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## **REFINING REVITALIZATION**

### *Bode proposes legislation to add badly-needed refining capacity*

(Cushing) Citing the gasoline price shocks and shortages brought on by hurricanes Katrina and Rita, Oklahoma Corporation Commissioner Denise Bode today unveiled the Oklahoma Refinery Revitalization Act. The proposed legislation would encourage the expansion of refining capacity in Oklahoma by providing incentives for growth and by streamlining the regulatory process.

Bode says it's a consumer issue.

“Consumers need a stable, secure source of fuel, “ noted Bode. “It’s clear we don’t have that. There has not been a new refinery built in America in almost 30 years, while many have closed over that time period. And as the recent hurricanes proved, too much of this country’s remaining refinery capacity is along the Gulf coast. Americans are stuck with an aging, vulnerable energy infrastructure that simply can’t be relied on to meet their daily needs, let alone the demands of a 21<sup>st</sup> century, high-tech economy.

“Oklahoma has much to offer when it comes to building new refining capacity. We are an energy producer, we have an experienced and eager work force, we are centrally located and we understand the oil and gas industry,” Bode continued. “However, there’s a lot more involved to the refining issue that simply picking a site and building a facility. This legislation addresses the many complex issues involved in tackling the problem.”

The areas addressed by the legislation include:

- The need for incentive programs to encourage needed growth in refining capacity
- Barriers to investment
- The need for regulatory certainty for refinery owners
- Needed reforms to the regulatory process, without compromising environmental protections

(more)

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**Commissioner Bode presented the proposed legislation today during a meeting in Cushing of the Oklahoma legislature's Rural Economic Development Initiative Task Force.**

**(end)**

**EDITORS PLEASE NOTE: A copy of the proposed bill and an Executive Summary are attached.**

## **The Oklahoma Refinery Revitalization Act Executive Summary**

The stated purpose of this proposed incentive package is to encourage the expansion of the refining capacity within the State of Oklahoma by providing incentives for growth and by detailing an accelerated review and approval process of all regulatory approvals for certain idle refineries.

This proposal contains a number of suggestions for assisting the refining industry in its constructing new facilities or expanding existing facilities. Under federal law, the Energy Policy Act of 2005 allows for states to enter into a memorandum of understanding (MOU) with the Administrator of the United States Environmental Protection Agency (Administrator). This proposed legislation provides for an MOU in the form of a Refinery Permitting Cooperative Agreement (RCPA) between the Director of the Oklahoma Department of Environmental Quality (Director) and the Administrator to implement the purposes of this act.

Within 30 days of the establishment of the RCPA the Director and the Administrator will identify steps, including timelines, that each will take to streamline the consideration of State and Federal environmental permits for a new refinery. The RCPA shall designate which agency is to provide technical and legal assistance relating to the siting and operation of refineries with respect to Federal legislation.

The DEQ shall act as the lead State agency for the purposes of coordinating all applicable State/Federal authorizations and environmental reviews of the refining facility. To the maximum extent practicable under applicable State and Federal law, the Director shall coordinate this State/Federal authorization and review process with the agencies responsible for conducting any separate permitting and environmental reviews. A schedule will be established with deadlines for the review of siting and operation. Further, the act also provides for the keeping of a complete consolidated record of decisions and actions of all state agencies.

The proposed act provides for a method to increase the delivery infrastructure. The Oklahoma Corporation Commission is directed to work with the Federal Energy Regulatory Commission to expedite the siting of a crude oil or refined petroleum product pipeline.

Finally, this proposal contains tax incentives for refiners. Those suggested include: 1) A provision allows for temporary expensing for equipment used in refining. A taxpayer may elect to treat 100 percent of the cost of any qualified refinery property as an expense that is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the year in which said qualified refinery property is incurred. 2) Another tax provision allows for pass through to owners of deduction for capital costs incurred by small refiner cooperatives in complying with environmental protection agency sulfur regulations. Under this provision the refiner may elect to allocate all or a portion of the deduction to the owners of a small refinery. 3) Small refiners are not subject to limitations on exemptions found in the tax code.

