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To: Energy Facility Siting Council

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

Date: December 3, 2010

Subject: Agenda Item C (Action Item): HB 2064 Rulemaking – Adoption of Permanent Rules for the December 16-17, 2021 EFSC Meeting

Attachment: 1. Notice of Proposed Rulemaking
2. Report on Public Comments (to be provided to Council in advance of EFSC meeting, if received)

SUMMARY

Staff recommends that the Council adopt permanent rules for the implementation of HB 2064 (2021) and EFSC Quorum Requirements, to be effective on January 1, 2022.

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.

“FiveFour 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.

HEARING REPORT AND PUBLIC COMMENT

The Notice of Proposed Rulemaking requested public comment on the rules, including whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. As part of the comment period, the Notice scheduled a rulemaking hearing for November 18, 2021 at 5:30 pm. After a brief introduction, Christopher Clark, the Council's Rules Coordinator opened the hearing at 5:44 and no comments were offered. The hearing was adjourned until 6:02, at which time Mr. Clark confirmed that there were no additional comments and closed the hearing.

In addition to the opportunity to provide oral comments at this hearing, the Notice specified that the Council would accept written comments on the proposed rules until 6:00 pm on December 10, 2021. Staff will provide the Council with exact copies of any written comments received before that time, but no written comments had been received as of the date of publication of this report.

ADOPTION OF PERMANENT RULES

After considering any public comments received before the close of the public comment period, staff recommends that the Council adopt permanent rules to implement HB 2064 (2021). Staff notes that the amendments to the statutory quorum requirement made by HB 2064 do not become operative until January 1, 2022 and recommends that the Council specify that permanent rules implementing the bill be effective on that date.

Staff will provide a report on any public comments received and final recommendations for permanent rules after the close of the public comment periods.

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