



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, ODOE Siting Policy Analyst & EFSC Rules Coordinator

Date: November 5, 2021

Subject: Agenda Item A (Hearing): HB 2064 Rulemaking – Rulemaking Hearing for the November 18-19, 2021 EFSC Meeting

Attachment: Notice of Proposed Rulemaking

SUMMARY

The purpose of this rulemaking hearing is to take public comment on a proposed rule amendment related to the implementation of HB 2064 (2021) and the Council's Quorum Requirements. The proposed rule language and associated statements of need and fiscal impact are provided in the Notice of Proposed Rulemaking attached to this Staff Report. In addition to the opportunity to provide oral comments at the hearing, the Council will accept written comments on the proposed rules until 6:00 pm on December 10, 2021.

BACKGROUND

The Energy Facility Siting Council (EFSC) consists of seven members appointed by the Governor and subject to confirmation by the Senate.¹ A quorum of Council members must be present at a meeting for the Council to conduct business.

Under current law, five members of the Council constitute a quorum.² During the 2021 session, the Oregon Legislature passed HB 2064 which amends the law to change the quorum from “five members” to “a majority” of Council members.³ The statutory change becomes operative on January 1, 2022, and the bill authorizes the Council to take actions necessary for the bill to be implemented on that date.

At its October 22, 2021 meeting, the Council initiated formal rulemaking proceedings to implement HB 2064. Consistent with the provisions of the bill, the Council proposed to amend OAR 345-011-0005(1), the administrative rule describing the Council’s quorum requirement, as follows:

¹ ORS 469.450

² ORS 469.460

³ Oregon Laws 2021, chapter 110, section 1.

“~~Five~~**Four** members of the Council constitute a quorum. The Council may meet to discuss any matter in the absence of a quorum but shall take no formal action on any matter unless a quorum is present.”⁴

The proposed rule language and associated statements of need and fiscal impact are provided in the Notice of Proposed Rulemaking attached to this Staff Report.

PUBLIC COMMENTS AND CONDUCT OF RULEMAKING HEARING

The Notice of Proposed Rulemaking establishes a formal public comment period on the proposed rules and schedules a rulemaking hearing to begin at 5:30 pm on November 18, 2021. The purpose of the hearing is to take public comment on the Council’s proposed rule, including any questions, concerns, or support, the public may have about the proposed rule language. In particular, the Council invites public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. The hearing will be conducted by the Council’s Rules Coordinator. The Council will not respond to questions or comments during the hearing but may ask commenters clarifying questions.

In addition to the opportunity to provide oral comments at this hearing, the Council will accept written comments on the proposed rules until 6:00 pm on December 10, 2021, which is the close of the public comment period. Information about how interested members of the public may submit written public comment is provided in the attached Notice of Proposed Rulemaking, and on the Council’s rulemaking webpage: www.tinyurl.com/EFSCRulemaking.

⁴ Four members is a majority of the statutory seven-member body. Vacancies are not considered when determining the quorum requirement.