

A-Engrossed House Bill 3681

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by Representative GAMBIA; Representatives ANDERSEN, HELM, Senators GOLDEN, SOLLMAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Makes changes to the EFSC site certificate process. (Flesch Readability Score: 61.2).

Requires the Energy Facility Siting Council to conclude a contested case and issue a final order within 12 months from the date of a proposed order. *[Provides that any final order issued by the council is appealable directly to the Supreme Court.]*

Requires the council to include in all final orders approving or rejecting an application for a site certificate or amended site certificate any decisions related to or arising from a contested case on the application. Requires a petitioner to establish individual or associational standing to appeal a final order. Provides that the council's approval or rejection of an application or request for an amendment, including decisions related to or arising from a contested case on the application or request, is conferred upon the Supreme Court.

[Allows a holder of a site certificate to file a notice for minor changes to the site boundaries of an energy facility. Allows a holder of a site certificate for certain energy facilities to file a request to extend by up to three years the deadlines by which construction of a facility must begin or be completed as specified in the site certificate.]

[Narrows the criteria by which the Public Utility Commission reviews a petition for a certificate of public convenience and necessity for overhead transmission lines. Directs the commission to review a petition for a certificate of public convenience and necessity without requiring a petitioner to first obtain any required land use approvals.]

[Allows the use of a site certificate for a high voltage transmission line as conclusive evidence of public use and necessity for any proceeding for condemnation of land or an interest therein. Allows a high voltage transmission line that has been designated as having statewide significance by a regional transmission authority that is established under state law to be placed in areas zoned for exclusive farm use.]

Allows a person who holds a site certificate to request to add area to the approved site boundary without the council requiring an amendment to the site certificate.

A BILL FOR AN ACT

Relating to energy facilities; creating new provisions; and amending ORS 469.370, 469.401, 469.403, 469.405 and 758.015.

Be It Enacted by the People of the State of Oregon:

ENERGY FACILITY SITING PROCESS

SECTION 1. ORS 469.370 is amended to read:

469.370. (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the State Department of Energy shall prepare and issue a draft proposed order on the application.

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

before the hearing. The notice shall, at a minimum:

(a) Comply with the requirements of ORS 197.797 (2), with respect to the persons notified;

(b) Include a description of the facility and the facility's general location;

(c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;

(d) State that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost; and

(e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

(4) After reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the department shall issue a proposed order recommending approval or rejection of the application. The department shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

(5) Following receipt of the proposed order from the department, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS chapter 183 and any procedures adopted by the council. **The council shall make every effort to conclude the contested case and issue a final order within 12 months from the date of the proposed order.** The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:

(a) The department failed to follow the requirements of subsection (2) or (3) of this section; or

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

(6) If no person requests party status to challenge the department's proposed order, the proposed order shall be forwarded to the council and the contested case hearing shall be concluded.

(7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.

(8) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.

(9) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or

(C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(10) At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with an average electric generating capacity of less than 100 megawatts. No notice of intent shall be required. Following approval of a request for expedited review, the department shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant.

(11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the automatic issuance or denial of a site certificate.

(12) The council shall specify in the site certificate a date by which construction of the facility must begin. **The earliest date that the council may require construction of a facility to begin is six years from the date the council issues the site certificate.**

(13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. [Section] 4321[, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

(a) Elimination of duplicative application, study and reporting requirements;

(b) Council use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable council standards;

(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency.

1 **SECTION 2.** ORS 469.403 is amended to read:

2 469.403. (1) **The Energy Facility Siting Council shall include in all of the council's final**
3 **orders approving or rejecting an application for a site certificate or amended site certificate**
4 **any decisions related to or arising from a contested case on the application.** Any party or
5 **limited party** to a contested case proceeding may apply for rehearing within 30 days from the date
6 the approval or rejection is served. The date of service shall be the date on which the [*Energy Fa-*
7 *cility Siting*] council delivered or mailed its approval or rejection in accordance with ORS 183.470.
8 The application for rehearing shall set forth specifically the ground upon which the application is
9 based. No objection to the council's approval or rejection of an application for a site certificate or
10 a site certificate amendment shall be considered on rehearing without good cause shown unless the
11 basis for the objection is urged with reasonable specificity before the council in the site certificate
12 or amended site certificate process. Upon such application, the council shall have the power to grant
13 or deny rehearing or to abrogate or modify its order without further hearing. Unless the council
14 acts upon the application for rehearing within 30 days after the application is filed, the application
15 shall be considered denied. The filing of an application for rehearing shall not, unless specifically
16 ordered by the council, operate as a stay of the site certificate or amended site certificate for the
17 facility.

