zoning ordinance;

8 2. Hear and decide special exceptions to the zoning ordinance  
9 to allow a use, or a specifically designated element associated with  
10 a use, which is not permitted by right in a particular district  
11 because of potential adverse effect, but which if controlled in the  
12 particular instance as to its relationship to the neighborhood and  
13 to the general welfare, may be permitted by the board of adjustment,  
14 where specifically authorized by the zoning ordinance, and in  
15 accordance with the substantive and procedural standards of the  
16 zoning ordinance;

17 3. Authorize in specific cases a variance from the terms,  
18 standards and criteria that pertain to an allowed use category  
19 within a zoning district as authorized by the zoning ordinance when  
20 such cases are shown not to be contrary to the public interest if,  
21 owing to special conditions, a literal enforcement of the provisions  
22 of the ordinance will result in unnecessary hardship and so that the  
23 spirit of the ordinance shall be observed and substantial justice  
24 done; provided, however, the board shall have no power to authorize

1 variances as to use except as provided by paragraph 4 of this  
2 section;

3 4. Hear and decide oil and/or gas applications or appeals  
4 unless prohibited throughout a municipality by municipal ordinance.  
5 The board of adjustment shall be required to make the findings  
6 prescribed by Section 44-107 of this title in order to grant a  
7 variance as to use with respect to any such application or appeal;

8 5. Hear utility customer appeals as outlined in Section 3 of  
9 this act.

10 Exceptions and/or variances may be allowed by the board of  
11 adjustment only after notice and hearing as provided in Section  
12 44-108 of this title. The record of the meeting at which the  
13 variance or special exception was granted shall show that each  
14 element of a variance or special exception was established at the  
15 public hearing on the question, otherwise said variance or special  
16 exception shall be voidable on appeal to the district court.

17 SECTION 3. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 44-111 of Title 11, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. Limited Power of Appeal - Any customer of a municipal  
21 government, trust with a municipal government as a beneficiary, or  
22 authority with a municipal government as a beneficiary, that  
23 provides water, natural gas, electric power, or similar service to  
24 its residents shall be eligible to seek an appeal under this section

1 as to any alleged overcharge of their utility account. In addition  
2 to Oklahoma Open Meeting Act requirements, the only additional  
3 notice requirement for utility customer appeals shall consist of  
4 mailing written notice by the clerk of the board of adjustment to  
5 the utility customer who has petitioned for a hearing before the  
6 board of adjustment ten (10) days prior to the scheduled hearing.  
7 The municipal government, trust, or authority may petition the  
8 district court for attorney's fees and other costs to reimburse  
9 actual expenses incurred for frivolous appeals under this section.

10 B. Appeal Hearing - The municipal government, trust or  
11 authority and the utility customer shall be allowed adequate time to  
12 make their respective presentations to the board. After the board  
13 enters its decision, the matter shall be concluded and neither party  
14 shall have any further right of appeal.

15 C. Remedy - The exclusive remedy of the board of adjustment in  
16 regard to a utility customer appeal is limited to the meter test  
17 outlined in subsection D of this section.

18 D. Authorized Meter Tests - If the municipal government, trust  
19 or authority waives their right to a hearing or if the board of  
20 adjustment determines there is sufficient evidence to order the  
21 municipal government, trust or authority to obtain a test of the  
22 utility meter in question, the following meter test procedure will  
23 be followed. The utility customer shall be required to pay a  
24 deposit to reimburse the municipality, trust or authority for only

1 the actual expenses of the meter test. If the meter is determined  
2 to be out of compliance with the operational parameters as outlined  
3 by the manufacturer, the utility customer's deposit will be returned  
4 to the customer. If the meter is functioning within the operational  
5 parameters as outlined by the manufacturer, the deposit will be  
6 surrendered to the municipal government, trust or authority.  
7 Additionally, if the meter is determined to be out of compliance  
8 with the operational parameters as outlined by the manufacturer and  
9 the meter test provides conclusive evidence there has been an  
10 overcharge to the utility customer, the municipal government, trust  
11 or authority shall make prompt and reasonable arrangements to  
12 reimburse or otherwise credit the utility customer for the  
13 overcharge.

14 SECTION 4. This act shall become effective November 1, 2020.

15 Passed the House of Representatives the 11th day of March, 2020.

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Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2020.

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Presiding Officer of the Senate

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