

EHB 2810

THE STATE SENATE
Tuesday, April 11, 2006

ENGROSSED

House Bill No. 2810

As Amended

ENGROSSED HOUSE BILL NO. 2810 - By: DENNEY, ADKINS, ARMES, BINGMAN, BILLY, BLACKWELL, BRADDOCK, COVEY, DePUE, DeWITT, DORMAN, ELLIS, GLENN, HICKMAN, JOHNSON, LAMONS, LIEBMANN, McCARTER, MILLER (Ken), MORGAN (Fred), PETERS, PRUETT, ROGGOW, TIBBS, TURNER, WALKER, DUNCAN, HIETT, HILLIARD, MORRISSETTE, PETERSON (Pam), SHERRER and SULLIVAN of the House and MORGAN and BRANAN of the Senate.

[energy - creating the Oklahoma Refinery Revitalization Act - effective date - emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-101 of Title 27A, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Refinery Revitalization Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The purpose of the Oklahoma Refinery Revitalization Act is to encourage the expansion of 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

1 for certain refinery facilities. Additionally, the act seeks to
2 provide legal and technical assistance to state agencies, which may
3 have resources that are inadequate to meet refinery facility permit
4 review demands.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-16-103 of Title 27A, unless
7 there is created a duplication in numbering, reads as follows:

8 As used in the Oklahoma Refinery Revitalization Act:

- 9 1. "Executive Director" means the Executive Director of the
10 Oklahoma Department of Environmental Quality;
- 11 2. "Administrator" means the Administrator of the Environmental
12 Protection Agency;
- 13 3. "RPCA" means the Refinery Permitting Cooperative Agreement;
- 14 4. "Federal authorization" means any authorization required
15 under federal law, including but not limited to, the Clean Air Act,
16 the Federal Water Pollution Control Act, the Safe Drinking Water
17 Act, the Comprehensive Environmental Response, Compensation, and
18 Liability Act of 1980, the Solid Waste Disposal Act, the Toxic
19 Substances Control Act, the National Historic Preservation Act, the
20 National Environmental Policy Act of 1969, and the Endangered
21 Species Act, in order to site, construct, upgrade, or operate a
22 refinery facility, including such permits, special use

1 authorizations, certifications, opinions, or other approvals as may
2 be required, whether issued by a federal, state, or local agency;

3 5. "Commission" means the Oklahoma Corporation Commission;

4 6. "Tax Commission" means the Oklahoma Tax Commission; and

5 7. "Refinery facility" means any facility designed and operated
6 to receive, unload, store, process and refine raw crude oil by any
7 chemical or physical process, including distillation, fluid
8 catalytic cracking, hydrocracking, coking, alkylation,
9 etherification, polymerization, catalytic reforming, isomerization,
10 hydrotreating, blending, and any combination thereof.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2-16-104 of Title 27A, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Not more than thirty (30) days after the effective date of
15 the Oklahoma Refinery Revitalization Act, the Governor shall request
16 the Administrator of the United States Environmental Protection
17 Agency to enter into negotiations with the Executive Director of the
18 Department of Environmental Quality for a Refinery Permitting
19 Cooperative Agreement (RPCA) for the purposes set forth in this act.
20 The RPCA shall be a memorandum of understanding as provided for in
21 the Energy Policy Act of 2005. The Executive Director shall
22 designate a senior official responsible for negotiations, and
23 dedicate sufficient other staff and resources to ensure, full

1 implementation of the purposes of this act and any rules promulgated
2 pursuant to this act as allowed by state and federal legislation.

3 B. The Executive Director and the appropriate representative of
4 any Indian tribe with jurisdiction over a potential refinery site,
5 may be signatories to the RPCA negotiated pursuant to this section.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-16-105 of Title 27A, unless
8 there is created a duplication in numbering, reads as follows:

9 A. Not more than thirty (30) days after the Executive Director
10 of the Department of Environmental Quality and the Administrator of
11 the United States Environmental Protection Agency become signatories
12 to the Refinery Permitting Cooperative Agreement (RPCA) as provided
13 for in Section 4 of this act, the following shall occur:

14 1. The Executive Director shall designate one or more employees
15 of the Department of Environmental Quality with expertise relating
16 to the siting and operation of refineries to provide legal and
17 technical assistance to any permit applicants in accordance with the
18 designations made in subsection E of this section; and

19 2. The Executive Director and the Administrator shall identify
20 steps, including timelines, that each shall take to streamline the
21 consideration of state and federal environmental permits for a new
22 refinery facility.

