



Oregon

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To: Energy Facility Siting Council

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

Date: October 8, 2021

Subject: Agenda Item C (Action Item): Initiation of Rulemaking to Implement HB 2064, Staff Report for the October 22, 2021 EFSC Meeting

Attachments: Attachment 1: HB 2064
Attachment 2: Draft Notice of Proposed Rulemaking

STAFF RECOMMENDATION

Staff recommends the Council initiate formal rulemaking proceedings to amend the number of Council members that constitute a quorum under OAR 345-011-0005 from “five” to “four” consistent with HB 2064 (2021) and requests the Council’s authorization to issue a Notice of Proposed Rulemaking, as presented in Attachment 2 to this report.

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. Currently, five members of the Council constitute a quorum.² When a quorum is not available, the Council may meet, but may not take formal action on any matter.

HB 2064, enacted by the 2021 legislature, amends ORS 469.460 to change the quorum 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.

Consistent with the current law, OAR 345-011-0005(1) provides:

¹ ORS 469.450

² ORS 469.460

³ Oregon Laws 2021, chapter 110, section 1.

“Five 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.”

As discussed further below, staff recommends that the Council initiate formal rulemaking proceedings to amend the rule to be consistent with the new law.

RECOMMENDED COUNCIL ACTION

HB 2064 amends the ORS 469.460 to change the number of Council members that constitute a quorum from “five” to “a majority.” The change is intended to ensure that the Council can meet as frequently as needed to conduct its business. Staff notes that the law continues to require the affirmative vote of at least four members to approve an application for site certificate; other decisions are made by the majority of members present at a meeting.⁴

Staff notes that during hearings on the bill, some stakeholders raised concerns that it was not clear if “a majority” of council members means a majority of the statutory seven member body, or a majority of members that have been appointed by the governor and confirmed by the senate at any given time. Staff believes that the former interpretation is appropriate, as ORS 469.450 establishes the Council as a body consisting of seven members, with no exception for vacancies. To avoid potential ambiguity, staff recommends that the Council amend the rule to specify that under the new law; “**Four** members of the Council constitute a quorum.”

Because this change would only affect the rules of conduct for Council meetings, Staff recommends that there would be no fiscal or economic impacts associated with the rulemaking, although some certificate holders could benefit from reductions in delays of Council action caused by lack of quorum.

Due to the narrow scope of the recommended rule changes, and the lack of potential fiscal and economic impacts, staff recommends that it would be appropriate to initiate formal rulemaking proceedings without appointing a rulemaking advisory committee or soliciting other informal advice from the public. To ensure that all interested stakeholders have a reasonable opportunity to participate in the formal proceedings, staff recommends that the Council schedule a rulemaking hearing to provide an opportunity for oral testimony, in addition to soliciting written public comments on the proposed rules.

Staff has prepared a draft Notice of Proposed Rulemaking reflecting the recommendations above, which is included as **Attachment 2** to this staff report. Staff requests the Council’s authorization to issue the Notice, as presented, and initiate formal rulemaking proceedings to amend OAR 345-011-0005 as described in this report.

⁴ ORS 469.370(7); OAR 345-011-0005(2).