The importance of increasing the refining capacity of America's refineries is now a recognized fact. Our state has the opportunity to help address this need by encouraging the construction of new refineries and assisting the expansion of our existing refineries. This

proposal is the beginning of a process that will lead to the production of adequate supplies of refined products that originate in Oklahoma.

## REFINING REVITALIZATION

### SEC. 1. SHORT TITLE.

This subtitle may be cited as the 'Oklahoma Refinery Revitalization Act'.

### SEC. 2. FINDINGS.

The House of Representatives of the State of Oklahoma finds the following:

*(1) There has not been a new petroleum refinery constructed in the United States since 1976. It is well known that the number of refineries located in the United States has declined rapidly since the early 1980s. Between 1981 and 2005 the number of oil refineries fell from 315 to 144. The surviving facilities have improved their efficiency to meet demand, but are currently operating at 94% capacity. To meet a growing demand, refiners have increased refining capacity by 28% since the mid-1990s.*

*It should be noted that approximately 50 percent of the petroleum in the United States is used for the production of gasoline. With a growing demand, suppliers of refined petroleum products are forced to meet this demand with imported product. The amount of imported product is growing and is currently 10% of domestic consumption. Unfortunately these foreign refiners cannot produce the volume of product needed due to stringent United States gasoline and diesel fuel specifications.*

The federal government states that by 2025, nationwide gasoline consumption is projected to rise from 8,900,000 barrels per day to 12,900,000 barrels per day. Diesel fuel, jet fuel and home heating oil are other refined products experiencing an increased demand due to greater consumption.

(2) There are currently 5 refineries operating in the State of Oklahoma. For 2005, it is estimated that the payroll at these refineries will be \$157 million and the operating expenses will total \$124 million. It is also expected that in 2005 the capital expenditures at these facilities will be an estimated \$136 million. The estimated total expenditures by these refineries in Oklahoma for 2005 are \$417 million. This figure represents a 58% increase since 2002.

(3) A commonly cited figure for the development and construction of a refinery is \$2 billion. With such a large price tag, incentive programs used to encourage growth in the domestic refining industry are an option that warrants consideration.

(4) The refining industry is subject to significant State and Federal environmental regulations and is facing compliance with several new Clean Air Act (CAA) requirements over the next decade. These new CAA requirements will benefit the environment and the people of the State of

Oklahoma, but will also require substantial capital investment and additional government permits.

(5) Barriers to investment, burdensome regulation, the cost of upgrading existing facilities and high operating costs have caused refining jobs to leave the state.

(6) More regulatory certainty for refinery owners is needed to stimulate investment in increased refinery capacity in Oklahoma. This will include procedures for Federal, State, and local regulatory approvals, which need to be streamlined.

### **SEC. 3. PURPOSE.**

The purpose of the Oklahoma Refinery Revitalization Act (Act) is to encourage the expansion of the refining capacity within the State of Oklahoma by providing incentives for growth and by detailing an accelerated review and approval process of all regulatory approvals for certain idle refineries. Additionally, the Act seeks to provide legal and technical assistance to State agencies, which may have resources that are inadequate to meet such permit review demands.

### **SEC. 4. REFINERY PERMITTING COOPERATIVE AGREEMENT.**

(1) IN GENERAL- Not later than 30 days after the date of enactment of this Act, the Governor shall request that the Executive Director of the Oklahoma Department of Environmental Quality (Director) and the Administrator of the United States Environmental Protection Agency (Administrator) enter into negotiation for a Refinery Permitting Cooperative Agreement (RPCA) for the purposes of this Act. This RPCA is a memorandum of understanding provided for in the Energy Policy Act of 2005. The Director shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the purposes of this Act and any regulations enacted pursuant to this Act as allowed by State and Federal legislation.

(2) ADDITIONAL SIGNATORIES- The Director, and the appropriate representative of any Indian Tribe, with jurisdiction over a potential refinery site, may be signatories to the RPCA under this section.