1 B. Pursuant to the provisions of the RPCA, the Executive
2 Director shall be authorized to:

3 1. Accept from a refiner a consolidated application for all
4 permits required from the Environmental Protection Agency and the
5 Department of Environmental Quality, to the extent consistent with
6 applicable law and the RPCA;

7 2. Enter into memoranda of agreement with other state and
8 federal agencies to coordinate consideration of refinery facility
9 applications and permits; and

10 3. Enter into memoranda of agreement with state and federal
11 agencies, under which state and federal review of refinery facility
12 permit applications will be coordinated and concurrently considered,
13 to the extent practicable.

14 C. The Executive Director is authorized to request financial
15 assistance from the federal government to facilitate the hiring of
16 additional personnel with expertise in fields relevant to
17 consideration of refinery permits.

18 D. The Executive Director is authorized to request technical,
19 legal, or other assistance from the federal government to facilitate
20 the state level review of applications for the construction of new
21 refinery facilities.

22 E. The RPCA shall designate each state and federal agency that
23 will provide technical and legal assistance relating to the siting

1 and operation of refinery facilities, with respect to each of the
2 following, if applicable:

- 3 1. The Clean Air Act (42 U.S.C. 7401 et seq.);
- 4 2. The Federal Water Pollution Control Act (33 U.S.C. 1251
5 et seq.);
- 6 3. The Safe Drinking Water Act (42 U.S.C. 300f et seq.);
- 7 4. The Comprehensive Environmental Response, Compensation, and
8 Liability Act of 1980 (42 U.S.C. 9601 et seq.);
- 9 5. The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
- 10 6. The Toxic Substances Control Act (15 U.S.C. 2601 et seq.);
- 11 7. The National Historic Preservation Act (16 U.S.C. 470 et
12 seq.);
- 13 8. The National Environmental Policy Act of 1969 (42 U.S.C.
14 4321 et seq.); and
- 15 9. The Endangered Species Act (16 U.S.C. 1531 et seq.).

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-16-106 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 A. Upon the written request of a prospective applicant for
20 authorization of a refinery facility in the State of Oklahoma, the
21 Department of Environmental Quality shall act as the lead state
22 agency for the purpose of coordinating all applicable state and
23 federal authorizations and environmental reviews of the refining

1 facility. To the maximum extent practicable under applicable state
2 and federal law, the Executive Director of the Department of
3 Environmental Quality shall coordinate the state and federal
4 authorization and review process with any federal, state, tribal,
5 and local agencies responsible for conducting separate permitting
6 and environmental reviews of the refining facility.

7 B. 1. The Executive Director, in coordination with the state
8 agencies and, as appropriate, with federal, tribal and local
9 agencies that are willing to coordinate their separate permitting
10 and environmental reviews with the state permitting and reviews
11 process, shall establish a schedule with prompt and binding
12 intermediate and ultimate deadlines for the review of, and state
13 authorization decisions relating to, refinery facility siting and
14 operation applications.

15 2. Prior to establishing the schedule, the Executive Director
16 shall provide an expeditious preapplication process that allows
17 applicants to confer with the agencies involved and to have each
18 agency communicate to the prospective applicant within sixty (60)
19 days:

- 20 a. the likelihood of approval for a potential refinery
21 facility, and
- 22 b. key issues of concern for the agencies and the local
23 community.

1 3. The Executive Director shall consider the preapplication
2 findings under paragraph 2 of this subsection when setting the
3 schedule and shall ensure that once an application has been
4 submitted with the necessary information, as determined by the
5 Executive Director, a draft permit shall be completed within six (6)
6 months or, where circumstances require otherwise, as soon as
7 thereafter practicable. An applicant may request that the
8 permitting process be stopped at anytime by agreement with the
9 Executive Director and Administrator.

10 4. If a state administrative agency does not complete a
11 refinery application authorization process in accordance with the
12 schedule established by the Executive Director pursuant to this
13 subsection, the applicant may pursue remedies set forth in
14 subsection F of this section.

15 C. 1. The RPCA shall address the coordination of all
16 applicable state and federal actions necessary for complying with
17 the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et
18 seq.), if applicable, and shall identify the entity responsible for
19 preparing any environmental impact statement or any other form of
20 environmental review that is required.

21 2. If the United States Environmental Protection Agency
22 determines an environmental impact statement is required, the
23 Department of Environmental Quality shall work with the Agency to

1 prepare a single environmental impact statement, which shall
2 consolidate the environmental reviews of all state and federal
3 agencies considering any aspect of the refinery facility covered by
4 the environmental impact statement.

