

77-616. Stay and other temporary remedies. (a) Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

(b) A party may file a motion in the reviewing court, during the pendency of judicial review, seeking interlocutory review of the agency's action on an application for stay or other temporary remedies.

(c) If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety or welfare, the court may not grant relief unless it finds that:

- (1) The applicant is likely to prevail when the court finally disposes of the matter;
- (2) without relief the applicant will suffer irreparable injury;
- (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and
- (4) the threat to the public health, safety or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances.

(d) If subsection (c) does not apply, the court shall grant relief if it finds, in its independent judgment, that the agency's action on the application for stay or other temporary remedies was unreasonable in the circumstances.

(e) If the court determines that relief should be granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on appropriate terms or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms or granting other temporary remedies. As used in this subsection, "appropriate terms" may include requirement of a bond.

(f) Except as otherwise authorized by rule of the supreme court, the court shall not issue any *ex parte* order pursuant to this section.

(g) This section shall not apply to proceedings under K.S.A. 66-118g through 66-118k, and amendments thereto.

History: L. 1984, ch. 338, § 16; July 1.