18 (2) Any party **or limited party** to a contested case proceeding on a site certificate or amended
19 site certificate application may appeal **a final order issued by the council under ORS 469.300 to**
20 **469.563, 469.590 to 469.619, 469.930 and 469.992, including** the council's approval or rejection of the
21 site certificate or amended site certificate application. Issues on appeal shall be limited to those
22 raised by the parties **or limited parties** to the contested case proceeding before the council. **To**
23 **appeal a final order, a petitioner shall establish individual or associational standing by dem-**
24 **onstrating an injury to the petitioner or petitioner's members resulting from the final order.**

25 (3) **Notwithstanding ORS 183.482 and 183.484,** jurisdiction for judicial review of the council's
26 approval or rejection of an application for a site certificate or amended site certificate, **including**
27 **decisions related to or arising from a contested case on an application for a site certificate**
28 **or amended site certificate,** is conferred upon the Supreme Court. Proceedings for review shall
29 be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days
30 after the date of service of the council's final order **approving or rejecting a site certificate or**
31 **amended site certificate** or within 30 days after the date the petition for rehearing is denied or
32 deemed denied. Date of service shall be the date on which the council delivered or mailed its order
33 in accordance with ORS 183.470.

34 (4) The filing of a petition for judicial review may not stay the order **approving or rejecting**
35 **a site certificate or amended site certificate,** except that a party **or limited party** to the con-
36 tested case, **or any other person seeking judicial review of a decision related to or arising**
37 **from a contested case,** may apply to the Supreme Court for a stay upon a showing that there is
38 a colorable claim of error and that:

39 (a) The petitioner will suffer irreparable injury; or

40 (b) Construction of the energy facility will result in irreparable harm to resources protected by
41 applicable council standards or applicable agency or local government standards.

42 (5) If the Supreme Court grants a stay pursuant to subsection (4) of this section, the court:

43 (a) Shall require the petitioner requesting the stay to give an undertaking in the amount of
44 \$5,000.

45 (b) May grant a stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review and shall render a decision within six months of the filing of the petition for review.

(7) The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (6) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

(8) No period of delay resulting from a continuance granted by the Supreme Court under subsection (7)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (7)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

(9) No continuance under subsection (7)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

SECTION 3. ORS 469.405 is amended to read:

469.405. (1) A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that *[must]* **may** be considered in a contested case proceeding. *[Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403.]* **Notwithstanding ORS 183.482 and 183.484, judicial review of the council's approval or rejection of a request for an amendment to a site certificate or decision related to or arising from a contested case on an amendment, regardless of whether a contested case was held prior to the council's decision, is conferred solely on the Supreme Court. If a contested case is not held, only the certificate holder or persons who submitted comments on the request for an amendment in compliance with council rules may seek judicial review. A certificate holder or person who seeks judicial review is limited to the issues the certificate holder or the person raised in their comments.**

(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law, the land use approval by an affected local government of a proposed amendment to a facility and the recommendation of the special advisory group of applicable substantive criteria shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to show compliance with the statewide planning goals by demonstrating that the facility has received local land use approval, the provisions of this section shall apply only to proposed projects for which the land use approval by the local government occurs after the date an application for amendment is submitted to the State Department of

1 Energy.

2 (3) An amendment to a site certificate is not required for a pipeline less than 16 inches in di-
 3 ameter and less than five miles in length that is proposed to be constructed to test or maintain an
 4 underground gas storage reservoir. If the proposed pipeline will connect to a council certified sur-
 5 face facility related to an underground gas storage reservoir or to a council certified gas pipeline,
 6 whether the proposed pipeline is to be located inside or outside the site of a council certified facil-
 7 ity, the certificate holder must obtain, prior to construction, the approval of the department for the
 8 construction, operation and retirement of the proposed pipeline. The department shall approve such
 9 a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding
 10 ORS 469.503 (3), the department may not review the proposed pipeline for compliance with other
 11 state standards. Notwithstanding ORS 469.503 (4), or any council rule addressing compliance with
 12 land use standards, the department shall not review such a proposed pipeline for compliance with
 13 land use requirements. Notwithstanding ORS 469.401 (3), the approval by the department of such
 14 pipeline shall not bind any state or local agency. The council may adopt appropriate procedural
 15 rules for the department review. The department shall issue an order approving or rejecting the
 16 proposed pipeline. Judicial review of a department order under this section shall be as provided in
 17 ORS 469.403.

18 (4) **Subject to applicable rules adopted by the council, a person who holds a site certif-**
 19 **icate may request to add area to the approved site boundary without the council requiring**
 20 **an amendment to the site certificate.**

22 CONDEMNATION: PUBLIC CONVENIENCE AND NECESSITY

24 SECTION 4. ORS 758.015 is amended to read:

25 758.015. (1) When any person, as defined in ORS 758.400, providing electric utility service, as
 26 defined in ORS 758.400, or any transmission company, proposes to construct an overhead trans-
 27 mission line which will necessitate a condemnation of land or an interest therein, it shall petition
 28 the Public Utility Commission for a certificate of public convenience and necessity setting forth a
 29 detailed description and the purpose of the proposed transmission line, the estimated cost, the route
 30 to be followed, the availability of alternate routes, a description of other transmission lines con-
 31 necting the same areas, and such other information in such form as the commission may reasonably
 32 require in determining the public convenience and necessity.