5 D. Each state agency considering an aspect of the siting or
6 operation of a refinery facility in the State of Oklahoma shall
7 cooperate with the Department of Environmental Quality and comply
8 with the deadlines established by the Department in the preparation
9 of an environmental impact statement or such other form of
10 environmental review that is required.

11 E. The Department of Environmental Quality shall, with the
12 cooperation of state and federal administrative agencies and
13 officials, maintain a complete consolidated record of all decisions
14 made or actions taken by the Department, by a state administrative
15 agency or officer acting under delegated federal authority, or by a
16 federal administrative agency with respect to the siting or
17 operation of a refinery facility in the state. The record shall be
18 the exclusive record for any state administrative proceeding that is
19 an appeal or review of any refinery facility siting or operation
20 decision made or action taken.

21 F. If a state agency has denied state authorization required
22 for a refinery facility in the state, or has failed to act by a
23 deadline established by the Director pursuant to subsection B of

1 this section, the applicant may file an appeal with a review panel
2 comprised of the Oklahoma Secretary of the Environment or a
3 designee, the Secretary of Energy or a designee, and the Secretary
4 of Transportation or a designee. Based on the record maintained
5 pursuant to subsection E of this section, and in consultation with
6 the affected state agency, the review panel may then either order
7 the immediate issuance of the necessary state authorization with
8 appropriate conditions, or deny the appeal. The review panel shall
9 issue a decision within sixty (60) days after the filing of the
10 appeal. In making a decision under this subsection, the review
11 panel shall adhere to applicable requirements of state and federal
12 law, including each of the laws referred to in subsection E of
13 Section 5 of this act. Any judicial appeal of the decision of the
14 review panel shall be to an Oklahoma court of competent jurisdiction
15 as allowed under the Constitution of the State of Oklahoma.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-16-107 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 Nothing in the Oklahoma Refinery Revitalization Act shall be
20 construed to waive the applicability of any environmental laws and
21 rules to any refinery facility.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 67 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Corporation Commission shall cooperate with and comply
5 with deadlines established by the Federal Energy Regulatory
6 Commission in regards to authorization for the construction, siting,
7 expansion, or operation of crude oil or refined petroleum product
8 pipeline facilities.

9 B. The Corporation Commission shall have the authority to
10 establish a schedule for all state pipeline authorizations with
11 respect to crude oil or refined petroleum product pipeline
12 facilities. In establishing the schedule, the Commission shall:

- 13 1. Ensure expeditious completion of all proceedings; and
- 14 2. Accommodate the applicable schedules established by state
15 law for such proceedings.

16 C. Any judicial appeal of the actions of the Commission shall
17 be to an Oklahoma court of competent jurisdiction as provided for by
18 the Constitution of the State of Oklahoma.

19 D. Upon application by a qualified applicant, the Commission
20 shall issue an order authorizing, in whole or in part, the siting,
21 construction, expansion, or operation of a crude oil or refined
22 petroleum product pipeline facility which is located in either
23 interstate or intrastate commerce.

1 E. If the holder of a Commission order issued pursuant to this
2 section cannot acquire by contract, or is unable to agree with the
3 owner of the property on the amount of compensation to be paid for:

4 1. The necessary right-of-way to site, construct, operate, and
5 maintain a pipeline or pipelines for the transportation of crude oil
6 or refined petroleum products; and

7 2. The necessary land or other property for the location of
8 compressor stations, pressure apparatus, or other stations or
9 equipment necessary to the proper operation of such pipeline or
10 pipelines,

11 the holder of the order may acquire the property through the
12 exercise of the right of eminent domain in an Oklahoma court of
13 competent jurisdiction as allowed under the Constitution of the
14 State of Oklahoma.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2357.204 of Title 68, unless
17 there is created a duplication in numbering, reads as follows:

18 A. A taxpayer may elect to treat one hundred percent (100%) of
19 the cost of a qualified refinery property as an expense that is not
20 chargeable to a capital account. Any cost so treated shall be
21 allowed as a deduction for the year in which the qualified refinery
22 property expense is incurred.

1 B. 1. An election under this section for any taxable year
2 shall be made on the taxpayer's return of the tax imposed by this
3 chapter for the taxable year. The election shall be made in a
4 manner as the Oklahoma Tax Commission may by rule prescribe.

5 2. An election made pursuant to this section shall not be
6 revoked except with the consent of the Tax Commission.