### **SEC. 5. ENVIRONMENTAL PERMITTING ASSISTANCE.**

Not later than 30 days after the Director and the Administrator become signatories to the RPCA under section 4 of this Act –

(1) The Director shall designate one or more employees of the Department of Environmental Quality (DEQ) with expertise relating to the siting and operation of refineries to provide legal and technical assistance by DEQ to any permit applicants in accordance with paragraph (3); and

**(2) In General- Under the RPCA, the Director and the Administrator shall identify steps, including timelines, that each will take to streamline the consideration of State and Federal environmental permits for a new refinery.**

- (b) Authority Under RPCA- The Director shall be authorized to—
  - (i) accept from a refiner a consolidated application for all permits required from the Environmental Protection Agency and the DEQ, to the extent consistent with other applicable law and the RPCA;
  - (ii) enter into memoranda of agreement with other State and Federal agencies to coordinate consideration of refinery applications and permits among State and Federal agencies; and
  - (iii) enter into memoranda of agreement with State and Federal agencies, under which State and Federal review of refinery permit applications will be coordinated and concurrently considered, to the extent practicable.
- (c) State Assistance- The Director is authorized to request financial assistance from the Federal government to facilitate the hiring of additional personnel with expertise in fields relevant to consideration of refinery permits.
- (d) Other Assistance- The Director is authorized to request that the Federal government provide technical, legal, or other assistance to the State to facilitate the state’s review of applications to build new refineries.

(3) The RPCA shall designate which agency shall provide technical and legal assistance relating to the siting and operation of refineries, with respect to each of—

- (i) the Clean Air Act (42 U.S.C. 7401 et seq.);
- (ii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
- (iii) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
- (iv) the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);**
- (v) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
- (vi) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);
- (vii) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and
- (viii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

## **SEC. 6. COORDINATION AND EXPEDITIOUS REVIEW OF PERMITTING PROCESS.**

- (a) The DEQ, as Lead Agency- Upon written request of a prospective applicant for authorization for a refinery facility in the State of Oklahoma, the DEQ shall act as the lead State agency for the purposes of coordinating all applicable State/Federal authorizations and environmental reviews of the refining facility. To the maximum extent practicable under applicable State and Federal law, the Director shall coordinate this State/Federal authorization and review process with any Federal, State, Indian Tribes and local agencies responsible for conducting any separate permitting and environmental reviews of the refining facility.
- (b) Schedule-

(1) IN GENERAL- The Director, in coordination with the agencies with authority over State authorizations and, as appropriate, with Federal, Indian Tribes and local agencies that are willing to coordinate their separate permitting and environmental reviews with the State authorizations and environmental reviews, shall establish a schedule with prompt and binding intermediate and ultimate deadlines for the review of, and State authorization decisions relating to, refinery facility siting and operation.

(2) PREAPPLICATION PROCESS- Prior to establishing the schedule, the Director shall provide an expeditious preapplication mechanism for applicants to confer with the agencies involved and to have each agency communicate to the prospective applicant within 60 days concerning--

(A) the likelihood of approval for a potential refinery facility; and

(B) key issues of concern to the agencies and local community.

(3) SCHEDULE- The Director shall consider the preapplication findings under paragraph (2) in setting the schedule and shall ensure that once an application has been submitted with such information as the Director considers necessary, a draft permit shall be completed within 6 months or, where circumstances require otherwise, as soon as thereafter practicable. A refiner may request that the permitting process be stopped at anytime by agreement with the Director and Administrator.

(4) FAILURE TO MEET SCHEDULE- If a State administrative agency does not complete a proceeding for an approval that is required for a refinery authorization in accordance with the schedule established by the Director under this subsection, the applicant may pursue remedies under subsection (f).

(c) Consolidated Environmental Review-

(1) RPCA- The RPCA shall address the coordination of all applicable State/Federal actions for complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and it shall identify who will be responsible for preparing any environmental impact statement required or such other form of environmental review as is required.