33 (2)(a) The commission shall give notice and hold a public hearing on such petition. The com-
 34 mission, in addition to considering facts presented at such hearing, shall make the commission's own
 35 investigation to determine *[the necessity, safety, practicability and justification in the public interest*
 36 *for the proposed transmission line]* **whether the proposed transmission line meets a need for**
 37 **increased transmission capacity and reliability in the electric grid** and shall enter an order
 38 accordingly. **The commission shall consider a petition for a certificate of public convenience**
 39 **and necessity and enter an order without requiring a petitioner to first obtain any required**
 40 **state or local land use approvals.**

41 (b) Except for petitions for a proposed transmission line for which the petitioner also seeks
 42 approval from the Energy Facility Siting Council for the same transmission line, the order shall be
 43 subject to review as in other cases. Orders on petitions for a proposed transmission line for which
 44 the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission
 45 line are subject to judicial review in the same manner as an order in a contested case as set forth

1 in ORS 758.017.

2 (c) In any proceeding for condemnation, a certified copy of such order shall be conclusive evi-
3 dence that the transmission line for which the land is required is a public use and necessary for
4 public convenience.

5 (3) This section shall not apply to construction of transmission lines in connection with a project
6 for which a permit or license is otherwise obtained pursuant to state or federal law.

7 (4) As used in this section and ORS 758.020, "transmission company" means a person or entity
8 that owns or operates high voltage transmission lines and is subject to the jurisdiction of the Fed-
9 eral Energy Regulatory Commission. "Transmission company" does not include a cooperative or-
10 ganized under ORS chapter 62.

11 **SECTION 5.** ORS 469.401 is amended to read:

12 469.401. (1) Upon approval, the site certificate or any amended site certificate with any condi-
13 tions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the
14 council and by the applicant. The certificate or amended certificate shall authorize the applicant to
15 construct, operate and retire the facility subject to the conditions set forth in the site certificate
16 or amended site certificate. The duration of the site certificate or amended site certificate shall be
17 the life of the facility.

18 (2) The site certificate or amended site certificate shall contain conditions for the protection of
19 the public health and safety, for the time for completion of construction, and to ensure compliance
20 with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or
21 amended site certificate shall require both parties to abide by local ordinances and state law and
22 the rules of the council in effect on the date the site certificate or amended site certificate is exe-
23 cuted, except that upon a clear showing of a significant threat to the public health, safety or the
24 environment that requires application of later-adopted laws or rules, the council may require com-
25 pliance with such later-adopted laws or rules. For a permit addressed in the site certificate or
26 amended site certificate, the site certificate or amended site certificate shall provide for facility
27 compliance with applicable state and federal laws adopted in the future to the extent that such
28 compliance is required under the respective state agency statutes and rules.

29 (3) Subject to the conditions set forth in the site certificate or amended site certificate, any
30 certificate or amended certificate signed by the chairperson of the council shall bind the state and
31 all counties and cities and political subdivisions in this state as to the approval of the site and the
32 construction and operation of the facility. After issuance of the site certificate or amended site
33 certificate, any affected state agency, county, city and political subdivision shall, upon submission
34 by the applicant of the proper applications and payment of the proper fees, but without hearings or
35 other proceedings, promptly issue the permits, licenses and certificates addressed in the site certif-
36 icate or amended site certificate, subject only to conditions set forth in the site certificate or
37 amended site certificate. After the site certificate or amended site certificate is issued, the only is-
38 sue to be decided in an administrative or judicial review of a state agency or local government
39 permit for which compliance with governing law was considered and determined in the site certif-
40 icate or amended site certificate proceeding shall be whether the permit is consistent with the terms
41 of the site certificate or amended site certificate. Each state or local government agency that issues
42 a permit, license or certificate shall continue to exercise enforcement authority over the permit, li-
43 cense or certificate.

44 (4) **In any proceeding for condemnation of land or an interest therein, a certified copy**
45 **of a site certificate for an energy facility that is a high voltage transmission line under ORS**

1 **469.300 (12)(a)(C) shall be conclusive evidence that the high voltage transmission line for**
2 **which the land is required is a public use and necessary for public convenience.**

3 [(4)] (5) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state
4 agency or local government over matters that are not included in and governed by the site certifi-
5 cate or amended site certificate. Such matters include but are not limited to employee health and
6 safety, building code compliance, wage and hour or other labor regulations, local government fees
7 and charges or other design or operational issues that do not relate to siting the facility.

8
9 **CAPTIONS**

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11 **SECTION 6. The unit captions used in this 2025 Act are provided only for the convenience**
12 **of the reader and do not become part of the statutory law of this state or express any leg-**
13 **islative intent in the enactment of this 2025 Act.**
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