7 C. 1. As used in this section, the term "qualified refinery
8 property" means any portion of a qualified refinery:

9 a. the original use of which commences with the taxpayer,

10 b. which is placed in service by the taxpayer after the
11 effective date of this act and before January 1, 2012,

12 c. which meets the requirements of subsection E of this
13 section, other than a qualified refinery which is
14 separate from any existing refinery,

15 d. which meets all applicable environmental laws in
16 effect on the date the portion was placed in service,

17 e. for which no written binding contract for the
18 construction of was in effect on or before June 14,
19 2005, and

20 f. (1) the construction of which is subject to a written
21 binding construction contract entered into before
22 January 1, 2008,

- 1 (2) which is placed in service before January 1,
2 2008, or
3 (3) in the case of self-constructed property, the
4 construction of which began after June 14, 2005,
5 and before January 1, 2008.

6 2. For purposes of subparagraph a of paragraph 1 of this
7 subsection, if property is:

- 8 a. originally placed in service after the effective date
9 of this act by a person, and
10 b. sold and leased back to the person within three (3)
11 months after the date the property was originally
12 placed in service,

13 the property shall be treated as originally placed in service not
14 earlier than the date on which the property is used under the
15 leaseback provision referred to in subparagraph b of paragraph 1 of
16 this subsection.

17 3. A waiver under the federal Clean Air Act shall not be taken
18 into account in determining whether the requirements of subparagraph
19 d of paragraph 1 of this subsection are met.

20 D. For purposes of this section, the term "qualified refinery"
21 means any refinery located in the State of Oklahoma that is designed
22 to serve the primary purpose of processing liquid fuel from crude
23 oil or qualified fuels.

1 E. The requirements of this section shall be met if the portion
2 of the qualified refinery:

3 1. Enables the existing qualified refinery to increase total
4 volume output, determined without regard to asphalt or lube oil, by
5 five percent (5%) or more on an average daily basis; or

6 2. Enables the existing qualified refinery to process qualified
7 fuels at a rate that is equal to or greater than twenty-five percent
8 (25%) of the total throughput of such qualified refinery on an
9 average daily basis.

10 F. No deduction shall be allowed under this section for any
11 qualified refinery property the primary purpose of which is for use
12 as a topping plant, asphalt plant, lube oil facility, or crude or
13 product terminal.

14 G. 1. The taxpayer may elect to allocate all or a portion of
15 the deduction allowable under subsection A of this section to
16 qualified persons. The allocation shall be equal to the ratable
17 share of the total amount allocated for each qualified person,
18 determined on the basis of the ownership interest the person has in
19 the taxpayer. The taxable income of the taxpayer shall not be
20 reduced under Section 10 of this act by reason of any amount to
21 which this subsection applies.

1 2. An election under paragraph 1 of this subsection for any
2 taxable year shall be made on a timely filed return for that year.
3 The election, once made, shall be irrevocable for the taxable year.

4 3. If any portion of the deduction available under subsection A
5 of this section is allocated to an owner under paragraph 1 of this
6 subsection, the cooperative shall provide the owner receiving the
7 allocation written notice of the amount of the allocation. Notice
8 shall be provided before the date on which the return described in
9 paragraph 2 of this subsection is due.

10 H. No deduction shall be allowed under subsection A of this
11 section to any taxpayer for any taxable year unless the taxpayer
12 files with the Tax Commission a report containing information with
13 respect to the operation of the refineries as shall be required by
14 the Tax Commission.

15 I. The provisions of this section shall apply to qualified
16 refinery properties placed in service after the effective date of
17 this act.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2357.205 of Title 68, unless
20 there is created a duplication in numbering, reads as follows:

21 A. A refiner who is:

22 1. A small business refiner; or

1 2. One or more persons directly holding an ownership interest
2 in the refiner,
3 may elect to allocate all or a portion of the cost of complying with
4 sulfur regulations issued by the Environmental Protection Agency as
5 a deduction allowable to such persons. The allocation for each
6 person shall be equal to the ratable share of the total amount
7 allocated, determined on the basis of the ownership interest of the
8 person. The taxable income of the refiner shall not be reduced by
9 reason of any amount allowed pursuant to this section.

10 B. An election made pursuant to subsection A of this section
11 for any taxable year shall be made on a timely filed return for such
12 year. The election, once made, shall be irrevocable for the taxable
13 year.

14 C. If any portion of the deduction available under subsection A
15 of this section is allocated to an owner, the cooperative shall
16 provide the owner receiving the allocation written notice of the
17 amount of the allocation. Notice shall be provided before the date
18 on which the return described in subsection B of this section is
19 due.

20 D. The provisions of this section shall apply to refinery
21 properties placed in service after the effective date of this act.

22 SECTION 11. This act shall become effective July 1, 2006.

1 SECTION 12. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.
5 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-4-06 - DO PASS,
6 As Amended and Coauthored.