(2) CONSOLIDATION OF STATEMENTS- In carrying out paragraph (1), if the United States Environmental Protection Agency determines an environmental impact statement is required, the DEQ will work with that Federal Agency to prepare a single environmental impact statement, which shall consolidate the environmental reviews of all State and Federal agencies considering any aspect of the project covered by the environmental impact statement.

(d) Other Agencies- Each State agency considering an aspect of the siting or operation of a refinery facility in the State of Oklahoma shall cooperate with the DEQ and comply with the deadlines established by the DEQ in the preparation of any environmental impact statement or such other form of review as is required.

(e) Exclusive Record- The DEQ shall, with the cooperation of State and Federal administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the DEQ or by a State administrative agency or officer acting under delegated Federal authority (or by a Federal administrative agency) with respect to the siting or operation of a refinery facility in the state. Such record shall be the exclusive record for any State

administrative proceeding that is an appeal or review of any such decision made or action taken.

(f) Appeals- In the event any agency has denied a State authorization required for a refinery facility in the state, or has failed to act by a deadline established by the Director pursuant to subsection (b) for deciding whether to issue the State authorization, the applicant may file an appeal with the Board of Environmental Quality (Board). Based on the record maintained under subsection (e), and in consultation with the affected agency, the Board may then either order the immediate issuance of the necessary State authorization with appropriate conditions, or deny the appeal. The Board shall issue a decision within 60 days after the filing of the appeal. In making a decision under this subsection, the Board shall adhere to applicable requirements of State and Federal law, including each of the laws referred to in section 5(3)(i) through (viii). Any judicial appeal of the Board's decision shall be to an Oklahoma court of competent jurisdiction as allowed under the Constitution of the State of Oklahoma.

(g) Conforming Regulations- Not later than 3-months after the date of enactment of this Act, the Oklahoma Environmental Quality Board shall issue any regulations, under its authority, necessary to implement this section.

## **SEC. 7. COMPLIANCE WITH ALL ENVIRONMENTAL REGULATIONS REQUIRED.**

Nothing in this Act shall be construed to waive the applicability of environmental laws and regulations to any refinery facility.

## **SEC. 8. INCREASING DELIVERY INFRASTRUCTURE.**

(a) The Oklahoma Corporation Commission (OCC) shall cooperate with the Federal Energy Regulatory Commission (FERC) and comply with the deadlines established by FERC.

(b) The OCC shall have the authority to establish a schedule for all state pipeline authorizations with respect to crude oil or refined petroleum product pipeline facility. In establishing the schedule, the OCC –

- (1) ensure expeditious completion of all such proceedings; and
- (2) accommodate the applicable schedules established by State law for such proceedings.

(c) Judicial Review – Any judicial appeal of the OCC actions shall be to an Oklahoma court of competent jurisdiction as allowed under the Constitution of the State of Oklahoma.

(d) Issuance of OCC Order – Upon application by a qualified applicant, the OCC shall issue an order authorizing, in whole or in part, the siting, construction, expansion, or operation of a crude oil or refined petroleum product pipeline facility in either interstate or intrastate commerce.

(e) Rights-of-Way – When any holder of an order from the OCC under this section cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for –



- (1) the necessary right-of-way to site, construct, operate, and maintain a pipeline or pipelines for the transportation of crude oil or refined petroleum products; and
  - (2) the necessary land or other property for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipeline or pipelines,
- the holder of the order may acquire such property by the exercise of the right of eminent domain in an Oklahoma court of competent jurisdiction as allowed under the Constitution of the State of Oklahoma.

## **SEC. 9. TEMPORARY EXPENSING FOR EQUIPMENT USED IN REFINING OF LIQUID FUELS. ELECTION TO EXPENSE CERTAIN REFINERIES.**

(a) Treatment as Expenses- A taxpayer may elect to treat 100 percent of the cost of any qualified refinery property as an expense that is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the year in which said qualified refinery property is incurred.

