An Act

ENROLLED SENATE
BILL NO. 1341

By: Treat of the Senate

and

Echols of the House

An Act relating to municipal boards of adjustment; amending 11 O.S. 2011, Section 44-110, which relates to appeals from the board of adjustment; modifying persons eligible to appeal certain judgments or 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.

SUBJECT: Board of Adjustment appeal procedures

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

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

Section 44-110. A. An appeal from any action, decision, ruling, judgment or order of the board of adjustment may be taken by any person or persons~~, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau~~ who were entitled, pursuant to Section 44-108 of this title, to mailed notice of the public hearing before the board of adjustment, by any person 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 district court in the county in which the situs of the municipality is located.

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

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

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

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

During the pendency of such an appeal, the effectiveness of a decision of the board of adjustment shall not be suspended unless a party applies to the district court for a stay pending the district court's determination of the merits of the appeal. Notice of such application shall be given by first class mail to all parties, to the district court appeal and to any applicant before the board of adjustment. Upon filing of an application for stay in the district court, all proceedings in furtherance of the action appealed from shall be temporarily stayed pending the outcome of a hearing regarding the stay, which shall be conducted within thirty (30) days of application. The Court shall determine whether to impose a stay by considering the following factors: (i) the likelihood of success on the merits by the party seeking to impose the stay, (ii)

irreparable harm to the property interests of the party seeking to impose the stay if the stay is not imposed, (iii) relative effect on the other interested parties, and (iv) public policy concerns arising out of the imposition of the stay. If the court determines to impose a stay, the court shall require a bond or other security and such other terms as it deems proper to secure the rights of the parties and compensate for costs of delay. A bond or other security shall be posted within ten (10) business days of the court's determination; provided, that a municipal governing body shall not be required to post a bond. Subject to subsection A of Section 990.3 of Title 12 of the Oklahoma Statutes, a stay pursuant to this subsection shall automatically dissolve after a judgment, decree or final order resolving the merits of the appeal is filed with the court clerk. Notwithstanding any provision of law to the contrary, stays in appeals from the board of adjustment to the district court shall be obtained only as set forth in this section.

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

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

Passed the Senate the 7th day of March, 2016.

Presiding Officer of the Senate

Passed the House of Representatives the 30th day of March, 2016.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 31st day of March, 2016, at 11:04 o'clock A M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 5th day of April, 2016, at 4:59 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 5th day of April, 2016, at 5:16 o'clock P. M.

By: Chi Benge