(b) Election-

(1) IN GENERAL- An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Oklahoma Tax Commission (Tax Commission) may by regulations prescribe.

(2) ELECTION IRREVOCABLE- Any election made under this section may not be revoked except with the consent of the Tax Commission.

(c) Qualified Refinery Property-

(1) IN GENERAL- The term 'qualified refinery property' means any portion of a qualified refinery--

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2012,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2008,

(ii) which is placed in service before January 1, 2008, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2008.

(2) SPECIAL RULE FOR SALE-LEASEBACKS- For purposes of paragraph (1)(A), if property is--

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

(3) EFFECT OF WAIVER UNDER CLEAN AIR ACT - A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified Refinery- For purposes of this section, the term 'qualified refinery' means any refinery located in the State of Oklahoma that is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels.

(e) Production Capacity- The requirements of this subsection are met if the portion of the qualified refinery--

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process qualified fuels at a rate that is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible Refinery Property - No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(g) Election to Allocate Deduction to Cooperative Owner-

(1) IN GENERAL - the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to qualified persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under Section 11 of this Act by reason of any amount to which the preceding sentence applies.

(2) FORM AND EFFECT OF ELECTION- An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) WRITTEN NOTICE TO OWNERS - If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting- No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Tax Commission a report containing such information with respect to the operation of the refineries of the taxpayer as the Tax Commission shall require.

(i) Effective Date- The provisions of this subsection shall apply to properties placed in service after the date of the enactment of this Act.

## **SEC. 10. PASS THROUGH TO OWNERS OF DEDUCTION FOR CAPITAL COSTS INCURRED BY SMALL REFINER COOPERATIVES IN**

## COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) Election to Allocate Deduction to Cooperative Owner; Regarding compliance with the Environmental Protection Agency's Sulfur Regulations:

(1) IN GENERAL — A refiner who is

(A) a small business refiner, and or

(B) one or more persons directly holding an ownership interest in the refiner;

the refiner may elect to allocate all or a portion of the deduction allowable to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under Section 11 of this Act by reason of any amount to which the preceding sentence applies.

(2) FORM AND EFFECT OF ELECTION- An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) WRITTEN NOTICE TO OWNERS- If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(b) Effective Date- The provisions of this subsection shall apply to properties placed in service after the date of the enactment of this Act.

## SEC. 11. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

**(a) In General - If the taxpayer or one or more related persons engages in the refining of crude oil, Section 613A(c) of the Internal Revenue Code, which addresses exemptions for independent producers and royalty owners, shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.**

(b) Effective Date - The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act.

## SEC. 12. DEFINITIONS.

For the purposes of this Act, the term--

(1) 'Director' means the Director of the Oklahoma Department of Environmental Quality;

(2) 'Administrator' means the Administrator of the Environmental Protection Agency;

- (3) 'DEQ' means the Oklahoma Department of Environmental Quality;
- (4) 'RPCA' means Refinery Permitting Cooperative Agreement;
- (5) 'Federal authorization' means any authorization required under Federal law (including the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Toxic Substances Control Act, the National Historic Preservation Act, and the National Environmental Policy Act of 1969) in order to site, construct, upgrade, or operate a refinery facility within a Refinery Revitalization Zone, including such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal, State, or local agency;
- (6) 'OCC' means the Oklahoma Corporation Commission;
- (7) 'FERC' means the Federal Energy Regulatory Commission;
- (8) 'Board' means the Environmental Quality Board;
- (9) 'Tax Commission' means the Oklahoma Tax Commission;
- (10) 'idle refinery' means any real property site that has been used at any time for a refinery facility since December 31, 1979, that has not been in operation after April 1, 2005; and
- (11) 'refinery facility' means any facility designed and operated to receive, unload, store, process and refine raw crude oil by any chemical or physical process, including distillation, fluid catalytic cracking, hydrocracking, coking, alkylation, etherification, polymerization, catalytic reforming, isomerization, hydrotreating, blending, and any combination thereof.